

**FRENCH-ENGLISH LAW STUDENT ESSAY PRIZE 2025 WITH THE GIDE AND
GRAY'S INN - WINNER**

If you were advising an entrepreneur starting up a company that develops and sells AI products would you encourage them to do so under the French or English legal system?

You may wish to consider: Would your advice assume the products were sold and used globally and would it matter whether they were goods or services or a mixture of both.

Dear Mr Smith,

Thank you for your instruction to advise you on your artificial intelligence (AI) start-up project. I hope to clarify the legal implications of starting up a company under the French and English legal systems. I will analyse the current legal frameworks in both England and France, examine whether they distinguish between goods and services, and advise you of your duties if your products are sold globally.

After researching both legal systems, my advice would be to start up your company under the English system. Its flexible approach to AI¹ strongly encourages innovation, while its lower compliance obligations and costs² make it more accessible for start-ups. You can then budget for European Union (EU) compliance costs³ when selling in the EU. When selling outside the EU, the English legal system's approach to AI is broadly similar to other countries, such as the United States⁴ or Japan⁵, minimising (but not eliminating) the need for significant adaptation of your product.

For the purposes of an executive summary, the table below highlights the key points I will be addressing to support your decision-making process.

Point of comparison	French legal system	English legal system
Legal framework	The EU AI Act (AIA) is directly applicable in France. ⁶	No overarching regulatory framework; there is instead a context-specific, principles-based framework. ⁷

¹ Department for Science, Innovation and Technology, *A pro-innovation approach to AI regulation* (White Paper, Cm 815, 2023) para 10.

² Asress Adimi Gikay, 'Risks, innovation, and adaptability in the UK's incrementalism versus the European Union's comprehensive artificial intelligence regulation' (2024) 32 *International Journal of Law and Information Technology* 1, 23.

³ Robert Kilian, Linda Jäck, and Dominik Ebel, 'European AI Standards—Technical Standardisation and Implementation Challenges under the EU AI Act' (2025) *EJRR* 1, 17.

⁴ White & Case LLP, 'AI Watch : Global regulatory tracker- United States' (*White & Case*, 21 July 2025) <[AI Watch: Global regulatory tracker - United States | White & Case LLP](#)> accessed 21 August 2025.

⁵ White & Case LLP, 'AI Watch : Global regulatory tracker- Japan' (*White & Case*, 13 June 2025) <[AI Watch: Global regulatory tracker - Japan | White & Case LLP](#)> accessed 21 August 2025.

⁶ White & Case LLP, 'AI Watch : Global regulatory tracker- France' (*White & Case*, 16 July 2025) <[AI Watch: Global regulatory tracker - France | White & Case LLP](#)> accessed 17 July 2025.

⁷ Department for Science, Innovation and Technology (n 1) box 2.1.

Compliance costs	High, with fines if technical standards are not respected. ⁸	Low because of the agile AI framework. ⁹
Start-up support	National AI regulatory sandboxes. ¹⁰	Guidance provided by regulators follows the context-specific, principles-based framework. ¹¹
Distinction between goods and services	No distinction. A risk-based approach is used instead. ¹²	Format determines which laws and regulators must be complied with. ¹³
Selling globally	AIA applies to all businesses that place AI services in the EU market, regardless of where they are established. ¹⁴	Businesses may fall under the AIA if they sell in Union markets. ¹⁵ But a flexible approach to AI is quite common in other legal systems, such as in the United States ¹⁶ or Japan ¹⁷ , which means minimal adaptation of AI products is necessary.

⁸ Kilian, Jäck, and Ebel (n 3) 3.

⁹ Gikay (n 2) 23.

¹⁰ Commission nationale de l'informatique et des libertés (CNIL), 'Artificial intelligence and public services: the CNIL publishes the results of its "sandbox"' (CNIL, 18 April 2025) <[Artificial intelligence and public services: the CNIL publishes the results of its "sandbox" | CNIL](#)> accessed 15 August 2025.

¹¹ Department for Science, Innovation and Technology, *A pro-innovation approach to AI regulation: government response* (Cm 1019, 2024) para 11.

