

Brussels, 19 October 2023

RE: Asymmetric Regulation of Foundation Models in the EU AI Act

Dear Mr Romero, Mr Valle,
Dear MEP Tudorache, MEP Benifei, and MEP Maydell,

I thank you for your work on this fundamental piece of legislation. I am writing to you on behalf of the Computer & Communications Industry Association (CCIA Europe), a trade association representing a broad cross-section of computer, communications, and internet industry firms.

The EU's efforts to put in place an effective risk-based approach to AI regulation – protecting human rights, while also allowing for continued innovation and the practical application of this important technology – are crucial.

Europe's regulatory framework for AI is at a critical point now. Over many months, the EU institutions have worked to build consensus on high-risk and prohibited uses that the EU AI Act will regulate.

At this crucial juncture of interinstitutional negotiations, CCIA would like to underline that the original ambition of the AI Act as proposed by the European Commission to focus on risk and use cases remains the most effective legislative approach. It would mitigate risks while ensuring European players remain competitive in the international AI ecosystem.

With only a short time left to complete this legislative process, CCIA Europe believes the EU co-legislators should avoid undermining this proportionate and evidence-based approach by forcing an expansive asymmetric approach to regulate Foundation Models and General Purpose AI.

Instead, the AI Act should focus on regulating AI systems through the risk-based and technology neutral approach proposed by the Commission, and ensure a fair balance of responsibilities within the value chain and the sharing of essential information to assist deployers' compliance. This approach will set appropriate guardrails and give a boost to European innovation and competitiveness. It is a good and clear place to start from.

Regulation of General Purpose AI and Foundation Models should avoid asymmetric obligations that inappropriately target a few providers or models, irrespective of risk or use.

There are crucial points that policymakers involved in these final decisions must consider:

- The General Product Safety Regulation has rightly avoided attempts to adopt such competition-motivated ideas of asymmetry. Appropriate safety requirements should apply to all to avoid fragmented safeguards that undermine users' trust. A small company can cause huge damage, while larger companies have built-in incentives to be as careful as possible.
- There are clear examples that smaller models, and models from smaller companies, can have the same or higher impact as larger models and companies. It all depends

on how they are used, not necessarily by whom. There is simply no evidence of any correlation between these risks and the size of providers.

- Creating a “glass ceiling” through arbitrary size criteria, such as the amount of compute used for Foundation Model training or the number of users of General Purpose AI, would hold back European innovators from scaling up. It would also distort innovative practices and create disincentives, where companies would have to consider if and how they take on the additional asymmetric requirements and restrictions. De facto it would be a penalty for success.
- Learning from the Digital Services Act (DSA), there is now a realisation by several EU Member States that risky services – which they had wanted covered by the asymmetric regime – have fallen outside the circle drawn for the DSA. That line in the DSA was debated for 18 months and is not perfect. Trying to draw such a line in the mere weeks left to conclude the AI Act is rolling the dice with Europe’s competitiveness and safety.
- It is still very early days for AI technology, and rapid developments are yet to come. The market is already fundamentally different than one year ago with many new players and great leaps in what AI can do. Any asymmetric regulation is likely to become outdated within a few years, if not months.
- The approach of focusing on the risk of use cases is already acknowledged as a more future-proof way of providing protections for EU citizens and should be maintained.
- Market interoperability is crucial. International and national commitments, the White House Voluntary AI Commitments, as well as regulatory approaches of other nations and trading blocs are also moving at pace. Unjustified asymmetry is not proportionate and not backed by compelling evidence. Discriminating against certain providers can never lead to an internationally aligned approach and will, again, harm European innovation in AI.

CCIA Europe and its Members stand eager to help navigate these last stages of the AI Act to help finalise proposals that maintain the risk-based approach that is the touchstone of Europe’s existing product safety legislation and helps to avoid harmful burdens that may be added, without addressing concrete risks and proven harms.

We seek an open dialogue with policymakers to finalise technical details and solutions that can work to deliver the pioneering framework the AI Act sets out to be.

Sincerely,

Daniel Friedlaender
Senior Vice President & Head of Office, CCIA Europe