## REACTION OF EUROCHAMBRES TO A PROPOSAL FOR AN ARTIFICIAL INTELLIGENCE ACT

**No one doubts the huge potential of Artificial Intelligence (AI) and the benefits it could bring to the European economy. The technologies that are being deployed now will shape to a large extent the way business is done. In order to avoid the proliferation of different laws governing AI and the fragmentation of the Single Market, EUROCHAMBRES supports the proposal of the European Commission.**

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AI is a broadly defined technology which has already existed for years, but it is now gaining pace as it is being used in more and more sectors across the board. It helps businesses in routine daily operations but can also lead to breakthrough ways of cracking complex issues as it is the case for instance in the pharmaceutical sector. Opportunities abound and the EU cannot afford to miss the boat.

To enable our European businesses and, especially innovative SMEs, to develop and make use of AI, it is crucial that the EU creates a balanced legal framework which provides the necessary legal certainty to all stakeholders. Keeping in mind this potential and especially to enable companies and society to take advantage of it, one question should be asked before envisaging new obligations: *"are they going to curb or spur innovation?"* Respect for fundamental and consumer rights self-evidently goes hand in hand with this principle. The objectives put forward by the European Commission rightfully vow to fulfill both of these elements.

EUROCHAMBRES agrees with the Commission about the risk-based approach and believes that the proposal comes at the right time as legal fragmentation must be avoided at all cost. 71,6% of respondents to our 2019 business survey on the Single Market stated that different national service rules are a concern to them. In this sense, an AI Act responds to the need for more uniformity with regards to the rules businesses have to abide by.

Finally, the European Investment Bank states in a report that the EU urgently needs more investment in AI. The investment gap they have calculated amounts to no less than 10 billion euros[1].The EU only accounts for 7% of annual equity investments in both AI and blockchain, while the United States and China together account for 80%. The dramatic underfunding should be at the top of policy-makers' agenda during the negotiations about the AI act. The Act should help the EU to bridge this gap and at least put the EU on par with our global competitors.

Overly stringent regulations might discourage funders from making investments in AI companies, irrespective of their size, which could widen the gap. When making investment decisions, especially in this field, companies will take into consideration which laws are the most innovation-friendly. Therefore, the regulatory framework should be

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[1] New EIB report: €10 billion investment gap in artificial intelligence and blockchain technologies is holding back the European Union

designed in such a way that Europe attracts investment rather than repels it.

**Our main recommandations are:**

- The law should not go beyond its intended scope. It intends to regulate AI. Many other laws, such as consumer law, already apply and will also be applicable to the AI field.
- The definition of AI needs to be clearer. Businesses will have more legal certainty if they know exactly which of their activities will be affected by the Regulation.
- Annex III should be more specific, as its current form creates the impression that large swaths of areas are going to be comprehensively covered even though they might not represent a high risk. Not every AI technology that is used in the areas of critical infrastructure, education and training, or the assessment of creditworthiness represents a high risk a priori.
- The law should be more SME-friendly by keeping compliance cost low, having clear and easily applicable rules, and ensuring low complexity.

## Specific comments on the Commission proposal

### 1. The general legal framework

The New Legislative Framework, the GDPR and other consumer law acts that are currently in place already regulate a large part of the potential risks that could arise from AI applications. The Chambers of Commerce are therefore sceptical towards the introduction of already applicable legal provisions for reasons of coherence and legal certainty. It should be absolutely clear what each act is regulating, which products are concerned and what the interplay is between the different legal acts. To this end, it would be helpful for all businesses to have clear and intelligible guidelines which can be easily consulted.

It should be clear that the objective of this Regulation is to set a specific framework to regulate dangers that come with the use of AI and not general risks for consumers. Consumers are already protected by many other already existing laws. There is a real risk of having overlapping regulations. Many sectors which are already using AI technology are already subject to risk-based conformity assessments. The medical appliances sector is a good example of this. It is a sector which is already subject to strict conformity assessments before the placing of the market of their products. Double assessments are therefore to be avoided. In short, the scope of the AI Act should be restricted to filling the identified legal gaps of the current legal framework.

