Industry urges further discussion on biometric categorization in the EU AI Act to avoid unintended consequences

Brussels, 30 November 2023

We, the undersigned industry associations, representing developers, deployers and users of Artificial Intelligence (AI) of all sizes urge policymakers to not neglect important discussions on biometric categorization systems for the sake of speed of negotiations.

We reiterate our full endorsement of the AI Act's overarching objectives and express our support for the work done by the co-legislators in the last weeks, however, we remain incredibly **concerned that discussions on biometric categorization systems have primarily focused on the law enforcement perspective without taking into account the private sector** and its beneficial and important uses of this technology, including to support user safety.

We understand from recent reports that the Presidency is exploring possible options for a common approach to systems deemed to pose an unacceptable level of risk, namely AI systems prohibited under Article 5. As the co-legislators are working against a tight timeframe, we fear the speed of negotiations could result in potential misunderstandings and oversight on the practical consequences of some of the provisions under discussion. This is a concern particularly for the **proposed prohibition of biometric categorization systems** under Article 5, as well as the inclusion of biometric categorization systems in the high risk category. Banning or classifying as high risk a whole technology, rather than its applications, is not a suitable approach that will benefit innovation and citizens.

We acknowledge the important risks identified by the Spanish Presidency associated with the

categorization of certain sensitive attributes, particularly political opinions, religious beliefs and sexual orientation. However, as the AI Act's approach to sensitive data is not aligned with the **GDPR,** the proposed ban will end up capturing many low-risk, beneficial and innovation-inducing applications.

It is important to stress that biometric categorization systems, which are not intended to identify individuals, are widely used not only by law enforcement agencies, but also in the **private sector** for technical purposes and to meet consumer expectations including for user safety, for accessibility tools, as well as for bias mitigation of AI systems themselves, or in accordance with other applicable legislation to proactively identify and remove harmful content, including content featuring minors such as CSAM. Some examples of beneficial uses include:

- Categorization systems are a key building block for **immersive technologies**, such as Augmented Reality and virtual try-on experiences., Biometric categorization systems are necessary to overlay digital content correctly over live footage or pictures or can also enable consumers to virtually try on clothes and accessories before buying them online. This also has the potential to reduce the **environmental impact** of e-commerce product returns.[1]
- A potential ban could hamper the development of these technologies and have serious negative economic consequences for the ecosystem of European SMEs connected to and dependent on them. The market size of immersive technologies in Europe is expected to grow exponentially from €7.95 billion in 2021 to €88.87 billion by 2030.[2]
- Biometrics categorization is also used to make age-appropriate content recommendations, for example on video on demand services.
- Categorization is also used in accessibility tools for visually impaired people to recognise or describe people in proximity.
- Additionally, the ban could bring **risks** for **product accessibility and inclusiveness** as categorization systems are also used for AI fairness training and bias correction.

We are committed to the safe and responsible development, deployment and use of AI. Building on recent proposals by the European Parliament, we thus urge policymakers to continue working towards a solution that is aligned with the GDPR, ensures legal certainty for operators, take a more considered and evidence-based approach by acknowledging the variety of use cases of biometric categorization systems and preserve the ability of European businesses, consumers and society to benefit from these technologies.

Signatories (in alphabetical order):

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- Information Technology Industry Council (ITI) - 061601915428-87
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- Virtual Dimension Center (VDC)

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[1] See e.g. Thomas, L. (2023). Virtual Try-Before-You-Buy: The Impact of Virtual Try-ons on Consumer Purchases: An Abstract
[2] European Commission (2022)