AI Regulatory Check-in: What Does the Future Hold Here and Abroad?

July 29, 2025

FRESHFIELDS
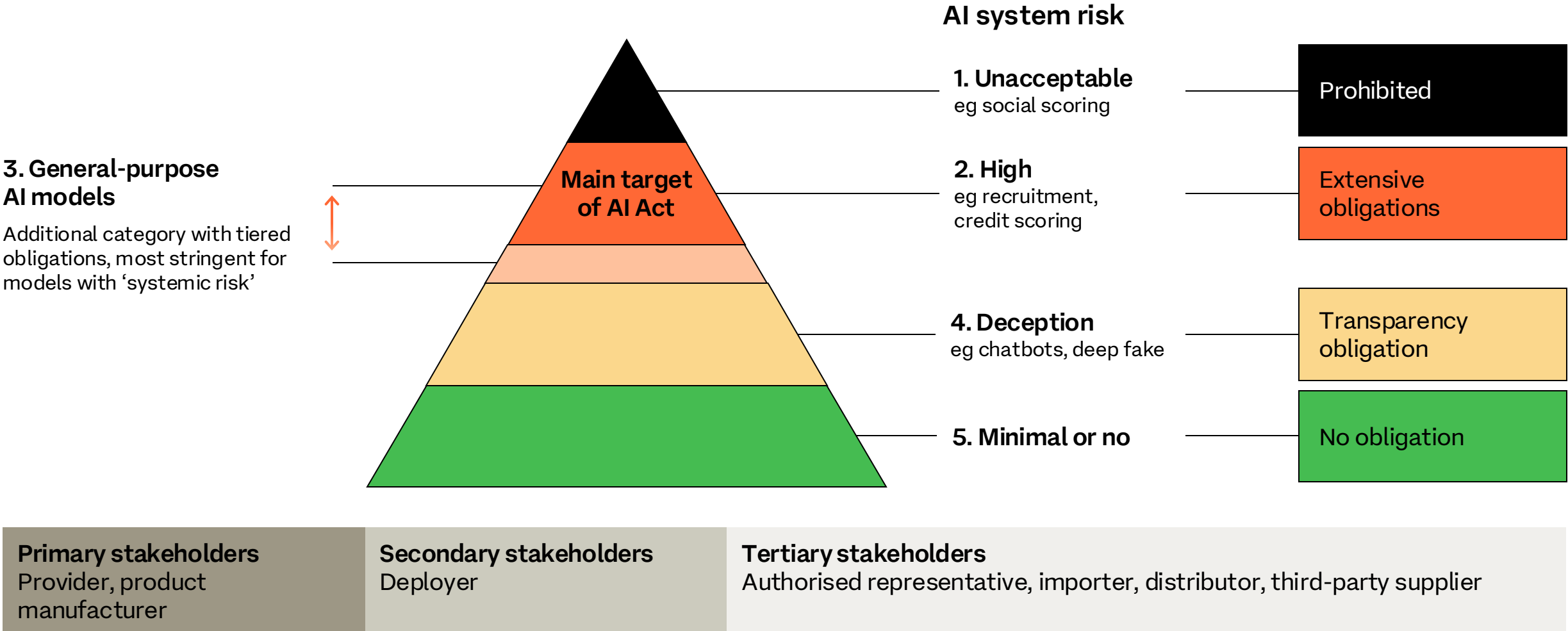
AI or Nay? The Executive Edition - Polling Question

