

## MBB comments on the EU Artificial Intelligence Act

### The AI Act – A Global First

The Artificial Intelligence Act (AI Act / AIA) was proposed by the European Commission in an effort to ensure that AI is developed and used safely and lawfully whilst still encouraging innovation and investment. AI ranges from predictive content online resulting in personalised adverts to new ways for medical treatment. Given AI's wide scope of influence, the EU is striving to make this proposed Act a global standard. It is one of the key elements of the 2020 Strategy in Europe's Digital Future and is a world first in terms of a legal framework that aims at addressing the safe and beneficial use of AI systems while still encouraging innovation and growth. In other terms, the Act seeks to increase the trustworthiness of AI systems within the EU economy. Whilst AI is evolving at an exponential rate and continues to provide more opportunities, it still poses a lot of risks in terms of ensuring safety, being able to attribute liability, and in abiding by the EU's fundamental rights.

The AIA is set to provide for a framework that can be applied to three risk categories. The first category includes all those AI systems that create unacceptable risk and therefore are banned. The second category includes high-risk AI applications, and these will be subject to specific legal requirements. Finally, the third category includes those AI systems which are not banned nor listed as high risk and are therefore left largely unregulated.

Similar to other EU businesses and representative organisations, MBB welcomes the proposed AI Act and looks forward to having a framework that ensures that AI is utilised safely and lawfully within the parameters of the EU's fundamental rights. Having welcomed the Act, it is important that the AIA still considers and avoids administrative burden which would result in the stemming of the competitiveness of EU businesses when it comes to AI innovation and does not go beyond its intended scope. Within the same vein, the AIA needs to be fashioned in a way that it only regulates high-risk AI applications where that is currently not covered by any other regulation, otherwise this could put off businesses from developing and using AI systems with the added red tape. In fact, it is also important for businesses that the Act is clear which types of AI are to be affected under the Act. The more certainty and clarity businesses have, the less is the probability that they are discouraged from utilising AI especially if they are reassured through the Act which activities will be affected. Although it remains important to strive for trustworthy AI, this Act needs to remain flexible enough in allowing for proportional checks and balances as well as be able to adapt to new knowledge and evidence. In being SME friendly, the AIA needs to have low compliance costs coupled with clear and easily applicable rules ensuring minimal burden on such businesses.

### The Introduction to the Regulatory Sandboxes

The AIA is also set to coordinate AI 'regulatory sandboxes'. The latter constitutes of a tool which allows businesses to try out new products, services or businesses under a regulator's

supervision in regulatory isolation and through this inclusion, the EU hopes to continue to foster innovation. It will help innovators determine which technology does not comply with the current laws on AI and regulators to determine what needs to be amended in terms of law that is applicable to AI. This can all be done without the fear of regulatory repercussions within these sandboxes. These so-called regulatory sandboxes will make it possible for innovators to be more willing to test their innovations in a controlled environment, it also allows regulators to better understand the technology, and it is aimed at creating more consumer choice in the long run. It is therefore recommended that these sandboxes schemes are made obligatory as well as clearly defined in allowing for effective access to businesses, including to SMEs.

SMEs and start-ups are set to benefit from the proposed outputs of these sandboxes which include best practices, straightforward guidelines and other supporting materials. The simplification of guidelines will make their applicability easier for such small companies. Moreover, these regulatory sandboxes will provide proportional application of the current and new rules that are applicable to SMEs.

### The Spanish Example and the Future of the AIA

At the end of June, the Spanish Government presented a pilot of the first regulatory sandbox on AI<sup>1</sup>. The aim of this sandbox is to help create and identify best practices, guidelines and other forms of support which would in turn make the process easier for other companies (especially SMEs) in implementing the new rules. In facilitating cooperation, the EU will leave open the possibility for Member States to implement these pilot sandboxes with the aim of ultimately creating a pan-European AI regulatory sandbox.

It must be borne in mind that all those businesses that choose to innovate through high-risk AI systems, will be legally required to meet a set of defined criteria before being able to integrate within the single market. In other words, AI systems being created by businesses will need to embed all the criteria as per the AIA, as well as have systems in place to ensure continued ethical compliance. In fact, those enterprises that have already complied with the data protection and cybersecurity frameworks, will find it easier to comply with what is being proposed within the AIA given that the two frameworks have a similar background to the AIA.

Following agreement on the AIA, which is envisaged for 2023, adoption will take another two years before it enters into force. This means that businesses will need to ensure that they are able to comply with the law beyond that timeframe. Adopting and abiding by these regulatory sandboxes might be costly for SMEs but the cost of disregarding the innovation that AI systems brings about can be greater as many will be rendered uncompetitive.

**The full text of the Commission proposal can be found at the link below:**

[https://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2021/0206/COM\\_COM\(2021\)0206\\_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2021/0206/COM_COM(2021)0206_EN.pdf)

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<sup>1</sup> <https://digital-strategy.ec.europa.eu/en/news/first-regulatory-sandbox-artificial-intelligence-presented>

***The Malta Business Bureau is the EU advisory organization for the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association. The MBB is also a partner of the Enterprise Europe Network.***

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