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Applicability of the EU AI Act to Commercial Arbitration and
Consequences of Non-Compliant AI Use for the Recognition and
Enforcement of Arbitral Awards under the New York Convention

verfasst von | submitted by
Marlene Trimborn

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Abstract

Regulation (EU) 2024/1689 (the EU AI Act) is a significant development in the governance of artificial intelligence, as it establishes the world's first comprehensive, binding regulatory framework for AI. As AI tools become increasingly integrated into arbitral practice, a trend confirmed by the 2025 Queen Mary University of London International Arbitration Survey (QMUL Survey 2025), which documents the rapid growth of AI adoption across all stages of arbitral proceedings, the question of whether and how the Act's regulatory framework applies to international commercial arbitration has emerged as one of the most pressing issues at the intersection of EU law and international dispute resolution. Drawing on the QMUL Survey 2025 as a key empirical source to analyse the current and anticipated uses of AI in international commercial arbitration, this work examines the consequences of AI use non-compliant with the EU AI Act for the recognition and enforcement of arbitral awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Following an introduction to the Act's key provisions and its classification of certain AI applications in alternative dispute resolution as high-risk, the personal and territorial scope of the Act is analysed in the context of international commercial arbitration, identifying the obligations imposed on all participants in an arbitral process, especially those of the arbitral tribunal and arbitrators as deployers of high-risk AI systems. A central finding is that the EU AI Act qualifies as a *loi de police* under EU private international law, with the consequence that its provisions apply as overriding mandatory rules to arbitral proceedings falling within its territorial scope, irrespective of the law chosen by the parties to govern the arbitration.

Building on this foundation, the analysis considers whether AI use non-compliant with the EU AI Act in arbitral proceedings can constitute grounds for refusing recognition or enforcement under Article V of the New York Convention. Three grounds are examined in detail: the right to be heard under Article V(1)(b), procedural irregularity under Article V(1)(d), and violation of public policy under Article V(2)(b). It is argued that undisclosed AI use in arbitral decision-making, AI-generated hallucinations forming the basis of an award, and the failure to ensure adequate human oversight of AI systems may each give rise to one or more of these grounds, subject to the high evidentiary thresholds that courts consistently apply when reviewing enforcement challenges. Particular attention is paid to the recent decision of the Québec Superior Court in *ARIHQ v Santé Québec* (2026), the first judicial confirmation that reliance

on hallucinated AI-generated content can constitute a procedural irregularity sufficient to set aside an arbitral award.

Finally, the work identifies the practical limitations of the current enforcement framework, particularly the structural opacity created by the confidential nature of arbitral proceedings, and offers concrete recommendations for arbitral practice to ensure compliance with the EU AI Act while preserving the flexibility and efficiency that characterise international commercial arbitration. The entry into force of the Act's high-risk provisions in August 2026 and the anticipated increase in AI use documented by the QMUL Survey 2025 suggest that these questions will become increasingly relevant in practice, underscoring the need for arbitral institutions, arbitrators and legislators to proactively engage with the regulatory challenges posed by AI in international dispute resolution.

Abstract (Deutsch)

Die Verordnung (EU) 2024/1689 (das EU-KI-Gesetz) stellt eine bedeutende Entwicklung im Bereich der Regulierung künstlicher Intelligenz dar, da sie den weltweit ersten umfassenden und verbindlichen Rechtsrahmen für KI schafft. Die zunehmende Integration von KI-Tools in die Schiedsgerichtsbarkeit ist ein Trend, der durch die Umfrage der Queen Mary University of London zum internationalen Schiedswesen aus dem Jahr 2025 bestätigt wird. Die sogenannte QMUL-Umfrage 2025 dokumentiert das rasante Wachstum des KI-Einsatzes in allen Phasen von Schiedsverfahren. Auf Grundlage dessen hat sich die Frage entwickelt, ob und wie der Rechtsrahmen des Gesetzes auf die internationale Handelsschiedsgerichtsbarkeit anzuwenden ist. Dies ist eines der drängendsten Themen an der Schnittstelle zwischen EU-Recht und internationaler Streitbeilegung. Unter Heranziehung der QMUL-Umfrage 2025 als zentrale empirische Quelle zur Analyse der aktuellen und zu erwartenden Einsatzbereiche von KI in der internationalen Handelsschiedsgerichtsbarkeit untersucht diese Arbeit die Folgen eines nicht mit dem EU-KI-Gesetz konformen KI-Einsatzes für die Anerkennung und Vollstreckung von Schiedssprüchen nach dem Übereinkommen über die Anerkennung und Vollstreckung ausländischer Schiedssprüche (New Yorker Übereinkommen).

Nach einer Einführung in die wichtigsten Bestimmungen des Gesetzes und dessen Einstufung bestimmter KI-Anwendungen in der alternativen Streitbeilegung als risikoreich werden der persönliche und der territoriale Geltungsbereich des Gesetzes im Kontext der internationalen Handelsschiedsgerichtsbarkeit analysiert, wobei die Verpflichtungen aller an einem Schiedsverfahren Beteiligten, insbesondere die des Schiedsgerichts und der Schiedsrichter als Nutzer risikoreicher KI-Systeme, herausgearbeitet werden. Eine zentrale Erkenntnis ist, dass das EU-KI-Gesetz als „loi de police“ im Sinne des internationalen Privatrechts der EU gilt, was zur Folge hat, dass seine Bestimmungen als zwingende Vorschriften für Schiedsverfahren gelten, die in seinen territorialen Anwendungsbereich fallen, unabhängig davon, welches Recht die Parteien für das Schiedsverfahren gewählt haben.

Auf dieser Grundlage wird in der Analyse geprüft, ob ein nicht mit dem EU-KI-Gesetz konformer Einsatz von KI in Schiedsverfahren einen Grund für die Verweigerung der Anerkennung oder Vollstreckung gemäß Artikel V des New Yorker Übereinkommens darstellen kann. Drei Gründe werden eingehend untersucht: das Recht auf Anhörung gemäß Artikel V Absatz 1 Buchstabe b, Verfahrensmängel gemäß Artikel V Absatz 1 Buchstabe d und ein Verstoß gegen die öffentliche Ordnung gemäß Artikel V Absatz 2 Buchstabe b. Es wird

argumentiert, dass der nicht offengelegte Einsatz von KI bei der Entscheidungsfindung im Schiedsverfahren, durch KI erzeugte „Halluzinationen“, die die Grundlage eines Schiedsspruchs bilden, sowie das Versäumnis, eine angemessene menschliche Aufsicht über KI-Systeme sicherzustellen, jeweils einen oder mehrere dieser Gründe begründen können, vorbehaltlich der hohen Beweisanforderungen, die Gerichte bei der Prüfung von Vollstreckungsanfechtungen konsequent anwenden. Besondere Aufmerksamkeit gilt der jüngsten Entscheidung des Obersten Gerichts von Québec in der Rechtssache ARIHQ gegen Santé Québec (2026), der ersten gerichtlichen Bestätigung, dass das Zurückgreifen auf halluzinierte, KI-generierte Inhalte eine Verfahrensunregelmäßigkeit darstellen kann, die ausreicht, um einen Schiedsspruch aufzuheben.

Schließlich werden in der Arbeit die praktischen Grenzen des derzeitigen Vollstreckungsrahmens aufgezeigt, insbesondere die strukturelle Undurchsichtigkeit, die durch den vertraulichen Charakter von Schiedsverfahren entsteht, und es werden konkrete Empfehlungen für die Schiedsgerichtspraxis gegeben, um die Einhaltung des EU-KI-Gesetzes zu gewährleisten und gleichzeitig die Flexibilität und Effizienz zu bewahren, die die internationale Handelsschiedsgerichtsbarkeit auszeichnen. Das Inkrafttreten der Bestimmungen des Gesetzes zu hohen Risiken im August 2026 und der durch die QMUL-Umfrage 2025 dokumentierte erwartete Anstieg des KI-Einsatzes deuten darauf hin, dass diese Fragen in der Praxis zunehmend an Bedeutung gewinnen werden, was die Notwendigkeit unterstreicht, dass Schiedsgerichtsinstitutionen, Schiedsrichter und Gesetzgeber sich proaktiv mit den regulatorischen Herausforderungen auseinandersetzen, die KI bei der internationalen Streitbeilegung mit sich bringt.

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A. Introduction

I. Research Problem and Context

The use of artificial intelligence (AI) in international arbitration has rapidly evolved from being a theoretical possibility to becoming an everyday practice. Practitioners are increasingly deploying AI-powered tools throughout arbitral proceedings. These include document review, legal research, predictive analytics and, most significantly, support for decision-making in the deliberative process itself.¹ As documented most comprehensively by the 2025 International Arbitration Survey conducted by White & Case and Queen Mary University of London, empirical research confirms a significant and growing acceptance of, and reliance on, AI within the international arbitration community.² Despite this rapid uptake, there are significant concerns about the accuracy and impartiality of AI outputs, data confidentiality, and most importantly, the lack of a regulatory framework for using AI in arbitral proceedings.³

The EU AI Act now seeks to address this regulatory gap. Regulation (EU) 2024/1689, commonly known as the EU Artificial Intelligence Act (EU AI Act), was adopted by the European Parliament and the Council on 13 June 2024, entering into force on 1 August 2024.⁴ It is the world's first comprehensive, binding, horizontal framework for AI regulation, aiming to strike a balance between fostering innovation and protecting fundamental rights.⁵ Its significance extends far beyond the borders of the European Union, as no comparable instrument exists in any other jurisdiction.⁶ This makes the EU AI Act likely to become a de

¹ S Migliorini and JI Moreira, 'Clashing Frameworks: The EU AI Act and Arbitration' (2026) 17 *European Journal of Risk Regulation* 140, 141 (hereinafter 'Migliorini and Moreira'); R Eftekhari, 'The Legal Framework Applicable to Using AI by an Arbitral Tribunal' (*Daily Jus*, 25 March 2025) <dailyjus.com/legal-tech/2025/03/the-legal-framework-applicable-to-using-ai-by-an-arbitral-tribunal> accessed April 2026 (hereinafter 'Eftekhari'); E Pabakhsh, 'AI in Arbitration: Will the EU AI Act Stand in the Way of Enforcement?' (*Conflict of Laws .net*, 24 August 2025) <conflictoflaws.net/2025/ai-in-arbitration-will-the-eu-ai-act-stand-in-the-way-of-enforcement> accessed April 2026 (hereinafter 'Pabakhsh').

² White & Case and Queen Mary University of London, *International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration* (QMUL 2025) 29 (hereinafter 'QMUL Survey 2025'). For a detailed analysis of its findings, see Chapter C.I below.

³ QMUL Survey 2025 (n 2) 30, 32-34.

⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 2024/1689 (hereinafter 'EU AI Act').

⁵ NA Smuha and K Yeung, 'The European Union's AI Act: Beyond Motherhood and Apple Pie?' in NA Smuha (ed), *The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence* (Cambridge University Press 2025) 228, 234 (hereinafter 'Smuha and Yeung'); Bird & Bird, *European Union Artificial Intelligence Act: A Guide* (Bird & Bird, 26 February 2026) <twobirds.com/-/media/new-website-content/pdfs/capabilities/artificial-intelligence/european-union-artificial-intelligence-act-guide.pdf> accessed April 2026 (hereinafter 'Bird & Bird Guide').

⁶ For the absence of comparable binding frameworks in the United States, the United Kingdom and major Asian jurisdictions, see DM Bregman and others, 'The New Rules of AI: A Global Legal Overview' (*Morgan Lewis*, 22

facto global standard for AI governance, a phenomenon known as the 'Brussels Effect' and which may prove of far-reaching significance for international arbitration regardless of where proceedings are seated.⁷

This global reach is of particular relevance to international arbitration, since the Act subjects certain AI applications used in dispute resolution to its most stringent compliance obligations. The EU AI Act adopts a risk-based approach to regulation, under which AI systems are subject to different obligations depending on the severity of the risks they pose. In this regard, certain AI applications used in the context of international arbitration fall within the highest tier of this framework.⁸ However, it is crucial to note that these provisions have not yet come into force, which means that the arbitration community now faces a narrow but important window in which to assess its obligations before they become binding.

II. Research Question

Against this backdrop, it remains an open and unresolved question in both scholarship and practice whether and to what extent the EU AI Act applies to international arbitral proceedings, and what legal consequences non-compliant AI use may entail for the recognition and enforcement of arbitral awards.⁹ This thesis examines that question through a doctrinal analysis of both regimes. The central research question is as follows:

'Does non-compliance with the EU AI Act in arbitral proceedings constitute a ground for refusal of recognition or enforcement of arbitral awards under Article V of the New York Convention?'

December 2025) <morganlewis.com/pubs/2025/12/the-new-rules-of-ai-a-global-legal-overview> accessed April 2026.

⁷ EU AI Act, art 2(1)(c); M Almada and A Radu, 'The Brussels Side-Effect: How the AI Act Can Reduce the Global Reach of EU Policy' (2024) 25 German Law Journal 646 (hereinafter 'Almada and Radu'); Migliorini and Moreira (n 1) 153.

⁸ The applicable provisions are Annex III, point 8(a) and Recital 61 of the EU AI Act, read in conjunction with Article 6(2). These provisions classify AI systems used in alternative dispute resolution as high-risk where the outcomes of the proceedings produce legal effects for the parties. The obligations arising from this classification are due to come into effect on 2 August 2026: EU AI Act, art 113(c). A proposed Digital Omnibus Regulation could extend this deadline to 2 December 2027: European Commission, Proposal for a Regulation amending Regulations (EU) 2022/2065, (EU) 2024/1689 and (EU) 2016/679 (Digital Omnibus) COM(2025) 853 final (19 November 2025). The detailed analysis of these provisions is provided in Chapters B.IV and C.II below.

⁹ Migliorini and Moreira (n 1) 158-159; Pabakhsh (n 1); MF Hayat and FH Azhar, 'Can AI-Assisted Arbitral Awards Survive Enforcement Under the New York Convention?' (*Kluwer Arbitration Blog*, 10 April 2026) <legalblogs.wolterskluwer.com/arbitration-blog/can-ai-assisted-arbitral-awards-survive-enforcement-under-the-new-york-convention> accessed April 2026 (hereinafter 'Hayat and Azhar').

The question is novel in that it connects two distinct legal regimes whose interaction has, to date, received only limited attention in legal scholarship.¹⁰ On the one hand, there is the EU AI Act, which imposes comprehensive compliance obligations on AI systems used in international arbitral proceedings and classifies certain such systems as high-risk within the aforementioned risk-based framework.¹¹ On the other hand, there is the New York Convention,¹² whose Article V sets out the exhaustive grounds on which national courts may refuse to recognise or enforce a foreign arbitral award. For the purpose of this thesis, the most centrally relevant grounds are the violation of the right to be heard under Article V(1)(b), procedural irregularities under Article V(1)(d) and a violation of public policy under Article V(2)(b). Determining whether and how these two regimes interact in the context of non-compliant AI use requires a careful analysis of both the scope and mandatory character of the EU AI Act and the exhaustive grounds for refusal under Article V of the Convention, as undertaken in the chapters that follow.

III. Relevance of the Topic

The aforementioned research questions are of both practical and theoretical significance. In practical terms, the EU AI Act creates substantial legal uncertainty for all parties to arbitral proceedings. Currently, none of these parties can confidently assess whether the EU AI Act applies to their proceedings, nor can they predict with certainty whether non-compliant AI use may result in the refusal of recognition or enforcement of their awards.¹³ This concern is already reflected in practice, as practitioners themselves have identified the risk of award challenges arising from the use of AI by arbitrators as a significant deterrent to greater AI adoption.¹⁴ Furthermore, it is likely that international arbitration will be among the first legal fields in which the consequences of non-compliant AI use are tested before national courts.¹⁵

¹⁰ Migliorini and Moreira (n 1) 142; Pabakhsh (n 1).

¹¹ EU AI Act, Annex III, point 8(a); Recital 61. For a detailed analysis of the high-risk classification of AI systems used in arbitral proceedings, see Chapter C.II below.

¹² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (hereinafter ‘New York Convention’ or ‘NYC’). All 27 EU Member States are contracting parties to the Convention, which thereby applies across the European internal market: United Nations Commission on International Trade Law, ‘Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)’ <uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed June 2026.

¹³ Migliorini and Moreira (n 1) 153-154; Pabakhsh (n 1).

¹⁴ QMUL Survey 2025 (n 2) 32. For a detailed analysis of practitioner attitudes towards AI adoption and its obstacles, see Chapter C.I below.

¹⁵ Migliorini and Moreira (n 1) 158.

Beyond these immediate practical concerns, the questions raised by this thesis touch on a fundamental tension in the governance of international commercial arbitration. International commercial arbitration has traditionally been characterised by party autonomy and a high degree of procedural flexibility, and has largely remained outside the scope of EU law. However, the EU AI Act marks a significant departure from this tradition. By categorising certain AI applications in arbitration as high-risk and imposing strict compliance obligations¹⁶, the Act risks disrupting the long-standing balance between party autonomy, procedural flexibility and regulatory oversight that has characterised the EU's approach to the field.¹⁷ It is this tension that the present thesis seeks to navigate.

IV. Methodology and Structure

The methodology employed in this thesis is doctrinal, proceeding through the systematic interpretation and application of the relevant primary and secondary legal sources, including legislation, case law and academic commentary. This thesis exclusively covers international commercial arbitration and does not address investment treaty arbitration¹⁸, and the examination of recognition and enforcement is limited to proceedings before EU Member State courts acting under the New York Convention. The overarching analytical approach structures the thesis around the central research question and examines each chapter's subject matter through the lens of that question, building progressively towards a comprehensive answer.

The analysis is divided into five stages. Chapter B outlines the regulatory framework of the EU AI Act, including its material, personal and territorial scope, its risk classification system and the key obligations it imposes on providers and deployers. Chapter C examines current AI applications in arbitral proceedings, including an empirical analysis of the scope and trajectory of AI use based on the QMUL Survey 2025, and analyses the applicability of the EU AI Act to international commercial arbitration, encompassing the compliance obligations for arbitrators and arbitral institutions as deployers, as well as the Act's *loi de police* character. Chapter D forms the analytical core of the thesis and determines, through a systematic analysis of the interaction between the EU AI Act and the New York Convention,

¹⁶ Further details regarding the compliance obligations of parties to arbitral proceedings under the EU AI Act can be found in Chapter C.II of this thesis.

¹⁷ Migliorini and Moreira (n 1) 140-142.

¹⁸ For an analysis of investment treaty arbitration and generative AI, see GM Lentner, 'Generative AI and Copyright in the EU and the US: A View from International Investment Law' (Stanford–Vienna Transatlantic Technology Law Forum Working Paper No 140, 2025) <ttlf.stanford.edu> accessed April 2026.

whether non-compliance with the Act's obligations constitutes grounds for refusing recognition or enforcement of arbitral awards under Article V of the Convention, concluding with an evaluation of the limitations of the current framework. Chapter E draws the conclusions of the thesis, answers the central research question, and proposes reforms with respect to disclosure requirements before offering an outlook on future developments.

B. The Regulatory Framework of the EU AI Act

The EU AI Act was adopted by the European Parliament and the Council on 13 June 2024 and officially came into force on 1 August of the same year.¹⁹ Its legislative journey began in April 2021, when the European Commission unveiled its proposal for the Act. Following trilogue negotiations between the Council, the Commission, and the Parliament, a provisional political agreement was reached in December 2023.²⁰ Rather than taking effect in its entirety on a single date, the Act will be implemented on a staggered basis: prohibitions on unacceptable-risk AI practices under Article 5 have applied since 2 February 2025. Several obligations relating to general-purpose AI models, together with the governance and penalty framework, came into effect on 2 August 2025.²¹ The provisions most directly relevant to arbitral proceedings, namely those arising from the high-risk classification of AI systems used in alternative dispute resolution under Annex III, point 8(a) read in conjunction with Article 6(2), are due to take effect on 2 August 2026, at which point the Act will take effect in its entirety.²² However, a proposed Digital Omnibus Regulation, published by the Commission in November 2025, could extend this deadline to 2 December 2027.²³

I. Material Scope of the EU AI Act

The EU AI Act pursues two overarching objectives. As set out in Article 1(1), it aims to improve the functioning of the internal market and promote the adoption of artificial

¹⁹ EU AI Act (n 4); European Parliament, 'Artificial Intelligence Act' (*Legislative Train Schedule*) <europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-regulation-on-artificial-intelligence> accessed April 2026.

²⁰ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* COM(2021) 206 final (21 April 2021); European Parliament (n 19).

²¹ Council of the EU, 'Timeline: Artificial Intelligence Act' (*Council of the European Union*) <consilium.europa.eu/en/policies/artificial-intelligence-act/timeline-artificial-intelligence> accessed April 2026 (hereinafter 'Council Timeline').

²² EU AI Act, arts 113(a)-(b); European Commission, 'Timeline for the Implementation of the EU AI Act' (*AI Act Service Desk*) <ai-act-service-desk.ec.europa.eu/en/ai-act/timeline/timeline-implementation-eu-ai-act> accessed April 2026 (hereinafter 'Commission Timeline').

²³ European Commission, Proposal for a Regulation amending Regulations (EU) 2022/2065, (EU) 2024/1689 and (EU) 2016/679 (Digital Omnibus) COM(2025) 853 final (19 November 2025). See also fn 8 above.

intelligence, while ensuring a high level of protection for the fundamental rights enshrined in the Charter.²⁴ This dual objective is reflected in the Act's material scope, which primarily establishes harmonised rules for placing AI systems on the market, putting them into service and using them, treating market regulation and fundamental rights protection as equal regulatory pillars.²⁵ AI-related risks are therefore addressed through a framework that combines internal market regulation with fundamental rights safeguards, rather than relying on market discipline alone.²⁶

Central to this framework is the legal definition of the term 'AI system' set out in Article 3(1), which defines it as a 'machine-based system designed to operate with varying degrees of autonomy and capable of demonstrating adaptability after deployment, and which, for explicit or implicit objectives derived from the inputs it receives, can generate outputs such as predictions, content, recommendations or decisions that may affect physical or virtual environments'.²⁷ A key element of this definition that distinguishes AI systems from traditional software is the AI system's ability to 'draw conclusions'. Therefore, under Article 3(1) of the EU AI Act, a system is only considered an AI system if it can independently create its own rules based on input data or datasets, rather than relying on predefined rules.²⁸ The definition of the term 'AI system' in Article 3(1) is deliberately broad, based on a technology-neutral, function-oriented approach, which ensures the long-term applicability of the Act and prevents manufacturers from circumventing its provisions by making minor technical adjustments to the systems.²⁹

²⁴ EU AI Act, art 1(1).

²⁵ EU AI Act, art 1(1); Smuha and Yeung (n 5) 234-235; M Veale and F Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act' (2021) 22 *Computer Law Review International* 97, 98 (hereinafter 'Veale and Zuiderveen Borgesius').

²⁶ Smuha and Yeung (n 5) 234-235; Veale and Zuiderveen Borgesius (n 25) 98.

²⁷ EU AI Act, art 3(1). The definition is intentionally consistent with the OECD definition of an AI system; see Bird & Bird Guide (n 5) 4.

²⁸ European Commission, *Guidelines on the Definition of an AI System* (6 February 2025) <digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-ai-system-definition-facilitate-first-ai-acts-rules-application> accessed April 2026; Veale and Zuiderveen Borgesius (n 25) 98-99; C Wendehorst and B Nessler, 'Guidelines on the Application of the Definition of an AI System in the AI Act: ELI Proposal for a Three-Factor Approach' (European Law Institute, 2024) <europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Response_on_the_definition_of_an_AI_System.pdf> accessed April 2026 (hereinafter 'Wendehorst and Nessler'), noting that the definition's vagueness and lack of clarity are 'surprising' given its central importance to the Act's effectiveness, and critically examining the technical and legal ambiguities of art 3(1); Bird & Bird Guide (n 5) 4-5.

