GOVERNANCE (CHAPTER VII) *

Mónica Álvarez Fernández
Senior Lecturer in Administrative Law
University of Oviedo

CONTENTS: 1. The role of governance in the AI Act. 2. System and structure of governance in the AI Act. 3. European Artificial Intelligence Office (AI Office). 4. European Artificial Intelligence Board. 5. Advisory Forum. 6. Scientific Panel of Independent Experts. 7. National Competent Authorities. 8. References.

1. *The role of governance in the AI Act*

Title VII of the AI Act contains a specific regulation on the governance of AI, which establishes an organisational system to coordinate and support its implementation at the national level, as well as to promote capacity building at the European Union level and the integration of stakeholders in the field of AI.[1] Governance as a traditional model of government and management within the European Union[2] is thus also projected onto AI in

---

[1] Recital (148).

[2] In this respect, the Communication from de Commission of 25 July 2001 on European Governance - A White Paper, COM(2001) 428 final. From this document it has emerged the need to open up the European Union policy-making process in order to involve more people and organisations in formulating and implementing Union policies, which would allow for greater transparency and accountability of all

the interests of integrating institutions, society, and the economy in government actions and decision-making processes as opposed to the more traditional bureaucratic and hierarchical formulas, translating into structures that reflect this integration. [3]

This integration is particularly necessary in the field of AI. Currently, AI research and innovation capacity is possible in the private sector, huge companies and technology corporations (although not only SMEs and other research entities can also generate knowledge in this area), as they have the means, knowledge, and capabilities in this field. It is, therefore, essential to create an environment of legal certainty which, on the one hand, favours investment in the creation and development of AI by these operators and, on the other, avoids excessive burdens on their activity, generating costs or imposing limits which, ultimately, would be a disincentive to the economic and social progress that AI undoubtedly entails. However, it is also necessary to consider the risks and harmful effects that AI generates and the need to establish a legal framework of protection for individuals, for society as a whole, but also for democracy and the market, to ensure the development of reliable, transparent and ethical AI. [4] It is therefore essential to seek a

---

participants. One of the aspects already being promoted at this time was the collaboration between the Commission and networks of businesses, communities, research centres and regional and local bodies to facilitate their involvement in the development and implementation of relevant Union policies.

[3] There is a vast amount of academic literature on the concept of governance, its models, and its evolution at different levels and in different legal fields. This analysis is beyond the scope of this commentary, but in order to understand its scope and to integrate the governance structures of AI into this notion, the following works have been used: S.J. Bulmer, *The Governance of the European Union: A New Institutionalist Approach*, in *Journal of Public Policy*, 13 (4), 1993, pp. 351-380; B. Kholer-Koch, *The evolution and transformation of European governance*, 1999, pp. 351-380. 351-380; B. Kholer-Koch, *The evolution and transformation of European governance*, in B. Kholer-Koch and R. Eising (Eds.), *The Transformation of Governance in the European Union*, London: Routledge, 1999, pp. 13-33; J. Chevalier, *La gouvernance, un nouveau paradigme étatique?*, in *Revue Française d'Administration Publique*, 2003, 105-106, pp. 203-217; J. Peterson, *Policy Networks*, in A. Wiener, Th. Diez, *European Integration Theory*, 2nd ed., Oxford: Oxford University Press, 2009, pp. 105-143; R.C. Días, P.C. Seixas, N. Lobner, *State transformations through public, multilevel, and territorial governance in European Union: Towards a metagovernance paradigm*, in *European Policy Analysis*, 8 (4), 2022, pp. 467-483.

[4] Article 1 of the AI Act is very significant in this regard when, in proclaiming

regulatory balance point to which technological operators, authorities, public and private institutions, as well as individuals and the groups and communities in which they are integrated, contribute and in which they participate.[5]

AI governance, as regulated in the AI Act, addresses this balance by involving Union and Member State institutions and authorities, but also so-called stakeholders in the development and evolution of AI and its use, including private operators working in the field, civil society, and the scientific and academic world.[6]

The institutional structure designed also responds to a balance between the European Union and the Member States. On the one hand, in order to achieve the intended objectives and favour the establishment of adequate cooperation in the Union territory, aimed at avoiding the fragmentation of responsibilities, increasing the capacities of the Member States, and guaranteeing adequate authorisation at the Union level, to develop, test and certify AI products and services.[7] But also on the other hand, to achieve

---

the purpose of the Regulation, it emphasises this aspect by stating that its purpose is 'to improve the functioning of the internal market and promote the uptake of human-centric and trustworthy artificial intelligence (AI), while ensuring a high level of protection of health, safety, fundamental rights enshrined in the Charter of Fundamental Rights, including democracy, the rule of law and environmental protection, against the harmful effects of artificial intelligence systems (AI systems) in the Union, and to support innovation'.

[5] See in this respect the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic, and Social Committee and the Committee of the Regions on Artificial Intelligence for Europe of 25 April 2018, COM(2018) 237 final.

