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LIMITE

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NOTE

Origine:	la présidence
Destinataire:	délégations
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Objet:	Proposition de Règlement du Parlement européen et du Conseil établissant des règles harmonisées concernant l'intelligence artificielle (législation sur l'intelligence artificielle) et modifiant certains actes législatifs de l'Union - Texte de compromis de la présidence - Articles 70-85

I. INTRODUCTION

1. La Commission a adopté la proposition de règlement établissant des règles harmonisées concernant l'intelligence artificielle (loi sur l'intelligence artificielle, AIA) le 21 avril 2021.

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2. La présidence slovène a rédigé la première proposition de compromis partiel, qui couvre **les articles 1 à 7 et les annexes I à III** de l'AIA proposée. Cette proposition de compromis partiel a été présentée au groupe TELECOM le 30 novembre 2021 par la présidence SI et a fait l'objet d'un examen approfondi lors de la réunion du groupe TELECOM du 11 janvier 2022 dans le cadre de la présidence française.
3. La présidence française a repris les travaux de rédaction au cours desquels la présidence slovène a achevé ses travaux et a rédigé les parties suivantes de la première proposition de compromis, couvrant **les articles 8 à 15 et l'annexe IV, les articles 16 à 29, les articles 30 à 39, les articles 40 à 52, les articles 53 à 55 bis et les articles 59 à 62**. En outre, la présidence française a remanié certaines **dispositions relatives au domaine de la justice et des affaires intérieures** à partir de l'ensemble du projet de règlement, qui ont ensuite été soumises pour examen par les attachés TELECOM et JAI le 7 avril 2022.
4. La présidence française a maintenant rédigé une autre partie de la première proposition de compromis, couvrant **les articles 70 à 85**, qui figure à l'annexe du présent document.
5. **La présidence française invite les délégations à examiner les modifications qu'il est proposé d'apporter aux articles 70 à 85 lors de la réunion du groupe TELECOM du 5 mai 2022.**
6. Les modifications apportées au document par rapport à la proposition de la Commission sont **soulignées**: les ajouts sont signalés par des **caractères gras**, les suppressions sont ~~barrées~~.

II. PRINCIPALES MODIFICATIONS

1. Article 70 — Confidentialité

1.1 Les modifications apportées à **l'article 70, paragraphe 1**, renforcent les exigences en matière de confidentialité et précisent qu'elles s'appliquent également à la Commission, au Comité et à toute autre personne physique ou morale participant à l'application de l'AIA. Elle tient également compte des observations des États membres sur la nécessité de garantir la confidentialité des données par des mesures techniques et organisationnelles.

2. Article 71 - Sanctions

2.1 À **l'article 71, paragraphe 1**, une modification a été apportée pour indiquer que les sanctions en cas d'infraction à l'AIA devraient être proportionnées à la taille des entreprises.

2.2 Les ajouts à la fin des **articles 71 (3) et 71 (4)** ont été introduits afin d'adapter les sanctions en cas de non-respect de l'AIA pour les PME, telles que définies par le droit de l'Union, et de clarifier le niveau maximal des sanctions encourues, d'une part, en cas de violation des interdictions (l'article 5) et, d'autre part, en cas de violation d'autres dispositions (y compris l'article 10). Par conséquent, le non-respect de l'article 10 est désormais couvert par **l'article 71, paragraphe 4**.

2.3 Les modifications apportées à **l'article 71, paragraphe 4**, précisent que les opérateurs économiques ou les organismes notifiés sont ceux qui peuvent faire l'objet d'amendes administratives.

2.4 L'ajout à **l'article 71, paragraphe 6, point b)**, a été introduit afin d'éviter la double imposition d'amendes pour la même infraction dans un autre État membre (ce qui n'est pas nécessairement interdit en vertu du principe *ne bis in idem*), tandis que l'ajout à **l'article 71, paragraphe 6, point c)**, vise à préciser que le chiffre d'affaires annuel doit également être pris en compte lors de la détermination du montant de l'amende administrative.

