



## **Press Statement by the German AI Association**

# **EU AI Act: Conclusion of the 5<sup>th</sup> Trilogue Negotiations**

*Berlin, 10 December 2023*

The German AI Association welcomes the political agreement reached in the 5th and final trilogue meeting on the AI Act. This is a decisive step towards an adoption in time for the upcoming European elections and the end of the legislative period, and towards legal certainty and a common regulatory framework for developers, deployers and users of AI in the European Union. However, a considerable amount of work at the technical level as well as formal adoption by the Parliament and the Council is needed before the negotiations can be declared completed.

Overall, we acknowledge that the agreement - as far as can be concluded from initial statements and with the negotiated text still outstanding - largely follows the Spanish Presidency's recent proposals and in some respects takes a lighter touch than the European Parliament's initial negotiating position. While we will review in detail how the agreement addresses the key issues and proposals we have [highlighted in recent weeks and months](#) when the text is adopted, the following key points seem clear with regards to the most contentious points of negotiation:

- Specific obligations for “general-purpose AI (GPAI)” models and systems, in particular horizontal transparency obligations for all providers and more stringent obligations for models identified as posing “systemic risk”.
- Obligations for AI systems deployed in an agreed list of areas classified as high-risk.
- Prohibited applications within the EU, including those using social scoring, manipulative techniques and emotion recognition in the workplace and educational settings, but not including an outright ban on systems using real-time and ex-post remote biometric identification (law enforcement exceptions apply).

Dr Robert Kilian, board member of the German AI Association, on the agreement: *“With regard to the regulation of foundation models and high-risk applications, it is now the responsibility of the technical negotiators and the Commission to identify appropriate and robust criteria to enable practical implementation. We will closely examine the final text on information sharing between foundation model and downstream providers, as a fair distribution of the regulatory burden along the value chain is a prerequisite for widespread industrial adoption. Unfortunately, negotiators seem to have missed the opportunity to include a Europe-wide commitment to much-needed EU funding for AI research and development.”*



While we welcome the overall agreement and recognise that the results of the negotiations so far demonstrate an effort to make requirements workable and reasonable, we maintain several reservations.

Regarding the regulation of so-called general-purpose AI, we have concerns about the approach taken to identify a subset of models that pose "systemic risk" and are subject to stringent obligations (including evaluation, risk assessment, adversarial testing, incident and energy reporting). We have previously challenged the decision to focus on a compute threshold (FLOPs) as a risk assessment criterion, which was indeed tightened in the latest trilogue, not least given the trend towards smaller, less hardware-intensive models. While the text also refers to more robust and durable criteria, such as the number of business users in the EU, the lack of specificity of many of the additional criteria, coupled with the need to continually update the criteria in line with technological developments, contributes to continued uncertainty for providers and does not yet satisfactorily address the need for a predictable, future-proof framework.

During the press conference following the conclusion of the trilogue, negotiators from all three parties notably highlighted the ability of the agreement to foster innovation and support European SMEs developing and deploying AI. Indeed, this has been a consistent and important focus for us: we have previously stressed the importance of not only minimising the bureaucracy associated with regulation particularly for start-ups and SMEs, but also of supporting the ecosystem with substantial funding.

Jörg Bienert, President of the German AI Association, on the negotiators' emphasis on the AI Act's ability to promote innovation: *"We have highlighted that a focus on regulatory sandboxes is not sufficient to address the concerns of private sector AI developers (and investors in these companies) regarding the transition to market. We will closely monitor the extent to which the current agreement specifically addresses these concerns, and whether legislators accompany the obligations in the AI Act with sufficient measures to support innovation and SMEs, and how national authorities implement these provisions."*

We look forward to analysing the agreed text when it is available and finalised, and to making a fuller assessment of how our key concerns have been addressed.



### **About the German AI Association**

The German AI Association (Bundesverband der Unternehmen der Künstlichen Intelligenz in Deutschland e.V.) is Germany's largest industry association for Artificial Intelligence (AI) and represents more than 400 innovative SMEs, start-ups and entrepreneurs focusing on the development and application of AI. We support AI entrepreneurs by representing their interests in politics, business and the media. Our goal is an active, successful and sustainable AI ecosystem in Germany and Europe. After all, we can only compete globally if the brightest minds and visionaries decide to set up businesses, conduct research and teach in the European Union. Our members are committed to ensuring that AI technology is applied in accordance with European and democratic values and that Europe achieves digital sovereignty. To achieve this, the European Union must become an attractive place for entrepreneurs to do business, where their willingness to take risks is valued and their innovative spirit is met with the best conditions.

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