²⁹ EU AI Act, art 3(1); Smuha and Yeung (n 5) 235; Veale and Zuiderveen Borgesius (n 25) 98; Wendehorst and Nessler (n 28) 19-22, proposing a Three-Factor Approach to delineate AI systems in practice, on the basis that 'it is quite difficult to draw a clear line between AI systems and other systems', and evaluating systems according to the data or domain-specific expert knowledge used in development, the extent to which new know-how is generated during operation, and the degree of formal indeterminacy of outputs; Bird & Bird Guide (n 5) 4, noting that 'the definition does not mention any specific technology or currently known approaches to artificial

However, not all AI systems fall within the Act's reach. Articles 2(2) to 2(6) of the EU AI Act set out a number of explicit exclusions from its material scope, reflecting a deliberate legislative choice to limit the Act's scope of application to contexts in which AI poses a meaningful risk to fundamental rights or safety within the Union.³⁰ The most significant of these exclusions concern AI systems used exclusively for military, defence or national security purposes, those used for scientific research and development, and those used in the course of purely personal, non-professional activities.³¹ For the purposes of this thesis, however, these exclusions are of limited relevance.³²

II. Personal Scope of the EU AI Act

The practical effectiveness of the EU AI Act depends not only on what it regulates, but on who is bound by its requirements. To this end, the Act allocates its obligations to various actors along the AI value chain³³, according to their respective roles in developing and deploying AI systems, thereby determining not only the nature and scope of the applicable obligations but also when they arise. This is achieved through a structured system of operators, including 'providers', 'importers', 'distributors' and 'deployers'.³⁴

Among these categories, providers are subject to the most far-reaching obligations under the Act. Article 3(3) defines a provider as 'any natural or legal person who develops an AI system or general-purpose AI model, or has an AI system or general-purpose AI model developed by a third party, and places it on the market or puts it into service under their own name or brand, whether for remuneration or free of charge'.³⁵ In addition to natural and legal persons, providers may include public authorities, bodies and institutions, as well as EU institutions, bodies, offices and agencies. A person may also be deemed a provider if a high-risk AI system has already been placed on the market or put into service by another provider in the EU.³⁶

intelligence systems' and that 'with the rapidly evolving nature of AI, this prevents the AI Act from becoming obsolete due to technological developments'.

³⁰ EU AI Act, arts 2(2)-(6); Veale and Zuiderveen Borgesius (n 25) 98-99; Smuha and Yeung (n 5) 234.

³¹ EU AI Act, arts 2(2)-(6); Migliorini and Moreira (n 1) 146.

³² EU AI Act, Annex III, point 8(a); Migliorini and Moreira (n 1) 146.

³³ The concept of the 'AI value chain' is adopted but not defined in the EU AI Act. It describes the stages involved in developing, deploying and utilising AI technologies; see Migliorini and Moreira (n 1) fn 43.

³⁴ EU AI Act, arts 3(3)-(8); Veale and Zuiderveen Borgesius (n 25) 103; Smuha and Yeung (n 5) 235; Migliorini and Moreira (n 1) 147.

³⁵ EU AI Act, art 3(3); Migliorini and Moreira (n 1) 147. Providers bear the most extensive obligations under the AI Act; for a detailed analysis of those obligations, see Chapter B.V of this thesis.

³⁶ EU AI Act, art 25(1)(a)-(c); Migliorini and Moreira (n 1) 150; C Werkmeister, T Ehlen and P Roos, 'EU AI Act Unpacked #3: Personal and Territorial Scope' (*Freshfields Technology Quotient*, 13 May 2024)

The Act further extends its personal scope to importers and distributors. Article 3(6) defines an importer as 'a natural or legal person located or established in the EU who places an AI system bearing the name or trademark of a natural or legal person established in a third country on the market', while Article 3(7) defines a distributor as 'a natural or legal person in the supply chain, other than the provider or importer, who makes an AI system available on the EU market'.³⁷ Extending the personal scope to these actors principally serves to close regulatory gaps at intermediate stages of the supply chain.³⁸

Of particular relevance to the present thesis, however, is the category of deployers. Unlike providers, deployers do not create or commercialise AI systems but instead deploy them in the context of their professional activities. Article 3(4) defines deployers as 'natural or legal persons, public authorities, agencies or bodies using an AI system'³⁹ under their authority, except where the AI system is used in the course of a personal, non-professional activity'. EU institutions, bodies, offices and agencies may also act as deployers. The AI Act restricts the definition of 'deployer' to the professional use of an AI system, thereby excluding purely personal or non-professional use.⁴⁰

This classification of actors is of considerable importance, as it determines not only the nature and scope of the obligations applicable to each actor and when they arise,⁴¹ but also requires a functional rather than a formal assessment of each actor's role in relation to the specific AI system in question.⁴²

III. Territorial Scope of the EU AI Act

In addition to its personal scope, the EU AI Act establishes a broad territorial scope governed by Article 2(1) of the Act. According to this article, the Act applies to providers based within or outside the EU who place AI systems or general-purpose AI models on the

<freshfields.com/en/our-thinking/blogs/technology-quotient/eu-ai-act-unpacked-3-personal-and-territorial-scope> accessed April 2026 (hereinafter 'Werkmeister and others'). A person may also be deemed a provider where a high-risk AI system has already been placed on the market or put into service by another provider in the EU and the measures referred to in Article 25(1)(a) to (c) have been taken.

³⁷ EU AI Act, arts 3(6)-(7); notably, the roles of an importer and distributor are only relevant with regard to AI systems, not GPAI models; see Werkmeister and others (n 36).

³⁸ Smuha and Yeung (n 5) 235-236; Werkmeister and others (n 36).

³⁹ EU AI Act, art 3(4); Werkmeister and others (n 36).

⁴⁰ The AI Act strictly limits the notion of the deployer to a professional use of an AI system, meaning that cases where the AI system is used in the course of a personal non-professional activity are excluded; see Werkmeister and others (n 36).

⁴¹ The qualification as provider or deployer is 'legally decisive' for the allocation of obligations; see Migliorini and Moreira (n 1) 150.

⁴² Migliorini and Moreira (n 1) 147-148.

EU market or put them into service in the EU under Article 2(1)(a), as well as to deployers who have their place of establishment, or are located within the EU under Article 2(1)(b).⁴³ Crucially, Article 2(1)(c) extends the Act's reach to providers and deployers based outside the EU whose AI systems produce outputs that are used within the Union.⁴⁴ The Act further applies to importers and distributors of AI systems entering the EU market under Article 2(1)(d), to authorised representatives of providers based outside the EU under Article 2(1)(e), and to manufacturers marketing or putting an AI system into service under their own name or trademark under Article 2(1)(f). Accordingly, the EU AI Act has an extraterritorial effect⁴⁵, which is primarily inspired by the territorial scope of the GDPR.⁴⁶

This extraterritorial reach reflects a deliberate regulatory choice. By incorporating a moderate 'destination approach', the Act aims to protect the rights of EU users, eliminate potential trade barriers within the internal AI market and harmonise national legislation of Member States.⁴⁷ By extending its reach beyond EU borders and requiring third-country providers to be represented, the Act ensures a level playing field for all entities operating in the EU market, regardless whether they are based inside or outside the EU, by subjecting them all to the same regulatory requirements.⁴⁸

⁴³ EU AI Act, art 2(1)(a)-(b); M Czerniawski, 'Towards the Effective Extraterritorial Enforcement of the AI Act' in JH Hoepman and others (eds), *Privacy Symposium 2024: Data Protection Law International Convergence and Compliance with Innovative Technologies (DPLICIT)* (Springer 2025) 4 (hereinafter 'Czerniawski'); Bird & Bird Guide (n 5) 15, noting that when a deployer located outside the EU uses outputs from a high-risk AI system within the EU, the non-EU established providers and deployers will also be caught by the scope of the EU AI Act.

⁴⁴ EU AI Act, art 2(1)(c); T Hickman and T Harper, 'The EU AI Act's Extra-Territorial Scope' (2024) 17(3) *Data Protection Ireland* 1, 2 (hereinafter 'Hickman and Harper'), providing a detailed discussion of the significance of Recital 11 for the interpretation of art 2(1)(c) EU AI Act and a comparative analysis with the extraterritorial scope of art 3(2) GDPR; Czerniawski (n 43) 4-5; C Renner, V Shankar and DM Bregman, 'The EU AI Act Is Here – With Extraterritorial Reach' (*Morgan Lewis LawFlash*, 26 July 2024) <morganlewis.com/pubs/2024/07/the-eu-artificial-intelligence-act-is-here-with-extraterritorial-reach> accessed April 2026 (hereinafter 'Renner and others').

⁴⁵ Czerniawski (n 43) 4; KPMG, *Decoding the EU AI Act: Understanding the AI Act's Impact and How You Can Respond* (KPMG International, February 2024) <assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2024/02/decoding-the-eu-ai-act.pdf> accessed April 2026 (hereinafter 'KPMG Guide') 6; L Moore, R Hayes and B Scannell, 'A Practical Guide to the Extraterritorial Reach of the AI Act' (*William Fry*, 23 July 2024) <williamfry.com/knowledge/a-practical-guide-to-the-extraterritorial-reach-of-the-ai-act> accessed April 2026 (hereinafter 'Moore and others'), noting that Recital 22 of the AI Act provides crucial context for understanding the extent of the AI Act's extraterritorial application, including scenarios where an EU-based operator contracts services to a third-country operator involving an AI system that would qualify as high-risk.

⁴⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1; Hickman and Harper (n 44) 2.

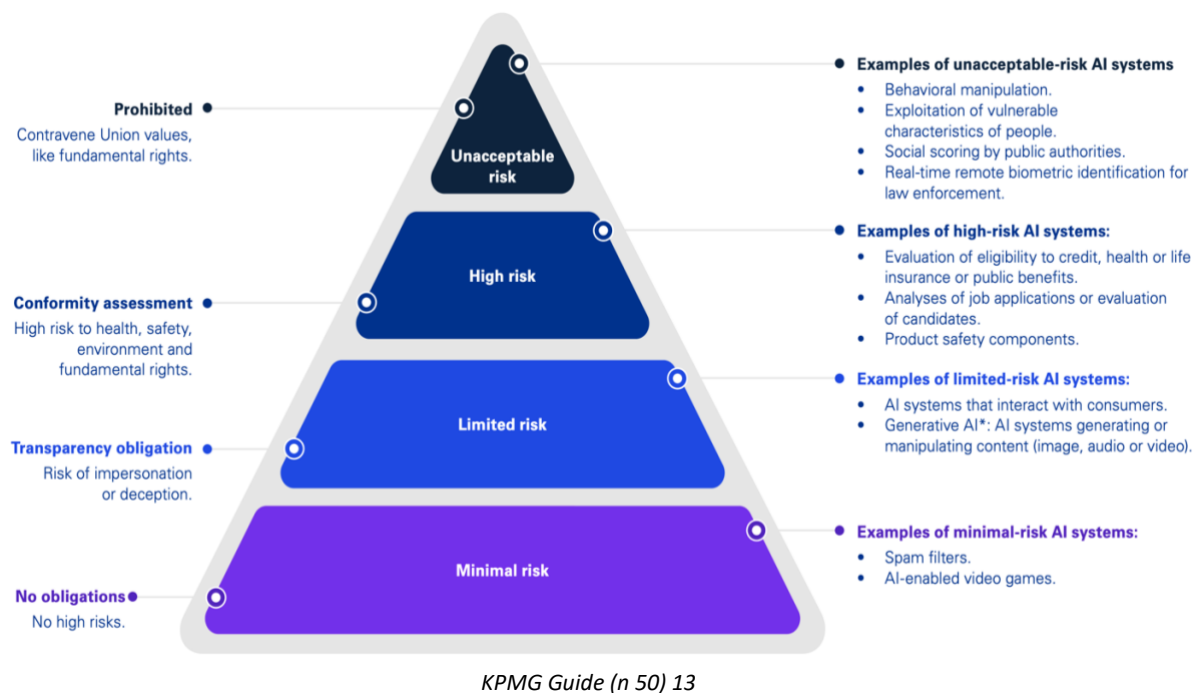
⁴⁷ Czerniawski (n 43) 4; Smuha and Yeung (n 5) 234.

⁴⁸ Czerniawski (n 43) 4; Moore and others (n 45).

Due to its extraterritorial effect, the AI Act will cover a significant number of non-EU actors operating in the EU market and may, in the longer term, influence the development of AI governance frameworks beyond EU borders on a global scale.⁴⁹

IV. Risk Classification

A defining feature of the EU AI Act is its risk-based approach, under which systems and practices are classified into tiers with proportionately more demanding legal obligations that vary according to the severity of the risks they pose.⁵⁰ The Act establishes eight risk categories under Article 5(1)(a)-(h)⁵¹, ranging from unacceptable-risk practices that are outright prohibited to minimal-risk systems that attract no new legal obligations. Of these, three tiers are of central importance to the present analysis: the prohibition of unacceptable-risk practices under Article 5, the high-risk system regime under Article 6 in conjunction with Annex III and the framework for general purpose AI models under Articles 51 ff.



⁴⁹ Czerniawski (n 43) 4, recommending that the broad territorial scope of the EU AI Act be limited by establishing clear guidelines and utilising interpretative aids, to ensure that the Act applies only to situations with a sufficient connection to the EU, thereby improving enforceability and preventing legal uncertainty under international law; Almada and Radu (n 7) 646; Moore and others (n 45), noting that the AI Act's extraterritorial provisions are likely to spark further debate and potentially influence the development of AI governance frameworks worldwide'.

⁵⁰ EU AI Act, recitals 26-27; Smuha and Yeung (n 5) 236.

⁵¹ EU AI Act, art 5(1)(a)-(h). The eight prohibited categories are: (a) harmful manipulation and deception; (b) exploitation of vulnerabilities; (c) social scoring by public authorities; (d) individual criminal risk prediction based solely on profiling; (e) untargeted scraping of facial images to build recognition databases; (f) emotion recognition in workplace and educational settings; (g) biometric categorisation inferring sensitive characteristics; and (h) real-time remote biometric identification in publicly accessible spaces.

1. Prohibited Practices

Article 5 of the EU AI Act imposes an outright ban on certain AI practices, deemed to pose an unacceptable risk to fundamental rights and human dignity, including harmful manipulation and deception as well as social scoring by public authorities.⁵² The Commission Guidelines clarify that these prohibited practices are those which inherently violate fundamental rights and Union values through manipulative, exploitative, social control and surveillance mechanisms.⁵³ Functioning as absolute regulatory limits that apply irrespective of sector or contractual arrangements, the prohibitions are universally binding on providers and deployers alike, regardless of the category of actor.⁵⁴ Their primary function is to act as a baseline safeguard, ensuring that certain fundamentally harmful uses of AI are excluded from legal and commercial contexts entirely, including arbitration, with the prohibition extending to placing relevant AI systems on the market, putting them into service and using them.⁵⁵

However, the prohibition regime has attracted scholarly criticism. Some argue that the prohibitions regulate behaviours rather than clearly defined technical systems, which creates ambiguity in their application⁵⁶, while others contend that some prohibitions are narrowly defined or difficult to enforce, which limits their practical effectiveness. They also suggest that the rigid structure of the regime may fail to capture emerging harmful uses of AI.⁵⁷

2. High-Risk Systems

Unlike prohibited practices, which are banned outright, high-risk AI systems may be placed on the market and used, but are subject to an extensive compliance regime that imposes stringent obligations on providers and deployers alike.⁵⁸ These are systems with a significant potential impact on individuals' fundamental rights in sensitive areas, such as law enforcement.⁵⁹ Article 6(1) provides that AI systems are classified as high-risk through their integration into regulated products covered by EU harmonisation legislation listed in Annex

⁵² EU AI Act, art 5(1). As already noted above, art 5 has applied since 2 February 2025 as the first tranche of the Act to become applicable; see Chapter B above.

⁵³ European Commission, *Guidelines on Prohibited Artificial Intelligence Practices as Defined by the AI Act* C(2025) 5052 final (29 July 2025) (hereinafter 'Commission Prohibited AI Guidelines') para 8.

⁵⁴ EU AI Act, art 5(1)(a)-(h); Commission Prohibited AI Guidelines (n 53) para 9.

⁵⁵ EU AI Act, art 5(1); Commission Prohibited AI Guidelines (n 53) para 8; Migliorini and Moreira (n 1) 148-149.

⁵⁶ Smuha and Yeung (n 5) 236-237.

⁵⁷ Veale and Zuiderveen Borgesius (n 25) 98-100.

⁵⁸ Smuha and Yeung (n 5) 241; Bird & Bird Guide (n 5) 31 ff.

⁵⁹ Smuha and Yeung (n 5) 238.

I, while Article 6(2) provides that AI systems falling within one of the specific use cases listed in Annex III are likewise classified as high-risk.⁶⁰ Annex III covers eight categories of particularly sensitive applications. These include, most relevantly for the present thesis, AI systems used in the administration of justice and democratic processes, where they are considered central to this category because of their potential to materially influence decision-making processes.⁶¹

Not every system falling within Annex III will, however, automatically be considered high-risk. According to Article 6(3), a system is exempt from high-risk classification if it does not materially influence the outcome of decision-making.⁶² This establishes a functional test based on the system's actual impact on decisions, rather than on its categorisation alone. It applies when the system performs a limited procedural task under Article 6(3)(a), improves the outcome of a previous human activity under Article 6(3)(b), or carries out a preparatory task without replacing or influencing human assessment under Article 6(3)(c) and (d).⁶³

As with prohibited practices, the high-risk classification regime has attracted criticism from scholars for its approach to regulating AI, which may fail to keep pace with technological developments. Some argue that the Annex III list is static and predefined and therefore may not adequately reflect evolving technological risks⁶⁴, while others contend that the regime's heavy reliance on ex ante categorisation rather than contextual risk assessment may result in emerging harmful uses of AI being overlooked. This could lead to both the over-inclusion of low-risk systems and the under-inclusion of genuinely harmful ones.⁶⁵

3. General-Purpose AI Models

The third tier of the EU AI Act's risk-based architecture consists of general-purpose AI models (hereinafter 'GPAI models'), which play a significant role in innovation and uptake of AI within the Union.⁶⁶ GPAI models are regulated under a separate regime set out in

⁶⁰ EU AI Act, arts 6(1)-(2) and Annex III; Veale and Zuiderveen Borgesius (n 25) 102-103; Bird & Bird Guide (n 5) 13; M Braun and others, 'What Are High-Risk AI Systems Within the Meaning of the EU's AI Act, and What Requirements Apply to Them?' (*WilmerHale Privacy and Cybersecurity Law Blog*, 17 July 2024) <[wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20240717-what-are-highrisk-ai-systems-within-the-meaning-of-the-eus-ai-act-and-what-requirements-apply-to-them](https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20240717-what-are-highrisk-ai-systems-within-the-meaning-of-the-eus-ai-act-and-what-requirements-apply-to-them)> accessed April 2026 (hereinafter 'WilmerHale').

⁶¹ EU AI Act, Annex III, point 8(a); Migliorini and Moreira (n 1) 148-149; Bird & Bird Guide (n 5) 26.

⁶² EU AI Act, art 6(3); WilmerHale (n 60); Bird & Bird Guide (n 5) 27.

⁶³ EU AI Act, art 6(3)(a)-(d); WilmerHale (n 60).

⁶⁴ Veale and Zuiderveen Borgesius (n 25) 102; Smuha and Yeung (n 5) 242-243.

⁶⁵ *ibid.*

⁶⁶ EU AI Act, arts 51 ff.; European Commission, *Guidelines on the Scope of Obligations for Providers of General-Purpose AI Models under the AI Act* (18 July 2025) <digital-strategy.ec.europa.eu/en/library/guidelines-scope>

Articles 51 ff., with risk categorisation based on model capability rather than application.⁶⁷ Such models are defined under Article 3(63) as 'AI models that display significant generality and are capable of competently performing a wide range of distinct tasks regardless of the way they are placed on the market, and which can be integrated into a variety of downstream systems or applications, excluding models used for research, development or prototyping activities before they are placed on the market'.⁶⁸ Unlike AI systems, which generate outputs in pursuit of a specific purpose and are regulated on that basis, GPAI models are not tied to a defined use case⁶⁹, meaning that their risk categorisation is based on model capability rather than on application.⁷⁰ At the time of writing, GPAI models hold limited direct relevance for commercial arbitration, as arbitrators and arbitral institutions typically interact with AI through commercial products rather than with the underlying models directly.⁷¹

V. Key Obligations for Providers and Deployers

The EU AI Act establishes a comprehensive framework of mandatory obligations for providers and deployers of high-risk AI systems. The scope of these obligations depends on the specific AI system and its risk classification, with only high-risk uses triggering the Act's most stringent requirements.⁷² The overarching aim is to ensure traceability, accountability and the possibility of ex post review of AI-assisted decisions,⁷³ and these obligations apply regardless of any contractual arrangements between the parties.⁷⁴

The majority of obligations under the EU AI Act fall on providers of high-risk AI systems, as set out in Chapter III, Section 2 of the Act.⁷⁵ These encompass the establishment and maintenance of a risk management system under Article 9, the preparation of technical documentation under Article 11, the provision of transparent information to deployers under Article 13, the design of systems to enable effective human oversight under Article 14, and

obligations-providers-general-purpose-ai-models-under-ai-act> accessed April 2026 (hereinafter 'GPAI Guidelines') para 2. A prime example of GPAI models is GPT-4, the large language model underlying the commercial product ChatGPT-4.

⁶⁷ EU AI Act, arts 51 ff.; GPAI Guidelines (n 66) para 12.

⁶⁸ EU AI Act, art 3(63); GPAI Guidelines (n 66) para 13.

⁶⁹ EU AI Act, art 3(63); GPAI Guidelines (n 66) para 13; Migliorini and Moreira (n 1) 141, 146-147.

⁷⁰ EU AI Act, arts 3(1) and 3(63); GPAI Guidelines (n 66) para 13.

⁷¹ Migliorini and Moreira (n 1) 141; QMUL Survey 2025 (n 2) 27.

⁷² Migliorini and Moreira (n 1) 150-151; Smuha and Yeung (n 5) 236-237; Eftekhari (n 1), noting that only high-risk uses trigger strict obligations, whereas low-risk uses are subject to lighter requirements.

⁷³ EU AI Act, recitals 1, 59 and 72; Smuha and Yeung (n 5) 241; Veale and Zuiderveen Borgesius (n 25) 103-104.

⁷⁴ EU AI Act, art 25(1)(a); Migliorini and Moreira (n 1) 150-151.

⁷⁵ EU AI Act, arts 8-16; Smuha and Yeung (n 5) 241-242; Migliorini and Moreira (n 1) 150-151; Veale and Zuiderveen Borgesius (n 25) 102-103.

the assurance of an appropriate level of accuracy, robustness, and cybersecurity under Article 15.⁷⁶

In the context of international arbitration, however, the obligations of deployers under Article 26 are of greater practical significance, since arbitrators and arbitral institutions typically interact with AI systems as deployers rather than providers.⁷⁷ Deployers of high-risk AI systems must take appropriate measures to ensure the system is used in accordance with its instructions for use⁷⁸, assign human oversight to competent individuals who can intervene and override the system outputs where necessary⁷⁹, retain automatically generated logs of the system for at least six months⁸⁰, report serious incidents⁸¹ and inform individuals affected by decisions made with the assistance of a high-risk AI system.⁸² Where AI systems are used for low-risk or purely procedural tasks, deployers are not subject to these stringent obligations, but they must still comply with the general AI literacy requirement under Article 4.⁸³ The specific application of these obligations to arbitral proceedings, including the structural risks arising from non-compliance, is examined in detail in Chapter C.II.3 below.

C. Current Uses of AI in Arbitration and Applicability of the EU AI Act

I. AI in Arbitration: Current Uses and Soft-Law Regulation

1. Current Uses of AI Tools in Arbitral Proceedings

The use of AI in international arbitration is not a new phenomenon. For over a decade, lawyers and arbitrators have used AI-powered tools, most notably for document review and legal research, though their use has often gone comparatively unnoticed.⁸⁴ What distinguishes the current situation is a qualitative shift in AI capability. Earlier AI technologies primarily functioned as analytical tools designed to support the evaluation of

⁷⁶ EU AI Act, arts 9, 11-15; Smuha and Yeung (n 5) 238-241; Veale and Zuiderveen Borgesius (n 25) 102-103.

⁷⁷ Migliorini and Moreira (n 1) 154-155; C Lüttenberg, I Beimel and SJ Heetkamp, 'How Does the EU AI Act Apply to Arbitration?' (*Daily Jus*, 14 January 2025) <dailyjus.com/legal-tech/2025/01/how-does-the-eu-ai-act-apply-to-arbitration> accessed April 2026 (hereinafter 'Lüttenberg and others')

⁷⁸ EU AI Act, art 26(1).

⁷⁹ EU AI Act, art 26(2).

⁸⁰ EU AI Act, art 26(6).

⁸¹ EU AI Act, art 26(5).

⁸² EU AI Act, art 26(11).

⁸³ EU AI Act, art 4; Migliorini and Moreira (n 1) 150-151.

