

# Artificial Intelligence Act

## Striking a Balance: Protect consumers, Enable European tech leadership and Promote AI Innovation

December 2023

As we enter the final stage of the negotiations, and in light of the potential final trilogue meeting, we would like to invite EU negotiators to **ensure that the AI Act leaves enough room for EU tech companies to develop and use innovative AI models and systems to compete with global players.**

The European Tech Alliance ([EUTA](#)) fully supports the AI Act's objective of promoting AI innovation while mitigating the risks of "high risk AI" and protecting users/consumers. More concretely, allow us to share the below recommendations on key issues which will be discussed during the trilogue.

### Adopt a risk-based approach

To avoid hindering European innovation, AI regulation should not focus on the technology *per se*, but only on outcomes and use cases which pose a significant risk. Consequently, EUTA calls on the co-legislators to remove the following points from Annex III and Article 6 as they do not meet Annex III high threshold:

- AI for recommender systems, as such systems are used in a variety of ways, without necessarily posing a risk. Also, overlap with the DSA should be avoided.
- Profiling, as all AI systems in Annex III carrying out profiling should not automatically be considered as high-risk.
- Targeted employment advertisements as it does not meet the threshold for high risk AI.
- Task allocation when used by digital labour platforms to match tasks with workers.
- Creditworthiness evaluation as it applies to lower-value consumer credits.
- Safety components used in road traffic management that do not trigger automated changes to the infrastructure

### Strengthen innovation in Europe

Developing General Purpose AI (GPAI) models and systems requires a lot of resources such as skills, R&D investment and talent. If the EU wants to develop and strengthen its own champions in this space, it should refrain from overregulating General-Purpose AI. The higher the regulatory burden, the more non-EU developers with global scale will have an advantage compared to European innovators in terms of ability to comply. Moreover, a lot of European companies of all sizes will rely on a few providers of GPAI models and systems to integrate this technology in their business model which is why obligations should be distributed fairly along the value chain. With this regard, we have some specific suggestions in relation to the latest compromise proposal by the Council of the EU:

- 1) The proposal by the Council only focuses on GPAI which has been put on the market, and not on R&D and prototyping. It's of paramount importance that a broad research exemption is preserved, to avoid hindering R&D efforts in Europe.
- 2) The Council proposal allows GPAI models which reach the thresholds to be considered of "systemic risk" to argue that they do not pose significant risk to EU citizens and avoid being designated as such. This mechanism is also consistent with the AI Act risk-based approach and should be maintained.
- 3) Open-source GPAI models which do not pose a systemic risk and open source AI systems which are not high risk should be exempted from the rules. They both provide major opportunities for all European economic actors to innovate and bring more competition at all stages of the AI value chain. In addition, a large proportion of European research in AI relies on open source GPAI models and systems.
- 4) It needs to be clarified that the simple fine-tuning of a GPAI foundation model, whether used in a high risk environment or not, does not make the deployer become a new provider of a GPAI foundational model, which would imply that the "new provider" would have to fulfil the obligations and implications that come with being a provider of GPAI foundational models. As fine tuning is simply a minor modification of the model to add further information.
- 5) While earlier transparency provisions under Art. 52 acknowledged the creation of AI-generated content for artistic purposes, the latest requirements for the watermarking of content generated or modified using AI fail to preserve the right to artistic expression. As the same principles continue to underpin the Act, content should not be required to be marked if it was generated or modified for artistic purposes.

### Ensure rules are clear and enforceable

Clear definitions of terms such as "downstream provider" (avoiding that those become providers of the GPAI foundation models by a simple fine-tuning) and "high-impact capabilities" which underlie key provisions in the AI Act are crucial to ensure companies' compliance. Furthermore, these terms should be very well defined to avoid any divergence of interpretation from national authorities and lack of effective enforcement.

### Grant enough time to comply

European tech companies need a reasonable time to adapt their systems and comply. Therefore, we call on the Act to maintain at least a 24-month compliance timeframe as foreseen in the respective positions of the Parliament and the Council.

Thank you for your consideration.



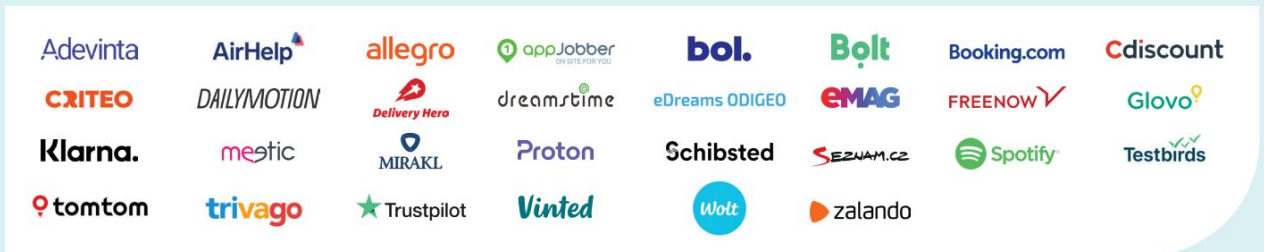
## About the European Tech Alliance

EUTA represents leading European tech companies that provide innovative products and services to 500 million users\*. Our 30 EUTA member companies from 14 European countries are popular and have earned the trust of consumers. As companies born and bred in Europe, for whom the EU is a crucial market, we have a deep commitment to European citizens and values.

With the right conditions, our companies can strengthen Europe's resilience and technological autonomy, protect and empower users online, and promote Europe's values of transparency, rule of law and innovation to the rest of the world.

The EUTA calls for boosting Europe's tech competitiveness by having an ambitious EU tech strategy to overcome growth obstacles, making a political commitment to clear, targeted and risk-based rules, and enforcing rules consistently to match the globalised market we are in.

## Our members



\* It reflects users, consumers and business customers from EUTA member companies, per year. It includes overlaps but illustrates the reach and impact of our services.

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