[6] This is the approach already taken up in the White Paper on Artificial Intelligence - A European approach to excellence and trust of 19 February 2020, COM(2020) 65 final, which identifies the various roles to be played by AI governance. In particular, those contributing to the implementation of standards through providing guidance or opinions or exchanging information and best practices. For this purpose, the articulation of a network of national authorities and sectoral networks and regulatory authorities, both at the national and EU levels, was already foreseen at that time. In addition, a committee of experts was envisaged to assist the Commission. The AI Act has finally established two bodies in which the role of stakeholders is embodied, the Advisory Forum in Article 67 and the Group of Independent Scientific Experts in Article 68.

[7] The White Paper on Artificial Intelligence has already made this point.

a proper balance of powers between the EU institutions and those of the Member States,[8] as evidenced by the regulation in the final text of two pre-eminent structures, the European Office for Artificial Intelligence, which is embedded in the European Commission itself, and the European Committee on Artificial Intelligence, composed of representatives of each Member State.[9] The latter is particularly evident in the diverse position on AI governance held by the Union's institutions during the process of drafting the AI Act, to the extent that one of the most controversial and discussed aspects in the provisional agreement reached between the Council Presidency and the European Parliament negotiators in December 2023 was precisely that of articulating an appropriate organisational structure.[10]

On this basis, the institutional design regulated in Articles 64 to 70 of the AI Act aims to coordinate and support the consistent and effective implementation of this regulation at the national level and to develop expertise and capacities at the Union level in the field of AI.[11] However, this regulation lacks a stronger reference to the control of risks and the

---

Mention should also be made of the European Parliament Resolution of 20 October 2020 with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics, and related technologies [2020/2012(INL)], which stresses the need for coordination in order to avoid fragmentation and to ensure a harmonised approach across the Union.

[8] Although referring to specific sectors (and different from the AI), the tensions in the organisational structures of the European Union and in the exercise of regulatory and executive powers can be found in H.C.H. Hofmann, G.C. Rowe, and A.H. Türk (2018), *Synthesis and Assessment*, in H.C.H. Hofmann, G.C. Rowe, A.H. Türk (Eds.), *Specialized Administrative Law of the European Union. A sectoral review*, Oxford: Oxford University Press, 2018, pp. 623-629.

[9] N. Th. Nikolinakos, *EU policy and legal framework for artificial intelligence, robotics and related technologies. The AI Act*, Cham (Switzserland): Springer, 2023, p. 609, reflects the pressure from Member States on the Council to include in its position on the Commission's Proposal a body that would strengthen the position of the European Artificial Intelligence Committee, giving it greater autonomy and more relevant functions, counterbalancing the powers of the Commission.

[10] See Press Release issued by the Council on 9 December 2023 at https://www.consilium.europa.eu/es/press/press-releases/2023/12/09/artificial-intelligence-act-council-and-parliament-strike-a-deal-on-the-first-worldwide-rules-for-ai/.

[11] Recital (148).

protection of health, safety, and fundamental rights that should be assumed by the institutions operating in the field of AI, especially at the European level, taking into account the purpose of the AI Act as stated in Article 1.

Finally, and from a different perspective from the above, it should be noted that the organisational system envisaged in the AI Act neglects the role of public authorities and institutions as providers, implementers, and users of AI in performing the public functions assigned to them. Although the AI Act does refer to the involvement of public authorities and other public entities as providers of public services or managers of critical infrastructures in which high-risk AI systems are applied, it does not, however, address this approach when establishing the general organisational framework for AI. It seems that in this task of service provision and development of activities that falls to public entities, these will be subject to the general provisions of any other user and that the competent national entities will preferably play a more active role in this respect. Precisely because of the scope of the application of AI systems can have in these cases, a specific provision would have been desirable when establishing the institutional design of the AI Act.

In any case, this organisation provided for in the AI Act is not a static structure since no later than four years after the entry into force of the Regulation (2 August 2028) and thereafter, in four-year periods, the Commission must evaluate the need to improve the effectiveness of the governance system, significantly, as will be pointed out, of the European Artificial Intelligence Office, which, if necessary, could determine the need to propose changes appropriate to the results of such evaluations.[12]

2. *System and structure of governance in the AI Act*

The AI Act includes two levels of governance in Articles 64 to 70. On the one hand, at the Union level, reference is made to the European Artificial Intelligence Office, which is referred to as the AI Office. Three other bodies are also regulated, namely the European Artificial Intelligence Board, the Advisory Forum, and the Scientific Panel of Independent Experts. At the Member State level, reference is made to the National

---

[12] Article 112 (2). And as will be seen with regard to the AI Office in paragraph (5).

Competent Authorities, providing for the designation of at least one notifying authority and one market surveillance authority in each Member State.

Without prejudice to the analysis below of each of these bodies, an overall assessment of this organisational design can be made, paying particular attention to those exercising their competences at the Union level as the competent national authorities, without prejudice to the requirements or demands deriving from the AI Act, will adopt the nature and legal regime provided for in the domestic law of each State.

