VERBAND DER INTERNETWIRTSCHAFT E.V.

POSITION PAPER

on the implementation of the EU AI Regulation (AI Act)

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With the AI Act, the European Union has adopted the world's first comprehensive legal framework for the regulation of artificial intelligence (AI) systems. In particular, the regulation aims to protect fundamental rights, strengthen trust in AI applications and also enable innovation. In recent years, AI systems have undergone significant development in many areas, allowing them to be used in more and more application scenarios in everyday life and in the economy. It is already clear that the introduction of artificial intelligence into many areas of life and work offers great opportunities. However, this potential is not yet being exploited to the desirable extent in Germany and Europe. AI applications need to be used more and the ecosystem for university spin-offs needs to be improved so that more competitive AI start-ups can be created in Germany and Europe. The success of this will depend not least on how innovation-friendly the European regulatory framework is implemented.

Key regulatory areas of the Regulation are subject to implementation in the Member States. This applies, in particular, to the provisions on high-risk AI systems and real-world laboratories. National implementation is therefore also of great importance for the creation of an innovation-friendly regulatory system for artificial intelligence. eco advocates unbureaucratic and standardised implementation in Germany and Europe. From the point of view of the Internet industry, the following points need to be taken into account during implementation.

1. Companies and users need legal certainty

European AI developers need to be able to scale up to remain competitive. Access to the European Single Market is of great importance for this. For this reason, uniform competitive conditions for AI systems and models across Europe are to be welcomed. eco has therefore supported the initiative for uniform regulation of artificial intelligence across Europe in principle. In order not to undermine the level playing field created by the AI Act and to create legal certainty for users, it is essential that the implementation of the provisions within the EU is as uniform as possible. This requires a constant exchange between the competent authorities of the Member States, including at the European level, as well as effective supervision by the Commission. However, national implementation must also be uniform so as not to undermine harmonised European standards and norms. This has proved difficult with some regulations in the past and should be ensured with regard to the AI Act, also in order to reduce the complexity of implementation.

The AI Act sets high requirements for developers and, in some cases, users of high-risk systems in the EU. In eco's view, these can go a long way towards increasing

confidence in the technology and its application as a whole. In order to strike an appropriate balance between legitimate concerns about the use of AI systems in some areas and innovation-friendly implementation, we advocate a 1:1 implementation of the Regulation wherever possible and avoid "gold-plating", i.e. raising the already high standards of the AI Act.

2. Supervisory structure

From the point of view of the Internet industry, it is important to establish a contact point for the relevant players in good time in order to reduce possible uncertainties, especially in view of the expected tight timetable for the application of the rules. The decision on the competent authorities to be appointed in the respective EU Member States, including Germany, should therefore be taken as soon as possible. When selecting the competent authority, consideration must also be given to its integration into the existing regulatory environment. In addition, the notified body must be able to guarantee uniform implementation of the AI Act in Germany. This is not only important in the context of legal certainty for companies and users, but is also a prerequisite for creating a central point of contact for developers, providers or users. This public authority could also be used to establish funding elements in the area of innovation and AI development.

In addition, the designated authorities must be empowered to carry out the functions for which they are responsible. This requires not only adequate staffing, but also the necessary expertise and experience in the area of existing legislation.

At European level, the AI Office needs to liaise closely with the competent national authorities, especially when dealing with cross-border cases. It will also be important for the AI Office to have the capacity to act as quickly as possible, in order to provide a focal point at European level and to be able to start work on the relevant guidelines and delegated regulations as soon as possible.

The "Advisory Forum" to be set up under Article 67 must be closely involved in decisions on guidelines, delegated regulations or standards. The involvement of all stakeholders is the only way to ensure that the rules are practical, to avoid over-regulation and to respond appropriately to the rapid pace of technological development. For this reason, the guidelines and standards to be published should be based on existing best practices and codes of practice.

3. Categorising AI systems as high-risk systems

Central to the implementation of the AI Act is the question of which systems will be classified as high-risk systems under Article 6. Such systems will be subject to significantly higher requirements than other systems, and it is therefore important to ensure, in the interests of innovation-friendly regulation, that systems that do not pose a risk to fundamental rights, health, safety or the environment do not fall into this category. In particular, the exemption provided for in Article 6(3) should be implemented with legal certainty in order to allow for a precise categorisation, including of more complex AI systems. It is also essential that developers and users of AI systems can reliably assess whether their system is a high-risk application

under the AI Act or not. To this end, guidelines need to be made available that can also provide assistance based on practical examples in order to avoid misjudgements. Greater European coordination is also called for here in order to prevent the regulatory structure from falling apart.