¹² Artificial Intelligence Act [2024] (AIA 2024) OJ L 2024/1689.

¹³ Department for Science, Innovation and Technology (n 1) box 2.1.

¹⁴ AIA 2024, Chapter I Article 2(1)(a).

¹⁵ Winona Chan, 'AI regulation: What UK businesses need to know' (*The Law Society Gazette*, 25 April 2025) <[AI regulation: What UK businesses need to know | Law Gazette](#)> accessed 26 July 2025.

¹⁶ White & Case LLP (n 4).

¹⁷ White & Case LLP (n 5).

International public image	AIA promotes more trustworthy AI, which could enhance public trust. ¹⁸	Legal system criticised for not ensuring the development of safe AI systems. ¹⁹
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I. Framework overview

A. French legal system

There are no specific laws in France that directly regulate AI because the EU AIA fulfils that function.²⁰

In spring 2024, the EU adopted the AIA to lay down a uniform legal framework for developing, placing on the market, and putting into service AI systems.²¹ The AIA came into force on the 1st of August 2024.²² The Act will be applicable on the 2nd of August 2026, but Article 6(1) on classification rules for “high-risk” AI systems will apply on the 2nd of August 2027.²³

The AIA imposes stringent obligations on “providers”. As an entrepreneur, starting up a company that develops and sells AI products, you fall under Article 3 of the AIA’s definition:

“a natural or legal person, public authority, agency or other body that develops an AI system or a general purpose AI model or that has an AI system or a general-purpose AI model developed and places it on the market or puts the AI system into service under its own name or trademark, whether for payment or free of charge”.

France’s legal system, with the AIA, offers strong legal certainty via a comprehensive framework. The AIA categorises AI systems according to risk: “unacceptable”, “high”, “low”, and “minimal” (the latter being unregulated) and establishes a specific regime for general-purpose AI (GPAI).²⁴ Certain requirements for some categories are already applicable,

¹⁸ Manuel Wörsdörfer, ‘Mitigating the adverse effects of AI with the European Union’s artificial intelligence act: Hype or hope?’ [2023] 43/3 Global Business and Organizational Excellence, <[Mitigating the adverse effects of AI with the European Union’s artificial intelligence act: Hype or hope?](#)>, accessed 15 July 2025, 114.

¹⁹ Gikay (n 2) 23.

²⁰ White & Case LLP (n 6).

²¹ AIA 2024.

²² AIA 2024, Chapter XIII Article 113.

²³ *ibid.*

²⁴ Wörsdörfer (n 18) 114.

including Chapter II (prohibited AI practices posing an “unacceptable” risk) as of 2nd of February 2025 and Chapter V (GPAI) as of 2nd of August 2025.²⁵

However, I would advise that rigid categorisation is problematic, as it ignores the rapid pace of AI development. Since AI evolves so quickly, fixed categories could lead to regulatory gaps that will need to be resolved in court or by settlement.²⁶ It is understandable that you may be reluctant to wait extended periods of time to know whether your product complies with the AIA.

Further to my point on the AIA’s rigidity, technical standardisation is another factor that makes the legal requirements for “high-risk” AI systems more prescriptive.²⁷ For example, the joint committee of the European Committee for Standardization and the European Committee for Electrotechnical Standardization has issued ten standards, with thirty-three more under development.²⁸ You could face expenses of thousands of euros to correctly comply with the AIA.²⁹ If your start-up cannot afford to purchase all relevant technical standards, you risk paying fines.³⁰ This will either be a percentage of the global annual sales in the previous financial year, or a predetermined amount, depending on whichever is the lowest.³¹ Compliance costs are independent of company size, meaning that it is more difficult for start-ups, such as yours, than for large technology companies.³²

Usefully, the EU does require Member States to create at least one “AI regulatory sandbox” at a national level.³³ Sandboxes are controlled environments that allow AI systems to be developed, tested, and validated before being released to the market.³⁴ They provide support for start-ups to achieve regulatory compliance whilst innovating. This AIA provision comes

²⁵ AIA 2024, Chapter XIII Article 113.