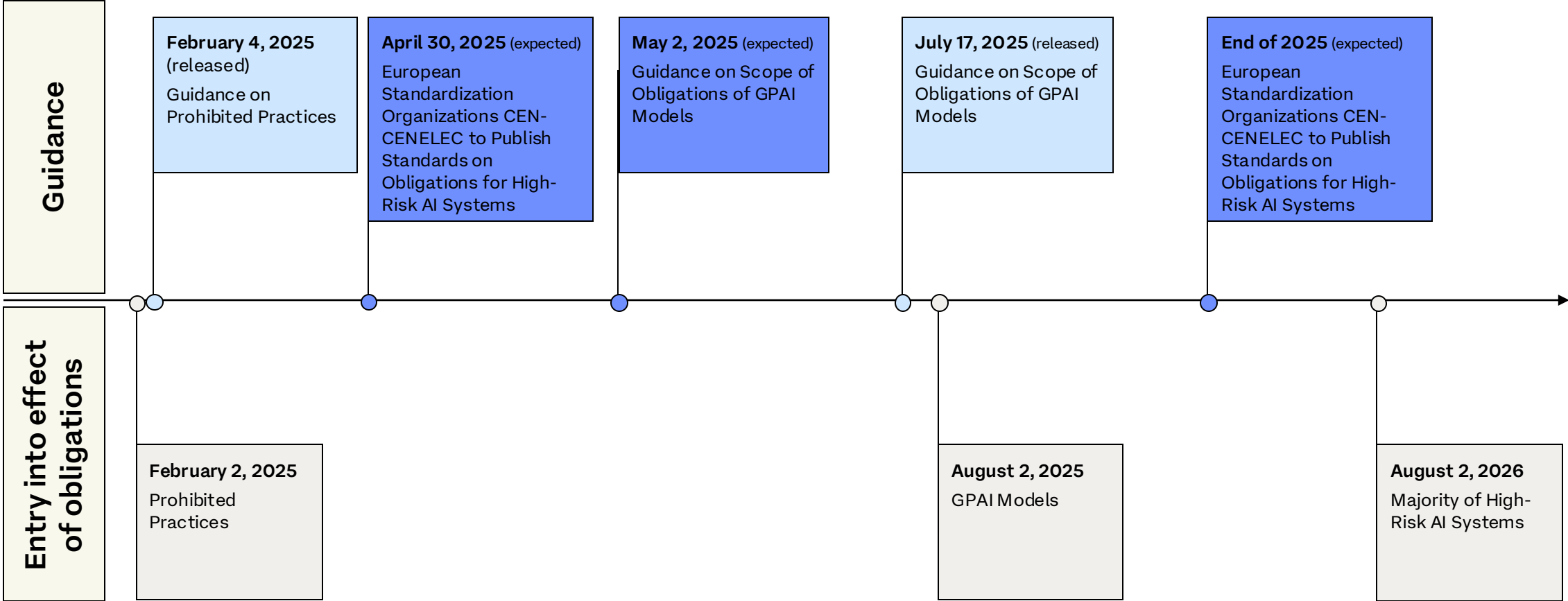# EU AI Act: Implementation Stumbles Lead to Compliance Challenges

The AI Act's risk-based approach to regulate AI

Worldwide: The AI Act applies if AI is used in the EU, or if the output of AI is used in the EU, or if the use of AI affects persons in the EU.

AI system risk

1. Unacceptable
eg social scoring

Prohibited

3. General-purpose AI models

Additional category with tiered obligations, most stringent for models with 'systemic risk'

Main target of AI Act

2. High
eg recruitment, credit scoring

Extensive obligations

4. Deception
eg chatbots, deep fake

Transparency obligation

5. Minimal or no

No obligation

Primary stakeholders
Provider, product manufacturer

Secondary stakeholders
Deployer

Tertiary stakeholders
Authorised representative, importer, distributor, third-party supplier

Implementation Stumbles

Different layers of legislation and staggered dates of application

Guidance

February 4, 2025 (released)

Guidance on Prohibited Practices

April 30, 2025 (expected)

European Standardization Organizations CEN-CENELEC to Publish Standards on Obligations for High-Risk AI Systems

May 2, 2025 (expected)

Guidance on Scope of Obligations of GPAI Models

July 17, 2025 (released)

Guidance on Scope of Obligations of GPAI Models

End of 2025 (expected)

European Standardization Organizations CEN-CENELEC to Publish Standards on Obligations for High-Risk AI Systems

Entry into effect of obligations

February 2, 2025

Prohibited Practices

August 2, 2025

GPAI Models

August 2, 2026

Majority of High-Risk AI Systems

Pressure for AI Deregulation

Deregulatory pressure on Brussels

- **Industry concerns:** The AI Act makes it harder to innovate and compete with the US and China.

- **Concerns by Member States:** Poland has suggested delaying implementation

- **Response by the EC:**

  - The EC says the AI Act will go ahead as planned with no delays.

  - The EC launched the digital omnibus simplification to streamline the AI Act and the DSA.

US/Trump Effect on Implementation

- International opinion regarding the AI Act as the global standard is in question.

- The chances of Brussels effect are diminishing

- The US has criticized EU approach.

