5GAA Automotive Association

Artificial Intelligence Act

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Response to Commission's Public Consultation

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5GAA feedback on the public consultation on the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending certain Union legislative acts (hereinafter referred to as the *"Artificial Intelligence Act")*

5GAA welcomes the opportunity to provide feedback on the Artificial Intelligence Act and share our recommendations to help the EU adopt future-proof legislation accelerating the market entry of connected and automated vehicles and smart mobility services while ensuring innovation in the long run. The EU is likely to become one of the first, if not the first, regions of the world to define rules about the placing on the market of artificial intelligence solutions. This will contribute to defining world-class standards and improve the trust of consumers. We respectfully invite European policymakers to recognise the evolutionary path of emerging technologies, such as artificial intelligence, while stimulating an effective competition on the merits by providing the wider industrial ecosystem of connected and automated vehicles with clear, predictable and concise criteria for the application of the Artificial Intelligence Act.

5GAA would like to draw the attention of European policymakers to the following points:

1. Definition of AI systems

We recognise the difficulty to unambiguously define artificial intelligence; however, the current definition of an AI System as proposed in the Artificial Intelligence Act is overly broad. We support the necessity to further qualify it by spelling out the specific techniques currently used to develop AI systems.

Not every search algorithm, not every optimisation problem, not every statistical calculation is an AI issue. For this reason, 5GAA suggests removing point (c) of Annex I, therefore focusing only on AI approaches and techniques listed in points (a) and (b) of Annex I. Otherwise, software developed using AI techniques could end up being classified as AI applications, which would give the legislation a disproportionate scope. For instance, a self-driving software that has been developed using some AI techniques would qualify as an AI application, even if it doesn't use machine learning or a knowledge-based approach.

2.Definition of high-risk AI systems

The definition of high-risk AI is intrinsically linked to the notion of safety component. The proposed definition of what constitutes a *"safety component"* (Article 3 (14)) could be open to interpretation and remains a source of uncertainty for the qualification of high-risk AI systems. To reduce this ambiguity, we believe it is of paramount importance that the assessment of a "safety component" refers back to EU harmonised legislation to ensure regulatory consistency with any relevant sectoral requirements, notably the legislation listed in Annex II. When assessing an AI system for the purposes of the application of Article 6(1) of the Artificial Intelligence Act, a safety component is to be understood within the meaning of the relevant Union harmonisation legislation listed in Annex II of the Artificial Intelligence Act.

3. Clarification needed on high-risk applications linked to road infrastructure

Article 6(2), read in conjunction with Annex III of the Artificial Intelligence Act, classify as high-risk application any AI system which is, *inter alia*, *"intended to be used as safety components in the management and operation of road traffic"*. It makes sense to ensure that applications for which the intended purpose is to improve road safety undergo a thorough market authorisation process. That being said, we consider that the Artificial Intelligence Act should not lead to a situation where various AI applications used for road traffic management and operation, and not necessarily having a safety-related intended purpose, could be classified as high-risk AI systems. This would be disproportionate and detrimental to both innovation and competition in the market.

Some AI applications used in vehicles are not covered by their sectorial legislation, in this case, the type-approval process (for example, an in-vehicle voice assistant), because they are not considered safety-critical by the legislator. The wording used in the Artificial Intelligence Act lacks precision and risks including these applications in the set of high-risk AI applications, when sectoral legislation has considered that this is not necessary. In this regard, the provisions on high-risk AI systems which could be applicable to motor vehicles and/or their components and systems embedding safety-critical artificial intelligence algorithms in light of Article 80 of the Artificial Intelligence Act should be clarified. Therefore, we recommend that the Artificial Intelligence Act provides for clear, objective and non-discriminatory criteria allowing to ascertain with a reasonable degree of predictability which requirements will be mandatory for the industry. Compliance requirements related to high-risk AI systems referred to in Annex III read in conjunction with Article 6(2) of the Artificial Intelligence Act, shall not apply to any AI systems which are embedded in a vehicle, irrespective of whether these requirements are subjected to a type-approval process within the meaning of Regulation (EU) 2018/858.

We consider that AI systems in the road infrastructure used for connected and automated mobility should be classified as high-risk only if it is clear that their intended purpose is dealing with a safety-critical issue. In this case, it is absolutely logical that they undergo a conformity assessment procedure, keeping in mind that some AI systems are integrated in devices that are also subject to sectorial legislation.

4.Promoting the use of recognised international standards on a voluntary basis

Article 40 of the Artificial Intelligence Act sets out the requirement for harmonised standards. 5GAA considers that harmonised standards developed by SDOs and published in the OJEU are an essential cornerstone of the product regulatory framework in the EU. The development of these standards in Europe has generally been very successful, to the extent that they are often cited by regulators globally. We are pleased that the Commission recognises the importance of harmonised standards and sees these as central to the proposed Artificial Intelligence Act.

With regards to Article 41(1) of the Artificial Intelligence Act, to the extent that relevant harmonised standards do not exist, or where they do exist but might be deemed insufficient, 5GAA would recommend that the Commission issue mandates to European SDOs on a case-by-case basis to create or amend such harmonised standards, rather than for the Commission to create common specifications itself via implementing acts. This is especially pertinent in cases where the standards address highly technical subjects and would benefit from the experience and knowledge available in European SDOs. In any case, the use of these standards should remain voluntary.

5GAA furthermore understands that a Standardisation Request will be issued to ESOs in support of the AI Regulation. In particular, such a Standardisation Request may require the ESOs to develop related Harmonised Standards. 5GAA would like to invite the European Commission to consider the following items in this context:

i) Sufficient time should be given to ESOs and industry to develop the Harmonised Standards and to adapt existing products to the new framework; ideally, a period of 5 years should be granted (2 years for the development of the Harmonised Standards plus 3 years as a transition period for the industry which is a typical R&D cycle time);

ii) Any requirements must be identified through a suitable risk analysis to be performed by ESOs and;

iii) Suitable (novel) methodologies need to be considered for the testing of identified requirements. In traditional Harmonised Standards, requirements often relate to physically observable metrics. In the context of AI, it is expected

that rather functional requirements require verification, and the classical testing method may be insufficient for such purposes. New approaches need to be identified.

5.Governance

In Articles 56, 57 and 58 of the Artificial Intelligence Act, the Commission sets out its plans to establish European Artificial Intelligence Board. Specifically, Article 57 states:

Article 57 Structure of the Board

1. The Board shall be composed of the national supervisory authorities, who shall be represented by the head or equivalent high-level official of that authority, and the European Data Protection Supervisor. Other national authorities may be invited to the meetings, where the issues discussed are of relevance for them.
2. […] The Board may establish sub-groups as appropriate for the purpose of examining specific questions.

   […]

4. The Board may invite external experts and observers to attend its meetings and may hold exchanges with interested third parties to inform its activities to an appropriate extent […].

We note that AI is a highly technical and specialised field, and it involves highly diverse and complex ecosystems and supply chains. While AI is still in its infancy in the context of widespread adoption and deployment, it is important to ensure that its regulation is balanced and that we learn from ongoing experiences.

For the above reasons, we consider that the Commission would benefit from the expertise and experience of the industry in informing the governance of AI. As such, we consider that the representation of industry at the European AI Board would be essential. We would recommend that the Commission formally allows the active participation of industry representatives in the Board's various sub-groups and as observers at the Board itself.


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