

To: **Henna VIRKKUNEN**, Executive Vice-President for Tech
Sovereignty, Security and Democracy



CC:

Stéphane Séjourné, Executive Vice-President for Prosperity and Industrial Strategy

Ekaterina Zaharieva, Commissioner for Startups, Research and Innovation

Lucilla Sioli, Director of the AI office

Apr 10, 2025

Subject: Mislabelling of Open Source AI and consequences for enforcement of the AI act

Dear Executive Vice-President,

In March of last year, the European Parliament voted to adopt the Artificial Intelligence Act. Among the changes made by Parliament to the Commission draft was the addition of an exemption for Open Source AI.

MEPs decided that AI systems distributed for free under an Open Source Licence which allows anyone to use, study, modify and share the system without restrictions on user or use case, should be exempt from the AI act. Compliance with the AI act would then fall upon the deployers or developers using the Open Source AI system. Through this balance, Parliament sought to give the Open Source community space to experiment and build innovative solutions, which could be reused across the union. This, in turn, will help democratise access to AI, in particular for SMEs, boost innovation and competition in the AI field in Europe, and help our industry leverage the power of technology.

However, over the course of the last year, we have seen a worrying trend emerging: a handful of very large AI companies are claiming their AI is Open Source, while imposing usage restrictions intended to prevent the emergence of competition and threatening users' safety. For instance, Meta prohibits the use of its *Llama* models for the purpose of training other AI systems, and forces anyone who develops a highly successful AI system based on Llama to negotiate a special licence with them. In essence, their AI is only free and open until a business wants to compete with them.

Additionally, these companies are withholding certain parts of the code, and information about the training data required to build their AI systems. Should such AI systems be considered Open Source for the purposes of the AI act, the unavailability of this information would make it extremely challenging for developers and deployers building on these systems — in particular SMEs — to assess potential risks related to data protection, bias, and

copyright, making it impossible for them to confidently comply with the AI act, and potentially putting citizens at risk.

The Open Source Community has already clearly stated¹ that such restrictions disqualify these systems from being considered Open Source, threatening AI safety and European competitiveness. We urge the Commission and the AI office to clarify that such systems cannot be considered Open Source for the purposes of the AI Act. Failing to do so would risk undermining the implementation of the AI act, putting citizens' rights at risk, and harming European Competitiveness.

Finally, we call on the Commission and the AI Office to actively monitor ongoing multilateral efforts to establish a comprehensive definition of Open Source AI², and to consider developing guidance on what should be considered as Open Source AI for the purposes of the AI act.

Thank you for your attention to this matter.

Yours Faithfully,

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¹ <https://opensource.org/blog/metaspark-2-license-is-not-open-source>

² <https://opensource.org/ai>

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