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**EUROPEAN
DATA
PROTECTION
SUPERVISOR**

The EU's independent data
protection authority

*“Governance and Enforcement structure
of the AI Act”*

IMCO-LIBE AI Act Working Group

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Dear Members of the IMCO-LIBE AI Act Working Group,

Thank you for this opportunity to share with you some perspectives on AI Act enforcement observed by a data protection authority. The AI Act left no doubt that for the use of AI systems by institutions, bodies and agencies of the European Union, the role of the Market Surveillance Authority should be performed by the institution which so far was first of all the data protection regulator - namely to the European Data Protection Supervisor.

For many first commentators of the AI Act, it was often recognised as a suggestion to Member States how to organise the governance on the national level. For different reasons - where the scope of “the market” was the most important one - the choices made by the Member States were, however, different.

Let me summarise today the experience of the data protection authorities, the EDPS itself, as well as the role of the European Data Protection Board in the implementation and enforcement of the AI Act.

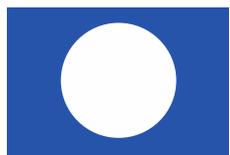
When it comes to the oversight of systems governed by the AI Act, the role of the EDPS is multifaceted:

- 1) First, the EDPS has been designated as **Market Surveillance Authority** by the AI Act. This means that we will conduct market surveillance activities to ensure that AI systems placed into service or used by the EUIs comply with the applicable legal framework and uphold the highest standards of health, safety and fundamental rights.
- 2) Second, the AI Act appointed the EDPS as a **Notified Body** responsible for conducting conformity assessments of certain high-risk AI systems intended for use by EUIs, notably those in the areas of remote biometric identification, biometric categorisation and emotion recognition.
- 3) Third, we are still the **Data Protection Authority**. As the AI Act works “without a prejudice towards the GDPR and EUDPR”, the EDPS remains responsible for overseeing any processing of personal data carried out in the context of the development or deployment of AI systems by institutions, bodies, offices, and agencies (EUIs), even when these activities are also governed by the AI Act.
- 4) Finally, as a **body of the European Union**, the EDPS is of course itself subject to the requirements of the AI Act and must lead by example in complying with the requirements of the AI Act.

Data Protection Authorities as regulators of AI

While the AI Act does not itself designate national data protection authorities as market surveillance authorities or notified bodies, it does recognise their important role when it comes to overseeing the use of AI.

Already before the AI Act was finalised, data protection authorities have been regulating AI under EU data protection law, both by offering guidance and undertaking enforcement actions. Just last year, my office also offered updated guidance on Generative AI and the EUDPR, to help EUI ensure compliance with data protection rules when using Generative AI systems.



While the AI Act left discretion to Member States to decide which authorities to designate at national level, the AI Act prescribes that the data protection authority under the GDPR or Law Enforcement Directive - or another authority satisfying the same conditions - be designated as MSAs for certain high-risk systems in certain areas such as border management and justice and democracy. In addition, several Member States have also decided to grant Data Protection Authorities as competent authorities.

Even in jurisdictions where data protection authorities have not been designated as competent authorities under the AI Act, they still have a very important role to play as authorities protecting fundamental rights.

Cooperation with fundamental rights authorities

It is important to stress that the AI Act does not affect in any way the investigative and supervisory powers granted to fundamental rights authorities by their respective legal frameworks.

In the case of data protection authorities, for example, this means they have full access to their supervisory toolbox to deal with personal data processing carried out by AI systems, including cases beyond the scope of competence of market surveillance authorities, such as systems that are not considered high-risk under the AI Act.

In addition, the AI Act includes specific provisions for fundamental rights authorities, including data protection authorities, such as the need to be informed by market surveillance authorities about serious incidents or to be associated with the operation of AI regulatory sandboxes to the extent the AI systems involve the processing of personal data, among others.

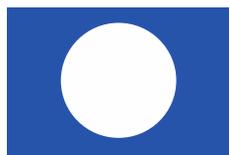
Fundamental rights authorities also have the right to request information and cooperation from market surveillance authorities in relation to the use of high-risk systems under Annex III when necessary to fulfil their mandates and within the limits of their competence.

The recent Proposal for a Digital Omnibus on AI also touches upon this cooperation and in our Joint Opinion with the EDPB we supported the goal of streamlining cooperation between fundamental rights authorities or bodies and market surveillance authorities ('MSAs').

In this regard, the EDPS has already identified and made available the list of public authorities or bodies considered as fundamental rights authorities in the context of the AI Act applied to EU institutions, bodies and agencies. Such list includes:

- the European Ombudsman,
- the Authority for European Political Parties and Political Foundations and
- the EDPS itself when acting as data protection authority.

Given the dual mandate within the EDPS and the need to regulate efficiently and respectfully within the context of the affected legal frameworks, we are already considering different solutions, including reforming our rules of procedure to regulate the cooperation between the two roles, while ensuring compliance with other requirements such as those relating to strict necessity and confidentiality of access to information, and without affecting the powers or guarantees of independence and autonomy associated with each role.



Role of the European Data Protection Board

Before sharing more about the steps that the European Data Protection Supervisor has taken in its new role as competent authority under the AI Act, I want to say a few words about the role of the European Data Protection Board (EDPB) when it comes to the enforcement of the AI Act.

To be perfectly clear: the EDPB does not have any role when it comes to the enforcement of the AI Act as such. The role of the Board is to ensure consistency in the application of the GDPR, not the AI Act.

As mentioned earlier, however, data protection authorities are also regulators of AI systems, because many AI systems impact the rights and freedoms of natural persons with regard to the processing of their personal data.

