Position Paper

on the EU Regulatory Framework for Artificial Intelligence
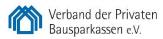
German Economy's Demands for the Regulation on Artificial Intelligence

Artificial intelligence (AI) is one of the key technologies of the 21st century and offers many possible applications to the economy. It affects almost every aspect of our lives and presents both opportunities and risks. AI offers huge potential for increasing innovation, growth and productivity, and for creating jobs. In Europe, we currently fail at leveraging its full potential. We need to do better. The EU is at risk of falling behind in the global race for technological leadership. It is often the technology leaders that create innovation clusters in their countries and set standards. We should therefore establish an effective framework for the development and application of AI in Europe, and systematically promote AI rather than making the development and market launch of AI more difficult. In doing so, it is crucial to strike the right balance between limiting potential risks on the one hand and supporting technological innovation on the other hand. The risk-based approach adopted by the European Commission to regulate AI is basically a reasonable idea and to be welcomed in this context. From our perspective, however, some of the provisions proposed by the European Commission need to be amended:

1. Narrower definition of AI

The definition of AI is crucial for the scope of application of the future Regulation. However, the definition included in the European Commission's regulatory proposal on AI is too broad, which means that several conventional IT systems would also wrongly fall within the scope of application of the Regulation. The definition of AI should therefore be clarified. Algorithms, in particular, which do not include any form of machine learning or self-optimisation should, by definition, not be subject to the AI Regulation. Linear models, supporting methods from the area of explainable AI and established statistical methods should not be subject to the scope of application either. The EU Council's position is a step in the right direction here.

2. Definition of risks taking into account the intended deployment

The list of high-risk AI applications is currently only taking account of the general area of deployment but does not consider the concrete design of AI, its actual use, or the real risk it involves. This general categorisation results in the fact that several AI applications which do not pose a risk are indeed classified as very high risk. This is true, amongst others, for applications used to increase the efficiency of work processes, such as digital inbox solutions, or applications used in candidate management which make the screening of applications more objective.

3. Avoiding regulatory duplication

The AI regulatory proposal affects nearly all business and industrial sectors. It is therefore important to ensure coherence with existing provisions und supervisory structures. The existing regulatory framework already provides for adequate consumer protection and, of course, also applies to AI applications. New requirements and provisions established by additional AI regulation may therefore lead to regulatory duplication and an inconsistent legal framework, which would not only result in additional workload and considerable legal uncertainty for companies but which would also slow down innovation in the long term. This is particularly true for industries that are already highly regulated, including critical infrastructures, the banking, insurance and pharmaceuticals market as well as medical devices.

4. Ensuring proportionality of the Regulation

It is considered crucial that any regulation is based on the principles of necessity and proportionality, following the principle of "as much as necessary but as little as possible". Obligations arising from the development and operation of high-risk AI must also be justified in each individual case. Some of the requirements on high-risk AI systems, however, go too far, such as for example the requirement that training data sets should be free of errors or the requirements on technical documentation. The respective requirements need to be adjusted and clarified based on the respective risks involved. In doing so, it shall be ensured that the adjustments and clarifications can reasonably be implemented.

5. Guaranteeing an adequate governance structure

For the purpose of guaranteeing an adequate governance structure, using already existing supervisory structures and considering national divisions of competences as provided for in the Commission's proposal are to be welcomed to prevent the duplication of supervisory activities. We believe that in industries that are already subject to regulation and supervision, in particular, overlapping structures would be contrary to what we actually want to achieve.

6. Guidelines for developers

Since the provisions have primarily been written for legal professionals, we would appreciate it if the Commission, after the legislative procedure has been completed, will issue application-oriented guidelines in which the provisions are "translated" into a practical and easily comprehensible language to facilitate the work of AI developers, e.g. by including respective checklists and step-by-step instructions. The guidelines could help developers determine when a particular AI application poses a high risk or how it can be ensured that data sets are unbiased, amongst others.