

For direct delivery via email.

Re: AI Act open source exemption

Dear Mr. Benifei, Mr. Tudorache, Dr. Lagodinsky, Mr. Voss,

We write to you to underline the importance of open source, non-profit, and academic research and development on AI, and to express our concern that these important activities may be limited in the European Union if Parliament does not amend the AI Act. While it is encouraging that an open source exemption is being discussed, recent developments motivate us to write to you. The exemption was previously scoped to protect open source, non-profit, and academic research and development while ensuring that all commercially deployed systems and all high risk systems faced relevant requirements. However, this has changed in recent drafts, and we urge you to improve it ahead of the 26 April vote.

As currently drafted, open source AI systems would be exempt¹ *unless* they fall into one of the following categories: (1) all commercially deployed open source AI systems; (2) all open source AI systems placed into service that are high-risk, banned, or have transparency obligations under Title IV; and (3) all open source general purpose AI systems. While much of this scope is well-reasoned and reflects the risk-based framework upon which the AI Act was introduced, **the final clause (3), “This exemption should not apply to fundamental general purpose AI models as described in Art 28b” should be struck.**

The undersigned organizations recognize the value of openness. Open source, open science, and open culture allow anyone to learn from and build on ideas and creations of the past. They’ve enabled knowledge commons like Wikipedia and yielded open source software—code that can be used, studied, distributed, and modified freely—that [generates between €65-95 billion for EU GDP](#). Open source frameworks and tools have catalyzed AI innovation for years, and the open, collaborative development of AI models present a new paradigm in AI research, development, and [policy](#).

AI models that are shared under an open license [enable the widespread scrutiny and understanding](#) of capabilities and shortcomings—among academics, regulators, and the public at large. This transparency, enabled by direct access to AI components, [supports research](#) on the bias, safety, environmental, and security concerns that are posed by AI. Open source development in the past year has disrupted the narrative that AI will only be developed by large companies in two countries: [it offers the EU another path](#), one aligned with European values.

EleutherAI is one of the leading open source research collaboratives and non-profits building general purpose AI models, including large language models [GPT-NeoX-20B](#) and [GPT-J](#). They help establish best practices in the field, including thorough [data documentation](#), model capability and limitation descriptions, and more. However, as drafted, Article 28b would present significant barriers to continued sharing and collaboration in the EU. Compliance would require a change in approach for the non-profit, with time spent on conformity assessment processes, despite EleutherAI not deploying their models but instead releasing them for better study of general purpose AI systems’ capabilities by scientists, auditors, and others. In one [recent research project](#), EleutherAI released [154 models for each of 16 general purpose AI model architectures](#). If subject to Article 28b, that would amount to nearly 2500 registrations in the EU database. LAION will be similarly impacted. Founded in

Hamburg, Germany, LAION is a non-profit research organization and a grassroots community of machine learning researchers, citizen scientists and technology enthusiasts across the world, united by the common ground of open-sourcing and democratizing research on large scale AI. In one leading contribution, LAION has [openly released the largest image-text dataset](#) to train and open-source general purpose language-vision models, for which it won Outstanding Paper at NeurIPS 2022. Eleuther and LAION’s approach to public, iterative development, which allows others to fine tune, adapt, and test models, helps society get the most from openness and promote public safety research.

Hugging Face is the foremost company dedicated to enabling sharing and collaboration on AI models, datasets, and applications. It is based in France and the US, with its largest office in Paris. It hosts open collaborations on generative AI models, including [BigScience’s BLOOM](#) and [BigCode](#), that leverage open multidisciplinary research to help developers understand [applicable regulations](#), devise [new governance mechanisms](#), and [directly involve data subjects](#). It also supports exploration and analysis of all models shared by providing [no-code demos](#), fostering the use of [extensive model cards](#), and supporting a range of [tools to enable work on responsible AI](#) by researchers and developers alike. The open source exemption provides clarity for users on Hugging Face and GitHub alike that open sharing of AI components does not constitute placing an AI system into service nor making it available on the market. This clarity is essential for open collaboration on AI to remain viable in the EU.

Risks associated with general purpose AI warrant careful regulatory scrutiny. The open source exemption was previously appropriately scoped to enable this scrutiny, with all commercially deployed and high risk systems facing relevant requirements, while enabling non-commercial development. Open source research, development, and deployment builds capacity for regulatory scrutiny—independent of the companies building and deploying these systems—and supports AI innovation in line with European values. **We urge you to improve the AI Act by adopting a clarified open source exemption.**

Signed:


[GitHub, Inc.](#)


[EleutherAI](#)

 **Hugging Face**
[HuggingFace](#)

 OpenForum Europe
[OpenForum Europe](#)


[LAION](#)

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¹ Open Source Exemption, as of 23 March:

Recitals: Research by the European Commission shows that Free and Open Source software contributes between €65 billion to €95 billion to the European Union's GDP and that it provides significant growth opportunities for the European economy. Free and Open Source licences allow users not only to run, copy, distribute, study, change and improve software freely but also models and data. This Regulation will group those software, models and data under the term Free and Open Source AI components. To foster the development and deployment of AI, especially by SMEs, start-ups, academia but also by individuals, this Regulation should not apply to such Free and Open Source AI components except to the extent that they are placed on the market or put into service by a provider as part of a high-risk AI system or of an AI system that falls under Title II or IV of this Regulation.

Neither the public and collaborative development of Free and Open Source AI components nor making it available on an open repository should constitute a placing on the market or putting into service. A commercial activity, within the understanding of making available on the market, might however be characterised by charging a price for a Free and Open Source AI component, with the exception of transactions between micro enterprises, but also by charging a price for technical support services, by providing a software platform through which the provider monetises other services, or by the use of personal data for reasons other than exclusively for improving the security, compatibility or interoperability of the software.

The developers of Free and Open Source AI components shall not be mandated under this Regulation to comply with requirements targeting the AI value chain and, in particular, not towards the provider that has used that Free and Open Source AI component. Developers of Free and Open Source AI components should however be encouraged to implement widely adopted documentation practices, such as model and data cards, as a way to accelerate information sharing along the AI value chain, allowing the promotion of trustworthy AI systems in the EU.

Article 2 paragraph 5 (scope): This Regulation shall not apply to Free and Open Source AI components except to the extent they are placed on the market or put into service by a provider as part of a high-risk AI system or of an AI system that falls under Title II or IV. This exemption should not apply to fundamental general purpose AI models as described in Art 28b.

Article 28 paragraph 2 (responsibilities share information or assist downstream actors along the AI value chain): The developers of Free and Open Source AI components shall not be mandated to comply with such obligations towards the provider that has integrated the Free and Open Source AI component in his or her high-risk AI system.