

Joint Letter

Subject: Artificial Intelligence Act in the Trilogue Negotiations

We are experiencing a substantial transformation related to a new generation of AI models. Generative AI, foundation models and other general-purpose technologies will increasingly play a role in companies and public administration. With the adequate framework, we can maximize these benefits and minimize the risks attached to such technology. Our economy, our society could largely benefit from AI.

Bitkom and Numeum, the leading digital industry associations in Germany and France, support an innovation-friendly legal framework for AI in Europe. 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.

As the negotiations on the AI Act are entering their final stages, we would like to highlight some key concerns for the Franco-German digital economy:

1. The AI Act should strictly follow the risk-based approach.

We support maintaining a risk-based approach, with only higher-risk models in scope when it comes to foundation models and generative AI. As foundation models and generative AI are still a nascent technology that is at the experimental stage in most companies, it is far too early to have specific rules for them as such independent of the concrete context where the system is used. Moreover, requirements that apply to foundation models and GPAI per se would be a departure from the basic idea of the AI Act, the risk-based approach, which we reject.

2. AI systems should be clearly defined.

It is key to refining the definition of AI to focus on the most challenging modern AI systems. There are two approaches to AI: rule-based AI (symbolic AI) - dominant from the 1950s to the early 2000s - and learning AI, which has developed in recent years. The focus should be on regulating learning AI, otherwise there is a risk of extending AI regulation to "traditional software" that does not present any of the real risks raised by modern AI.

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3. Obligations should be fairly distributed along the AI value chain.

The AI Act should offer the flexibility needed to distribute responsibilities throughout the value chain to those players best placed to ensure compliance with the rules, while guaranteeing the contractual freedom in the allocation of responsibilities.

If the legislators want to regulate GPAI systems, 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. Therefore, we recommend to only regulate GPAI in application in high-risk scenarios, strictly following the risk-based approach. Finally, as long as in conformity with the regulations enshrined in the AI Act, business parties should be free to allocate responsibilities through contractual obligation.

4. The AI Act shouldn't reinvent the wheel on subjects already covered by EU law.

Aspects such as rule of law, copyright, or environmental protection should not be regulated within the AI Act, as it is a product safety regulation. It is crucial to keep in mind this specific purpose of the AI Act to not overburden it, keep consistent with existing laws, and avoid double regulation.

5. Any regulation should be harmonized at EU-level.

Governments should refrain from adopting local rules creating fragmentation. European AI leaders will only thrive in a truly integrated Digital Single Market, and fragmentation should be avoided at all costs. To this end, it is also crucial to prepare the implementation of the AI Act as early as possible together with relevant stakeholders to ensure Europe-wide coordination of market surveillance authorities.

Our experts at Bitkom and Numeum are available for 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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