

# Position Paper

## Comment on the Council's General Approach

14.12.2022

## Introduction

As laid out in our position on the user-provider relationship and general purpose AI (GPAI) from 11<sup>th</sup> November, we generally do not support the idea of including GPAI into the AI Act as it undermines the risk-based approach. Instead, it is necessary to guarantee the necessary cooperation in the value chain that enables final providers to comply with the regulation.

Additionally, we want to highlight that we see the transfer of the obligation to determine the necessary requirements for GPAI providers to implementing acts very critical. Leaving this central question out of the legislative process and to the EU's administrative body is not appropriate considering the possible consequences for companies.

As the Trilogue is approaching, we, however, want to comment on the general approach of the Council from 6<sup>th</sup> December. Although it does not reflect in its underlying logic our view of the topic and delegates important requirements to implementing acts in a way we reject, we deem it constructive to at least provide some recommendations on how the current text could be improved.

Additions are in **bold** and deletions in ~~strike-through~~.

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## TITLE I<sub>A</sub>

# GENERAL PURPOSE AI SYSTEMS

### Article 4a

## Compliance of general purpose AI systems with this Regulation

1. Without prejudice to Articles 5, and 52, 53 and 69 of this Regulation, general purpose AI systems shall only comply with the requirements and obligations set out in Article 4b.
2. Such requirements and obligations shall apply irrespective of whether the general purpose AI system is placed on the market or put into service as a pre-trained model and whether further fine-tuning of the model is to be performed by the user of the general purpose AI system.

### Article 4b

## Requirements for general purpose AI systems and obligations for providers of such systems

1. General purpose AI systems which may be used as high risk AI systems or as components of AI high risk AI systems in the meaning of Article 6, shall comply with the requirements established in Title III, Chapter 2 of this Regulation as from the date of application of the implementing acts adopted by the Commission in accordance with the examination procedure referred to in Article 74(2) no later than 18 months after the entry into force of this Regulation. **As part of this procedure, the EU institutions should carry out an impact assessment and regularly consult expert groups and affected stakeholders and take their views into account when drafting and adopting the implementing acts.** Those implementing acts shall specify and adapt the application of the **relevant** requirements established in Title III, Chapter 2 to general purpose AI systems **in a way which is proportionate to the possible risk and benefits of these systems**, in the light of their **specific** characteristics, technical feasibility, specificities of the AI value chain and of market and technological developments. When fulfilling those requirements, the generally acknowledged state of the art shall be taken into account. **The implementing acts should ensure that the relevant requirements are allocated appropriately to the entity and role who is best suited to control the risks that these requirements seek to address, which may be achieved by contractual agreement between the AI system provider and the general purpose AI supplier respectively the importer containing obligations for the general purpose AI supplier or importer to enable the AI system provider to comply with its obligations under this Regulation. Furthermore, the AI supplier has to enable the importer of the AI system to comply with its obligation under this regulation.**

- ~~2. Providers of general purpose AI systems referred to in paragraph 1 shall comply, as from the date of application of the implementing acts referred to in paragraph 1, with the obligations set out in Articles 16aa, 16e, 16f, 16g, 16i, 16j, 25, 48 and 61.~~
- ~~3. For the purpose of complying with the obligations set out in Article 16e, providers shall follow the conformity assessment procedure based on internal control set out in Annex VI, points 3 and 4.~~
- ~~4. Providers of such systems shall also keep the technical documentation referred to in Article 11 at the disposal of the national competent authorities for a period ending ten years after the general purpose AI system is placed on the Union market or put into service in the Union.~~
- ~~5. Providers of general purpose AI systems shall cooperate with and provide the necessary information to other providers intending to put into service or place such systems on the Union market as high-risk AI systems or as components of high-risk AI systems, with a view to enabling the latter to comply with their obligations under this Regulation. Such cooperation between providers shall preserve, as appropriate, intellectual property rights, and confidential business information or trade secrets in accordance with Article 70. In order to ensure uniform conditions for the implementation of this Regulation as regards the information to be shared by the providers of general purpose AI systems, the Commission may adopt implementing acts in accordance with the examination procedure referred to in Article 74(2).~~
- ~~6. In complying with the requirements and obligations referred to in paragraphs 1, 2 and 3:
  - ~~■ any reference to the intended purpose shall be understood as referring to possible use of the general purpose AI systems as high risk AI systems or as components of AI high risk systems in the meaning of Article 6;~~
  - ~~■ any reference to the requirements for high-risk AI systems in Chapter II, Title III shall be understood as referring only to the requirements set out in the present Article.~~~~

The following definition should be added to Article 3:

**AI Supplier: Supplier means the natural or legal person that has developed the AI and holds the rights in the code and the intellectual property rights of the AI. If the Supplier is not placed in the Union the supplier obligations shall be fulfilled by the importer.**

## Article 4c

### Exceptions to Article 4b

7. Article 4b shall not apply when the **supplier of the general purpose AI provider** has explicitly excluded any **all reasonably foreseeable** high-risk uses in the instructions of use or information accompanying the general purpose AI ~~system~~.
8. Such exclusion shall be made in good faith and shall not be deemed justified **where the general purpose AI supplier is promoting the general purpose AI for high-risk uses** ~~if the provider has sufficient reasons to consider that the system may be misused.~~
9. When the **general purpose AI supplier provider becomes aware of detects or is informed about market a misuse of a general purpose AI for a non-permitted use**, they shall take ~~all necessary and~~ proportionate measures to prevent such further misuse, ~~in particular~~ taking into account the scale of the misuse and the seriousness of the associated risks.
10. **This Article 4c is without prejudice to the general purpose AI supplier being able to permit in writing a specific provider and/or user to deploy the general purpose AI for a specific high-risk use in circumstances where the importer, provider and/or user has expressly consented in writing to undertake the obligations that would otherwise apply to the supplier under Article 4b. In this circumstance, the general purpose AI supplier is required to provide all essential, relevant and reasonably expected information that is necessary for the importer, provider and/or user of such general purpose AI to comply with the obligations in question.**

Additionally, the following should complement Recital 12c:

**The obligation for the general purpose AI supplier to take proportionate measure to prevent misuse may for example involve the supplier sending a notice to the relevant provider and/or user. Also, the supplier upon the request of the competent authority may be required to technically prevent the user from further using the general purpose AI at stake, where this is possible.**

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