INNOVATIVE AND TRUSTWORHTY AI: TWO SIDES OF THE SAME COIN

Position paper on behalf of Denmark, Belgium, the Czech Republic, Finland, France Estonia, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Spain and Sweden

Artificial intelligence (AI) is one of the most promising technologies for our future. It can help change our lives and societies for the better, strengthen our competitiveness as well as tackle some of the most pressing issues of our time. **Mindful of the vast potential of AI as well as its possible challenges and risks**, we consider it more important than ever that the EU harnesses the full potential of AI for the benefit of our society, people and economy. Therefore, we, the cosignatory ministers, emphasise the **need to shape a truly European approach** on AI, where innovation and trustworthiness are two sides of the same coin in a **coherent and borderless single market for AI**.

Recently, the COVID-19 crisis has highlighted the potential of AI as well as accelerated its development and deployment - **intensifying the need for trustworthy AI.** To this end, we welcome the European Commission's intentions to propose a European framework on AI.

In this regard, we support a risk-based approach towards AI. The main aim must be to create a common framework where **trustworthy and human-centric AI goes hand in hand with innovation, economic growth and competitiveness** in order to protect our society, maintain our high-quality public service and benefit our citizens and businesses. Therefore, it is of utmost importance that we **strike the right balance** between managing risks on the one hand and supporting technological innovation on the other. The ecosystems of trust and excellence are closely interlinked and should reinforce each another.

A future European framework should aim at creating a genuinely single market for AI. Fragmentation from diverse national regulatory regimes should be avoided through a coordinated approach. It is important to create the right framework conditions to encourage the cross-border development and scaling-up of innovative solutions. In this context, we should make use of efficient tools available such as harmonisation and mutual recognition. **An innovation-friendly single market for AI** will enable companies to scale up and further grow and be globally competitive, thereby contributing significantly to rebooting growth and jobs in the European economy. Additionally, a single regulatory framework will also enhance possibilities of cooperation between Member States in the public sector. In this respect, we need a proportionate, operable and futureproof regulatory framework.

By approaching AI in a proportionate and risk-based manner, we are able to build an ecosystem based on trust as well as enable innovation and scalability across borders. By creating a common and truly European approach, we have the opportunity to take the lead in this area and inspire and compete at a global level. Through this approach, **we can form the development of AI in our favour, so that it protects and empowers our fellow citizens, underpins innovation and progress in our society as well as respects our values.**

Promoting innovation, while managing risks through a clear framework
To achieve these objectives, we must apply an **evidence-based approach** by carefully assessing existing legislation regulating the application of AI as well as identify potential shortcomings of addressing risks associated to AI. Research, experiments and pilot projects can help to assess whether and where shortcomings occur. Where specific situations related to risks to individuals or to society stemming from the use of AI are not tackled by existing legislation, we need to

address these by a risk-based legislative framework protecting existing public values and fundamental rights.

In order to construct a **well-calibrated and proportionate approach**, we need to further discuss the concept of AI in order to establish clear definitions of AI itself as well as of what constitutes serious risks. Such an approach should also take into account the potential and opportunities stemming from AI in different sectors. In our view, **serious risks cannot solely be determined by the sector and application in which the AI application is used**. This would likely categorise too much AI as serious risk and would provide a static picture of the sectors and applications where AI has been developed so far. When assessing such risks, we should establish a coherent framework consisting of an objective methodology, adhering to principles such as proportionality, where we **must also qualify the risk assessment by both the potential impact and the probability of the risks** In this way, we can characterize the risks more precisely and dynamically as new sectors and applications arise – thus delivering a future-proof response which could cope with new development of the technology. Furthermore, as the COVID-19 crisis has underlined the ability to act fast in terms of innovation and implementation of solutions, a risk-based framework and its components such as a risk assessment and a certification procedure must also ensure the right level of capacity as well as competences in order to result in a flexible and reliable framework.

Clear delineation of what constitutes high-risk and low-risk AI applications should make **the category of high-risk AI the exception rather than the rule.** Furthermore, a thoroughly and carefully constructed risk assessment coupled with practical guidance should reduce legal uncertainty, especially for SMEs. This will ensure a targeted approach, aiming at managing serious risks that cannot be sufficiently addressed by the means of the existing acquis and thereby minimising the potential disturbance to innovation and creativity that could have lasting negative impacts on our economy and society. It should be clearly underlined that all types of AI, whether high-risk or not, must still comply with existing legislation such as GDPR. Therefore, it should also be ensured that new potential requirements do not overlap with existing requirements.

Establishing trustworthy AI as a competitive advantage
The experiences from COVID-19 have shown how cooperation between the public and the private sector (i.e. through Govtech-solutions) can provide the foundation for trust needed to build AI solutions. Trust is a prerequisite for the uptake of the technology. Without trust, the demand for the technology as well as its productive effect will decrease. Therefore, **the EU should aim to establish an ecosystem of trust**, where **trustworthiness by design is a natural companion in any given AI solution**.

In doing so, we must avoid setting burdensome barriers and requirements which can be a hindrance for innovation. Instead, we should **incentivise AI developers and deployers to proactively and systematically promote trustworthy AI** for the benefit of our society, citizens and economy. In this respect, we should turn to soft law solutions such as self-regulation, voluntary labelling and other voluntary practices as well as robust standardisation process as a supplement to existing legislation that ensures that essential safety and security standards are met. Soft law can allow us to learn from the technology and identify potential challenges associated with it, taking into account the fact that we are dealing with a fast-evolving technology.

One flexible instrument within the remit of soft law could be **a voluntary European labelling scheme** which would make it visible for potential users – such as citizens, businesses as well as public administrations - which applications are based on secure, responsible and ethical AI and data and therefore which applications to trust - thus empowering them to make an ethical choice.

This would create **incentives for companies to go beyond the letter of the law and drive trustworthy solutions**, because they see the competitive advantage in being ahead of the curve.

Furthermore, taking such a step would give European businesses a first-mover advantage within the sphere of AI in the global competition. **European businesses would be able to distinguish themselves from the global competitors as the trustworthy alternative** in times of digital scandals and increasing data collection. We are convinced that ethical and responsible alternatives will make the difference in the future.

With these points, we stand ready to actively and constructively engage in the discussions on a European way towards AI.

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