Toward a Code of Practice for GPAI Models that supports Downstream providers

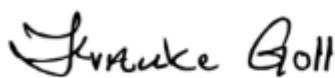## The view of appliedAI Institute for Europe on the 3rd Draft

appliedAI Institute for Europe welcomes the third draft of the GPAI model Code of Practice (CoP) and thanks the Chairs, Vice-Chairs and the AI Office for their substantial efforts.

At the **non-profit appliedAI Institute for Europe**, our goal is to empower AI professionals in **EU-based start-ups, SMEs, and public institutions** to develop and apply trustworthy AI at scale. We obtain first-hand insights into their challenges with the AI Act through direct exchange in our open trainings, workshops and community events. With this target group in mind, our goal is to to reduce cost for compliance, time to compliance, and to foster Trustworthy AI Innovation in Europe
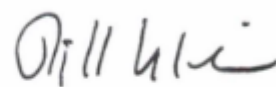
We acknowledge the contentious geopolitical, commercial, and epistemic environment in which the CoP is being drafted and believe that a perfect balance between stakeholder interests is difficult. **We urge all parties** - model providers, regulators, and civil society actors - **to accept trade-offs** today while continuing to work towards a CoP in line with the spirit of the AI Act, while considering rapid technological advancements and fostering innovation.

EU-based start-ups, SMEs, and public institutions are the backbone of the EU economy, and are likely to make up the **bulk of EU-based "downstream providers"** under the AI Act. That way, they are heavily dependent on (largely foreign) GPAI model providers, including the information they share, but they have **limited resources and bargaining power**. Consequently, they will be significantly affected by the scope of the CoP and the extent to which GPAI model providers comply with it.

With the aim of **strengthening the position of EU-based downstream providers** to accelerate innovation in Europe, we make the following observations about the current draft.

Dr. Frauke Goll
Managing Director

Dr. Till Klein
Head of AI Regulation

We welcome:

- Making publicly available a draft Model Documentation Form that better allows stakeholders to understand the nature and format of information that is owed to them under the CoP. (Link) This way, downstream providers will be able to better compare and select the right GPAI Model for their purposes.

- Recommendations by the Chairs to the AI Office to review the CoP at defined intervals, taking into account technological and legal developments (Link). This is vital for an agile implementation of the AI Act and serves GPAI Model providers and downstream providers alike.

- Publicly acknowledging that the Chairs expect the CoPs Safety and Security section to only be relevant to 5-15 (well resourced) companies at any given point in time. (Link)
  - Should this assumption be incorrect - and significantly more entities (particularly European GPAI model providers) fall into the ambit of these requirements - we expect the AI Office to revisit assumptions about whether the nature of obligations are in fact proportional to the size of the organization.

We are ambivalent about:

- The rules on copyright. In particular, we look forward to more clarity on how model providers are expected to prevent the production of copyright-infringing outputs, and how downstream providers can be empowered to detect and report outputs that unintentionally infringe copyright, without assuming liability for such activities.
  - We also hope that these provisions are reviewed and amended at regular intervals as our understanding and availability of law and technology evolves.

- The claim that the draft CoPs Safety and Security section is "newcomer friendly." While we are pleased to see some concessions for SMEs, we believe that complying with this section will still require significant institutional and financial resources, making it harder for European GPAI model providers to achieve compliance (Link)
  - We also note that many of the concessions available to SMEs in the second draft's Copyright section are no longer available in the third draft.
  - We hope to see the AI Office assess the ongoing costs associated with compliance and to simplify this process further for any SMEs or other under-resourced actors that fall within the scope of these requirements.

We note with concern that:

- Several elements of the Model Documentation Form remain unavailable to downstream providers, including model architecture, information about data management practices, and energy use. ([Link](#))
    - These elements are likely to be crucial for downstream providers who integrate a model into AI systems and would have informed their own risk management activities. We are concerned that the absence of this information might prevent downstream providers of AI systems, particularly high-risk AI Systems, from complying with the AI Act.
    - While model providers may make this information available through other means, it would significantly benefit downstream providers if this information was provided as a CoP artefact in order to ascertain its veracity and accuracy during the compliance process.
    - If countervailing reasons exist that hinder the disclosure by model providers, such as trade-secrets, IP, or security, the chairs and vice-chairs should publicly communicate what these reasons are in order to facilitate public debate.

We note with significant concern that:

- The 3rd draft of the CoP creates a new hierarchy of systematic risks, with so-called "existential" risks accorded priority over risks to public health and safety, and fundamental rights. The latter three being core to the purpose of the AI Act, but the 3rd CoP draft refers to them as "for potential consideration". ([Link](#))
    - This is an unacceptable deviation from the expectations of lawmakers and detrimental to both downstream actors integrating these models and to EU citizens.
    - This leads to a contradiction between the purpose of the AI Act, which is to prevent risk to health, safety, and fundamental rights and the CoP, which prioritises existential risks.
    - In addition, given that the documentation for risk management is only due to the AI Office, downstream providers will have no transparency into the decisions of model providers, leading to more uncertainty and potentially lower adoption.

Expectations for Future Work:

- appliedAI institute for Europe will continue working together with the Chairs through the Working Groups and is looking forward to the final version of the CoP. We are also eager to hear from the Commission and the AI Office about the rules for downstream actors who modify or fine-tune GPAI models as these rules will significantly impact how GPAI models are adopted in the EU.
  - We agree in principle with the Chair's observation that the CoP's rules - particularly the Safety and Security section - should not be enforced against fine-tuned or modified models unless such activities could introduce novel significant risks. However, we reserve more detailed comments for when more information is available ([Link](#)).

About

The appliedAI Institute for Europe aims to strengthen the European AI ecosystem by engaging in research, developing knowledge around AI, providing trusted AI tools, and creating educational as well as interactive formats around high-quality AI content.

As a non-profit subsidiary of the appliedAI Initiative, the Institute was founded in Munich in 2022. The appliedAI Initiative itself is a joint venture of UnternehmerTUM and IPAI. The Institute is managed by Dr. Frauke Goll and Dr. Andreas Liebl.

The appliedAI Institute for Europe focuses on the people in Europe. It pursues the vision of shaping a common AI community and providing high-quality content in the age of AI for the entire society. By promoting trustworthy AI, the Institute accelerates the application of this technology and strengthens trust in AI solutions.

With a focus on research, knowledge development, research and the provision of trusted AI tools, the appliedAI Institute for Europe provides a valuable resource for companies, organizations, and individuals looking to expand their knowledge and skills in AI. Through educational and interaction formats, the Institute enables an intensive exchange of expertise and fosters collaboration between stakeholders from different fields.

The appliedAI Institute for Europe invites companies, organizations, startups, and AI enthusiasts to benefit from the Institute's diverse offerings and resources. The appliedAI Institute for Europe is supported by the KI-Stiftung Heilbronn gGmbH.

For more information, please visit www.appliedai-institute.de