Firstly, it should be borne in mind that none of the structures mentioned among those exercising competences at the Union level have the status of institutions as provided for in the Primary Law.[13] The Treaties also refer to two other general organisational categories, that of bodies and that of agencies, which are not, however, defined so that their contours, nature, and legal status are completely diluted.[14] However, the organisational structures referred to in the AI Act would not fit in with these other types of administrative entities either. On the one hand, they are not bodies that, although lacking their own legal personality, enjoy full autonomy and independence in performing the functions entrusted to them, generally with a cross-cutting nature in pursuing Union policies.[15] The agencies, on the other hand, have legal personality and assume functions that respond to the

---

[13] Article 13 TEU identifies the following institutions exclusively: European Parliament, European Council, Council, European Commission, Court of Justice of the European Union, European Central Bank, and Court of Auditors.

[14] Throughout the Treaties, the three organisational structures referred to as 'institutions, bodies, offices and agencies' are generally referred to together, without providing any details beyond those given to the Union's institutions, except for the reference to the consultative status of the Committee of the Regions and the Economic and Social Committee (Title I, Part Six, Chapter 3 of the TFEU).

[15] The independence that is recognised and distinguishes them from other auxiliary bodies (which simply constitute a mere component or internal unit of an institution or an autonomous body), is evident from the budgetary point of view and in relation to how their members are appointed. See in this respect C. Rapoport, *Les catégories organiques du droit primaire de L'Union Européenne*, in B. Bertrand (Dir.), *Les catégories juridiques du droit de l'Union Europénne*, Brussels: Bruylant, 2016, p.116.

principle of specialty and are frequently linked to the delegation of implementing powers by the Commission. [16]

Neither the AI Office nor the European Artificial Intelligence Board (nor, of course, the Advisory Forum or the Scientific Panel of Independent Experts) correspond to the above-mentioned features and constitute entities with their own characteristics.

On the one hand, the AI Office is set up as a service within the structure of the Commission, specifically within its Directorate-General for Communication Networks, Content, and Technologies. [17] On the other hand, the European Artificial Intelligence Board has its own particular characteristics. It does not have the same characteristics as the Comitology Committees [18] (even the AI Act itself refers to a specific committee to assist the Commission when adopting implementing acts [19]), although it is undoubtedly linked or attached to the Commission, insofar as the Secretariat of the Committee is entrusted to the AI Office (without voting rights). Both

---

[16] This category would include the decentralised agencies and the existing executive agencies of the Union.

[17] The Commission Decision of 24 January 2024 establishing the European Artificial Intelligence Office (C/2024/1459) also does not clearly determine its nature and, beyond integrating it into the structure of the Commission itself, only rules out that it is a European Office as defined in Article 2(26) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (Financial Regulation).

[18] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, provides, in Article 3, for the composition of these Committees, which shall be composed of one representative of each Member State and chaired by a representative of the Commission. The Committee governed by Article 65 of the AI Act, however, will be chaired by one of the representatives of the Member States.

[19] According to Article 98 of the AI Act which refers to the examination procedure regulated in Regulation (EU) No 182/2011. In fact, the implementing act to be adopted by the Commission to lay down provisions on the Scientific Panel of Independents Experts, according to Article 68 of the AI Act, shall be in accordance with that examination procedure carried out by a Committee provided for in Regulation (EU) 182/2011.

the Advisory Forum and the Expert Group are also closely linked to the Commission and are entrusted with advisory and support functions for the Commission itself, the AI Office, and where appropriate, the Member States in complying with and implementing the AI Act. They are, in short, administrative entities without legal personality and subject in terms of their nature, legal regime, and functions to the specific regulatory framework established by the AI Act. [20]

This organisational structure established by Chapter VII of the AI Act, which is broad and varied, in line with other similar regulations, [21] does not,

---

[20] They depart from the model that was deemed appropriate very early on by the European Parliament in its Resolution of 16 February 2017, with recommendations to the Commission on civil law rules on robotics. This Resolution called on the Commission to establish a European agency for robotics and artificial intelligence to provide the necessary technical, ethical, and regulatory expertise to support the work of public actors operating in this field, both at the Union and Member State levels, in order to ensure a swift, ethical and informed response to the new opportunities and challenges posed by the technological development of robotics. The Resolution also required that the European agency be provided with an adequate budget and staffed by regulators and external technical and ethical experts.,

[21] Since the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, Digital Compass 2030: Europe's approach for the Digital Decade of 9 March 2021, COM(2021) 118 final, several rules relating to the digital environment have been adopted. All of them establish an organisational structure that, beyond the national supervisory authorities, includes one or more entities at the Union level that aim to facilitate the implementation of the rules and ensure their correct application in each Member State. This is the case, for example, of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (the Digital Services Act or DSA), as well as Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022, on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 and repealing Directive (EU) 2016/1148 (NIS2 Directive) or Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act or DMA), as well as, of course, Regulation (EU) 2016/679 of the

however, exclude the intervention of other institutions, bodies, or agencies to a greater or lesser extent.

In addition to the strengthened position of the Commission, [22] the role of the European Data Protection Supervisor (EDPS), [23] a body with the status of an independent supervisory authority in relation to the processing of personal data by the European Union institutions and bodies and in assessing the data protection or privacy implications of policies and legislative proposals within the Union, can also be highlighted. In the framework of the AI Act, the EDPS acts as a market surveillance authority

---

European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR).

