

# The European Union Artificial Intelligence Act

Enterprise Governance

*AI Toolkit*

*August 2024*

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This report focuses on AI deployments and contains specific tools and resources focused on enterprise governance in alignment with vetted AI use cases. The content is modular, not linear. The aim is that readers can use the toolkit as a handy reference for their AI project, reviewing different sections as needed, whenever needed, depending on their particular AI project’s needs.

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## — Combining best practices from practitioners across relevant domains

The emergence of artificial intelligence (“AI”) holds great promise for enterprises, both AI native and AI non-native, perhaps as much as any new development in the modern data economy. The case for AI is stronger as global macroeconomic tensions highlight the need for novel mechanisms to boost productivity, drive economic growth and an emergence of a new AI-enabled economy underpinned through trade digitization. At the same time, AI may engender a fair share of puzzlement and anxiety among business leaders unfamiliar with it as a new and unfamiliar productivity tool.

This toolkit is designed to help with the deployment journey, whether your enterprise is seeking to gain increased efficiency, greater trust with counterparties, or other potential benefits offered AI technology. Your enterprise can use the toolkit to support more responsible AI deployments, de-risk early adoption, and ensure careful consideration of unintended consequences.

Unlocking opportunities means necessary consideration must be given to key technical and non-technical factors of success and the potential pitfalls in areas including enterprise governance, cyber security, risk management, and regulatory.

The toolkit is the culmination of more than three years of AI & Partners efforts to document tested-and-tried deployment best practices, insights and lessons from a community of 20+ organisations – and to address related issues that may arise in implementation projects.

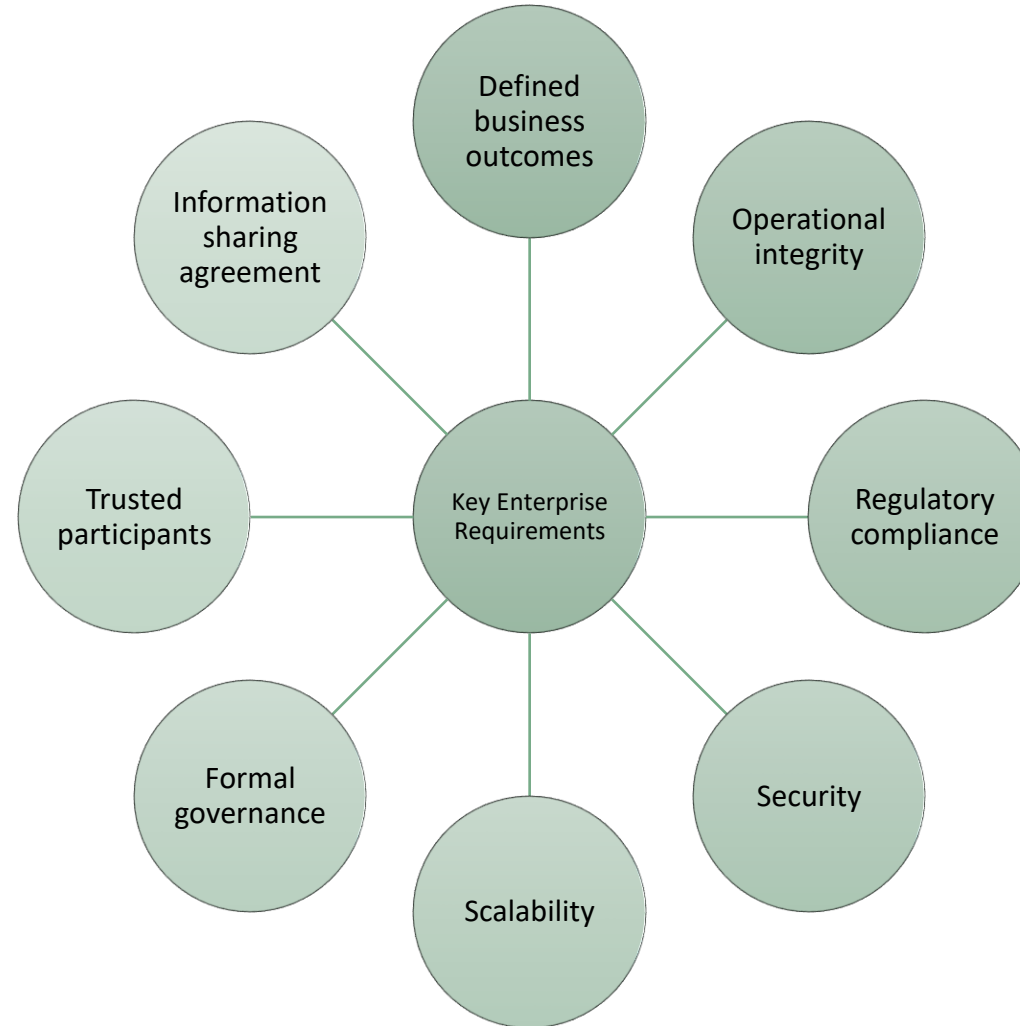
To accelerate the proliferation of trustworthy AI products and services and to level the playing field for partners upstream and downstream, we encourage sharing of the toolkit within your professional network. Sincere thanks to the generous commitment of the community who contributed their unique insights and expertise to this toolkit.

