

Joint Letter

Subject: Progress on the Artificial Intelligence Act

In light of the legislative progress on the AI Act, we would like to raise our members' concerns about some crucial aspects of the dossier which are currently under discussion. As Bitkom and Numeum represent more than 4.000 companies, both on the side of AI developers as well as users of AI systems in various industrial sectors, we want to emphasize again the importance of striking the right regulatory balance.

The AI Act sets meaningful safeguards for fundamental rights, public health and safety to protect consumers and incentivize the uptake of the technology. At the same time, we call upon the co-legislators to uphold the risk-based approach to ensure that the European Union strengthens the competitiveness and innovative potential of Europe's AI ecosystem according to our European values and the principle of digital sovereignty.

To this end, we would like to highlight our concerns with regards to 1) the classification of high-risk AI systems, 2) assessing the risk to fundamental rights, and 3) the role of general purpose AI systems in the AI Act:

1) High-risk classification

We strongly argue for an additional layer in the risk classification to ensure that only those systems are classified as high-risk that truly entail a respective risk. We therefore are in favor of discussions in Parliament that lead in the direction of a case-by-case decision. The use-case-based classification already is the right approach as risks only arise in a specific application, but it still does not fully reflect the various roles an AI system can play. Allowing for an additional evaluation of whether a certain use case entails a high risk for health, safety or fundamental rights accounts for this complexity.

The idea of creating the possibility to exempt a system that is listed in Annex III if it does not pose a risk is, hence, a step in the right direction and we welcome this approach as it fully executes the risk-based working of the Act. To most effectively implement such a procedure, it should be set up in a way that avoids delayed market access, thus promoting AI innovation in the European Union.

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2) Fundamental rights impact assessment

We are closely following the discussions on the fundamental rights impact assessment in Parliament. Protecting human rights is a crucial function of the AI Act and important to our members. However, in light of this objective we deem the original proposal to be already very exhaustive. Especially the risk management (Art. 9) and data governance requirements (Art. 10) are in our view already covering potential harms to fundamental rights. Also, if the intended purpose of a systems is changed the former user becomes a provider according to Art. 28 and, hence, must comply with these requirements as well. Finally, users of high-risk AI systems already have the obligation to act if they identify a risk stemming from the use of the AI system. Thus, we consider this to already account for potential threats to fundamental rights and are cautioning against doubling requirements.

3) General Purpose AI

We object to the inclusion of GPAI into the scope as this undermines the risk-based approach of the AI Act. The focus should be on exchanging information in the value chain to guarantee the final provider's compliance. A risk only arises in a specific use case, not out of a general function an AI system carries out. This of course does not imply that these developers do not have responsibilities regarding the provision of necessary information to their customers. Enabling compliance through information sharing should be the guiding principle for provisions dedicated to GPAI.

In this context we see new proposals that explicitly refer to generative AI very critically. We oppose its inclusion in Annex III as well, since a risk only arises within a specific application. Making these systems fulfill all requirements of high-risk systems is, thus, hardly feasible, and more importantly does not reduce risk.

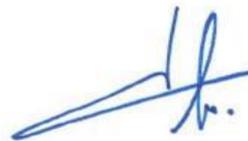
Our experts at Bitkom and Numeum stand ready to further discuss the AI Act and elaborate on our concerns and possible solutions.

In the meantime, we kindly ask the co-legislators to take our concerns into consideration and hope that our input proves useful during the course of negotiations in the coming weeks and months.

Sincerely,



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