



Working Group on the self- and co-regulatory measures under the AI Act

Facilitating the establishment of codes of practice and/or codes of conduct under the AI Act



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1 Idea / Approach

This Working Group aims to explore and develop co/self-regulatory mechanisms outlined in the AI Act. In this process, it will examine the possible interplay between Codes of Practice and Codes of Conduct as well as standardisation and adequate alternative means, identifying any overlaps or complementary aspects.

The group will discuss and draft positions respectively pragmatic suggestions on who should be involved in creating Codes of Practice and Codes of Conduct. While the AI Act suggests that business stakeholders are optional in developing Codes of Practice, conditional to the de-facto processes of drafting codes under the AI Act, involving business stakeholders early might be crucial to adequately represent the needs of different market sectors. This includes paying special attention to the interests and needs of small and medium-sized enterprises (SMEs).

In this vein, the working group will also touch base on potential needs and benefits to consult with conformity experts, recognizing that market players may require additional support in developing these criteria.

Self- and coregulatory approach should ensure compatibility with existing legal frameworks, e.g. the GDPR, and to incorporate technical documentation referred to in Article 53(1) AI Act reflecting initiatives and developments supporting AI training addressing both general-purpose AI models and those with systemic risk. Therefore, the Working Group seeks to determine suitable methodologies. E.g., by analyzing existing initiatives and inviting their representatives to collaborate, the Working Group can build upon their work and ensure the Codes of Practice and Conduct can be broadly implemented. Where possible SRIW strives to build upon any existing work and will certainly invite representatives of such initiatives to collaborate.

Finally, establishing a realistic timeline for effectively drafting self- and coregulatory measures, considering the AI Act's requirements and deadlines distinctively related to Codes of Practice, will be crucial for the Working Group's success.

2 Early Indication of Working Group's Roadmap and Activities

At this early moment in time, the roadmap and activities of the working group may be delineated in two stages.

2.1 First Stage

The first stage shall focus on the multitude of possible co/self-regulatory mechanisms and the players involved, including:

- Clarification of the needs, preferences as well as advantages of each mechanism;
- Identification of parallels or complementarity between mechanisms;
- Clarification as to which parties will be or should be involved in the development of the codes, including identifying their roles;
- Identifying the needs and interests of different sectors in the market.

2.2 Second Stage

The second stage of the working group activities shall focus on the establishment of a dynamic dialogue between the stakeholders, including competent authorities, at an international level. This will cover topics including the necessity and minimum content of the codes, potential hurdles in their development, and good practices for their creation.

2.3 Timeline / Roadmap

Considering the nine-month deadline from the AI Act's effective date for drafting a Code of Practice, the Working Groups seeks to progress accordingly.

Stage 1 is expected to be closed by end July/August, allowing the determination of any subsequent work streams in Stage 2.

Stage 1 is expected to create different public deliverables, outlining the findings, positions and requests by SRIW alongside pragmatic suggestions to stakeholders (potentially) involved in the development of self- and coregulatory measures under the AI Act.

Depending on the findings of Stage 1, Stage 2 strives for publishing first (draft) iterations of by autumn 2024. Such iterations may address conceptual approaches regarding the methodology, the approval and adoption process, as well as initial lists of potential material requirements.

3 Background Story

Selbstregulierung Informationswirtschaft e.V. (SRIW)¹ has been involved in several projects since establishment more than a decade ago. Its focus lies in operationalizing data protection and consumer protection. With this experience and considering current events, SRIW recognizes the uncertainty that AI training complexities and overlaps with other legal frameworks, such as the GDPR, may cause. SRIW also acknowledges the necessity for a robust and actionable co- or self-regulation mechanism to ensure coherent AI governance across the market.

In the wake of rapid advancements in artificial intelligence (AI) technology, the current legal framework (the “**AI Act**”) introduced by the European Commission aims to ensure transparency, accountability, and safety in the development and deployment of AI systems by adopting a classification system according to which AI systems are categorized based on their risk level from low-risk AI systems to prohibited AI.

With the Council of the EU having approved the AI Act on 21 May 2024 the AI Act is now expected to enter into force by June 2024. The obligations will be phased in over a period of three years, with the first key obligations on prohibited AI applying six months after the AI Act comes into force. All businesses involved in the development, deployment, distribution, oversight or utilization of AI will need to assess their use of AI to ensure compliance with the AI Act.

3.1 Available Toolkit

The AI Act provides for different compliance tools. It allows for Codes of Practice, Codes of Conduct, standardization and alternative means. The AI Act remains ambiguous in respect of the interrelation of each of these mechanisms.

3.1.1 Material understanding and ambiguities

- Codes of Practice shall facilitate the implementation of the provisions of the AI Act regarding the obligations of providers of general-purpose AI models and of general-purpose models presenting systemic risks.
- The AI Act itself does not provide any guidance or clarification as to what constitutes possible alternative adequate means. Providers of general-purpose AI models with or without systemic risks who do not adhere to an (approved) Code of Practice shall demonstrate alternative adequate means of compliance for approval by the Commission.

