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EMULATING BRUSSELS BUT RECALIBRATING IN
SEOUL: CHALLENGES IN SOUTH KOREA'S AI
FRAMEWORK ACT

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This paper examines the pathway of South Korea's AI Framework Act ("AIFA"), which became the world's first fully implemented horizontal AI regulatory regime on January 22, 2026. While the United States and other leading innovators have largely pursued sectoral or context-specific AI regulatory frameworks, the AIFA initially moved toward an EU-style horizontal framework. This was driven by the institutional incentives from the leading regulatory agency and the political clout of citizen activist organizations.

However, the rapid acceleration of AI adoption, a global shift toward "light-touch" governance, and Seoul's "AI G3" agenda called for a strategic recalibration to mitigate regulatory overlap and unnecessary compliance burdens. Instead of amending the primary statute, the regulator used administrative rulemaking to alter the underlying logic of the regime. This pivot shifted the AIFA away from a safety-centric structure designed to protect "affected persons" from

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developers and deployers into a quasi-utility regime to shield “users” (including downstream deployers) from providers and distributors.

While this change narrowed the scope of application of the AIFA, it misaligned accountability across the AI value chain and pushed developers to protect sophisticated deployers who often wield substantial operational control. In response, the Presidential Council on National AI Strategy (“AISC”) has mandated legislative amendments in the National AI Action Plan to rectify these structural flaws.

By examining unresolved tensions in the AIFA and the rationale behind the AISC mandate, this paper suggests an alternative framework that balances context-specific and horizontal approaches. Furthermore, it offers three lessons for jurisdictions that are modeling legislation after the EU’s horizontal approach with less stringency: (i) even within streamlined rules, the differences between actors in the AI value chain must remain legally distinct; (ii) scalability is best achieved through taking up international industry standards rather than ambiguating legal duties or covered entities; (iii) the regulatory structure must decouple the rules for the underlying AI systems and regulations for AI-enabled products and services.

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I. INTRODUCTION

Amid a global divide in AI regulation, jurisdictions leading AI development such as the U.S. at the federal level,¹ the U.K.,² China³, Israel⁴, India⁵, Japan⁶,

¹ The U.S. federal government has refrained from adopting a horizontal framework, except that the Federal Trade Commission had long attempted to have the Algorithmic Accountability Act enacted. The Biden Administration's Exec. Order No. 14110 (88 Fed. Reg. 75191 (2023), revoked on Jan. 20, 2025), the 2nd Trump Administration's America's AI Action Plan (EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES, WINNING THE RACE: AMERICA'S AI ACTION PLAN, July 2025, <https://www.ai.gov/action-plan> [<https://perma.cc/A5XB-ERQ7>]), along with the National Institute of Standards and Technology (NIST)'s AI Risk Management Framework (NIST AI 100-1, Jan. 2023), have laid a foundation for nationwide governance. President Trump's National AI Legislative Framework, released March 20, 2026, calls on Congress to legislate across six priority pillars: protecting children, safeguarding communities, respecting intellectual property, preventing censorship, enabling innovation, and educating/training Americans (WHITE HOUSE, LEGISLATIVE RECOMMENDATIONS – A NATIONAL POLICY FRAMEWORK FOR ARTIFICIAL INTELLIGENCE (2026), <https://www.whitehouse.gov/releases/2026/03/president-donald-j-trump-unveils-national-ai-legislative-framework/>. [<https://perma.cc/2QYZ-6LDN>]).

² DEPARTMENT FOR SCIENCE, INNOVATION AND TECHNOLOGY & OFFICE FOR A.I. (OAI), A PRO-INNOVATION APPROACH TO AI REGULATION 25 (2023), ¶ 45, <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper> [<https://perma.cc/GXN6-KCXX>] (stating “[o]ur framework is context-specific. We will not assign rules or risk levels to entire sectors or technologies. Instead, we will regulate based on the outcomes AI is likely to generate in particular applications.”).

³ Chinese authorities have issued tailored regulations that target specific applications, most notably generative AI and deepfake. *See, e.g.*, (i) Hulianwang Xinxu Fuwu Suanfa Tuijian Guanli Guiding (互联网信息服务算法推荐管理规定) [Internet Information Service Algorithmic Recommendation Management Provisions] (promulgated by the Cyberspace Admin. China et al., Dec. 31, 2021, effective Mar. 1, 2022) (China); (ii) Hulianwang Xinxu Fuwu Shendu Hecheng Guanli Guiding (互联网信息服务深度合成管理规定) [Internet Information Service Deep Synthesis Management Provisions] (promulgated by the Cyberspace Admin. China et al., Nov. 25, 2022, effective Jan. 10, 2023) (China); (iii) Shengchengshi Rengongzhineng Fuwu Guanli Zanzingbanfa (生成式人工智能服务管理暂行办法) [Interim Measures for Management of Generative AI Service] (promulgated by the Cyberspace Admin. China et al., Jul. 10, 2023, effective Aug. 15, 2023) (China); and (iv) Rengongzhineng Shengcheng Hecheng Neirong Biaoshi Banfa (人工智能生成合成内容标识办法) [Measures for Labeling of AI-Generated Synthetic Content] (promulgated by the Cyberspace Admin. China et al., Mar. 7, 2025, effective Sep. 1, 2025) (China). While a group of scholars proposed a horizontal AI law framework in 2024 (LINGHAN ZHANG ET AL., ARTIFICIAL INTELLIGENCE LAW OF THE PEOPLE'S REPUBLIC OF CHINA (DRAFT SCHOLAR PROPOSAL), Mar. 16, 2024 (China)), its adoption remains improbable.

⁴ The Principles of Regulatory Policy and Ethics in the Field of Artificial Intelligence, Ministry Innovation, Sci. & Tech. (MSIT) (Oct. 30, 2022) (Isr.), <https://www.gov.il/BlobFolder/news/most-news20223110/he/Regulatory%20and%20ethics%20policy%20document%20in%20the%20field%20of%20artificial%20intelligence%20in%20IsraelAI.pdf> [<https://perma.cc/9RNQ-D9PZ>] (stating Israel's intent to exclude AI-specific lateral regulatory frameworks and instead utilize soft and advanced regulatory tools in a modular format); Isarel's Policy on Artificial Intelligence, MSIT (Dec. 17, 2023) (Isr.), https://www.gov.il/en/pages/ai_2023 [<https://perma.cc/42KY-3BQ8>] (proposing the adoption of sectoral regulation).

⁵ Ministry of Electronics and Information Technology, India AI Governance Guidelines – Enabling Safe and Trusted AI Innovation 9-10 (issued on Nov. 5, 2025) (stating “India's approach in general is to govern the applications of AI by empowering the relevant sectoral regulators, and not to regulate the underlying technology itself” and “Existing laws (for e.g. on information

Switzerland⁷, and Singapore⁸ have pursued context-specific, sectoral, or modular regulatory frameworks, which adapt existing sectoral regulations to specific AI use cases.⁹ In contrast, the European Union (“EU”)¹⁰ (including Italy¹¹ and Spain¹²), South Korea (“Korea”), several Latin American countries (including Peru¹³,

technology, data protection, consumer protection and statutory civil and criminal codes, etc.), can be used to govern AI applications. Therefore, at this stage, a separate law to regulate AI is not needed given the current assessment of risks. However, timely and consistent enforcement of applicable laws is required to build trust and mitigate harm.”).

⁶ See generally, Jin'kōchinō kan'ren'gijutsuno ken'kyūkaihatsu oyobi katsuyōno suishin'ni kan'suru hōritsu [Act on Promotion of Research and Development, and Utilization of Artificial Intelligence-related Technology], Law No. 53 of 2025 (Japan) (taking pro-innovation, “soft law” approach, focusing on fostering AI development through government guidance, multi-stakeholder cooperation, and international norms, rather than regulation and penalties).

⁷ The Swiss Federal Council emphasized that “[w]here legislative changes are needed, they should be as sector specific as possible. Only key areas relevant to fundamental rights, such as data protection, will be subject to general, cross-sectoral regulation.” It further announced plans to draft an AI bill, in collaboration with federal agencies, by the end of 2026, with the aim of implementing the Council of Europe’s AI Convention. Press Release, Swiss Government, AI Regulation: Federal Council to Ratify Council of European Convention (Feb. 12, 2025), <https://www.news.admin.ch/en/nsb?id=104110> [<https://perma.cc/FVF4-TFL8>].

⁸ GOVERNMENT OF THE REPUBLIC OF SINGAPORE, SINGAPORE NATIONAL AI STRATEGY (AISC) 2.0 – AI FOR THE PUBLIC GOOD FOR SINGAPORE AND THE WORLD 1, 57 (Dec. 4, 2023), <https://file.go.gov.sg/nais2023.pdf> [<https://perma.cc/HQ4C-P4K8>] (stating “Design interventions that are risk-based, tiered, and adapted for specific vertical sectors and horizontal applications. This recognizes that every use case carries a different set of considerations and risks and would therefore require different risk thresholds and context-specific risk management approaches. For instance, using AI to improve the user experience for video games would differ considerably from a use case where AI assists hiring managers in selecting potential candidates.”).

⁹ Sangchul Park, *Bridging the Global Divide in AI Regulation: A Proposal for a Contextual, Coherent, and Commensurable Framework*, 33 WASH. INT’L L.J. 216, 223 (2024).

¹⁰ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), 2024 O.J. (L 1689) 1.

¹¹ Legge 23 settembre 2025, n.132 (It.) (effective Oct. 10, 2025).

¹² On March 11, 2025, the Spanish Government approved the Bill for the Good Use and Governance of Artificial Intelligence (Ministerio para la Transformación Digital y de la Función Pública, Anteproyecto de Ley para el Buen Uso y la Gobernanza de la Inteligencia Artificial (Spain) (2025)).

¹³ Ley No. 31814, Ley que promueve el uso de la inteligencia artificial en favor del desarrollo económico y social del país [Law that promotes the use of artificial intelligence for the economic and social development of the country] (enacted July 2023) (Peru); Decreto Supremo No. 115-2025-PCM, Decreto Supremo que aprueba el Reglamento de la Ley No. 31814 [Supreme Decree approving the Regulations of Law No. 31814] (enacted Sep. 9, 2025 and effective Jan. 22, 2026) (Peru).

Brazil¹⁴, Chile¹⁵, Colombia¹⁶, and Mexico¹⁷), Vietnam,¹⁸ and Colorado¹⁹ have enacted or are enacting horizontal or lateral regulatory regimes, which apply a uniform bundle of regulations to different contexts and use cases.²⁰ Because AI-induced harms are often heterogeneous and inseparable from traditional harms in each domain, horizontal AI regulations are prone to overregulation and regulatory duplication.²¹

Despite the absence of a cross-border harmonization imperative such as the EU's Digital Single Market strategy – aimed at applying the free movement of persons, services, goods, and capital apply to the digital world within the region²² – Seoul modeled its domestic AI regulation after the EU AI Act with reduced stringency.²³ This choice was driven by (i) the Korean Ministry of Science and ICT's ("MSIT") bureaucratic incentives to achieve legislative speed over regulatory quality, and expand its regulation into the AI field, and (ii) the need to convince citizen activist organizations and progressive lawmakers espousing stringent legal safeguards.²⁴ The Framework Act on the Development of Artificial

¹⁴ Projeto de Lei No. 2338, de 2023 (Braz.) (approved by the Senate and under review by the Chamber of Deputies).

¹⁵ Boletines No. 15869-19 y No. 16821-19, Regula los sistemas de inteligencia artificial [AI Systems Regulation] (Chile) (admitted on May 7, 2024, approved by the Chamber of Deputies and under review by the Senate).

¹⁶ Proyecto de Ley 422 de 2025, Cámara de Representantes (Colom.) (submitted to the Senate on July 28, 2025).

¹⁷ Multiple bills are currently under review, including a draft AI law introduced in both the Senate and the Chamber of Deputies (Iniciativa con Proyecto de decreto por el que se expide Ley Federal que Regula la Inteligencia Artificial, Gaceta del Senado, No. 65/3/2024-04-02-1, Apr. 2, 2024 (Mex.)), alongside ongoing discussions to establish a constitutional basis for AI regulation at the federal level (Iniciativa que reforma la fracción XVII del artículo 73 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Inteligencia Artificial, Feb. 19, 2025 (Mex.)).

¹⁸ *Luật Trí tuệ nhân tạo* [Artificial Intelligence Act] enacted by *Luật số 134/2025/QH15*, Dec. 10, 2025 (Viet.) (effective Mar. 1, 2026), replacing AI-related provisions in *Luật Công Nghiệp Công Nghệ Số* [Digital Technology Industry Act], enacted by *Luật số 71/2025/QH15*, June 14, 2025 (Viet.) (effective Jan. 1, 2026).

¹⁹ Colorado Artificial Intelligence Act, COLO. REV. STAT. § 6-1-1702 *et seq.* (2024). On August 28, 2025, its effective date was postponed from February 1, 2026 to June 30, 2026 (Senate Bill 25B-004).

²⁰ Park, *supra* note 10, at 222.

²¹ *Id.* at 233-38.

²² See generally EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE DIGITAL SINGLE MARKET - TRENDS AND OPPORTUNITIES FOR SMES (OWN-INITIATIVE OPINION) (Sept. 18, 2020), <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/digital-single-market-trends-and-opportunities-smes-own-initiative-opinion> [<https://perma.cc/694F-UZG2>]

²³ Sangchul Park, *Why Korea's AI Framework Act Requires Amendment Before Implementation: A Structural and Textual Analysis*, 28(3) J. KOR. INFO. L. 3, 7 (2024) (S. Kor.).

²⁴ *Id.* at 18-20.

Intelligence and the Creation of a Foundation for Trust (“AIFA”),²⁵ which was enacted into law on January 21, 2025 and fully implemented on January 22, 2026, has become the world’s earliest fully implemented horizontal AI law.²⁶

Since around 2025, however, the global trend toward regulation of AI was leaning toward a light touch regulation, moving away from horizontal frameworks:

- Canada’s Bill C-27 for the Digital Charter Implementation Act – which includes the AI and Data Act (“AIDA”), a horizontal regulatory framework that had a serious impact on Korean legislation including the term “high-impact AI” – expired when its parliament was prorogued on January 6, 2025.²⁷
- Responding to the 2024 Draghi Report on EU Competitiveness, which issued a proposal to simplify onerous digital regulations that jeopardize European competitiveness,²⁸ and following the 2025 Paris AI Action Summit, where the U.S. executive branch criticized the EU’s approach as excessive and massive,²⁹ the EC introduced the Digital Omnibus on AI dated November 19, 2025, which seeks to streamline the AI Act and extend the effective date of high-risk AI regulations for up to 16 months.³⁰
- The 2nd Trump administration tried to block states and localities from regulating AI for ten years through the One Big Beautiful Bill Act,³¹ but the Senate passed the Act without the AI law moratorium clause.³² In response,

²⁵ Ingongjineungbaljeongwa shinryoe giban joseong deunge gwanhan gibanbeop [Framework Act on the Development of Artificial Intelligence and the Creation of a Foundation for Trust] [AIFA], amended by Act. No. 21311, Jan. 20, 2026 (S. Kor.).

