

Joint Industry Statement on the EU Artificial Intelligence Act and High-Risk Obligations for General Purpose AI

September 27, 2022

Our organizations closely follow the work in the Council of the EU and Parliament on the EU's Artificial Intelligence Act, a first-of-its-kind framework for artificial intelligence (AI) legislation globally. The businesses we represent have been supportive of the objectives of the AI Act, particularly the Commission's goal to establish a "balanced and proportionate horizontal regulatory approach to AI that is limited to the minimum necessary requirements to address the risks and problems linked to AI, without unduly constraining or hindering technological development or otherwise disproportionately increasing the cost of placing AI solutions on the market."¹

As the EU Institutions put forward amendments to the Commission's proposal, we would like to express concerns regarding the suggestion to include General Purpose AI and tools in the AI Act's scope. The Czech Presidency of the Council of the EU has released a compromise proposal that would require all General Purpose AI and tools, very broadly defined, to comply with most of the requirements of the AI Act before market placement—regardless of the risk posed and specific use case. Similar proposals have also been put forward in the European Parliament.

The AI Act is built on a risk-based approach to encourage the development of trustworthy technology and empower digital growth. The Act aims to include well-defined high-risk uses and scenarios in its scope, warranting specific obligations to manage those risks depending on the intended purpose of an AI tool. Including General Purpose AI and tools—which by definition lack an intended purpose and can be applied in a multitude of often low-risk use cases—would directly counter the main objective and structure of the AI Act. At the same time, the AI Act would benefit from more clarity on the allocation of responsibilities between AI developers and deployers by ensuring that compliance obligations are assigned to the entities best placed to mitigate challenges and concerns, and encouraging coordination along the AI value chain.

SPECIFICALLY, THE INCLUSION OF GENERAL PURPOSE AI AND TOOLS IN THE SCOPE OF THE AI ACT WOULD:

- 1. OVERTURN THE AI ACT'S RISK-BASED APPROACH.** Including General Purpose AI and tools would subject inherently non-high-risk AI to the AI Act, no longer regulating high-risk scenarios but a whole technology. Moreover, as defined in the French Presidency's proposal, General Purpose AI would include tools and software not traditionally considered AI, thereby extending the Act's scope beyond AI technologies.
- 2. PLACE VIRTUALLY IMPOSSIBLE AND RETROACTIVE OBLIGATIONS ON LOW-RISK AI.** Requiring developers of General Purpose AI and tools to comply with ex-ante risk assessments before market placement for all possible uses and establishing life cycle-long compliance obligations would create virtually impossible compliance obligations with no corresponding risk or market need. In addition, any subsequent changes to the AI Act would require further ex-post risk obligations for AI not considered high-risk, based on possible extensions of the scope of the Act.

¹ European Commission Explanatory Memorandum to the Artificial Intelligence Act, p. 3.

3. SEVERELY IMPACT OPEN-SOURCE DEVELOPMENT IN EUROPE. The French Presidency's proposal would require open-source developers of General Purpose AI and tools to comply with the AI Act at all phases of development, regardless of market placement and risk definition. In addition, the entities and individuals responsible for compliance would include all those involved in developing code that may eventually lead to a General Purpose AI or tool. This would severely impact and disincentivize the development of open-source software and AI in Europe.

4. UNDERMINE AI UPTAKE, INNOVATION, AND DIGITAL TRANSFORMATION IN EUROPE. Under the French Presidency's proposal, any company wanting to invest in the development of General Purpose AI and tools—and those involved in the value chain—would have ex-ante obligations at all stages of development. Moreover, the proposal to include language in contracts requiring users not to place General Purpose AI and tools in high-risk scenarios would create a direct disincentive to invest in AI development and to integrate AI in business processes. This runs counter to AI uptake, innovation, and digital transformation goals in Europe.

For these reasons, we strongly urge EU Institutions to reject the recent proposals on General Purpose AI and ensure that the scope of the AI Act maintains its risk-based approach and a balanced allocation of responsibilities for the AI value chain, for a framework that protects fundamental rights, while addressing the challenges posed by high-risk AI use-cases and supports innovation.

