

# AI Sweden's position on the proposed European legislation on AI

## *Position on a Proposal for a regulation laying down harmonized rules on Artificial Intelligence*

### General assessment of the proposal

While efforts are needed to create a level playing field for data driven and autonomous systems, in particular for high-risk application domains and uses, we see a great risk that the proposal by the European Commission would substantially limit European competitiveness, the ability to retain talent and the conditions necessary for developing solutions improving welfare across the member states.

AI Sweden believes that any legislation should maintain a high focus on democratic, safety, privacy, and inclusive values, embrace the opportunities AI brings and aim to enable innovation, sustainable solutions, rising competitiveness and improved quality of life for all Europeans.

The fundamental question of why a general-purpose technology is targeted for regulation, instead of addressing outcomes and consequences for society and individuals in a technologically neutral way, is not sufficiently answered. Our position is that regulating specific technologies rather than outcomes will undoubtedly fail to provide European citizens with the fundamental protection they deserve. As an example, the proposal forbids “AI-based social scoring for general purposes done by public authorities”; this does not provide protection from non-AI-based social scoring being exerted by public authorities, leaving citizens potentially vulnerable. Worse is the detrimental effect the approach will have on opportunities for developing methods and applications that are critical to Sweden’s and Europe’s welfare and competitiveness. Considering these challenges, we would like to revisit the fundamental assumptions and approach of the proposal.

### Examples of areas in need of improvement, clarification or deletion

In this section we focus our comments on basic assumptions and principles instead of a complete review of issues. The issues below are not a complete list of concerns, but should be regarded as examples of more fundamental issues.

**The proposal regulates AI specifically, largely as a set of named technologies.** The document rests on claims that do not by themselves provide a motivation of why to regulate AI specifically but need to be answered in this context. The definition of AI rests on a listing of very broad approaches and technologies.

**Examples of issues:** Limited protection of citizens against bad-faith actions or harmful systems. Is social scoring not regulated if not utilizing named technologies deemed to fall under the umbrella of AI? Is malicious manipulation of content regulated using named AI technologies but not otherwise?

**The proposal claims a single, future-proof definition of AI.** The definition provided in Annex I does not provide a clear definition of AI but rather a listing of very broad fields that may in part be considered components of the field of AI. The provision for future proofing seems in part to be resting on the ability to add technologies to this list.

**Examples of issues:** Great uncertainty of what technologies and approaches will fall in the scope of the regulation. This also carries the risk of bias and discretion in how the regulation is applied.

**The definition of what constitutes an AI system is unclear.** AI technologies in production tend to be part of complex data, decision, and software systems, sometimes without clear delineations between methods and components. The proposal treats AI systems mostly as monoliths that can be clearly defined, and therefore does not fully reflect how trust and utility are built into complex technological systems.

**Examples of issues:** The proposal creates uncertainties around what constitutes an AI system and therefore what falls under regulation, and how this affects interconnected systems and processes. AI production systems are often composed of many interconnected methods and processes, sometimes shared between applications and interacting between organizations. What constitutes one AI system becomes very unclear.

**The proposal claims to lay down a solid risk methodology to define “high-risk” AI systems that pose significant risks to the health and safety or fundamental rights of persons”.** While providing several examples of high-risk areas and applications, the proposal does not seem to provide a clear and solid risk methodology.

**Examples of issues:** While several high-risk areas are mentioned in the proposal, what areas that will be regulated as high risk in the future and the principles for including them remain unclear.

## Societal impact

The legal uncertainty created by; the lack of principles for including new technologies, by the unclear definition of what AI is, as well as the lack of definitions of what an AI system constitutes, will create a number of potential risks for societal advancements in terms of welfare delivery, competitiveness and quality of life for European citizens. In addition, the regulation imposes a very high administrative burden, which in turn poses a huge challenge for smaller organizations that do not have in-house counsel or the personnel to manage this internally. The cost to get external help can be significant. Many Swedish companies are in the segment of small and medium size enterprises and would have challenges with managing this administrative burden.

Specifically, the legal uncertainty and regulatory burden holds great risk of leading to:

- A lack of foreign and domestic investments as capital will seek to avoid legal uncertainty for their investments.
- Less R&D investments by larger corporations being made in Europe
- A market access skewed towards larger actors with the necessary resources to address the regulatory burden. This could be detrimental to the smaller but crucial AI-startups and scaleups as they struggle with the regulatory burden as well as a lack of capital due to the legal uncertainty for investors.
- Talent shunning Europe, not least due to the three above mentioned issues.
- Innovation being hindered and the application of AI in European societies being significantly slowed down, leading to less quality of life for citizens and a less competitive European industry.

## The European Commission's impact assessment

In the European Commission's impact assessment, the motivation for action being taken by society relies on specific characteristics of AI systems. However, the characteristics listed are not necessarily specific to AI systems and examples given rely on a view of AI that does not necessarily reflect current or, more importantly, future capabilities and practices.

Another important issue is that the motivation for legislating the issue of AI does not include goals for a prosperous society in terms of quality of life for citizens, well-functioning welfare systems or a competitive European economy and industry, all of which could be made possible using AI.

Consequently, we believe the impact assessment needs to be revisited and that, among other issues, the above aspects need to be taken into consideration.

## AI Sweden's position

We propose that the European Commission, the European Council and the European Parliament

- Revisit the scope and purpose of the legislation and take a technologically neutral stance, instead focusing on addressing outcomes and consequences for society and individuals.
- Perform a new impact assessment of the proposed legislation, focusing on goals for a prosperous society in terms of quality of life for citizens, well-functioning welfare systems and a competitive European economy and industry.
- Refrain from attempting to make operational definitions / distinctions of AI, as attempts of setting clear boundaries to other data processing, automation, and autonomous systems approaches are near impossible.

## About AI Sweden

AI Sweden is the Swedish national center for applied artificial Intelligence, supported by the Swedish government and the public and private sectors across the country. Our mission is to accelerate the use of AI for the benefit of our society, our competitiveness, and for everyone living in Sweden.