¹ <https://sriw.de>

- The AI Act introduces voluntary Codes of Conduct. Providers of AI systems that are not high-risk are encouraged to create such Codes of Conduct, including related governance mechanisms, intended to foster the voluntary application of some or all of the mandatory requirements applicable to high-risk AI systems.
- Standardization is referred to in cases where Providers of general-purpose AI models with and without systemic risk choose not to rely on alternative adequate means or codes of practice as means of compliance with the AI Act. The compliance with a European harmonized standard should grant providers the presumption of conformity. “Harmonized standards” in that sense have the meaning given in Article 2(1), point (c), of Regulation (EU) No 1025/2012.

3.1.2 Procedural understanding and ambiguities

The procedural aspect on how the mechanisms will be established remain unclear. The AI Act provides indicators on the expected procedures, especially, if procedures from other European legislation will be considered. On the other hand, the AI Act apparently uses different language than such other European legislation. It remains up for debate whether such linguistic inconsistencies are deliberate.

- To facilitate the drafting of a Code of Practice the AI Office may invite all providers of general-purpose AI models, as well as relevant national competent authorities, to participate in the drawing-up of while civil society organizations, industry, academia and other relevant stakeholders (e.g. downstream providers and independent experts) may support the process.
- Codes of Conduct may be drawn up by individual providers or deployers of AI systems or by organizations representing them or by both, including with the involvement of deployers and any interested stakeholders and their representative organizations, including civil society organizations and academia. The specific interests and needs of SMEs (including start-ups) should be taken into consideration.
- Regarding Codes of Practice and Codes of Conduct the requirement of an approval remains ambiguous. The AI Act seems to be taking preference of a self-regulatory approach, since an approval by a regulator appears not required; at the same time the AI Act may be read that some codes may only be drafted by the regulator itself. Apparently, in neither case, the AI Act incorporates additional information on approval processes which go beyond eligibility criteria.
- The Commission issues standardization requests covering all requirements set out in the AI Act to standardization organizations. When preparing the standardization request, the Commission should consult the advisory forum and the Board in order to collect relevant expertise. However, In the absence of relevant references to harmonized standards, leaves room on its consequences. E.g., if the Commission will be able to establish, via implementing acts, and after consultation of the advisory forum, common specifications for certain requirements under the AI Act.

3.2 Territorial scoping

Self- and co-regulative measures, as well as any other regulative approach, will at best evolve at a minimum on a European level, as the industry is not limited to national-wide AI development and deployment. Considering the available technical solutions, industry good practices and reflecting the state of the art. Alongside the material development, the consequences, i.e. legal effects of Codes of Practice and Codes of Conduct must be evaluated. The latter may even require recognition of international approaches and requirements.

4 About Selbstregulierung Informationswirtschaft

Selbstregulierung Informationswirtschaft e.V. (SRIW)² is a non-profit association with European focus. Ever since its establishment in 2011 and as the primary of a pan-European ecosystem, SRIW assembled first-hand experiences in the establishment of trusted self- and co-regulatory instruments in the information economy. The association benefits from its independent subsidiaries across Europe and its diverse and constantly growing membership.

The everyday business of the association centres on harmonising industry practices with social demands and political requirements. The mechanism considered fit for purpose is balanced and monitored self- and co-regulatory frameworks facilitating effective data and consumer protection.

SRIW strives to collect and amplify valuable experiences to improve the necessary and independent structures required for the development, approval and monitoring of codes of conduct. By actively connecting experts and bringing together interested stakeholders, SRIW serves as a forum for exchange and discussions, providing the impetus for kicking-off frontrunner initiatives.

The ecosystem includes SCOPE Europe srl³, most probably Europe's leading independent Monitoring Body. SRIW's subsidiary became known in supporting the first officially approved transnational (European-wide) code of conduct, i.e. the EU Data Protection code of conduct for Cloud Service Providers and becoming the first ever accredited transnational Monitoring Body as well as the first Monitoring Body which was accredited by more than one data protection supervisory authority and for more than one code of conduct.⁴

SRIW appreciates the possibility and readiness of researchers contributing to the Working Group. Since 2021 SRIW is participating as partner in a research consortium related to the project "Cognitive Economy Intelligence Platform for the Resilience of Economic Ecosystems" (CoyPu)⁵ funded by the Federal Ministry for Economic Affairs and Climate Protection of Germany. The research focuses on the legal challenges relating to the development of AI systems.

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² <https://sriw.de/home>

³ <https://scope-europe.eu>

⁴ <https://www.dataprotectionauthority.be/publications/decision-n05-2021-of-20-may-2021.pdf> ;
https://edpb.europa.eu/system/files/2023-03/document_4_data_pro_code_nl_sa.pdf

⁵ <https://coypu.org>



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