⁸⁴ M Scherer, 'Artificial Intelligence in Arbitral Decision-Making: The New Enlightenment?' in C Bull, L Malintoppi and others (eds), *ICCA Congress Series* vol 2 (2023) 683, 684 (hereinafter 'Scherer (ICCA)'); M Scherer, 'International Arbitration 3.0: How Artificial Intelligence Will Change Dispute Resolution' in C Klausegger and others (eds), *Austrian Yearbook on International Arbitration 2019* (Manz 2019) 503, 506-508 (hereinafter 'Scherer (Austrian Yearbook)').

evidence during proceedings. In contrast, generative AI is increasingly being used for core cognitive tasks that directly affect the outcome of legal disputes, such as initial case assessment, drafting pre-trial correspondence and pleadings, as well as conducting legal research.⁸⁵ The most comprehensive and reliable empirical basis for assessing these developments is provided by the QMUL Survey 2025, which draws on 2,402 responses from practitioners across 100 jurisdictions and is, to date, the largest study of its kind.⁸⁶ The Survey confirms that AI has moved well beyond peripheral use in arbitral practice.⁸⁷

The predominant current uses are factual and legal research, reported by 64% of respondents, followed by data analytics and document review, each reported by 64% of respondents, with a significant proportion of respondents also reporting AI used for drafting correspondence (40%) and summarising submissions or evidence (38%).⁸⁸ With regard to arbitrators specifically, the survey reveals a nuanced picture of acceptance. There is strong approval for AI use in administrative and procedural tasks such as the calculation of damages, costs and interest (77%), the summarisation of submissions or evidence (66%), and the drafting of procedural orders and non-dispositive portions of awards (60%). By contrast, there is marked resistance to AI in tasks requiring discretion and judgement, which respondents view as fundamental to the arbitrator's mandate. Only 23% of respondents approve of the use of AI to draft the legal reasoning sections of awards, and a clear majority of both arbitrators (80%) and counsel (85%) are opposed to such use without meaningful human oversight.⁸⁹

Looking ahead, adoption is expected to increase significantly across all surveyed tasks. Within the next five years, 91% of respondents anticipate using AI for research and data analytics, 75% for drafting correspondence and 66% for drafting submissions, which is a marked increase compared to current practice. Over half of respondents (52%) expect

⁸⁵ C Morgan and MP King, 'A Human Story: AI, Arbitration and the Importance of Judgment' in S Nappert and F Carvalho Dias de Oliveira Silva (eds), *AI and Arbitration* (Kluwer Law International 2026) 1, 1-2 (hereinafter 'Morgan and King').

⁸⁶ QMUL Survey 2025 (n 2) 1; for a detailed overview of the most significant applications of AI in international commercial arbitration, see also A Al Mahdouri, 'Public Policy and the Enforcement of AI-Generated Arbitral Awards' (2025) 42(6) *Journal of International Arbitration* 759, 761-767 (hereinafter 'Al Mahdouri').

⁸⁷ For an earlier account of AI-assisted legal research tools, big data treatment, and e-discovery in arbitration, see Scherer (Austrian Yearbook) (n 84) 506–508, who already in 2019 identified these as the most immediate areas of AI application for lawyers in international arbitration.

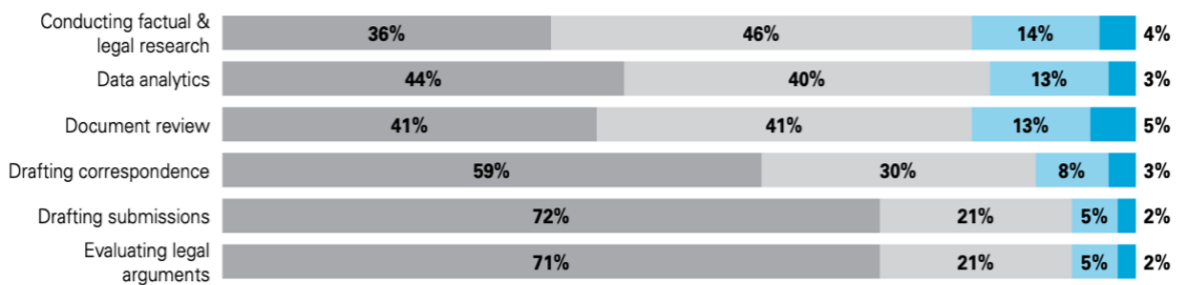
⁸⁸ QMUL Survey 2025 (n 2) 27-28 (Chart 18).

⁸⁹ QMUL Survey 2025 (n 2) 31-32 (Chart 21); notably, this divide in attitudes reflects a broader generational trend within the arbitral community: junior counsel and institutional staff appear more inclined to use AI for initial drafts, while more experienced counsel and arbitrators tend to resist, citing concerns about quality control, reputational risk and a reluctance to delegate tasks requiring human judgment. This distinction between administrative and deliberative tasks maps closely onto the high-risk and low-risk classification under the EU AI Act, as discussed in Chapter C.II.2 below.

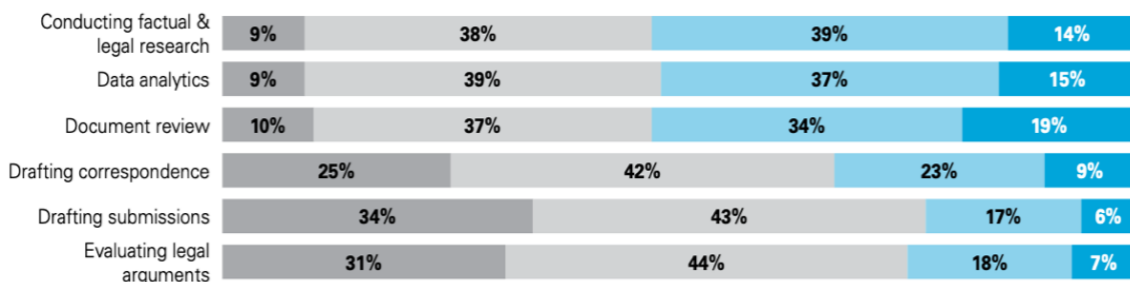
arbitrators to rely more heavily on AI, and 48% predict that arbitral proceedings will speed up as a result. Notably, 40% of respondents anticipate the creation of new professional roles dedicated to managing and implementing AI.⁹⁰ These figures suggest that AI will transition from a supplementary tool to a routine feature of arbitral practice within a relatively short timeframe.

Chart 18: How often have you used, and do you expect to use, AI tools and technology?

Use of AI tools and technology: Past 5 years



Use of AI tools and technology: Next 5 years



■ Never ■ Sometimes ■ Often ■ Almost always

QMUL Survey 2025 (n 2) 28 (Chart 18)

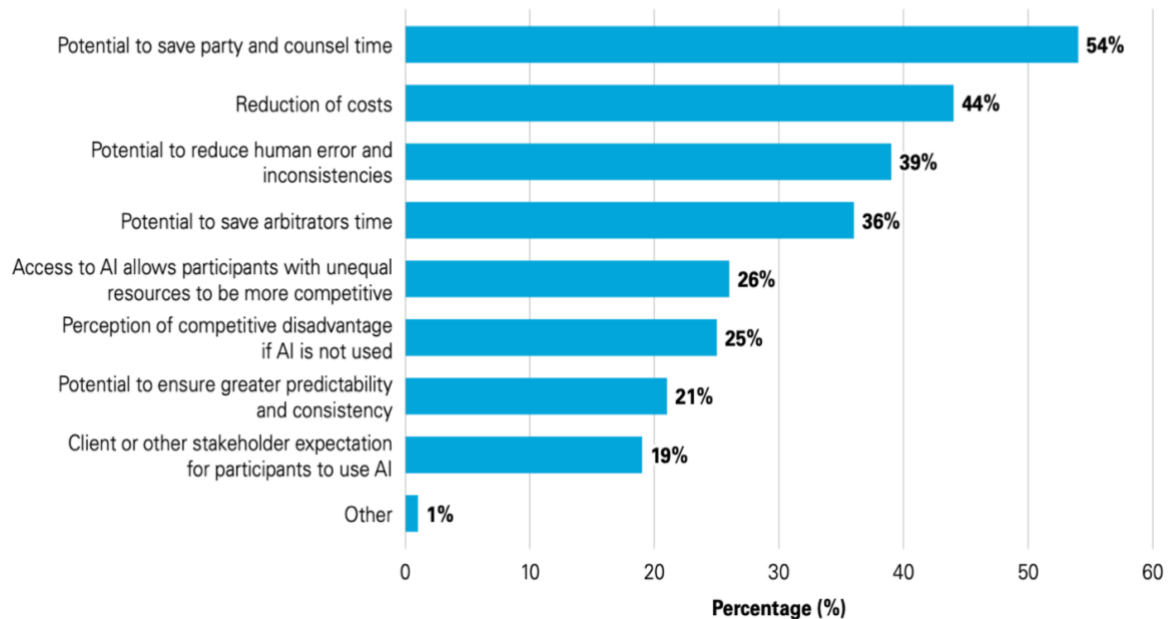
Behind these patterns of adoption lie a number of clear motivations, particularly the potential for time savings for parties and counsel (54%), cost reduction (44%) and minimising human error and inconsistency (39%). Notably, a significant proportion of respondents also cited the potential to save arbitrators time (36%), and concerns about competitive disadvantage if AI is not used (25%), suggesting that adoption is driven not only by efficiency gains but also by broader competitive dynamics within the arbitration market.⁹¹

⁹⁰ QMUL Survey 2025 (n 2) 32-33 (Chart 22); for a broader discussion of the potential future uses of AI throughout the entire arbitration process, including AI-assisted drafting of arbitration clauses, automated case management, and the role of AI decision-support systems for tribunal secretaries, see CI Florescu, 'The Interaction Between AI (Artificial Intelligence) and IA (International Arbitration): Technology as the New Partner of Arbitration' (2024) 18(1) *Revista Română de Arbitraj* 42, 44 (hereinafter 'Florescu').

⁹¹ QMUL Survey 2025 (n 2) 28-29 (Chart 19).

Chart 19: What drives the greater use of AI by participants in international arbitrations?

Respondents were asked to select up to three options



QMUL Survey 2025 (n 2) 29 (Chart 19)

Yet this enthusiasm for AI use must be tempered by the recognition that greater reliance on AI also brings significant risks. The risk of undetected AI errors and bias was identified as the most significant obstacle to greater AI adoption by 51% of respondents, followed by confidentiality and data security concerns (47%), and a lack of experience with the technology (44%). A further obstacle, and the one most directly relevant to the present thesis, is the perceived absence of adequate regulatory frameworks (38%).⁹²

The use of AI as a decision-making tool further gives rise to public policy and ethical concerns that are directly relevant to the conduct of arbitral proceedings. Notably, 28% of respondents identified the risk of challenges to awards on due process grounds where arbitrators used AI, and 24% cited the risk of ethical infractions or compromising the integrity of the arbitral process, both of which point directly to the central concern of this thesis. These risks materialise, in particular, when AI use is not disclosed to the parties, when human oversight of AI-generated outputs is insufficient, or when the documentation of AI-assisted decisions is inadequate to ensure their traceability and accountability.⁹³ The

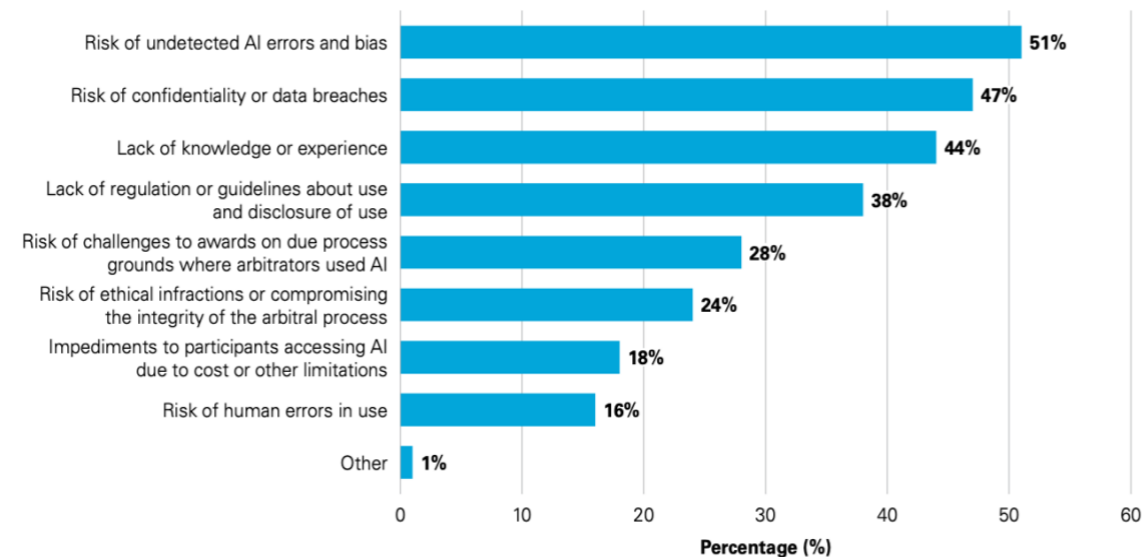
⁹² QMUL Survey 2025 (n 2) 30 (Chart 20).

⁹³ D Perera and TM Aaron, 'AI Guidelines in International Arbitration: Revolutionary or Cautionary? A Comparative Analysis' (2025) 42(5) *Journal of International Arbitration* 585, 586-587 (hereinafter 'Perera and Aaron'); for a detailed discussion of the current risks associated with AI use in arbitration, including early instances

regulatory obligations imposed by the EU AI Act on arbitrators and arbitral institutions, in response to these risks, as well as the structural consequences of non-compliant AI use, are examined in Chapter C.II.3 below.

Chart 20: What deters greater use of AI by participants in international arbitrations?

Respondents were asked to select up to three options



QMUL Survey 2025 (n 2) 30 (Chart 20)

Taken together, these findings confirm that AI is no longer a peripheral phenomenon in international arbitration and that the question of its governance has become one of immediate practical urgency. While enthusiasm for greater AI use continues to grow, it is tempered by a clear desire for transparency and adequate guidelines and training on the responsible deployment of AI in arbitral proceedings, underscoring the need for a coherent regulatory framework.⁹⁴

2. Party Autonomy and Soft-Law Regulation of AI Use in Arbitration

a. The Role of Party Autonomy in Arbitration

The principle of party autonomy is one of the fundamental aspects of arbitration proceedings in commercial disputes.⁹⁵ It is enshrined in a wide range of international arbitration

of misuse and their consequences as well as the skill gap among legal practitioners, see Morgan and King (n 85) 2-3.

⁹⁴ QMUL Survey 2025 (n 2) 29-30.

⁹⁵ HF Whitfield, 'Judicial Fairness and Party Autonomy in International Commercial Arbitration' (2024) 7(4) *International Journal of Law, Management and Humanities* 167, 168 (hereinafter 'Whitfield'); N Blackaby

guidelines, most explicitly in Article 19(1) of the UNCITRAL Model Law⁹⁶, which has been adopted by almost all national arbitration laws.⁹⁷ It grants the parties involved considerable contractual freedom, including the power to determine the procedure that the arbitral tribunal should follow during the proceedings⁹⁸, as well as the option to select the applicable substantive law. This enables them to structure their agreements according to their preferences.⁹⁹ Notably, the tribunal's procedural discretion is subject to the agreement of the parties in any case.¹⁰⁰

These contractual freedoms now extend to the parties' chosen use of AI during arbitral proceedings. Accordingly, they may regulate directly the use of AI or agree to apply national arbitration rules as well as international arbitration guidelines in their arbitration agreement.¹⁰¹ Parties could expressly permit the arbitral tribunal to use AI, for instance by authorising it to make use of an AI system or a specific AI-based feature when dealing with written submissions or evidence, thereby expediting the arbitration proceedings.¹⁰² Conversely, where parties have agreed in their arbitration agreement or at the

and C Partasides with A Redfern and M Hunter, *Redfern and Hunter on International Arbitration* (Oxford University Press, 6th edn 2015) 187 (hereinafter 'Blackaby and others').

⁹⁶ 'Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings': UNCITRAL Model Law on International Commercial Arbitration (adopted by the United Nations Commission on International Trade Law on 21 June 1985, with amendments as adopted in 2006) UN Doc A/40/17, Annex I (hereinafter 'UNCITRAL Model Law'), art 19(1).

⁹⁷ For a German perspective on the role of party autonomy as well as the deployment and use of AI in commercial arbitration, see F Pötzlberger and S Henrich, 'AI and Arbitration: The German Perspective' (*Clyde & Co*, 15 February 2024) <clydeco.com/en/insights/2024/02/ai-in-arbitration-germany> accessed April 2026 (hereinafter 'Pötzlberger and Henrich'); for an overview of AI and its deployment in international arbitration as well as the potential problems and controversies arising from using AI in international arbitration through the lens of Austrian regulation, see K Oblin and N Gorjaev, 'Ushering in a New Era: The Austrian Outlook of Deployment and Regulation of AI in International Arbitration' (*Oblin Attorneys*, 19 March 2025) <oblin.at/knowledge/publications/ushering-in-a-new-era-the-austrian-outlook-of-deployment-and-regulation-of-ai-in-international-arbitration> accessed April 2026 (hereinafter 'Oblin and Gorjaev').

⁹⁸ H Carlquist, 'Party Autonomy and the Choice of Substantive Law in International Commercial Arbitration' (Master Thesis, Göteborg University 2006) 2 (hereinafter 'Carlquist').

⁹⁹ G Born and K Beale, 'Party Autonomy and Default Rules: Reframing the Debate Over Summary Disposition in International Arbitration' (2010) 21(2) *ICC International Court of Arbitration Bulletin* 19 (hereinafter 'Born and Beale'); MO Dickson, 'Party Autonomy and Justice in International Commercial Arbitration' (2018) 60(1) *International Journal of Law and Management* 114, 115 (hereinafter 'Oruaze Dickson').

¹⁰⁰ UNCITRAL Model Law (n 96), art 19(2); New York Convention (n 12), art V(1)(d).

¹⁰¹ Eftekhari (n 1).

¹⁰² D Stefer and V Fricke, 'From Algorithms to Awards: Exploring the Technological and Legal Boundaries of AI's Contributions to the Work of Arbitrators' (2025) 41(1) *Arbitration International* 49, 52 (hereinafter 'Stefer and Fricke'); J Andrews and others, 'Navigating AI in International Arbitration: Key Insights and Guidelines' (*Faegre Drinker*, May 2025) <faegredrinker.com/en/insights/publications/2025/5/navigating-ai-in-international-arbitration-key-insights-and-guidelines> accessed April 2026 (hereinafter 'Andrews and others') recommend that where a relevant agreement between the parties permits, arbitrators who intend to rely on AI-generated information should ensure that it is independently verified and that the parties are consulted in advance. This would help to ensure due process, thereby strengthening transparency and confidence in the arbitration proceedings. Furthermore, it would enable arbitrators to strike a balance between respecting party autonomy and fulfilling their duty to deliver a fair and legally sound outcome. Ultimately, arbitrators are solely responsible for upholding the integrity and fairness of arbitration proceedings.

commencement of the proceedings to prohibit the arbitral tribunal from using AI, the tribunal must comply with this prohibition. Any such breach may potentially give rise to grounds for refusal of recognition or enforcement of arbitral awards under Article V of the New York Convention. The extent to which party autonomy may be constrained by mandatory provisions of EU law, and in particular the EU AI Act, is examined in Chapter C.II.4 below.

b. Pre-Existing Soft Law Regulation on the Use of AI in Arbitration

In response to the aforementioned risks of using AI in arbitral proceedings, including concerns about undetected AI errors and bias, confidentiality breaches, and the absence of clear regulatory guidance,¹⁰³ a number of leading arbitral institutions have recently published guidelines on the use of AI in arbitral proceedings.¹⁰⁴

The first institution to respond to the challenges arising from the use of AI in arbitration was the Silicon Valley Arbitration and Mediation Center (SVAMC), which published its 'Guidelines on the Use of Artificial Intelligence in Arbitration' in April 2024.¹⁰⁵ The guidelines set out a principle-based framework for integrating AI tools into arbitral proceedings, emphasising responsible innovation and maintaining human oversight.¹⁰⁶ They require that all participants using AI tools in connection with arbitration 'make reasonable efforts to understand the relevant limitations, biases and risks of each AI tool, and mitigate them where possible'.¹⁰⁷ With regard to disclosure, the guidelines recognise that disclosure of AI use may be warranted in certain circumstances, but they do not impose a general obligation on arbitrators or arbitral institutions to do so. Designed to provide non-binding guidance to help participants navigate the potential applications of AI in arbitration, the guidelines have been praised for encouraging other stakeholders to develop their own

¹⁰³ See Chapter C.I.1. above.

¹⁰⁴ Morgan and King (n 85) 6; for a detailed overview of the existing soft-law regulation on the use of AI in international arbitration, see J Ole Jensen, 'The Emerging Body of Regulation on the Use of Artificial Intelligence in International Arbitration: An Overview' (2025) 2025(2) *b-Arbitra* 324 (hereinafter 'Jensen') 324-337, who catalogues the existing instruments in chronological order, explains their coverage and evaluates their regulatory approach, and illustrates existing differences between these instruments, including a comparison of the different approaches to the existence and scope of the arbitrator's duty of disclosure when using AI; see also Perera and Aaron (n 93) 585 ff, evaluating the effectiveness of the various guidelines and illustrating the extent of disclosure required under each instrument.

¹⁰⁵ Silicon Valley Arbitration and Mediation Center, 'Guidelines on the Use of Artificial Intelligence in Arbitration' (First Edition, April 2024) <svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf> accessed April 2026 (hereinafter 'SVAMC Guidelines').

¹⁰⁶ F Wouter Landman, '2025 PAW: Arbitrage International Meets Artificial Intelligence' (*Kluwer Arbitration Blog*, 2025) <legalblogs.wolterskluwer.com/arbitration-blog/2025-paw-arbitrage-international-meets-artificial-intelligence> accessed April 2026 (hereinafter 'Wouter Landman'); SVAMC Guidelines (n 105), Guideline 7.

¹⁰⁷ Florescu (n 90) 44.

instruments, but at the same time have been criticised for offering limited substantive direction on specific uses of AI that are permissible or impermissible.¹⁰⁸

Later in 2024, the Arbitration Institute of the Stockholm Chamber of Commerce published its Guide to the Use of Artificial Intelligence in Cases Administered under the SCC Rules, marking the first occasion on which an arbitral institution engaged in the administration of proceedings issued guidance on AI use in its cases.¹⁰⁹ Adopting a more practical approach than a policy-oriented one, the SCC Guide addresses the use of AI at every stage of the proceedings, from filing a request for arbitration to issuing an award. Particular attention is paid to confidentiality concerns, and the Guide expressly undertakes to ensure compliance with the EU AI Act.¹¹⁰ Inspired by the EU AI Act on disclosure, arbitral tribunals are merely 'encouraged' to disclose any use of AI when researching and interpreting facts and the law, or when applying the law to the facts. Further details are to be determined by the parties and tribunals on a case-by-case basis.¹¹¹

To date, the most detailed and operationally comprehensive instrument is the Guideline on the Use of AI in Arbitration, which was published by the Chartered Institute of Arbitrators in March 2025.¹¹² Moving beyond general principles, the guideline offers a concrete protocol for practice. This includes a model agreement on the use of AI that parties can adopt at the start of their arbitration, under which they may list the specific tools permitted for use in the proceedings, exclude any tool they deem inappropriate, and specify the activities for which AI may be deployed, particularly legal research and document review.¹¹³ Under the guideline, arbitrators can issue instructions and make procedural rulings regarding the use of AI by the parties involved. This includes appointing an AI expert, deciding whether AI-generated or AI-assisted content can be included in the record and requesting that the parties explain how inputs from the evidentiary record are linked to machine-generated outputs.¹¹⁴ In April 2025, the Vienna International Arbitral Centre also issued a Note on the Use of Artificial Intelligence in Arbitration Proceedings, expressly designated as non-binding and

¹⁰⁸ Jensen (n 104) 326-328; Morgan and King (n 85) 8.

¹⁰⁹ Arbitration Institute of the Stockholm Chamber of Commerce, *Guide to the Use of Artificial Intelligence in Cases Administered under the SCC Rules* (October 2024) (hereinafter 'SCC Guide').

¹¹⁰ Jensen (n 104) 331-332.

¹¹¹ Perera and Aaron (n 93) 597; Wouter Landman (n 106).

¹¹² Jensen (n 104) 332-333.

¹¹³ Jensen (n 104) 332-333; S Rahman, 'AI and Arbitration: How to Agree Sensible Uses of AI Tools Within the Arbitration' (*Rahman Ravelli*, 27 August 2025) <rahmanravelli.co.uk/expertise/international-arbitration/articles/ai-and-arbitration-how-to-agree-sensible-uses-of-ai-tools-within-the-arbitration> accessed May 2026 (hereinafter 'Rahman').

¹¹⁴ Morgan and King (n 85) 8; Perera and Aaron (n 93) 596.

intended to 'facilitate discussions related to the use of AI' in VIAC arbitrations. The VIAC Note encourages arbitrators and parties to agree on the scope of AI use on a case-by-case basis, proposing that the matter be raised at the case management conference together with any disclosure requirements and the potential impact of AI use on the arbitration timeline and costs.¹¹⁵

As demonstrated by the widespread adoption of the IBA Rules on the Taking of Evidence, soft-law has historically proven effective in international arbitration.¹¹⁶ However, when it comes to regulating the use of AI in arbitral proceedings, this approach proves insufficient to address the significant risks at stake. None of the aforementioned instruments constitute a binding regulatory framework applicable to EU Member States. Instead, they are advisory in nature, empowering arbitrators to impose certain AI-related disclosure obligations on those involved, but they do not create enforceable rights or obligations as a matter of law.¹¹⁷ In the absence of such incorporation, the instruments remain without legal effect, creating a significant protection gap that party autonomy alone cannot close. Beyond this, even where the parties incorporate such guidelines by reference in their arbitration agreement such that they govern the tribunal's use of AI in the proceedings, a breach of their provisions does not automatically give rise to sanctions and the consequences of non-compliance remain largely dependent on the tribunal's discretion.¹¹⁸ The risks posed by AI in arbitral proceedings, particularly the risks of non-disclosure and inadequate human oversight, are of a different order of complexity to the procedural issues that soft law has traditionally addressed. This suggests that a binding legislative response may be necessary. It is precisely this regulatory gap that the EU AI Act seeks to address, as examined in Chapter C.II below.

