



Artificial intelligence in commercial arbitration: The European Union experience and lessons for Vietnam

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Abstract

The development of artificial intelligence (AI) is increasingly transforming commercial arbitration while creating new regulatory challenges. This article examines the regulatory of European Union (EU) approach to AI in commercial arbitration, with a view to drawing lessons for Vietnam. The article focuses on three key aspects of the EU framework: a risk-based approach to AI regulation, obligations imposed on providers of high-risk AI systems, and specific requirements for providers of general-purpose AI (GPAI) models. The article argues that these mechanisms provide a structured basis for managing the risks associated with AI-assisted arbitral decision-making while maintaining human oversight and accountability. Based on the EU experience, the article proposes relevant considerations for Vietnam in developing a regulatory framework for the responsible use of AI in commercial arbitration.

Keywords: Artificial intelligence, commercial arbitration, EU Artificial Intelligence Act, Vietnam

Introduction

Artificial intelligence (AI) has been increasingly being integrated into the resolution of commercial disputes, offering potential benefits in areas such as document review, legal research, and the management of large volumes of information. However, the use of AI in arbitration also raises significant legal concerns, particularly regarding accuracy, transparency, data governance, human oversight, and the independence of arbitrators. These concerns require an appropriate regulatory framework to ensure that AI remains a tool supporting, rather than replacing human decision-making. In this respect, the European Union provides an important reference point through Regulation (EU) 2024/1689 (the AI Act). For Vietnam, where AI regulation is developing alongside increasing interest in technology-assisted dispute resolution, the EU experience offers valuable guidance for balancing technological innovation with the fundamental principles of commercial arbitration. This article therefore examines the European Union's regulatory approach to AI in commercial arbitration and draws lessons for Vietnam.

European Union's Law in applying artificial intelligence in commercial arbitration

Overview of European Union's Law in applying artificial intelligence in commercial arbitration

In general, commercial arbitration occupies the position of an independent legal order, distinct from the EU law framework. Instead of simply coexisting neutrally, the two frameworks emerge a plethora of inevitable interactions and conflicts. The EU AI Act has changed the relationship between EU legislation and commercial arbitration. Accordingly, the EU AI Act distinguishes between two categories called "AI systems" and "AI models". Within the category of AI systems, the Act further defines a subcategory named "general-purpose AI (GPAI) systems", known as "AI systems based on a general-purpose AI model serving a variety of purposes, both for direct use as well as

for integration into other AI systems". For example, Chat GPT belongs to this category. Meanwhile, "AI models" is a different aspect compared to AI systems because they cannot be utilised directly by users, instead, they need to be integrated into commercial products. The GPT-4 large language model (LLM), for example, serves as the foundation for Chat GPT. The EU AI Act regulates several categories of actors along the AI value chain, collectively termed "operators," each subject to distinct obligations. In particular, deployers are the users of an AI system acting under their own authority in a professional capacity. This is the category that arbitrators fall into when utilizing AI tools in arbitral proceedings. In terms of geographical scope, the EU AI Act geographical reach extends not only entities and situations connected to EU territory but also to certain entities outside the EU whose AI systems or GPAI models on the EU market, regardless of their location. Furthermore, providers and deployers established in third countries where "the output generated by their AI system is utilised within the Union" have to comply with this law. The EU AI Act adopts a risk-based regulatory framework that classifies AI systems into three distinct categories: "prohibited", "high-risk" and those falling outside these two categories. Annex III states that the high-risk AI systems are identified relying on the concept of intended purpose. This may lead to providers having influence on whether their AI systems are classified as high-risk.

The European Union's law on classifying AI-assisted adjudicative decision-making as high-risk activity

The EU AI Act adopts a risk-based approach to artificial intelligence regulation. Under Article 6(2), AI systems listed in Annex III are classified as high-risk. For dispute resolution, Annex III, point 8(a) is particularly relevant, covering AI systems used by or on behalf of judicial authorities to assist in researching and interpreting facts and law, applying law to specific facts, or used in a similar way in alternative dispute resolution. Recital 61 further explains

that such classification responds to risks of bias, errors and opacity, while affirming that AI may support but must not replace human decision-making.

The framework is relevant to commercial arbitration, although the EU AI Act does not expressly refer to arbitral tribunals. Its application should therefore be assessed according to the function performed by the AI system. AI used for substantive legal research, interpretation or application in a specific dispute may fall within point 8(a), whereas purely ancillary administrative functions, such as anonymisation, pseudonymisation and internal administrative tasks, are expressly excluded from the high-risk classification.

Importantly, not every AI system falling within Annex III is automatically high-risk. Under Article 6(3), an Annex III system may be excluded where it does not pose a significant risk to health, safety or fundamental rights, including where it does not materially influence decision-making. This may cover narrow procedural, preparatory or supportive functions. However, such an exception does not apply where the system performs profiling of natural persons.

