

## AI Sweden position paper – AI Act

### **Radical changes necessary to stop new legislation on AI from severely harming Europe's competitiveness and digital sovereignty – AI Sweden's key recommendations**

AI Sweden has previously expressed serious concerns about the European Commission's proposal on the AI Act<sup>1</sup>. Having followed how ongoing legislative deliberations have unfolded in the European Parliament and the Council of Ministers, we see a real risk that the AI Act will seriously undermine Europe's competitiveness and digital ambitions.

Consequently, the AI Act needs to radically change for Europe to have a chance to be in the global front seat of innovation, deployment, and usage of AI.

Our key recommendations:

- Ensure that the definition of AI is in line with the commonly accepted OECD definition of AI – All definitions must be recognized by the global AI community.
- Avoid double-verification processes and exclude AI systems that are already covered by EU safety regulations - If the AI system is a component covered by harmonized EU legislation in Annex II, it is already verified and assessed. A second verification process results in unnecessary costs without additional safety benefits.
- High-risk AI should only include systems that may pose a potentially high risk to safety or fundamental rights – There is a significant risk that many low-risk AI systems will end up being classified as high risk, irrespective of their use and if that use generates harm, and thereby unnecessarily subject to burdensome high-risk requirements. This would hamper growth and innovation in the EU.
- Adding the concept of General Purpose AI makes the legislation ambiguous when it comes to liability and responsibility – The concept of General Purpose AI is not well defined. It also puts too much burden on providers of useful development tools, thus stifling innovation and leading to innovators holding off on making such tools available.
- Stronger mandate for the AI board - Give the board the power to issue written opinion pieces on the effectiveness of the regulation on its own initiative. It should be mandatory for the Commission to ask the opinion of the board when preparing

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<sup>11</sup> Comments shall be read in conjunction with our previous comments which you can find here: <https://www.regeringen.se/49eb04/contentassets/59dff9749d5e4cfa8d51146dd026ff62/ai-sweden.pdf>

delegated and implemented acts. Ensure full representation of AI stakeholders on the board.

- Task the AI board with writing an interim report after a minimum of two years after the legislation enters into force, assessing the consequences of the AI Act for innovation, growth, and privacy, as well as its impact on society. The Commission shall take the outmost account of the opinion of the board when reviewing the AI Act.
- Similar rules across the globe – Strive for similar AI rulebooks in democratic states such as the EU, US, and Canada, and in the longer run global AI norms.

#### *About AI-Sweden:*

*AI Sweden is the Swedish national center for applied artificial intelligence (AI), supported by Vinnova, Sweden's innovation agency, and partners from both private and public sector as well as academia. Our mission is to accelerate the use of AI for the benefit of our society, our competitiveness, and for everyone living in Sweden.*

#### **Introduction**

AI can help find solutions to many of society's challenges. Precision agriculture enables farmers to grow and harvest more food. AI-connected smart grids and connected cities makes us better equipped to fight climate change. AI can help doctors provide more accurate diagnoses and develop preventive care recommendations for patients. More efficient manufacturing, improved education, and cheaper energy are other examples of how the use of AI changes the world for the better. Future AI applications have the potential to significantly advance the environmental, economic, and social fields.

Ensuring that current and future developments and uses of AI takes place in the European Union is a cornerstone of Europe's ambitions to become digitally sovereign. Together with our global democratic partners we must strive to develop and build our own AI capacity.

However, we are concerned that the AI Act may increase Europe's dependency on non-EU countries, thus diverting research, investments, and applications away from Europe.

Our suggestions for how to avoid such a development:

**Ensure that the definition of AI is in line with commonly accepted OECD definition<sup>2</sup>.** Any attempt to define AI and claim that it is a "single future-proof definition" is a hazardous

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<sup>2</sup> [\\*OECD Framework for the classification of AI systems \(oecd-ilibrary.org\)](https://oecd-ilibrary.org/)

enterprise. A definition is likely to neither be broad enough to capture standard definitions used elsewhere, nor sufficiently narrow to avoid capturing digital technologies clearly outside the scope of AI. The field of AI is evolving at a rapid pace making AI techniques difficult to separate from other advanced computing techniques. AI is most effectively defined and regulated based on concrete uses of the technology instead of specific techniques. We suggest a narrow definition that limits the scope to AI systems that include AI algorithms and techniques that may pose a potentially high risk to safety or fundamental rights. Provided the many challenges that any AI definition results in, AI Sweden calls on the Commission and the co-legislators to use a definition that is accepted by the global AI community, and that is in line with commonly accepted definitions.