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2.6 Un nouvel **article 71, paragraphe 9**, a été ajouté afin de prévoir des garanties procédurales appropriées devant être mises en place par les autorités de surveillance du marché en ce qui concerne les sanctions, et précise que les principes de procédure régulière et de recours juridictionnel effectif devraient être pris en compte lors de l'établissement des règles nationales. Le libellé est fondé sur une disposition similaire du RGPD.

4. Articles 72 à 83

4.1. Ces articles n'ont pas été modifiés par la présidence française.

4. Article 84 - Évaluation et réexamen

4.1 Des modifications ont été apportées à **l'article 84, paragraphe 3, point a)**, afin d'assurer l'alignement sur les modifications correspondantes introduites à **l'article 59**.

4.2 Les modifications apportées à **l'article 84, paragraphe 4**, visent à préciser que, compte tenu du caractère volontaire des codes de conduite, leur évaluation doit avoir lieu lorsqu'ils existent. Aucune nouvelle obligation générale n'a été créée pour les États membres, étant donné que ces codes de conduite restent volontaires.

4.3 À **l'article 85, paragraphe 2**, le délai général d'application du règlement a été porté de 24 à 36 mois après l'entrée en vigueur de l'AIA, afin de donner aux États membres davantage de temps pour se préparer à une mise en œuvre effective et de donner plus de temps aux entreprises pour s'adapter, en suivant l'exemple du RGPD et en tenant compte des conséquences importantes de l'AIA sur les opérateurs. Par conséquent, le délai laissé aux États membres pour la mise en place des autorités notifiantes et des organismes notifiés (titre III, chapitre 4) et de la structure de gouvernance (titre VI) a également été porté à 12 mois, afin de tenir compte des préoccupations exprimées par plusieurs États membres en matière de gouvernance.

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE
(ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION
LEGISLATIVE ACTS**

TITLE X

CONFIDENTIALITY AND PENALTIES

Article 70

Confidentiality

1. National competent authorities, ~~and~~ notified bodies, **the Commission, the Board, and any other natural or legal person** involved in the application of this Regulation shall, **in accordance with Union or national law, put appropriate technical and organisational measures in place to ensure** ~~respect~~ the confidentiality of information and data obtained in carrying out their tasks and activities in such a manner as to protect, in particular:
 - (a) intellectual property rights, and confidential business information or trade secrets of a natural or legal person, including source code, except the cases referred to in Article 5 of Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure apply.
 - (b) the effective implementation of this Regulation, in particular for the purpose of inspections, investigations or audits;
 - (c) public and national security interests;
 - ~~(e)~~ **(d)** integrity of criminal or administrative proceedings.

2. Without prejudice to paragraph 1, information exchanged on a confidential basis between the national competent authorities and between national competent authorities and the Commission shall not be disclosed without the prior consultation of the originating national competent authority and the user when high-risk AI systems referred to in points 1, 6 and 7 of Annex III are used by law enforcement, immigration or asylum authorities, when such disclosure would jeopardise public and national security interests.

When the law enforcement, immigration or asylum authorities are providers of high-risk AI systems referred to in points 1, 6 and 7 of Annex III, the technical documentation referred to in Annex IV shall remain within the premises of those authorities. Those authorities shall ensure that the market surveillance authorities referred to in Article 63(5) and (6), as applicable, can, upon request, immediately access the documentation or obtain a copy thereof. Only staff of the market surveillance authority holding the appropriate level of security clearance shall be allowed to access that documentation or any copy thereof.

3. Paragraphs 1 and 2 shall not affect the rights and obligations of the Commission, Member States and notified bodies with regard to the exchange of information and the dissemination of warnings, nor the obligations of the parties concerned to provide information under criminal law of the Member States.