US Rollback of AI Regulation

Trump Moves to Deregulate AI

- In January, 2025 President Trump repealed Biden's AI Executive Order
- On July 23, 2025 President Trump released *America's AI Action Plan*
- Three pillars:
  - Deregulate to accelerate AI innovation and adoption
  - Infrastructure to support "AI dominance"
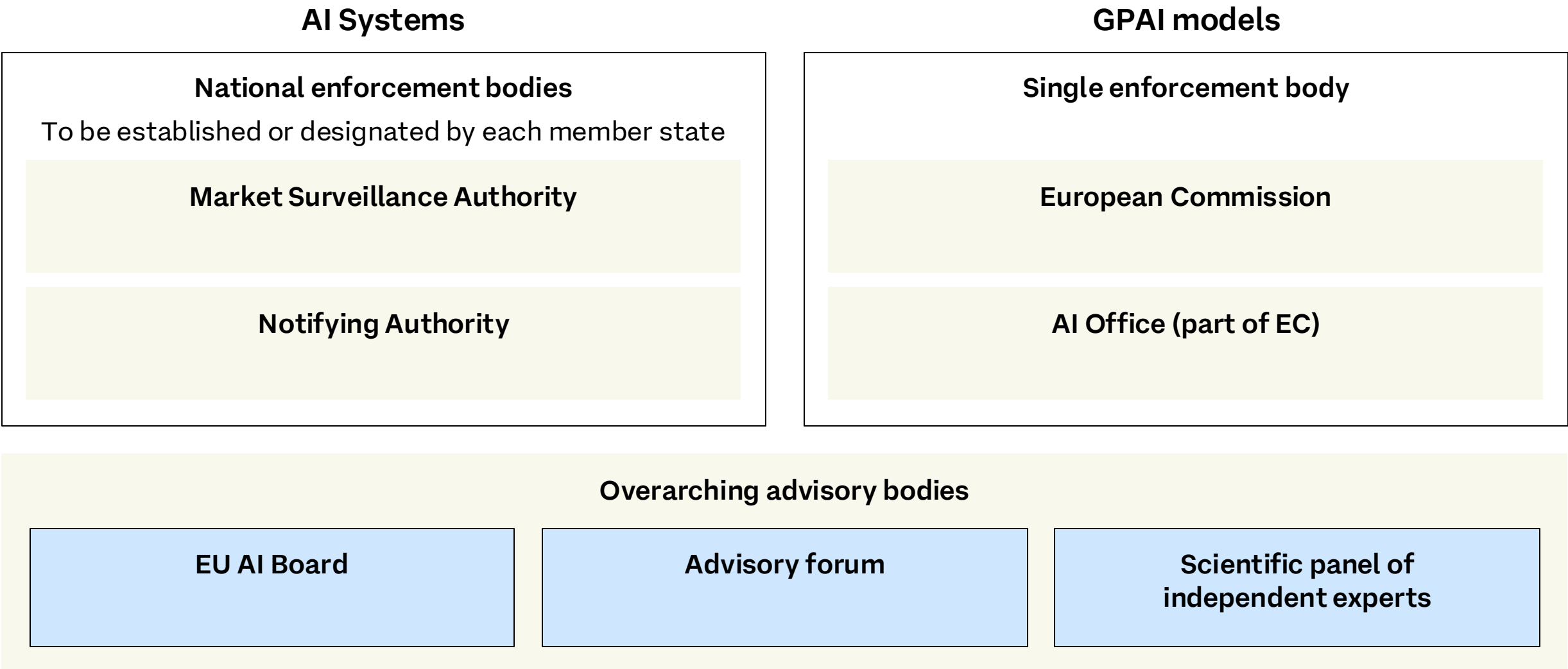 - Maintaining the US position as a global leader in AI

Successful Industry Pushback

- Industry shift toward deregulation
- Concern over foreign competition
- Open-AI letter
- The Texas Artificial Intelligence Governance Act
- Virginia Governor vetoed High-Risk Artificial Intelligence Developer and Deployer Act

Possible Federal Moratorium

- 10-year moratoriam on state regulation in the One Big Beautiful Bill
- Industry support for a moratorium
- AI Action Plan may link funding to AI regulation

Enforcement Landscape

AI Systems

National enforcement bodies

To be established or designated by each member state

Market Surveillance Authority

Notifying Authority

GPAI models

Single enforcement body

European Commission

AI Office (part of EC)

Overarching advisory bodies

| EU AI Board | Advisory forum | Scientific panel of independent experts |

Enforcement Landscape (2)

GDPR Enforcement

- Ban of ChatGPT
- Blocking of DeepSeek
- Meta AI 1P training litigation
- Whatsapp "AI button"

DSA Enforcement

- The EC opened formal proceedings to assess whether the launch of TikTok Lite in France and Spain had breached the DSA.
- Legal concerns:
  - Reward functions on could encourage addictive behaviour.
  - No risk assessment prior to launch.

