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Brando Benifei, MEP  
European Parliament  
60 rue Wiertz / Wiertzstraat 60  
B-1047 - Bruxelles/Brussels

Dragoş Tudorache, MEP  
European Parliament  
60 rue Wiertz / Wiertzstraat 60  
B-1047 - Bruxelles/Brussels

Via Email

**Subject: Artificial Intelligence Act**

Dear Mr. Tudorache and Mr. Benifei:

On behalf of the Software & Information Industry Association (SIIA) and the European Edtech Alliance (EEA), we write to provide background on the education technology (edtech) industry and its use of artificial intelligence (AI) technologies to enhance the learning environment in Europe and to provide recommendations on the Artificial Intelligence Act (the “AI Act”) to foster the continued development of responsible artificial intelligence (AI) technologies to support students and teachers.

As trade and sector associations representing both edtech companies and organizations along with educational institutions, SIIA and EEA fully support the objectives of the AI Act to create a harmonized approach to regulating AI to protect citizens, including learners across the EU who engage with digital learning platforms. However, the proposed legislation brings forth serious concerns regarding the impact on the edtech industry and the advancement of future educational technology solutions.

We specifically emphasize that the AI guidelines will have a disparate impact on smaller edtech companies that would need to comply with the new expectations of the AI Act. We call for a differentiation of edtech services based on risk profile and also for support to develop and test AI tools in educational or learning settings. These measures will advance learning objectives, promote innovation, and ensure competitiveness in European edtech.

## **What is Edtech?**

Educational technology has been used by students in classrooms and at-home learning for decades. However, the switch to virtual learning during the COVID-19 pandemic put a new focus on the use of edtech. In order to ensure policy governing educational technology adequately accommodates both the industry and societal needs, it is imperative to differentiate between the different types of technology that learners and education professionals use in the field of education.

The first is “educational technology” or “edtech” which is technology used under contract with an educational authority like a school, university, or a corporate or workforce learning environment. Edtech helps create a richer educational experience for learners, educators, and, in certain circumstances, parents. It includes subject-based curriculum tools, learning management systems, student information systems and adaptive learning programs to help support individualized learning styles. Edtech will be a necessary support mechanism in the face of drastic teacher shortages, disruptive events such as pandemics or climate related incidents, mass migration, and reskilling or upskilling.

The second is technology that is self-described as educational. This technology is typically accessed independently by a learner, parent, or organization and is not under contract with a school, an institution or officially used by companies for professional training and upskilling. This technology may provide a robust educational experience but is not designed for use in a traditional learning setting. Some examples include websites with educational content, mobile applications downloadable from a platform’s store, and educational content viewable on a platform’s website.

Both types of content may be used to further a learner’s educational experience, however, the technologies are subject to different legal frameworks, data processing requirements, and reporting requirements. Any policies should take these differences into consideration throughout the legislative process.

## **How is AI Used in Education?**

AI has been used in the educational space for several years. An article from the Center for Data Innovation explains how AI can be a resource in education stating:

AI tools have the potential to improve K-12 education in the United States. For students, AI can provide them a personalized learning experience tailored to their individual preferences and needs, immediate feedback on their work and answers to their questions, and increased access to tutoring and other educational materials. For teachers, it can help automate some of their workload, design better interventions, and reduce burnout. And for administrators, AI can monitor the student body and provide preemptive interventions with the help of predictive analytics. But while there are many benefits to AI in schools, there are a number of technical, operational, and social challenges that limit AI-driven innovation in the education sector.”

Furthermore, it has been stated that AI tools can assist in key aspects of education, such as tutoring, teaching methods, textbooks, and chatbot/digital assistance tools. Due to the increasing development(s) of AI, the diversity of populations that this technology can assist is expected to increase by the day. A report curated by UNESCO also contributes to the conversation by stating, that “[t]he use of AI technologies...aim to provide every learner, wherever they are in the world, with access to high-quality, personalized, and ubiquitous lifelong learning.”

In addition, the use of AI in schools can impact how teachers can enhance their education curriculum, as well as teaching methods, in the modern classroom. For example, the UNESCO report also states that “[m]any teacher-facing AI applications aim to help teachers reduce workloads by automating tasks such as assessment, plagiarism detection, administration and feedback.”

AI tools can also assist with relieving teachers from many activities that could be considered “time-consuming.” For example, AI can be utilized to assist with attendance, answering questions, and marking completed assignments. Although this is just one piece of what can be accomplished through AI-based technology, in the field of edtech, the possibilities are endless and remarkable.

We believe that the deployment of AI in education must be done in a way that addresses risks associated with the development and use of these tools. While technology usage grew during the pandemic, the need to protect the rights, privacy, and safety of students is just as important now as it was before the pandemic.

It is integral that laws and policies across the globe are specific and clear when it comes to defining what educational AI-based systems are deemed “safe,” according to legislative standards and regulations. Nevertheless, with the proposed legislation creating a more regulatory framework for companies to abide by in order to be accessed in the EU, the initial advances in edtech may be thwarted by the proposed Act.

### **Not All Education Technology Should Be Considered High Risk**

As the Parliament continues to evaluate the provisions of the AI Act and consider amendments, we urge you to incorporate a more nuanced treatment of AI systems used by edtech or in the educational context. Treating all applications of AI in the educational context as “high risk,” subject to the requirements for pre-market certification and ongoing review, will have significant effects on three important constituencies: students; educators; and edtech developers.