²⁶ Kang-han Kim, *South Korea Enacts World’s First Comprehensive AI Legal Framework*, THE CHOSUN DAILY (Jan. 22, 2026), <https://www.chosun.com/english/industry-en/2026/01/22/PBTYDFZWWJFODKNQXCKTU7QQW4/> [<https://perma.cc/3KW8-59VC>] (S. Kor.).

²⁷ Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts, 44th Parl, 1st Sess, 2021 (in consideration in committee in the House of Commons) (Can.).

²⁸ MARIO DRAGHI, THE FUTURE OF EUROPEAN COMPETITIVENESS – PART A. A COMPETITIVE STRATEGY FOR EUROPE, 30-35, 68-69 (Sep. 2024), https://commission.europa.eu/topics/competitiveness/draghi-report_en. [<https://perma.cc/2UEV-WVE8>].

²⁹ Remarks by the Vice President J.D. Vance at the Artificial Intelligence Action Summit in Paris, France, AM. PRES. PROJECT (Feb. 11, 2025), <https://www.presidency.ucsb.edu/documents/remarks-the-vice-president-the-artificial-intelligence-action-summit-paris-france> [<https://perma.cc/U4VM-HKRN>].

³⁰ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI), COM (2025) 836 final (Nov. 19, 2025).

³¹ H.R. 1, 119th Cong. § 43201 (2025).

³² Press Release, U.S. Senate Committee on Commerce, Science and Transportation, Senate Strikes AI Moratorium from Budget Reconciliation Bill in Overwhelming 99-1 Vote, (July 1, 2025), <https://www.commerce.senate.gov/2025/7/senate-strikes-ai-moratorium-from-budget->

President Trump signed Executive Order 14365 titled “Ensuring a National Policy Framework for Artificial Intelligence” on December 11, 2025, which, among other things, directs the Attorney General to form an AI Litigation Task Force with the responsibility of challenging state AI laws (Sec. 3) and seeks to establish a uniform federal AI policy framework that preempts competing state laws (Sec. 8).³³

Amid this global regulatory shift, the MSIT attempted to resolve regulatory overlap and compliance burdens with administrative rulemaking rather than legislative amendment. Its main aim was to, by aggressive interpretation, exclude the deployers from covered entities and add them to protected entities while assigning the remaining regulations (which had been intended to apply to deployers) out to the developers and distributors. On September 17, 2025, the MSIT released draft subordinate regulations including the Enforcement Decree, ministerial notifications, and guidelines.³⁴ Combined with legislative mistakes in defining protected groups, this interpretation transformed the AIFA from (i) a safety regulation regime protective of “affected persons” from AI developers and deployers into (ii) a quasi-utility regulation model protective of “users” (now including deployers) from AI providers and distributors. To address several structural flaws arising from the existing statute and such recalibration, the Presidential Council on National AI Strategy (“AISC”) mandated, through Item 34 of its AI Action Plan, that the MSIT undertake specific measures to amend the AIFA and its subordinate regulations and guidelines.³⁵ The MSIT further revised subordinate regulations and set forth the Enforcement Decree on January 21, 2026³⁶ and the guidelines on January 22, 2026.³⁷

In this context, this paper critically evaluates the structural issues associated with the AIFA, elucidates the core logic and motivation for Item 34 of AISC’s AI Action Plan, and provides a future perspective on the AIFA. To achieve this goal, this paper is partly underpinned by autoethnography, which stems from my

reconciliation-bill-in-overwhelming-99-1-vote/8415a728-fd1d-4269-98ac-101d1d0c71e0
[<https://perma.cc/L8P5-3WJC>].

³³ 90 C.F.R. § 58499 (2025).

³⁴ MSIT, *Proposed Rulemaking for the AI Framework Act*, Sep. 17, 2025, https://aikorea.go.kr/web/board/brdDetail.do?menu_cd=000011&num=64 (S. Kor.).

³⁵ Gukgaingongjineungjeollyagwiwonhoe, daehanminguk ingongjineunghaengdonggyehoeok (ingongjineung gibon gyehoeok (2026-2028)) [KOREA’S AI ACTION PLAN (AI BASIC PLAN (2026–2028))] art. 33, https://www.aikorea.go.kr/web/board/brdDetail.do?menu_cd=000011&num=328 [<https://perma.cc/3HG8-8SSD>] (S. Kor.) (first draft released in Dec. 2025, and final version released on Feb. 25, 2026).

³⁶ See generally Ingongjineungbaljeongwashinryoeigibanjoseongdeung’egwanhangibonbeop shihaengryeong [Enforcement Decree of the Framework Act on the Development of Artificial Intelligence and the Creation of a Foundation for Trust] (S. Kor.).

³⁷ See generally AI Gibonbeop Sihaeng Mit Hawibeomnyeong Gonggae (1.22.~) [Implementation of the Framework Act on AI and Disclosure of Subordinate Regulations (from Jan. 22)], https://nia.or.kr/site/nia_kor/ex/bbs/View.do?cbIdx=99835&bcIdx=28987 [<https://perma.cc/8VZW-Z9AR>] (S. Kor.).

involvement in or observation of this issue,³⁸ although it reflects my personal academic views based on publicly available information and should not be construed as representing my official position at the Global Cooperation Division of the AISC.

To that end, this paper is divided as follows. Part II examines why and how the EU AI Act was emulated within the AIFA framework, highlighting both public service motivation and bureaucratic rent-seeking of the MSIT and other stakeholders' positions. Part III reviews the MSIT's subsequent attempts to recalibrate the AIFA, specifically regarding the realignment of regulated entities and protected groups. Part IV identifies some of the key design weaknesses in the AIFA, including (i) the imposition of disproportionate protective obligations on developers and distributors for the benefit of deployers who often maintain superior leverage; and (ii) the erroneous imputation of deployment-stage regulations to upstream actors. Part V provides an overview of the AISC's efforts to remediate these structural mismatches. Part VI predicts the future trajectory of AIFA and presents three normative lessons for jurisdictions that are currently following the "Brussels Effect." Part VII concludes.

II. WHY AND HOW AIFA INITIALLY EMULATED THE EU AI ACT

A. Key Players and their Motivations

1. MSIT as a Carrier Regulator

Despite Korea's adoption of the presidential system, its executive agencies possess the formal authority to submit legislative bills and play a pivotal role in the whole legislative process, which reflects the parliamentary or Cabinet-system elements. This dual track legislative genesis originates in the Constitution: although Article 40 confers general legislative powers on the National Assembly,³⁹ Article 52 clearly outlines that "[m]embers of the National Assembly and the Executive may propose bills."⁴⁰ Although agencies often delegate statutory action to the National Assembly to circumvent procedural requirements (e.g. preliminary announcement and regulatory impact assessment (RIA)),⁴¹ they continue to exert great political power over the entire legislative life cycle.

³⁸ Autoethnography is a qualitative research method where an author uses self-reflection to connect personal experience to wider cultural and social meanings. See Carolyn Ellis & Arthur Bochner, *Autoethnography, Personal Narrative, Reflexivity: Researcher as Subject*, in HANDBOOK OF QUALITATIVE RESEARCH 733, 739 (Norman. K. Denzin & Yvonna S. Lincoln eds., 2000).

³⁹ DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 40 (S. Kor.).

⁴⁰ *Id.* art. 52.

⁴¹ ORG. ECON. COOP. DEV., OECD REGULATORY POLICY OUTLOOK 2025, 195, https://www.oecd.org/en/publications/oecd-regulatory-policy-outlook-2025_56b60e39-en/full-report/korea_1a947798.html [<https://perma.cc/VB6F-CK8Q>] (noting "[t]he indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (6% of all primary laws in Korea)").

The narrative of this paper unfolds from the delegation of legislative power over AI to a carrier regulator. The MSIT was formed by consolidating the former Ministry of Science and Technology (“MST”), a science policy agency, with the former Ministry of Information and Communication (“MIC”), a carrier regulator, through a series of complex institutional reorganizations between 2008 and 2017.⁴² AI policymaking was assigned to an MSIT division succeeding the MIC (the 2nd Vice Minister Office in charge of carrier regulation), not the MST (the 1st Vice Minister Office in charge of science policy).⁴³ This means that a carrier regulator comparable to the U.S. Federal Communications Commission (“FCC”) has taken over AI regulation in Korea.

The MIC, starting as a postal agency, has aggressively expanded its authority to carriers, Internet service providers (“ISPs”), digital platforms, and now AI by reinterpreting the concept of the Value-Added Telecommunications Service (which originally meant the Value-Added Network (“VAN”)⁴⁴) to expand the reach of the Electronic Communications Business Act (“ECBA”),⁴⁵ a telecom law, to ISPs and digital platforms. Telecom-information dichotomies, as in the U.S. circuits’ decisions in *Comcast Corp. v. FCC*⁴⁶ and *Ohio Telecom Ass’n v. FCC*,⁴⁷ do not prevail in Korea, just like in China.⁴⁸ This history explains (i) why Korea has stringently regulated the Internet; (ii) why Korea’s ECBA was amended to establish telecom-style unbundling regulations for in-app purchases for Android and iOS in 2021;⁴⁹ (iii) why the MSIT opted for a horizontal AI regulatory framework; and

⁴² Jeongbujojikbeop [Government Organization Act], amended by Act No. 14839, Jul. 26, 2017, arts. 26(1)(iii) and 29 (S. Kor.), <https://law.go.kr/lInfoP.do?lsiSeq=195013&ancYd=20170726&ancNo=14839> [<https://perma.cc/UB3Z-9BLS>].

⁴³ Gwahakgisuljeongbotongshinbuwa geu sosokgigwan jikje [Decree on the Organization Structure of the Ministry of Science and ICT and its Subordinate Agencies], amended by Presidential Decree No. 30205, Nov. 12, 2019, arts. 5(3) and 13(3)(xxviii)-(liv) (S. Kor.), <https://law.go.kr/lInfoP.do?lsiSeq=211333&ancYd=20191112&ancNo=30205> [<https://perma.cc/FK9J-8XPE>].

⁴⁴ VAN originally means the resale of circuits bundled with value-added service and has no relation to Internet server-based information service. It corresponds to the enhanced communications service which the FCC deregulated under Computer Inquiries II in 1980. *See* Amendment of Section 64.702 of the Comm’n’s Rules & Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 419 (1980) (Computer II Final Decision).

⁴⁵ Jeongitongshinsaeopbeop [Electronic Communications Business Act], amended by Act No. 21066, Oct. 1, 2025 (S. Kor.).

⁴⁶ *Comcast Corp. v. FCC*, 600 F.3d 642, 651 (D.C. Cir. 2010) (holding that the FCC does not have jurisdiction over Internet service providers).

⁴⁷ *See Ohio Telecom Ass’n v. FCC*, 150 F.4th 694, 705-12 (6th Cir. 2025).

⁴⁸ *See* Dianxin Tiaoli (电信条例) [Telecommunications Regulations] (promulgated by the State Council, Sept. 25, 2000, effective Sept. 25, 2000, rev’d Feb. 6, 2016) arts. 8-9 (China), <https://flk.npc.gov.cn/detail?id=ff8080816f3cbb3c016f4117a46d169e> [<https://perma.cc/5GLY-FNV5>] (defining online service as the Value-Added Telecom Business under art. 8 and requiring an ICP license under art. 9).

⁴⁹ *Compare* Ariz. H.B. 2005, 55th Leg., 1st Reg. Sess. (2021) (proposing to unbundle platform service and payment facilitation by barring certain app stores from requiring use of their in-app payment systems), rejected, Mar. 24, 2021, *with* Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital

now (iv) why Korea's AI law has deviated from AI system regulation and has become similar to carrier regulation.

The development of the AIFA may reflect tensions between the MSIT's institutional incentives and broader public-service motivations. While public administration is expected to be motivated by public welfare,⁵⁰ scholarship has long identified bureaucratic rent-seeking as a recurring source of government failure.⁵¹ The MSIT's overriding goal during the legislative process was speed of enactment,⁵² even though the process ultimately took more than four years. Since the Korean public and media tend to condemn the government after socially salient accidents with no punitive legislation—a phenomenon one Korean public administration scholar calls “bashing culture”⁵³—the MSIT faced pressure to legislate quickly, a response that could not be solely ascribed to rent-seeking. That said, the decision to adopt a horizontal regulatory framework is undeniably not simply a sidestep but the result of bureaucratic rent-seeking. Notwithstanding concerns about the EU approach's potential for overregulation and regulatory duplication,⁵⁴ the MSIT selected a horizontal framework to enhance its authority amidst inter-agency competition for jurisdiction over an emerging, pan-industry technology. In doing so, the MSIT could continue its tradition of aggressively extending regulatory control from postal services and telecommunications to information services and now, AI.

The MSIT's principal tactic for accelerating enactment was (i) prioritizing coordination among sharply conflicting positions over statutory completeness and coherence; and (ii) integrating separate subject matters (facilitation and regulation) into a single legislative framework in order to cater for different stakeholder

sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) art. 5(4), 2022 O.J. (L 265) 1.

⁵⁰ See James L. Perry & Lois R. Wise, *The Motivational Bases of Public Service*, 50 PUB. ADMIN. REV. 367, 368 (1990).

⁵¹ See WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT, *passim* (1971).

⁵² See, e.g., Seungjoon Kim, “Ijongho Janggwan ‘AI Gibonbeop Jejeong Dan Tongbeop Pyeji... Swol Tonggwa Andoemyeon Sigi Nochinda” [Minister Jong-ho Lee: “Enact the AI Framework Act and Repeal the Mobile Terminal Distribution Act . . . If They Don't Pass in May, the Window of Opportunity Will be Lost”], NEWS1 (May 8, 2024), <https://www.news1.kr/it-science/general-it/5409420> [<https://perma.cc/9PPB-6NZW>] (S. Kor.); Byun Hwi, “Yusangim Janggwan ‘AI Gibonbeop, Nara Wihae Ppalli Gukhoe Tonggwadoeya” [Minister Sang-im Yoo, “The AI Framework Act: The National Assembly Must Pass It Quickly for the Motherland”], MONEY TODAY (Dec. 11, 2024), <https://www.mt.co.kr/tech/2024/12/11/2024121110461335640> [<https://perma.cc/9AH5-RSCU>] (S. Kor.).

⁵³ Jae Wan Bahk, *Aligning Public Administration Research and Education with Trends and Challenges in the Field: A Good Public Governance Perspective Focusing on Government Failure*, 54(4) KOREAN J. PUB. ADMIN. 39, 48 (2016) (S. Kor.).