SIGNATORIES



AFNUM—The French Alliance of Digital Industries



Allied for Startups



BSA | The Software Alliance



EARE—European Alliance for Research Excellence



INFOBALT Lithuania



ISFE—Interactive Software Federation of Europe



ITI—Information Technology Industry Council



SEPE—Federation of Hellenic ICT Enterprises



SPCR—Confederation of Industry of the Czech Republic



ZPP—Union of Entrepreneurs and Employers

A Balanced Approach to General Purpose AI in the EU AI Act

The French Presidency of the Council of the EU released on May 13, 2022, a proposal to include General Purpose Artificial Intelligence (AI) in the scope of the AI Act¹ in a fundamental departure from its original objective, which threatens the uptake and development of AI in Europe. The proposal would require General Purpose AI providers to comply with Articles 9 (Risk Management System), 10 (Data Governance), 11 (Technical Documentation), 13 (Transparency and Provision of Information to Users), and 15 (Accuracy, Robustness, and Cybersecurity), in addition to many of the obligations for providers of high-risk AI provided by Arts. 16, 25, 48, and 61. This inclusion would be a fundamental departure from the original structure of the AI Act, **by including non-high risk AI in the scope of the Regulation, against all objectives set out by the European Commission.** Similar suggestions have been introduced in the European Parliament amendments to the Internal Market and Consumer Protection (IMCO) and Civil Liberties, Justice, and Home Affairs (LIBE) Committees Draft Joint Report for the AI Act.

The original proposal was for an Artificial Intelligence Act, aimed at establishing “a balanced and proportionate horizontal regulatory approach to AI that is limited to the minimum necessary requirements to address the risks and problems linked to AI, without unduly constraining or hindering technological development or otherwise disproportionately increasing the cost of placing AI solutions on the market.”² The foundation of this objective is a **risk-based approach**, which includes in the scope of the AI Act **well-defined high-risk scenarios**, which warrant specific obligations, designed around risk management. The Commission excluded the possibility of establishing AI legislation that would include all AI, or non-high-risk AI, as explained in its accompanying Impact Assessment.³ The inclusion of General Purpose Artificial Intelligence would **directly counter the main objective of the AI Act**. The AI Act already provides for mechanisms to support the compliance with its requirements of certain types of AI not originally included in the scope. These mechanisms would allow the necessary flexibility to ensure that the allocation of responsibilities along the AI supply-chain is balanced.⁴ At the same time, more clarity would be welcome to ensure that the compliance responsibilities for deployers are supported by General Purpose AI developers by establishing balanced requirements for both parties.

This paper provides factual, technical, operational, and legal reasons as to how the complete inclusion of General Purpose AI in the scope of the AI Act at market placement would significantly hamper the objectives of the AI Act—as well as the uptake and development of AI in the EU—and provides recommendations for balancing responsibilities between developers and deployers of General Purpose AI.

Including General Purpose AI in the scope would undermine the risk-based approach of the AI Act

Including General Purpose AI in the scope of the Act would subject AI that is not high-risk to the requirements of the Act. This would completely upend the main objective of the proposal, which resulted from years of work by the High-Level Expert Group and countless consultations with stakeholders, to establish a risk-based approach to AI that would mitigate potential AI harms while fostering AI innovation. As explained in more detail below, the AI Act is structured as a risk-based and risk-management proposal, with compliance obligations designed to adhere to a risk assessment based on specific high-risk scenarios. Additionally, the Act is built around the concept of intended purpose, which is central to determining whether an AI is within its scope, which entity is subject to compliance obligations, and, importantly, how to determine continuous compliance after a system is placed on the market. General Purpose AI, by definition, does not have an intended purpose. Including General Purpose AI would therefore drastically expand the scope of the Act—and the associated burden of compliance obligations, allocation of responsibilities, and enforcement for AI—to systems that are not high-risk, creating a disproportionate regulatory burden on the developers of these systems. In addition, General Purpose AI systems are often open-source projects that are foundational to the entire AI innovation ecosystem; imposing disproportionate burdens on these systems that by themselves are not high risk will hinder the development of foundational technologies and enhancements to the AI ecosystems. As a result, **the AI Act would no longer regulate specific high-risk scenarios, but a whole technology regardless of its risk classification**. This would run counter to the Commission’s own assessment—and that of stakeholders who provided comments on the AI Act—on which option for legislation would better serve the EU for supporting the development of Trustworthy AI.⁵

