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# **Public Consultation: Future Proof AI Act, Trustworthy General Purpose AI**

**Response from the American Chamber of Commerce Ireland (AmCham).**

**September 2024**

## **The American Chamber of Commerce Ireland The Voice of US-Ireland Business**

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The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and investment.

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The American Chamber of Commerce Ireland (AmCham) welcomes the opportunity to engage with the European AI Office on the topics covered by the first Code of Practice on detailing out rules for providers of general-purpose AI (GPAI) models in the context of the AI Act. The introduction of the AI Act will have a considerable impact on industry and wider society, AmCham therefore appreciates the AI Office’s consultative approach to the implementation of the Act. It is key that AI Act is introduced in a manner that fosters responsible innovation, continues to attract investment, supports adoption across the EU economy, and is mindful of the continuous technological advancements that are happening in the field. There are several overarching principles that AmCham would like to see applied to the Code of Practice. It is important that legal clarity is prioritised in all aspects of the Code of Practice, that international standards and best practice are adhered to, that it ensures essential information is shared within the value chain, and that the Code of Practice remains adaptable to future developments in this space.

## **Section 1. General-purpose AI models: transparency and copyright-related rules**

### **A. Information and documentation by general-purpose AI model providers to providers of AI systems**

AmCham welcomes the steps that are being taken to enhance clarity regarding the requirements for GPAI model providers under Article 53 of the AI Act. Several leading AI providers already carry out extensive research on their models resulting in comprehensive technical reports, and the Code of Practice can help to guide companies regarding best practice when it comes to producing this material in the future. The goal of the Code of Practice in this instance should be to achieve greater clarity regarding the minimum requirements for technical documents provided by GPAI model providers and to ensure downstream users have essential information to do risk assessments and inform decisions regarding adoption and deployment. In order to enhance the work that is already being done by GPAI model providers, AmCham suggests that the AI Office carry out a gap analysis and consult with relevant stakeholders to consider what more is needed to achieve these goals and what the best approach to this will be going forward. In doing so, it will be important to consider the intended purpose of, and audience for, the information provided. Importantly, there needs to be an acknowledgement that this will be a continuously evolving area. AI is advancing at a rapid rate, and documentation requirements therefore need to be flexible enough to reflect and keep up with advancements in AI research and standards.

It is of central importance that the Code of Practice delivers transparency via the sharing of necessary and relevant information with downstream providers, while protecting sensitive information that could be exploited by bad actors. To help strike this balance,

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AmCham suggests that reasonable safeguards against the disclosure of confidential information to protect legitimate business interests be set out in the code alongside any requirements to disclose detailed information about models.

The Code of Practice should additionally aim to be proportionate and minimise the administrative burden for both GPAI model providers, and downstream providers; a streamlined system that is efficient and effective for both parties is needed given the growing body of regulation currently faced by business within the EU.

### **B. Technical documentation by general-purpose AI model providers to the AI Office and the national competent authorities**

The Code of Practice should be leveraged to provide clarity regarding when and what information is appropriate to be requested by the AI Office under Article 53 of the AI Act. This will be helpful in preventing unnecessary requests being made by the AI Office to GPAI model providers. The Code of Practice should also be used to clarify how the AI Office can best handle sensitive information it does receive, and the procedures that GPAI model providers may go through to counter unnecessary requests for the sharing of sensitive information.

The Code can mitigate against excessive and unnecessary information requests by establishing a clear framework and by clearly defining what constitutes a reasonable and justified request. This Code can further be used to clarify the processes that will allow GPAI providers to challenge the unnecessary or disproportionate disclosure of sensitive information.

### **C. Policy to respect Union copyright law**

When it comes to copyright law and the Code of Practice, AmCham would stress that the AI Act is not intended to be a copyright legislation. As a result, it is important that the Code of Practice operates within what is laid out in the existing EU copyright legislation and in the AI Act. The Code of Practice should not attempt to enhance or contradict existing EU copyright legislation.

In relation to the summary requirement, it is important the AI Act's recognition that transparency measures should not impact the protection of trade secrets, as per Recital 107, is adhered to. As a result, the information included as part of the summary requirement should meet the objectives of the AI Act while being aligned with the protections provided for trade secrets by Directive (EU) 2016/943, and with the balance struck by the CJEU between trade secrets and general obligations of disclosure. This will further be important in ensuring model safety and security.

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## **Section 2. General-purpose AI models with systemic risk: risk taxonomy, assessment and mitigation**

### **A. Risk taxonomy**

It is important that the risk taxonomy is as specific and robust as possible, and that the categories of risk are both tangible and measurable. At present several categories are too broad in nature. More information and risks that are grounded in concrete harms are needed to enhance legal clarity. The Code of Practice should draw on existing practices where they support compliance with the requirements of the AI Act, such as the G7 Principles and the U.S. Executive Order on AI, in terms of agreed upon risk domains to ensure there is international alignment. The taxonomy should further reflect the fact that some risks are more appropriate to be addressed at the model level than others. Whether a risk is considered ‘systemic’ needs to consider the marginal risk, in terms of what the additional risk is compared to the next best alternative.

### **B. Risk identification and assessment measures**

AmCham suggests that the Code of Practice sets out clearly defined objectives and promotes procedural best practices, but does not specify particular technical methods, as they could soon become outdated.

As model evaluation is still an emerging area, the Code of Practice should have a degree of flexibility as to how to achieve the objectives while incorporating the latest technological developments.

The Code of Practice should promote practices aligned with international standards and initiatives, such as the Hiroshima Code of Conduct.

### **C. Technical risk mitigation**

As with the above, risk mitigation is still an emerging area. Again, the Code of Practice needs to allow for technological developments. In light of this, the Code of Practice should set out objectives but be flexible as to technical methods, as overly specific methods risk becoming outdated in a short space of time and could prevent model providers from integrating the latest safety practices. Ultimately the Code of Practice should reflect the responsibility that AI model providers have but should not mandate overly prescriptive rules.

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The importance of balancing responsible innovation with regulation is key, and the Code of Practice should provide guidance regarding how best responsible innovation can be balanced with risk mitigation.

#### **D. Internal risk management and governance for general-purpose AI model providers**

AmCham would note that there are a number of standards and frameworks already in existence in this area, notably ISO 42001 and NIST AI Risk Management Framework. The Code of Practice should be reflective of existing best practice frameworks.

### **Section 3. Reviewing and monitoring of the General-Purpose AI Code of Practice**

Developments in AI are happening at pace so the Code should set out a process for periodic review and revision. Overall, the Code of Practice should remain adaptable, and should allow flexible ways to demonstrate compliance. It is also crucial that companies have time to adapt their practices to comply with the Code of Practice. AmCham would suggest that the Code of Practice is reviewed at pre-determined intervals, allowing enough time for companies to implement changes, and for the results of these updates to be meaningfully evaluated.