[22] The Commission plays a central role in the system implementing the AI Act. Without prejudice to the functions it performs through the AI Office, it is competent to adopt a wide range of delegated acts to develop and implement the AI Act, in accordance with Article 97. In addition, it assumes other competences such as, for example, exercising the initiative for the adoption of harmonised standards (Article 40) and implementing acts laying down common specifications (Article 41) in relation to the requirements for high-risk AI systems; adopting implementing acts aimed at establishing codes of practice at Union level (Article 49); specifying the detailed arrangements for the establishment, development, implementation, operation and monitoring of AI regulatory sandboxes (Article 58), of the detailed elements of the real-world testing plan for high-risk AI systems (Article 60) and of the models for the post-market monitoring system (Article 72); or defining the detailed modalities and conditions for the assessments to be carried out for certain general-purpose AI models. It is also responsible for adopting guidelines on the practical implementation of the AI Act (Article 96) and exercising sanctioning powers in respect of providers of general-purpose AI models (Article 101).

[23] It was created by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. This rule was repealed by the current Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices, and agencies, and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC and the GDPR itself.

for Union institutions, bodies, offices, and agencies when AI systems are integrated and implemented [Article 70(9)] and assumes all the other tasks that would fall to the competent national authorities in the same case, from the regulation and control of regulated testing environments (Article 58), to the exercise of sanctioning powers (Article 100).

Furthermore, it is necessary to consider the involvement of other entities in charge of conformity assessment of high-risk AI systems. Although the AI Act refers to the notifying authorities in Article 70, the regulation contained in this provision is of a general nature (it refers to the national competent authorities), with a more precise regulation being found in Section 4 of Chapter III, which includes not only provisions relating to the notifying authorities but also to the notified bodies that are not mentioned in the chapter on Governance.[24] The choice has thus been made to incorporate substantive or material regulation of these specific entities at the same time as or in conjunction with the regulation of conformity assessment procedures. This systematisation generates a particular dispersion that does not favour the regulatory simplicity that should prevail.

It is also essential to articulate a connection between governance mechanisms already in place in other sectors or for other products to which AI applies.[25] Of these, special mention should be made of financial

---

[24] Notifying authorities and notified bodies are, as indicated, elements of conformity assessment processes that are supported by New Legislative Framework (NLF) rules. Article 3 of the AI Act furthermore includes definitions of both types of entities. On the one hand, a notifying authority is defined as an authority 'responsible for setting up and carrying out the necessary procedures for the assessment, designation, and notification of conformity assessment bodies and for their monitoring' [paragraph (19)]. A notified body, on the other hand, is considered to be a conformity assessment body, i.e., an independent body performing conformity assessment activities, such as testing, certification, and inspection, which has been notified under the AI Act or other acts of Union harmonisation legislation to assess the conformity of high-risk AI systems [paragraph (22)]. This is discussed in the contribution by Carrillo Donaire in this volume.

[25] This is a provision that was already foreseen in the aforementioned White Paper on Artificial Intelligence, which referred to areas such as finance, pharmaceuticals, aviation, medical devices, consumer protection, or data protection. In these cases, it was foreseen that the governance structure proposed by the future AI regulation should not duplicate functions already

institutions. Regarding the former, the AI Act provides that the authorities competent, according to their specific regulations, to supervise and enforce the Union legislation relating to financial services should also be designated as competent authorities in charge of supervising the application of the AI Act. The same assimilation should also occur in respect of market surveillance activities, in relation to AI systems provided or used by regulated and supervised financial institutions, unless Member States decide to designate another specific authority, derived from the implementation of AI systems, to perform these tasks.[26]

Beyond this integration envisaged for the governance of financial institutions, consideration should be given to the competences of other European and, above all, national authorities in the fulfilment of the competences entrusted to them under their specific regulations, in particular in the areas of data protection, consumer protection, fundamental rights, employment, protection of workers, and product safety,[27] which are interrelated with those corresponding to the entities responsible for the execution, supervision and control of the AI, and which are particularly specified, as far as this is of interest here, in mutual obligations of exchange of information, coordination, and collaboration between all of them.

---

performed in these areas. On the contrary, close links should be established with other Union and national competent authorities in the different sectors in order to complement expertise and assist these authorities in monitoring and supervising the activities of the various operators with regard to AI systems and AI-provided products and services.

[26] This is derived from Article 74(6) and (7). These would be authorities such as the European Banking Authority or the European Systemic Risk Board, in addition to the relevant national supervisory authorities. The AI Act itself refers to the regulation to be taken into account in Recital (158).

[27] Recital (9) of the AI Act takes a general position in this respect, stating that '[t]he harmonised rules laid down in this Regulation should apply across sectors and, in line with the New Legislative Framework, should be without prejudice to existing Union law, in particular on data protection, consumer protection, fundamental rights, employment, and protection of workers, and product safety, to which this Regulation is complementary'.

3. *European Artificial Intelligence Office (AI Office)*

It is the basis 'for a single system of AI governance in the Union', according to the Commission Decision of 24 January 2024, which establishes it as a structure for monitoring developments in artificial intelligence models, in particular, general purpose AI models, interacting with the scientific community and implementing the AI Act.

