Dear Vice-President Virkkunen,

In the current geopolitical situation, it is more important than ever that the EU rises to the challenge and stands strong on fundamental rights and democracy.

Therefore, we, the representatives of the co-legislators of the AI Act, write to you with great concern about the AI Act Code of Practice, where **assessing and mitigating various risks to fundamental rights and democracy** is now suddenly **entirely voluntary** for providers of general-purpose AI models with systemic risk.[1] We, the co-legislators that negotiated the AI Act, stress: **this was never the intention of the trilogue agreement**. **Risks to fundamental rights and democracy are systemic risks that the the most impactful AI providers must assess and mitigate.**[2] It is dangerous, undemocratic and creates legal uncertainty to fully reinterpret and narrow down a legal text that co-legislators agreed on, through a Code of Practice.[3]

If providers of the most impactful general-purpose AI models were to adopt more extreme political positions, implement policies that undermine model reliability, facilitate foreign interference or election manipulation, contribute to discrimination, restrict the freedom of information or disseminate illegal content, the consequences could deeply disrupt Europe's economy and democracy. Especially as businesses and people start to use AI more widely. **The AI Act must ensure AI is safe and trustworthy for people and businesses in the EU.** Risks to health, safety, fundamental rights and democracy are the foundations of the AI Act and thus the core of the systemic risks that providers of those models must assess.

The AI Act is clear on when a model poses a systemic risk and which risks it should assess. The trilogue agreement by the co-legislators is crystal clear that systemic risks include risks **"to public health, safety, public security, fundamental rights, or the society as a whole".**[4] And the entire purpose of the Act is to protect **"health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, including democracy, the rule of law and environmental protection".**[5]

A general-purpose AI model is deemed to pose a systemic risk based on capabilities or based on size and impact through reach.[6] Designation is clear: either a model has high impact capabilities based on 1) the FLOP-threshold presumption[7] or, if systems do not meet this threshold, they can still be designated *ex officio* or following alert by the scientific panel

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[1] Annex 1.2. AI Act Code of Practice.
[2] See for example recital 110 AI Act.
[3] "According to settled case-law, the adoption of rules essential to the subject-matter envisaged is reserved to the legislature of the European Union see, to that effect, *Germany* v *Commission*, paragraph 36; Case C-104/97 P *Atlanta* v *European Community* [1999] ECR I-6983, paragraph 76; and C-356/97 *Molkereigenossenschaft Wiedergeltingen* [2000] ECR I-5461, paragraph 21). The essential rules governing the matter in question must be laid down in the basic legislation and may not be delegated (see, to that effect, Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 18; *Parliament* v *Council*, paragraph 23; Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 34; and Case C-133/06 *Parliament* v *Council* [2008] ECR I-3189, paragraph 45)", ECJ ruling C-355/10 para. 64.
[4] Article 3(65) AI Act, definition of systemic risks and see recital 110: "General-purpose AI models could pose systemic risks which include, but are not limited to, any actual or reasonably foreseeable negative effects in relation to major accidents, disruptions of critical sectors and serious consequences to public health and safety; any actual or reasonably foreseeable negative effects on democratic processes, public and economic security; the dissemination of illegal, false, or discriminatory content [...] the ways in which models can give rise to harmful bias and discrimination with risks to individuals, communities or societies; the facilitation of disinformation or harming privacy with threats to democratic values and human rights"
[5] Article 1(1) AI Act, purpose of the AI Act.
[6] See Article 51, Article 90, Annex XIII and recital 111 AI Act: "a general-purpose AI model should be considered to present systemic risks if it has high-impact capabilities [...], or significant impact on the internal market due to its reach.".
[7] Articles 51(1) and 51(2) AI Act, classification of general-purpose AI models as general-purpose AI models with systemic risk.

based on 2) size, impact and reach according to the criteria in annex XIII[8]. And when a general purpose AI model has been designated as a general purpose AI model with systemic risk, they need to assess and mitigate any systemic risks they may pose, **including risks to public health, safety, public security, fundamental rights or the society as a whole**. By analogy to the DSA, once models have been designated as posing a systemic risk based either on capabilities, or on impact and reach, the systemic risks are inherently "significant due to their reach, or due to actual or reasonably foreseeable negative effects" and do not need further narrowing on severity or significance.

The Code however, seems to fully conflate and confuse the capability-based designation criteria for general-purpose AI models with systemic risks with the actual systemic risks these systems consequently present to our current society, that **providers must mandatorily assess and mitigate**.[9]

We trust that you, Vice-President, will ensure a clear, concrete and strong Code of Practice that reflects these core principles of the AI Act and protects our society against systemic risks to health, safety, fundamental rights and democracy. And, if necessary, you will reject any Code of Practice that does not.

Undersigned, Representatives of the co-legislators,
The Representative of the Spanish Presidency and the Rapporteur and Shadow Rapporteurs of the European Parliament for the European AI Act,

Brando Benifei (S&D), Member of the European Parliament, Rapporteur of the AI Act of the AI Act
Carme Artigas, Council Presidency for the AI Act during the Spanish Presidency of the EU, Former Minister for Digitalization and Artificial Intelligence of Spain.
Axel Voss (EPP), Member of the European Parliament, LIBE Shadow Rapporteur of the AI Act and JURI Rapporteur
Deirdre Clune (EPP), former Member of the European Parliament, IMCO Shadow Rapporteur of the AI Act
Petar Vitanov (S&D), former Member of the European Parliament, LIBE Shadow Rapporteur of the AI Act
Svenja Hahn (Renew), Member of the European Parliament, IMCO Shadow Rapporteur of the AI Act
Kim van Sparrentak (Greens/EFA), Member of the European Parliament, IMCO Shadow Rapporteur of the AI Act
Sergey Lagodinsky (Greens/EFA), Member of the European Parliament, LIBE Shadow Rapporteur of the AI Act

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[8] Article 51(b) and Annex XIII, classification of general-purpose AI models as general-purpose AI models with systemic risk.
[9] See for example Code of Practice Annex 1.1, 1.3 and 1.4 versus the risks to voluntarily assess Annex 1.2.