IT WOULD BE PRACTICALLY IMPOSSIBLE FOR GENERAL PURPOSE AI DEVELOPERS TO CARRY OUT A RISK-ASSESSMENT FOR A TOOL DESIGNED AND INTENDED TO WORK IN MANY DIFFERENT CONTEXTS—BOTH LOW AND HIGH RISK—FOR POTENTIALLY MANY YEARS IN THE FUTURE.

Due to the broad definition of AI in the AI Act, which includes many processes that are not traditionally considered AI,⁶ including General Purpose AI would expand the scope of the proposal to such an extent that the classifications of Annex II and Annex III would become almost irrelevant. By including General Purpose AI, rather than listing specific use-cases considered high risk, the further determinations made in Annex II and Annex III would no longer serve the purpose of addressing specific concerns. Rather, they would constitute a non-exhaustive list of AI in the Act's scope, because the addition of General Purpose AI could render virtually all computational processes "high-risk."

In addition, the current definition of AI in the Act would include many software tools that are not traditionally considered AI, which would also be included under the definition of General Purpose AI. This would be particularly concerning for General Purpose tools and APIs that are not AI systems per se but are either used to build AI systems or developed into AI systems by other AI providers or users who will define their intended purpose. Often, third parties are contracted by users who deploy an AI system to develop and train an AI system on their behalf. These tools have no broader purpose beyond serving as building blocks for various user-designed applications, which in turn serve a more specific user-generated intended purpose. Including such tools in the scope of the AI Act would run counter to the objective of proportional legislation and establish disproportionate obligations for a significant number of developers and deployers that have no contact with high-risk scenarios or sectors.

Including General Purpose AI would essentially force AI providers to comply with the AI Act regardless of whether the specific AI is high-risk or not, thus creating extremely significant burdens. Because the burden of establishing possible classification is put entirely on AI developers, every prudent developer would have to err on the side of caution and be forced to comply with the Act regardless of any risk-based approach. The Commission's Impact Assessment specifically cautions against the risk of overcompliance of AI systems with the Act, because it would significantly increase compliance costs without increasing benefits⁷ and establish an extremely disproportionate legislative framework.⁸

Including General Purpose AI in the scope of the AI Act would make the Regulation, and any subsequent changes, retroactive for low-risk AI

General Purpose AI, by definition, is not developed with a specific use-case in mind, and many such systems have been on the market for years predating the AI Act. Including them in the scope of the Act would mean creating countless retroactive obligations for AI neither considered high-risk nor specifically developed for a high-risk use. This would be particularly problematic for the risk-assessment compliance obligations **because it would be practically impossible for General Purpose AI developers to carry out a risk-assessment for a tool designed and intended to work in many different contexts—both low and high risk—for potentially many years in the future.** Additionally, any changes to the AI Act that would include additional high-risk use cases would also be retroactive for General Purpose AI developers. As the onus is put on developers to forecast all possible high-risk uses by customers, the additional burden would be made even more complicated by further additions to the Act that would mandate post-market placement compliance obligations, including ex-post risk assessments.

Including General Purpose AI in the scope would completely undermine risk assessments and create excessively complex and burdensome compliance obligations

The Presidency proposal would mandate General Purpose AI providers to comply with Art. 9 of the AI Act, which requires providers of high-risk systems to maintain a robust AI risk management system and is a cornerstone of the Act. Article 9 recognizes that effective risk management requires that an “iterative process run throughout the entire lifecycle of a high-risk AI system,” which includes a careful analysis of the foreseeable risks that may arise when it is “used in accordance with its intended purpose and under conditions of reasonably foreseeable misuse.” Article 9 is designed to operationalize a risk-based legislative framework, whereby a specific high-risk scenario is assessed on the basis of several different considerations and classifications. Providers of General Purpose AI would likely be unable to comply with the goals of Article 9 because they would lack the insight into the specific use, sector, and many other variables necessary for performing an informed risk analysis. General Purpose AI providers simply do not know such information before the AI is provided to the deployer, who then decides how to use it in the specific business case.