II. Applicability of the EU AI Act to Arbitration

The EU AI Act does not explicitly mention arbitration by name. Nevertheless, its relevance for international commercial arbitration stems from two key provisions. Recital 61 clarifies that AI systems intended for use by alternative dispute resolution bodies should be considered high-risk if the outcomes of the proceedings have legal consequences for the

¹¹⁵ Vienna International Arbitral Centre, 'Note on the Use of Artificial Intelligence in Arbitration Proceedings' (VIAC, 10 April 2025) <viac.eu/en/viac-publishes-a-note-on-the-use-of-ai-in-arbitration-proceedings> accessed April 2026 (hereinafter 'VIAC Note'); see also Jensen (n 104) 334-336.

¹¹⁶ International Bar Association, *IBA Rules on the Taking of Evidence in International Arbitration* (adopted by a resolution of the IBA Council, 17 December 2020) (hereinafter 'IBA Rules').

¹¹⁷ Perera and Aaron (n 93) 596; Jensen (n 104) 336-337.

¹¹⁸ Eftekhar (n 1).

parties involved. Annex III, point 8(a) confirms this by explicitly listing AI systems intended to assist with researching and interpreting facts and the law, or applying the law to a concrete set of facts, that are used in a similar way in alternative dispute resolution¹¹⁹, as a high-risk use case.¹²⁰ Under a combined reading of these provisions, the Act classifies AI systems used in commercial arbitration fall within the Act's high-risk classification where they are designed to assist an arbitrator with researching and interpreting facts, or applying the law to a concrete set of facts.¹²¹ This interpretation is confirmed by the Commission's Draft Guidelines on Annex III, published in May 2026, which expressly identify commercial arbitration institutions as alternative dispute resolution bodies within the scope of point 8(a), thereby removing any residual doubt as to the applicability of the Act to arbitral proceedings.¹²²

1. Personal and Territorial Scope of the EU AI Act in the Arbitral Context

a. Personal Scope in the Arbitral Context

As set out in Chapter B.II above, the EU AI Act allocates its obligations to various actors along the AI value chain, depending on their role. In an arbitration context, the distinction between providers and deployers is particularly important, since the Act's compliance obligations differ significantly depending on which category an actor falls into. For the purposes of this thesis, the category of 'deployer' is especially significant, since, in practice, arbitrators and arbitral institutions typically interact with AI systems as deployers rather than 'providers'. The following analysis of the personal scope of the Act in the arbitral context therefore focuses on those qualifying as deployers.

¹¹⁹ M Scherer, 'We Need to Talk About ... the EU AI Act!' (*Kluwer Arbitration Blog*, 27 May 2024) <arbitrationblog.kluwerarbitration.com/2024/05/27/we-need-to-talk-about-the-eu-ai-act> accessed April 2026 (hereinafter 'Scherer'); E Hay, 'Thinking Outside the Black Box: Arbitration and Artificial Intelligence' in AW Sheppard and C Bao (eds), *International Arbitration: A Human Endeavour* (ICCA Congress Series vol 22, Kluwer Law International 2025) 669, 682 (hereinafter 'Hay').

¹²⁰ EU AI Act, recital 61 ('AI systems intended to be used by alternative dispute resolution bodies for those purposes should also be considered to be high-risk when the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties'); Annex III, point 8(a) ('AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution').

¹²¹ Migliorini and Moreira (n 1) 143; for a detailed analysis of which uses of AI in arbitration specifically qualify as high-risk, see Chapter C.II.2 below.

¹²² European Commission, 'Draft Commission Guidelines on the Classification of High-Risk AI Systems under Article 6 of Regulation (EU) 2024/1689 (AI Act) for Stakeholder Consultation' (May 2026) paras 426-429 (hereinafter 'Draft Guidelines Annex III').

As outlined in Section B.II, Article 3(4) defines a deployer as 'any natural or legal person, public authority, agency or other body that uses an AI system under their authority, unless the AI system is being used for personal, non-professional activities'.¹²³ Arbitrators, as natural persons exercising their mandate on a personal basis, fall squarely within this definition when they make use of AI in the discharge of their professional functions, for instance when examining case files, summarising submissions or reviewing awards.¹²⁴ Beyond arbitrators themselves, this scope extends to all professional participants in arbitral proceedings, for instance counsel, experts and witnesses where they do not testify in a purely personal capacity,¹²⁵ provided that they make use of AI in the discharge of their professional functions.¹²⁶

Beyond these participants, the obligations arising from the high-risk use of AI within the meaning of Annex III, point 8(a) extend to further actors, including certain arbitral institution functions, such as decisions on the seat of the arbitration, joinder and consolidation questions, and the appointment and challenge of arbitrators.¹²⁷ Furthermore, these obligations apply to individuals assisting a judicial authority in this function, including tribunal secretaries.¹²⁸

As noted above, Article 3(4) defines deployers as natural or legal persons using an AI system under their authority. Given that the parties in commercial arbitration are typically legal entities, the question whether legal entities acting as deployers fall within this scope gives rise to interpretative challenges that require further clarification.¹²⁹ Article 3(4) does not expressly address legal entities and is therefore ambiguous in this regard. Recital 13, which is intended to provide guidance on interpretation, states that the term deployer should be interpreted as 'any natural or legal person, including a public authority, agency or other body, using an AI system under its authority'. However, this definition also falls short of providing a clear answer, as it does not specifically encompass legal entities either. One interpretative approach holds that, ultimately, every company has a natural person as its beneficial owner,

¹²³ EU AI Act, art 3(4).

¹²⁴ Scherer (n 119); Lüttenberg and others (n 77); C Lüttenberg, IH Beimel and SJ Heetkamp, 'Neue Pflichten für Schiedsgerichte aus der KI-Verordnung?' (2024) 22(5) *SchiedsVZ* 225 (hereinafter 'Lüttenberg and others (SchiedsVZ)').

¹²⁵ Jensen (n 104) 330–331 (listing numerous examples of professional participants).

¹²⁶ Jensen (n 104) 330; Scherer (n 119).

¹²⁷ Jensen (n 104) 330; Lüttenberg and others (n 77).

¹²⁸ Jensen (n 104) 330.

¹²⁹ Jensen (n 104) 330; M Scherer, JO Jensen and R Childree, 'Regulating the Use of Artificial Intelligence in International Arbitration: The EU AI Act and Beyond' (2024) *Cahiers de l'Arbitrage* 653, 670 (hereinafter 'Scherer, Jensen and Childree').

meaning that a decision concerning the company would also relate to the natural person owning shares in it. Nevertheless, the Act's legislative history suggests that this provision was intended to apply only to natural persons, excluding companies.¹³⁰ This would lead to the dissatisfactory outcome that the Act requires the disclosure of AI use where a natural person is party to arbitral proceedings but not where the parties are legal entities.¹³¹

b. Territorial Scope in the Arbitral Context

Article 2(1) of the EU AI Act establishes its territorial scope by providing that the Act covers not only providers and deployers established or located within the Union under point (b), but also those based in third countries where the output produced by the AI system is used within the Union under point (c).¹³² Therefore, EU-based companies, arbitral institutions and arbitrators who provide or deploy AI systems for use in arbitration within the EU fall directly within the scope of Article 2(1)(b).¹³³ However, determining the precise circumstances in which the Act applies is not always straightforward, given the inherently cross-border nature of many commercial arbitration proceedings.¹³⁴

It could be argued that, following the exact wording of Article 2(1)(b), an arbitrator's place of habitual residence is where they are established or located. However, this interpretation would lead to the impractical result that the Act would apply only to members of a three-person panel who are domiciled or based within the Union.¹³⁵ A more uniform application amongst tribunal members could be achieved by linking the application exclusively to the seat of the arbitral tribunal¹³⁶, but it is questionable whether this result was intended. The clear wording of Article 2(1)(b), which refers to 'deployers located within the Union', suggests that the seat of the arbitral tribunal should not be the exclusive connecting factor. Furthermore, as the Act aims to 'ensure protection against the harmful effects of AI systems in the Union'¹³⁷, considering the entire Union as a protected territory also contradicts the

¹³⁰ Scherer, Jensen and Childree (n 128) 670.

¹³¹ Jensen (n 104) 330.

¹³² EU AI Act, art 2(1)(b) ('deployers of AI systems that have their place of establishment or are located within the Union') and art 2(1)(c) ('providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the AI system is used in the Union').

¹³³ Migliorini and Moreira (n 1) 157.

¹³⁴ Migliorini and Moreira (n 1) 157; Scherer (n 119).

¹³⁵ Scherer (n 119); Lüttenberg and others (n 77).

¹³⁶ Scherer (n 119); Lüttenberg and others (n 77) (noting that in the case of an arbitral tribunal with members from EU Member States but whose seat is located outside the EU, the Act would not apply under this interpretation of Article 2(1)(b)).

¹³⁷ EU AI Act, recital 1.

intention to link the Act's applicability exclusively to the seat of the arbitral tribunal.¹³⁸ It is noteworthy each of these interpretative approaches leads to a different outcome and none can be definitively excluded based on the Act's current wording alone.

The potential inconsistency in treatment within the arbitral tribunal under Article 2(1)(b) can, however, be partially mitigated by Article 2(1)(c).¹³⁹ Under Article 2(1)(c), as previously described, the Act applies when the output of an AI system is used within the EU. However, the precise meaning of 'use of an output' in this context is far from settled and gives rise to considerable interpretative difficulty.¹⁴⁰ Various interpretations are possible. On a narrow reading, it may suffice that one of the parties to the arbitration has its seat or place of residence in the EU.¹⁴¹ On a broader reading, enforcement of the award may be sought against assets situated in the EU, even if none of the parties are based in the EU. Further still, the arbitral institution alone may have its seat in the EU.¹⁴²

Academic commentary has so far broadly favoured an expansive interpretation of the Act's provisions, with a view to securing the widest possible scope of protection.¹⁴³ On this basis, it can be argued that the Act extends to non-EU arbitral institutions and arbitrators who, although physically located outside the EU, conduct proceedings legally seated in the EU.¹⁴⁴ Such an extensive reading of 'use of an output' may also cover cases where an award is enforced in an EU court, even if the arbitration took place outside the EU and was administered by a non-EU institution.¹⁴⁵ Additionally, the concept of an 'affected party located in the EU' as defined in Article 2(1)(g) could extend the Act's scope to proceedings

¹³⁸ Lüttenberg and others (SchiedsVZ) (n 124) 226; Lüttenberg and others (n 77).

¹³⁹ Lüttenberg and others (SchiedsVZ) (n 124) 226.

¹⁴⁰ Scherer (n 119); Lüttenberg and others (SchiedsVZ) (n 124) 226.

¹⁴¹ This interpretation is backed up by Article 2(1)(g) EU AI Act, limiting the scope of application to 'affected persons that are located in the Union', see Lüttenberg and others (n 77).

¹⁴² Lüttenberg and others (SchiedsVZ) (n 124) 226-227; Lüttenberg and others (n 77).

¹⁴³ D Bomhard and J Siglmüller, 'AI Act – das Trilogergebnis' [2024] *RD* 45, no 5; D Bomhard and M Merkle, 'Europäische KI-Verordnung – Der aktuelle Kommissionsentwurf und praktische Auswirkungen' (2021) 1(6) *RD* 276, no 14; Lüttenberg and others (SchiedsVZ) (n 124) 227: 'Conversely, in order to define what is insufficient to trigger the territorial scope of application, a parallel can be drawn with the approach developed by the ECJ regarding the old Brussels I Regulation, and the mere reading of an arbitral award should not be regarded as use of the result. See ECJ, *EuZW* 2011, 98, para. 94: "However, mere access to the website of the trader or his intermediary in the Member State in whose territory the consumer is domiciled is not sufficient"'.¹⁴⁴

¹⁴⁴ This derives from the distinction between 'seat' and 'venue' in arbitration. The term 'seat' refers to the location chosen by the parties as the legal venue for the proceedings, whereas 'venue' refers to the specific geographical location where the parties agree to meet. See generally J Hill, 'Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements' (2014) 63(3) *International and Comparative Law Quarterly* 519 (hereinafter 'Hill'). In the context of the AI Act, see Scherer, Jensen and Childree (n 129). Although the EU AI Act does not apply in the United Kingdom following Brexit, its extraterritorial scope means that UK-based practitioners may still be subject to its provisions in arbitrations with a link to the EU or involving EU-based parties; see Andrews and others (n 102).

¹⁴⁵ Migliorini and Moreira (n 1) 157; Lüttenberg and others (n 77).

involving only one party in the EU, regardless of whether the arbitration is conducted outside the EU, administered by a non-EU institution, or involves facts with no substantive connection to the EU.¹⁴⁶

In practice, the Act's application to international arbitration will depend on how the national courts and, ultimately, the Court of Justice of the European Union (hereinafter 'the CJEU') interpret key terms such as 'located within the Union', 'use of an output' and 'affected party'. At the time of writing, no such judicial interpretation exists, which creates significant legal uncertainty for arbitrators and institutions operating outside the EU, as they may find themselves subject to the Act's compliance regime even in cases with only a marginal connection to the EU.¹⁴⁷

Given the cross-border nature of arbitral proceedings and the rapidly growing use of AI tools in arbitration, determining the precise scope of the Act's territorial application is a question of considerable significance that courts and legal practitioners will be called upon to resolve in the upcoming years.¹⁴⁸

2. Risk Classification of AI Use in Arbitration

As established in Chapter C.II.1 above, arbitrators and other professionals involved in arbitration proceedings usually interact with AI systems as deployers rather than providers. Therefore, the following analysis of the high-risk classification focuses on the use of AI by arbitrators acting as deployers.¹⁴⁹

a. High-Risk Classification under Article 6(2) and Annex III, Point 8a

Under Article 6(2) read in conjunction with Annex III, point 8(a), AI systems intended to be used 'by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution' are classified as high-risk.¹⁵⁰ Recital 61 clarifies that 'AI systems intended to be used by alternative dispute resolution bodies for

¹⁴⁶ EU AI Act, art 2(1)(g); Migliorini and Moreira (n 1) 157; Scherer, Jensen and Childree (n 129) 547; Lüttenberg and others (n 77).

¹⁴⁷ Migliorini and Moreira (n 1) 158; Lüttenberg and others (SchiedsVZ) (n 124) 226.

¹⁴⁸ Jensen (n 104) 330.

¹⁴⁹ For a detailed analysis of the high-risk classification of AI systems developed by companies and arbitral institutions in their capacity as providers, see Migliorini and Moreira (n 1) 152-153.

¹⁵⁰ EU AI Act, art 6(2) and Annex III, point 8(a); Lüttenberg and others (SchiedsVZ) (n 124) 227; Scherer (n 119).

those purposes should also be considered to be high-risk when the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties'.¹⁵¹ Under a combined reading of these provisions, AI systems used in commercial arbitration are therefore classified as high-risk where they are intended to assist arbitrators in researching or interpreting facts and the law, or in applying the law to a specific set of facts.¹⁵² This was recently confirmed by the Commission's draft guidelines on Annex III, published in May 2026. These guidelines expressly identify commercial arbitration institutions, including national and international arbitration bodies, as alternative dispute resolution bodies within the scope of point 8(a), thereby confirming that AI systems used in arbitral proceedings for the above-described purposes qualify as high-risk.¹⁵³ This classification reflects the legislature's recognition, as expressed in Recital 61, that AI systems used in dispute resolution carry significant risks for democracy, the rule of law, and the right to a fair trial, in particular through the introduction of biases, errors and opacity into decision-making processes.¹⁵⁴

Building on the provisions outlined above, it follows that AI systems deployed in the context of arbitral proceedings will be classified as high-risk where they materially influence arbitral decision-making.¹⁵⁵ Arbitration is a prime example of alternative dispute resolution for these purposes. It culminates in an arbitral award that is binding on the parties and which produces the same legal effects as a court judgment, thereby constituting an outcome that produces legal effects for the parties, within the meaning of Recital 61.¹⁵⁶ Accordingly, AI systems used by the arbitral tribunal in the investigation and interpretation of facts and legal provisions, or in the application of the law to a specific set of facts, are to be classified as high-risk.¹⁵⁷

¹⁵¹ EU AI Act, recital 61, sentences 3 and 4; Lüttenberg and others (SchiedsVZ) (n 124) 227; Scherer (n 119).

¹⁵² Migliorini and Moreira (n 1) 152; for a detailed overview of AI tools currently on the market that may qualify as high-risk under this definition, see Migliorini and Moreira (n 1) 152-153.

¹⁵³ Draft Guidelines Annex III (n 121) paras 426-429.

¹⁵⁴ EU AI Act, recital 61; furthermore, as early as 2018, the EU legislator recognised that the use of AI in alternative dispute resolution can also be classified as high-risk through the publication of ethical guidelines on the use of AI in court proceedings; see R Abbott, 'Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules' (2023) 4(3) *Amicus Curiae* 695 (hereinafter 'Abbott'); Lüttenberg and others (SchiedsVZ) (n 124) 227, fn 25.

¹⁵⁵ Scherer, Jensen and Childree (n 129) 669; Jensen (n 104) 329.

¹⁵⁶ See eg DIS Arbitration Rules, art 38 ('The arbitral award shall be final and shall have the same effect between the parties as a final court judgment'); for an arbitral tribunal seated in Germany, see also Zivilprozessordnung (ZPO), s 1055; Lüttenberg and others (SchiedsVZ) (n 124) 227, fn 23.

¹⁵⁷ A pragmatic exemplification would be an AI system that, by analysing the digital case file, autonomously initiates procedural measures or generates a draft award; see Lüttenberg and others (SchiedsVZ) (n 124) 227; Scherer (n 119). An arbitrator who relies on an AI system designed specifically for arbitration will be treated as a 'deployer' of a high-risk system. General-purpose tools not specifically designed for arbitration, such as ChatGPT,

Not every instance of AI being used in arbitral proceedings will result in a high-risk classification. Where AI is used for routine tasks in a purely auxiliary capacity that does not materially influence the outcome of the proceedings, it does not pose any significant risk.¹⁵⁸ Such uses fall within the low-risk category and are subject only to the general AI literacy obligation under Article 4, which requires deployers to maintain 'a sufficient level of skills, knowledge and understanding' that allows them 'to make an informed deployment of AI systems, as well as to gain awareness about the opportunities and risks of AI and possible harm it can cause'.¹⁵⁹ This requirement is relatively loose and is met where there is sufficient understanding of how the deployed AI system operates and what its risks are.¹⁶⁰ Similarly, AI systems intended for purely ancillary administrative activities do not qualify as high-risk.¹⁶¹ Such activities include, for example, anonymising documents, proofreading or communicating between personnel.¹⁶²

The practical significance of this classification becomes apparent when considered alongside the actual usage patterns documented in Chapter C.I.1 above. Current AI use in arbitration encompasses a wide range of applications falling into both the high-risk and low-risk categories. However, a clear tendency towards high-risk use is emerging. By way of example, the predominant current uses, most notably factual and legal research and data analytics, each reported by 64% of respondents, fall within the high-risk category, as they are designed to assist arbitrators in researching and interpreting facts and the law. This trend is further underscored by the forward-looking data from the QMUL Survey 2025, which projects that the share of respondents using AI for the same purposes will rise to 91% within the next five years.¹⁶³ The international arbitration community should therefore be aware that not only the most prevalent uses of AI in arbitral proceedings trigger mandatory compliance obligations under the EU AI Act, but that this regulatory exposure is set to

may still fall into the high-risk category if used for legal reasoning or for applying the law to facts; see Migliorini and Moreira (n 1) 155.

¹⁵⁸ EU AI Act, recital 53; art 4; Jensen (n 104) 329; Scherer, Jensen and Childree (n 129) 671; Eftekhari (n 1).

¹⁵⁹ EU AI Act, art 4.

¹⁶⁰ Jensen (n 104) 329 (noting that one would hope that serious professionals engaging in arbitral proceedings would readily comply with this requirement, as they would not rely on AI output without verification of its accuracy; however, the first cases of potentially hallucinated case law cited in submissions in high-stakes arbitral proceedings might suggest otherwise, and accordingly the requirement to be AI literate should be taken seriously).

¹⁶¹ EU AI Act, recital 61.

¹⁶² Lüttenberg and others (n 77); Lüttenberg and others (SchiedsVZ) (n 124) 227.

¹⁶³ See Chapter C.I.1 above; QMUL Survey 2025 (n 2) 28 (Chart 18).

increase significantly as AI adoption continues to grow. The scope and content of these obligations are examined in Chapter C.II.3 below.

b. Exemptions from High-Risk Classification under Article 6(3) and Grey Areas

Under Article 6(3), exceptions to the high-risk classification may arise where an AI system listed in Annex III 'does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision-making'. In the context of arbitration, this applies where the AI system is intended to 'perform a narrow procedural task' under Article 6(3)(a), such as calculating deadlines, processing advance payments, or converting unstructured data. The exemption also applies when the system is intended to 'improve the result of a previously completed human activity' under Article 6(3)(b). This covers situations in which the tribunal improves the presentation of finalised orders, reviews existing chronologies, or enhances the language of documents. Article 6(3)(c) covers AI systems that are intended to 'detect decision-making patterns or deviations from prior decision-making patterns' without replacing or influencing prior human assessments. This permits arbitral tribunals to use AI to check a drafted award for consistency with prior decisions, provided that any discrepancy detected only serves as a trigger for further human review. Finally, Article 6(3)(d) covers AI systems intended to 'perform a preparatory task relevant to the use cases listed in Annex III', including those that create factual chronologies or summaries, search for relevant case law and literature, or perform indexing and data processing.¹⁶⁴

Due to their open-ended wording, these exceptions leave considerable scope for interpretation, creating grey areas in which it remains unclear whether a given AI application falls within the high-risk category or qualifies for an exemption, and thereby generating significant legal uncertainty for practitioners.¹⁶⁵ A related difficulty, mirroring that identified above in the context of personal scope, arises from the fact that Article 6(3) expressly refers to natural persons only, leaving unclear how the provision applies when the parties to an arbitration are legal entities.¹⁶⁶ Similarly, it may be argued in favour of a broad application that the natural persons behind the legal entity may be affected by the award and that legal entities generally require less protection in respect of health, safety and fundamental rights,

¹⁶⁴ EU AI Act, art 6(3); Lüttenberg and others (n 77); Migliorini and Moreira (n 1) 153.

¹⁶⁵ Migliorini and Moreira (n 1) 153-154.

¹⁶⁶ Scherer (n 119); Lüttenberg and others (n 77); Lüttenberg and others (SchiedsVZ) (n 124) 228, fn 31.

both of which support a wide reading of the exemption.¹⁶⁷ At the time of writing, the European Commission has not yet issued clarifying guidelines. It is uncertain whether they will be available before the high-risk provisions enter into application on 2 August 2026, which further compounds the legal uncertainty facing the international arbitration community.

3. Compliance Obligations and Structural Risks of Non-Compliance

Where an AI system is classified as high-risk under the above analysis, all participants in arbitral proceedings acting as deployers must comply with the regulatory requirements set out in Article 26 of the EU AI Act.¹⁶⁸ In the arbitral context, three categories of obligations are of particular relevance, which are examined in turn below.

The first category relates to the transparency and disclosure requirements. According to Article 26(11), deployers must inform the parties involved if a high-risk AI system is being used in circumstances that affect natural persons.¹⁶⁹ This obligation is significantly reinforced by Article 86(1), which grants any person affected by a decision based on the output of a high-risk AI system that produces legal effects the right to obtain from the deployer clear and meaningful explanations of the role of the AI system in the decision-making process and the main elements of the decision taken. Taken together, these provisions directly address the risk identified in the QMUL Survey 2025, where 28% of respondents cited the risk of challenges to awards on due process grounds arising from undisclosed AI use, and 24% identified the risk of ethical infractions compromising the integrity of the arbitral process.¹⁷⁰ By requiring deployers to inform the parties in arbitral proceedings not only that an AI system was used but also to provide substantive information about the system and its influence on the decision-making process, Articles 26(11) and 86(1) enable the parties to assess whether AI was used appropriately and to challenge its outputs where necessary. Furthermore, these provisions foster accountability and preserve trust in the arbitral process.¹⁷¹ In this way, the disclosure obligations serve as a structural safeguard

¹⁶⁷ EU AI Act, arts 2(1)(g) and 85 and recital 79.

