



European Tech Alliance

Position on EP Proposed Amendments on the AI Act

September 2022

“Foreword

The EU Tech Alliance (EUTA) represents EU tech champions in a great variety of sectors that leverage the power and benefits of AI in diverse and widespread situations. Acting as developers, deployers or users of AI systems, EUTA members rely on AI to better serve their customers and improve their operations in a range of ways, including fraud detection, instant translation, customer assistance, bespoke product and content recommendations, personalised advertising, e-commerce parcel bundling, and automated classification of products onto a marketplace.

As outlined in its initial [reaction to the Commission's Artificial Intelligence Act proposal](#) (AIA), EUTA welcomes the Commission's risk-based approach to regulating AI, where transparency requirements apply to some specific AI use cases and additional obligations apply only to AI systems that present the highest risks. EUTA agrees that this approach strikes the right balance between the protection of the EU's fundamental values and the need to promote EU innovation in this field. It also fosters the public trust that is instrumental to the development of AI in Europe.

EUTA strongly believes that this balance must be maintained during the legislative process to ensure that EU tech companies continue to innovate and remain competitive at the global level. With this in mind, we have set out some key recommendations below for the rapporteurs of the European Parliament to take into consideration, and have also identified the amendments (AM) that support EUTA's recommendations and those that threaten a balanced approach between regulation and innovation.





AI Definition

To foster innovation, the AIA must provide legal certainty as well as flexibility to accommodate future technological developments. The definition of AI must also align with international definitions to enable EU champions to compete at arm's length with their non-EU competitors.

EUTA welcomes amendments providing legal certainty and alignment with international definitions (AM 358), as well as AM that seek to clarify the definition of an AI system (for example AM 906, 908, 910). To this end, AM 3019 is also welcome, as it further enables a more targeted definition. EUTA also supports collaboration with all relevant stakeholders, including technical experts and AI developers, to update the definition of AI (AM 365).

On the contrary, EUTA warns that AM 904 would lead to an overly broad, all-encompassing, and too-generic definition of AI.

Finally, EUTA supports amendments aimed at fostering innovation by excluding from the AIA scope scientific research, testing and development activities prior to the system being placed on the market (AM 888, 892). Similarly, EUTA welcomes AM 875, which excludes from the scope AI systems used in B-to-B contexts that do not directly impact natural persons.

Prohibited AI

Any ex-ante prohibition of AI impinging on the fundamental right to conduct a business should remain exceptional in line with the EU principle of proportionality. Prohibited AI should also be narrowly defined to avoid creating reticence to innovate due to the lack of legal certainty on the limits of what AI uses are prohibited.

EUTA welcomes AM clarifying that AI systems can only be prohibited if they intentionally materially distort human behaviour, and that such intention cannot be presumed (AM 424).

EUTA strongly opposes AM containing overly broad wording such as prohibiting all uses of “AI systems which interfere with the essence of the fundamental rights of individuals” (AM 415), “AI systems for advertising vacancies” (AM 1283, 1341), “AI systems for automated monitoring and analysis of human behaviour in publicly accessible spaces, including online” (AM 1304), use of “AI for indiscriminate surveillance” (AM 1342, 1345, 1155), or “use of recommender system aimed at generating interaction that systematically suggest disinformation or illegal content” (AM 1315). Such broad wordings would potentially trigger wide, uncontrolled, and diverging interpretations by EU regulators that would create legal fragmentation in contradiction with the harmonisation objectives of the AIA.



High-risk AI

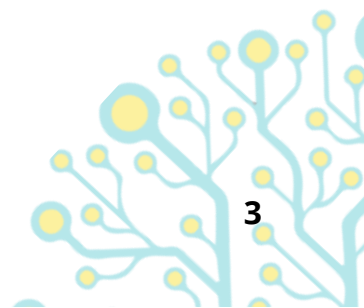
The AI use cases contained in Annex III should be selected with care to ensure that only situations that convey the highest risks fall in the scope of the AIA, and to avoid that it inadvertently captures AI systems having no impact on health, safety, or fundamental rights.

EUTA welcomes AM that adopt a more nuanced approach to defining high risk, and that limit the inclusion of AI use cases in Annex III such as:

- Providing that AI systems used for fraud prevention, investigation, and detection do not necessarily convey high risks (**AM 439**)
- Defining significant harm as material harm to a person's life, health, and safety, or fundamental rights or entities or society at large whose severity is exceptional - i.e., the harm is hardly reversible, the outcome has a material adverse impact on health or safety of a person, or the impacted person is dependent on the outcome (**AM 940**)
- Limiting Annex III to critical use cases and AI systems, making a final decision that puts significantly at risk the health, safety, or fundamental rights (**AM 1413, 1436**)
- Providing that certain areas can be withdrawn from Annex III (**AM 1466, 1548**)
- Imposing to weigh benefits/risks when updating Annex III (**AM 1498**)
- Providing that AI applications are only considered high risk when they focus on employment and work-related contractual relationships, and no longer on employment and workers management and access to self-employment. (**AM 3105, AM 3106, AM 3107, AM 3108 and AM 3111**)
- Removing AI powered job vacancies advertising (**AM 3106, 3108, 3111**)
- Removing AI powered task allocation in the context of work (**AM 3118, 3119**)
- Removing AI systems used to evaluate creditworthiness (**AM 3126, 3127**)
- Removing AI systems related to low-value credits for the purchase of movables (**AM 572, 574**)
- Clarifying that biometric identification is high risk only when it is used without individual's expressed or implied consent, and causing legal effects or discrimination against the affected individual (**AM 3048**)
- Clarifying that AI systems intended to be used as safety components in the management and operation of road traffic and the supply of water, gas, heating and electricity are high risk only if they would directly cause significant harm to the health, natural environment or safety of natural persons (**AM 3090**)