⁵⁴ When MSIT leadership sought expert input immediately following the EC's proposal for the EU AI Act in 2021, I advised against mirroring their approach. I argued that (i) the EU's framework is rather precautionary than risk-based, and (ii) a horizontal mandate imposes mismatched regulations, such as applying fairness standards to safety-critical use cases or safety requirements to rights-impacted ones, creating unnecessary burdens and conflicting with established sectoral rules.

interests at once, which can be framed as “logrolling.”⁵⁵ The AIFA does contain more facilitative than regulatory provisions and imposes less-stringent legal obligations and more lenient administrative sanctions than the EU AI Act. During the legislative process, the MSIT consistently characterized their approach as “balancing facilitation and regulation” prior to enactment, and as “pro-innovation” after then, notwithstanding the statute’s structural deficiencies that may in fact constrain innovation.⁵⁶ The MSIT officials have informally implied that, although the statute’s primary objective was to establish a legal basis for facilitative policies, the inclusion of regulatory elements was politically unavoidable to secure support from citizen activist organizations and progressive lawmakers. The MSIT’s early effort focused on keeping a declaratory provision setting forth the allow-first, regulate-later principle in the AIFA. That provision, however, provoked substantial backlash from citizen activist organizations,⁵⁷ and in 2023, the National Human Rights Commission (“NHRC”) recommended its deletion,⁵⁸ which in turn impeded the AIFA’s passage during the 21st session of the National Assembly. The provision was ultimately removed during review by the 22nd session of the National Assembly.⁵⁹

⁵⁵ Jennifer Nou & Jed Stiglitz, *Regulatory Bundling*, 128 YALE L.J. 1174, 1226-28 (2019).

⁵⁶ See, e.g., Press Release, MSIT, Ingongjineung 3dae Ganggugeui Giteurin «Ingongjineung Gibonbeop» Sihaeng [Enforcement of the AI Framework Act, the Foundation for Becoming AI G3] (Jan. 22, 2026) (S. Kor.), <https://www.korea.kr/briefing/pressReleaseView.do?newsId=156740659> [<https://perma.cc/8VZY-XDT6>] (noting that “[i]n particular, the AI Framework Act focuses on industry promotion. Adhering to the principle of ‘minimum necessary regulation,’ it minimizes obligations and sanctions on AI business operators while incorporating broad provisions to foster the growth of the AI industry.”).

⁵⁷ Press Release, Citizen’s Coalition for Economic Justice (CCEJ), Ingongjineung Saneop Yukseonge man Chocheon Majchun Bangan Bandaehanda, Gwabangwineun Ingongjineung Beoban Jeonmyeon Jaegomtohara [Emergency Press Conference Held: “We Oppose a Bill Focused Solely on Promoting the AI Industry—The Science & ICT Committee Must Undertake a Comprehensive Re-examination of the AI Bill”] (Mar. 9, 2023) (S. Kor.), <https://www.peoplepower21.org/publiclaw/1928354> [<https://perma.cc/WJS3-AXVJ>].

⁵⁸ Press Release, National Human Rights Commission (NHRC), “Ingongjineung Beomnyulan,” ‘Useon Heoyong-sahu Gyuje’ Wonchik Sakjehago, Ingwon Yeonghyang Pyeongga Doiphaeya [AI Bill: Remove the Allow First, Regulate Later Principle and Introduce a Human Rights Impact Assessment] (Aug. 24, 2023) (S. Kor.), <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609439&men> [<https://perma.cc/EA36-YVLW>].

⁵⁹ NAT’L ASSEMBLY OF REPUBLIC OF KOREA, INGONGJINEUNG SANEOP YUKSEONG MIT SINROE HWAKBOE GWANHAN BEOMNYULAN DEUNG GEOMTO BOGO [REVIEW REPORT: BILLS FOR THE FRAMEWORK ACT ON THE DEVELOPMENT OF ARTIFICIAL INTELLIGENCE AND THE CREATION OF A FOUNDATION FOR TRUST] 82-86 (Aug. 2024) (S. Kor.), <https://likms.assembly.go.kr/bill/bi/comm/preview/pdfPreview.do?bookId=E4894824-E909-0810-BA22-F1BAD567717B§ion=bill&filetype=p> [<https://perma.cc/2Y43-KYW2>].

2. Standing Committee within the National Assembly

The Science, ICT, Broadcasting and Communications Committee (“Science & ICT Committee”) is the principal standing committee of the National Assembly responsible for overseeing the MSIT and reading bills in the MSIT’s jurisdiction. In practice, however, the Committee’s ability to exercise specialized oversight over AI and other such emerging technologies is restricted in many instances by the disproportionate political salience of broadcasting policy. Within the Korean political landscape, broadcasting is one of the most contentious and most high-profile areas of concern. As three of the four major over-the-air broadcasters, KBS, MBC and EBS, are state-owned and news outlets are heavily regulated according to the Broadcasting Act, media governance control has formed the center of partisan contention.⁶⁰ As a result, the Committee is frequently overshadowed by battles over media neutrality and executive appointments and marginalizes technical policymaking.⁶¹ This institutional attention to broadcasting is further visible in the professional makeup of the Committee: of its twenty members, eleven are former journalists, and only three have science or technical experience.⁶² Due to the political salience of broadcasting, the Committee has tended to recruit ideologically hardline members capable of fighting fiercely for broadcasting and have, at times, been sorely lacking in technical know-how in reviewing information technology-related bills. As of March 1, 2026, its membership consists of twelve legislators from progressive parties (including eleven from the ruling party) and eight from conservative parties.⁶³

Throughout the legislative process, lawmakers on the Science and ICT Committee sought to position themselves as early movers by enacting the first AI law and worked closely with MSIT to pass the AIFA.⁶⁴ Despite this, uneven

⁶⁰ John C. Carpenter, *Limits to Freedom in Public Service Broadcasting: The Case of South Korea*, 66 *MEDIENPOLITIK INT’L* 353 *passim* (2021); Timothy S. Rich, *When Do South Koreans Support Government Restrictions on Media? The Role of Partisanship and Democratic Support*, 55 *J. CONTEMP. ASIA* 741 *passim* (2024).

⁶¹ *Bangsong Jeongjaeng Ssaumteo Doen Gukhoe Gwabangwi, Gwahak Gisul Bunrihaeya [The Science & ICT Committee at the National Assembly Has Become a Battlefield for Political Wars Surrounding Broadcasting – Science and Technology Should Be Split]*, *THE CHOSUN DAILY* (Aug. 27, 2024), <https://www.chosun.com/opinion/editorial/2024/08/27/EMDEXNXLKJEYXMYEOE3ABG6QSU/> [<https://perma.cc/VB4M-RV79>] (S. Kor.).

⁶² Hyuna Kim, *22dae Gukhoe gwabangwi Guseong... Eollonin Chulsin 11myeong, Gwahak-IT Chulsin 3myeong [Composition of the Science & ICT Committee of the 22nd Session of the National Assembly... 11 Former Journalists, and 3 Science and IT Persons]*, *EDAILY* (Jun. 12, 2024) (S. Kor.), <https://www.edaily.co.kr/News/Read?newsId=03289846638921064&mediaCodeNo=257> [<https://perma.cc/C68B-TPVT>].

⁶³ NAT’L ASSEMBLY OF REPUBLIC OF KOREA, *MSIT*, <https://science.na.go.kr> [<https://perma.cc/5AKP-8W8Z>] (S. Kor.) (listing committee membership by party composition).

⁶⁴ *See, e.g.*, Press Release, Ihaemin Uiwon-sil [Office of Rep. Hae-min Lee], Ihaemin Gukhoe Uiwon, ‘AI Gibonbeop’ Jejeong-euro Daehanminguk Gukhoe Uijeong Daesang Susang [Rep. Lee Hae-min Honored with National Assembly Excellence Award for Enacting the AI Framework Act] (June 11, 2025) (S. Kor.), <https://rebuildingkoreaparty.kr/news/press-release/4367> [<https://perma.cc/CU5D-6AX9>].

expertise in AI governance among committee members created significant legislative shortfalls, such as redundant regulatory provisions covering synthetic content produced by generative AI.⁶⁵

3. Citizen Activist Organizations and the National Human Rights Commission

During the legislative process over the AIFA, citizen activist organizations led by Minbyun, the Institute for Digital Rights (“IDR”), the Digital Justice Network (“DJN”), and People’s Solidarity for Participatory Democracy (“PSPD”), have exerted significant influence. These groups have consistently articulated their positions, including: (i) the 2023 statement on the AIFA bill;⁶⁶ (ii) the 2024 statement on the AIFA;⁶⁷ (iii) the 2025 statement on subordinate regulations;⁶⁸ and (iv) the 2026 statement on the enforcement of the AIFA.⁶⁹ They strongly advocated for an EU-style regulatory framework that includes prohibitions on certain AI practices, which they view as essential to ensure robust and seamless protection of fundamental rights.

Within the government sector, the NHRC largely echoed the stances taken by these activist groups in its recommendation to the MSIT or the National Assembly, including: (i) the 2023 recommendation to the Speaker of the National Assembly regarding the removal of the allow-first, regulate-later principle,⁷⁰ (ii) the 2025 recommendation to the Speaker objecting to the postponement of enforcement of the AIFA,⁷¹ and (iii) the 2025 recommendation to the MSIT about improving the draft Enforcement Decree.⁷²

⁶⁵ See, e.g., AIFA, art. 31(2)-(3).

⁶⁶ CCEJ, et al., *supra* note 57.

⁶⁷ Minbyun, IDR, DJN & PSPD, *Nugureul Wihan AI Gibonbeopinga [For Whom Is the AIFA?]*, PSPD (Nov. 22, 2024) (S. Kor.), <https://www.peoplepower21.org/publiclaw/1981094> [<https://perma.cc/ETW3-9WWK>].

⁶⁸ Minbyun, IDR, DJN & PSPD, *Jinjeongseong Inneun Uigyeon Suyeomeuro Ingongjineung Wiheomeourouteo Yeonghyangnabneun Simineul Bohohaeya [Citizens Affected by the Risks of AI Must be Protected through Genuine and Meaningful Public Consultation]*, PSPD (Sep. 25, 2025) (S. Kor.), <https://www.peoplepower21.org/publiclaw/2001082> [<https://perma.cc/UFQ5-6A9P>].

⁶⁹ DJN, Minbyun, IDR & PSPD, *Simineui Anjeon-gwa Inkwoneul Oemyeonhan 'AI Gibonbeop' Sihaeng, Ije Barojaggi Wihan Noryeogeul Sijakhaeya Handa [The Implementation of the AIFA, Which Turns a Blind Eye to Citizens' Safety and Human Rights—Now Is the Time to Begin Efforts to Set it Right]*, PSPD (Jan. 23, 2026) (S. Kor.), <https://www.peoplepower21.org/publiclaw/2009534> [<https://perma.cc/U77R-M57T>].

⁷⁰ NHRC, *supra* note 58.

⁷¹ NHRC, *Ingongjineung Gibonbeob Gyuje Johang Sihaeng Yuye-neun Sinjunghage Geomtohaeya [The Postponement of the Enforcement of Regulatory Provisions in the AIFA Must Be Carefully Reviewed]* (Sep. 1, 2025) (S. Kor.), <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7611439> [<https://perma.cc/2K3W-GWT5>].

⁷² NHRC, *Ingongjineung Gibonbeob Sihaengnyeong, Ingan-ui Jongeomseong Deung Ingwonboho Gwanjeom-eseo Bowandoeo-ya [Enforcement Decree for the AIFA Should Be Improved from the Perspective of Protection of Human Dignity and Other Human Rights]* (Dec. 21, 2025) (S. Kor.), <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&board>

4. Industry

Another key stakeholder is Korea's domestic digital platforms. Korea is one of the few open economies whose digital platform market has not been overwhelmed by the U.S. Big Tech firms. Naver and Google compete closely in the domestic search market: In 2025, their market shares, as measured by referral traffic to sample local websites, were estimated at 63 and 30 percent, respectively.⁷³ Kakao, meanwhile, holds a near-monopoly position in mobile instant messaging and ride hailing.⁷⁴ Although these firms have adopted ambivalent positions toward the AIFA, expressing both support for facilitative provisions and concern over regulatory provisions,⁷⁵ their survival has been a critical factor enabling Seoul to pursue a regulatory approach somewhat different from that of the EU despite the citizen activist organizations' strong preference for it. Korean startups have pointed out the undue regulatory burden imposed by the AIFA and their lack of awareness and preparedness regarding its compliance.⁷⁶

U.S. Big Tech firms have also actively engaged with the MSIT to convey their policy positions. In 2021, the Business Software Alliance ("BSA") representing Microsoft, OpenAI, Amazon Web Services, and others, submitted recommendations on the AIFA to the Korean government, emphasizing (i) clearer definitions of key concepts such as users, AI Business Operators, and high-risk AI; (ii) caution to translate ethical principles into legal rules; (iii) improvement for

No=7611694&menuLevel=3&menuNo=91 [https://web.archive.org/web/20260213155019/https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7611694&menuLevel=3&menuNo=91].

⁷³ Sangyong Han, *Neibeo Geomsaek Jeomyunyul 63%...3-nyeon Man-e 60% Jaedolpa* [Naver's Search Market Share 63% ... Rebreaking 60% in 3 Years], YONHAP NEWS (Jan. 4, 2026) (S. Kor.), <https://www.yna.co.kr/view/AKR20260102129700017> [https://perma.cc/CC7B-745R].

⁷⁴ Kakao's domestic market share is 97% in the mobile messaging market (in terms of duration) as of Sep. 2025, and over 96% in the ride hailing market as of 2022. See KAKAO CORP., QUARTERLY REPORT II. 7. (Nov. 14, 2025) (S. Kor.), <https://englishdart.fss.or.kr/dsbh001/main.do?rcpNo=20251114002572> [https://perma.cc/286K-V8EM]; Press Release, Korea Fair Trade Commission, Kakao Mobility-UI Sijangjibaejeogijiwi Manyonghaenwi Jeje [Sanction on Kakao Mobility Corp.'s Abuse of Market Dominance] (Oct. 2, 2024) (S. Kor.), <https://www.korea.kr/briefing/policyBriefingView.do?newsId=156653307> [https://perma.cc/A4XA-3GNQ].

⁷⁵ Youngsoo Moon et al., *AI Gibonbeob Sihaeng: 'Gidae Ban Uryeo Ban' Daeungchaek Maryeon-e Gosim...Tongsin-Potal-Geim Bangeung-eun* [AI Framework Law Goes Live: In 'Half Anticipation, Half Concern,' Struggling to Prepare Countermeasures... Responses from Telecom, Portal, and Gaming Industries], INEWS24 (Jan. 22, 2026) (S. Kor.), <https://www.inews24.com/view/1930541> [https://perma.cc/NDE9-VTMY].