¹⁶⁸ Morgan and King (n 85) 26; Eftekhari (n 1).

¹⁶⁹ EU AI Act, art 26(11); Lüttenberg and others (SchiedsVZ) (n 124) 228; Lüttenberg and others (n 77) (noting that transparency towards legal entities is not required under the Act but is partly recommended by other rules, including the SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration); see also Chapter C.II.1.a above for the interpretative challenges arising from the Act's focus on natural persons in the context of arbitral proceedings involving legal entities.

¹⁷⁰ QMUL Survey 2025 (n 2) 29-30 (Charts 19 and 20).

¹⁷¹ EU AI Act, art 86; Migliorini and Moreira (n 1) 155-156.

for procedural integrity and the parties' right to be heard under Article V(1)(b) of the New York Convention. Failure to comply with these obligations may therefore give rise to grounds for challenging the arbitral award on due process grounds under this provision.¹⁷²

The second category relates to the requirement for human oversight. According to Articles 26(1), (2) and (5), all deployers in the arbitral context must implement the appropriate technical and organisational measures to ensure the proper use and monitoring of high-risk AI systems.¹⁷³ Article 26(2) in particular requires arbitrators to retain ultimate decision-making authority and to intervene whenever an AI system's outputs may compromise the fairness or legality of the proceedings.¹⁷⁴ In the specific context of arbitral decision-making, this means that deployers must retain ultimate decision-making authority and ensure that AI remains a support tool in arbitration rather than a substitute for human judgment. This obligation directly addresses the risk of undetected AI errors and bias, identified as the most significant obstacle to greater AI adoption by 51% of respondents in the QMUL Survey 2025, including in particular the risk of hallucinations whereby AI generates fictitious authorities that are then relied upon without verification.¹⁷⁵ The structural significance of this risk has already materialised in practice, as illustrated by the recent decision of the Québec Superior Court in *ARIHQ v Santé Québec*, in which an arbitral award was set aside precisely because the arbitrator had failed to exercise adequate oversight over AI-generated content and relied on hallucinated case law without verification.¹⁷⁶ The significance of this decision for the recognition and enforcement of arbitral awards under the New York Convention is examined in Chapter D.III below. It may, however, be objected that the obligation of human oversight lacks precision, as the Act does not define what constitutes a sufficient level of oversight, leaving open the question of whether a cursory review of AI-

¹⁷² Scherer, Jensen and Childree (n 128) 541; Jensen (n 104) 331; Migliorini and Moreira (n 1) 158; M Wörsdörfer, 'Mitigating the Adverse Effects of AI with the European Union's Artificial Intelligence Act: Hype or Hope?' (2024) 43(3) *Global Business and Organizational Excellence* 106 (hereinafter 'Wörsdörfer'); see Chapter D.II below for a detailed analysis of this ground.

¹⁷³ EU AI Act, arts 26(1), (2) and (5).

¹⁷⁴ EU AI Act, art 26(2); Scherer, Jensen and Childree (n 129) 554.

¹⁷⁵ QMUL Survey 2025 (n 2) 30 (Chart 20); Morgan and King (n 85) 2-3 (highlighting the significant risks of AI hallucinations in legal practice, including the generation of fictitious authorities and the tendency of practitioners to defer to AI outputs without adequate verification).

¹⁷⁶ *ARIHQ v Santé Québec* 2026 QCCS 1360; X Liu, 'ARIHQ v Santé Québec: When Must an AI-Drafted Award Be Set Aside?' (*Kluwer Arbitration Blog*, 19 June 2026) <legalblogs.wolterskluwer.com/arbitration-blog/arihq-v-sante-quebec-when-must-an-ai-drafted-award-be-set-aside> accessed June 2026 (hereinafter 'Liu'); D Quinke, S Kreifels and A Daber, 'When the Arbitrator Uses ChatGPT & Co.: Setting Aside an Award Due to AI Hallucinations' (*Gleiss Lutz*, 25 June 2026) <gleisslutz.com/en/know-how/when-arbitrator-uses-chatgpt-co-setting-aside-award-due-ai-hallucinations> accessed June 2026 (hereinafter 'Quinke and others') (noting that the Québec Superior Court identified five key risks of AI in decision-making, namely hallucinations, lack of human judgment, bias, confidentiality concerns and erosion of public trust, which closely mirror the risks identified by practitioners in the QMUL Survey 2025).

generated outputs would satisfy the requirement. Non-compliance with this requirement may therefore give rise to a procedural irregularity within the meaning of Article V(1)(b) of the New York Convention, as well as to challenges on public policy grounds under Article V(2)(b) of the New York Convention.¹⁷⁷

The third category concerns the documentation requirements. Under Article 26(6), all deployers in the arbitral context are required to retain logs automatically generated by the system for at least six months.¹⁷⁸ These documentation requirements serve an important protective function for both parties, as they ensure the traceability of AI-assisted decisions and enable the reconstruction of the role played by AI in the decision-making process. This is particularly significant given that, in the QMUL Survey 2025, 47% of respondents identified confidentiality and data security concerns as the second most significant obstacle to greater AI adoption in arbitration.¹⁷⁹ This highlights the need for clear, verifiable documentation standards that balance transparency with the confidentiality of arbitral deliberations. However, a practical difficulty arises from the fact that logs may contain sensitive information about the tribunal's deliberative process to which the parties and state courts would not ordinarily have access, raising questions as to how such documentation should effectively be relied upon in enforcement proceedings. A further concern is the minimum six-month retention period prescribed by Article 26(6), which may be insufficient in an arbitral context, given that proceedings for the recognition and enforcement of awards under the New York Convention are often initiated years after the award has been rendered. Without retained logs, the traceability of AI-assisted decisions is compromised, which may constitute a procedural irregularity under Article V(1)(d) of the New York Convention.

Beyond the risk of non-enforcement, non-compliance with the obligations under the EU AI Act may expose arbitrators and arbitral institutions to further significant consequences. The most immediate consequence is the risk of substantial administrative fines of up to EUR 15 million or 3% of total global annual turnover, whichever is higher, for violations of the aforementioned obligations under Article 26.¹⁸⁰ Member States may also impose additional fines and non-monetary sanctions under Article 99(1).¹⁸¹ For individual arbitrators and smaller institutions, such fines may be unsustainable. In addition to these significant

¹⁷⁷ Migliorini and Moreira (n 1) 155; see Chapter D.IV below for a detailed analysis of this ground.

¹⁷⁸ EU AI Act, art 26(6).

¹⁷⁹ QMUL Survey 2025 (n 2) 30 (Chart 20).

¹⁸⁰ EU AI Act, art 99(4).

¹⁸¹ EU AI Act, art 99(1).

financial penalties, arbitrators who misuse AI systems may also suffer reputational damage, and may be exposed to civil liability for breaching the implied terms of their mandate.¹⁸²

In light of these risks, all professional participants in arbitral proceedings should approach the use of AI with considerable caution. In the absence of any judicial interpretation, a restrictive approach is advisable. Where AI is deployed nonetheless, all relevant participants must ensure strict adherence to the applicable compliance obligations under the EU AI Act, bearing in mind the significant consequences of non-compliance.¹⁸³

4. The Loi de Police Character of the EU AI Act

a. The EU's Traditional Approach to Arbitration

Commercial arbitration has generally been characterised¹⁸⁴ as an independent legal system that has evolved alongside, but separately from, the EU legal framework with limited and sporadic interaction between the two.¹⁸⁵ Despite the potential legislative avenues available, the EU's competence to regulate arbitration has been significantly underutilised. For instance, Article 81 of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') empowers the EU to adopt harmonisation measures for the development of alternative dispute resolution methods.¹⁸⁶ However, EU lawmakers have consistently excluded arbitration from the scope of harmonisation measures based on this article.¹⁸⁷ Furthermore, the CJEU has historically adopted a broad interpretation of these exclusions,

¹⁸² Scherer, Jensen and Childree (n 129) 541; Jensen (n 104) 331.

¹⁸³ Lüttenberg and others (Daily Jus) (n 86); Lüttenberg and others (SchiedsVZ) (n 132) 228; Eftekhar (n 1).

¹⁸⁴ F Ferre, 'EU Internal Market Law and the Law of International Commercial Arbitration: Have the EU Chickens Come Home to Roost?' (2020) 22 *Cambridge Yearbook of European Legal Studies* 133, 134 (hereinafter 'Ferre') described the relationship between EU law and international arbitration as follows: 'Although the relationship between EU law and international arbitration has long been treated as one of mutual indifference, the two systems increasingly interact and conflict with each other rather than simply coexisting neutrally. Nonetheless, EU law does not regulate commercial arbitration, and there is a current diversity of arbitration laws and practices across the European Union'.

¹⁸⁵ Over the years, this relationship has been tacitly reaffirmed by EU institutions. For example, the European Parliament issued a report mentioning that EU law does not regulate commercial arbitration, and there is currently a diversity of arbitration laws and practices across the EU. See European Parliament (Directorate General for Internal Policies – Policy Department C: Citizens' Rights and Constitutional Affairs), *Legal Instruments and Practice of Arbitration in the EU* (2014) 186 <europa.eu/RegData/etudes/STUD/2015/509988/IPOL_STU(2015)509988_EN.pdf> accessed May 2025.

¹⁸⁶ TFEU, art 81.

¹⁸⁷ Migliorini and Moreira (n 1) 143-144; by contrast, the EU legislator has regulated arbitration in the field of consumer protection; see Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes [2013] OJ L 165/1; Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes [2013] OJ L 165/63.

thereby affirming the EU's general restraint in regulating arbitration.¹⁸⁸ In doing so, the CJEU has recognised the distinct nature of commercial arbitration and the EU legal system in various contexts, including issues of public policy¹⁸⁹ and the relationship between EU law and legal processes for the recognition and enforcement of arbitral awards.¹⁹⁰ Taken together, these judgments demonstrate the ongoing tension between applying certain EU law provisions and upholding party autonomy and the finality of arbitral awards, while adhering to the principle that the two systems evolve in parallel rather than being in direct conflict with each other.¹⁹¹

Prior to the adoption of the EU AI Act, EU law contained no binding rules or requirements governing the conduct of commercial arbitration proceedings. As examined in Chapter C.I.2.b above, the regulatory landscape was limited to soft-law instruments developed by arbitral institutions. As a result, the arbitral community has been able to maintain arbitration as a largely self-governing system based on the principle of party autonomy,¹⁹² under which purely procedural matters, including issues of due process and procedural fairness, are predominantly determined by agreement between the parties.¹⁹³ In practice, such agreements typically incorporate standardised arbitration rules adopted by private arbitral institutions, alongside the relevant national arbitration law.¹⁹⁴ The CJEU's consistently favourable attitude towards party autonomy has further limited the extent to which EU law can interfere with commercial arbitration.¹⁹⁵

¹⁸⁸ For example, in *Marc Rich*, it was held by the CJEU that if the substance of a lawsuit concerns arbitration procedures – as it did in the case – any litigation relating to the appointment of arbitrators should fall outside of the scope of the Brussels Ibis Regulation, thereby adopting a broader interpretation of the arbitration exclusion in the Brussels Ibis Regulation. See *Marc Rich & Co AG v Società Italiana Impianti PA* (Case C-190/89) [1991] ECR I-3855, paras 26-29.

¹⁸⁹ See, e.g., *Ingmar GB Ltd v Eaton Leonard Technologies Inc* (Case C-381/98) [2000] ECR I-09305; *United Antwerp Maritime Agencies (Unamar) NV v Navigation Maritime Bulgare* (Case C-184/12) [2013].

¹⁹⁰ See, e.g., *Eco Swiss China Time Ltd v Benetton International NV* (Case C-126/97) [1999] ECR I-3055; *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain* (Case C-700/20) [2022] ECLI:EU:C:2022:488.

¹⁹¹ Migliorini and Moreira (n 1) 144-145.

¹⁹² M Penades Fons, 'The Effectiveness of EU Law and Private Arbitration' (2020) 57(4) *Common Market Law Review* 1069, 1070–1072 (hereinafter 'Penades Fons').

¹⁹³ Migliorini and Moreira (n 1) 144-145.

¹⁹⁴ Rahman (n 113); K-H Böckstiegel, 'The Role of Party Autonomy in International Arbitration' (1997) 52(3) *Dispute Resolution Journal* 1 (hereinafter 'Böckstiegel').

¹⁹⁵ See *Marc Rich & Co AG v Società Italiana Impianti PA* (Case C-190/89) [1991] ECR I-3855, paras 19–23, in which the CJEU held that, where the subject matter of the proceedings relates to arbitration, those proceedings fall within the arbitration exception and are outside the scope of the Brussels regime; see also *Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line* (Case C-391/95) [1998] ECR I-7091, in which the CJEU confirmed that arbitration is entirely excluded from the scope of the Brussels regime.

b. The EU AI Act: From Soft Law to Binding Obligation

Before the EU AI Act came into force, the regulatory landscape governing the use of AI in arbitral proceedings was limited to soft-law instruments developed by arbitral institutions, as discussed in Chapter C.I.2.b above, given that no international treaty or binding instrument had been adopted to address this issue.¹⁹⁶ Against the backdrop of the significant risks posed by the use of AI in arbitration to due process, transparency, and the enforceability of awards, as examined in Chapters C.I.1 and C.II.3 above, and given the rapidly growing use of AI in arbitral proceedings, the absence of binding regulation applicable to EU Member States is of particular concern.¹⁹⁷ The EU AI Act addresses this regulatory gap as the first comprehensive legislative framework to regulate the use of AI in all EU Member States by setting out specific, directly applicable rules on the use of AI in judicial and arbitration proceedings. These rules impose binding compliance obligations on all professional participants in arbitral proceedings acting as deployers, without requiring domestic ratification.¹⁹⁸ In doing so, it marks a fundamental departure from the EU's traditionally restrained approach to commercial arbitration.¹⁹⁹

Furthermore, the EU AI Act imposes direct constraints on party autonomy by limiting the extent to which arbitrators can rely on AI tools, even when the parties have explicitly agreed to their unrestricted use. In this regard, the Act may be characterised as a 'loi de police', an overriding mandatory provision, the application of which cannot be excluded or derogated from by agreement between the parties, regardless of the governing law or the seat of arbitration.²⁰⁰

¹⁹⁶ For a detailed overview of the current body of soft-law regulation on the use of AI in international arbitration, see Jensen (n 104) 324-337.

¹⁹⁷ AG Cardoso, 'Artificial Intelligence in International Arbitration: From Tool to Adjudicator' in S Nappert and F Carvalho Dias de Oliveira Silva (eds), *AI and Arbitration* (Kluwer Law International 2026) 15 (hereinafter 'Cardoso').

¹⁹⁸ Eftekhari (n 1); Jensen (n 104) 328.

¹⁹⁹ The EU AI Act is criticised by Migliorini and Moreira (n 1) 155, 159 for subjecting arbitration to the Act's risk-based regulatory framework, which they argue will negatively affect the long-standing balance between self-regulation, party autonomy and due process that has allowed commercial arbitration to thrive as a flexible, efficient mechanism for resolving transnational disputes.

²⁰⁰ This regulatory intrusion into party autonomy has not gone unchallenged. Migliorini and Moreira (n 1) 159–160 argue that the EU AI Act's uniform treatment of all forms of alternative dispute resolution under Annex III fails to account for the distinct characteristics of commercial arbitration, where the parties involved are typically commercially sophisticated actors capable of shaping their own procedural rules, in contrast to consumer or employment disputes where significant power asymmetries justify stronger procedural safeguards. In their view, applying the same compliance regime to both contexts creates unnecessary burdens that undermine the flexibility and self-determination traditionally associated with arbitration, without offering any corresponding benefit to parties who do not require such protection. For this reason, they advocate carving commercial arbitration out of

D. Non-Compliance and Enforcement Under the New York Convention

The classification of the EU AI Act as a *loi de police* raises the question of whether non-compliance with its provisions could constitute ground for refusing to recognise or enforce an arbitral award under the New York Convention. This chapter examines that question by analysing the interaction between the EU AI Act's compliance obligations and the exhaustive grounds for refusal under Article V of the Convention, focusing on violations of the right to be heard under Article V(1)(b), violations of the agreed arbitral procedure under Article V(1)(d), and violations of public policy under Article V(2)(b), as these appear to be the most relevant grounds for non-compliant AI use.

Article III of the Convention imposes a general obligation on all contracting states to 'recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon', without imposing 'substantially more onerous conditions or higher fees or charges than are imposed on the recognition or enforcement of domestic arbitral awards'.²⁰¹ While the European Union is not a party to the Convention itself²⁰², it applies across the European internal market, as all twenty-seven EU Member States have signed and ratified it individually.²⁰³ Consequently, each EU member state must recognise and enforce foreign arbitral awards within its territory.²⁰⁴

the scope of Annex III, either through a delegated act under Article 7(3) that excludes matters of a commercial nature from the high-risk category, or through guidelines under Article 6(5) that narrow the relevant use cases.

²⁰¹ New York Convention (n 12), art III. This obligation has been referred to by a number of courts as embodying the Convention's pro-enforcement bias; see eg *Yukos Oil Co v Dardana Ltd* [2002] EWCA Civ 543; *Glencore Grain Rotterdam BV v Shivnath Rai Harnarain Company* Court of Appeals, Ninth Circuit, United States of America, 26 March 2002, 01-15539; *Gouvernement de la région de Kaliningrad v République de Lituanie* Paris Court of Appeal, France, 18 November 2010, 09/19535; *Tampico Beverages v Productos Naturales de la Sabana SA Alquería* Supreme Court, Colombia, 12 July 2017.

²⁰² The Convention is historically limited to sovereign states; see New York Convention (n 12), arts I(1) and VIII(1).

²⁰³ United Nations Commission on International Trade Law, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' <uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed 2 June 2026.

²⁰⁴ This obligation is structurally safeguarded at the supranational level by the arbitration exclusion enshrined in arts 1(2)(d) and 73(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1 (hereinafter 'Brussels Ibis Regulation'). Article 73(2) expressly provides that 'This Regulation shall not affect the application of the 1958 New York Convention', which effectively excludes arbitration from the Union's judicial competence and prevents any normative conflict between EU procedural law and the Convention. See also *Marc Rich & Co AG v Società Italiana Impianti PA* (Case C-190/89) [1991] ECR I-3855, para 18.

I. Regulatory Framework of Article V New York Convention

1. Limited Grounds for Refusal and Burden of Proof

Article V of the New York Convention sets out the limited and exhaustive grounds on which a competent authority in the Contracting State where recognition and enforcement is sought may refuse recognition and enforcement of an arbitral award. A violation of the compliance obligations set out in the EU AI Act can therefore only constitute a ground for refusal under Article V of the New York Convention if it falls within one of the exhaustive grounds listed in that provision.

In pursuit of the Convention's objective of facilitating the recognition and enforcement of arbitral awards to the greatest extent possible,²⁰⁵ the courts of the contracting states interpret the grounds listed in Article V narrowly, so as to prevent a substantive review of the arbitral award with regard to both legal assessment and the evaluation of evidence, commonly referred to as the prohibition of *révision au fond*.²⁰⁶ It follows that the exhaustive character of Article V New York Convention is unanimously affirmed by the courts of the Contracting States.²⁰⁷

Regarding the burden of proof, Article V(1) states that recognition and enforcement may only be refused 'at the request of the party against whom the award is invoked' and if that party 'furnishes proof' of the grounds listed therein. In accordance with this wording, the courts of the contracting states have consistently held that the party opposing recognition and enforcement must prove the grounds for refusal under Article V(1).²⁰⁸ By contrast,

²⁰⁵ New York Convention (n 12), Preamble.

²⁰⁶ NYC Secretariat Guide (n 7) art V para 9; van den Berg (n 7) 13-14; *Parties not indicated* Oberlandesgericht Hamm, Germany, 2 November 1983, XIV YB Com Arb 629 (1989); *Rosseel NV v Oriental Commercial Shipping* High Court of Justice, England and Wales, 16 November 1990, XVI YB Com Arb 615 (1991); *Trading Company (Israel) v Buyer (Germany)* Oberlandesgericht Cologne, Germany, 23 April 2004, XXX YB Com Arb 557 (2005).

²⁰⁷ UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (United Nations 2016) 124-125 (hereinafter 'NYC Secretariat Guide'); AJ van den Berg, 'The New York Convention of 1958: An Overview' in *Yearbook Commercial Arbitration* vol XXVIII (Kluwer Law International 2003) 13 (hereinafter 'van den Berg'); G Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 3426-3427 (hereinafter 'Born'); *Inter-Arab Investment Guarantee Corp v Banque Arabe et Internationale d'Investissements* Cour d'Appel, Brussels, Belgium, 25 January 1996, XXII YB Com Arb 643 (1997); *Rosseel NV v Oriental Commercial Shipping* (n 6); *Sovereign Participations International SA v Chadmore Developments Ltd* Cour d'Appel, Luxembourg, 28 January 1999, XXIV YB Com Arb 714 (1999).

²⁰⁸ New York Convention (n 12), art V(1); *Trans World Film SpA v Film Polski Import and Export of Films* Corte di Cassazione, Italy, 22 February 1992, XVIII YB Com Arb 433 (1993); *Europcar Italia SpA v Maiellano Tours Inc* Court of Appeals, Second Circuit, United States of America, 2 September 1998, XXIV YB Com Arb 860 (1999); *Dutch Shipowner v German Cattle and Meat Dealer* Bundesgerichtshof, Germany, 1 February 2001, XXIX YB Com Arb 700 (2004).

Article V(2) sets out the grounds on which a court may refuse enforcement of its own motion. Although Article V(2) does not specifically allocate the burden of proof to either party, the courts of the contracting states have nevertheless deemed it to lie with the party opposing recognition and enforcement.²⁰⁹ As examined in detail in Chapters D.II and D.III below, both the narrow interpretation of Article V and the burden of proof requirements impose significantly high evidentiary and legal thresholds on the party seeking to resist enforcement on the basis of non-compliant AI use.

2. Interaction of Article V New York Convention with the EU AI Act

The question of whether non-compliant AI use falls within one of the exhaustive grounds of Article V cannot be answered by reference to the New York Convention alone, since EU Member State courts remain bound by mandatory EU law obligations when conducting their enforcement review.²¹⁰ Although, as established above, all EU Member States are contracting parties to the New York Convention and are therefore bound by the general enforcement obligation under Article III and the exhaustive grounds for refusal under Article V as set out above, their courts do not operate within a purely conventional framework when assessing those grounds.

The extent to which mandatory EU law obligations influence the enforcement review under the Convention is illustrated by the CJEU in *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain*. In that case, the Grand Chamber held that a national court entering judgment in the terms of an arbitral award is obliged to verify that the award complies with the provisions and fundamental objectives of EU law.²¹¹ Although *London-Steamship* concerned the Brussels I Regulation rather than the New York Convention, this case demonstrates that mandatory provisions of EU law are capable of directly influencing the outcome of enforcement proceedings before EU Member State courts, regardless of the instrument under which enforcement is sought. By analogy, where the EU AI Act applies to arbitral proceedings as established in Chapter C above, its provisions as an overriding

²⁰⁹ New York Convention (n 12), art V(2); NYC Secretariat Guide (n 7) art V para 16; *Sovereign Participations International SA v Chadmore Developments Ltd* (n 7); *Licensee v Licensor* Oberlandesgericht Düsseldorf, Germany, 21 July 2004, XXXII YB Com Arb 315 (2007); *Gater Assets Ltd v Nak Naftogaz Ukrainiy* [2007] EWCA Civ 988.

²¹⁰ *Eco Swiss China Time Ltd v Benetton International NV* (Case C-126/97) [1999] ECR I-3055 (n 191).

²¹¹ *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain* (Case C-700/20) [2022] ECLI:EU:C:2022:488; Penades Fons (n 193) 1071, 1073. In that case the Court of Justice held that a court entering judgment in the terms of an arbitral award must verify that the provisions and fundamental objectives of EU law have been complied with, thereby confirming that EU law obligations cannot be circumvented through arbitration proceedings.

mandatory instrument of EU law are relevant to how EU Member State courts interpret the grounds for refusal under Article V of the Convention.²¹²

Against this backdrop, a further question arises as to the territorial scope of any potential refusal of enforcement on the basis of non-compliance with the EU AI Act. As established in Chapter C.II.1.b above, the precise territorial reach of the Act in the context of international arbitration remains a matter of doctrinal interpretation, as neither the CJEU nor any national court of an EU Member State has yet ruled on this question. Consequently, where it is currently uncertain whether the EU AI Act applies to a given set of arbitral proceedings, it is also uncertain whether non-compliance with its provisions can constitute grounds for refusal under Article V before an EU Member State court. The analysis in this chapter therefore focuses on enforcement proceedings before EU Member State courts, where the Act's application is most clearly established. In this context, however, the Act's extraterritorial reach becomes relevant at the very least at the enforcement stage. This is particularly significant for arbitral tribunals seated outside the EU. While they are not directly bound by the EU AI Act at the procedural level, they may find that non-compliance with its provisions becomes legally relevant when their award produces effects within the EU. This could be the case if one of the parties has its seat or place of residence in the EU, if enforcement is sought against assets situated within the EU, or if the arbitral institution alone has its seat in the EU. Therefore, the question of compliance with the EU AI Act shifts from the level of the arbitral proceedings to the level of their legal effects within the Union.²¹³

It should be noted, however, that a violation of the compliance obligations set out in the EU AI Act does not constitute an autonomous ground for refusal outside of Article V. It can only give rise to a ground for refusing recognition or enforcement if it falls within one of the exhaustive grounds listed in that provision, as examined in the following sections.²¹⁴

²¹² Migliorini and Moreira (n 1) 144; Penades Fons (n 193) 1071, 1073.