We recognize the sensitivity around the use of AI systems in the educational context. We concur with the spirit of Recital 35 and the Rapporteurs’ amendments thereto about the importance of ensuring that AI systems used in the educational context are properly designed, do not foster discrimination, and contain safeguards to protect educators at all levels. We believe, however, that subjecting all AI systems used in the educational context to the requirements of high-risk

systems will significantly impair the ability to use these tools to advance learning objectives. Especially as not all tools are built with the same complexity and differentiate between the use of personal and anonymised learning progress data.

To address this, we propose that the Parliament include amendments to the AI Act that would allow for the certification of AI systems used in the educational context based on their comportment with industry standards designed to ensure the safety, reliability, and trustworthiness of AI tools. By capturing virtually all uses of AI in the edtech context, within the scope of “high risk” AI, edtech businesses will be subject to a plethora of rules and regulations, which allows the business to “prove” that their AI-based system is trustworthy and meets the mandatory requirements. While the requirements for such systems may be sound, the requirement to seek government approval before the AI tools may be provided to schools and other educational institutions will have a significant impact on the learning environment across the EU, on the ability of EU-based companies to develop, and, importantly, on the equitable access to meaningful education opportunities for learners.

We agree that the safety and efficacy of AI-systems in the market is essential. Nonetheless, the proposed approach will have significant consequences on the edtech industry, as well as the economic growth and sustainability of education around the world. The procedural implementation of the AI Act could have a detrimental effect both within the edtech industry and European learning environments.

### **Regulations Should Minimize Adverse Effects on the Educational Ecosystem**

In addition, we reflect a more nuanced approach to regulations based on the size of companies providing technology for educators and teachers.

Edtech companies vary in size and scope. The draft AI Act distinguishes between an AI “provider” and a “small-scale provider.” Despite different regulatory requirements for providers and small-scale providers, we have concerns that protections for small-scale providers would nevertheless be too stringent. As the majority of European edtech companies are small scale companies operating within and adapting to the many small European markets and their diversity in curricula and languages, we fear it could make the threshold too steep for new solutions and innovation.

The effect of the stringent regulations on small-scale providers alongside concerns about regulations applicable to other edtech providers is that services to schools, students and teachers are likely to be disrupted due to the burden of the Act. The state of education depends heavily on technology to ensure that teachers and students are well versed in its advancements. If this Act were to pass in its current form, the restrictions currently placed under Title III would also, in effect, restrict the availability of educational learning opportunities for teachers and students without necessarily improving the quality of the underlying tools.

In addition, the requirements for “high risk” AI systems leave no room for exigency when it comes to immediate needs of consumers – which, in the context of edtech, means students and

educators. Shall another pandemic arise, how would edtech companies ensure that they can continue to provide services to schools? What are edtech companies to do when they are required to wait for approval from a government entity? Would these companies and providers possess the ability to meet the needs of the public they are attempting to serve? Would this Act inhibit their possibility of expansion to the EU? Would students, teachers, and families suffer due to the overwhelming regulations that may stop businesses from providing services?

While the impact of this new regulation will be difficult to assess in the beginning, we have concerns that this will impact how edtech companies will be able to thrive and prosper in the EU.

The EU is a thought leader in technology innovation across the globe. With this Act, the EU has the possibility to create an innovative process that truly protects the rights, privacy, and safety of learners while also embracing the diversity of the edtech field, allowing innovation and creating a competitive advantage with responsible AI. It is clear that AI is ever-changing and impacting our lives in many different arenas. We are hopeful that the next version of the AI Act will adequately reflect the dynamic uses of technology in education, making edtech a key driver in the high-performing digital education ecosystem the EC strives for in the Digital Education Plan 2027.

## **Conclusion**

SIIA and EEA would like to thank you for the opportunity to share our views on the AI Act. We would be grateful for a chance to meet with your staff to discuss edtech, how AI is being used in the educational context, and our proposed recommendations for ensuring the safety, trustworthiness, and responsibility of AI systems in the AI context without hurting the ability for learners and educators to make use of these tools and continuing to foster socially beneficial uses of AI for education.

Sincerely,

Beth Havinga  
Managing Director  
European Edtech Alliance

Paul Lekas  
Senior Vice President, Global Public Policy  
Software & Information Industry Association

***About our organizations:***

**The Software & Information Industry Association (SIIA)** is the principal trade association for the software and digital information industries worldwide. Our members include over 450 companies and associations reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide and companies specializing in data analytics and information services. Our members are unified in their support for policy measures that promote a robust, healthy digital ecosystem and information lifecycle worldwide. Further, SIIA provides a unique community for edtech companies to get noticed, gain knowledge critical to business success, and join together to influence policies that impact our industry. SIIA serves as the key champion for the edtech industry representing small, medium and large businesses making products for PK-20 education partners. We help members navigate and stay current on education law and policy to respond to the needs of and better serve educators and students.

**The European Edtech Alliance (EEA)** is a consortium of national trade and sector associations and clusters representing more than 2.600 providers of education technology (Edtech) across 20 countries in Europe. The mission of the EEA is to encourage cross-border cooperation and education innovation in Europe supporting both the domestic and international growth of Edtech and strengthen the pan-European Edtech ecosystems. The Alliance has two areas of focus: policy and support. The aim of our policy work centers around the collation of best practice and methodology data across Europe to evidence and champion the efficacy and relevance of Edtech. Through this work, the EEA is a core member of the EU Commission's round table on Edtech and the work of both the Council of Europe and UNESCO's Broadband Commission. The EEA's work with the start-up sector focuses on building meaningful networking and related opportunities designed to help start-ups innovate, thrive and scale.