⁷⁶ STARTUP ALLIANCE, AI GIBONBEOPGWA SEUTATEUEOP: AI SEUTATEUEOPI GYEOKNEUN HYEONSIL [STARTUP ECOSYSTEM TRENDS REPORT: AI FRAMEWORK ACT AND STARTUPS – THE REALITY FACED BY AI STARTUPS] *passim* (Dec. 3, 2025) (S. Kor.), https://startupall-prod-bucket.s3.amazonaws.com/_media/%E1%84%83%E1%85%A9%E1%86%BC%E1%84%92%E1%85%A3%E1%86%BC%E1%84%85%E1%85%B5%E1%84%91%E1%85%A9%E1%84%90%E1%85%B3_2025-6_AI_%E1%84%80%E1%85%B5%E1%84%87%E1%85%A9%E1%86%AB%E1%84%87%E1%85%A5%E1%86%B8%E1%84%80%E1%85%AA_%E1%84%89%E1%85%B3%E1%84%90%E1%85%A1%E1%84%90%E1%85%B3%E1%84%8B%E1%85%A5%E1%86%B8_251203_cbhQiNA.pdf [https://perma.cc/ZG5H-8ZTH].

reporting requirements; (iv) the independence of private AI ethics committees; and (v) risk-based and context-specific explainability requirements.⁷⁷ In 2025, the BSA again submitted recommendations on subordinate regulations, requesting the government to (i) refrain from mandating external certification or verification; (ii) exclude minor modifications from transparency requirements; (iii) align risk assessment factors and streamline reporting obligations; (iv) apply high-impact obligations at the AI system level rather than the model level; (v) avoid ambiguity regarding the allocation of responsibilities between AI developers and deployers; and (vi) clarify the operation of investigatory powers under the AIFA.⁷⁸ Seoul has carefully considered their views, in light of the U.S.-ROK alliance, and potential sensitivities related to international trade and non-tariff barriers, and necessity to keep access to and interoperability with their state-of-the-art technology.

5. Academia

Computer science scholarship has shown limited engagement with the potential regulatory burdens of the AIFA, with the notable exception of Professor Alice Oh, one of Korea's most renowned computer scientists, who chaired the Global Cooperation Division of the AISC and played a significant role in shaping Item 34 of the AI Action Plan.⁷⁹

In legal scholarship, the Korean Association for AI and Law (“KAAIL”) proposed an amendment to the AIFA, addressing its structural deficiencies;⁸⁰ although the outcome was still vague because of difficulties that arose in reaching consensus between members, the drafting of the Second Subcommittee that I chaired served as a prototype for Item 34 of the AI Action Plan.⁸¹ I published an op-ed,⁸² an English-language paper⁸³ (with another forthcoming in 2026), Korean-language papers in 2024⁸⁴ and 2025⁸⁵, delivering multiple presentations with the aim of steering the AIFA toward a context-specific regulatory framework better

⁷⁷ BUSINESS SOFTWARE ALLIANCE, KOREA: BSA COMMENTS ON ACT ON CREATING FOUNDATION FOR TRUST AND FOSTERING ARTIFICIAL INTELLIGENCE 7-10 (Aug. 2, 2021), <https://www.bsa.org/files/policy-filings/08022021aifrmkcmnts.pdf> [<https://perma.cc/LGA5-UCFH>].

⁷⁸ BUSINESS SOFTWARE ALLIANCE, BSA RECOMMENDATIONS ON AI BASIC ACT DRAFT SUBORDINATE LEGISLATION AND GUIDELINES 2-3 (Oct. 3, 2025), https://www.bsa.org/files/policy-filings/en10032025bsakraibasicactdrft_0.pdf [<https://perma.cc/4BEY-7RJG>].

⁷⁹ See KOREA'S AI ACTION PLAN, *supra* note 35, at 4.

⁸⁰ KOREAN ASSOCIATION FOR AI AND LAW (KAAIL), AI GIBONBEOP GAEJEONG YEONGU WIWONHOE GAEJEONG JEANESEO [AI FRAMEWORK ACT REVISION RESEARCH COMMITTEE'S PROPOSAL FOR AMENDMENT] *passim* (Dec. 2025) (S. Kor.), <https://kaail.kr/%ea%b3%b5%ec%a7%80%ec%82%ac%ed%95%ad/?mod=document&uid=62> [<https://perma.cc/D7LM-LYVH>].

⁸¹ *Id.* at 46-54.

⁸² Sangchul Park, *AI Gyuje, EU Bangsigeun Jeongdabi Anida [AI Regulation: The EU Model is Not the Right Answer]*, THE JOONGANG ILBO (Dec. 13, 2023) (S. Kor.), <https://www.joongang.co.kr/article/25214651> [<https://perma.cc/2PF6-BC8Y>].

⁸³ Park, *supra* note 9 at 222-23.

⁸⁴ Park, *supra* note 23 at 18-20.

⁸⁵ Sangchul Park, *Who Protects Whom and Why It Matters – An Analysis of the Proposed Rules for the AI Framework Act*, 74 JURIS. 887, 887-923 (2025) (S. Kor.).

aligned with global trends and Korea's institutional context, and of addressing several structural flaws in the bill.

B. Legislative Process

The enactment of the AIFA was first placed on the official policy agenda through the inter-agency “National AI Strategy” in December 2019.⁸⁶ The MSIT tasked one of its subordinate agencies, the National Information Society Agency (“NIA”), with drafting the AIFA. To support this effort, the MSIT organized the AI Legal System Reform Task Force four times between 2020 and 2023.⁸⁷ The Team was mainly made of law firm practitioners, scholars, and other domain experts.

The MSIT initially sought enactment of the AIFA during the 21st session of the National Assembly (2020–2024).⁸⁸ Following the MSIT's drafting, eleven AIFA bills were proposed by lawmakers. On February 14, 2023, a consolidated bill was approved by the Bill Review Subcommittee within the Science & ICT Committee.⁸⁹

⁸⁶ MSIT, *From an IT Powerhouse to an AI Powerhouse!: Government Unveils the “National AI Strategy,” Consolidating Whole-of-Government Capacity to Articulate a Future Vision and Strategy for the AI Era*, p. 6, Dec. 17, 2019, <https://www.korea.kr/briefing/pressReleaseView.do?newsId=156366736&pWise=sub&pWiseSub=J2> (S. Kor.) (setting forth three agendas: (i) establishing a Comprehensive Negative Regulatory Roadmap for the AI Sector (2020), based on the fundamental direction of allow-first, regulate-later; (ii) establishing a basic legal framework for the AI Era (2020), setting out core ideas and principles, as well as measures to prevent adverse effects; and (iii) launching the (tentatively named) “Future Society Legal Reform Task Force” (2020), to lead sector-specific legal and regulatory reforms).

⁸⁷ Jongjin Park, *Ingongjineung (AI) Beop Jejeongbidan Sidong... Mingan Wiwon Wichok Deung Chulbeom Junbi Bakcha [AI Legal System Reform Task Force Revs Up: Gearing Up for Launch with Appointment of Private Sector Members]*, ELEC. TIMES (Apr. 20, 2020) (S. Kor.), <https://www.etnews.com/20200420000195> [<https://perma.cc/6CRL-88HH>] (S. Kor.); Press Release, MSIT, Digital Nyudil Gasokhwa Wihae Ingongjineung Beop Jedo Bongyeok Sonjil [Accelerating the Digital New Deal: Overhauling AI Laws and Systems Launch of the 2d AI Legal System Reform Task Force... Establishing a Roadmap for 30 Short- and Long-Term Tasks] (Mar. 19, 2021) (S. Kor.), <https://www.korea.kr/news/policyNewsView.do?newsId=148885213> [<https://perma.cc/VM4N-CASQ>]; Hyunseok Choi, *Gwagi Jeongtongbu, Je3gi Ingongjineung Beop Jejeongbidan Baljok [MSIT Launches the 3d AI Legal System Reform Task Force]*, YONHAP NEWS (Jun. 28, 2022) (S. Kor.), <https://www.yna.co.kr/view/AKR20220628070800017> [<https://perma.cc/6R3X-CEN7>]; Press Release, MSIT, Je4gi Ingongjineung Beop Jejeongbidan Chulbeomsik Gaechoe [Inauguration Ceremony Held for the 4th AI Legal System Reform Task Force] (Aug. 16, 2023) (S. Kor.), <https://www.korea.kr/briefing/pressReleaseView.do?newsId=156585559> [<https://perma.cc/NNB5-9V2H>].

⁸⁸ Ingongjineung Yukseong Mit Sinroe Giban Joseong Deunge Gwanhan Beomnyulan (Jeong Pilmo Uijeon Deung 23in) [Bill for the Promotion of Artificial Intelligence and the Creation of a Foundation for Trust (proposed by 23 members, including Rep. Pilmo Jeong)], No. 2111261, NAT'L ASSEMBLY OF REPUBLIC OF KOREA (introduced July 1, 2021) (S. Kor.), https://likms.assembly.go.kr/bill/bi/billDetailPage.do?billId=PRC_Y2B1M0R6G2I2P1B0V2X9H4Z0X3M3J2 [<https://perma.cc/9R69-LY5R>].

⁸⁹ NAT'L ASSEMBLY OF REPUBLIC OF KOREA, *Je21dae Gukhoe Je403hoe (Imsihoe) Je1cha Gwahak Gisul Jeongbo Bangsong Tongsin Wiwonhoe (Jeongbo Tongsin Bangsong Beopan Simsaso Wiwonhoe) [The 21st Nat'l Assembly, the 403d Sess. (Extraordinary Sess.), the 1st Sci. & ICT Comm. (ICT and Broad. Bill Rev. Subcomm.)]*, NAT'L ASSEMBLY MINUTES 13-17 (Feb. 14, 2023)

However, that bill was not enacted and ultimately lapsed at the end of the legislative session, due to challenges from citizen activist organizations⁹⁰ and objections from the NHRC.⁹¹

During the 22nd session of the National Assembly (2024–present), nineteen AIFA bills were reintroduced and subsequently consolidated by the Science & ICT Committee on November 26, 2024.⁹² During this process, the term “high-risk AI” was renamed to “high-impact AI.” On December 17, the consolidated bill passed the Legislation and Judiciary Committee where the Chairman said, “First, this bill should be passed and if there are any unfinished or incomplete parts, it would be proper to resolve them by an amendment, yet in the present period, it would be right for this law to be taken forward with the passenger doors open.”⁹³ The legislation was finally passed by the plenary session of the National Assembly on December 26.⁹⁴

C. Composition of the AIFA

1. Overall Structure

The AIFA is structured into four main parts. First, Chapter 1 sets forth the general provisions, including the purpose of the Act, definitions, guiding principles, scope, and its relationship with other laws.⁹⁵ Second, the Act provides an institutional framework, which includes the AI Basic Plan, the formation of the AISC, the AI Policy Center, and the AI Safety Institute.⁹⁶ Third, the Act provides for the promotion of AI development and industries.⁹⁷ These provisions address,

(S. Kor.), <https://record.assembly.go.kr/assembly/viewer/minutes/xml.do?id=47136&type=view> [https://perma.cc/AZ42-CYH6].

⁹⁰ CCEJ et. al., *supra* note 57.

⁹¹ NHRC, *supra* note 58.

⁹² Ingongjineung Baljeon-gwa Sinroe Giban Joseong Deung-e Gwanhan Gibon Beomnyulan (Dae-an) (Gwahak Gisul Jeongbo Bangsong Tongsin Wiwonjang) [Bill for the Framework Act on the Development of Artificial Intelligence and the Creation of a Foundation for Trust (alternative bill) (proposed by the Chair of the Sci. & ICT Comm.)], No. 2206772, NAT'L ASSEMBLY OF REPUBLIC OF KOREA (introduced Dec. 20, 2024) (S. Kor.), https://likms.assembly.go.kr/bill/bi/billDetailPage.do?billId=PRC_R2V4H1W1T2K5M1O6E4Q9T0V7Q9S0U0 [https://perma.cc/C99U-VQTQ].

⁹³ NAT'L ASSEMBLY OF REPUBLIC OF KOREA, *Je22dae Gukhoe Je419hoe (Imsihoe) Je2cha Beopje Sasbeop Wiwonhoe* [The 22d Nat'l Assembly, the 419th Sess. (Extraordinary Sess.), the 2d Legis. And Judiciary Comm.], NAT'L ASSEMBLY MINUTES, 19, 24 (Dec. 17, 2024) (S. Kor.), <https://record.assembly.go.kr/assembly/viewer/minutes/xml.do?id=52607&type=view> [https://perma.cc/52L4-TT4V].

⁹⁴ NAT'L ASSEMBLY OF REPUBLIC OF KOREA, *Je22dae Gukhoe Je420hoe (Imsihoe) Je1cha Gukhoe Bonhoeui* [The 22d Nat'l Assembly, the 420th Sess. (Extraordinary Sess.), the 1st Plenary Sess.], NAT'L ASSEMBLY MINUTES, 13-17 (Dec. 26, 2024) (S. Kor.), <https://record.assembly.go.kr/assembly/viewer/minutes/xml.do?id=52677&type=view> [https://perma.cc/7FY2-ZY3H].

⁹⁵ AIFA arts. 1-5.

⁹⁶ *Id.*, arts. 6-12, 39, 41, 42.

⁹⁷ *Id.*, arts. 13-26, 37, 38.

among others, (i) the establishment of foundational support for the AI industry and (ii) policies aimed at development support and industrial facilitation. This paper, except for definitional provisions regarding the regulatory framework, does not cover these facilitative provisions.

This paper instead focuses on the Act's regulatory provisions.⁹⁸ After defining “high-impact AI” and “generative AI”,⁹⁹ the Act imposes obligations depending on categories. Specifically, it assigns: (i) an obligation to ensure transparency¹⁰⁰ to both high-impact AI and generative AI; (ii) obligations applicable to high-impact AI, including confirmation of high-impact AI status,¹⁰¹ business operator duties,¹⁰² and AI impact assessments;¹⁰³ (iii) an obligation to ensure safety for AI business operators whose models meet specified training-compute thresholds (i.e., frontier AI),¹⁰⁴ and (iv) a requirement to designate a local representative for offshore AI business operators that exceed prescribed thresholds.¹⁰⁵ Non-compliance may trigger corrective or suspension orders issued by the MSIT¹⁰⁶ and/or administrative fines of up to KRW 30 million (approximately USD 20 thousand),¹⁰⁷ as applicable.

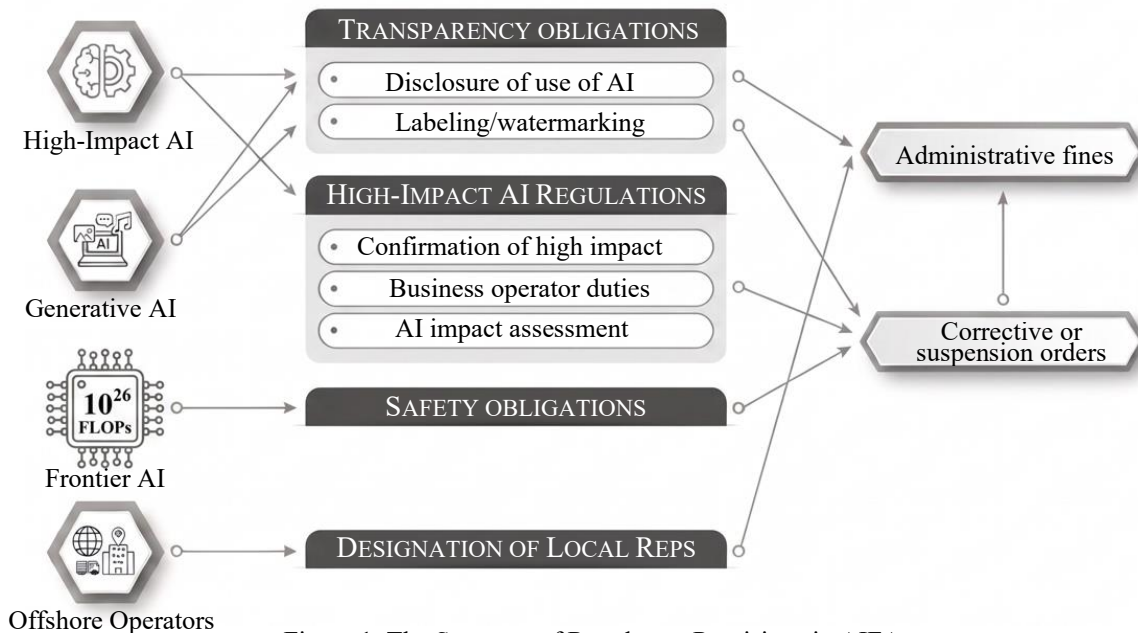


Figure 1. The Structure of Regulatory Provisions in AIFA

⁹⁸ *Id.*, arts. 27-36, 40, 43.