²⁶ Stanley Greenstein and Mauro Zamboni, ‘Navigating the legislative dilemma: evaluating the EU AI Act’s approach to regulating emerging technologies’ [2025] *The Theory and Practice of Legislation* <[Navigating the legislative dilemma: evaluating the EU AI Act’s approach to regulating emerging technologies](#)>, accessed 1 August 2025, 25.

²⁷ AIA 2024, Chapter III Article 40.

²⁸ CEN, ‘About CEN’ (CEN, 2025) <[CEN - CEN/CLC/JTC 21](#)> accessed 5 August 2025.

²⁹ Kilian, Jäck, and Ebel (n 3) 9.

³⁰ *ibid.*

³¹ AIA 2024, Chapter XII Article 99.

³² Philipp Hacker, ‘AI Regulation in Europe: From the AI Act to Future Regulatory Challenges’ [2023] <[Microsoft Word - Hacker Europe 231006](#)> accessed 25 July 2025, 5.

³³ AIA 2024, Chapter VI Article 57.

³⁴ *ibid.*

into force in August 2026, but in France, the “Commission Nationale de l’Informatique et des Libertés” has already created a sandbox to advise actors in their projects.³⁵

B. English legal system

The White Paper “A Pro-Innovation Approach to AI Regulation” (August 2023)³⁶, the government’s response to the White Paper (February 2024)³⁷ and the “AI Action Plan” (July 2024)³⁸ all set out the benefits of a context-specific, principles-based approach to AI.

This approach promotes the use of five principles to drive safe and responsible AI innovation.³⁹ These principles⁴⁰ are:

- Safety, security, and robustness.
- Appropriate transparency and explainability.
- Fairness.
- Accountability and governance.
- Contestability and redress.

They guide existing UK regulators, such as the Competition and Markets Authority (CMA), in adopting a proportionate and flexible approach to regulating and supervising AI within their domains.⁴¹ With this agile approach, compared to France, the English legal system has lower compliance obligations, making it easier for companies, such as yours, to launch in England.⁴² However, you should be aware that AI-related misconduct is penalised under existing legal frameworks. The UK General Data Protection Regulation and the Data Protection Act 2018 allow fines of up to £17.5 million or 4% of global annual turnover (whichever is higher) for severe violations that involve misusing personal data in AI systems.⁴³

³⁵ CNIL (n 10).

³⁶ Department for Science, Innovation and Technology (n 1) para 11.

³⁷ Department for Science, Innovation and Technology (n 11) 6.

³⁸ Department for Science, Innovation and Technology, *AI Opportunities Action Plan* (Cm 1241, 2025) para 1.4.

³⁹ Department for Science, Innovation and Technology (n 11) para 10.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² Gikay (n 2) 22.

⁴³ Information Commissioner’s Office (ICO), ‘The maximum amount of a fine under UK GDPR and DPA 2018’ (ICO) <[The maximum amount of a fine under UK GDPR and DPA 2018 | ICO](#)> accessed 28 August 2025.

It is worth mentioning the introduction of the “Artificial Intelligence (Regulation) Private Members’ Bill” (the Bill) in the House of Lords in March 2025.⁴⁴ The Bill proposes one centralised body, the AI Authority, which would replace the current model where multiple existing regulators oversee AI within their respective domains.⁴⁵ The Bill would introduce, for the first time, a set of legal obligations on AI developers.⁴⁶ However, you should not worry: this Bill is unlikely to be passed, given time constraints and lack of UK government support.⁴⁷

II. Goods and services distinction

A. French legal system

The AIA treats AI as “systems” without distinguishing between goods and services.⁴⁸ The AIA’s risk-based approach distinguishes AI systems by risk level, with obligations varying accordingly. I would advise that, due to all these legal obligations, there is a real risk that this will slow down your innovation at an early stage.⁴⁹

Prohibited AI systems that pose “unacceptable” risks are:

- Deploying subliminal/manipulative techniques to distort people’s behaviours.⁵⁰
- Exploiting vulnerabilities to distort behaviours.⁵¹
- Social scoring.⁵²
- Assessing the risk of an individual committing criminal offenses based on profiling.⁵³
- Compiling facial recognition databases.⁵⁴
- Inferring emotions in workplaces or educational institutions.⁵⁵
- Using biometric categorisation systems.⁵⁶

⁴⁴ Artificial Intelligence (Regulation) Bill HL Bill (2024-2025) 76.