Where an AI system is classified as high-risk, the EU AI Act imposes enhanced regulatory requirements, including record-keeping, transparency, human oversight, accuracy, robustness and cybersecurity under Articles 12-15. Deployers must also ensure appropriate human oversight, monitor the system and retain automatically generated logs for at least six months, unless otherwise provided by law, pursuant to Article 26. This framework seeks to ensure that AI can assist adjudicative processes without displacing human responsibility for final decision-making.

The significance of providers' obligations for commercial arbitration

Article 16(a) The EU AI Act imposes an obligation on providers to ensure that high-risk AI systems comply with the requirements set out in Section 2 of Chapter III, thereby establishing a legal foundation for the reliability of AI tools used in commercial arbitration. The data governance requirements under Article 10 help prevent incorrect or inappropriate data, thereby reducing the risk of inaccurate outputs when AI is used to analyse documents, evidence, and legal information. The transparency requirement under Article 13 enables arbitrators to understand the capabilities, limitations, and operation of the system, providing a basis for carefully assessing AI-generated outputs. In particular, Article 14 on human oversight helps ensure that AI serves only a supporting function, while the assessment of evidence, application of the law, and final decision-making remain with the arbitrators. Therefore, the obligation under Article 16(a) contributes to enhancing the safety and reliability of AI in activities supporting dispute resolution.

In addition to the obligation to ensure compliance, Article 16(f) requires providers to ensure that high-risk AI systems undergo a conformity assessment before being placed on the market or put into service. This mechanism serves as an initial verification step, helping to determine whether an AI tool meets the necessary legal and technical standards before being used in arbitration proceedings. Once the system is put into service, Article 16(j) further requires providers to take corrective actions and provide information in accordance with Article 20 when problems are identified. This obligation helps prevent a defective system from continuing to be used in the dispute resolution process while

also establishing a mechanism for addressing risks that arise during operation. In conclusion, these obligations form a chain of control consisting of ensuring compliance, conducting a conformity assessment, and taking corrective action when risks are identified, thereby supporting the safety, transparency, and reliability of AI applications in commercial arbitration.

Usage of general-purpose AI systems by arbitrators

In principle, deploying general-purpose AI (GPAI) systems, such as ChatGPT, Gemini, or Claude, does not automatically qualify as a high-risk activity under the EU AI Act. However, utilizing these models for high-risk applications within commercial arbitration introduces substantial risks by altering their intended purpose. In these circumstances, arbitrators may not only be regarded as deployers but also be classified as providers, thereby becoming subject to additional obligations under the EU AI Act.

The problem is that, according to annex III, point 8(a), it remains ambiguous which activities are high-risk: “researching and interpreting facts and the law” and “applying the law to a concrete set of facts”. In this case, arbitrators just use AI solely for proofreading or enhancing language, which cannot be identified as high-risk activities because of the lack of an intention to engage with facts or apply the law. Additionally, this is considered as “the result of a previously completed human activity”, hence, would not qualify as “high-risk”. In contrast, the implication of a GPAI system to assist with decision-making tasks during the proceedings would fall within the scope of Annex III.

There is, however, a grey area between these two extremes. The EU AI Act's structure distinguishes uses that materially affect decision-making from narrower preparatory or administrative functions. This distinction is relevant in arbitration, where procedural risks increase when AI affects merits reasoning rather than serving as a mere tool of grammar correction, formatting or logistics. Some ancillary tasks such as legal research, drafting procedural documents and reviewing parties' claim and evidence is accomplished with the operation of the GPAI tools. In order to identify how highly risky these tasks are, the tribunal depends on how deeply these outputs from GenAI influence the outcome of decision-making. In practice, tribunals should identify the tasks performed by AI, assess the limitations of the tools used, independently verify their outputs, and determine whether disclosure is warranted before relying on those outputs in their reasoning. Consequently, the EU AI Act's broad language might be interpreted as significantly curtailing the use of the LLMs and other GPAI systems for such uses, given the opportunities of implicating these tools to contribute to the outcome of the arbitral process.

Lessons for Vietnam

Lessons on risk classification of AI in commercial arbitration

Vietnam has established a risk-based framework for AI regulation under the Law on Artificial Intelligence No.134/2025/QH15, which classifies AI systems into high-, medium- and low-risk categories according to their potential impact on human rights, safety, security and public interests. This framework has been further developed by Decision No.33/2026/QĐ-TTg, which provides a list of high-risk AI systems across several sectors, including judicial

proceedings. However, the current framework does not specifically identify AI systems used in commercial arbitration or distinguish the risks arising from different levels of AI involvement in arbitral decision-making.

This gap is particularly relevant because AI may perform very different functions in arbitration. It may merely provide ancillary support, such as translation, transcription, document organisation or legal research, or it may perform functions that substantially influence the tribunal's assessment of evidence, interpretation of law and determination of the dispute. The latter use presents greater risks because errors, bias or opacity in AI-assisted reasoning may directly affect the parties' rights and the content of the arbitral award. Therefore, Vietnam could further develop its risk-classification framework by adopting a functional and impact-based approach to AI used in arbitration.