EUTA is strongly opposed to the following AM, which would propose to expand the list in Annex III in an unjustified manner:

- Extending the list of high-risk AI to applications that may be intended to be used for recruitment or selection of natural persons, notably for screening or filtering applications, evaluating candidates in the course of interviews or tests (**AM 3109**) as this would enlarge the scope of Annex III in an unjustified manner to even include advertising vacancies.
- AI used for Recommender systems (**AM 3240**)
- AI systems used for the delivery of online advertising to internet users (**AM 3241**)





More generally, EUTA cautions that referring to the precautionary principle in the AIA would completely undermine its foundational risk-based approach (**AM 783, 811, 812, 813**).

In the same vein, EUTA is opposed to the introduction of a set of horizontal principles applicable to all AI systems regardless of their risks (**AM 1143, 1145, 1151, 1153, 1154, 116, 1144, 1150**), to the general requirement to conduct a risk assessment for each AI system (**AM 1456, 1457**), to new onerous transparency requirements (**AM 2260, 2264**), or to new and unnecessary transparency and non-discrimination requirements for recommender systems (**AM 1146, 1147, 1151, 2279**).

Interplay with other laws

The AIA should not create a layer of additional rules where regulation is already in place. In addition to unnecessarily duplicating requirements for organisations, this may lead to potential conflicts of law that will generate reticence to innovate.

EUTA welcomes AM providing that the AIA should respect existing sector specific legislations, and create legal certainty by avoiding duplication and additional administrative burden (**AM 355**), and cautions against AM removing such protection (**AM 841**). Duplicated legislation (e.g. AI requirements for the automotive sector in horizontal AIA and vertical type approval) would cause huge costs in key European sectors that are already under immense economic pressure.

In relation to the GDPR more specifically, we welcome AM clarifying how the texts should apply with respect to the processing of personal data, such as clarifying that the AIA may be understood as providing for the legal ground for processing personal data (**AM 611**) or providing for a legal basis under the GDPR to train, test, and validate data sets and monitor bias (**AM 1733, 1738**).

EUTA cautions against prohibiting AI systems violating the right to privacy in online communication as such is already regulated by the GDPR and the e-Privacy Directive (**AM 515**).

EUTA also cautions against amendments which would regulate recommender systems in a way which is at odds or not fully aligned with the recently adopted Digital Services Act (DSA) (**AM 1315, 2279, 3240, 3241**).

Conformity assessment

EUTA supports the possibility to conduct conformity assessments internally in the form of self-assessment together with an ex post enforcement mechanism. This will avoid that EU innovation is hampered by having certification bodies control AI systems ex ante with the creation of bottlenecks significantly slowing down the development of new AI systems.

EUTA disagrees with **AM 681** removing the possibility for the AI provider to conduct the conformity assessment under its own responsibility and without the involvement of a notified body.





Oversight and enforcement

It is necessary that the oversight of the AIA does not recreate fragmentation. Considering the objective of the AIA to foster innovation, it is also necessary that AI oversight is entrusted to regulators that can properly balance AI benefits and risks. Such regulators must be equipped with agile tools adapted to this fast-moving technology.

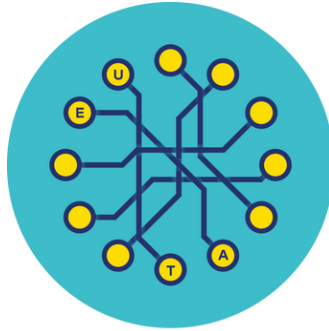
EUTA supports the proposal to reinstate the high-level expert group on AI as an advisor to the EU Commission and the AI board (**AM 743**). More generally, EUTA welcomes AM to provide for greater involvement of the industry in regulatory implementation and oversight, supporting innovation (**AM 739, 2421, 422, 2423, 2425, 2462, 2555**).

EUTA also supports AM requiring member states to ensure that regulatory sandboxes have adequate financial and human resources (**AM 720, 2293**), and providing for cooperation with industry and across borders and regulators (**2300, 2322, 2323, 2334**).

However, EUTA disagrees that data protection authorities should be appointed as competent authorities for the enforcement of the AIA (**AM 744**), as their mandate does not enable them to properly balance the need for innovation and the actual risks posed by an AI system.

Finally, the timeline for application after entry into force should be as long as possible to ensure that all undertakings subject to the AIA, and especially those with limited compliance resources, have the time to adapt their systems in order to comply with the rules. We support the amendments that set out a timeline of 48 months for the application of the rules (**AM 3001, 3002**).





European Tech Alliance

About the EUTA

The European Tech Alliance (EUTA) brings together and gives voice to the most exciting homegrown European tech companies across business models, member states and sectors.

Our objective is to create a better future for Europe through technology and based on shared EU values: we aim to contribute to our local economies and build a sustainable, greener, innovative and inclusive Europe for future generations.

Our track record of success highlights the recent growth and potential of the EU's digital economy. With the right legal framework and policies that enable innovation and fair competition for all players, Europe can continue to prosper and produce more global European digital champions in the future.

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