In addition, the AI Act itself identifies several intersections between the AI Act and EU data protection law, for example when it comes to the processing of special categories of personal data for the purpose of ensuring bias detection and correction or when it comes to carrying out fundamental rights and data protection impact assessments.

Given the special relationship between the AI Act and GDPR, and the need to provide guidance to stakeholders, the EDPB and Commission have decided to develop Joint guidelines on the interplay between the AI Act and the GDPR interplay. This is part of the efforts EDPB's efforts to enhance cross-regulatory cooperation, something which we as EDPS have also long advocated.

And of course, data protection authorities will continue to exchange information about their enforcement activities regarding AI systems under the GDPR and this form of cooperation is of course supported by the EDPB.

EDPS in transformation since August 2024

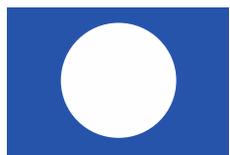
Now let me turn to the role of the EDPS in the enforcement of the AI Act.

Since August 2024, the EDPS has been undergoing a profound transformation.

While it continues to carry out its well-known mandate as Data Protection Supervisor — a role it has fulfilled for the past two decades — it has also been entrusted with significant new responsibilities under the Artificial Intelligence Act.

We are undertaking the necessary **technical and procedural preparatory steps**, including targeted adjustments to our organisational structure and internal processes, while building both technical capabilities and human expertise.

We have created the unit responsible for our duties according to the AI Act in order to make it organisationally independent from the structure responsible for our data protection duties. Ms. Sonia Perez Romero is the Head of this AI Act team to which we deployed officers from other units and recruited new forces we could enlist due to the help from the European Parliament in the budgetary procedures.



Preparation for Enforcement by Institutional Empowerment

In 2025, we approached our enforcement and supervisory role with a proactive stance, engaging closely with the supervised entities to ensure they possess the necessary skills, organisational structures, and tools to confidently manage compliance of AI systems.

Throughout the year, we have taken consistent and deliberate steps to strengthen the governance of the institutions through the establishment of a dedicated network of AI experts - **the “AI Act Correspondents Network”** that works as a central platform for compliance support allowing to identify synergies, consolidate cross-institutional expertise on AI systems and disseminate good practices.

A few months ago, we launched the EDPS **AI Sandbox pilot project**. This pilot aims to support the institutions in complying the AI Act's requirements and to test our capacity of establishing full-fledged regulatory sandboxes under the AI Act in the future. The pilot demonstrates a collaborative approach to compliance, while maintaining a strong focus on fostering innovation. Additionally, this pilot project is intended to give the answer to a crucial question: Is the EDPS in the position to offer a proper AI regulatory sandbox under the AI Act, with its current technical and human capabilities? We will find out the answer to this question in the next months.

I should add that while sandboxes for EU institutions, bodies and agencies are optional according to the AI Act, the interest in AI sandbox among the institutions is so vital, that the EDPS feels obliged to help to establish sandboxes in the future.

Finally, the EDPS has consolidated its role of **observer in the AI Board**, a key advisory body which plays a fundamental role in the multistakeholder governance established by the AI Act. This is complemented with the work of the EDPS as a full member of the **Administrative Cooperation Group** that brings together all MSAs to address matters related to market surveillance and sector specific issues.

Preparation for Enforcement – Mapping the Market and Identifying Prohibited Practices

Thanks to the valuable contribution of the AI Act correspondents, we have conducted an initial **voluntary mapping exercise of potentially high-risk AI systems** used across the European Union public administration.

The mapping exercise has provided a preliminary yet valuable overview of the AI landscape. It has enabled us to identify priority areas for supervision and has informed the development of our technical capacity and allocation of resources. The results of this mapping have been published in a dedicated public report.

As part of our soft approach to enforcement, ahead of 02 February 2025 – when the provisions on prohibited AI practices under the AI Act came into force – **we issued a formal letter to the institutions to remind** them that AI systems classified as prohibited under the AI Act pose unacceptable risks. We requested that they assess whether any of their AI practices fell within the scope of these prohibitions, to immediately cease any such practices, and to report back to us on the outcome.

I was pleased to know that no prohibited practices were identified to be reported to us by the EUIs.



Close cooperation with EUIs - an open, cooperative and pro-innovation approach with the supervised entities

We are also working closely with EUIs. The mapping exercise revealed that the highest concentration of high-risk AI use cases is within the areas of Freedom, Security, and Justice (AFSJ) and employment, which we will need to supervise in the near future.

We have established close cooperation with FRONTEX and Europol through targeted study visits, fostering a shared understanding and effective preparation for our supervisory responsibilities.

Conclusion

In conclusion, I would like to emphasise the multifaceted role of the European Data Protection Supervisor in enforcing the AI Act – as a market supervisory authority, a notified body for selected high-risk systems, and still as a data protection authority acting under the EUDPR. EU institutions, bodies and agencies operate across all 27 Member States. This reality makes close and structured cooperation between the EDPS, national competent authorities and the AI Office not merely desirable, but indispensable. It also calls for stronger and more coherent cooperation among national data protection authorities, irrespective of whether they are formally designated as competent authorities under the AI Act or act as fundamental rights authorities within its framework.

While the European Data Protection Board does not have a direct enforcement mandate under the AI Act, it remains a vital platform for ensuring consistency, mutual learning and effective cross-border cooperation in matters where AI and data protection intersect.

Ultimately, our collective success – and the credibility of the AI Act itself – will depend on robust institutional coordination, the responsible and strategic use of limited public resources, and our shared capacity to foster innovation while safeguarding the fundamental rights and values on which the Union is built.

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I hope you found our perspective useful for your further deliberations and I remain available for any further questions you may have.

