

# Position statement on the current trilogue negotiations

on the Artificial Intelligence Act

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## Position statement on the current trilogue negotiations on the Artificial Intelligence Act

In 2021, the Commission presented a proposal for the first law anywhere in the worldwide to govern the field of artificial intelligence (AI). The proposal forms part of the EU's digital strategy and aims to establish improved conditions for the development and use of this innovative technology.

The Parliament and the Council have since drawn up their own versions of the Commission proposal. All three of the negotiating partners have been seeking to assert their respective positions in the trilogue negotiations since June 2023.

The German Banking Industry Committee (GBIC) supports the aims of the AI Act in general, namely, to promote the potential that artificial intelligence offers European consumers, companies and the EU economy as a whole. German banks wish to play an active role in this process since AI presents major opportunities for developing the financial sector in particular and enables banks to offer their customers new and improved products and services with greater speed and efficiency.

The GBIC has already set out its position on the AI Act in a detailed position statement during the consultation process and now wishes to take this opportunity, while trilogue negotiations are ongoing, to highlight some key points that have not been discussed exhaustively in the negotiations so far.

### **1. Definition of artificial intelligence**

There is no official definition of AI recognised in the EU; many organisations and companies have devised their own definitions, resulting in numerous different definitions of AI. It is important to have a flexible and technology-neutral understanding of AI in order to establish a workable definition.

The GBIC supports the **definition proposed by the Parliament** since it is dynamic and is therefore better suited to the rapidly developing field of AI. The definition proposed by the Parliament focuses on behavioural characteristics (output) of AI, such as a certain degree of autonomy, and not on individual technologies, such as logic-based approaches.

This ensures that the definition will remain relevant as AI develops and non-AI models will not unintentionally come under the scope of the regulations. Furthermore, the European Parliament's proposal is largely geared to the proposals of NIST, ENISA and the OECD, thereby promoting the interoperability of standards and other provisions. However, the OECD definition, for example, is very broad and there is a risk that – if adopted into EU law – conventional processes that are used today, such as logistic regressions, will also come under the AI Act. It would make sense to clarify that AI used on an ad hoc basis and rule-based expert systems are excluded from this definition.

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## 2. High-risk use cases

The Commission's proposal for the AI Act takes a risk-based approach: the higher the risk associated with the use of AI, the more stringent the regulatory requirements with respect to the permissibility of that use.

Here, the GBIC supports the approach that only those use cases that pose a significant risk should be classified as high risk. Clear guidelines still need to be provided to describe exactly what constitutes significant risk. The regulatory requirements should always be guided by the specific use of the AI system and the associated risk and not by a blanket classification (for example, harmless AI chatbots should not automatically be deemed high risk because they are used in the financial sector).

The principle of proportionality should always apply: the less complex and autonomous the functioning of the AI, the fewer regulatory requirements should apply. To that end, the GBIC expects new standards, including those to be drawn up by CEN/CENELEC, and would welcome the application of this approach there too.

The GBIC also supports unbureaucratic processes in the scope of the AI Act to avoid hampering the development and use of AI in the EU.

## 3. "General Purpose AI" and "Foundation Models"

In their respective proposals, the Parliament and the Council introduced to the negotiations a distinction between "General Purpose AI" (GPAI) and "Foundation Models" that was not included in the Commission's original proposal. However, the two terms have not been sufficiently clearly defined and distinguished from one another. In the interest of greater clarity, a more precise definition of the differences between the two terms or models would be welcome.

Furthermore, the GBIC advocates that only the regulatory requirements that correspond to the risk of the use case should apply to GPAI and the foundation models of AI.

The approach of the Parliament and the Council of defining separate regulatory requirements for GPAI or foundation models contradicts the risk-based approach of the Act, according to which the required measures should correspond to the actual risk. If GPAI or a foundation model is applied in a use case with lower risk and compliance with more extensive regulatory requirements is nevertheless required, the innovativeness of the European financial sector will be restricted in such cases.

Here, the GBIC supports the **Commission's proposal**, according to which the risk-mitigating measures and rules are geared to the actual risk assessment of the specific use situation in each individual case and not to general model assumptions without any context.

#### **4. Overlaps with existing rules**

In the drafts of the Commission, the Parliament and the Council, a number of aspects are included both in the recitals and in the requirements that are already enshrined in numerous EU laws and provisions and even go beyond those. This applies in particular to sector-specific requirements. Under the Digital Operational Resiliency Act, banks are required, for example, to perform risk management and address risks, including ICT risks. In addition, banks must document procedures, log technical processes and create transparency about the operation of their apps. Those measures are also required by national supervisory authorities. The AI Act may result here in a duplication of regulations since relevant statutory obligations already apply.

#### **5. Time of first application and grandfathering rule**

In terms of the implementation period, the GBIC supports the European Council's position, in which the Regulation is to first apply three years after coming into force. That would give companies sufficient time to prepare for implementation of the Regulation.

Furthermore, the GBIC advocates the Council's grandfathering rule for AI systems in high-risk use cases. After that, existing AI systems will only come under the provisions of the AI Act if significant changes have been made to their design or intended purpose.