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To: European Commission

BIL Sweden's response to EUCOM's public consultation on "Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts", 2021/0106 (COD)

BIL Sweden is thankful for the opportunity by the Commission to submit comments on the proposed AI Act.

BIL Sweden's views

BIL Sweden choose to limit our comments to those proposals that we predominately perceive concern vehicles. Here, by "vehicles" is meant those vehicles that our members manufacture, i.e. passenger cars, buses, trucks and certain types of work machines.
BIL Sweden's members have also contributed to and support ACEA's response to EUCOM's public consultation on AI Act.

Sectorial approach

BIL Sweden welcomes the EU Commission's sectoral approach where the technical requirements for automotive products are integrated within existing frameworks for type approval of vehicles, EU regulations 2018/858 and 2019/2144, thereby avoiding duplication of governance mechanisms. However, the European Commission has taken the liberty of allowing itself to make changes through delegated acts, continuously. This approach makes it very difficult for the automotive industry to provide our views and comments.

Long lead times

Vehicles probably have a significantly longer development cycle than many other products that contain AI. When EU Regulation 2018/858 will be amended, when a future delegated act that includes AI will be adopted, an appropriate time frame / lead time for a phased implementation is needed for both new vehicle types and all vehicle types to meet the new requirements.

Technology neutrality

The technology development is very rapid, and the AI Act's ambition is to affect all sectors, thus it must be technology neutral.

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Harmonisation with UNECE
The automotive industry is global. The Swedish vehicle manufacturers, as well as the European vehicle manufacturers, export their vehicles both to EU countries and to countries outside the EU. It is important that the AI Act does not create trade restrictions and/or reduce the competitiveness of European companies.
BIL Sweden advocates that it's important that the AI Act is harmonized with the work carried out at UNECE level for vehicle regulation, for example with the working groups FRAV (Functional Requirements for Automated and Autonomous Vehicles) and VMAD (Validation Method for Automated Driving) with regard to automated vehicles.

The AI Act in relation to existing regulations concerning AI
Before new EU-regulations are drawn up, existing regulations concerning the area of AI should be reviewed, to identify where there is overlap and what is not already covered, the "white spots". Often, it's easier and faster to propose additions/adjustments to existing regulations than to create a completely new one.
There may also be sectors that have already regulated an aspect that concerns AI, where experience could be used by other sectors. Within the automotive industry, for example, there is a new legislation that regulates the right to introduce software updates, UNECE-R156 "Software update and software update management system", which may interest other sectors using software updates.

The AI Act in relation to the GDPR (and the forthcoming regulation on ePrivacy) etc.
Vehicle manufacturers also see a significant risk that the extensive and highly set requirements set out in the proposal, in combination with other existing legislation such as the GDPR (and also forthcoming regulation on ePrivacy), could lead to companies in some cases refraining from deploy AI and thus loses the positive effects, both for the users and the people "exposed" to AI.
BIL Sweden's view is that this may affect the competitiveness and attractiveness of the EU vehicle manufacturers, its suppliers and society as a whole.
It also appears that the AI Act, at least in part, overlaps with the framework for data protection, product safety, discrimination and liability. In this consultation response, we have not immersed into this, but it needs to be reviewed to avoid double regulation and ambiguities.

The definition of AI
The AI Act introduces a very broad definition of AI. It would be gained by even greater clarity, primarily with regard to the definition of high-risk AI systems and the demarcation for which AI systems that are considered to entail high risk.

Risk-based approach
BIL Sweden support the logic behind the risk-based approach set out in the proposal, this should ensure that the requirements in the AI Act are in proportion to the level of risk for AI applications and that they are not so burdensome for companies throughout Europe. However, it is important that high-risk is well defined.
Article 9 on Risk Management Systems contain some vague wordings, which may cause legal uncertainties, and should therefore be clarified and simplified.

The definition of high-risk
The vehicle industry is a part of Annex II through WVTA and GSR and has, thus by definition, been classified as high-risk.
BIL Sweden advocates that clarification is needed, regarding whether it's all systems falling under EU Regulation 2018/858 Type Approval and GSR that are by definition classified as high risk.
The vehicle manufacturers see a significant risk, if so, that AI will not be used in vehicles. In that case, it would result in the automotive industry not being allowed to contribute as much to increased road safety as they could have done.
BIL Sweden also advocates that clarification is needed regarding the definition in Article 3 (14) of "safety component in a product or system".

Data and data governance
Article 10, §3, states that "Training, validation and testing data sets shall be relevant, representative, free of errors and complete. They shall have the appropriate statistical properties, including, where applicable, as regards the persons or groups of persons on which the high-risk AI system is intended to be used.".
BIL Sweden believes that data, usually and in practice, can never be guaranteed to be completely "free from errors" and "complete", validation of such is not practically possible. It is also not possible to fully ensure that all data has "the appropriate statistical properties".

Record-keeping
Article 12, §2, states that "The logging capabilities shall ensure a level of traceability of the AI system's functioning throughout its lifecycle that is appropriate to the intended purpose of the system.".
BIL Sweden advocates that a clarification is needed as to what is meant by "lifecycle", if it means that events (logs) must be stored for the entire life of a product.
It's important to keep in mind that storing logs for a longer period of time requires large storage capacity, which can lead to large consequences in terms of increased costs for data storage, increased energy consumption and maintenance. Overall, this would be inconsistent in view of the goals of climate neutrality set out in the European Green Deal but also in view of the goals of strengthening European competitiveness.

Innovation and AI regulatory sandboxes
BIL Sweden welcomes the opportunity for AI regulatory sandboxes but advocates that much sharper proposals are needed for experimental opportunities that benefit technology development and innovation. In regulated sandboxes, companies should be able to test ideas under limited responsibility and without being affected by the burdensome market access system that assessments of conformity constitute. The innovation capacity is central to competitiveness and should therefore enable in a clearer and simpler way. The right to experiment under certain conditions should be included directly in the proposal and not handed over to the respective member state since it could lead to different interpretations and thus conditions within the internal market. When it comes to experiments for new AI solutions, there are today many limitations, for example due to the GDPR's rules.

BIL Sweden is pleased to be available for further discussions or any clarifications.

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