⁴⁵ Nathalie Moreno, ‘The Artificial Intelligence (Regulation) Bill: Closing the UK’s AI Regulation Gap?’ (*Kennedys*, 7 March 2025) <[The Artificial Intelligence \(Regulation\) Bill: Closing the UK's AI Regulation Gap?](#)> accessed 20 July 2025.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Directorate-General for Communication, ‘AI Act enters into force’ (*European Commission*, 1 August 2024) <[AI Act enters into force - European Commission](#)> accessed 20 July 2025.

⁴⁹ Nuno Sousa e Silva, ‘The Artificial Intelligence Act: Critical Overview’ (2025) *Journal of Intellectual Property, Information Technology and Electronic Commerce Law* 2, 23.

⁵⁰ AIA 2024, Chapter II Article 5 (1)(a).

⁵¹ *ibid* Chapter II Article 5(1)(b).

⁵² *ibid* Chapter II Article 5(1)(c).

⁵³ *ibid* Chapter II Article 5(1)(d).

⁵⁴ *ibid* Chapter II Article 5(1)(e).

⁵⁵ *ibid* Chapter II Article 5(1)(f).

⁵⁶ *ibid* Chapter II Article 5(1)(g).

- “Real-time” remote biometric identification in publicly accessible spaces for law enforcement.⁵⁷

Your AI system would be considered “high-risk” if it is itself a product that is covered by Union harmonisation legislation listed in Annex I of the AIA (machinery, toys, lifts...) or if it is the safety component of a product listed in Annex I.⁵⁸ Your AI system will also be considered “high-risk” if it is referred to in Annex III of the AIA, which includes non-banned biometrics, critical infrastructure, education, and vocational training.⁵⁹

If your AI system is “high-risk,” then you need to establish a risk management system throughout the AI system’s lifecycle⁶⁰, conduct data governance⁶¹, draw up technical documentation to demonstrate compliance with the authorities⁶² and provide instructions for use⁶³. You should design your AI system to automatically record events throughout its lifespan⁶⁴, implement human oversight⁶⁵ and achieve appropriate levels of accuracy, robustness, and cybersecurity⁶⁶. You should establish a quality management system to ensure compliance with the AIA.⁶⁷

If your system poses “limited risk”, transparency is required to ensure that users are aware they are interacting with AI.⁶⁸

If your AI product is GPAI, you must have technical documentation of the model, comply with the Copyright Directive, and publish a summary about the content used for training.⁶⁹

Regarding your liability, under the current EU Product Liability Directive (PLD) 1985⁷⁰, codified in the French Code Civil in Articles 1245 to 1245-17, AI is not included in the meaning of the term “product”, so it is difficult for claimants to obtain compensation for their

⁵⁷ *ibid* Chapter II Article 5(1)(h).

⁵⁸ *ibid* Chapter III Article 6 (1)(a) and (b); AIA 2024, Annex I.

⁵⁹ *ibid* Chapter III Article 6(2); AIA 2024 Annex III.

⁶⁰ *ibid* Chapter III Article 9.

⁶¹ *ibid* Chapter III Article 10.

⁶² *ibid* Chapter III Article 11.

⁶³ *ibid* Chapter III Article 13.

⁶⁴ *ibid* Chapter III Article 12.

⁶⁵ *ibid* Chapter III Article 14.

⁶⁶ *ibid* Chapter III Article 15.

⁶⁷ *ibid* Chapter III Article 17.

⁶⁸ *ibid* Chapter IV Article 50.

⁶⁹ *ibid* Chapter V Article 53 (1).