Article 71

Penalties

1. In compliance with the terms and conditions laid down in this Regulation, Member States shall lay down the rules on penalties, including administrative fines, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are properly and effectively implemented. The penalties provided for shall be effective, proportionate, and dissuasive. They shall take into particular account the **size and** interests of ~~small-scale~~ SME providers, **including and** start-ups, and their economic viability.
2. The Member States shall **without delay** notify the Commission of those rules and of those measures and ~~shall notify it, without delay,~~ of any subsequent amendment affecting them.
3. ~~The following infringements~~ **Non-compliance with any of the prohibitions of the artificial intelligence practices referred to in Article 5** shall be subject to administrative fines of up to 30 000 000 EUR or, if the offender is company, up to 6 % of its total worldwide annual turnover for the preceding financial year, ~~whichever is higher~~ **and in case of SMEs and start-ups, up to 3% of its worldwide annual turnover for the preceding financial year, whichever is higher.**

~~(a) non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5;~~

~~(b) non-compliance of the AI system with the requirements laid down in Article 10.~~

4. The non-compliance of the AI system with any requirements or obligations under this Regulation **on operators or notified bodies**, other than those laid down in Articles 5 ~~and 10~~, shall be subject to administrative fines of up to 20 000 000 EUR or, if the offender is a company, up to 4 % of its total worldwide annual turnover for the preceding financial year, ~~whichever is higher~~ **and in case of SMEs and start-ups, up to 3% of its worldwide annual turnover for the preceding financial year, whichever is higher.**
5. The supply of incorrect, incomplete or misleading information to notified bodies and national competent authorities in reply to a request shall be subject to administrative fines of up to 10 000 000 EUR or, if the offender is a company, up to 2 % of its total worldwide annual turnover for the preceding financial year, whichever is higher and in case of SMEs and start-ups, up to 3% of its worldwide annual turnover for the preceding financial year, whichever is higher.
6. When deciding on the amount of the administrative fine in each individual case, all relevant circumstances of the specific situation shall be taken into account and due regard shall be given to the following:
 - (a) the nature, gravity and duration of the infringement and of its consequences;
 - (b) whether administrative fines have been already applied by other market surveillance authorities **in other Member States** to the same operator for the same infringement.
 - (c) the size, **the annual turnover** and market share of the operator committing the infringement;
7. Each Member State shall lay down rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.
8. Depending on the legal system of the Member States, the rules on administrative fines may be applied in such a manner that the fines are imposed by competent national courts ~~of or~~ other bodies as applicable in those Member States. The application of such rules in those Member States shall have an equivalent effect.
- 9. The exercise by the market surveillance authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.**

Article 72

Administrative fines on Union institutions, agencies and bodies

1. The European Data Protection Supervisor may impose administrative fines on Union institutions, agencies and bodies falling within the scope of this Regulation. When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case, all relevant circumstances of the specific situation shall be taken into account and due regard shall be given to the following:
 - (a) the nature, gravity and duration of the infringement and of its consequences;
 - (b) the cooperation with the European Data Protection Supervisor in order to remedy the infringement and mitigate the possible adverse effects of the infringement, including compliance with any of the measures previously ordered by the European Data Protection Supervisor against the Union institution or agency or body concerned with regard to the same subject matter;
 - (c) any similar previous infringements by the Union institution, agency or body;
2. The following infringements shall be subject to administrative fines of up to 500 000 EUR:
 - (a) non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5;
 - (b) non-compliance of the AI system with the requirements laid down in Article 10.
3. The non-compliance of the AI system with any requirements or obligations under this Regulation, other than those laid down in Articles 5 and 10, shall be subject to administrative fines of up to 250 000 EUR.
4. Before taking decisions pursuant to this Article, the European Data Protection Supervisor shall give the Union institution, agency or body which is the subject of the proceedings conducted by the European Data Protection Supervisor the opportunity of being heard on the matter regarding the possible infringement. The European Data Protection Supervisor shall base his or her decisions only on elements and circumstances on which the parties concerned have been able to comment. Complainants, if any, shall be associated closely with the proceedings.
5. The rights of defense of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the European Data Protection Supervisor's file, subject to the legitimate interest of individuals or undertakings in the protection of their personal data or business secrets.
6. Funds collected by imposition of fines in this Article shall be the income of the general budget of the Union.