Additionally, Article 9’s requirement for a risk management system that operates throughout the life cycle of the AI system is likewise unachievable for providers and developers of General Purpose AI. Once a General Purpose AI provider hands over their system to a business customer, it is the customer who feeds data into the AI system and has control over all aspects for the rest of its life cycle. Many General Purpose AI providers and developers are unable to monitor how their customers use the software tools and services. Thus, **introducing General Purpose AI into the scope of the AI Act would impose significant burdens for providers and developers to continuously monitor AI that is being deployed countless times across very diverse sectors.** This is in addition to complex, overlapping regulatory obligations that would not allow for such a monitoring system (from cybersecurity requirements and best practices to data protection).

The inclusion of open-source General Purpose AI in the scope of the AI Act as suggested by the Presidency is particularly problematic. Not only would this be detrimental to the development of open-source software, often by individuals who would not be able to comply with all the burdensome obligations, it would also be nearly impossible to ascertain which individual or entity would be responsible for complying with the AI Act—in addition to the requirement to carry out ex ante risk assessments on AI or software that is not fully developed or intended for a specific sector.

Given the multitude of sectors covered by the AI Act Annexes II and III, any meaningful ex ante risk assessment would require a deep understanding not only of the specific use-cases, but also of the subtleties of the industrial sector and of the many best practices, guidelines, and regulatory requirements that pertain to those sectors. General Purpose AI providers and developers are not equipped—nor were they ever required by any reasonable standard—to face this amount of compliance obligations. This is especially complicated if the obligation is not only for actual placement in a specific sector, but for *possible* placement in a specific sector.

INTRODUCING GENERAL PURPOSE AI INTO THE SCOPE OF THE AI ACT WOULD IMPOSE SIGNIFICANT BURDENS FOR PROVIDERS AND DEVELOPERS TO CONTINUOUSLY MONITOR AI THAT IS BEING DEPLOYED COUNTLESS TIMES ACROSS VERY DIVERSE SECTORS.

The main objective of the AI Act is to create a regulatory framework for Trustworthy AI. Public faith in risk assessment and enforcement of the Act would be severely undermined by creating compliance obligations that are conflicting, near-to-impossible to fulfil, and often technically unfeasible. The end result would be an overcompliance of those General Purpose AI systems that would be placed on the market and an erosion of the value of risk assessment as a matter of practice for new technologies.

Including General Purpose AI would undermine EU AI innovation and would not support a future-proof AI Act.

Including General Purpose AI in the scope of the AI Act would have an impact beyond non-European companies. Such an inclusion would severely hamper European companies that are successfully developing General Purpose AI and any start-up wanting to enter this market. As General Purpose AI is not developed exclusively by non-European companies, and European developers and deployers—large and small—would be equally impacted by its inclusion in the scope of the AI Act. This would be particularly detrimental to European SMEs, as noted by the Commission in its Impact Assessment for the AI Act.⁹ It would also impose disproportionate costs on the whole AI value chain.¹⁰

European companies would not benefit from shifting all responsibilities for compliance with the AI Act onto General Purpose AI providers and developers. Because the obligations would be so burdensome and often technically unfeasible, the market for General Purpose AI would be significantly affected by compliance costs and discouraged to invest in the field.¹¹ Moreover, even if a General Purpose AI system developer were to manage to meet the new proposed compliance obligations, that would not give any guarantees that a high-risk AI system developed using General Purpose AI would meet the requirements of the AI Act. Therefore, those high-risk systems would have to be recertified and re-assessed under the Act because their intended purpose would have been defined or changed.