Good governance is a key indicator of a well-functioning enterprise. Creating the framework for business functions to effectively work together is just as important as building the related AI technology solution. Inevitably, members of an enterprise will have different priorities and interests that need to be reconciled. Thus, before launching an AI product or service, it is important to plan in advance how decisions will be made and how differences of opinion will be resolved. While there is no single solution that will enable every disparate interest to be accommodated, establishing rules of the road early on can greatly help to smooth disagreements, or even prevent them altogether.

Deciding on a governance model is important at the very formation of an enterprise’s AI journey, as the governance model is key for all other decision making. Important initial decisions include who will fund operations, who will be responsible for the development of new AI technology, and who will own this technology. However, note that it is also possible – and even likely – that an enterprise’s governance model will change over time as the AI solution becomes more sophisticated, adding new features and functionalities.

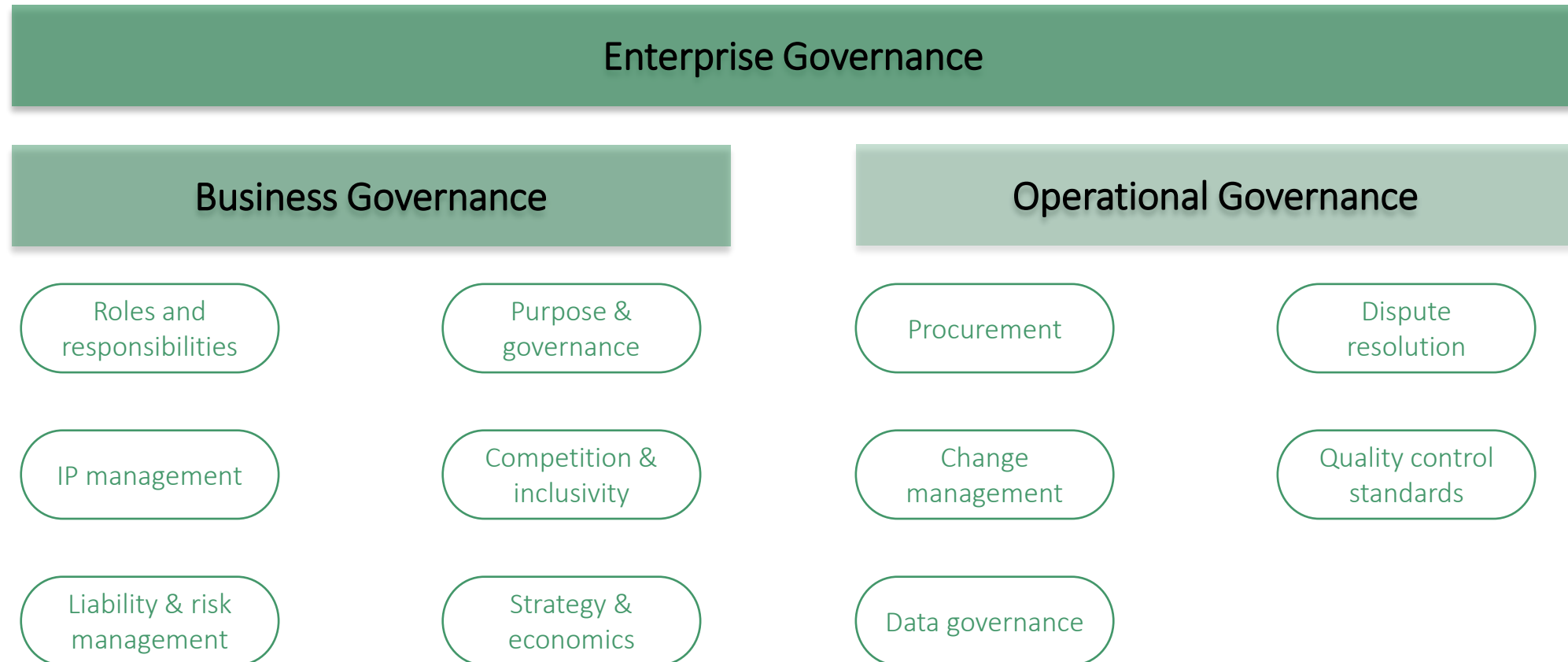


— Essential considerations for enterprise technology AI solutions



— Recommended set roles for enterprise AI governance





## — Typical liabilities faced by enterprise stakeholders

Liability may be imposed on an individual enterprise employee or enterprise stakeholders for:

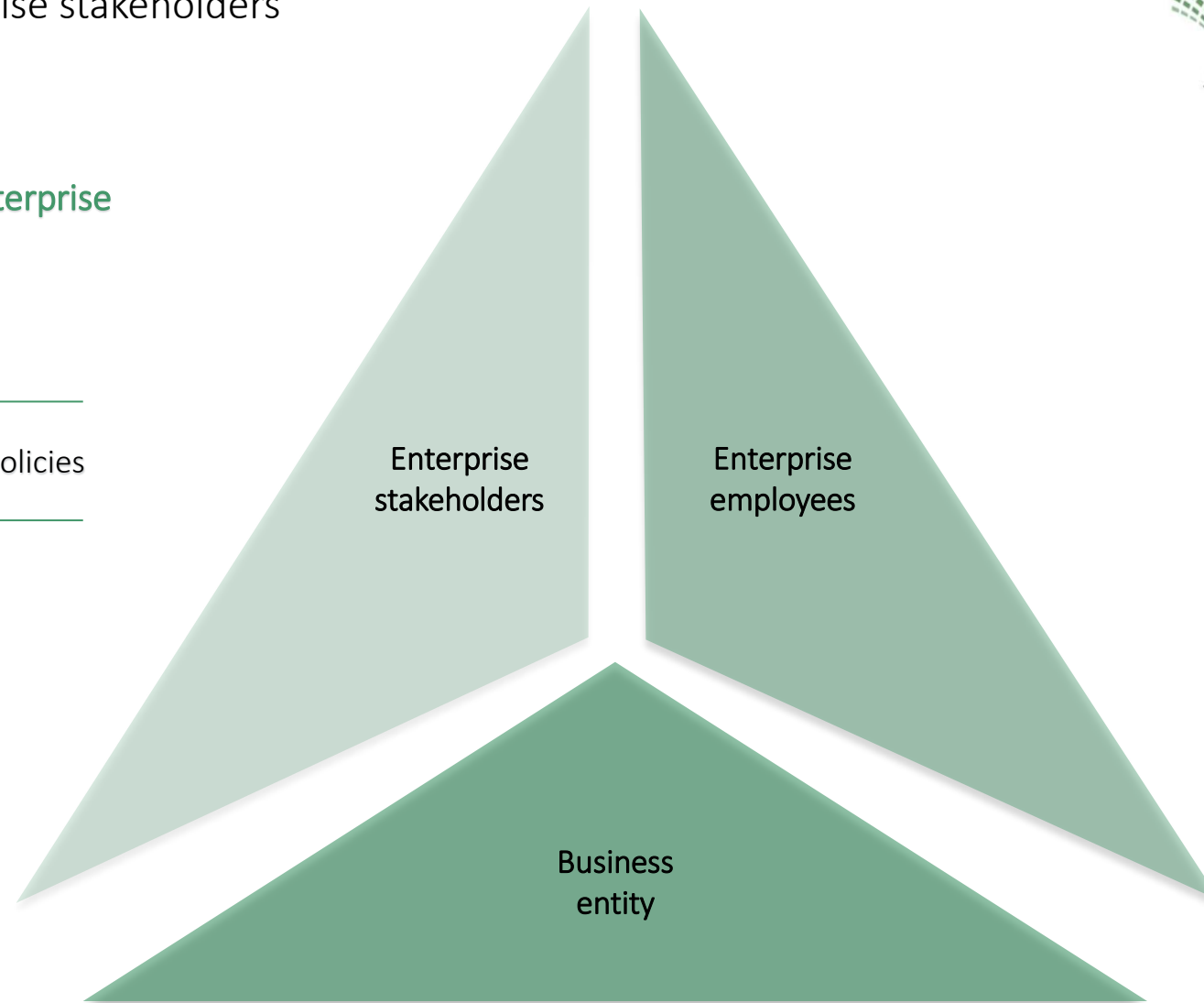
Failure to comply with EU AI Act

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Failure to comply with enterprise agreements or policies

