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## **NIST | Request for Information - Assignments under the Executive Order Concerning Artificial Intelligence**

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The National Institute of Standards and Technology's (NIST) mission is to promote American innovation and industrial competitiveness, so it is fitting that the agency is taking input on how the federal government should pursue global artificial intelligence (AI) policy coordination. Nothing less than American technological leadership is at stake.

In this context, Chamber of Progress<sup>1</sup> is grateful for the opportunity to provide comments on Section 11 of the United State Government's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (AI). Its measured approach, prioritizing responsible development and deployment within the government while nurturing private sector innovation, resonates with our vision for a technological landscape that thrives under balanced regulation and ethical stewardship.

### **Dedication to Strengthening American Leadership Abroad**

The United States is the global AI leader, boasting innovative models, robust data resources, and significant capital flows. At the same time, the United Kingdom, European Union, and China are all vying to set the terms for global AI norms<sup>2</sup>. Most prominently, the EU became the first major global jurisdiction to adopt formal AI rules through the ratification of the EU AI Act. To maintain our global leadership, the US must chart its own course and resist the urge to embrace the tech-skeptical vision of the EU AI Act.

Chamber of Progress advocates for a values-driven, collaborative approach to establishing a strong international framework, rather than replicating Europe's restrictive tendencies. Recent history shows that the EU employs command-and-control regulations, and selectively targets American tech companies for enforcement through punitive fines and stifling oversight, all of which harm innovation and progress. Instead, Chamber of Progress believes in nurturing a competitive environment where startups can thrive alongside established players. In this context, we strongly urge NIST to favor facilitative, values-driven frameworks rather than the EU's permission-driven approach.

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<sup>1</sup> Chamber of Progress is a tech industry coalition promoting technology's progressive future. Our corporate partners include companies like Google and Amazon, but they do not have a vote or a veto on our positions. [www.progresschamber.org](http://www.progresschamber.org)

<sup>2</sup> Digital Planet, The Fletcher School at Tufts University, and Mastercard, <https://digitalplanet.tufts.edu/the-emerging-geography-of-ai/>



## **Europe Remains Overzealous in Targeting American Tech**

Europe's recent tech policy history, particularly the Digital Markets Act (DMA), raises concerns about an underlying bias against American companies. All but one of the platforms designated for strict oversight under the DMA are American firms, suggesting a motive beyond simply promoting fair competition. Together, the five US companies targeted under the DMA are investing over \$60 billion annually in R&D, including in quantum computing and other emerging technologies that are central to US leadership. By imposing rules on their services but not those of foreign competitors, the DMA effectively mandates that top US firms offer products to consumers that are less secure, less useful, and less innovative than rival products from foreign tech companies. That all but one of the 5 of the 6 so-called “gatekeepers” are American firms - not only raises the specter of anti-American animus, but also highlights the signal failure of European policymakers to cultivate a thriving tech ecosystem. The precautionary European approach to the private sector must be avoided.

Drawing parallels to the General Data Protection Regulation (GDPR), Europe's influence in shaping global conversations about data privacy and individual control becomes apparent. GDPR has served as a catalyst for discussions on how countries worldwide should approach data protection. However, enforcement has bordered on imposing punitive, ex post facto punishment inconsistent with the American legal tradition. For instance, Meta faced a staggering \$1.3 billion fine under the GDPR for adhering to data transfer standards that were considered legal under the EU-U.S. Privacy Shield Framework.<sup>3</sup> The judgment followed a European court invalidating these standards, raising concerns about the retrospective nature of EU's tech regulations and their potential impact on businesses operating in a rapidly evolving digital landscape - notably in the AI policy realm.

A consistent, predictable policy framework stimulates investment that benefits innovators and ultimately consumers. These are the hallmarks of the American technological success story; the US government must take pains to avoid Europe's capricious enforcement policy at all costs.

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<sup>3</sup> Johnson, Jeremiah. *Europe's Tech Curbs Are a Double-Edged Sword* (October 23, 2023) <https://foreignpolicy.com/2023/10/23/metaverse-europe-uk-us-big-tech-regulation-innovation/#:~:text=And%20the%20GDPR's%20regulation%20of,court%20struck%20down%20that%20agreement.>



## **Avoid Cumbersome Regulations to Support New Entrants**

Major American tech companies like Alphabet and Microsoft have invested vast resources in hiring staff, building and testing foundational models, and deployed capital-intensive cloud computing infrastructure. In turn, public cloud infrastructure has been essential to so many American AI startups.

Yet in order to leverage the AI innovation structure, regulatory policy - domestic and global - must not threaten this vibrant ecosystem in which large and small companies alike are thriving. The US government should take great care to avoid following Europe's approach. The EU AI Act saddles technology companies with tremendous compliance costs - under threat of penalties of up to 7% of a company's global revenue<sup>4</sup>. Given the risk associated with non-compliance, we may expect smaller companies to avoid the EU market altogether.

A major concern lies in the potential for entrenchment: regulations mirroring the EU AI Act stand to solidify the dominant players, foreclosing market entrance by startups. This not only curtails competition and economic opportunity, but also risks limiting the diversity and depth of AI advancements that could emerge from a more inclusive landscape.

## **Reward Open Discourse, Avoid Preemptive Restriction**

American policymakers and their counterparts abroad have rightly highlighted the importance of competition to fuel innovation. Because of the substantial upfront capital cost to build a new AI model, policymakers are right to raise questions about how to promote competition. As noted, the heavy-handed European approach, rooted in tech skepticism, may counterintuitively entrench dominant players.

A better approach is to embrace open source models in addition to the existing closed source ones. Open source models remove a major barrier to market entry and provide for the sort of low-cost experimentation that gives rise to pathbreaking innovation.

## **A Balanced Approach to Regulating Private Sector AI to Maintain US Leadership**

Global policy coordination can establish the regulatory certainty that facilitates investment and in turn promotes innovation. However, it should not come at the cost of

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<sup>4</sup> See

<https://www.cio.com/article/1255863/concerns-remain-even-as-the-eu-reaches-a-landmark-deal-to-govern-ai.html>



American leadership. So far, this Administration has struck a commendable balance: regulating public-sector use of AI, while taking more measured steps on private sector AI. That balanced perspective was evident in the EO and most recently in the State Department resisting civil society demands to proactively regulate private sector AI at the Council of Europe Convention on AI. We applaud this considered approach to policy making. Any future global policy coordination must continue this balanced approach.

Chamber of Progress appreciates the opportunity to participate in this essential proceeding.