This provision is indicative of the central position given to the AI Office, and hence to the Commission, which ultimately supports the AI Office, which is fully integrated within the Commission as part of the administrative structure of the Directorate-General for Communication Networks, Content, and Technologies.

This approach constitutes a major novelty in the regulation of AI governance, as an AI Office with these characteristics was not envisaged either in the Proposal submitted by the Commission or in the successive texts drafted by the Council and the European Parliament. Initially, the Commission's position on the application and control of AI was based on a European Artificial Intelligence Board, which also differed from the entity finally envisaged in the AI Act approved.[28] The Council, in its position on the Commission's Proposal, also did not foresee an AI Office and, moreover, limited the Commission's power over the Board.[29] The European Parliament's text, as a result of the approved Amendments, did incorporate a European AI Office, but with a very different scope from the current one, as it configured it as an independent body of the Union with its own legal

---

[28] The Proposal for a Regulation of the European Parliament and of the Council of 21 April 2021 laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union legislative acts COM(2021) 206 final was really simple in terms of regulating governance, as it only provided for the aforementioned European Artificial Intelligence Board at Union level and the national competent authorities at Member State level. The Board was set up as an advisory and assistance body to the Commission, chaired by the Commission itself (Articles 56 to 58 of the Proposal).

[29] General Approach adopted by the Council on the European AI Regulation on 6 December 2022. This document results in a weaker position for the Commission as it becomes a member of the European Artificial Intelligence Board, with a voice but no vote and an administrative and analytical support role for its activities (Articles 56 and 58 of this General Approach).

personality, assuming all the functions of the European Union in relation to the effective and coherent implementation of the AI Act.[30]

In the finally adopted text of the AI Act, Article 64, in the Chapter on governance, only mentions the role of the AI Office as the subject through which the Commission shall develop the Union's expertise and capabilities in the field of AI.[31] This generic provision is complemented by the definition in Article 3 of the AI Act which identifies the AI Office as the 'function' of the Commission to contribute to the implementation, monitoring, and supervision of the AI systems and general-purpose AI models and AI governance, clarifying that, ultimately, the references made in the AI Act to the AI Office are to be understood as references to the Commission itself. It is therefore concluded that the Commission and the AI Office are fully identified and that the latter is linked to specific tasks of all the Commission's tasks in this area [paragraph (47)].

On the basis of this approach, it could be considered that the supervisory tasks in the area of AI systems generally fall within the remit of the AI Office (as a specific function of the Commission), however, this is not the case. This competence is assumed by the Member States through the relevant market surveillance authorities,[32] with the supervisory role of the AI Office focusing exclusively on general purpose AI models.[33]

For the fulfilment of this task, the AI Office may take all necessary actions, including the development of tools, methodologies and indices to assess the capabilities of general-purpose AI models, particularly very large models with systemic risks.[34] In addition, it may take all necessary measures

---

[30] Amendments 523 to 552 were adopted by the plenary of the European Parliament on 14 June 2023. From this perspective, the AI Office resembled the idea of a European Agency, which the European Parliament had already outlined in its resolution of 16 January 2017, cited above.

[31] The regulation is completed, in paragraph (2), by imposing on Member States the obligation to facilitate the tasks entrusted to the AI Office.

[32] Indeed, the Decision of 24 January 2024 itself specifies that the AI Office should not affect the powers of the competent national authorities and bodies and agencies of the Union with regard to the supervision of AI systems.

[33] Pursuant to Article 88 of the AI Act, the Commission assumes powers to supervise and enforce Chapter V of the AI Act concerning general-purpose AI models, entrusting the AI Office with its implementation.

[34] In this respect, Article 1(a) of the Decision of 24 January 2024 and Article 92 of the AI Act.

to monitor the effective implementation and enforcement of the AI Act by providers of general-purpose AI models, including their compliance with approved codes of practice.[35] Moreover, where appropriate, possible infringements by providers of general-purpose AI models should be investigated, whether on their own initiative, because of supervisory activities, or at the request of market surveillance authorities.[36]

Beyond this task, which is one of the essential functions of the AI Office, the other tasks assigned to it are numerous and very diverse in scope: technical-legal, advisory, control, and administrative.

For example, the AI Office is responsible for providing standardised templates for the areas covered by the AI Act,[37] for developing and maintaining a single information platform providing user-friendly information for all operators in the Union,[38] for providing technical assistance and advice for the establishment and operation of AI regulatory sandboxes,[39] assess and promote the convergence of best practices in public procurement procedures in relation to AI systems[40] and encourage and facilitate the development of codes of practices for general purpose AI models and, in general, codes of conduct aimed at promoting the voluntary

---

[35] Article 89 in conjunction with Article 56 AI Act.

[36] This is without prejudice to cooperation with market surveillance authorities. Thus, where general-purpose AI systems can be used directly by deployers for at least one purpose that can be classified as high risk, market surveillance authorities should cooperate with the AI Office to carry out conformity assessments. In addition, market surveillance authorities may seek the assistance of the AI Office when they are unable to conclude an investigation into a high-risk AI system due to their inability to access certain information related to the general-purpose AI model on which the high-risk AI system is based (Article 75).