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Damages caused to the enterprise or enterprise stakeholders by its bad acts or failure to act



*Responsible for enterprise operations and will be liable for a breach of its covenants to stakeholders.*



## — Typical liabilities faced by enterprise stakeholders

Point	Consideration
<b>Purpose impacts governance</b>	
What is the purpose of the enterprise?	<ol style="list-style-type: none"><li>1. What value will we deliver to enterprise employees and enterprise stakeholders?</li><li>2. How does the purpose of the enterprise impact governance?</li><li>3. Is anything needed to align incentives of various stakeholder groups?</li></ol>
What are the deliverables of the enterprise? Collaborative deliverables can take many forms. The following are the most typical deliverables prevalent in an AI-enabled enterprise:	<ol style="list-style-type: none"><li>1. <b>Designing and developing an AI solution for a given industry or ecosystem.</b> This typically starts with a joint proof-of-concept to test organisation collaboration.</li><li>2. <b>Standard-setting.</b> Complement and accelerate existing AI, data and protocol standardisation efforts. After a proof-of-concept is created, it is critical for organisations to work with other industry competitors, supply chain partners and enterprise stakeholders to set AI, data and software standards.</li><li>3. <b>Sharing research and development.</b> Enterprises can become use case-specific open innovation working groups dedicated to collaborative R&amp;D around AI technology. Industry participants must be able to learn from and build upon one another's work.</li></ol>
Short-term versus long-term drivers of success	<ol style="list-style-type: none"><li>1. What do we want to accomplish in the short-term? What will be the first use case? Who is critical to involve now versus later?</li><li>2. What do we want to accomplish in the long-term?</li></ol>
<b>Organisational structure</b>	
What are the key roles and responsibilities and who will fill those positions?	<ol style="list-style-type: none"><li>1. Who are the legal representatives of the enterprise?</li><li>2. Who are the technology partners of the enterprise?</li><li>3. Who are the business partners of the enterprise?</li><li>4. Should the enterprise seek out independent experts, non-profits or industry standards bodies at the initial stage or a later stage?</li><li>5. How do you engage with regulators?</li></ol>

## — Typical liabilities faced by enterprise stakeholders

Point	Consideration
<b>Purpose impacts governance</b>	
-	<ol style="list-style-type: none"><li>1. Agree up front on, and document, ownership of IP assets created in enterprise.</li><li>2. Review existing IP assets and consider whether those relevant to the specific enterprise should be licensed. Agree who will own the improvements to this IP.</li><li>3. Clearly define IP rights in the case of code that interacts with the AI technology solution, such as software developers or other actors involved in connection with the solution.</li><li>4. Put in place appropriate confidentiality, data transfer and data sharing agreements.</li></ol>
<b>Competition and inclusivity</b>	
-	<ol style="list-style-type: none"><li>1. At the outset of discussions among competitors, put in place policies and procedures to keep competition law compliance top-of-mind.</li><li>2. Consult with competition counsel to ensure that the enterprise's activities are not perceived as exclusionary.</li></ol>
<b>Liability and risk management</b>	
-	<ol style="list-style-type: none"><li>1. Enterprises should confirm whether their insurance policies cover related work.</li><li>2. Consider what levels of insurance are appropriate at the enterprise entity level.</li></ol>
<b>Business strategy and economics</b>	
-	<ol style="list-style-type: none"><li>1. What is a realistic budget for bringing the enterprise's product to production, if that is the goal?</li><li>2. How is the enterprise initially funded? What happens if additional funding is needed?</li></ol>

## — Typical liabilities faced by enterprise stakeholders

Point	Consideration
<b>Dispute resolution and errors</b>	
-	<ol style="list-style-type: none"><li>1. Consider whether an AI-specific dispute resolution forum is needed.</li><li>2. Consider whether a product rollback/cancellation/error policy is needed.</li></ol>
<b>Systems change management</b>	
-	<ol style="list-style-type: none"><li>1. Determine who makes decisions regarding upgrades at the strategic and operational level.</li><li>2. What are the procedures for upgrades? How long do enterprise stakeholders have to test or integrate before an upgrade must be put into production?</li></ol>

— Contact us today – we’re happy to help!



Amsterdam - London - Singapore



Email

[contact@ai-and-partners.com](mailto:contact@ai-and-partners.com)



Phone

+44(0)7535 994 132



Website

<https://www.ai-and-partners.com/>



Social Media

LinkedIn: <https://www.linkedin.com/company/ai-&-partners/>

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