The EU AI Act provides a useful reference. Annex III, point 8(a), specifically treats certain AI systems used by judicial authorities, or in a similar manner in alternative dispute resolution, to research, interpret or apply law to specific facts as high-risk. Vietnam could consider a comparable approach by expressly identifying AI systems that materially assist in substantive arbitral decision-making as high-risk, while applying proportionate requirements to AI used only for ancillary or administrative functions. Such clarification would enable the Vietnamese framework to respond more precisely to the specific risks of AI-assisted commercial arbitration without imposing the same regulatory burden on all forms of AI use.

Lessons on implications for AI provider responsibilities in Vietnam commercial arbitration

Article 16 of the EU AI Act offers an important lesson for Vietnam: providers' responsibilities for AI systems should be linked to each stage of their use in commercial arbitration. Article 16(a) requires providers to ensure that their systems comply with requirements about data, transparency, human oversight, accuracy, and security; Article 16(f) requires a conformity assessment to be conducted before the system is placed on the market or put into service; and Article 16(j) requires corrective action where risks are identified. This approach can be further reflected in Vietnam's 2025 Law on Artificial Intelligence. Article 13 requires high-risk AI systems to undergo a conformity assessment before deployment, while Article 14 requires providers to manage risks, govern data, retain technical documentation and logs, ensure human oversight and transparency, and coordinate in addressing incidents. In commercial arbitration, these obligations should be further operated as requirements applicable to AI tools used for document analysis, evidentiary assessment, and legal research, while ensuring that arbitrators remain the independent and impartial decision-makers in accordance with Articles 4 and 21 of Vietnam's Law on Commercial Arbitration 2010. Vietnam could thus establish a regulatory framework based on pre-deployment assessment, continuous monitoring during use, and corrective action when risks arise, rather than relying solely on measures taken after an AI-related problem arises.

Lessons on proportionate safeguards for arbitrators' use of General-Purpose AI

Based on the EU's implementation experience, Vietnam should ensure that GPAI is not repurposed to affect the tribunal's reasoning on the merits without appropriate

safeguards. The scope of an arbitrator's duties should be proportional to the degree of influence that GPAI outputs exert on the arbitral award. Proofreading and formatting generally require fewer safeguards due to their limited impact on the tribunal's substantive reasoning. Conversely, the application of AI for legal research, drafting, and evidence review warrants greater scrutiny. In these cases, arbitrators would identify how AI has been used, understand its limitations, and independently verify its outputs, as well as consider disclosure to the parties. These expectations are broadly consistent with the Law on Commercial Arbitration 2010, under which an award must state its grounds (Article 61(1)(đ)), annulment is limited to specified grounds (Article 68(2)), and proceedings are private and the substance of disputes is confidential (Article 4(4)). Therefore, arbitrators must be able to stand behind any AI-assisted reasoning, and because AI use is not itself a ground for annulment, safeguards must operate during the proceedings, particularly where submitting case materials to external AI platforms may risk confidentiality. In the absence of specific provisions on AI, arbitration centres can address these risks through soft law, thereby preserving human accountability and procedural fairness without statutory reform.

Conclusion

Law of EU provides valuable lessons for regulating the use of AI in commercial arbitration through risk-based classification, provider obligations, and proportionate safeguards for general-purpose AI. For Vietnam, these experiences highlight the need to clarify the classification of AI systems used in arbitration, strengthen provider responsibilities, and establish practical guidelines for arbitrators, particularly regarding output verification, confidentiality, and human oversight. These measures would promote the responsible use of AI while preserving arbitrators' independence and procedural fairness.

References

1. European Parliament and Council of the European Union. Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). Official Journal of the European Union, L 2024/1689, 2024.
2. National Assembly of the Socialist Republic of Vietnam. Law on Artificial Intelligence No. 134/2025/QH15, 10 December 2025.
3. Prime Minister of the Socialist Republic of Vietnam. Decision No. 33/2026/QĐ-TTg on the List of High-Risk Artificial Intelligence Systems, 30 June 2026.
4. National Assembly of the Socialist Republic of Vietnam. Law on Commercial Arbitration No. 54/2010/QH12, 17 June 2010.
5. Scherer M, Jensen O, Childree R. Regulating the Use of Artificial Intelligence in International Arbitration: The EU AI Act and Beyond. *Les Cahiers de l'Arbitrage (The Paris Journal of International Arbitration)*, 2024;3(3):635-653.
6. Migliorini S, Moreira JI. Clashing Frameworks: the EU AI Act and Arbitration. *European Journal of Risk Regulation*, 2026;17(1):140-160.
7. Alhasan TK. Governing the Black Box in Adjudication: Policy Frameworks for Algorithmic Transparency in International Arbitration. *Social Sciences & Humanities Open*, 2026, 14.