[37] For example, it must prepare model questionnaires to make it easier for deployers of a high-risk AI system to carry out the fundamental rights impact assessments they are required to conduct [Article 27(5)].

[38] For example, the list of planned and existing AI regulatory sandboxes and keep them updated in order to encourage more interaction in AI regulatory sandboxes as well as cross-border cooperation (Article 57).

[39] Article 3(2)(e) of the Decision of 24 January 2024.

[40] May develop and recommend voluntary standard contractual clauses between providers of high-risk AI systems and third parties supplying tools, services, components, or processes to be used or integrated in high-risk AI systems [Article 25(4)].

application of some or all of the requirements set out in Chapter III, Section 2 to not high-risk AI systems.[41]

Furthermore, the AI Office should support the Commission in the preparation of Commission decisions and delegated and implementing acts necessary for the implementation of the AI Act, as well as in the preparation of standardisation requests, in the evaluation of existing standards, and the development of common specifications as necessary. In order to facilitate the implementation of the AI Act, it should also assist the Commission in developing guidance and guidelines or supporting tools, such as standardised protocols and best practices.[42]

From another perspective, the Decision of 24 January 2024 assigns to the AI Office the task of carrying out evaluations and reviews of the AI Act.[43] However, Article 112 entrusts this function to the Commission itself, limiting the role of the AI Office to establish an objective and participatory methodology for assessing risk levels.

Moreover, the role that the Decision of 24 January 2024 assigns to the AI Office to coordinate the AI system of governance of the AI Act is striking, not only by providing for the possibility for it to prepare the establishment of advisory bodies at the EU level but also by giving it a role in monitoring the establishment of national authorities and other relevant bodies at national level.[44] It is not indicated how this function will be articulated, which may be problematic insofar as it entails a control of the functions attributed to the Member States by the AI Act.

From a strictly administrative point of view, the AI Office is responsible for the secretariat of the European Artificial Intelligence Committee and its sub-groups and for the administrative support of the Advisory Forum and the Scientific Panel of Independent Experts.[45]

---

[41] Articles 56 and 95 respectively as well as Article 3(2)(i) of the Decision of 24 January 2024.

[42] In this sense, Article 3(2) of the Decision of 24 January 2024.

[43] For example, in relation to the amendment of the list in Annex III and the list of prohibited AI practices in Article 5, in relation to the need to amend the list of AI schemes requiring additional transparency measures or to improve the effectiveness of the oversight and governance system, etc.

[44] Article 3(2)(g) of the Decision of 24 January 2024.

[45] In relation to the administrative set-up, the organisation of meetings and the preparation of relevant documents [Article 3(2)(h)].

Finally, the AI Office is tasked with promoting and encouraging the development and responsible use of AI in the EU [46] and cooperating with international organisations and third countries in all matters relating to advancing of AI innovation and excellence policies. [47]

Beyond treating the functions assumed by the AI Office, the Decision of 24 January 2024 (let alone the AI Act) makes virtually no provision for the internal organisation or functioning of the AI Office.

It is simply stated that in order to fulfil its tasks, the AI Office should cooperate with stakeholders through the creation of cooperation forum, in particular with providers of AI models and systems and with the open-source community and through regular consultations, especially with experts from the scientific community and the education sector and with citizens, social partners, and civil society. [48] Collaboration is also foreseen with other Directorates-General and services of the Commission [49] or other bodies and agencies of the Union, [50] as well as with Member States' authorities and agencies.

It follows from the reference to financing in Article 7 of the Decision of 24 January 2024 that the functions of the AI Office may be carried out by officials of the Directorate-General to which the AI Office belongs or, where appropriate, by external statutory staff with the human and operational costs of running the AI Office being financed from the financial resources allocated to the Digital Europe Programme.

The internal functioning of the Commission should be governed by the

---

[46] In this regard, Article 2.2 of the Decision of 24 January 2024 refers to the promotion of a strategic, coherent and effective Union approach to international AI initiatives and to actions and policies that harness the social and economic benefits of AI technologies, as well as to the accelerated development, deployment and use of reliable AI systems and applications that deliver social and economic benefits and contribute to the Union's competitiveness and economic growth or the monitoring of the evolution of AI markets and technologies.

[47] Article 7 of the Decision of 24 January 2024.

[48] Article 4 of the Decision of 24 January 2024.

[49] In particular, with the European Centre for Algorithmic Transparency to evaluate and test general-purpose AI models (Article 5 of the Decision of 24 January 2024).

[50] Particularly the European High Performance Computing Joint Undertaking (EuroHPC Joint Undertaking) (Article 2(3)(c) of the Decision of 24 January 2024).

Commission's Rules of Procedure.[51] Its internal organisation is decided by the President of this institution.[52]

In this regard, the AI Office has recently been put in place and will be headed by the Head of the Office and will work under the direction of a Lead Scientific Adviser to ensure scientific excellence in the evaluation of innovative models and approaches and an Adviser for International Affairs to follow up on the commitment of the AI Office to work closely with international partners on reliable AI.[53]

Internally it will be structured into five Units, the Regulation and Compliance Unit, the AI Safety Unit, the Excellence in AI and Robotics Unit, the AI for Societal Good Unit, and the AI Innovation and Policy Coordination Unit.[54]

The performance of the AI Office should be evaluated four years after the entry into force of the AI Act, and the Commission should prepare a report on whether it has sufficient and appropriate powers and competences

---

[51] Rules of Procedure of the Commission (C(2000) 3614).