**Avoid double verification processes for high-risk AI and exclude AI systems that are already covered by EU safety regulations.** Under existing EU-legislation (the New Legislative Framework), the sale of products that pose a high risk is forbidden. Current legal provisions, successfully applied for example in the sector of industrial machines, state that only machines where risks have been eliminated or reduced to the lowest possible level on the basis of the state-of-the-art may be marketed. If the AI system is a component of or constitutes the product and covered by the Union harmonization legislation listed in Annex II, the AI system will already undergo one verification process. This verification process can already assess possible risks originating from the AI system, rendering a second verification for the AI component superfluous. Subjecting organizations, especially SMEs and public entities to unwarranted and burdensome re-certification of existing software could result in innovations and entrepreneurs choosing to develop and launch their products in markets outside the EU where they have the resources to manage regulatory compliance.

**High-risk AI should only include systems that may pose a potentially high risk to safety or fundamental rights.** We welcome the idea to regulate AI according to a risk-based system. We believe that the classification of “high-risk” AI in article 6 and annex 3 should be based on concrete use cases and examples of the techniques falling under the scope. As the classification is currently outlined in the Commission’s proposal there is a clear risk that many applications will be classified as high risk, regardless of how that AI system is used and if the use creates a substantial risk of harm. This will create heavy and unnecessary administrative burdens that will increase costs for developing a product and bringing it to the market. This is likely to hinder innovation as well as creating a high threshold, thus limiting the use of AI technology in the EU.

**Adding the concept of General Purpose AI makes the legislation ambiguous when it comes to liability and responsibility.** It is beneficial to look at the whole value chain when looking at AI systems. However, shifting or sharing the responsibility for compliance with the AI Act to multiple providers other than the ultimate provider of the AI system would put undue burdens on SMEs, which are usually the ones providing components for software development. With the burden and high risk of being liable for damages under the AI Act, there is a high likelihood of many withdrawing from the European market. Eliminating the concept of “General Purpose AI” would clarify that the ultimate provider is the sole

responsible part. As in all development of products and services, ensuring the compliance and integrity of included components is a natural part in the design process for all providers.

**Stronger mandate for the European Artificial Intelligence board.** We support efforts to strengthen the mandate and powers of the AI Board. The board has a crucial task to ensure coordination and together with legislators support regulators with detailed implementation guidance, and to identify legislative overlaps between the AI Act and other EU legislation. It is vital that the board is composed of relevant experts that have a detailed understanding about AI. To ensure full representation of relevant AI stakeholders, the board should be composed of Member State Representatives as well as technical experts from SMEs, large enterprises, academia, and the public sector. The board should have the power to on its own initiative issue written opinions on the effectiveness of the regulation. It should be mandatory for the Commission to ask the opinion of the board when preparing delegated and implemented acts.

The board should be tasked with writing an interim report within a minimum of two years after the legislation enters into force. Such a report shall assess the consequences of the AI Act for innovation, growth, public sector development, research, privacy, and fundamental rights. The Commission shall take utmost account of the opinion of the board when reviewing the AI-act.

### **Similar rules across the globe**

Europe should inspire and take inspiration from democratic states that are already successful in AI. European businesses, academia, and the public sector collaborate in many ways with partners in democratic countries outside the EU. Europe is therefore well placed to coordinate global efforts to regulate AI applications. A global AI coalition for democracies led by Europe would benefit and prevent the EU from becoming an isolated AI island while helping and promoting AI applications that improve life for people all over the world. Consequently, the EU should take due account of the actions that its democratic partners are taking on legislation regarding AI.

The EU-US trade and technology council and its working group on Technology Standards Cooperation could be one possible vehicle to initiate a discussion on global AI standards.