⁹⁹ *Id.*, art. 2(iv), (v).

¹⁰⁰ *Id.*, art. 31.

¹⁰¹ *Id.*, art. 33.

¹⁰² *Id.*, art. 34.

¹⁰³ *Id.*, art. 35.

¹⁰⁴ *Id.*, art. 32.

¹⁰⁵ *Id.*, art. 36.

¹⁰⁶ *Id.*, art. 40, para. 3.

¹⁰⁷ *Id.*, art. 43.

One of the notable differences between the AIFA and the EU AI Act is that the AIFA does not differentiate the roles of actors in the AI value chain at the statutory level. Instead, it regulates a single category of “AI Business Operator” (“AIBO”).¹⁰⁸ Requirements for high-impact AI are applied universally to AIBOs and not according to a player’s role. As a result, the MSIT was supposed to implement the type of differentiation through subordinate administrative rules, but as explained below, the MSIT applied this distinction vaguely.

Category		EU AI Act	AIFA	MSIT regulations and guidelines
Transparency obligations	Disclosure of use of AI	<ul style="list-style-type: none"> High-risk AI: applicable only to deployers at the workplace or for making decisions related to natural persons (Arts. 26(7), (11)) AI interacting directly with natural persons: providers (Art. 50(1)) 	AIBO	UBO
	Labeling/watermarking	<ul style="list-style-type: none"> Labeling: Deployer (Art. 50(4)) Watermarking: Provider (Art. 50(2)) 		UBO
High-impact AI regulations	Confirmation	Provider (Art. 6(4))		DBO
	Business operator duties	Provider (Art. 16(a)). Partly applicable to deployers (Art. 26).		DBO and UBO
	AI impact assessment	Deployer (Art. 27)		UBO
Safety obligations		Provider (Arts. 53 and 55)		DBO
Designation of local representative		Provider (Art. 22). Providing information to deployers (13(3)(a))		(DBO and UBO)

Table 1. Comparison of regulated entities under the EU AI Act and the AIFA

While the EU AI Act overall protects affected persons, the AIFA requires AIBOs to (i) establish and operate a policy that safeguards users, not affected persons;¹⁰⁹ (ii) inform users, not affected persons, that a product or service is deployed using high-impact AI or generative AI;¹¹⁰ and (iii) notify or indicate to users, not affected persons, that an outcome was AI-generated.¹¹¹ The only regulation protecting affected persons is AI impact assessment.

¹⁰⁸ *Id.*, art. 2, para. 7 (strictly speaking, the term refers to legal entities, groups, individuals, government or municipal agencies, and public institutions that engage in businesses related to the AI industry and fall under either DBO or UBO).

¹⁰⁹ *Id.*, art. 34, para. 3.

¹¹⁰ *Id.*, art. 31, para. 1.

¹¹¹ *Id.*, art. 31, para. 3.

This stands in sharp contrast with the EU's legal framework, which protects the use of the AI-based information services (e.g., ChatGPT subscriptions) not through the AI Act, but under the Directive on Electronic Commerce or Digital Services Act.¹¹² This confusion stems from a misunderstanding of how scientific risk control regimes work. AI does not read contracts to decide whom to affect. Just as environmental laws protect not only the users of environmentally risky products but everybody that may be impacted, AI risk oversight frameworks should safeguard citizens potentially affected by such systems. This confusion might have been further exacerbated by the assignment of AI regulation to a carrier regulator. The protection of telecommunications users, including business users, has policy justifications such as (i) the common carrier doctrine,¹¹³ (ii) the essential facilities doctrine (often mistakenly referred to as public goods),¹¹⁴ and/or (iii) the need to prevent cross-subsidization.¹¹⁵ In contrast, AI developers and distributors do not enjoy similar leverage over the deployer. In this context, user protection can be ensured through contract between the two parties.

2. High-Impact AI Regulations (Article 33 to 35)

The literal translation of Articles 33 to 35 of the AIFA is as follows:¹¹⁶

Article 33 (Confirmation of high-impact AI)

- (1) When providing AI or products and services using it, the AIBO shall review in advance whether the AI falls under the high-impact AI, and if necessary, may request the Minister of the MSIT to confirm whether it falls under the high-impact AI.
- (2) The Minister of the MSIT shall, upon receipt of the request under paragraph (1), confirm whether the AI falls under the high-impact AI, and may establish a specialized committee to obtain related advice if necessary.
- (3) The Minister of the MSIT may establish and disseminate guidelines on standards and examples of high-impact AI.
- (4) Other matters necessary for the confirmation procedures under paragraph (1) shall be prescribed by Presidential Decree.

Article 34 (Responsibilities of business operators regarding high-impact AI)

- (1) When providing high-impact AI or a product or service using it, the AIBO shall implement measures that include the following in accordance with Presidential Decree to ensure the safety and trustworthiness of AI:
 1. To formulate and operate a risk management plan;

¹¹² See Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1.

¹¹³ See 47 U.S.C. §§ 201(a), (b), 202(a) (1989).

¹¹⁴ See *MCI Commc'ns Corp. v. AT&T Co.*, 708 F.2d 1081, 1132-33 (7th Cir. 1983). *But see Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

¹¹⁵ See 47 U.S.C. §§ 254(k), 260(a), 273(g), 274(b)(4), 275(b)(2), 276(a), 629(a) (1996).

¹¹⁶ Framework Act on the Development of Artificial Intelligence and the Creation of a Foundation for Trust, translated in the Korea Legislation Research Institute's online database, <https://law.go.kr/lInfoP.do?lsiSeq=268543&lsId=014820&urlMode=engLsInfoR&viewCls=engLsInfoR&efYd=20260122#0000> (S. Kor.).

2. To formulate and implement an explanation plan for the final results derived by the AI to the extent technically feasible, the main criteria utilized to derive the final results of the AI, and the overview of learning data used in the development and utilization of the AI;
 3. To formulate and operate user protection plans;
 4. To assign human management and oversight of high-impact AI;
 5. To prepare and retain documents that can verify the content of the measures taken to ensure safety and trustworthiness;
 6. Other matters deliberated and resolved by the Committee to ensure the safety and trustworthiness of high-impact AI.
- (2) The Minister of the MSIT shall determine and publicly notify the details of the measures in the subparagraphs of paragraph (1) and may recommend that AI business operators comply with them.
- (3) If an AIBO has implemented measures equivalent to those in the subparagraphs of paragraph (1) as prescribed by Presidential Decree, they shall be deemed to have implemented the measures under paragraph (1).

Article 35 (Impact assessment of high-impact AI)

- (1) When providing products or services using high-impact AI, the AIBO shall endeavor to assess the impact on the fundamental rights of people in advance (hereinafter referred to as “impact assessment”). In such cases, the impact assessment must ensure that the characteristics of AI-vulnerable populations are reflected, taking into account the specific nature of the products or services utilizing high-impact AI.
- (2) Where State agencies, etc. intend to use products or services using high-impact AI, they shall give priority consideration to products or services that have undergone an impact assessment.
- (3) Other matters necessary for the specific content and methods of impact assessments shall be prescribed by Presidential Decree.

“High-impact AI” means an AI system that is likely to exert a significant impact on or pose a risk to human life, physical safety, or fundamental rights and that is used in a designated area.¹¹⁷ These domains can largely be grouped into (i) rights-impacting AI use cases, including hiring and credit assessment, public services, education, healthcare allocation, and criminal justice, and (ii) safety-impacting AI use cases, including energy systems, drinking water infrastructure, medical devices, nuclear facilities, and transportation.¹¹⁸ AIBOs are required to verify whether AI or the products or services using AI that they provide fall under the category of high-impact AI. They may request confirmation from the MSIT if necessary.¹¹⁹

¹¹⁷ They include (a) supplying energy, (b) processing drinking water production, (c) establishing or operating healthcare delivery system, (d) developing or using medical devices, (e) managing or operating nuclear materials and facilities, (f) analyzing or using biometric data for criminal investigation or arrest, (g) making judgments or evaluations significantly affecting individual rights or obligations, such as hiring and loan review, (h) running or operating traffic means, facilities, or systems, (i) state, municipal, or public institution’s decision-making that affects nationals, including confirmation of eligibility or decision for public service or collection of costs, and (j) student evaluation during preschool, primary, and secondary education. *Id.* art. 2, para. 4.

¹¹⁸ *Id.*, art. 2, para. 4.

¹¹⁹ *Id.*, art. 33, para. 1.

Unlike the EU AI Act, the AIFA does not provide for prohibited AI practices. AIBOs providing high-impact AI systems must perform operational duties under Article 34(1), including: (i) setting up a risk management policy; (ii) implementing an explanation policy addressing AI outputs, decision criteria, and training data overviews; (iii) keeping a user-protection policy; (iv) ensuring human intervention; and (v) maintaining documentation and record-keeping.¹²⁰ However, several of these mandates raise significant conceptual and allocative concerns. First, the term “user-protection” is a misnomer; these policies can be described more properly as “affected-person” protection. Second, the nature of “explanation” is context-dependent: while rights-impacting AI needs to be transparent about decision-making rubrics, safety-impacting AI needs to provide transparency based on safety standards, testing protocols, and incident logs.¹²¹ Third, human control requirements must be attuned to contextual risk. For rights-impacting systems, a “human-in-the-loop” model is a better interpretation and should be assigned to deployers who will implement final decisions. In contrast, for safety-impacting AI, “human-on-the-loop” oversight is more appropriate and should be allocated to developers so that they can act in emergencies.

3. Transparency Obligations

Article 31 (Obligation to ensure AI transparency)

- (1) An AIBO that intends to provide a product or service using high-impact AI or generative AI shall notify the user in advance that the product or service is operated based on the relevant AI.
- (2) An AIBO that provides generative AI or a product or service using it shall indicate that the output was generated by generative AI.
- (3) If an AIBO provides virtual sound, image, or video outputs that are difficult to distinguish from the real ones by using an AI system, they shall notify or indicate in a manner that users can clearly recognize the fact that the outputs are generated by the AI system. In this case, if the outputs correspond to an artistic or creative work or constitute a part thereof, the fact may be notified or labeled in a manner that does not hinder the exhibition or enjoyment.
- (4) Other matters necessary for the prior notification under paragraph (1), the indication under paragraph (2), the method of notification or indication and its exceptions under paragraph (3) shall be prescribed by Presidential Decree.

Article 31(1) of the AIFA requires an AIBO to issue prior notice to “users,” not “affected persons,” when they intend to supply products or services utilizing high-impact or generative AI. This requirement has little value in contexts where users already know of AI’s involvement. In addition, the AIFA’s requirements for this disclosure are considerably broader than those in the EU AI Act. Whereas the AIFA requires disclosure for high-impact, generative systems, the EU AI Act restricts disclosure to: (i) deployers in the workplace, or those using AI for decision-making

¹²⁰ *Id.* art. 34, para. 1, subparas. 1-5.

¹²¹ Park, *supra* note 10, at 222.

that impacts natural persons;¹²² or (ii) AI system providers designed to interface directly with natural persons.¹²³

Articles 31(2) and 31(3), which mandate the labeling or watermarking of synthetic content produced via generative AI and provided by AIBOs, prescribe largely overlapping obligations, a redundancy resulting from a drafting error. Read in conjunction, these articles stipulate that an AIBO providing generative AI outputs (i.e., synthetic content) must disclose that the output is AI-generated. Whether this disclosure should be in the form of labeling or watermarking, and whether watermarking can be machine-readable or should be human-readable is delegated to the Enforcement Decree.¹²⁴ Since the Act doesn't apply to end users, who are responsible for most of the deepfakes, it fails to address the most essential suppliers of synthetic content.

4. Frontier AI Regulations

Article 32 (Obligation to ensure AI safety)

(1) An AIBO shall implement the following to ensure the safety of an AI system in which the cumulative amount of computation for learning is equal to or greater than the standard prescribed by Presidential Decree:

1. Identification, assessment, and mitigation of risks throughout the entire AI lifecycle;
2. Establishment of a risk management system that monitors and responds to AI-related safety accidents.

(2) An AIBO shall submit the results of the implementation of the matters in the subparagraphs of paragraph (1) to the Minister of MSIT.

(3) The Minister of MSIT shall determine and publicly notify the specific implementation methods for the matters in the subparagraphs of paragraph (1) and the matters necessary for submitting the results under paragraph (2).

This provision regulates frontier AI safety in line with the Bletchley Declaration¹²⁵ and the Seoul Declaration.¹²⁶ It draws partial inspiration from California's Safe and Secure Innovation for Frontier AI Models Act (SB 1047),¹²⁷

¹²² Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), 2024 O.J. (L 1689) 1, 7-8.

¹²³ *Id.* at 82.

¹²⁴ AIFA, art. 31, para. 4.

¹²⁵ See generally AI Safety Summit, *The Bletchley Declaration by Countries Attending the AI Safety Summit, 1-2 November 2023* (updated Feb. 13, 2025), GOV.UK., <https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023> [<https://perma.cc/NZA6-86EQ>].

¹²⁶ MINISTRY OF FOREIGN AFFAIRS, *Seoul Declaration for Safe, Innovative and Inclusive AI by Participants Attending the Leaders' Session of the AI Seoul Summit, 21st May 2024* (May 23, 2024) (S. Kor.), https://www.mofa.go.kr/eng/brd/m_5674/view.do?page=1&seq=321007 [<https://perma.cc/c/4WA9-7UDJ>].

¹²⁷ S.B. 1047, 2023-2024 Leg., Reg. Sess. (Cal. 2024).

which was vetoed by Governor Newsom and later reintroduced as the Transparency in Frontier AI Act (TFAIA) (effective Jan. 1, 2026).¹²⁸ However, unlike the TFAIA, the Enforcement Decree applies to AI systems in general, not just general-purpose models, and sets the computational threshold at 10^{26} FLOPs.¹²⁹ No Korean AI model reaches this level at the moment; only a few models from the U.S., such as most recent versions of GPT and Grok are projected to exceed it, although these forecasts remain speculative.¹³⁰ Beyond the computational metric, two additional qualitative thresholds apply: (i) whether the system utilizes state-of-the-art AI technologies, and (ii) whether the system's risk level could have broad and significant impacts on human life, physical safety, or fundamental rights.¹³¹ Models meeting these criteria must comply with safety obligations, including (i) establishing risk management systems to monitor and respond to safety accidents, and (ii) identifying, assessing, and mitigating risks throughout the AI lifecycle.¹³² Specific implementation details are entrusted to the MSIT's notification and guidelines.