Developers of AI systems are also obliged under Article 11 to provide the information specified in Annex IV to a new platform to be created. This platform must be easy to use for all stakeholders, and the type of information to be provided should be made clear. When the Commission publishes the delegated regulation, the Member States and the German federal government should also ensure that the simplification of reporting obligations for SMEs provided for in Article 11(1) is made as unbureaucratic as possible.

4. Reduce uncertainties

Many companies, especially SMEs, are still holding back from making greater use of AI systems. This is not least due to uncertainty about the obligations and requirements to be met. With the AI Act, the EU has laid down a very complex set of rules to create legal certainty in the use and application of artificial intelligence and to address the relevant issues. This complexity now needs to be reduced to minimise uncertainty. On the one hand, businesses need clarity on the overlap between the AI Act and existing regulation. This applies both to the legal acts mentioned in Annex I and to other digital laws, such as the DSA or the GDPR. What is needed here is a European screening of these legal acts for regulatory duplication, with the aim of eliminating them, setting priorities and defining clear recommendations for action for the companies concerned.

On the other hand, clear guidelines and instructions are also important in other areas to avoid uncertainty. This applies, for example, to reporting obligations. It must be clear how extensive the obligations are. Uncertainties also arise with regard to the risk management system and risk assessment required by Article 9. In particular, it is unclear how possible risks to health, fundamental rights, safety and the environment can be operationalised in concrete terms. Particularly in relation to mental health, it may not always be possible for developers to identify all potential risks. In this context, there is also a need to clarify the point at which potential risks can be ‘reasonably foreseen’, as required by the Regulation. The same applies to the robustness and accountability of systems. Furthermore, the requirements for human oversight of high-risk systems need to be made manageable for the full range of possible use cases.

5. General purpose AI models

In addition to AI systems, the AI Act also contains provisions on general purpose AI models (GPAI models). In particular, the regulation imposes a number of requirements and reporting obligations on models that are categorised as “systemic risk” models in accordance with Article 51 and the criteria in Annex XIII. AI models are the foundation for innovative AI applications, so over-regulation in this area

must be avoided in order not to make the development of such foundations in Europe more difficult or unattractive.

For this reason, the Internet industry considers it necessary to implement the proposed requirements and obligations in a practical manner and to allow for tailored classification, also in light of the rapid technological developments in this area. In particular, the threshold for categorising models as posing systemic risk needs to be regularly adjusted in consultation with all relevant stakeholders and in the light of current technological developments. The criteria should not be overly broad and should be consistent with the risk-based approach of the Regulation.

6. Real-world laboratories

To encourage innovation, the AI Act provides for the creation of real-world laboratories. These will enable SMEs and start-ups in particular to test their systems in a protected environment and under real conditions to ensure that they comply with the provisions of the Regulation. The Internet industry believes that real-world labs can be a useful tool to support SMEs and start-ups. Access to these real-world labs should therefore be unbureaucratic and free for all developers who wish to use them. This is also important because the presumption of conformity with the AI Act established in Article 57(7) following the successful completion of a test in a real-world laboratory may be an appropriate way to simplify compliance with the provisions of the AI Act, especially for SMEs and start-ups.

7. Conclusion

The success of the AI Regulation will also depend on its correct implementation, in particular preserving the freedom to innovate and ensuring a level playing field in Europe. Standardised implementation across Europe and Germany is also essential to reduce uncertainty. This needs to be taken into account in the choice of competent authorities and the capacity required to carry out the resulting tasks, which should include the role of contact point. The same applies to the governance structure at European level. Here, the AI Office needs to maintain a regular dialogue with the relevant stakeholders and the Advisory Forum in order to enable practical and unbureaucratic implementation. The design of guidelines and standards must also be based on existing best practices and codes of conduct.

The categorisation of systems as high-risk systems must be based on clear and comprehensible criteria, in particular in order to benefit from the envisaged exemption rules. From the point of view of the Internet industry, guidelines and practical examples would be useful. Guidelines should also be provided for other provisions in order to reduce uncertainty. This applies, for example, to the requirements for risk assessment, risk management systems and reporting obligations. In this context, it is particularly important to clarify the scope of the information to be provided. In addition, over-regulation of AI models must be avoided so that the development of basic AI models in Europe remains attractive as the basis for a wide range of AI applications.

In addition, a clear demarcation is also needed in the context of overlaps between existing regulations such as the DSA or the GDPR. As part of the implementation, eco also supports the establishment of real-world laboratories as a tool to promote innovation and support, in particular for SMEs and start-ups. The groundwork should be laid as soon as possible to make such real-world laboratories available to interested stakeholders.

About eco: With approximately 1,000 member companies, eco (international.eco.de) is the leading Association of the Internet Industry in Europe. Since 1995, eco has been highly instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of its members in politics and international forums. eco has offices in Cologne, Berlin and Brussels. In its work, eco primarily advocates for a high-performance, reliable and trustworthy ecosystem of digital infrastructures and services.