

ARE YOU A GPAI MODEL PROVIDER?

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The EU AI Act regulates general purpose AI (**GPAI**) models. However, as the obligations under the EU AI Act only apply to providers of GPAI models, before diving into compliance requirements, there are two key threshold questions for any organisation to answer using the European Commission published guidance on GPAI models (**Guidance**) as a guide.

1. Is my model a GPAI model?

Article 3(63) of the Act defines a GPAI model as: “..an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks....”

The Guidance sets out two complementary tests to help determine whether a model is a GPAI model – a quantitative one (based on the model's capability) and a qualitative test (based on training compute).

Quantitative test – training compute threshold

The Guidance uses the concept of training compute to estimate the scale and potential capability of a model, measured using floating point operations (FLOPs). At a high level, training compute represents the total number of arithmetic operations performed during the training, combining variables including model size and volume of training data. The Guidance helpfully draws a line in the sand: a model is presumed to be a GPAI model where the model training compute is greater than 10²³ FLOPs.

Not a GPAI model	Model training compute ≤10 ²³ FLOPs
GPAI model	Model training compute >10 ²³ FLOPs
GPAI model with systemic risk	Model training compute >10 ²⁵ FLOPs

The concept of training compute is technical, and will require input from technical/ AI development teams to assess accurately. The annexes of the Guidance provide additional detail.

The Guidance is also clear that the Commission may revise these thresholds or introduce new metrics as technology and the market evolves.

Qualitative test – is it highly capable?

The qualitative test looks beyond raw compute to assess what the model can actually do. It must be able to generate language (text or audio), text-image or text-video. It must also show significant generality and perform competently across a wide range of distinct tasks, i.e. it must not be limited to a narrow function.

This means that even if a model meets the compute threshold, if it lacks generality or is not capable of competently performing a wide range of distinct tasks, then it will not be a GPAI model. Conversely a model that falls below the threshold displays significant generality and is capable of competently performing a wide range of distinct tasks, is a GPAI model.

Example 1: A model is trained specifically for the task of transcribing speech to text, using 10²⁴ FLOP. This indicates that it should be a GPAI model. However, if it can only competently perform a narrow set of tasks (transcribing speech), it is not actually a GPAI model.

Example 2: A model is trained specifically for modelling weather patterns, using 10²⁴ FLOP. While the model's training compute is over the indicative threshold for a GPAI model, if it cannot generate text, speech, text-to-image, and text-to-video, then it is not a GPAI model.

2. Am I the provider of that GPAI model?

The next step is to establish who is the provider of the GPAI model.

Article 3(3) of the Act defines a provider of a GPAI model as: “A natural or legal person, public authority, agency or other body that develops...a general-purpose AI model, or that has... a general-purpose AI model developed, and places it on the market...under its own name or trademark, whether for payment or free of charge.”

This captures both original developers who have developed and trained the model, as well as organisations that commission, modify, fine-tune or otherwise commercialise models.

The term 'placing on the market' follows the well-established concept used in EU product regulation, as reflected in the EU's Blue Guide. It means the first time a GPAI model is supplied for use or distribution within the EU in the course of a commercial activity, whether for payment or free of charge. In other words, it is about making the model available to others in the EU, not necessarily selling it. Recital 97 of the Act and Guidance give concrete examples of what counts as placing a GPAI model on the market, including:

- making it available for the first time on the EU market via an API, a software library or package, or cloud computing service;
- making it available for the first time upon by upload to a public repository for direct download on the EU market;
- where integrated into a mobile application made available for the first time in the EU via app stores (see further on integration below).

In practice, these concepts can be complex – particularly where models are developed, integrated or adapted by different actors. The following three questions commonly arise when assessing whether an organisation qualifies as a provider of a GPAI model:

If I integrate a GPAI model into my AI system, am I the provider?

Generally speaking, if an organisation integrates a third party's GPAI model into its AI system, that organisation is the provider of the AI system, but not the GPAI model itself. The GPAI model obligations remain with the upstream developer who first placed the model on the market. However, the Guidance identifies two specific exceptions where integration itself means the GPAI model is also considered to have been placed on the market.

Scenario	Detail	Who is the provider of the GPAI model?
A non-EU developer provides a GPAI model to an organisation that incorporates it into its AI system that it makes available in the EU	The GPAI model is deemed placed on the market once the AI system is made available in the EU	The non-EU developer, unless it has clearly and unequivocally excluded EU use, in which case that organisation will be the provider of the GPAI model
An organisation develops its own GPAI model and integrates it into its own AI system that it makes available in the EU	The GPAI model is deemed to be placed on the market, even though it is not separately distributed	That organisation is both the provider of the GPAI model and the GPAI system

In particular, US GPAI model providers who wish to stay outside of the scope of the EU AI Act should ensure that their contractual documentation specifically excludes use in the EU.

If the GPAI model is only used internally, does the EU AI Act apply?

Generally, no. Recital 97 and the Guidance make clear that GPAI models used solely for internal purposes are not in scope provided only that the model:

- is not essential for providing a product or service; and
- does not affect the rights of individuals.

In other words, if the model is essential for providing a product or service or the model affects individuals, you will be a provider even if only used internally.

Example 1: A FinTech company develops a GPAI model that performs a range of advisory tasks investment recommendations. Although only used by FinTech company staff, and not provided to clients or made available externally, it is essential to the client services and influences client outcomes. It is therefore treated as being placed on the market and that FinTech company will be the provider of that GPAI model.

Example 2: A company develops a GPAI model to help employees draft internal reports and summarise work. The model is not essential to any external product or service and has no impact on individuals. It is not in scope of the EU AI Act.

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If I modify or fine-tune the model, am I the provider?

Potentially. While the Guidance is clear that not every modification of a GPAI model makes a downstream modifier a provider, it all depends (once again) on the training compute used.

The Guidance lays down a practical benchmark - if the training compute used for the modification exceeds one third of the compute used to train the original model, then the downstream modifier will be the provider of the modified GPAI model. If the original model's compute cannot be determined or estimated, the Guidance sets fallback thresholds based on those set out in the qualitative test section above.

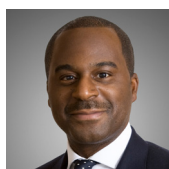
Not the provider of the modified GPAI model	Equal to or less than 1/3 of compute used to train the original GPAI model or (if original compute unknown) $\leq \frac{1}{3}$ of 10^{23} FLOPs
Provider of modified GPAI model	More than 1/3 of compute used to train the original GPAI model or (if original compute unknown) $> \frac{1}{3}$ of 10^{23} FLOPs
Provider of modified GPAI model with systemic risk	More than 1/3 of compute used to train the original GPAI model or (if original compute unknown) $> \frac{1}{3}$ of 10^{25} FLOPs

What this means is that minor adjustments such as prompt-tuning or parameter efficient fine-tuning are unlikely to reach this threshold. Generally speaking, and in line with EU product regulation, an organisation will usually be considered a provider of a modified GPAI model if the modifications result in significant change to the model's generality, capability or systemic risk.

Where an organisation does become a provider of a modified GPAI model, provider obligations under the EU AI Act apply with respect to the modification only.

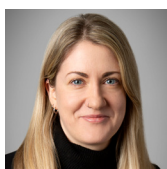
FOR MORE INFORMATION

If you would like to discuss how the EU AI Act's GPAI model obligations may apply to your organisation, or how to prepare for compliance, please speak to your regular contact at Weil or to any of the authors listed below.



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