[52] In this respect, Article 17(6) subparagraphs (a) and (b) TFEU.

[53] According to the Commission's Press Release of 29 May 2024, the AI Office will employ more than 140 people to carry out its tasks. The staff will be composed of technology specialists, administrative assistants, lawyers, policy specialists and economists.

[54] The Regulation and Compliance Unit coordinates the regulatory approach to facilitate the uniform application and enforcement of the AI Act across the Union, working closely with Member States. The unit will contribute to investigations on possible infringements, administering sanctions; the Unit on AI safety focuses on the identification of systemic risks of competent general-purpose models, possible mitigation measures as well as evaluation and testing approaches; the Excellence in AI and Robotics Unit supports and funds research and development to foster an ecosystem of excellence. It coordinates the GenAI4EU initiative, stimulating the development of models and their integration into innovative applications; the AI for Societal Good Unit designs and implements the international engagement of the AI Office in AI for good, such as weather modelling, cancer diagnoses and digital twins for reconstruction; the AI Innovation and Policy Coordination Unit oversees the execution of the EU AI strategy, monitoring trends and investment, stimulating the uptake of AI through a network of European Digital Innovation Hubs and the establishment of AI Factories, and fostering an innovative ecosystem by supporting regulatory sandboxes and real-world testing.

to carry out its functions and whether improvements in its functioning and enforcement powers or an increase in its resources are necessary to support the proper implementation of the AI Act. [55]

4. *European Artificial Intelligence Board*

It is an entity currently constituted as the counterpoint to the AI Office in view of the leading role played by the Member States through their designated representatives.

Initially, according to the Commission's Proposal for an AI Act, the European Artificial Intelligence Board was configured as the body that materialised cooperation between the Member States and the Commission in the field of AI, with the Commission occupying a reinforced position by assuming its presidency. [56] The version approved by the European Parliament opted for a completely different model based on the creation of a European Office for Artificial Intelligence, which would bring together the Union's competences in this field and assume the role of advising, supporting, and cooperating with the Member States and contributing to coordination between their national supervisory authorities, abolishing the European Artificial Intelligence Board. [57] The Council, on the other hand, in its general approach on the Commission's Proposal strengthened the position of the European Artificial Intelligence Board, enhancing the role of Member States in it and relegating the Commission as a non-voting member in line with the current regulation.

Even though, at least initially (in the Commission's Proposal), an

---

[55] According to Article 112 (5), such an assessment should take place by 2 August 2028.

[56] Article 56 of the Proposal provided for the Committee to advise and assist the Commission in order to ensure effective cooperation between national supervisory authorities and the Commission, to give guidance and contribute to the analysis of the Commission and national supervisory and other competent authorities on emerging problems caused by AI in the internal market and to assist the Commission and national supervisory authorities in ensuring the consistent application of the AI Act.

[57] Amendments 523 to 552 of the European Parliament, which provided for a redrafting of Articles 56 et seq.

assimilation with the European Data Protection Board could be intended, at least as regards its functions and responsibilities, [58] in the end, the AI Act has notably diluted this similarity, both in terms of the powers assigned to it and, of course, in terms of its nature and composition.

The AI Act does not attribute legal personality to the Board, nor does it proclaim its independence, [59] beyond calling for an organisation and management that preserves the objectivity and impartiality of its activities.

As far as the organisation is concerned, it is made up of one representative from each Member State, [60] one of whom will assume the chairmanship of the entity. These representatives, appointed for a period of three years, renewable once, must have the relevant competences and powers, within the framework of the internal regulations of the respective Member State, to contribute to the fulfilment of the functions assigned to the Committee by the AI Act and they must be empowered to coordinate the respective national competent authorities in relation to the application of the AI Act. This predetermines the treatment that the domestic legislation of each Member State must provide to these representatives and, where appropriate, to the institutions to which they belong.

In turn, these representatives, once appointed by each Member State, will be the single point of contact for the Member State in the Board and, where appropriate, with regard to the stakeholders in each Member State. This representative is thus placed as the reference figure of each Member State in relation to the functions of the European Artificial Intelligence Board and, in short, as the person who institutionally represents the State on AI matters within the European Union. [61]

In addition to the representatives of the Member States, the EDPS,

---

[58] This is evidenced by N. Th. Nikolinakos (2023), op. cit., p. 604.

[59] The GDPR, on the other hand, gives the European Data Protection Board a legal personality (Article 68) and establishes its complete independence in the performance of its tasks and the exercise of its powers (Article 69).

[60] And not by the holder or another representative of the national supervisory authority concerned, as foreseen in the Commission's Proposal.