Copyright litigation

LAION case

- Issue: Does the webscraping of images infringe copyright law?
- Ruling: The use is a legitimate form of TDM for scientific research purposes.

Consumer protection litigation

Consumer Association North Rhine-Westphalia

- Issue: Can AI training be based on legitimate interest under the GDPR?
- Ruling: The application for injunction was dismissed, but CA announced it would consider further legal steps.

Complying in a Shifting Landscape

Proactive engagement with regulators

- Regulatory dialogue
- TikTok engagement with the EC
- AI Office is pushing for proactive reporting

Robust internal tracking of AI adoption/ implementation

- Effective AI Governance requires adopting a governance framework
- knowing what AI systems you employ and what data those systems collect
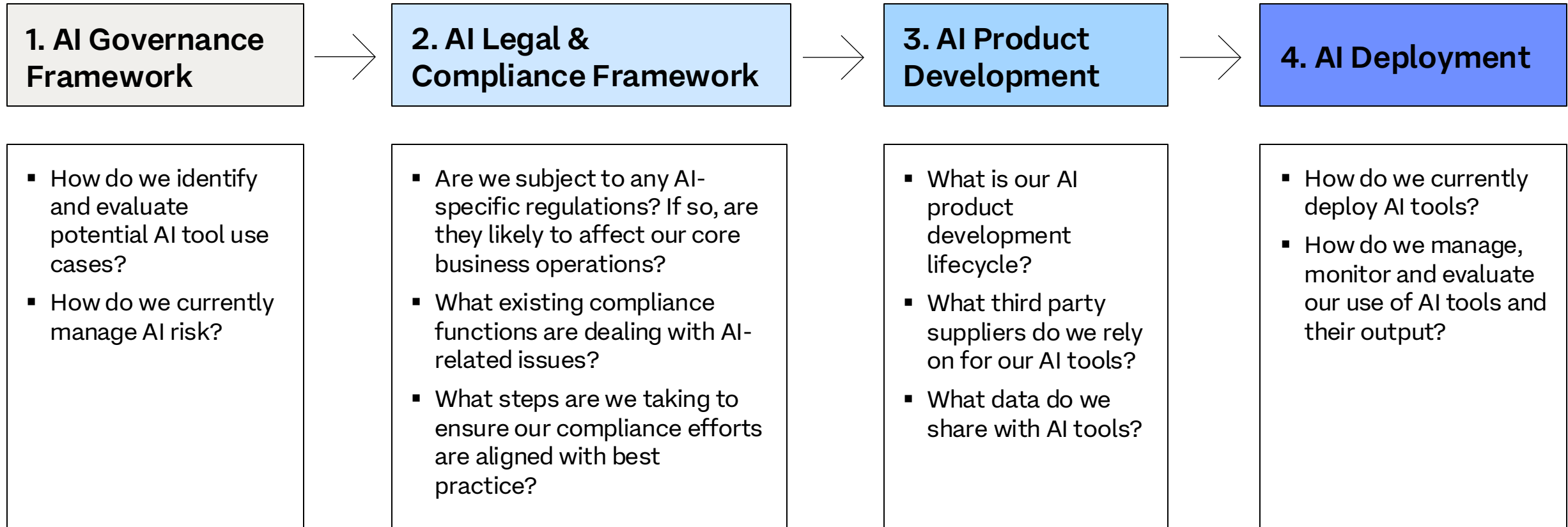- Questionnaires, catalogues, and factbooks about your AI systems

Establishing AI literacy levels and adopting/updating policies:

- Cyber
- Data/Privacy
- Procurement
- Employee Code/ Handbook/AI Use Policy for Employees

AI Council and Escalation Paths

- Effective AI governance requires a cross-functional council of senior leaders to direct the development and deployment of AI systems across your organization

AI – Questions from the Board

1. AI Governance Framework	→	2. AI Legal & Compliance Framework	→	3. AI Product Development	→	4. AI Deployment

▪ How do we identify and evaluate potential AI tool use cases? ▪ How do we currently manage AI risk?	▪ Are we subject to any AI-specific regulations? If so, are they likely to affect our core business operations? ▪ What existing compliance functions are dealing with AI-related issues? ▪ What steps are we taking to ensure our compliance efforts are aligned with best practice?	▪ What is our AI product development lifecycle? ▪ What third party suppliers do we rely on for our AI tools? ▪ What data do we share with AI tools?	▪ How do we currently deploy AI tools? ▪ How do we manage, monitor and evaluate our use of AI tools and their output?

Questions & Answers

FRESHFIELDS

Thank you.

www.freshfields.com

DSR0019750