²¹³ Migliorini and Moreira (n 1) 157-158; Lüttenberg and others (n 77); Lüttenberg and others (SchiedsVZ) (n 124) 226-227.

²¹⁴ NYC Secretariat Guide (n 207) art V para 8; van den Berg (n 7) 13.

II. Article V(1)(b) New York Convention – Right to be Heard

1. The Concept of the Right to be Heard under Article V(1)(b)

According to Article V(1)(b) of the New York Convention, recognition and enforcement of an arbitral award may be refused if the party against whom it is invoked was 'not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or was otherwise unable to present their case'.²¹⁵ Since the first defence seems to be less relevant with respect to the use of AI in arbitration as such, this thesis focuses solely on the second defence. The second defence of Article V(1)(b) is intended to ensure that violations of due process in arbitral proceedings are penalised.²¹⁶ To secure this objective, the right to be heard, with the party's ability to present its own case representing the most fundamental rule, is interpreted broadly. It encompasses the opportunity to present facts, claims, defences and arguments on the merits, ensuring that the proceedings have been properly conducted and that the parties have had an adequate and fair opportunity to respond to the evidence and arguments against them.²¹⁷

As with all grounds under Article V(1), procedural irregularities under Article V(1)(b) must be raised and proven by the party opposing recognition and enforcement and cannot be raised by a court of its own motion.²¹⁸ In line with the aforementioned principle that the grounds for refusing enforcement should be interpreted narrowly, the threshold for successfully establishing a breach is deliberately high.²¹⁹ Accordingly, an enforcement court will only refuse recognition if the party opposing enforcement can prove that the procedural violation caused the outcome of the arbitration. This requires the party to demonstrate that the outcome would likely have been different if their right to be heard had not been violated.²²⁰ As a

²¹⁵ New York Convention (n 12), art V(1)(b).

²¹⁶ *Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier* Court of Appeals, Second Circuit, United States of America, 23 December 1974, 1 YB Com Arb 205 (1976) ('this provision essentially sanctions the application of the forum state's standards of due process'); Redfern and Hunter (n 95) para 11.69; AJ van den Berg, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* (Kluwer Law International 1981) 14 (hereinafter 'van den Berg (1981)'); MS Kurkela and S Turunen, *Due Process in International Commercial Arbitration* (2nd edn, Oxford University Press 2010) 36 (hereinafter 'Kurkela and Turunen').

²¹⁷ NYC Secretariat Guide (n 207) art V(1)(b) para 3; AJ van den Berg, 'New York Convention of 1958: Refusals of Enforcement' (2007) 18(2) *ICC International Court of Arbitration Bulletin* 1, 8 (hereinafter 'van den Berg (ICC Bulletin 2007)'); *Chrome Resources SA v Leopold Lazarus Ltd* Federal Tribunal, Switzerland, 8 February 1978, XI YB Com Arb 538 (1986); *Rice Trading (Guyana) Ltd v Nidera Handelscompagnie BV* Court of Appeal, The Hague, Netherlands, 28 April 1998, XXIII YB Com Arb 731 (1998).

²¹⁸ NYC Secretariat Guide (n 207) art V(1)(b) para 2.

²¹⁹ van den Berg (1981) (n 216) 14-15.

²²⁰ M Scherer, 'Article V(1)(b)' in R Wolff (ed), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: Commentary* (2nd edn, Beck/Hart/Nomos 2019) paras 136, 142

result, although Article V(1)(b) is one of the grounds most frequently invoked to resist the enforcement of foreign awards, the defence that a party was unable to present its case has rarely succeeded in practice²²¹ and recognition and enforcement have only been refused where the process was particularly egregious or the arbitration departed radically from due process standards.²²²

2. Non-Disclosure as a Violation of the Right to be Heard

Given the fundamental importance of the right to be heard in ensuring the fairness and integrity of arbitral proceedings,²²³ the question arises whether the failure of an arbitral tribunal to disclose its use of AI may, under certain conditions, constitute a violation of that right within the meaning of Article V(1)(b).

As examined in Chapter C.II.3 above, all participants in arbitral proceedings acting as deployers of high-risk AI systems are subject to transparency and disclosure obligations under Articles 26(11) and 86(1) of the EU AI Act.²²⁴ These obligations require them not only to inform the parties that a high-risk AI system has been used, but also to provide substantive information about how they used AI in the decision-making process and the main elements of the decision taken. Failure to disclose all the facts on which the tribunal has based its decision, particularly those relating to the use of AI, is liable to constitute a breach of the prohibition on surprise decisions and thereby infringe the right to be heard under Article

(hereinafter 'Scherer (NYC Commentary)'); *US Firm P v German Firm F* Oberlandesgericht Hamburg, Germany, 3 April 1975, II YB Com Arb 241 (1977); Oberlandesgericht Frankfurt am Main, Germany, 18 October 2007, 26 Sch 1/07, XXXV YB Com Arb 377 (2010); Oberlandesgericht Frankfurt am Main, Germany, 27 August 2009, 26 SchH 03/09, XXXV YB Com Arb 377 (2010).

²²¹ NYC Secretariat Guide (n 207) art V(1)(b) para 5; E Gaillard and J Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999) paras 1001–1003, 1698 (hereinafter 'Fouchard Gaillard Goldman'); van den Berg (1981) (n 216) 297; Lana Linetzky and Klein Kranenberg, 'New York Convention, Article V(1)(b) [Violation of Due Process]' in H Kronke, P Nacimiento and others (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (2nd edn, Kluwer Law International 2024) paras 2, 5 (hereinafter 'Lana Linetzky and Klein Kranenberg').

²²² NYC Secretariat Guide (n 207) art V(1)(b) para 33; *US Firm P v German Firm F* Oberlandesgericht Hamburg, Germany, 3 April 1975, II YB Com Arb 241 (1977); *Portuguese Company A v Trustee in bankruptcy of German company X* Landgericht Bremen, Germany, 20 January 1983, XII YB Com Arb 486 (1987); *GWL Kersten & Co BV v Société Commerciale Raoul-Duval et Cie* Gerechtshof Amsterdam, Netherlands, 16 July 1992, XIX YB Com Arb 708 (1994); *Iran Aircraft Industries and Iran Helicopter Support and Renewal Company v Avco Corporation* Court of Appeals, Second Circuit, United States of America, 24 November 1992, XVIII YB Com Arb 596 (1993).

²²³ MS Malekela, 'AI and Confidentiality Protection in International Commercial Arbitration: Analysis of the Existing Legal Framework' (2025) 5 *Discover Artificial Intelligence* 83 accessed June 2026 (hereinafter 'Malekela').

²²⁴ EU AI Act, arts 26(11) and 86(1); see already Chapter C.II.3 above.

V(1)(b).²²⁵ This prohibition may be violated in two specific scenarios that arise from the use of AI in arbitral proceedings.

The first scenario concerns the right to comment on evidence submitted by the opposing party, which may be compromised by the undetected use of AI. Where AI has been used to generate or analyse evidence submitted in the proceedings, many generative AI systems do not disclose the underlying algorithm or reasoning process by which their outputs are produced, meaning that whilst the parties can review the data inputted into the AI tool, they are unable to scrutinise or understand how the resulting output was generated (the so-called 'black-box' problem).²²⁶ This deprives the affected party of the opportunity to properly comment on such evidence and to challenge its accuracy, relevance or potential bias, which may in itself constitute a violation of Article V(1)(b), provided that the document in question is one on which the tribunal actually relied in making its decision. The second scenario concerns the right to have submissions considered by the tribunal, which requires the tribunal to genuinely deliberate over the parties' arguments and evidence. Where AI has been used to process or summarise those submissions, the black-box problem is equally present on the tribunal's side, as without access to the underlying algorithm, the tribunal itself is unable to verify the accuracy and correctness of AI-generated summaries or assessments of the parties' arguments.²²⁷ This concern is further compounded where the tribunal relies on AI-generated reasoning that introduces arguments, legal bases or conclusions not advanced by either party during the proceedings, and on which they consequently had no opportunity to comment. A further violation may arise where arbitrators use AI to conduct independent research or make findings of fact that go beyond the parties' submissions, for example where an AI system draws on publicly available data that is not part of the evidentiary record.²²⁸

In both of the scenarios described above, a degree of unpredictability may arise from the use of AI, which could undermine the parties' ability to understand the basis of the decision. Consequently, the disclosure obligations under Articles 26(11) and 86(1) of the EU AI Act will not have been complied with by the tribunal. Whether such conduct constitutes grounds for refusing recognition or enforcement under Article V(1)(b) has yet to be authoritatively

²²⁵ M Mehboob, S Zakir, H Usman and A Rehman, 'AI, Transparency, and Fairness in International Arbitration: Rethinking Disclosure and Due Process in the Age of Algorithmic Adjudication' (2025) 4(2) *Academia International Journal for Social Sciences* 1287, 1290-1291 (hereinafter 'Mehboob and others').

²²⁶ B Ohnoutková, 'Limitation on the Use of Artificial Intelligence (AI) in Arbitration under the New York Convention' (2025) 4 *TLQ* 557, 561-562 (hereinafter 'Ohnoutková'); Scherer (NYC Commentary) (n 220) para 318; Perera and Aaron (n 93) 593; Cardoso (n 198) 16.

²²⁷ Ohnoutková (n 226) 563.

²²⁸ Mehboob and others (n 225) 1290-1291; Stefer and Fricke (n 102) 58.

determined by a court. While there are strong grounds for concluding that a court would reach this conclusion, the practical ability to enforce such a ground for refusal remains significantly constrained. As arbitral proceedings are confidential and AI use in the decision-making process is rarely visible in the award itself,²²⁹ an arbitrator's reliance on AI for legal research or the drafting of procedural documents will often not be evident from either the procedural record or the award. A party seeking to invoke a violation of the disclosure obligations under Articles 26(11) and 86(1) of the EU AI Act as a ground for refusal under Article V(1)(b) faces a considerable evidentiary challenge in proving not only that AI was used, but also that its use was undisclosed in breach of those obligations and that this failure materially influenced the outcome of the proceedings.

Against this backdrop, the pending case of *LaPaglia v Valve Corporation* may well yield a landmark ruling on this very issue in the near future. In this case, the claimant is challenging an arbitral award on the basis that the arbitrator outsourced their adjudicative role to AI without disclosing this. This resulted in an award containing arguments and findings not present in the evidentiary record, on which the parties had no opportunity to be heard.²³⁰ Should the court find in the claimant's favour, this would represent the first judicial confirmation that undisclosed AI use in arbitral decision-making may constitute a violation of the right to be heard under Article V(1)(b).

Nevertheless, to prevent such breaches from the outset, arbitral tribunals should disclose to the parties all findings produced by the AI based on written submissions and evidence. This would give the parties the opportunity to comment on and highlight any aspects they feel have been overlooked or misrepresented in a summary or assessment produced by the AI.²³¹ This recommendation is consistent with the emerging consensus in the soft-law instruments examined in Chapter C.I.2.b above, which similarly emphasise the importance of transparency and disclosure in the context of AI use in arbitral proceedings, and reflects the

²²⁹ Migliorini and Moreira (n 1) 158.

²³⁰ *LaPaglia v Valve Corporation* No 3:25-cv-00833 (SD Cal, 8 April 2025) (hereinafter 'LaPaglia'); N Pashaeva, 'AI and Exceeding Power: Lessons from LaPaglia v Valve Corporation' (*Daily Jus*, 24 October 2025) <dailyjus.com/legal-tech/2025/10/ai-and-exceeding-power-lessons-from-lapaglia-v-valve-corporation> accessed June 2026; Aceris Law LLC, 'When Arbitrators Use AI: LaPaglia v Valve and the Boundaries of Adjudication' (*Aceris Law*, 19 April 2025) <acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication> accessed June 2026.

²³¹ Stefer and Fricke (n 102) 59, noting critically that while full disclosure of all AI-generated findings to the parties is the safest option for preserving the right to be heard, such an approach would incur additional costs and risk prolonging rather than expediting proceedings.

broader principle that the legitimacy of arbitral proceedings depends on the parties' ability to understand and challenge the basis on which the award was made.

3. Party Agreement and the Limits of Waiver

It should be noted that the foregoing analysis of non-disclosure as a potential violation of the right to be heard assumes that the parties have either expressly excluded the use of AI in their arbitration agreement or have not addressed it at all. Where, by contrast, the parties have expressly agreed to permit the use of AI in the arbitral proceedings, or where an ambiguous agreement can be interpreted as consenting to the use of AI within permissible bounds, a court may find that the party opposing enforcement has implicitly waived its right to object to non-disclosure. Consequently, a subsequent challenge under Article V(1)(b) on the grounds of non-disclosure may not succeed.

This scenario is similar to the approach taken by courts in cases where a party has impeded its own ability to present its case. In the case of *Dutch Seller v German Buyer*, for example, the German court refused to rule that there had been a breach of Article V(1)(b), despite the German buyer claiming that it had not been properly informed of the arbitral proceedings. This was because the threshold for refusing enforcement under Article V(1)(b) is high, and is only met in cases of a genuine violation of the right to be heard, not where a party merely relies on its own procedural failings.²³² By analogy, it could be argued that where a party has expressly agreed to the use of AI in the decision-making process without reservation, a court may treat such agreement as a form of implicit waiver of the right to object to non-disclosure at the enforcement stage, on the basis that the party had the opportunity to impose disclosure conditions in its agreement but failed to do so. This reasoning would be consistent with the general principle, reflected in the case law on Article V(1)(b), that Article V(1)(b) is not an instrument for correcting a parties' own procedural failures.

Nevertheless, even if the parties have agreed to the use of AI in the arbitration proceedings, this agreement cannot extend beyond the limits of permissible waiver of due process rights. The parties may only waive the minimum requirements of due process within very narrow limits, either expressly by agreement or implicitly through their conduct during the proceedings. A general and unrestricted waiver of the minimum requirements of due process

²³² *Dutch Seller v German Buyer* Regional Court, Zweibrücken, Germany, 11 January 1978; NYC Secretariat Guide (n 207) art V(1)(b) para 35.

is not permitted under any circumstances.²³³ Therefore, if the tribunal's use of AI results in a violation of the right to be heard that falls outside these limits, a challenge under Article V(1)(b) may still succeed, regardless of any agreement between the parties to the contrary.

III. Article V(1)(d) New York Convention – Procedural Irregularity

1. The Concept of Procedural Irregularity under Article V(1)(d)

Article V(1)(d) of the New York Convention provides that the recognition and enforcement of an award may be refused where 'the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place'.²³⁴ This provision is directed at procedural compliance with the parties' agreement or the law of the seat rather than the quality or reasoning of the final award.²³⁵ In this regard, the term 'arbitral procedure' encompasses the period beginning with the filing of an action and ending when the award is rendered, and does not extend to the substantive application of the law by the tribunal.²³⁶

In the context of AI use in arbitral proceedings, it is the second limb of Article V(1)(d) that is of particular relevance, namely the requirement that the arbitral procedure accord with the law of the country where the arbitration took place. Where an arbitral tribunal uses AI in a manner that violates the applicable procedural law at the seat of arbitration, this may constitute a ground for refusing recognition or enforcement.

As with Article V(1)(b), any procedural irregularity under Article V(1)(d) must be raised and proven by the party opposing recognition and enforcement and cannot be raised by the court of its own motion.²³⁷ Although the threshold for procedural irregularities is not specified in the provision, most courts interpret it restrictively²³⁸ and therefore set the refusal

²³³ NYC Secretariat Guide (n 207) art V(1)(b) para 51; Lana Linetzky and Klein Kranenberg (n 221) para 69.

²³⁴ New York Convention (n 12), art V(1)(d).

²³⁵ MF Hayat and FH Azhar, 'Can AI-Assisted Arbitral Awards Survive Enforcement Under the New York Convention?' (*Kluwer Arbitration Blog*, 10 April 2026) <legalblogs.wolterskluwer.com/arbitration-blog/can-ai-assisted-arbitral-awards-survive-enforcement-under-the-new-york-convention> accessed June 2026 (hereinafter 'Hayat and Azhar').

²³⁶ NYC Secretariat Guide (n 207) art V(1)(d) para 36; *Vigel SpA v China National Machine Tool Corporation* Court of Cassation, Italy, 8 April 2004, XXXI YB Com Arb 802 (2006).

²³⁷ NYC Secretariat Guide (n 207) art V(1)(d) para 2; *Conceria G De Maio & F snc v EMAG AG* Court of Cassation, Italy, 20 January 1995, XXI YB Com Arb 602 (1996); *Oberlandesgericht Schleswig*, Germany, 24 June 1999, 16 SchH 01/99.

²³⁸ NYC Secretariat Guide (n 207) art V(1)(d) para 7; *Al Haddad Bros Enterprises Inc v M/S 'Agapi' and Diakan Love SA* District Court, District of Delaware, United States of America, 9 May 1986, 635 F Supp 205.

threshold relatively high.²³⁹ In practice, this means that proof of a substantial defect in the arbitral procedure, as well as a causal link between that defect and the award, is required. Courts also assess whether the alleged procedural irregularity caused substantial injustice to one of the parties.²⁴⁰ Alternatively, the party opposing enforcement may be required to demonstrate that the outcome would have been different had the irregularity not occurred.²⁴¹ However, in the vast majority of reported cases, parties have been unsuccessful in proving the ground for non-enforcement under Article V(1)(d).²⁴²

2. *ARIHQ v Santé Québec* as an Illustration

In this regard, the Québec Superior Court's decision on 22 April 2026 in the *ARIHQ v Santé Québec* case represents a notable exception to the general pattern. It was the first case in which a state court set aside an arbitral award on the basis that an arbitrator had relied on hallucinated, AI-generated sources, which was deemed to be a procedural irregularity under the applicable arbitral procedure.²⁴³

The claimants in this case applied to annul the award on the grounds that there were strong indications that the reasoning had been drafted using hallucinating AI. Specifically, all of the legal sources on which the award was based, and which formed the foundation of the reasoning of the arbitral award, were the result of AI hallucinations and did not in fact exist. The Superior Court upheld this argument and set aside the award pursuant to Article 646, No. 3 of the Québec Code of Civil Procedure, a provision that closely mirrors Article V(1)(d) of the New York Convention insofar as it permits annulment where the applicable arbitral procedure was not observed. In reaching its conclusion, the court emphasised that parties who agree to arbitration are entitled to expect that the selected arbitrator will personally render a reasoned decision, and that the arbitrator cannot delegate decision-making functions to a third party. By relying on hallucinated AI-generated authorities without independently

²³⁹ *China Agrobusiness Development Corporation v Balli Trading* High Court of Justice, Queen's Bench Division, England and Wales, 20 January 1997, XXIV YB Com Arb 732 (1999); *Tongyuan International Trading Group v Uni-Clam Limited* High Court of Justice, England and Wales, 19 January 2001, 2000 Folio No 1143.

²⁴⁰ *K Trading Company v Bayerischen Motoren Werke AG* Bayerisches Oberstes Landesgericht, Germany, 23 September 2004, 4 Z Sch 05/04, XXX YB Com Arb 568 (2005); *Creditor under the award v Debtor under the award* Oberlandesgericht Karlsruhe, Germany, 14 September 2007, 9 Sch 02/07.

²⁴¹ NYC Secretariat Guide (n 207) art V(1)(d) para 6; van den Berg (n 207) 323.

²⁴² *K Trading Company v Bayerischen Motoren Werke AG* Bayerisches Oberstes Landesgericht, Germany, 23 September 2004, 4 Z Sch 05/04; *Industrial Risk Insurers v MAN Gutehoffnungshütte GmbH* Court of Appeals, Eleventh Circuit, United States of America, 22 May 1998, 94-2982, 94-2530.

²⁴³ *ARIHQ v Santé Québec* 2026 QCCS 1360; Liu (n 176); Quinke and others (n 176).

verifying their existence, the arbitrator failed to fulfil this personal responsibility, thereby violating fundamental principles of arbitral procedure.

For the purposes of this thesis, the significance of this case lies in its confirmation that the use of non-compliant AI in arbitral proceedings can constitute a procedural irregularity under provisions analogous to Article V(1)(d) of the New York Convention. In particular, such a ground for refusal is most likely to arise when an arbitrator relies on AI-generated content without independently verifying its accuracy, when that content forms a central part of the reasoning in the award, and when a direct causal link can be established between the AI-generated content and the outcome of the proceedings.²⁴⁴ By ruling that an arbitrator's reliance on hallucinated AI-generated content violated the fundamental requirement of personal and reasoned decision-making, the Québec Superior Court confirmed that improper AI use can result in concrete grounds for annulling an arbitral award, and by analogy, for refusing to recognise and enforce it under Article V(1)(d) of the New York Convention. It may furthermore be noted that the circumstances of the case could equally have given rise to a ground for refusal under Article V(1)(b), since the arbitrator relied on AI-generated reasoning that introduced legal authorities not advanced by either party during the proceedings, and on which the parties consequently had no opportunity to comment, which may equally have given rise to a violation of the right to be heard.²⁴⁵ This falls squarely within the second scenario examined in Chapter D.II.2 above.

IV. Article V(2)(b) New York Convention – Public Policy

1. The Concept of Procedural Ordre Public under Article V(2)(b)

Article V(2)(b) of the New York Convention enables the courts of a Contracting State to refuse recognition and enforcement of an arbitral award where 'the competent authority finds that recognition or enforcement would be contrary to the public policy of that country'.²⁴⁶ Unlike the grounds listed in Article V(1), which must be raised and proven by the party opposing enforcement, Article V(2)(b) may be invoked by the court of its own motion (*ex*

²⁴⁴ Liu (n 176); Quinke and others (n 176); Stefer and Fricke (n 102) 66; in cases where AI tools act as decision-makers rather than supporting tools, it is even questionable whether the resulting decision can be considered an award under the New York Convention. In jurisdictions where the law requires arbitrators to be natural persons, a decision rendered by AI would likely be considered contrary to public policy and therefore not enforceable; see Stefer and Fricke (n 102) 67.

²⁴⁵ See Chapter D.II.2 above.

²⁴⁶ New York Convention (n 12), art V(2)(b).

officio).²⁴⁷ The concept of public policy is a fundamental element of Article V(2)(b), which allows contracting courts to protect the integrity of their legal order and cannot therefore be separated from the framework of the Convention.²⁴⁸

Although different jurisdictions have different definitions of public policy,²⁴⁹ case law consistently treats the exception as applicable when a breach of widely recognised fundamental procedural principles renders an arbitral decision incompatible with a state's core values and legal order based on the rule of law. Thus, the public policy exception functions as a safety valve, to be invoked only in exceptional circumstances where it would be impossible for a legal system to recognise and enforce an award without abandoning its fundamental principles.²⁵⁰ The procedural dimension of public policy encompasses principles such as due process, proper procedure and reasoned decision-making.²⁵¹ Since a violation of due process engages not only Article V(1)(b), as was examined in Chapter D.II.1 above, but also Article V(2)(b), an award may be refused to be enforced by a court on this basis of its own accord. Consequently, it is not unusual for parties to invoke both provisions simultaneously in an attempt to resist the enforcement of an award.²⁵²

2. The EU AI Act Compliance Obligations as European Public Policy

The question arises as to whether the EU AI Act, particularly the compliance obligations it imposes on those who deploy high-risk AI systems, constitutes part of European public policy as defined in Article V(2)(b) of the Convention. Although the New York Convention does not define public policy, allowing national courts to derive the applicable standard from the law of the enforcement forum, the concept is more nuanced within the EU due to the interaction between EU law and national Member State laws.²⁵³ Therefore, the threshold

²⁴⁷ NYC Secretariat Guide (n 207) art V(2)(b) para 54.

²⁴⁸ NYC Secretariat Guide (n 207) art V(2)(b) para 2.

²⁴⁹ Oberlandesgericht München, Germany, 34 Sch 019/05, 28 November 2005; Oberlandesgericht Düsseldorf, Germany, VI Sch (Kart) 1/02, 21 July 2004; Hanseatisches Oberlandesgericht Bremen, Germany, (2) Sch 04/99, 30 September 1999; Bundesgerichtshof Germany, III ZR 269/88, 18 January 1990.

