
Trust in Excellence & Excellence in Trust

Summary of Contribution by The Future Society, October 2021

The Future Society (TFS) is a global nonprofit advancing the responsible adoption of Artificial Intelligence (AI) for the benefit of humanity. We build decision-makers' understanding of AI and its impact, we build bridges between relevant constituents, and we help communities and people all over the world enjoy the benefits of AI and avoid its risks. With a network of policy researchers and practitioners in the EU (France, Spain, Germany, Greece, Italy, Belgium, Estonia), the US, and all over the world, we provide an independent and nuanced perspective on the governance of AI. The Future Society's Transparency Register number is 473310732515-30 - more information about us is available at the bottom of this document.

This paper summarizes our recommendations for the European Commission's proposal for an AI Act to better advance the responsible adoption of AI. If you have any questions or suggestions, you can contact Nicolas Moës, our Head of Operations based in Brussels (nicolas.moes@thefuturesociety.org; +32 488 541917).

1. "Not just another AI board" - Strengthen the European AI Board

The European AI Board is an excellent idea to ensure cohesion across Member States in the enforcement of the AI Act. However, it can have a broader mandate to ensure that it helps enforcement become more future-proof and adaptable to evolving trends. We recommend to:

- **Mandate the European AI Board to carry out yearly reviews** and analyses of the complaints, findings, new registrations and incident reports gathered by national authorities and in the EU Database for Standalone AI systems, to identify trends and emerging issues not adequately addressed by the AI Act and to carry out biannual horizon scanning and foresight exercises to extrapolate the impact these trends and emerging issues can have on the Union.
- **Mandate the Board to make recommendations to the European Commission** based on the findings from these reviews, analyses, and foresight exercises, including but not limited to recommendations on the categorization of prohibited practices, high-risk systems, and codes of conduct for AI systems that are not classified as high-risk.
- **Mandate the organisation, operation, and proper staffing of the European AI Board** so as to safeguard its independence and objectivity.

2. “These are not sandboxes” - A more ambitious sandbox system

AI regulatory sandboxes will be crucial to the smooth diffusion of the AI Act’s requirements to small-scale providers globally and should stimulate innovation. The key to the sandbox system’s success is to provide benefits for the added scrutiny it brings. We recommend to:

- **Make cutting-edge tools available in the system** for identifying, preventing, and mitigating risks to health, safety, and fundamental rights likely to occur post-deployment.
- **Grant sandbox participants access to pre-deployment services**, such as registration, insurance, compliance and R&D support services, and to all the other relevant elements of the Union’s AI ecosystem and other Digital Single Market initiatives such as testing & experimentation facilities, digital hubs, centers of excellence, testing & benchmarking capabilities; and to other value-adding services such as certification, community social platform and contact databases, tenders & grantmaking portal and lists of potential investors.
- **Enable everyone to participate in the sandboxes**, such as researchers, entrepreneurs, innovators, and other owners of early stage ideas, and foreign providers, in particular small-scale providers.
- **Enable the creation of EU-wide and transnational sandboxes** and to provide a single interface and contact point at the EU level for any sandbox participant to interact with the sandbox ecosystem.

3. “A Future-Proof AI Act” - Anticipate & prevent societal harms

The AI Act as it stands does not address societal harms¹—the negative externalities arising from the *widespread* use of a given type of AI systems in society. These harms are rare but impact all citizens when they materialize, whether they interact with the AI system themselves or not (e.g. by exacerbating social divisions or increasing opacity and fragility of energy grids, financial markets, law enforcement and telecommunications). We recommend to:

- **Require limited but informative horizontal safeguards** for specific types of AI systems or their providers, based on objective features of the system itself rather than the stated intended purpose, such as the number of average monthly users;
- **Require providers to disclose the social implications of deploying their type of AI system at scale**, similar to academic publications guidelines and to pay particular attention to implications from widespread use in their risk assessment.
- **Facilitate the detection of these negative externalities** by compiling and regularly analysing complaints from users and third parties to market surveillance authorities, incident and malfunctioning reports, and other relevant information generated through the regulatory regime that could help identify these externalities.
- **Facilitate the classification as “high risk” of AI systems that pose a risk of societal harm**, regardless of their intended purposes and of whether they are used in an Annex III area.