TITLE XI

DELEGATION OF POWER AND COMMITTEE PROCEDURE

Article 73

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 4, Article 7(1), Article 11(3), Article 43(5) and (6) and Article 48(5) shall be conferred on the Commission for ~~an~~ ~~a~~ ~~indefinite~~ period of ~~time~~ **five years** from [*entering into force of the Regulation*].

The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5 year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 4, Article 7(1), Article 11(3), Article 43(5) and (6) and Article 48(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. Any delegated act adopted pursuant to Article 4, Article 7(1), Article 11(3), Article 43(5) and (6) and Article 48(5) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 74
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE XII

FINAL PROVISIONS

Article 75
Amendment to Regulation (EC) No 300/2008

In Article 4(3) of Regulation (EC) No 300/2008, the following subparagraph is added:

“When adopting detailed measures related to technical specifications and procedures for approval and use of security equipment concerning Artificial Intelligence systems in the meaning of Regulation (EU) YYY/XX [on Artificial Intelligence] of the European Parliament and of the Council*, the requirements set out in Chapter 2, Title III of that Regulation shall be taken into account.”

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 76
Amendment to Regulation (EU) No 167/2013

In Article 17(5) of Regulation (EU) No 167/2013, the following subparagraph is added:

“When adopting delegated acts pursuant to the first subparagraph concerning artificial intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [on Artificial Intelligence] of the European Parliament and of the Council*, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 77
Amendment to Regulation (EU) No 168/2013

In Article 22(5) of Regulation (EU) No 168/2013, the following subparagraph is added:

“When adopting delegated acts pursuant to the first subparagraph concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX on [Artificial Intelligence] of the European Parliament and of the Council*, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 78

Amendment to Directive 2014/90/EU

In Article 8 of Directive 2014/90/EU, the following paragraph is added:

“4. For Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [on Artificial Intelligence] of the European Parliament and of the Council*, when carrying out its activities pursuant to paragraph 1 and when adopting technical specifications and testing standards in accordance with paragraphs 2 and 3, the Commission shall take into account the requirements set out in Title III, Chapter 2 of that Regulation.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 79

Amendment to Directive (EU) 2016/797

In Article 5 of Directive (EU) 2016/797, the following paragraph is added:

“12. When adopting delegated acts pursuant to paragraph 1 and implementing acts pursuant to paragraph 11 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [on Artificial Intelligence] of the European Parliament and of the Council*, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 80

Amendment to Regulation (EU) 2018/858

In Article 5 of Regulation (EU) 2018/858 the following paragraph is added:

“4. When adopting delegated acts pursuant to paragraph 3 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [on Artificial Intelligence] of the European Parliament and of the Council *, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”

Article 81

Amendment to Regulation (EU) 2018/1139

Regulation (EU) 2018/1139 is amended as follows:

(1) In Article 17, the following paragraph is added:

“3. Without prejudice to paragraph 2, when adopting implementing acts pursuant to paragraph 1 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*] of the European Parliament and of the Council*, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [*on Artificial Intelligence*] (OJ ...).”

(2) In Article 19, the following paragraph is added:

“4. When adopting delegated acts pursuant to paragraphs 1 and 2 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*], the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.”

(3) In Article 43, the following paragraph is added:

“4. When adopting implementing acts pursuant to paragraph 1 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*], the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.”

(4) In Article 47, the following paragraph is added:

“3. When adopting delegated acts pursuant to paragraphs 1 and 2 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*], the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.”