### 2. Definition of AI

In order for companies to navigate in a stable environment incentivizing them to make investments in new technologies, legislation needs to be future-proof. It is therefore of utmost importance that the lawmakers define the scope appropriately. Uncertainty about whether the definition of AI applies to a specific business will inhibit a company from going forward with certain projects or oblige it to assess the question with (expensive) legal practitioners. Hence, from the onset clarity is key.

Article 3 § 1 to be read in conjunction with the techniques and approaches listed in annex I, provides for a very wide definition of what AI is. Based on the given definition in the said article, it is hard to conceive which software would not have an impact or generate outputs such as content, predictions, recommendations, or decisions that influence the environments they interact with. Much in the same fashion, the techniques described in annex I, depending on the interpretation that is given to them, are so broadly defined that almost any modern software would be captured by it. If kept in its current form, this would entail that a great number of systems would fall under the scope of the Regulation, even the ones that make only a limited use of it. Because the proposal sets many requirements, it could have as an effect that companies will refrain from using techniques they otherwise would have in order to avoid supplementary red tape.

Given that the objective of the Commission is to enhance trust in AI systems, it would make sense in our view to restrict the definition of AI for the purpose of this Regulation to techniques and approaches that may give rise to a high risk, either now or in the future because of modifications AI applications might undergo in the future. AI systems are by no means static products but can change overtime. This latter element doesn't seem to have been taken into account.

We believe the policy-makers should also give a proper consideration to a more differentiated AI definition. The current definition doesn't take into account the degree of autonomy the AI application has in a decision-making process while this strikes us as being relatively a crucial element.

## 3. Prohibited Artificial Intelligence Practices

Caution needs to be applied with regard to companies active in "real time" remote biometric systems in publicly accessible spaces. An outright ban or a moratorium on these techniques seems to be overly strict at this stage, especially if these systems are being used when they already fulfil requirements of necessity and proportionality.

## 4. High-risk AI systems

The risk-based approach is well-suited for the aims of the Directive, as different risk profiles warrant different treatments. We are in favour of an approach geared towards to the intended use of an AI application. As such, the potential harm an AI system can bring depends solely on its intended use. In this fashion it would make more sense to evaluate cases more individually. The associated autonomy in decision-making of the system of course would also needed to be taken into account.

The AI systems which are applicable in any of the areas in annex III, will be considered as high risk according to article 6 § 2. It is not clear to us on which basis the 8 areas were taken up in the list. Before such a list is made, a clear assessment needs to be made before any area is defined as high-risk by definition. In order to avoid any confusion among AI developers, the list should be made more specific and thus should include areas at a more granular level. The current list could create legal uncertainty as it is unclear how enforcement authorities will interpret the law. It is also unclear why the areas of critical infrastructure, education and training and the assessment of creditworthiness would represent a high risk by definition.

Because the list will be subject to changes in the future, businesses need to have clarity about how it might be amended over time. The criteria which will be used by the European Commission to assess whether new areas will be added to the list, should be shared transparently and in a timely manner to the AI stakeholder community in order to allow them to prepare accordingly. To that end, it is advisable that the Commission communicates clearly which changes it is considering before making any decision.

## 5. Making the regulatory framework SME-friendly

The AI Act introduces many obligations related to the placing on market of the AI systems. All these obligations, whether relateded to the keeping of logs, the conformity mechanisms or others, will increase compliance costs for companies, and SMEs in particlar. In our view, the Act should be more supportive to SMEs and start-ups.

In order to limit the proliferation of even more legal obligations, we are pleased to see that in article 69 the Commission supports the introduction of voluntary codes for to AI systems other than high-risk AI systems.

We also support the regulatory sandbox approach which should create special conditions for SMEs to test out certain ideas in an innovation-friendly environment. Moreover, the regulatory sandboxes should be introduced as much as possible through national and regional initiaives bringing together public and private players. Digital Innovation Hubs (DIH) can play a particularly important role in this respect.

## 6. The enforcement framework

With regard to the substantial penalties, excessive penalties need to be avoided and the principle of proportionality must be observed. In addition, legal certainty must also be ensured in this context, as the draft only provides for a maximum level of penalties that can be applied differently by the Member States.

## 7. Transition periods

According to article 84, the Commission shall, through delegated acts, assess every year the need for amendment of the list in annex III of the Regulation. Chambers are concerned that no transition periods are foreseen for businesses who are in the process of developping new AI systems, as any change to annex III can potentially have major implications on the economic potential of an AI system.

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