



DOT Europe Open Letter on **AI Act Trilogues**

Dear trilogue negotiators,

I am contacting you on behalf of [DOT Europe](#), the voice of the leading internet companies in Europe. We write to express our concerns with recent developments on fundamental building blocks of the Artificial Intelligence Act. Since the presentation of the AI Act by the European Commission, industry has consistently supported a risk-based approach to AI regulation. We support the AI Act's overarching objectives of promoting trust and innovation in AI, and our members are all committed to the safe and responsible development, deployment and use of AI. The speed of negotiations has also resulted in potential misunderstandings and oversight on the practical implications of the provisions that could hamper the innovation of new products seeking to support user experiences.

As the co-legislators aim to find an agreement on the AI Act before the end the year, we urge you to:

1. **Further clarify the recent proposal for an exemption to Annex III:** To achieve the right balance between risk and innovation as well as be practically enforceable, we would urge further clarifications surrounding the notion of profiling. Automatically classifying all systems which carry out profiling as high-risk, would undermine the spirit of flexibility to tailor the legislation according to the potential risk of the use case. The current wording would create a significant loophole to the exemption thereby also potentially introducing an overly broad and disproportionate new high-risk area in Annex III. Linking profiling to a negative impact on fundamental rights generally would also be inconsistent with the GDPR. Profiling should therefore only be considered "high-risk" where it has significant legal effects on the individual. In addition, the AI Act should avoid overlapping with other pieces of legislation, including the DSA, which adequately regulates VLOP recommender systems; and upcoming rules on the transparency of political advertising, which regulate systems used to influence elections.
2. **Avoid arbitrary classifications of the services and respective obligations which run counter to the risk-based approach of the legislation:** We strongly urge policymakers to avoid addressing foundation models and general purpose AI systems through a multi-tier framework, introducing overlapping layers of stringent obligations. The use of proxies such as those recently introduced by the European Commission, including criteria recalling the Digital Services Act and Very Large Online Platforms do not adequately reflect the risk stemming from an AI system, as they do not capture output risks. This approach would run counter to the risk-based nature of the AI Act, as well as generally to the EU framework on product policy. The current distinction between foundation models/GPAIs at scale also fails to take into account the specificities of the technology and lacks a clear understanding on where one technology ends and the other begins.
3. **Ensure that provisions do not have unintended consequences on low-risk and experience improving technologies:** We welcome the opening of the discussion on biometric categorisation by the Spanish Presidency. General and overly broad bans for practices such as biometric categorisation or identification, targeted to other sectors of society such as law enforcement, have overlooked the impact of such bans on low-risk technologies. Such systems are used to power immersive technologies, such as overlaying digital





content correctly and in the right place over live footage or pictures. These systems are also used in the context of fairness training and bias correction for content moderation. Simply banning such practices runs the risk of collaterally banning just and user-improving practices. We appreciate the recent proposals on this topic, such as including all biometric categorization systems processing sensitive attributes under GDPR in Annex III or not banning such AI systems dealing with sensitive data categories under GDPR but consider them high-risk instead. We would urge policy-makers to ensure consistency with GDPR provisions on this issue.

4. **Acknowledge that the close link between allocated responsibilities within the AI value chain and the limited liability framework:** We appreciate the increasing recognition of the necessary distinctions and nuances within the AI value chain by policy makers. At the same time, we regret that specific discussions surrounding the different responsibilities within the value chain are taking place without the important acknowledgment that they are linked to the issue of liability. Whilst we appreciate efforts to better assign responsibilities where more appropriate, it is unfortunate that this important discussion is taking place within a vacuum and has not been connected to the related and vital point of limited liability.
5. **Transparency provisions should carefully consider technical aspects, risk levels and user engagement:** Whilst recognising the benefit in requiring AI generated images and audiovisual content to be labelled in key scenarios, so that the public “knows the content,” we would advocate for a more nuanced approach. The specificities and different types of artificially generated content and associated user interaction, (e.g., text-based or image-based, deep fakes vs CGI, as well as the level of risk should be considered. The target audience of generative AI services should also be taken into account, such as where content is for the public or provided in a (closed) enterprise environment. We thus urge lawmakers to not introduce broad and general requirements on labels, as these technologies are still nascent and developing.
6. **Avoid overlap with the Copyright Directive:** We welcome the recognition by the Spanish Presidency that the Copyright Directive, specifically the opt-out from the TDM exception, remains relevant in the field of AI. We would thus caution against introducing disproportionate and technically unfeasible obligations already covered in existing rules. Data collection from the web is done dynamically, meaning it is updated over time, rendering disclosure obligations impossible to meet due to the sheer amount of content that would have to be disclosed.

We would value the opportunity to discuss these points with you further with a view to providing our constructive views and suggestions. We hope that your schedule will allow for this important exchange and for now thank you for your ongoing efforts and work on this crucial file.

Yours sincerely,

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Director General, DOT Europe

