



November 29, 2023

## **The AI Act's Final Stretch: Regulating AI Cannot be Rushed**

The negotiations on the AI Act are near the finish-line and if successful could carry the ambitions of businesses, consumers, investors, and policymakers alike into a new era for the technology. However, bolting 'AI' to the framework of product safety (i.e., to the New Legislative Framework) has resulted in several challenges.

One of the main challenges of the AI Act has been in defining how to regulate<sup>1</sup> General Purpose AI (GPAI) & Foundational Models. This is an area that public scrutiny is increasingly turned towards as these models continue to proliferate.

Complicating matters further is that while the AI Act seeks to build trustworthy AI and spur innovation, we are highly concerned any innovation benefits the AI Act can create would become compromised due to the revision of the Product Liability Directive. As a result of maintaining AI systems in the scope of the Product Liability Directive, AI developers in Europe will be facing a disproportionately strict liability regime for consumer-facing businesses. This risk of over-exposure to litigation in the AI value chain will likely be very noticeable for GPAI.

**But before even attempting to find an agreement on GPAI and Foundational Model requirements, we strongly urge the co-legislators to first agree upon the definitions *and* how extensive the scope of intervention will be. It is very important that the co-legislators concretely decide *what* is being regulated.**

While the recent proposals on GPAI confirm the attempt of the co-legislators to define the '*what*' and '*how*', we are alarmed about the content itself as these proposals have emerged abruptly and seemingly without much consultation of Member States, Members of European Parliament, Industry, and Civil Society. The result of such rushed actions can only bring about requirements that will make meaningful compliance unachievable for the majority of AI Developers and Users who wish to participate in the EU's single market. This would result in stifling competition and reducing the wider incentive to develop these models.

### **We recommend:**

- **Maintaining the risk-based approach**, which is essential to the AI Act's framework. By this we mean AI should be regulated according to its level of risk so that context of usage and application is what dictates safety requirements.
- **Ensure that all actors can comply with their obligations**, so all AI systems developed and placed on the market in the EU are created in an ethical, responsible, and transparent manner that promotes innovation. What is essential is that an obligation remains that ensures the next party in the value chain is provided the necessary information enabling it to fulfil its AIA requirements.

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<sup>1</sup> Confindustria has not found a common position among its members on the issues addressed in this paper.



- **Ensuring the AI Act is aligned with other regulations such as the Market Surveillance Regulation.** The proposal also would introduce a new notion of ‘systemic risk’ which is problematic as various tiers of ‘risk’ are emerging aside from ‘significant risk’. We have Art. 3 ‘risk’ Art. 3 ‘serious risk’ Art. 65’s notion of ‘risk’ and Art. 67’s notion of ‘serious risk’. To avoid creating legal confusion it is important to ensure alignment with the Market Surveillance Regulation with notions of ‘risk’.
- **Ensure legal clarity for various definitions and obligations under the AI Act.** For instance, while the terminology for Provider, Deployer, User, etc. dynamics may be sufficient in describing many AI value chain interactions, there is still a tendency of the co-legislators to try articulating more precise roles while not having a strict legal definition under the AIA<sup>2</sup>.

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<sup>2</sup> For example, the EP text refers to ‘developers’ in recitals, while anecdotally there is a common habit to place ‘finality’ on an entity such as a ‘final provider or the usage of ‘downstream/upstream provider.’