²⁵⁰ NYC Secretariat Guide (n 207) art V(2)(b) para 5; *Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier* (n 216) 974.

²⁵¹ van den Berg (n 207) 18-19.

²⁵² NYC Secretariat Guide (n 207) art V(2)(b) para 13; van den Berg (n 207) 15.

²⁵³ T Singla, 'Achmea: The Fate and Future of Intra-EU Investment Treaty Awards under the New York Convention' (*EJIL Talk*, 7 May 2018) <ejiltalk.org/achmea-the-fate-and-future-of-intra-eu-investment-treaty-awards-under-the-new-york-convention/> accessed June 2026 (hereinafter 'Singla').

question is whether the obligations imposed by the EU AI Act rise to the required standard for mandatory rules to be regarded as part of public policy.²⁵⁴

The judicial standard developed by the CJEU in *Eco Swiss China Time Ltd v Benetton International NV* is of particular relevance in this regard. In this case the Court held that in order to determine whether a mandatory rule of EU law forms part of public policy under Article V(2)(b) of the Convention, it must be established whether the norm in question is a 'fundamental provision essential for accomplishing the tasks entrusted to the Union, particularly for the functioning of the internal market'.²⁵⁵ As a matter of principle, mandatory rules of the enforcement forum should be considered part of its public policy if they reflect that forum's fundamental concepts of morality and justice, from which no derogation can be permitted.²⁵⁶

It is submitted that the EU AI Act satisfies this criterion. As the world's first comprehensive, binding framework for regulating AI, the Act protects fundamental rights guaranteed by the EU Charter, including the right to a fair trial under Article 47.²⁵⁷ It also ensures the safe and trustworthy use of AI across the internal market.²⁵⁸ Furthermore, as established in Chapter C.II.4 above, the EU AI Act constitutes a *loi de police* whose provisions apply as overriding mandatory rules. While the Act does not expressly address the extent to which its obligations may be derogated from by contractual arrangements between the parties, it must be assumed, having regard to its overarching objective of ensuring protection against the harmful effects of AI systems in the Union as set out in Recital 1 of the Act²⁵⁹, that any such derogation is permissible only within very narrow limits.²⁶⁰

²⁵⁴ NYC Secretariat Guide (n 207) art V(2)(b) para 17; B Hanotiau and O Caprasse, 'Public Policy in International Commercial Arbitration' in E Gaillard and D Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice* (Cameron May 2008) 787, 791-794 (hereinafter 'Hanotiau and Caprasse').

²⁵⁵ *Eco Swiss China Time Ltd v Benetton International NV* (Case C-126/97) [1999] ECR I-3055 (n 210) paras 37-39; NYC Secretariat Guide (n 207) art V(2)(b) para 19.

²⁵⁶ NYC Secretariat Guide (n 207) art V(2)(b) para 26; Hanotiau and Caprasse (n 254) 791-794; *Mostaza Claro v Centro Móvil Milenium SL* (Case C-168/05) [2006] ECR I-10421, paras 36-38.

²⁵⁷ The right to a fair trial is enshrined in Article 47 of the EU's Charter of Fundamental Rights and thereby forms an integral part of European public policy. This conclusion is confirmed by the CJEU in its recent judgment on 1 August 2025, in which the court stated that 'Article 47 of the EU Charter guarantees the right to an effective remedy for any person relying on a right conferred by EU law': *Fédération Royale des Sociétés de Football Association ASBL (URBSFA) v RFC Seraing SA* (Case C-600/23), judgment of 1 August 2025, ECLI:EU:C:2025:X; EU AI Act, recital 48.

²⁵⁸ EU AI Act, recitals 1 and 48.

²⁵⁹ EU AI Act, recital 1.

²⁶⁰ K Thorn and U Nickel, 'The Effect of Overriding Mandatory Rules on the Arbitration Agreement' (2018) 7(1) *European International Arbitration Review* 43 (hereinafter 'Thorn and Nickel').

Consequently, the compliance obligations imposed by the EU AI Act on those who deploy high-risk AI systems should be considered part of European public policy and non-compliance with the obligations of the EU AI Act may engage the public policy exception under the same article.

3. Lack of Human Oversight and the Black-Box Problem as Violations of European Public Policy

Another fundamental principle to protect due process, a key procedural principle underlying Article V(2)(b), is human oversight. The principle of human oversight seeks to ensure that a human decision-maker remains involved in all significant aspects of the decision-making process.²⁶¹ However, a tension may arise when AI effectively assumes the role of decision-maker in arbitral proceedings. Where an arbitrator or an arbitral tribunal relies on AI tools that fall within the high-risk category of the EU AI Act without providing justifiable reasons for the outcomes, this may not only give rise to a violation of the right to be heard under Article V(1)(b) as established in Chapter D.II.2 above, but may also engage the public policy exception under Article V(2)(b).

While the EU AI Act does not prohibit AI systems from materially influencing arbitral decision-making in general, it does subject such influence to regulatory constraints. Under Article 26(2) of the Act, arbitrators using AI in their decision-making must ensure human oversight of the system in order to prevent outputs that could adversely affect fundamental rights, health or safety.²⁶² This requirement means that arbitrators must retain ultimate decision-making authority and intervene if an AI system's outputs threaten to compromise the fairness or legality of the proceedings. Whether the requirements of Article 26(2) apply depends on the role that AI plays in the proceedings. If AI is only used to draft an award and does not engage in factual or legal decision-making, the arbitrators have discretion over how to organise the proceedings, provided they do not treat the AI-generated draft as final but instead assess it independently.

The great risks that, for the final award, arise where AI ceases to be merely an assistance tool and instead replaces the arbitrators in the legal reasoning process to such an extent that the substantive legal decision is effectively delegated to AI, thereby undermining the human

²⁶¹ Migliorini and Moreira (n 1) 156; Scherer, Jensen and Childree (n 129) 554.

²⁶² EU AI Act, art 26(2); Migliorini and Moreira (n 1) 155-156.

oversight requirement, were illustrated by the Québec Superior Court in the aforementioned case *ARIHQ v Santé Québec*. The court concluded that responsibility for the reasoning must at all times remain with the decision-maker, since only a human arbitrator is capable of exercising the genuine discretion and independent judgment that arbitral integrity requires. This conclusion resonates directly with the human oversight requirement under Article 26(2) of the EU AI Act, and underscores that where an arbitrator fails to exercise genuine oversight over AI-generated content, a violation of European public policy under Article V(2)(b) may arise.²⁶³

These risks highlight the necessity of human oversight. Arbitration relies on capacities that AI systems lack, including exercising discretion and making value judgements, as well as interpreting context-specific norms. By contrast, AI systems cannot weigh moral considerations, assess the credibility of witnesses or evaluate evidence beyond numerical inputs. Compared to human arbitrators, AI tools lack the characteristics that enable proportionate discretionary decisions and value judgements grounded in empathy, morals and ethics.²⁶⁴ Additionally, the 'black box' problem re-emerges in this context in a structural form. While AI systems can generate fluent, well-structured texts that could be used to draft the reasoning section of an arbitral award, they usually cannot explain their conclusions in a transparent or comprehensible way to human reviewers. This conflicts with an arbitrator's duty to engage with the evidence and legal arguments presented, and to formulate reasoning that reflects fairness and due consideration. If the processes of an AI system cannot be understood by humans, it is not suitable for use by arbitrators in legal decision-making.²⁶⁵

Taken together, effective human oversight within the meaning of Article 26(2) therefore requires more than a human's mere presence in the decision-making process. It extends to the ability to independently consider the facts, documenting the decision-making process, and transparently communicating the role of AI tools. Thus, allowing an AI system to

²⁶³ *ARIHQ v Santé Québec* 2026 QCCS 1360; Quinke and others (n 176); Liu (n 176); Stefer and Fricke (n 102) 66; in cases where AI tools act as decision-makers rather than supporting tools, it is even questionable whether the resulting decision can be considered an award under the New York Convention. In jurisdictions where the law requires arbitrators to be natural persons, a decision rendered by AI would likely be considered contrary to public policy and therefore not enforceable; see Stefer and Fricke (n 102) 67.

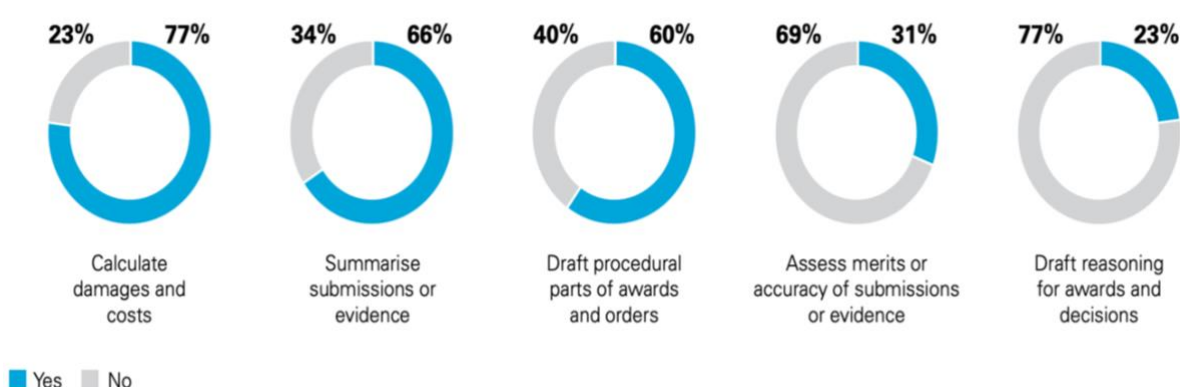
²⁶⁴ van den Berg (n 207) 20; *EDF (Services) Limited v Romania* ICSID Case No ARB/05/13, Award (8 October 2009); *The Argentine Republic v AWG Group Ltd* UNCITRAL, Decision on Liability (30 July 2010).

²⁶⁵ Stefer and Fricke (n 102) 67-68; Al Mahdouri (n 86) 776-779; SG Efstathiou and M Apostol, 'Arbitration Tech Toolbox: ChatGPT, Arbitral Assistant or Fourth Arbitrator?' (*Kluwer Arbitration Blog*, 22 July 2023) <arbitrationblog.kluwerarbitration.com/2023/07/22/arbitration-tech-toolbox-chatgpt-arbitral-assistant-or-fourth-arbitrator> accessed June 2026 (hereinafter 'Efstathiou and Apostol').

significantly influence the tribunal's reasoning without the human oversight could constitute a violation of procedural public policy in itself.²⁶⁶

Nevertheless, the QMUL Survey 2025 suggests that this extreme scenario remains the exception rather than the rule. The data shows that acceptance correlates inversely with proximity to the core adjudicative function. While AI is widely accepted for administrative and preparatory tasks, such as calculating damages and costs, as well as for summarising submissions, a majority reject its use for tasks touching the decision-making core itself. In particular, 77% of the respondents reject AI drafting of the reasoning for awards and decisions. This pattern suggests that the vast majority of practitioners currently view AI strictly as an assistive tool rather than a substitute for human judgement.²⁶⁷ However, practitioners also predict that arbitrators will increasingly rely on AI over the coming years, suggesting that this line may not remain static.²⁶⁸

Chart 21: Do you think it is appropriate for arbitrators to use AI to assist with performing the following tasks?



One final point to consider is the threshold for refusal. Most jurisdictions recognise that a mere violation of domestic law is insufficient, given that Article V(2)(b) requires a breach of international, rather than domestic, public policy.²⁶⁹ Courts also apply a considerably higher standard of proof than that required for Article V(1). Therefore, only serious integrity failures, such as opaque decisions with no meaningful review process or substantiated bias

²⁶⁶ In cases where AI tools act as decision-makers rather than supporting tools, it is questionable whether the resulting decision can be considered an award under the New York Convention. In jurisdictions where the law requires arbitrators to be natural persons, a decision rendered by AI would likely be considered contrary to public policy and therefore not enforceable; see Stefer and Fricke (n 102) 67.

²⁶⁷ QMUL Survey 2025 (n 2) 31-32 (Chart 21).

²⁶⁸ See Chapter C.I.1 above.

²⁶⁹ NYC Secretariat Guide (n 207) art V(2)(b) para 13.

that could affect the outcome, would justify refusal.²⁷⁰ However, it is submitted that, since the human oversight and reasoning requirements of the EU AI Act safeguard the fundamental principles of arbitration emphasised throughout this thesis, namely party autonomy, due process, and confidentiality, a serious breach of these requirements would likely justify the refusal of enforcement of the resulting award under Article V(2)(b).

V. Limitations of the Current Framework

Beyond the substantive thresholds discussed above, the practical enforceability of the grounds examined in this chapter is limited by the confidential nature of arbitral proceedings. To invoke Article V(1)(b), Article V(1)(d) or Article V(2)(b) on the basis of non-compliant AI use, a party must first be able to prove that AI was used, how it was used and to what extent. As the deliberations of the tribunal, and frequently the proceedings as a whole, remain confidential, this often presents a considerable evidentiary challenge.²⁷¹ This risk is recognised by practitioners themselves. In the 2025 QMUL Survey, 47% of respondents identified confidentiality and data security as one of the principal concerns regarding the use of AI in arbitration, second only to the risk of undetected errors and bias in AI systems.²⁷² This structural opacity means that non-compliance with the EU AI Act's human oversight, disclosure and documentation obligations may effectively remain unreviewable in practice, irrespective of how the grounds under Article V are interpreted.²⁷³

Another limitation relates to the procedural requirements for raising grounds under Articles V(1)(b) and V(1)(d). Courts have consistently held that a party that becomes aware of a procedural irregularity during arbitral proceedings but fails to raise an objection at that stage will be precluded from relying on that irregularity at the enforcement stage. Where a party suspects during proceedings that the tribunal is relying on AI in a manner inconsistent with the EU AI Act, they should therefore promptly raise this objection with the tribunal itself or risk losing the ability to invoke it later.²⁷⁴ However, this requirement does not apply to

²⁷⁰ van den Berg (n 207) 18-19; *Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier* (n 216) 974.

²⁷¹ Efsthathiou and Apostol (n 265); S Migliorini and JI Moreira, 'The EU AI Act and Arbitration' (*EAPIL Blog*, 9 September 2025) <eapil.org/2025/09/09/migliorini-and-ilhao-moreira-on-the-eu-ai-act-and-arbitration> accessed April 2026; Andrews and others (n 102).

²⁷² QMUL Survey 2025 (n 2) 30 (Chart 20).

²⁷³ Stefer and Fricke (n 102) 52; Florescu (n 90) 47.

²⁷⁴ NYC Secretariat Guide (n 207) art V(1)(b) paras 51-54.

Article V(2)(b), which the court may raise of its own accord, irrespective of whether the relevant party objected during the proceedings.²⁷⁵

E. Conclusion

I. Summary of Findings

The observation of the rapid uptake of AI in the practice of international commercial arbitration formed the fundamental starting point of this thesis. The 2025 QMUL Survey confirmed that AI is no longer confined to peripheral tasks such as document review, but is increasingly used for factual and legal research, data analytics, and the drafting of submissions and procedural orders, with adoption expected to increase markedly across all these areas within the next five years. This rapid uptake, however, is accompanied by significant concerns, most notably regarding undetected errors and bias, confidentiality, and, most importantly for present purposes, the absence of any binding regulatory framework governing the use of AI in arbitral proceedings.

This regulatory gap has so far only been addressed through soft-law instruments published by arbitral institutions such as SVAMC, the SCC, and the Chartered Institute of Arbitrators. While these guidelines demonstrate a growing awareness of the risks posed by AI, they remain non-binding and differ substantially in their approach to disclosure. Furthermore, they do not guarantee that compliance will result in an enforceable award. The arbitration community was therefore left in a position of considerable legal uncertainty, with practitioners themselves identifying the lack of clear regulation as one of the main obstacles to the wider adoption of AI. It is precisely this gap that the EU AI Act seeks to fill. As the world's first comprehensive, binding framework for the regulation of AI, it provides a set of directly applicable rules capable of governing the use of AI in arbitral proceedings for the first time. It was demonstrated by this thesis that the Act is applicable to arbitral tribunals in their capacity as deployers under Articles 2(1)(b) and (c), encompassing both tribunals established within the EU and, by virtue of the Act's extraterritorial reach, tribunals seated outside the EU whose output is used within the Union, for instance because enforcement is sought against assets located there or because one of the parties is established in the EU.

²⁷⁵ NYC Secretariat Guide (n 207) art V(2)(b) paras 54-55.

Whether these obligations apply, however, depends not only on the AI system itself, but on how it is used specifically. This thesis demonstrated that when a tribunal uses an AI system to research or interpret facts and the law, or apply the law to a specific set of facts, this use is categorised as high-risk under Annex III, point 8(a) and Recital 61, provided it significantly influences the tribunal's decision-making. However, purely auxiliary uses, such as document review or proofreading, remain outside this category. Where this is the case, arbitrators and arbitral institutions, as deployers, become subject to a set of obligations that proved central to the analysis in Chapter D, most notably the transparency and disclosure obligations under Articles 26(11) and 86(1) and the requirement of human oversight under Article 26(2).

The practical weight of these obligations comes from another finding of this thesis. This is that the EU AI Act is a *loi de police*. Where the Act applies by virtue of its personal and territorial scope, the obligations set out in the Act take precedence over any other rules and cannot be excluded or modified by agreement between the parties, except within very narrow limits, regardless of the law otherwise governing these proceedings. This represents a significant shift from the EU's traditionally restrained approach to commercial arbitration. It is this mandatory character that establishes the relevance of the Act's compliance obligations for the recognition and enforcement of arbitral awards under the New York Convention.

II. Answer to the Research Question

However, this mandatory character does not mean that a violation of the EU AI Act constitutes an autonomous ground for refusal under the New York Convention. Article V provides an exhaustive list of grounds, meaning that non-compliance can only be considered relevant if it can be mediated through one of these grounds. The research question posed at the outset of this thesis, namely whether non-compliance with the EU AI Act in arbitral proceedings constitutes a ground for refusal of recognition or enforcement of arbitral awards under Article V of the New York Convention, is therefore answered by determining which of these grounds are capable of performing such a mediating function.

Article V(1)(b) of the New York Convention, which protects the right to be heard, is primarily engaged through the transparency and disclosure obligations set out in Articles 26(11) and 86(1) of the EU AI Act. These provisions require arbitrators and arbitral tribunals to disclose their use of high-risk AI systems, as well as to provide substantive information about how these systems are used in the decision-making process. If these obligations are

disregarded, a party may be deprived of the opportunity to comment on AI-generated evidence whose underlying process cannot be scrutinised. Alternatively, they may be confronted with AI-generated reasoning or findings that extend beyond their own submissions without having had the opportunity to respond, which would be in breach of the prohibition on surprise decisions. Either scenario could constitute a violation of the right to be heard under Article V(1)(b).

Article V(1)(d) of the New York Convention, which addresses procedural irregularities in the arbitral procedure, may equally be engaged where an arbitrator relies on AI-generated content without independently verifying its accuracy and where that content forms a central part of the award's reasoning. As illustrated by the Québec Superior Court in *ARIHQ v Santé Québec*, the first case in which a state court set aside an award on the grounds of improper AI use, the arbitrator's unverified reliance on hallucinated AI-generated sources violated the fundamental requirement that the selected arbitrator personally render a reasoned decision. The decision confirms that such conduct can constitute a procedural irregularity of sufficient seriousness to satisfy the high threshold required under provisions analogous to Article V(1)(d), provided that a direct causal link between the procedural irregularity and the outcome can be established. Furthermore, the circumstances of the case highlight the structural overlap between Article V(1)(d) and Article V(1)(b), insofar as the parties were equally denied the opportunity to comment on legal authorities that did not exist.

Article V(2)(b) of the New York Convention, the public policy exception, is primarily engaged through the requirement of human oversight under Article 26(2) of the EU AI Act. This provision requires arbitrators to retain ultimate decision-making authority and to ensure human oversight of any AI system used. Where this requirement is disregarded and AI effectively assumes the role of decision-maker, this is problematic not only because the parties have mandated natural persons, rather than an algorithm, to decide their dispute, but also because AI lacks the capacities that arbitral decision-making requires, including the exercise of discretion and value judgements grounded in empathy and ethics. A related concern arises with respect to the reasoning of the award, which itself forms part of public policy. Where that reasoning rests on AI-generated output whose underlying process cannot be explained or verified, the arbitrators are unable to adequately discharge their duty to provide the reasons for their decision. Both scenarios are capable of constituting a violation of procedural public policy under Article V(2)(b).

Yet the conditions under which these grounds may be engaged in principle are not aligned with the practical reality of their enforcement. The main obstacle lies in the confidentiality of arbitral proceedings, as it can be difficult for a party to prove that AI was used at all, let alone that its use was non-compliant with the EU AI Act. Therefore, non-compliance with the EU AI Act can, in principle, constitute a ground for refusal under Article V of the New York Convention, but the practical likelihood of a successful refusal is limited in practice and depends heavily on the nature of the AI's involvement and the quality of the human oversight exercised over it.

III. Proposal for Reform and Outlook

One way to address the practical difficulty that the confidentiality of arbitral proceedings makes it exceptionally difficult in practice for a party to establish that AI was used, would be to introduce a binding duty for arbitrators and arbitral tribunals to explain their use of AI. This duty of explanation, going beyond the general requirements of Articles 26(11) and 86(1) of the EU AI Act, would strengthen the parties' confidence in the proper use of AI and directly serve the due process concerns underlying Articles V(1)(b), V(1)(d) and V(2)(b) of the New York Convention.²⁷⁶ This would require the tribunal to explain how and why AI was used, and how its output was handled, particularly in terms of its influence on the decision-making process. Furthermore, it would reinforce the efficiency principle on which international commercial arbitration prides itself by preventing costly and time-consuming post-award challenges resulting from procedural secrecy. The 2025 QMUL survey demonstrates the practical need for such a proposal, with a significant proportion of respondents expressing a clear desire for greater transparency around the use of AI. They also indicated that such transparency need not compromise the features that make arbitration an attractive forum for dispute resolution.

In practical terms, such a duty could be implemented through a twofold approach. Firstly, rather than including it in the award itself, the tribunal would provide the parties with a separate document setting out the relevant information in sufficient time before the conclusion of the proceedings. This would enable a party to raise any concerns about the role of AI with the tribunal while the proceedings are ongoing. Secondly, the arbitral institution could retain a more detailed record of the AI tools used and their outputs

²⁷⁶ This proposal draws inspiration from Mehboob and others (n 225) 1297, who similarly emphasises the importance of explainability for ensuring that the reasoning of an award can be traced back to human judgment.

confidentially, rather than disclosing it to the parties or making it part of the public record. This would preserve the confidentiality that arbitration users value, while ensuring that such a record exists should it become relevant to a challenge under Article V(1)(b), Article V(1)(d) or Article V(2)(b).

Nevertheless, rather than waiting for crises such as *LaPaglia v Valve* and *ARIHQ v Santé Québec* to force reactive change, the arbitration community should take the initiative. Adopting such standards would not only address the limitations identified in this thesis, but also more broadly strengthen confidence in arbitration. This would secure its continued relevance in an AI-driven environment and uphold the basic commitment to fairness and due process that underpins the legitimacy of any legal system.

The coming years are likely to be defined by a tension between the current reluctance of practitioners to allow AI any role in the core adjudicative function and their expectation that AI will play an increasingly significant role in arbitral practice in the future. Successfully navigating this tension will depend on arbitrators bearing in mind that the more AI is used in the decision-making process, the greater the risk of engaging Article V(1)(b) or Article V(2)(b) of the New York Convention. Arbitrators should therefore primarily use AI as a tool to support their own evaluation of the legal issues, treating its output as a starting point to be critically reviewed rather than adopted. Where the use of AI extends beyond legal research into evaluating the merits of a case, arbitrators should disclose this to the parties and, where appropriate, seek their agreement. They should also give the parties an opportunity to comment on any findings contributed by AI that were not previously raised in the proceedings.²⁷⁷

The need for caution is reinforced by the ongoing uncertainty regarding the timeline for the application of the EU AI Act to arbitration, as discussed in Chapter B above. The proposed Digital Omnibus Regulation could delay the implementation of relevant obligations until after 2026. However, this thesis has shown that this regulatory uncertainty does not mean that arbitration can simply 'wait and see'. Even before the arbitration-specific obligations of the EU AI Act take full effect, the concerns they address, such as due process, transparency, and the integrity of the decision-making process are already capable of shaping how awards

²⁷⁷ The recommendations in this text are based on the practical guidance put forward by Stefer and Fricke (n 102) 68-69, who also stressed the importance of treating AI output as a starting point for the arbitrators' own evaluation, staying alert to potential bias, and disclosing or seeking the parties' agreement when using AI for more than just legal research.

are recognised and enforced under the New York Convention. As AI tools continue to develop, these concerns are unlikely to diminish. The arbitration community would therefore be well advised to treat them as an ongoing responsibility, rather than a future compliance exercise.