5. Designation of a Local Representative

An offshore AIBO is required to appoint a local representative in writing and report to the MSIT under Article 36(1), if any of the following thresholds are met: (i) a total annual turnover of at least KRW 1 trillion in the preceding fiscal year; (ii) an AI-related turnover of at least KRW 10 billion in the preceding fiscal year; (iii) a domestic user base averaging at least 1 million during the final quarter (October through December) of the preceding year; and (iv) a history of administrative fines under the AIFA.¹³³

III. HOW THE MSIT RECALIBRATED AIFA THROUGH RULEMAKING

A. Mounting Controversy and MSIT's Rulemaking Approach

After the AIFA was enacted on December 26, 2024, the world's regulatory landscape quickly turned away from the EU model, and the statute's structural deficiencies and legislative errors surfaced within legal scholarship¹³⁴ and were subsequently brought to public attention. Concerns grew that the premature enforcement of the AIFA would not only derail Korea from global developments

¹²⁸ Transparency in Frontier Artificial Intelligence Act, CAL. BUS. & PROF. CODE § 22757.10 *et seq.* (Deering 2026).

¹²⁹ AIFA, *supra* note 25, art. 24(1)(i).

¹³⁰ *See, e.g.*, EPOCH AI, *AI Models* (updated Mar. 25, 2026), <https://epoch.ai/data/ai-models> [<https://perma.cc/6J7V-W63E>] (projecting training compute for Grok 4 and GPT-4.5 at 5×10^{26} FLOPs and 3.8×10^{26} FLOPs, respectively).

¹³¹ Enforcement Decree of the AIFA, *supra* note 36, art. 24(1)(ii), (iii).

¹³² AIFA, *supra* note 25, art. 32(1)(i), (ii).

¹³³ Enforcement Decree of the AIFA, *supra* note 36, art. 29(1)(i)-(iv).

¹³⁴ *See generally* Park, "Who Protects Whom," *supra* note 86 (noting that the whole article is a critique of the statute).

but also cause substantial market confusion.¹³⁵ As a result, calls to postpone enforcement gained momentum. In response, Rep. Jeonga Hwang, one of the few former scientists who sit on the Science & ICT Committee, introduced an amendment bill to hold off time on the AIFA's enforcement for three years.¹³⁶ However, the bill failed to secure support in the Science & ICT Committee, and the MSIT officially refuted reports that it had decided to postpone AIFA enforcement.¹³⁷

The MSIT instead tasked its subordinate agencies with administrative rulemaking.¹³⁸ To support these agencies, the MSIT organized a Subordinate Regulation Task Force, made up of approximately 80 experts.¹³⁹ Amid ongoing controversies, the MSIT decided to implement a one-year grace period for investigations and administrative fines; during this period, investigations will be conducted only in cases involving significant issues, such as loss of life or human rights abuses.¹⁴⁰

Throughout the administrative rulemaking process, the MSIT's primary strategy was to shrink the AIFA's scope. By focusing on upstream development, the MSIT excluded downstream deployers (entities using AI systems for business purposes) from regulatory burden, by reshuffling the definition of AIBO. Instead, it rerouted the duties intended for deployers toward developers and distributors.

¹³⁵ KOREA'S AI ACTION PLAN, *supra* note 35, at 58.

¹³⁶ Ingongjineung baljeongwa sinroe giban joseong deunge gwanhan gibonbeop ilbugaejeongbeopyuran) [Partial Revision Bill for the Framework Act on the Development of Artificial Intelligence and the Creation of a Foundation for Trust] (proposed by 14 members, including Rep. Jeonga Hwang), No. 2209896, NAT'L ASSEMBLY OF REPUBLIC OF KOREA (introduced Apr. 17, 2025) (S. Kor.), https://likms.assembly.go.kr/bill/bi/billDetailPage.do?billId=PRC_N2M5K0S3R2R0Q1O3X5X1W1U1T7P3Q6 [<https://perma.cc/KKP2-V734>].

¹³⁷ Press Release, MSIT, AIGibonbeop 3nyeon Gyujesihaeng Yuyee Daehae Gyeoljeongdoen ba Eopseum [A Three-Year Deferral of AIFA Regulation Enforcement Has Not Been Decided] (July 2, 2025) (S. Kor.), <https://www.korea.kr/news/policyNewsView.do?newsId=148953079> [<https://perma.cc/EG7H-WWW2>].

¹³⁸ The NIA was assigned the Guideline on the Determination of High-Impact AI, the Telecommunications Technology Association (TTA) was tasked with the Guideline on High-Impact AI Business Operator Duties and the Guideline on Ensuring Transparency, the AI Safety Institute (AISI) took on the Guideline on Ensuring AI Safety, and the Korea Information Society Development Institute (KISDI) was assigned the Guideline on AI Impact Assessments. *See* Press Release, MSIT, Ingongjineung Gibonbeobeul wihan 'Hawibeopryeong Jeongbidan' Bongyeok Chulbeom [Official Launch of the Subordinate Regulation Task Force for the AI Framework Act] at 3 (Jan. 15, 2025) (S. Kor.), <https://www.korea.kr/briefing/pressReleaseView.do?newsId=156670378> [<https://perma.cc/Y3KU-N4VM>].

¹³⁹ *See id.*

¹⁴⁰ Press Release, MSIT, "Ingongjineunggibonbeop" 22il Sihaeng...Saengseonghyeong AI Gyeolgwamul "Woteomakeu" Pyosi Uimu [AIFA Takes Effect on the 22nd; Mandatory Watermarking for Generative AI Outputs] (Jan. 21, 2026), <https://www.korea.kr/news/policyNewsView.do?newsId=148958380> [<https://perma.cc/9XF5-P7KB>] (S. Kor.).

Since upstream providers often lack a direct relationship with the general public, the category of protected persons was narrowed to focus on users rather than affected citizens.

*B. High-Impact AI Regulation: Tweaking Who Protects Whom*¹⁴¹

1. Definition of High-Impact AI

In response to concerns about potential regulatory overlaps, the High-Impact AI Determination Guideline narrowed the scope of high-impact AI.¹⁴² The Enforcement Decree further exempted digital medical products, nuclear power facilities, self-driving cars, and self-navigating ships from all or a part of “business operator duties,” if other relevant sectoral laws are complied with.¹⁴³ As a result, AI use cases without full autonomy (for example, rights-impacting use cases with human-in-the-loop) were largely excluded from the “high-impact” category. The MSIT noted that because few AI use cases, other than Level 4+ self-driving cars, currently meet this designation, the high-impact AI regulation is targeted at future risks.¹⁴⁴

2. Covered Entities and Protected Groups: AI Business Operators and Users

The AIFA regulates AIBO, which encompass AI Development Business Operator (“DBO”) and AI Use Business Operators (“UBO”).¹⁴⁵ A DBO is defined as an individual or entity that develops and provides AI, and a UBO is defined as an individual or entity that provides AI products or services *by use of* AI that a DBO provides.¹⁴⁶ Due to the “by use of” element, the term DBO had been thought to

¹⁴¹ This Chapter partly builds on the core argument presented in my previous Korean-language work, Park, “Who Protects Whom,” *supra* note 85, but has been rearticulated for the non-Korean audience.

¹⁴² It covers (i) fully automated electricity or drinking water supply, (ii) medical or non-medical healthcare service which medical professors are unable to actively intervene in, (iii) Lv. 4 (highest-risk) medical device, (iv) certain nuclear facilities, (v) certain uses of biometric data for criminal investigation or arrest, (vi) fully automated hiring, (vii) certain types of loan review significantly affected by AI, (viii) Lv. 4+ self-driving cars and certain traffic facilities and systems, (ix) self-navigating ships, (x) self-navigating aircrafts and certain safety facilities and devices, (xi) trains and relevant facilities and systems, (xii) determining eligibility, ranks, and costs regarding certain fully automated public service, and (xiii) level tests, student records, and exams during primary and secondary education. MSIT & NIA, GOYEONGHYANG INGONGJINEUNG PANDAN GAIDEURAIN CHOEJONG [HIGH-IMPACT AI DETERMINATION GUIDELINE], 27-140 (Jan. 22, 2026) (S. Kor.), http://nia.or.kr/viewer/skin/doc.html?fn=40ccad19_7ddf_42b5_bf0e_d71c5ce8c849.pdf&rs=/viewer/result/board/99835/ [<https://perma.cc/5M4Q-RSFA>].

¹⁴³ Enforcement Decree of the AIFA, *supra* note 36, art. 27(5), sched. 1.

¹⁴⁴ Kim Mijeong, *Jeongbu “Algibonbeop, Wiheom Daebi Jedoil Ppun...Gwado Gyuje Anya” [Government: “AI Framework Act is a Risk Management Tool, Not Overregulation”]*, ZDNET KOREA (Jan. 21, 2026) (S. Kor.), <https://zdnet.co.kr/view/?no=20260121105347> [<https://perma.cc/65AJ-VYSD>].

¹⁴⁵ AIFA, *supra* note 25, art. 2(vii).

¹⁴⁶ *Id.* art. 2, para. 7, subparas. 1-2.

mean a “deployer” (business user or operator) under the EU AI Act. However, due to concerns about pan-industry regulatory burdens, the MSIT gives more weight to the “provision of AI products or services” element than to the “by use of” element, in the Guideline for Determination of High-Impact AI.¹⁴⁷ Accordingly, the MSIT interprets that the UBO does not include deployers and mainly refers to either (i) those who develop and provide AI components (a “provider” under the EU AI Act) (who also falls under the definition of a DBO) or (ii) those who do not develop but resell AI components to end users or deployers (a “distributor” under the EU AI Act).¹⁴⁸

Unlike the EU AI Act, the AIFA protects “users,” not “affected persons,” with the exception being the AI impact assessment. “Users” are defined as those who receive AI products or services.¹⁴⁹ The MSIT guidelines interpret deployers as users. Take an example of (i) A developing AI-based hiring solutions, (ii) B reselling the solutions to a hiring company C, and (iii) C deploying the solution to hire a job applicant D. Under the EU AI Act, A, B, C, and D fall under (i) provider, (ii) distributor, (iii) deployer, and (iv) affected person, respectively; the Act obligates providers and deployers to protect affected persons (job applicants D in this case). However, under the AIFA, A, B, C, and D fall under (i) both DBO and UBO, (ii) UBO, (iii) user, and (iv) affected person, respectively; the Act obligates DBO and UBO to protect users (the hiring company C in this case).

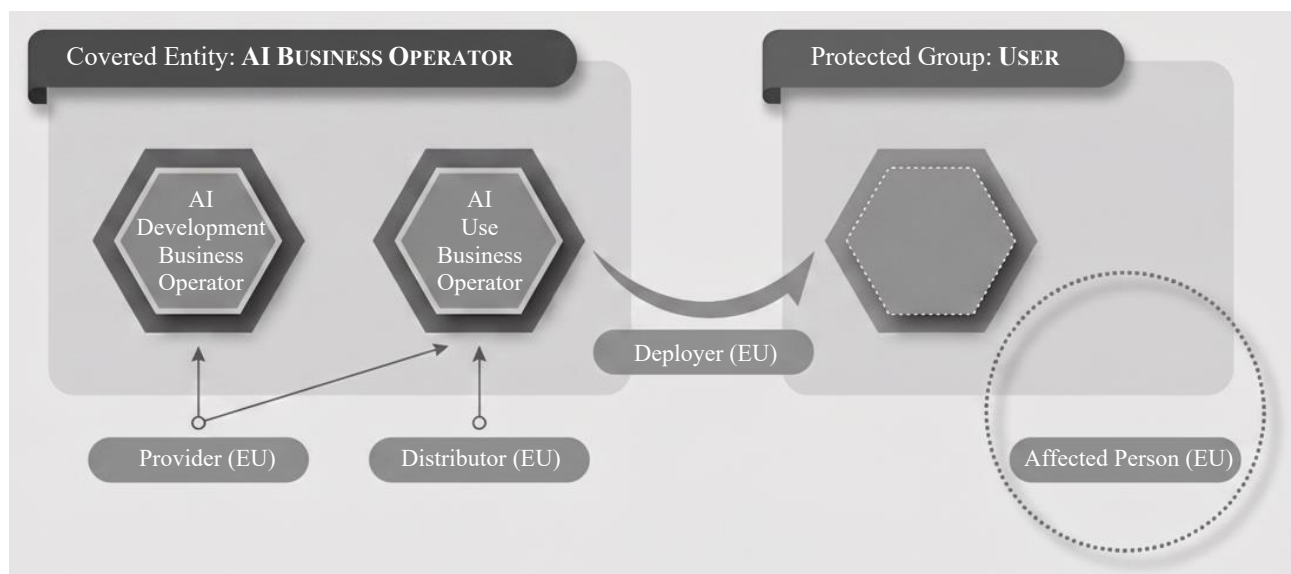


Figure 2. MSIT's Interpretation of Covered Entities and Protected Groups

¹⁴⁷ MSIT & NIA, *supra* note 142, at 14.

¹⁴⁸ The MSIT, in the Guideline, interprets UBO to mean (i) those who deliver products that performs or directly implements AI-based function for users and (ii) those who provide service utilizing AI or AI technology for use of users, but not to mean (i) those who internally use AI for developing products or service necessary for their own businesses or (ii) those who provide the outcomes generated by use of AI as products or services. *Id.* at 14.

¹⁴⁹ AIFA, *supra* note 25, art. 2, para. 8.