¹ Nathalie A. Smuha (2021) [Beyond the individual: governing AI's societal harm](#), Internet Policy Review, Vol.10(3).

4. “An AI Act for the people” - Empower citizens and users

The AI Act will be successful only if it increases users and citizens' confidence in the AI systems they directly use or are indirectly subject to. Everyone should therefore feel empowered to signal infringement and providers should remain responsible given their knowledge and control over the design and development of the system in question. We recommend to:

- **Preserve the current distribution of obligations between users and providers of AI systems.** Protect Articles 28 and 29 from undue influence. Current debates about the shift of obligations from providers to users are detrimental to a healthy and trustworthy market and would harm not only consumers but also industry in the long-term - in particular domestic EU industry that is mostly composed of SMEs. We recommend strongly against shifting the burden from providers (mostly US and Chinese multinationals) onto the users (operating in the EU). Moreover users should be able to notify incidents to the authorities as well rather than just to providers, to facilitate enforcement of the providers' duty of information.
- **Ensure the AI Act is fully integrated with the EU's existing trustworthiness mechanisms.** The AI Act should refer to relevant measures in Directive (EU) 2019/1937 protecting whistleblowers, in particular for developers. It should also emphasize that AI systems, regardless of whether they are high-risk or not, should comply with existing legislation for consumer protection (Directives (EU) 2019/2161, 2005/29/EC, 2011/83/EU and 98/6/EC and Council Directive 93/13/EEC), in particular with regards to AI systems' loyalty to the users rather than any third party.
- **Create a direct complaint procedure for citizens to increase confidence in the market.** By enabling citizens to signal infringement and even to have access to recourse in case they are subjected to a non-compliant AI system, the AI Act would increase these citizens' willingness to engage with the latest and often poorly understood AI technologies.

About The Future Society:

The Future Society (TFS) is a global nonprofit advancing the responsible adoption of Artificial Intelligence (AI) for the benefit of humanity. We build decision-makers' understanding of AI and its impact, we build bridges between relevant constituents, and we help communities and people all over the world enjoy the benefits of AI and avoid its risks. With a network of policy researchers and practitioners in the EU (France, Spain, Germany, Greece, Italy, Belgium, Estonia), the US and all over the world, we provide an independent and nuanced perspective on the governance of AI.

TFS contributes to the governance of AI on multiple fronts. Recently, we have:

- *supported the OECD's work as part of the expert group that drafted its OECD AI Principles,² through commissioned research on AI Value Chains³ and now as an active element of its AI Policy Observatory;*
- *undertaken research & strategic advisory work for the Global Partnership on AI, after winning several competitive tenders and as selected experts in various working groups and committees (Responsible AI, AI for Pandemic Response, Data Governance, AI for Climate Change, etc.);⁴*
- *co-founded the Athens Roundtable on AI and the Rule of Law, bringing senior decision-makers from the US and the EU together to co-shape the governance of AI;⁵*
- *advised governments and development IGOs on matters related to AI governance, as with our recent work developing Rwanda's National AI Policy in partnership with the Rwandan government and GIZ.⁶*

TFS is a nonprofit registered in both Boston, United States and Tallinn, Estonia. We have joined the Transparency Register (ID# 473310732515-30) in 2018 following our strong conviction that the EU institutions have a leading role to play in the governance of AI. We remain at your disposal if you have any questions related to our work: nicolas.moes@thefuturesociety.org.

² [OECD AI Group of Experts \(AIGO\)](#)

³ [Mapping the AI Value Chain](#)

⁴ [The Global Partnership on AI \(GPAI\) on Responsible AI and AI in Pandemic Response](#)

⁵ [The Athens Roundtable on Artificial Intelligence and the Rule of Law 2020](#)

⁶ [The Development of Rwanda's National Artificial Intelligence Policy](#)