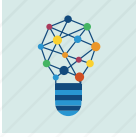
Balancing the responsibilities for developers and deployers of General Purpose AI

The AI Act currently provides for language (i.e., Recital 60, see footnote 4) that encourages the cooperation between developers and deployers of General Purpose AI. Such language supports the current functioning of the AI value chain yet would merit further clarification. The original Commission proposal does not clarify what information developers should provide and the degree of support they should offer. Although it is traditionally considered a normal business expectation that developers provide the necessary information to operate a General Purpose AI, the additional layer of obligations established by the AI Act may lead to a complex compliance landscape for deployers.

Many of the compliance obligations of the AI Act are built on a risk-based approach that would make *ab origine* compliance for developers nearly impossible, especially with regards to risk assessments and data management. At the same time, developers would be well placed to provide the necessary information for compliance with technical documentation and information related to the design and development of the AI. At the same time, deployers would be best placed to establish the level of risk as the AI is deployed and put in place a data management system.

The AI Act should reflect these different technical capabilities and ensure that any obligations for General Purpose AI developers and deployers are technically feasible, reflect their role in the AI supply chain, and are the most beneficial outcome for the protection of fundamental rights and the uptake of AI in the European Union.

Examples of how the inclusion of General Purpose AI in the scope of the AI Act would impact AI innovation and uptake



A **European game developer** uses open source software to develop a game engine, based also on general purpose tools, including APIs that would be considered AI under the broad definition of the AI Act. Because the engine can be used to simulate real-life scenarios, and therefore could be placed in a variety of sectors (from gaming to urban planning), she would have to pre-emptively comply with the AI Act even before market placement. Additionally, she would be required to carry out and document risk assessments for as many sectors as the game engine could be placed in. As an open-source tool, also those who contributed to the code may be required to individually comply with the AI Act, regardless of how their APIs may be used, and regardless of whether they are aware of the development of the game engine. As the game engine is about to be placed on the market, the developer also needs to allocate resources for post-market compliance with customers she still does not have.



A developer has designed a **General Purpose AI that is capable of reading documents**, from university transcripts to government forms, and can automatically extract the relevant data for the specific use. The system is designed to be further customized by customers for their respective business uses. The developer is forced to comply with ex ante risk assessment requirements of very diverse and different sectors. At the same time, the developer is also required to continuously monitor the operation of the General Purpose tool, therefore creating possible conflicts with GDPR as the tool is used to extract personal data, and the requirements for monitoring the functioning of the tool are broader than the exceptions for data processing provided for by the AI Act.



A **cybersecurity company** has developed a tool to collate information about cyberattacks and similar threats to provide data analytics to their customers. The tool is built upon traditional General Purpose data analytics systems and is highly customizable for the different uses it may be put in by different customers. Due to the requirement to continuously monitor the functioning of the tool across different sectors, businesses, and customers, the original General Purpose AI developer is forced to choose between complying with data protection and cybersecurity obligations, or with the AI Act.



A **developer of General Purpose AI** designs a pre-trained AI model able to recognize low-level vision features (basic shapes, lighting, textures). The pre-trained model does not contain any knowledge about the possible target domains. Other AI developers will expand this pre-trained model with data to fit new problems, eventually developing a high-risk AI system. Due to the inclusion of General Purpose AI in the scope of the AI Act, the developer is required to prepare as many risk profiles as there are possible applications of the model, thus limiting the customer base for the AI to exclusively those sectors that the developer could imagine the AI could be deployed in.



A **cloud communications provider** develops a conversational AI platform, combined with a natural language understanding engine, for building AI-powered customer service management systems or voice assistants. The AI tool is designed to understand default data types like dates, names, or times, and then to be further customized by business customers with specific data categories depending on the specific business use. The Council Presidency proposal to include General Purpose AI would force the cloud communications provider and the customer into a life cycle-long relationship, in order to continuously monitor the AI system, even once the system has been integrated into the customer's products and is being trained with the customer's own data. Also, the cloud communications provider would not be able to foresee all risks because it does not know upfront which specific tasks and which intended purpose the customer will select for the tool. Additionally, depending on the datasets that are used with the AI tool, the General Purpose AI developer could be forced to monitor the processing of protected data categories, therefore requiring additional compliance obligations under data protection rules.