⁷⁰ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L210/29.

injuries.⁷¹ However, you should note the stricter liability standards that will arise with the new PLD 2024⁷², which must be implemented into Member States' national laws by December 2026.⁷³ The new PLD 2024 defines “product” broadly to include AI software.⁷⁴ This means claimants who suffer injury or loss from a defective AI product can bring claims against the manufacturers, such as your start-up.⁷⁵

Therefore, under the French legal system, the format of your product (goods, services, or a mixture of both) will not change your obligations. It will depend on which category of risk the embedded AI system falls into. With your business still at a foundational stage, I would advise that the complexity of the risk-based approach could negatively affect your innovation because of all the heavy regulatory obligations.⁷⁶

B. English legal system

The format of the product (goods, services, or a mixture of both) determines which existing laws and regulators you must comply with.⁷⁷

If you develop goods with AI, you must ensure compliance with all applicable laws. Product safety laws, such as the General Product Safety Regulations 2005 or the Product Regulation and Metrology Act 2025, ensure that goods manufactured and placed on the market are safe.⁷⁸ Product-specific legislation may apply to some specific goods that include integrated AI, such as medical devices (the Medical Devices Regulations 2002 would apply).⁷⁹ If you develop AI services, there are also certain obligations in force that must be respected. For example, AI services may increase the risk of unfair bias or discrimination, so you must respect the Equality Act 2010.⁸⁰

⁷¹ Directive 2024/2853 of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC [2024] OJ L 2024/2853, (3).

⁷² *ibid.*

⁷³ *ibid* Article 2(1).

⁷⁴ *ibid* Article 4(1).

⁷⁵ Tim Wybitul and Judith Sikora, ‘New EU Product Liability Directive Comes Into Force’ (*Latham & Watkins*, 23 December 2024) <[New EU Product Liability Directive Comes Into Force](#)> accessed 26 July 2025.

⁷⁶ Nuno Sousa e Silva (n 49), 23.

⁷⁷ Department for Science, Innovation and Technology (n 1) box 2.1.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

Furthermore, you must comply with regulators' guidance on AI, which implements the five principles based on the context-specific, principles-based approach (see section I.B).⁸¹ For example, the CMA has set out specific rules for AI businesses to enable healthy competition and ensure consumer protection.⁸² Whilst the AIA focuses on the AI product itself, the English context-specific, principles-based rationale evaluates the context in which an AI product is used.⁸³ This creates a nuanced understanding of the potential risks associated with an AI application, providing more room for innovation and flexibility in diverse settings.⁸⁴ Therefore, your company will have greater leeway to innovate when complying with the general guidance given by regulators and applicable English laws.⁸⁵

Regarding your liability, consumer rights law (Consumer Rights Act 2015; Consumer Protection from Unfair Trading Regulations 2008) protects consumers when they have entered a sales contract for AI-based products and services.⁸⁶ Tort law can provide redress when a civil wrong has caused harm.⁸⁷

III. Selling globally

An advantage of complying with the AIA is that it applies to the entire EU market, thereby creating a significant level playing field.⁸⁸ The AIA applies to providers (such as you) who place on the market or put into service AI systems or GPAI in the EU, regardless of where they are established.⁸⁹ Therefore, England-based businesses still fall within the scope of the AIA if they provide AI systems used within the EU.⁹⁰

If you decide to sell outside of the EU, flexibility in regulating AI seems to be a common approach in some countries, which means that if you decide to start your company under the English legal system, compliance burdens would be minimised. For example, in the United

⁸¹ Department for Science, Innovation and Technology, 'Implementing the UK's AI Regulatory Principles' (Policy paper, Department for Science, Innovation and Technology, 6 February 2024), 4.

⁸² Competition & Markets Authority (CMA), 'AI Foundation Models: Summary' (Report, CMA, 18 September 2023), 1.

⁸³ Weiyue Wu and Shaoshan Liu, 'A Comprehensive Review and Systematic Analysis of Artificial Intelligence Regulation Policies' [2023] <[2307.12218](#)> accessed 26 July 2025, 3.

