List of recipients:

*Deputy Prime Minister for Digitization and Minister of Regional Development **Ivan Bartoš***
*Minister of Industry and Trade **Jozef Síkela***
*Minister for European Affairs **Mikuláš Bek***

Open letter on the proposed regulation of artificial intelligence

Dear Deputy Prime Minister, dear Ministers,

on behalf of the Platform for Artificial Intelligence of the Confederation of Industry of the Czech Republic and the undersigned companies, we would like to address you in connection with the discussion of the proposal for regulation of artificial intelligence in the Council of the European Union. As representatives of Czech companies developing and using artificial intelligence systems and representatives of the academic community, we would like to draw attention to the persistent shortcomings in the compromise text presented by the Czech Republic. We believe the Government should devote more time to ensure that the text of the proposal is of good quality, in preference to the quantity of proposals concluded during its Presidency. We understand that the Czech Republic wants to have a general approach in the Council by the end of the year, but we see that in order to do so many key questions around the AI Act are not being thoroughly discussed in the Council. We are concerned that if left to a later decision by the Commission through implementing acts, it will prolong legal uncertainty and slow down development of AI in Europe. The European Union is the first in the world to try to regulate the field of artificial intelligence and it is all the more important that the proposal is not discussed in haste. If approved in the wording presented by the Czech Republic, it would have a strong negative impact on the entire field of development and use of artificial intelligence systems in the Czech Republic and the EU. We believe the Council should take their time to come up with own solution on AI Act – from definition to high risk and General Purpose AI.
We have already shared our comments on the 3rd compromise text and we take the liberty of sharing them again, because from our point of view there has not been a significant positive shift in the 4th compromise text.

Dear Deputy Prime Minister, Dear Ministers, we appeal to you to priorities the quality of this proposal and not to succumb to political pressure to close the proposal until the points below have been discussed and amended in a way that does not harm the interests of developers and users of AI systems in the Czech Republic and the EU. On behalf of the Platform for Artificial Intelligence, we are available for expert discussions and are willing, as in the past, to help.

Thank you very much

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THE CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC HAVE SIGNED UP TO THE EU TRANSPARENCY REGISTER
AND THE ASSOCIATED CODE OF CONDUCT. REGISTER IDENTIFICATION NUMBER: 785320514128-81.

MEMBER OF

BUSINESSEUROPE

Platform for AI of the Confederation of Industry of the Czech Republic

CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC

ACADEMIA:

BRNO FACULTY UNIVERSITY OF INFORMATION OF TECHNOLOGY TECHNOLOGY

ČVUT ČESKÉ VYSOKÉ UČENÍ TECHNICKÉ V PRAZE

FAKULTA APLIKOVANÝCH VĚD ZÁPADOČESKÉ UNIVERZITY V PLZNI

FACULTAS ARTIS INFORMATICÆ · UNIVERSITAS MASARYKIANA

FAKULTA ELEKTROTECHNICKÁ ČVUT V PRAZE

CHARLES UNIVERSITY

Mendelova univerzita v Brně

COMPANIES:

AI CHECK

Atos
Worldwide IT Partner

AUTOCONT

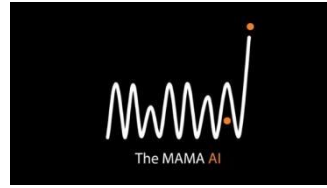creative connections

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Comments of the Platform for AI on Artificial Intelligence Act-Czech Presidency compromise text

Definition of AI System

We welcome the Presidency's objective to fine-tune the definition of AI systems, but disagree with the idea that the reference to 'human-defined' objectives is not essential for the purposes of this definition. Importantly, we believe that the definition should include a reference to 'human-defined intended purpose' to ensure alignment with the overall Regulation. The concept of the intended purpose given to AI systems is an essential element of the AI Act, as this is the decisive criterion which helps establish the level of risk for an AI system in the context of the AI Act.

Definition of High Risk

We welcome the Presidency's overall aim to clarify the scenarios in which AI systems designated in Annex III are viewed as being high-risk and subject to additional compliance obligations. As the Czech Presidency noted, it is indeed critical to assess "the significance of the output of the AI system in relation to the decision or action taken by a human". However, unless further clarified, the current wording of Art. 6(3) may have the same effect as the original draft: any AI system within the categories listed in Annex III that has any impact on human decision-making may be viewed as an inherently high-risk AI system. The use of an AI system should be considered as high risk only, when the output of the system significantly determines what a person does or decides, thereby limiting the individual's decision-making power. If there is adequate human involvement and oversight when an AI system is used, this is sufficient to avoid significant risk to health, safety and fundamental rights. The term 'not purely accessory' does not sufficiently reflect the influence of the output of the AI system on human decision-making.