(5) In Article 57, the following paragraph is added:

“When adopting those implementing acts concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*], the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.”

(6) In Article 58, the following paragraph is added:

“3. When adopting delegated acts pursuant to paragraphs 1 and 2 concerning Artificial Intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*] , the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.”

Article 82

Amendment to Regulation (EU) 2019/2144

In Article 11 of Regulation (EU) 2019/2144, the following paragraph is added:

“3. When adopting the implementing acts pursuant to paragraph 2, concerning artificial intelligence systems which are safety components in the meaning of Regulation (EU) YYY/XX [*on Artificial Intelligence*] of the European Parliament and of the Council*, the requirements set out in Title III, Chapter 2 of that Regulation shall be taken into account.

* Regulation (EU) YYY/XX [on Artificial Intelligence] (OJ ...).”.

Article 83

AI systems already placed on the market or put into service

1. This Regulation shall not apply to the AI systems which are components of the large-scale IT systems established by the legal acts listed in Annex IX that have been placed on the market or put into service before *[12 months after the date of application of this Regulation referred to in Article 85(2)]*, unless the replacement or amendment of those legal acts leads to a significant change in the design or intended purpose of the AI system or AI systems concerned.

The requirements laid down in this Regulation shall be taken into account, where applicable, in the evaluation of each large-scale IT systems established by the legal acts listed in Annex IX to be undertaken as provided for in those respective acts.

2. This Regulation shall apply to the high-risk AI systems, other than the ones referred to in paragraph 1, that have been placed on the market or put into service before *[date of application of this Regulation referred to in Article 85(2)]*, only if, from that date, those systems are subject to significant changes in their design or intended purpose.

Article 84

Evaluation and review

- ~~1. The Commission shall assess the need for amendment of the list in Annex III once a year following the entry into force of this Regulation.~~
- 1a. The Commission shall assess the need for amendment of the list in Annex I every 24 months following the entry into force of this Regulation and until the end of the period of the delegation of power. The findings of that assessment shall be presented to the European Parliament and the Council.**
- 1b. The Commission shall assess the need for amendment of the list in Annex III every 24 months following the entry into force of this Regulation and until the end of the period of the delegation of power. The findings of that assessment shall be presented to the European Parliament and the Council.**
2. By *[three years after the date of application of this Regulation referred to in Article 85(2)]* and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Regulation to the European Parliament and to the Council. The reports shall be made public.

3. The reports referred to in paragraph 2 shall devote specific attention to the following:
 - (a) the status of the financial **resources, technical equipment and** ~~and~~ human resources of the national competent authorities in order to effectively perform the tasks assigned to them under this Regulation;
 - (b) the state of penalties, and notably administrative fines as referred to in Article 71(1), applied by Member States to infringements of the provisions of this Regulation.
4. Within [*three years after the date of application of this Regulation referred to in Article 85(2)*] and every four years thereafter, **where appropriate**, the Commission shall evaluate the impact and effectiveness of **voluntary** codes of conduct to foster the application of the requirements set out in Title III, Chapter 2 and possibly other additional requirements for AI systems other than high-risk AI systems.
5. For the purpose of paragraphs **1a** to 4 the Board, the Member States and national competent authorities shall provide the Commission with information on its request.
6. In carrying out the evaluations and reviews referred to in paragraphs **1a** to 4 the Commission shall take into account the positions and findings of the Board, of the European Parliament, of the Council, and of other relevant bodies or sources.
7. The Commission shall, if necessary, submit appropriate proposals to amend this Regulation, in particular taking into account developments in technology and in the light of the state of progress in the information society.

Article 85

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from [~~24~~ **36** months following the entering into force of the Regulation].
3. By way of derogation from paragraph 2:
 - (a) Title III, Chapter 4 and Title VI shall apply from [~~three~~ **twelve** months following the entry into force of this Regulation];
 - (b) Article 71 shall apply from [twelve months following the entry into force of this Regulation].