⁸⁴ *ibid.*

⁸⁵ Hacker (n 32), 5.

⁸⁶ Department for Science, Innovation and Technology (n 1) box 2.1.

⁸⁷ *ibid.*

⁸⁸ Wörsdörfer (n 18), 114.

⁸⁹ AIA 2024, Chapter I Article 2(1)(a).

⁹⁰ Chan (n 15).

States, there are frameworks and guidelines that exist to guide the regulation of AI, such as “The Blueprint for an AI Bill of Rights”.⁹¹ It sets out five principles to help guide the design, use, and deployment of AI to protect civil rights.⁹² Another example is Japan, which has the “Act on Promotion of Research and Development and Utilization of Artificial Intelligence-Related Technologies”.⁹³ This law focuses on promoting innovation rather than imposing specific requirements.⁹⁴ While the English approach to AI aligns broadly with the United States and Japan, thereby reducing adaptation costs, it does not eliminate them entirely, as each jurisdiction keeps its own rules.

Furthermore, you should note that many companies are concerned about the uncertainty of how different Member States will implement the AIA.⁹⁵ Such companies are hesitant that this may affect their product deployment in the EU, putting them at a competitive disadvantage to other global rivals.⁹⁶

Complying with the AIA offers your company the opportunity to promote more secure, ethical, and trustworthy AI, enhancing public trust.⁹⁷ The AIA could appeal to ethical investors who might put pressure on companies to align with the regulation.⁹⁸ In comparison, the English legal system has been criticised for not ensuring the development of safe AI systems (such as by the Ada Lovelace Institute).⁹⁹ This could put the country’s technology sector at a competitive disadvantage in the global market of AI.¹⁰⁰ Therefore, strategically, if you choose to start your company under the English legal system, you could voluntarily adopt certain AIA transparency requirements to build public trust in your product.

Moving forward, I would advise establishing your business under the English legal system. This would enable you to maintain financial stability (due to low compliance

⁹¹ The White House, ‘What is the Blueprint for an AI Bill of Rights?’ (*White House*) <[What is the Blueprint for an AI Bill of Rights? | OSTP | The White House](#)> accessed 25 August 2025.

⁹² *ibid.*

⁹³ White & Case LLP (n 5).

⁹⁴ *ibid.*

⁹⁵ Barbara Moens and Tim Bradshaw, ‘European CEOs urge Brussels to halt landmark AI Act’ *Financial Times* (Brussels and London, 3 July 2025) <[European CEOs urge Brussels to halt landmark AI Act](#)> accessed 5 August 2025.

⁹⁶ *ibid.*

⁹⁷ Wörsdörfer (n 18), 114.

⁹⁸ *ibid.*

⁹⁹ Gikay (n 2) 23; Matt Davies and Michael Birtwistle ‘Regulating AI in the UK’ (*Ada Lovelace Institute*, 18 July 2023) <[Regulating AI in the UK | Ada Lovelace Institute](#)> accessed 25 August 2025.

¹⁰⁰ Gikay (n 2) 23.

costs), whilst planning for EU compliance costs and obligations when expanding into the Union markets.¹⁰¹ As explained above, when selling beyond the EU, the English legal system is broadly compatible with some countries, such as the United States¹⁰² or Japan¹⁰³, minimising (but not eliminating) the need for significant adaptation of your product. Furthermore, the English context-specific approach offers you more flexibility when creating new AI products.¹⁰⁴ However, when innovating, you should ensure that you follow any applicable English laws and regulators' guidance.¹⁰⁵

I hope that my advice has clarified the legal implications of starting up a company in either the French or the English legal system.

Please do not hesitate to contact me if you have any questions or would like to discuss these matters further.

Yours sincerely,

Partner of EBS

¹⁰¹ Kilian, Jäck, and Ebel (n 3) 3.

¹⁰² White & Case LLP (n 4).

¹⁰³ White & Case LLP (n 5).

¹⁰⁴ Department for Science, Innovation and Technology (n 1) box 2.1.

¹⁰⁵ *ibid.*

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French Code Civil 1804 (2025 edition)

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