The proposed categories of high-risk are overly general and would include a broad variety of AI use cases that are non-problematic. Criteria for what constitutes high-risk is vague, giving significant latitude to enforcement authorities to interpret systems as "high risk" endangering market interoperability. Definitions do not consider the risk level of the actual process the AI system will be involved in. Broad category definitions also mean that all AI systems in a category are considered high risk, even where the actual use case has little or no risk.

- Add that in order to be considered high risk, an AI system must also create a material adverse risk to a person's fundamental rights or health and safety.
- Add that the use of AI that is not core to the task and is not used to make final decisions should not be regulated as high-risk AI system, as suggested by the Czech presidency of the Council.

Allocation of Responsibility across the AI Value Chain

The terminology of the Act (e.g., "provider" and "user") does not sufficiently distinguish between roles in the AI value chain (i.e., AI developers, deployers, end users, and other actors); and the Act's obligations do not consider these parties' different roles or provide clarity on which parties are responsible.

- Adopt terminology or adjust the existing defined terms to more clearly define roles under the Act— in particular, AI developers (i.e., those who make available general-purpose AI systems or AI software, pre-trained models and the like), deployers (i.e., those who implement an AI system for high-risk use or who deploy the final system to end consumers), and end users (i.e., consumers, companies or those using AI for personal use). This could be done in a number of ways, e.g., creating new defined terms that replace the existing terms, or adjusting the definitions of "providers" and "users" to align with the roles of developers and deployers, respectively.

- Clarify which parties have responsibility for the obligations under the Act, particularly with regard to high-risk AI systems. Recommendation is to place the direct legal obligations on deployers of AI systems, who are best suited to always know whether their use of a particular AI system will be high risk and fall under the Act's scope. As is common in manufacturing, such deployers can then require that developers and others within their supply chain make contractual commitments to assist them with compliance.

<u>General Purpose AI</u>

The new compromise text does not amend the French proposal on General Purpose AI (GPAI) systems, which would place on the provider of GPAI the obligation to comply with certain AI Act requirements where a GPAI system could potentially be used in a high-risk context. This approach would virtually extend the application of the AI Act to all general purpose technologies without a risk-based justification.

- there is no need for the AI Act to have a specific section on GPAI. The original text of the Commission should stand, especially when it comes to the risk-based approach. AI systems which can be risky are already covered in the Act. Anything outside of that is not covered.
- according to the Commission's own views, if users need information from GPAI providers to ensure compliance, these providers have a commercial interest in helping these users/clients. This idea that

the market will take care of the cooperation is the reason for Recital 60. Users will not be "left in the dark" as some are saying. Perhaps this encouragement to cooperate between GPAI providers and users can be strengthened in the text, but shouldn't be turned into an obligation.

- predicting all potential risks, including those in conditions of 'reasonably foreseeable misuse', as the AI Act proposes, would already be very difficult for providers developing an AI system geared towards a specific intended purpose. In the context of GPAI software, the variety of applications could range from hundreds to thousands. It is therefore not possible for providers of GPAI software
- to exhaustively guess and anticipate the AI solutions that will be built based on their software.
- the best way to make things clear is to fine tune the allocation of responsibilities and clarify that the entity which decides over the intended purpose of an AI system or gives an intended purpose to a system becomes the provider.
- finally, this allocation can be modified through contracts. One solution is to follow the example of the General Data Protection Regulation and add a provision to the Act that provides the deployers of high-risk AI systems the right to demand from the developer to enter into written agreement to capture developers' obligations under the Act, insofar as developers' support or certifications are necessary for deployers' compliance with the Act and the developer has agreed to provide the AI system for a high-risk use case.

We have discussed this issue at length with our experts on AI and engineers and the conclusion is simple: without knowing the purpose of a general purpose tool, there is no way of being able to comply with any of the requirements for high risk. Indeed, too many elements depend on this intended purpose, as well as on what happens at the later stages of building an AI system, which involves other providers and third parties we do not know about. Imposing high risk requirements on general purpose AI would put companies and AI developers in a situation where they just cannot comply with the law.