Bibliography

I. Primary Sources

1. EU Legislation

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L376/36

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes [2013] OJ L 165/63

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes [2013] OJ L 165/1

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 2024/1689

2. International Treaties and Instruments

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3

UNCITRAL Model Law on International Commercial Arbitration (adopted by the United Nations Commission on International Trade Law on 21 June 1985, with amendments as adopted in 2006) UN Doc A/40/17, Annex I

3. Cases of the Court of Justice of the European Union

Eco Swiss China Time Ltd v Benetton International NV (Case C-126/97) [1999] ECR I-3055

Fédération Royale des Sociétés de Football Association ASBL (URBSFA) v RFC Seraing SA (Case C-600/23), judgment of 1 August 2025, ECLI:EU:C:2025:X

Ingmar GB Ltd v Eaton Leonard Technologies Inc (Case C-381/98) [2000] ECR I-09305

London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain (Case C-700/20) [2022] ECLI:EU:C:2022:488

Marc Rich & Co AG v Società Italiana Impianti PA (Case C-190/89) [1991] ECR I-3855

Mostaza Claro v Centro Móvil Milenium SL (Case C-168/05) [2006] ECR I-10421

United Antwerp Maritime Agencies (Unamar) NV v Navigation Maritime Bulgare (Case C-184/12) [2013]

Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line (Case C-391/95) [1998] ECR I-7091

4. Other National Cases and Arbitral Awards

Al Haddad Bros Enterprises Inc v M/S 'Agapi' and Diakan Love SA, District Court, District of Delaware, United States of America, 9 May 1986, 635 F Supp 205

ARIHQ v Santé Québec 2026 QCCS 1360

The Argentine Republic v AWG Group Ltd, UNCITRAL, Decision on Liability (30 July 2010)

Bundesgerichtshof, Germany, III ZR 269/88, 18 January 1990

China Agrobusiness Development Corporation v Balli Trading, High Court of Justice, Queen's Bench Division, England and Wales, 20 January 1997, XXIV YB Com Arb 732 (1999)

Chrome Resources SA v Leopold Lazarus Ltd, Federal Tribunal, Switzerland, 8 February 1978, XI YB Com Arb 538 (1986)

Conceria G De Maio & F snc v EMAG AG, Court of Cassation, Italy, 20 January 1995, XXI YB Com Arb 602 (1996)

Creditor under the award v Debtor under the award, Oberlandesgericht Karlsruhe, Germany, 14 September 2007, 9 Sch 02/07

Dutch Seller v German Buyer, Regional Court, Zweibrücken, Germany, 11 January 1978

Dutch Shipowner v German Cattle and Meat Dealer, Bundesgerichtshof, Germany, 1 February 2001, XXIX YB Com Arb 700 (2004)

EDF (Services) Limited v Romania, ICSID Case No ARB/05/13, Award (8 October 2009)

Europcar Italia SpA v Maiellano Tours Inc, Court of Appeals, Second Circuit, United States of America, 2 September 1998, XXIV YB Com Arb 860 (1999)

Gater Assets Ltd v Nak Naftogaz Ukrainiy [2007] EWCA Civ 988

Glencore Grain Rotterdam BV v Shivnath Rai Harnarain Company, Court of Appeals, Ninth Circuit, United States of America, 26 March 2002, 01-15539

Gouvernement de la région de Kaliningrad v République de Lituanie, Paris Court of Appeal, France, 18 November 2010, 09/19535

GWL Kersten & Co BV v Société Commerciale Raoul-Duval et Cie, Gerechtshof Amsterdam, Netherlands, 16 July 1992, XIX YB Com Arb 708 (1994)

Industrial Risk Insurers v MAN Gutehoffnungshutte GmbH, Court of Appeals, Eleventh Circuit, United States of America, 22 May 1998, 94-2982, 94-2530

Inter-Arab Investment Guarantee Corp v Banque Arabe et Internationale d'Investissements, Cour d'Appel, Brussels, Belgium, 25 January 1996, XXII YB Com Arb 643 (1997)

Iran Aircraft Industries and Iran Helicopter Support and Renewal Company v Avco Corporation, Court of Appeals, Second Circuit, United States of America, 24 November 1992, XVIII YB Com Arb 596 (1993)

K Trading Company v Bayerischen Motoren Werke AG, Bayerisches Oberstes Landesgericht, Germany, 23 September 2004, 4 Z Sch 05/04, XXX YB Com Arb 568 (2005)

LaPaglia v Valve Corporation, No 3:25-cv-00833 (SD Cal, 8 April 2025)

Licensee v Licensor, Oberlandesgericht Düsseldorf, Germany, 21 July 2004, XXXII YB Com Arb 315 (2007)

Oberlandesgericht Frankfurt am Main, Germany, 18 October 2007, 26 Sch 1/07, XXXV YB Com Arb 377 (2010)

Oberlandesgericht Frankfurt am Main, Germany, 27 August 2009, 26 SchH 03/09, XXXV YB Com Arb 377 (2010)

Oberlandesgericht Schleswig, Germany, 24 June 1999, 16 SchH 01/99

Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier, Court of Appeals, Second Circuit, United States of America, 23 December 1974, I YB Com Arb 205 (1976)

Oberlandesgericht Hamm, Germany, 2 November 1983, XIV YB Com Arb 629 (1989)

Portuguese Company A v Trustee in bankruptcy of German company X, Landgericht Bremen, Germany, 20 January 1983, XII YB Com Arb 486 (1987)

Rice Trading (Guyana) Ltd v Nidera Handelscompagnie BV, Court of Appeal, The Hague, Netherlands, 28 April 1998, XXIII YB Com Arb 731 (1998)

Rosseel NV v Oriental Commercial Shipping, High Court of Justice, England and Wales, 16 November 1990, XVI YB Com Arb 615 (1991)

Sovereign Participations International SA v Chadmore Developments Ltd, Cour d'Appel, Luxembourg, 28 January 1999, XXIV YB Com Arb 714 (1999)

Tampico Beverages v Productos Naturales de la Sabana SA Alqueria, Supreme Court, Colombia, 12 July 2017

Tongyuan International Trading Group v Uni-Clam Limited, High Court of Justice, England and Wales, 19 January 2001, 2000 Folio No 1143

Trading Company (Israel) v Buyer (Germany), Oberlandesgericht Cologne, Germany, 23 April 2004, XXX YB Com Arb 557 (2005)

Trans World Film SpA v Film Polski Import and Export of Films, Corte di Cassazione, Italy, 22 February 1992, XVIII YB Com Arb 433 (1993)

US Firm P v German Firm F, Oberlandesgericht Hamburg, Germany, 3 April 1975, II YB Com Arb 241 (1977)

Vigel SpA v China National Machine Tool Corporation, Court of Cassation, Italy, 8 April 2004, XXXI YB Com Arb 802 (2006)

Yukos Oil Co v Dardana Ltd [2002] EWCA Civ 543

II. Secondary Sources

1. Books

Blackaby N and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015)

Born G, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021)

Fouchard E, Gaillard E and Goldman B, *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999)

Kronke H, Nacimiento P and others (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (2nd edn, Kluwer Law International 2024)

Kurkela MS and Turunen S, *Due Process in International Commercial Arbitration* (2nd edn, Oxford University Press 2010)

van den Berg AJ, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* (Kluwer Law International 1981)

2. Contributions to Edited Books

Cardoso AG, ‘Artificial Intelligence in International Arbitration: From Tool to Adjudicator’ in Nappert S and Carvalho Dias de Oliveira Silva F (eds), *AI and Arbitration* (Kluwer Law International 2026)

Czerniawski M, ‘Towards the Effective Extraterritorial Enforcement of the AI Act’ in Hoepman JH and others (eds), *Privacy Symposium 2024: Data Protection Law International Convergence and Compliance with Innovative Technologies (DPLICIT)* (Springer 2025)

Hanotiau B and Caprasse O, ‘Public Policy in International Commercial Arbitration’ in Gaillard E and Di Pietro D (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice* (Cameron May 2008)

Hay E, ‘Thinking Outside the Black Box: Arbitration and Artificial Intelligence’ in Sheppard AW and Bao C (eds), *International Arbitration: A Human Endeavour* (ICCA Congress Series vol 22, Kluwer Law International 2025)

Lana Linetzky and Klein Kranenberg, ‘New York Convention, Article V(1)(b) [Violation of Due Process]’ in Kronke H, Nacimiento P and others (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (2nd edn, Kluwer Law International 2024)

Morgan C and King MP, ‘A Human Story: AI, Arbitration and the Importance of Judgment’ in Nappert S and Carvalho Dias de Oliveira Silva F (eds), *AI and Arbitration* (Kluwer Law International 2026)

- Scherer M, 'Article V(1)(b)' in Wolff R (ed), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: Commentary* (2nd edn, Beck/Hart/Nomos 2019)
- 'International Arbitration 3.0: How Artificial Intelligence Will Change Dispute Resolution' in Klausegger C and others (eds), *Austrian Yearbook on International Arbitration 2019* (Manz 2019)
- 'Artificial Intelligence in Arbitral Decision-Making: The New Enlightenment?' in Bull C, Malintoppi L and others (eds), *ICCA Congress Series* vol 2 (2023)
- Smuha NA and Yeung K, 'The European Union's AI Act: Beyond Motherhood and Apple Pie?' in Smuha NA (ed), *The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence* (Cambridge University Press 2025)
- van den Berg AJ, 'The New York Convention of 1958: An Overview' in *Yearbook Commercial Arbitration* vol XXVIII (Kluwer Law International 2003)

3. Journal Articles

- Abbott R, 'Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules' (2023) 4(3) *Amicus Curiae* 695
- Al Mahdouri A, 'Public Policy and the Enforcement of AI-Generated Arbitral Awards' (2025) 42(6) *Journal of International Arbitration* 759
- Almada M and Radu A, 'The Brussels Side-Effect: How the AI Act Can Reduce the Global Reach of EU Policy' (2024) 25 *German Law Journal* 646
- Böckstiegel K-H, 'The Role of Party Autonomy in International Arbitration' (1997) 52(3) *Dispute Resolution Journal* 1
- Bomhard D and Merkle M, 'Europäische KI-Verordnung – Der aktuelle Kommissionsentwurf und praktische Auswirkungen' (2021) 1(6) *RDİ* 276
- Bomhard D and Sigmüller J, 'AI Act – das Trilogergebnis' [2024] *RDİ* 45, no 5
- Born G and Beale K, 'Party Autonomy and Default Rules: Reframing the Debate Over Summary Disposition in International Arbitration' (2010) 21(2) *ICC International Court of Arbitration Bulletin* 19
- Carlquist H, 'Party Autonomy and the Choice of Substantive Law in International Commercial Arbitration' (Master Thesis, Göteborg University 2006)
- Dickson MO, 'Party Autonomy and Justice in International Commercial Arbitration' (2018) 60(1) *International Journal of Law and Management* 114
- Ferre F, 'EU Internal Market Law and the Law of International Commercial Arbitration: Have the EU Chickens Come Home to Roost?' (2020) 22 *Cambridge Yearbook of European Legal Studies* 133
- Florescu CI, 'The Interaction Between AI (Artificial Intelligence) and IA (International Arbitration): Technology as the New Partner of Arbitration' (2024) 18(1) *Revista Română de Arbitraj* 42

- Hickman T and Harper T, 'The EU AI Act's Extra-Territorial Scope' (2024) 17(3) *Data Protection Ireland* 1
- Hill J, 'Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements' (2014) 63(3) *International and Comparative Law Quarterly* 519
- Jensen J Ole, 'The Emerging Body of Regulation on the Use of Artificial Intelligence in International Arbitration: An Overview' (2025) 2025(2) *b-Arbitra* 324
- Lüttenberg C, Beimel IH and Heetkamp SJ, 'Neue Pflichten für Schiedsgerichte aus der KI-Verordnung?' (2024) 22(5) *SchiedsVZ* 225
- Malekela MS, 'AI and Confidentiality Protection in International Commercial Arbitration: Analysis of the Existing Legal Framework' (2025) 5 *Discover Artificial Intelligence* 83
- Mehboob M and others, 'AI, Transparency, and Fairness in International Arbitration: Rethinking Disclosure and Due Process in the Age of Algorithmic Adjudication' (2025) 4(2) *Academia International Journal for Social Sciences* 1287
- Migliorini S and Moreira JI, 'Clashing Frameworks: The EU AI Act and Arbitration' (2026) 17 *European Journal of Risk Regulation* 140
- Ohnoutková B, 'Limitation on the Use of Artificial Intelligence (AI) in Arbitration under the New York Convention' (2025) 4 *TLQ* 557
- Penades Fons M, 'The Effectiveness of EU Law and Private Arbitration' (2020) 57(4) *Common Market Law Review* 1069
- Perera D and Aaron TM, 'AI Guidelines in International Arbitration: Revolutionary or Cautionary? A Comparative Analysis' (2025) 42(5) *Journal of International Arbitration* 585
- Scherer M, Jensen JO and Childree R, 'Regulating the Use of Artificial Intelligence in International Arbitration: The EU AI Act and Beyond' (2024) *Cahiers de l'Arbitrage* 653
- Stefer D and Fricke V, 'From Algorithms to Awards: Exploring the Technological and Legal Boundaries of AI's Contributions to the Work of Arbitrators' (2025) 41(1) *Arbitration International* 49
- Thorn K and Nickel U, 'The Effect of Overriding Mandatory Rules on the Arbitration Agreement' (2018) 7(1) *European International Arbitration Review* 43
- van den Berg AJ, 'New York Convention of 1958: Refusals of Enforcement' (2007) 18(2) *ICC International Court of Arbitration Bulletin* 1
- Veale M and Zuiderveen Borgesius F, 'Demystifying the Draft EU Artificial Intelligence Act' (2021) 22 *Computer Law Review International* 97
- Whitfield HF, 'Judicial Fairness and Party Autonomy in International Commercial Arbitration' (2024) 7(4) *International Journal of Law, Management and Humanities* 167
- Wörsdörfer M, 'Mitigating the Adverse Effects of AI with the European Union's Artificial Intelligence Act: Hype or Hope?' (2024) 43(3) *Global Business and Organizational Excellence* 106

4. Working Papers and Theses

Carlquist H, *Party Autonomy and the Choice of Substantive Law in International Commercial Arbitration* (Master Thesis, Göteborg University 2006)

Lentner GM, 'Generative AI and Copyright in the EU and the US: A View from International Investment Law' (Stanford–Vienna Transatlantic Technology Law Forum Working Paper No 140, 2025) <ttlf.stanford.edu> accessed April 2026

5. Institutional Reports and Surveys

KPMG, *Decoding the EU AI Act: Understanding the AI Act's Impact and How You Can Respond* (KPMG International, February 2024) <assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2024/02/decoding-the-eu-ai-act.pdf> accessed April 2026

UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (United Nations 2016)

White & Case and Queen Mary University of London, *International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration* (QMUL 2025)

6. Official EU Documents, Commission Guidelines and Legislative Proposals

Council of the EU, 'Timeline: Artificial Intelligence Act' (Council of the European Union) <consilium.europa.eu/en/policies/artificial-intelligence-act/timeline-artificial-intelligence> accessed April 2026

European Commission, Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts COM(2021) 206 final (21 April 2021)

European Commission, Proposal for a Regulation amending Regulations (EU) 2022/2065, (EU) 2024/1689 and (EU) 2016/679 (Digital Omnibus) COM(2025) 853 final (19 November 2025)

European Commission, 'Draft Commission Guidelines on the Classification of High-Risk AI Systems under Article 6 of Regulation (EU) 2024/1689 (AI Act) for Stakeholder Consultation' (May 2026)

European Commission, 'Guidelines on the Definition of an AI System' (6 February 2025) <digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-ai-system-definition-facilitate-first-ai-acts-rules-application> accessed April 2026

European Commission, 'Guidelines on Prohibited Artificial Intelligence Practices as Defined by the AI Act' C(2025) 5052 final (29 July 2025)

European Commission, 'Guidelines on the Scope of Obligations for Providers of General-Purpose AI Models under the AI Act' (18 July 2025) <digital-

strategy.ec.europa.eu/en/library/guidelines-scope-obligations-providers-general-purpose-ai-models-under-ai-act> accessed April 2026

European Commission, ‘Timeline for the Implementation of the EU AI Act’ (AI Act Service Desk) <ai-act-service-desk.ec.europa.eu/en/ai-act/timeline/timeline-implementation-eu-ai-act> accessed April 2026

European Parliament, ‘Artificial Intelligence Act’ (Legislative Train Schedule) <europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-regulation-on-artificial-intelligence> accessed April 2026

European Parliament (Directorate General for Internal Policies – Policy Department C: Citizens’ Rights and Constitutional Affairs), *Legal Instruments and Practice of Arbitration in the EU* (2014) <[europarl.europa.eu/RegData/etudes/STUD/2015/509988/IPOL_STU\(2015\)509988_EN.pdf](https://europarl.europa.eu/RegData/etudes/STUD/2015/509988/IPOL_STU(2015)509988_EN.pdf)> accessed May 2025

United Nations Commission on International Trade Law, ‘Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)’ <uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed June 2026

Wendehorst C and Nessler B, ‘Guidelines on the Application of the Definition of an AI System in the AI Act: ELI Proposal for a Three-Factor Approach’ (European Law Institute, 2024) <europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Response_on_the_definition_of_an_AI_System.pdf> accessed April 2026

7. Soft Law and Arbitral Institution Instruments

Arbitration Institute of the Stockholm Chamber of Commerce, *Guide to the Use of Artificial Intelligence in Cases Administered under the SCC Rules* (October 2024)

International Bar Association, *IBA Rules on the Taking of Evidence in International Arbitration* (adopted by a resolution of the IBA Council, 17 December 2020)

Silicon Valley Arbitration and Mediation Center, ‘Guidelines on the Use of Artificial Intelligence in Arbitration’ (First Edition, April 2024) <svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf> accessed April 2026

Vienna International Arbitral Centre, ‘Note on the Use of Artificial Intelligence in Arbitration Proceedings’ (VIAC, 10 April 2025) <viac.eu/en/viac-publishes-a-note-on-the-use-of-ai-in-arbitration-proceedings> accessed April 2026

8. Online Sources, Blog Posts and Other Electronic Sources

Aceris Law LLC, ‘When Arbitrators Use AI: LaPaglia v Valve and the Boundaries of Adjudication’ (Aceris Law, 19 April 2025) <acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication> accessed June 2026

Andrews J and others, ‘Navigating AI in International Arbitration: Key Insights and Guidelines’ (Faegre Drinker May 2025)

- <faegredrinker.com/en/insights/publications/2025/5/navigating-ai-in-international-arbitration-key-insights-and-guidelines> accessed April 2026
- Bird & Bird, *European Union Artificial Intelligence Act: A Guide* (Bird & Bird, 26 February 2026) <twobirds.com/-/media/new-website-content/pdfs/capabilities/artificial-intelligence/european-union-artificial-intelligence-act-guide.pdf> accessed April 2026
- Braun M and others, 'What Are High-Risk AI Systems Within the Meaning of the EU's AI Act, and What Requirements Apply to Them?' (WilmerHale Privacy and Cybersecurity Law Blog, 17 July 2024) <wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20240717-what-are-high-risk-ai-systems-within-the-meaning-of-the-eus-ai-act-and-what-requirements-apply-to-them> accessed April 2026
- Bregman DM and others, 'The New Rules of AI: A Global Legal Overview' (Morgan Lewis, 22 December 2025) <morganlewis.com/pubs/2025/12/the-new-rules-of-ai-a-global-legal-overview> accessed April 2026
- Efstathiou SG and Apostol M, 'Arbitration Tech Toolbox: ChatGPT, Arbitral Assistant or Fourth Arbitrator?' (Kluwer Arbitration Blog, 22 July 2023) <arbitrationblog.kluwerarbitration.com/2023/07/22/arbitration-tech-toolbox-chatgpt-arbitral-assistant-or-fourth-arbitrator> accessed June 2026
- Eftekhar R, 'The Legal Framework Applicable to Using AI by an Arbitral Tribunal' (Daily Jus, 25 March 2025) <dailyjus.com/legal-tech/2025/03/the-legal-framework-applicable-to-using-ai-by-an-arbitral-tribunal> accessed April 2026
- Hayat MF and Azhar FH, 'Can AI-Assisted Arbitral Awards Survive Enforcement Under the New York Convention?' (Kluwer Arbitration Blog, 10 April 2026) <legalblogs.wolterskluwer.com/arbitration-blog/can-ai-assisted-arbitral-awards-survive-enforcement-under-the-new-york-convention> accessed June 2026
- Liu X, 'ARIHQ v Santé Québec: When Must an AI-Drafted Award Be Set Aside?' (Kluwer Arbitration Blog, 19 June 2026) <legalblogs.wolterskluwer.com/arbitration-blog/arihq-v-sante-quebec-when-must-an-ai-drafted-award-be-set-aside> accessed June 2026
- Lüttenberg C, Beimel I and Heetkamp SJ, 'How Does the EU AI Act Apply to Arbitration?' (Daily Jus, 14 January 2025) <dailyjus.com/legal-tech/2025/01/how-does-the-eu-ai-act-apply-to-arbitration> accessed April 2026
- Migliorini S and Moreira JJ, 'The EU AI Act and Arbitration' (EAPIL Blog, 9 September 2025) <eapil.org/2025/09/09/migliorini-and-ilhao-moreira-on-the-eu-ai-act-and-arbitration> accessed April 2026
- Moore L, Hayes R and Scannell B, 'A Practical Guide to the Extraterritorial Reach of the AI Act' (William Fry, 23 July 2024) <williamfry.com/knowledge/a-practical-guide-to-the-extraterritorial-reach-of-the-ai-act> accessed April 2026
- Oblin K and Gorjaev N, 'Ushering in a New Era: The Austrian Outlook of Deployment and Regulation of AI in International Arbitration' (Oblin Attorneys, 19 March 2025) <oblin.at/knowledge/publications/ushering-in-a-new-era-the-austrian-outlook-of-deployment-and-regulation-of-ai-in-international-arbitration> accessed April 2026
- Pabakhsh E, 'AI in Arbitration: Will the EU AI Act Stand in the Way of Enforcement?' (Conflict of Laws .net, 24 August 2025) <conflictoflaws.net/2025/ai-in-arbitration-will-the-eu-ai-act-stand-in-the-way-of-enforcement> accessed April 2026

- Pashaeva N, 'AI and Exceeding Power: Lessons from LaPaglia v Valve Corporation' (Daily Jus, 24 October 2025) <dailyjus.com/legal-tech/2025/10/ai-and-exceeding-power-lessons-from-lapaglia-v-valve-corporation> accessed June 2026
- Pötzlberger F and Henrich S, 'AI and Arbitration: The German Perspective' (Clyde & Co, 15 February 2024) <clydeco.com/en/insights/2024/02/ai-in-arbitration-germany> accessed April 2026
- Quinke D, Kreifels S and Daber A, 'When the Arbitrator Uses ChatGPT & Co.: Setting Aside an Award Due to AI Hallucinations' (Gleiss Lutz, 25 June 2026) <gleisslutz.com/en/know-how/when-arbitrator-uses-chatgpt-co-setting-aside-award-due-ai-hallucinations> accessed June 2026
- Rahman S, 'AI and Arbitration: How to Agree Sensible Uses of AI Tools Within the Arbitration' (Rahman Ravelli, 27 August 2025) <rahmanravelli.co.uk/expertise/internationalarbitration/articles/ai-and-arbitration-how-to-agree-sensible-uses-of-ai-tools-within-the-arbitration> accessed May 2026
- Renner C, Shankar V and Bregman DM, 'The EU AI Act Is Here – With Extraterritorial Reach' (Morgan Lewis LawFlash, 26 July 2024) <morganlewis.com/pubs/2024/07/the-eu-artificial-intelligence-act-is-here-with-extraterritorial-reach> accessed April 2026
- Scherer M, 'We Need to Talk About ... the EU AI Act!' (Kluwer Arbitration Blog, 27 May 2024) <arbitrationblog.kluwerarbitration.com/2024/05/27/we-need-to-talk-about-the-eu-ai-act> accessed April 2026
- Singla T, 'Achmea: The Fate and Future of Intra-EU Investment Treaty Awards under the New York Convention' (EJIL Talk, 7 May 2018) <ejiltalk.org/achmea-the-fate-and-future-of-intra-eu-investment-treaty-awards-under-the-new-york-convention> accessed June 2026
- Werkmeister C, Ehlen T and Roos P, 'EU AI Act Unpacked #3: Personal and Territorial Scope' (Freshfields Technology Quotient, 13 May 2024) <freshfields.com/en/our-thinking/blogs/technology-quotient/eu-ai-act-unpacked-3-personal-and-territorial-scope> accessed April 2026
- Wouter Landman F, '2025 PAW: Arbitrage International Meets Artificial Intelligence' (Kluwer Arbitration Blog, 2025) <legalblogs.wolterskluwer.com/arbitration-blog/2025-paw-arbitrage-international-meets-artificial-intelligence> accessed April 2026