A **small business owner** wants to integrate a General Purpose AI-powered data analytics tool in her business. The AI tool is provided by a company that must comply with the AI Act, even though the tool is a low-risk use of AI. To do so, it has integrated in its contracts the requirement for customers to declare which uses the tool will be put to, upon purchase and in the future, because the AI Act would require a risk assessment on all possible uses of the tool. The small business owner is therefore asked by the AI seller to include in the contract a declaration on all possible uses for the tool, even if she never intended to deploy the AI in any of the high-risk scenarios originally covered by the AI Act. The small business owner is thus deterred by the request to provide information on the future business plans she has not yet fully developed, and chooses not to use an AI.

Endnotes

- ¹ Dossier number 2021/0106(COD), Document 9029/22
- ² European Commission, [AI Act Explanatory Memorandum](#), COM(2021) 206 Final (April 21, 2021), p. 3.
- ³ “By requiring a restricted yet effective set of actions from AI developers and users, it would limit the risks of violation of fundamental rights and safety of EU citizens, but would do so in targeting the requirements only to applications where there is a high risk that such violations would happen. As a result, it would keep compliance costs to a minimum, thus avoiding an unnecessary slowing of uptake due to higher prices.” [European Commission, Impact Assessment accompanying the AI Act](#), p. 87.
- ⁴ “In the light of the complexity of the artificial intelligence value chain, relevant third parties, notably the ones involved in the sale and the supply of software, software tools and components, pre-trained models and data, or providers of network services, should cooperate, as appropriate, with providers and users to enable their compliance with the obligations under this Regulation and with competent authorities established under this Regulation.” European Commission, [Proposal for an AI Act](#), Recital 60.
- ⁵ “Option 4 [i.e., an AI Act covering all AI regardless of risk] would provide the same legal certainty as option 3 [i.e., a risk-based AI Act], but for all AI applications. However, this increased legal certainty would come at the price of increased legal complexity for applications where there is no reason for such complications, since they do not constitute a high risk.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 82.
- ⁶ Discussions regarding how to define Artificial Intelligence in the AI Act are ongoing in the European Parliament, with many stakeholders expressing strong reservations for the definition of the original proposal as overly broad. Please refer to the recent Czech Consolidated Second Presidency Compromise Text for the AI Act (Document 11124/22).
- ⁷ “Option 4 [i.e., an AI Act covering all AI regardless of risk] has by far the highest aggregate costs for AI providers and users, since the costs per applications are the same, but the number of applications is far greater. These vastly increased costs are compensated only to little extent by an increased trust, since most of the additionally covered application do not rely on trust. Moreover, public administrations would have to monitor and enforce the system for all AI application, which would be significantly more resource-intensive than option 3 [i.e., a risk-based AI Act] Thus, despite the fact that there would be no costs to policy-makers to determine high-risk applications, since all applications are covered, option 4 would not be cost effective.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 84.
- ⁸ “Option 4 [i.e., an AI Act covering all AI regardless of risk], on the other hand, imposes burdens across all AI applications, whether justified by the risks each application poses or not. The aggregate economic cost for AI providers and AI users is therefore much higher, with no or only small additional benefits. It is thus disproportionate.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 85.
- ⁹ “Option 4 [i.e., an AI Act covering all AI regardless of risk] would lead to SMEs being exposed to the regulatory costs when developing or using any AI application, no matter whether the application poses risks or not, or whether consumer trust is an important sales factor for this application. Despite the limited costs, it would thus expose SMEs as well as large companies to disproportionate expenditures.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 85.
- ¹⁰ “[T]he increase in costs for all AI applications [...], including when there is no countervailing benefit because they do not extensively rely on user trust (e.g., industrial applications) can have the effect of fewer AI applications being offered, thus leading to a smaller market than otherwise.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 83.
- ¹¹ “Option 4 would see no such shift of supply but would see a much larger overall increase in cost, thus dampening innovation across all AI applications.” European Commission, [Impact Assessment accompanying the AI Act](#), p. 79.