	Developer Developing AI	Startup (Sublicensing without System Modification)	Hiring Company (Recruiting by Use of Hiring AI)	Job Applicants
EU AI ACT	Provider (subject to high-risk AI regulations)	Distributor (subject to lenient regulations including CE marking)	Deployer (subject to high-risk AI regulations)	Affected person (protected)
AIFA	DBO (subject to high-impact AI regulations)	UBO (subject to high-impact AI regulations)	User (protected)	Affected person (not protected)

Table 2. MSIT's Interpretation of Covered Entities and Protected Groups

3. "Business Operator Duties"

Under the MSIT's High-Impact Business Operator Duty Guideline, High-impact AI DBOs and UBOs bear the following "business operator duties."¹⁵⁰

Statute (Art. 34(1))	Draft Ministerial Notification	Draft Business Operator Duty Guideline	DBO	UBO
1. Establishment & operation (E&O) of risk management policy	1-1. E&I of risk management policy	1-1-1. Establishment of risk management plan	○	○
		1-1-2. Risk identification	○	○
		1-1-3. Risk analysis and evaluation	○	○
		1-1-4. Risk handling	○	○
		1-1-5. Improvement of risk management policy	○	○
	1-2. E&O of risk management organization	1-2-1. Formation of risk management organization	○	○
		1-2-2. Provision of information	○	○
2. Establishment & implementation (E&I) of explanation policy for AI outputs, key criteria for deriving	2-1. Preparing grounds for outputs and criteria	2-1-1. Ensuring transparency and explainability	○	×
		2-2. Managing information	○	×
	2-2-1. Overview of training data	○	×	

¹⁵⁰ See MSIT & TELECOMMS. TECH. ASS'N (TTA), GOYEONGHYANG INGONGJINEUNG SABEOPJA CHAEKMU GAIDEULAIN [HIGH-IMPACT AI BUSINESS OPERATOR DUTY GUIDELINE] 16-60 (Jan. 22, 2026) (S. Kor.), https://nia.or.kr/viewer/skin/doc.html?fn=5dc0bce4_fddf_431b_9da4_7f48bea695ab.pdf&rs=/viewer/result/board/99835/ [<https://perma.cc/5P4B-BMEY>].

the outputs, and training data overview	regarding training data			
	2-3. E&O of explanation policy	2-3-1. Establishing key content of explanation policy	×	○
		2-3-2. Implementing explanation policy	×	○
3. E&O of user protection policy	3-1. AI development stage	3-1-1. Data collection and management	○	○
		3-1-2. Algorithm design and system development	○	×
		3-1-3. Testing and evaluation	○	○
	3-2. AI operation stage	3-2-1. Monitoring and response	○	○
		3-2-2. Feedback collection and application	○	○
		3-2-3. Guarantee of user rights	○	×
4. Human control and supervision	4-1. AI development stage	4-1-1. Standards for human involvement	○	○
		4-1-2. Methods of human involvement	○	○
	4-2. AI operation stage	4-2-1. Regular inspections	○	○
		4-2-2. Education and training	○	○
5. Documentation and recordkeeping	5-1. Documentation and management policy	5-1-1. Documentation	○	○

Table 3. High-impact AI Business Operator Duties

These compliance items prescribe broad procedural frameworks and do not offer tailored measures for varying contexts or applications of high-impact AI. The MSIT states that, in preparing these items, they drew upon (i) the Telecommunications Technology Association (“TTA”; Korea’s standard body)’s Trustworthy AI Development Guideline, (ii) the U.S. National Institute of Standards & Technology’s (“NIST”) Risk Management Framework (“RMF”), and (iii) the EU AI Act.¹⁵¹ Although risk management policy items correspond reasonably well with the NIST’s RMF, explanation and user protection policy items differ substantially from the RMF, mainly because they protect users.¹⁵²

4. AI Impact Assessment

High-impact AI UBOs are required to make efforts to conduct an AI impact assessment before providing products or services, while the state, municipalities, and public institutions must prioritize products or services that have undergone the

¹⁵¹ *Id.* at 4-5.

¹⁵² *See id.* at 5-9.

AI impact assessment prior to deployment.¹⁵³ Non-compliance with this provision shall not result in correction/suspension orders or administrative fines. The MSIT published the AI Impact Assessment Guideline, which confirms it would be modified when the EU issues its FRIA template in compliance with the AI Act to make it interoperable.¹⁵⁴ This prompts the question as to why the MSIT seeks to have the AIFA implemented in its unfinished state, before the EU AI Act takes full effect.

C. Transparency Obligations: Maneuvering Legislative Errors

1. Disclosure of the Use of AI (Article 31(1))

As noted above, the AIFA requires that AIBOs give “prior notice to users” when providing products or service using high-impact and generative AI.¹⁵⁵ The Enforcement Decree shifted this away from a notice requirement and into a general disclosure obligation; this obligation may be met in various formats, such as packaging, service contracts (including terms of use), user manuals, interface displays, or in-store notices.¹⁵⁶

2. Labeling/Watermarking for Synthetic Content (Articles 31(2) and (3))

To address the “notification” and “indication” requirements for synthetic content, the MSIT attempted to maneuver legislative errors, including (i) redundant provisions in Articles 31(2) and (3), (ii) the illogical mandate to notify users who are already aware they are using generative AI tools rather than affected persons who might be deceived by synthetic content, and (iii) a failure to define the specific technical means of disclosure. To mitigate these issues, the MSIT developed a framework that distinguishes between content viewed within a service interface and content prepared for external distribution.¹⁵⁷

For in-service interactions where synthetic content is generated and viewed within the AI tool’s own interface, the MSIT allows for flexible labeling.¹⁵⁸ Compliance can be achieved through text labels like “*Meet Gemini, Google’s AI assistant*” or by displaying a logo such as “◆ Gemini” within the user interface.¹⁵⁹

¹⁵³ AIFA, *supra* note 25, art. 35, para. 1.

¹⁵⁴ MSIT & KOREA INFO. SOC’Y DEV. INST. (KISDI), INGONGJINEUNG YEONGHYANG PYEONGGA GAIDEULAIN [AI IMPACT ASSESSMENT GUIDELINE] 11 (Jan. 22, 2026) (S. Kor.), https://nia.or.kr/viewer/skin/doc.html?fn=28908751_292d_454b_acce_2051f9ccecda.pdf&rs=/viewer/result/board/99835/ [<https://perma.cc/T9Z6-YZLA>].

¹⁵⁵ AIFA, *supra* note 25, art. 31, para. 1.

¹⁵⁶ Enforcement Decree of the AIFA, *supra* note 36, art. 23, para. 1.

¹⁵⁷ MSIT & TTA, INGONGJINEUNG TUMYEONGSEONG HWABO GAIDEULAIN [AI TRANSPARENCY ASSURANCE GUIDELINE] 7 (Jan. 26, 2026) (S. Kor.), https://nia.or.kr/viewer/skin/doc.html?fn=b7d0f829_f310_471d_b058_fa240597f76d.pdf&rs=/viewer/result/board/99835/ [<https://perma.cc/2QNY-TLYY>].

¹⁵⁸ *Id.* at 7-8.

¹⁵⁹ *Id.* at 11.

In these specific internal contexts, watermarking embedded within images or audio is not required.¹⁶⁰

However, the standards become more rigorous when content is downloaded or shared for external takeout. For standard synthetic content, either human-readable watermarking or machine-readable watermarking is required.¹⁶¹ In practice, this interpretation shifts the focus of notification from the primary user to affected third parties. The Chairperson of the Science & ICT Committee directed the MSIT to mandate, via the Enforcement Decree of the AIFA, that machine-readable markers are accompanied by at least one visible or audible annotation,¹⁶² despite a lack of sound justification for forcing visible or audible markers on users who already know they are interacting with AI. For content specifically classified as a “deepfake” under Article 31(3), only human-readable watermarking is allowed.¹⁶³ The technical application of these markers varies by media format. For text-based content, human-readable requirements are met through document prefaces or descriptions in markdown files, while machine-readable requirements are satisfied via metadata or comments within the code.¹⁶⁴ For visual media, the embedding of visible logos such as “◆ Gemini” or “[logo] Sora” onto images or video are recognized as valid human-readable watermarking.¹⁶⁵

D. Frontier AI Safety

Because the frontier AI safety mandates target only a small cohort of developers, the MSIT's recalibration in this area remained narrow in scope. As originally intended, the AI Safety Assurance Guideline imposes rigorous requirements designed to safeguard public welfare against the specific risks posed by frontier AI systems.¹⁶⁶

IV. SIDE EFFECTS OF THE MSIT'S RECALIBRATION

Though the MSIT's recalibration mitigated the wide cross-industry impact of the AIFA, it aroused the following concerns.

¹⁶⁰ *Id.* at 7-8.

¹⁶¹ Enforcement Decree of the AIFA, *supra* note 36, art. 23, para. 2., subparas. 1-2.

¹⁶² *Id.* art. 23, para 2., subpara. 2.

¹⁶³ *Id.* art. 23, para. 3.

¹⁶⁴ MSIT & TTA, *supra* note 157 at 15.

¹⁶⁵ *Id.* at 17-18.

¹⁶⁶ MSIT & ELECS. & TELECOMM. RSCH. INST., [INGONGJINEUNG ANJEONSEONG HWABO GAIDEULAIN] AI SAFETY ASSURANCE GUIDELINE (Jan. 22, 2026) (S. Kor.), https://nia.or.kr/viewer/skin/doc.html?fn=9e78399b_a8ab_4baa_b41f_5488f514eeb7.pdf&rs=/viewer/result/board/99835/ [<https://perma.cc/7CEF-72BN>].

A. High-Impact AI Regulations

1. Confusion About Whom to Protect

While the EU AI Act protects affected persons, the AIFA requires AIBOs to (i) establish and operate a policy that safeguards users, not affected persons;¹⁶⁷ (ii) inform users, not affected persons, that a product or service is “deployed” using high-impact AI or generative AI;¹⁶⁸ and (iii) notify or indicate to users, not affected persons, that an outcome was AI-generated.¹⁶⁹ As the MSIT guidelines exclude deployers from the category of UBOs and instead classifies them as users,¹⁷⁰ the AIFA has become a law that requires protection and notification not for affected individuals (e.g., patients, job applicants, residents near nuclear plants, or railway passengers), but for users including deployers (e.g., hospitals, hiring companies, nuclear plant operators, and railway companies). This differs drastically from the EU’s legal framework, where the use of AI-based information services (e.g., ChatGPT subscriptions) is protected not by the AI Act but by the Directive on Electronic Commerce¹⁷¹ or the Digital Services Act.¹⁷²

This confusion is owing to a failure to grasp how scientific risk control regimes operate. AI cannot read contracts to decide who it is going to influence. Just like environmental laws also protect not just the users of environmentally risky products but all people who might be indirectly affected by those products, so AI risk oversight frameworks should protect citizens that are vulnerable to such systems.

Assigning AI regulation to a carrier regulator might have exacerbated confusion about whom to protect. In contrast with telecommunications carriers, AI developers and distributors generally lack comparable leverage over deployers; user protection in this context can be effectively ensured through contractual arrangements between the parties. For instance, among the “Business Operator Duties,” Item 3-2-3 (guarantee of user rights) requires UBOs to make effort for compensation for users (including deployers) upon incidents;¹⁷³ this is excessive when existing contractual liability can sufficiently cover damages incurred by deployers. A hallmark of good AI regulation is that developers who invest in state-of-the-art (“SOTA”) trust and safety technology would, often inadvertently, find themselves in compliance. In contrast, the AIFA requires even those who have already achieved SOTA protection for affected citizens to undertake additional measures focused on protecting deployers.

¹⁶⁷ AIFA art. 34(1)(iii).

¹⁶⁸ *Id.* art. 31(1).

¹⁶⁹ *Id.* art. 31(3).

¹⁷⁰ *See* MSIT & NIA, *supra* note 142, at 14.

¹⁷¹ Directive 2000/31/EC, of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (E-Commerce Directive), 2000 O.J. (L 178) 1.

¹⁷² Regulation (EU) 2022/2065, arts. 2-3, 2022 O.J. (L 277) 1.

¹⁷³ MSIT & TTA, *supra* note 150, at 50.

Indeed, end users or consumers deserve more protection than deployers. However, the adjustment of existing consumer protection laws should take precedence. If the AIFA becomes protective of user subscriptions to AI service, it will overlap and may collide with incumbent consumer protection laws, such as the E-Commerce Act¹⁷⁴ or the Network Act.¹⁷⁵ This is particularly meaningful given that Korean carrier regulators such as the MSIT and the Korea Media and Communications Commission (“KMCC”) have unwittingly extended user protection under the telecommunications law (ECBA) to Internet services and digital platforms. The Supreme Court of Korea, in its 2023 decision, canceled the Korea Communications Commission (currently, the KMCC)’s sanctions over Facebook (currently, Meta) on the charge of rerouting network connections for Korean users in a manner that reduced service quality; the court ruled that this rerouting does not qualify as the “deterioration of telecommunications user interest” prohibited under the ECBA.¹⁷⁶ The KMCC recently issued a guideline to allege that AI-based services are broadly subject to telecommunications laws such as the ECBA.¹⁷⁷

Compounding that ambiguity is that the MSIT guidelines recommend protecting affected persons as well. For example, the High-Impact AI Business Operator Duty Guideline categorizes users directly affected by the use of AI as “Area A” and users not directly affected by the use of AI as “Area B”; the Guideline then argues that for Area B, user protection policy under Art. 34(1)(iii) should be designed in consideration of “affected persons.”¹⁷⁸ This legislative mistake would raise the legal question of whether literal or teleological interpretations should prevail, but such uncertainty is not addressed by this shift and is likely to create confusion in the market and industry.

2. Problems in Imputing Downstream Obligations on Upstream Developers

The High-Impact AI Business Operator Duty Guideline places a number of deployment-stage obligations on DBOs or developers, such as: (i) deployment-stage user protection (Art. 34(1)(iii)), including real-time monitoring and response (Item 3-2-1) and the collection and application of user feedback throughout deployment (Item 3-2-2);¹⁷⁹ (ii) deployment-stage affected person protection (with

¹⁷⁴ See Jeonjasangeoraedeungeseoui sobija boho e gwanhan beopryul [Act on Consumer Protection in Electronic Commerce], Act No. 21066 (Oct. 1, 2025) (S. Kor.), arts. 13, 17.

¹⁷⁵ See Jeongbotongshinmang iyong chokjin mit jeongbo boho deung e gwanhan beopryul [Act on Promotion of Information and Communications Network Utilization and Information Protection] (Network Act), Act No. 21066 (Oct. 1, 2025) (S. Kor.), arts. 22, 28.

¹⁷⁶ Daebeobwon [S. Ct.], Dec. 21, 2023, 2020Da50348, at 4-8 (S. Kor.).

¹⁷⁷ Korea Media & Commc’ns Comm’n & KISDI, Ingongjineung Seobiseu Sabeopjareul Wihan Iyongja Boho Gwanryeon Tongsin Gwangye Beomnyeong Annaeseo [Guideline for AI Service Providers on Telecommunications Laws and Regulations Related to User Protection] 6-12 (Jan. 20, 2026) (S. Kor.), <https://www.kmcc.go.kr/user.do?mode=view&page=A02031100&dc=K02031100&boardId=1148&cp=1&nop=10&boardSeq=67952> [<https://perma.cc/FBD7-D3MR>].

¹⁷⁸ MSIT & NIA, *supra* note 142, at 40-41.

¹⁷⁹ *Id.* at 46-47.

no statutory grounds), requiring efforts to assess the protection of affected persons' rights (Item 3-1-3) and recommending the incorporation of their opinions on a biannual or quarterly basis (Item 3-2-2);¹⁸⁰ and (iii) human control and monitoring (Art. 34(1)(iv)), which includes error detection and kill switch mechanisms (Items 3-1-2 and 4-1-2), regular system checks (Item 4-2-1), and education and training (4-2-2).¹⁸¹ Unless developers themselves deploy the AI systems they develop, they typically lack direct contact with users and affected persons and have no practical means to intervene in downstream deployment. The EU AI Act, of course, assigns responsibility for human oversight and monitoring during the deployment stage to deployers,¹⁸² while requiring providers to supply deployers with high-risk AI systems in a manner that enables effective human oversight.¹⁸³

In addition, neither the statute nor the guidelines provide how to reassign regulatory roles upon changes in intended purposes or substantial system changes along the AI value chain. The EU AI Act sets forth a very clear rule on this issue.¹⁸⁴ The MSIT guidelines still do not clarify whether general-purpose AI models are excluded from the scope of high-impact AI regulations and thus shielded from obligations related to downstream uses beyond their control.

Further, the guidelines require DBOs to contact UBOs to provide necessary information (Items 1-1-4 and 1-2-2) and training and education (Item 4-2-2).¹⁸⁵ This is hard to implement in the case of open-weight models that are made publicly available on repositories like Hugging Face.

A more tenable legal interpretation of Art. 2(vii)(*na*) of the AIFA would not categorize developers and distributors under the UBO, notwithstanding the MSIT guidelines that are not binding on judicial interpretation.¹⁸⁶ A literal interpretation of the term “AI Use Business Operator” and its defining phrase “*by use of*” (Art. 2(vii)(*na*)) are hard to construe as encompassing developers and distributors.¹⁸⁷ Through a teleological interpretation, the legislative intent behind the definition of UBO is more plausibly directed toward deployers, given that the AIFA is modeled after the EU AI Act.

3. Unnecessary Overregulation of Distributors

The EU AI Act assigns relatively lenient regulatory roles to distributors, as compared to providers and deployers, including (i) verifying CE marking, (ii) avoiding the distribution of non-compliant AI systems, (iii) not jeopardizing compliance during storage or transport, (iv) taking corrective actions and informing providers (or importers) and authorities of non-compliance and corrective acts, (v)

¹⁸⁰ *Id.* at 45-47.

¹⁸¹ *Id.* at 43, 55-57.

¹⁸² Regulation (EU) 2024/1689, art. 26(2), (3), (5).

¹⁸³ *Id.* art. 14(4).

¹⁸⁴ *Id.* art. 25.

¹⁸⁵ MSIT & TTA, *supra* note 150, at 22, 26, 57.

¹⁸⁶ Park, *supra* note 85, at 919.

¹⁸⁷ *Id.*

providing authorities with information and documentation, and (vi) cooperating with authorities.¹⁸⁸ However, the MSIT had to reassign deployer obligations to UBOs (including both developers and distributors), in an effort to avoid amending the AIFA. As a result, UBOs are subject to deployment-stage obligations (Items 1-2-3, 3-1-3, 3-2-1, 3-2-2, and 4-1-1),¹⁸⁹ human monitoring and control (Items 3-1-2, 4-1-1, 4-1-2, 4-2-1, and 4-2-2),¹⁹⁰ and AI impact assessment.¹⁹¹ As distributors tend to include startups, it is problematic to pass on deployment-stage obligations to such resource-constrained startups in order to benefit deployers who have more leverage.

In particular, the AI impact assessment is customarily assigned to deployers who directly interact with affected persons; the EU AI Act provides as such,¹⁹² and the U.S. Office of Management and Budget's AI M-Memo (M-25-21) also tasks federal agencies to conduct AI impact assessment.¹⁹³ As the AIFA requires UBOs to take on this deployer-level responsibility, UBOs, who do not directly interact with affected persons, must imagine potential use cases and conduct imaginary assessments.

B. Transparency Obligations

With regard to the disclosure of AI use, it remains uncertain whether general disclosure under the Enforcement Decree satisfies the statutory obligation for prior notice.¹⁹⁴ Further, the requirement to notify users is redundant in contexts where the use of AI is already self-evident.

Furthermore, in the context of synthetic content, assigning the responsibility for labeling or watermarking to UBOs is conceptually incoherent and misallocates regulatory burdens. By contrast, the EU AI Act maintains a clear functional distinction: labeling obligations are assigned to deployers,¹⁹⁵ whereas watermarking requirements are the responsibility of providers.¹⁹⁶ User-facing labels offer little value since users generally know they are interacting with AI. Furthermore, human-readable watermarks are easily bypassed, as they can be removed by simply cropping an image or trimming a clip. For machine-readable

¹⁸⁸ Regulation (EU) 2024/1689, art. 24.

¹⁸⁹ MSIT & TTA, *supra* note 150, at 27, 45, 46, 48, 54.

¹⁹⁰ *Id.* at 43, 54-57.

¹⁹¹ AIFA, art. 35.

¹⁹² Regulation (EU) 2024/1689, art. 27.

¹⁹³ OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB MEMORANDUM No. 25-21, ACCELERATING FEDERAL USE OF AI THROUGH INNOVATION, GOVERNANCE, AND PUBLIC TRUST 16-17 (Apr. 3, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf> [<https://perma.cc/BR6S-TXRS>].

¹⁹⁴ Park, *supra* note 85, at 911.

¹⁹⁵ See Regulation (EU) 2024/1689, art. 50(4), 2024 O.J. (L) 1.

¹⁹⁶ See Regulation (EU) 2024/1689, art. 50(2).

watermarking to be effective, distributors including platforms must collaborate on shared technical specifications to develop integrated detection tools.

C. Frontier AI Safety

The training compute threshold of 10^{26} FLOPs needs to be reconsidered. As agentic AI and reasoning evolve, inference or runtime compute is now as vital to model capabilities as initial training power.¹⁹⁷ The MSIT Safety Assurance Guideline, which imposes broad and ambiguous obligations, must be refined to ensure legal clarity and predictability.

V. WHICH EFFORT SEOUL WILL FURTHER MAKE TO IMPROVE THE AIFA

A. Item 34 of the AISC's AI Action Plan

Although the AISC was established pursuant to the AIFA, its members, myself included, identified significant structural flaws within the Act. Consequently, Item 34 of the AISC's National AI Action Plan begins with a preamble critiquing the current organizational logic of the AIFA's regulatory provisions:

The AIFA, scheduled to enter into force in January 2026, has significance in that it establishes, after a long period of preparation, a novel legal and institutional foundation. In particular, its provisions related to institutional design and promotion are expected to contribute to the advancement of AI development and commercialization. However, the Act's regulatory provisions and the proposed subordinate regulations lack clarity, equity, enforceability, and international consistency, with certain items requiring statutory amendment. Moreover, once the final version of the subordinate regulations is confirmed, developers should have been afforded sufficient time prior to the effective date to invest in trust and safety. Accordingly, while options such as deferring the Act's implementation and pursuing follow-on amendments were initially considered, practical constraints, including the need for consultation with the National Assembly, have led to a second-best approach: identifying matters that should be supplemented or amended even after the Act enters into force. In addition, AI-related bills being pursued in a fragmented manner by individual ministries pose a persistent risk of conflict with the existing legal framework or of generating overlapping regulation. Such outcomes would impose unpredictable burdens on developers and could seriously undermine national AI competitiveness. It is therefore necessary to pursue

¹⁹⁷ Charlie Snell et al., *Scaling LLM Test-Time Compute Optimally Can Be More Effective than Scaling Parameters for Reasoning*, in INTERNATIONAL CONFERENCE ON LEARNING REPRESENTATIONS (ICLR 2025) *passim* (2025).

improvements while continuously listening to voices from both the development community and the public.¹⁹⁸

Regarding subordinate regulations, the AISC has tasked the MSIT with a comprehensive overhaul of the current regime, focusing on the following objectives:¹⁹⁹

- Subdividing the definition of “users” entitled to protection, explanation, and notice based on specific usage contexts;
- Refining the responsibilities of developers by explicitly excluding general-purpose models from the high-impact AI category, identifying the responsible party following material system modifications, and recalibrating obligations for open-weight models where the deploying entity is identifiable;
- Easing the regulatory burden on UBOs, particularly regarding deployment-level mandates;
- Simplifying recordkeeping and reporting requirements to reduce administrative friction;
- Rationalizing provisions that are currently technically infeasible or impractical to implement;
- Tailoring obligations more precisely to specific usage contexts;
- Clarifying the requisite nexus between a UBO’s AI products/services and their generated outputs to trigger transparency disclosures; and
- Developing more effective strategies to eliminate overlapping or redundant regulations.

However, as the amendment to the AIFA is inevitable, the AISC further tasked the MSIT with amending the following items of the AIFA:²⁰⁰

- Revising the protected subject from “user” to “affected person”;
- Improving and clarifying the allocation of obligations among developers, distributors, and deployers;
- Clarifying the scope of developers’ responsibility across the downstream segments of the AI value chain; and
- Improving provisions on transparency obligations.

B. Directions for Amending the AIFA

Pursuant to Item 34 of the AI Action Plan, the MSIT has formed a task force to amend the AIFA.²⁰¹ However, it is uncertain to what extent the MSIP will be able

¹⁹⁸ KOREA’S AI ACTION PLAN, *supra* note 35, at 58.

¹⁹⁹ *Id.* at 192 n.56.

²⁰⁰ *Id.* at 192 n.57.

²⁰¹ MSIT, *supra* note 56, at 6.

to integrate these items into the final amendment bill. That said, the AIFA could be substantially improved by implementing the following measures.

First, operator duties should be refined. Obligations for high-impact AI business operators should be reassigned to developers based on their intended purpose, while explicitly excluding developers and distributors of general-purpose AI models.

Second, deployment-stage obligations should be reasonably limited. Obligations specific to the deployment stage, such as real-time human oversight, should be removed, except where they involve developing functions that enable oversight for safety-critical use cases. This shift does not leave citizens unprotected; rather, it ensures that protections are managed through robust, domain-specific sectoral regulations.

Third, impact assessment obligations should be reassigned. The duty should rest with deployers rather than developers. To prevent an undue industry-wide burden, this requirement could be limited initially to public-sector deployers. For example, the AIFA could be aligned with the Act on Promotion of AI and Data-Based Administration, which will require public-sector deployers to conduct AI impact assessments starting February 28, 2027.²⁰²

Fourth, disclosure requirements should be improved. The responsibility to disclose AI use should fall on deployers (relative to affected persons) rather than on UBOs (relative to users). Consistent with the EU AI Act, the scope of covered high-impact or generative AI should be reasonably limited.

Lastly, labeling and watermarking regulations should be reformed. The MSIT could establish general principles for labeling, which sectoral agencies can then adapt to deter high-risk misuses, such as sexually exploitative deepfakes or synthetic content designed to deceive consumers, voters, or investors. Regarding watermarking, the mandate for visible watermarks should be lifted, as they are easily bypassed by simple cropping. While invisible watermarking is more effective, the technology is still maturing and needs to be aligned with detection technology. Consequently, this area should be governed by a self-regulatory framework designed to foster cooperation between developers (responsible for watermarking) and platforms or carriers (responsible for detection).

VI. FURTHER DISCUSSIONS

A. Future Trajectories of Korea's AI Regulatory Framework

Even after amending the AIFA, the MSIT needs further to: (i) transition the current horizontal framework toward a more context-specific approach; and (ii) replace “Business Operator Duties” and other prescriptive mandates with international industry standards. Given that Korea possesses relatively weak inter-

²⁰² See Ingongjineung Mit Data Givan Haengjeong Hwalseonghwa-e Gwanhan Beopryul [Act on Promotion of AI and Data-Based Administration], Act No. 21392 (Feb. 27, 2026) (S. Kor.), art. 32.

agency coordination mechanisms²⁰³ – especially when compared to the U.S. Office of Management and Budget (OMB) – this shift toward context-specific governance must be supported by an enhanced coordination framework led by the AISC. Rather than attempting to spearhead pan-industry regulations, the MSIT should focus on establishing high-level guidelines. Such guidelines would ensure that various government agencies adopt coherent and harmonized approaches when amending their respective sectoral laws.

B. Lessons for Other Jurisdictions

These trial-and-error experiences could have been avoided if Seoul had adopted more organized and agile frameworks. They nonetheless offer valuable lessons for jurisdictions pursuing horizontal frameworks while seeking to avoid the EU's stringent and highly granular regulatory approach.

1. Clearly Defining and Assigning Roles Along the AI Value Chain

Jurisdictions pursuing a streamlined, principle-based regulatory framework should continue to ensure well-defined roles across the AI value chain, such as under the EU AI Act. Risks involving different AI life cycles such as development, provision/distribution, deployment, and consumption should be carefully differentiated, with responsibilities being assigned properly. The duties and liabilities of upstream developers – particularly those of general-purpose model or open-weight model developers – should be proportionately mitigated when they lose control over downstream modifications, uses, or repurposing of their systems. In such cases, another participant who can prevent problems at the least cost should be identified and assigned responsibility.

2. Using Standards Instead of Ambiguating Key Legal Elements to Ensure Flexibility

As both AI technology and industry are rapidly evolving, it is important to ensure flexibility and scalability through regulatory approaches based on processes and principles. However, law must still give unambiguous answers to basic questions of the law – like who is responsible for protecting whom. Instead of hiding these relationships, regulators could permit standards to become stand-ins for inflexible rules. For instance, in the EU, the Code of Practice may provide a presumption of conformity for general-purpose AI regulation under the AI Act (Art. 56),²⁰⁴ and CEN-CENELEC standards are, once completed, scheduled to serve as

²⁰³ See, e.g., Chun-Oh Park, *An Empirical Study on the Power Relationships of Government Agencies in Korean Policy Process*, 43(3) KOR. J. PUB. ADMIN. 1, 8 (2005) (S. Kor.), <https://www.kci.go.kr/kciportal/ci/sereArticleSearch/ciSereArtiView.kci?sereArticleSearchBean.rtiId=ART001141586> [<https://perma.cc/E8KR-M69C>].

²⁰⁴ EUR. COMM'N, *General-Purpose AI Code of Practice* (July 10, 2025), <https://digital-strategy.ec.europa.eu/en/policies/contents-code-gpai> [<https://perma.cc/A7SR-QWVU>].

the primary vehicle for demonstrating compliance once the high-risk AI provisions come into force (Art. 40).²⁰⁵

3. Distinguishing AI System Regulations from AI-Based Service and Product Regulations

Utility-style user protection regimes are ill-suited to scientific risk-control frameworks such as those governing AI systems. Legislators should ensure that rules for AI systems remain distinct from those for AI-based services or products, with priority given to protecting affected citizens. The Colorado AI Act and several other U.S. state laws, which primarily frame AI regulation around consumer protection, should likewise be reconsidered.

VII. CONCLUDING REMARKS

This paper has retraced Seoul's trials and errors in the world's first full implementation of a horizontal AI regulatory regime. AI has the transformative potential to fundamentally reorder our social structures and ways of life. So our legislative focus should be on two fronts: first, to meticulously address how AI amplifies domain-specific risks through tailored interventions, rather than trying to regulate the technology itself; and second, to mitigate the risk of under-utilization of AI caused by antiquated systems and irrational practices. To confront these daunting challenges, each jurisdiction needs to overcome entrenched institutional hurdles in the first place.

While Korea successfully navigated the path from rapid industrialization to resilient democracy, its legislative culture remains trapped in a "second-best" paradigm that prioritizes tepid compromises and the haphazard balancing of conflicting interests over the design of forward-looking legal infrastructure aligned with global standards. The failure to transcend the bureaucratic silos and the limited expertise of legislators has eventually brought Korea to the premature enforcement of an unfinished regulatory framework. Korea's experience serves as a cautionary tale, illustrating that while the agile, rational, and coherent legal infrastructure is a prerequisite for the AI transformation, it remains a formidable challenge.

²⁰⁵ See *Commission Implementing Decision of 22.5.2023 on a Standardisation Request to the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation in Support of Union Policy on Artificial Intelligence*, at 2-5, COM (2023) 3215 final (May 22, 2023), [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)3215&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)3215&lang=en) [<https://perma.cc/WMK9-F2WQ>].