[61] Within the Board, these representatives are responsible for adopting the rules of procedure, which shall lay down the procedures for the selection process, the duration of the term of office and the specifications of the functions of the chair, detailed voting arrangements and the organisation of the activities of the Board and its sub-groups [Article 65(5)].

which has observer status, and the AI Office, which will act as the secretariat, participate in the Committee without the right to vote.[62] Other national and Union authorities, bodies, or experts may attend the meetings of the Board, upon invitation, on a case-by-case basis and when the issues to be discussed are relevant and within their knowledge.

Two sub-groups should be established within the Board to function as a platform for cooperation and exchange among the market surveillance authorities and notifying authorities of the Member States on issues related to market surveillance and notified bodies.[63] Other sub-groups, both permanent and temporary, may also be set up for the examination of specific issues.[64]

Regarding its functions, the Board is configured as an advisory body to the Commission and the Member States to facilitate the coherent and effective application of the AI Act, a framework from which the specific tasks that it can assume are identified. As we shall see below, these are, in any case, advisory functions of support and back-up for the fulfilment of the competences corresponding to the Commission and the Member States through their respective institutions, but without the binding and executive

---

[62] In accordance with Article 65(8), the AI Office shall convene meetings at the request of the chair and shall draw up the agenda within the framework of the Board's duties.

[63] The market surveillance sub-group shall act as an administrative cooperation group (ADCO) for the purposes of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011. These groups (ADCOs), composed of representatives of national market surveillance authorities and, where appropriate, representatives of single liaison offices, aim to facilitate the uniform application of Union harmonisation legislation (Article 30). Recital (149) of the AI Act adds (although this reference is not incorporated in the corresponding Article of the Regulation) that according to Article 33 of Regulation (EU) 2019/1020, the Commission should support the activities of the permanent market surveillance sub-group by carrying out market assessments or studies, with a view to identifying aspects of the AI Act that require specific and urgent coordination between market surveillance authorities.

[64] Representatives of the Advisory Forum may be invited to participate in these sub-groups or specific meetings of these sub-groups as observers [Article 65(6)].

legal force of the competences exercised, for example, by the European Data Protection Board, whose similarity, as indicated above, is ruled out. Any assimilation of this Board with those assisting the Commission for the adoption by the latter of implementing acts requiring control by the Member States, in accordance with the procedures established for this purpose by Regulation (EU) 182/2011,[65] should also be ruled out, as has also been pointed out.

The AI Act includes a list of tasks reflecting the different roles of the Board in relation to States and to the Commission. In the first case, it is the task of the Board to advise and support national competent authorities, in particular market surveillance authorities, to share technical and regulatory expertise and best practices with Member States, to advise them on the implementation of the Regulation and in particular on the rules relating to general-purpose AI models and to contribute to the harmonisation of their administrative practices concerning conformity assessment procedures, the operation of sandboxes or testing in real-world conditions. In the second case, i.e., about the Commission, the Boards's advisory role is mainly through the provision of opinions and recommendations in relation to the Commission's (or the AI Office's) own functions, e.g. on the development and implementation of codes of conduct, codes of practice and guidelines, on the assessment and review procedures of the AI Act or on the preparation of delegated or implementing acts, as well as on the use of harmonised standards or common specifications. Several functions of a more general nature are also foreseen for the Committee, some linked to the promotion of technical knowledge on AI to facilitate the implementation of the AI Act, but also to raise awareness in society on the advantages and disadvantages of the use of AI and others on cooperation with the institutions, bodies and agencies of the Union, with expert groups or networks in areas such as product safety, cybersecurity, competition, digital and media services, financial services, consumer protection, data protection and protection of fundamental rights.[66]

---

[65] These Committees are regulated in Article 3 of this Regulation (EU) 182/2011.

[66] See Article 66 for a complete list of competences.

5. *Advisory Forum*

The Advisory Forum is the body responsible for providing technical expertise and advice to both the European Artificial Intelligence Board and the Commission so that they can properly fulfil the functions entrusted to them by the AI Act.

In the text that was finally approved, the Advisory Forum has acquired its own entity as opposed to its status as a structure inserted in the AI Office, as foreseen in the text approved by the European Parliament.[67] Notwithstanding this different initial configuration, there are a few differences to be noted between the regulation now contained in Article 67 of the AI Act and those contained in the version that came out of the European Parliament.

It will be composed of a balanced selection of all stakeholders[68] in the field of artificial intelligence with recognised expertise, including representatives from industry, start-ups, SMEs, civil society, and academia. This balance also extends to commercial and non-commercial interests and, within the former, between SMEs and other types of companies. The Commission is responsible for appointing these members, and it is, therefore, the Commission that ultimately assesses the counterbalances and chooses which sectors or parties will ultimately be represented in the Forum.[69]

In addition, the European Union Agency for Fundamental Rights, the European Union Agency for Cybersecurity (ENISA), the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI) will be permanent

---

[67] Article 58 as amended by Amendments 540 to 550 of the European Parliament.

[68] Although it is a term that is reiterated throughout the AI Act, it has yet to be concretely defined. According to Article 67.2, this would include industry, start-ups, SMEs, civil society and academia.

[69] These members are elected for a term of two years, which may be extended for a maximum of four years. Two co-chairs shall be elected from among the members appointed by the Commission for a two-year term of office, renewable once. The organisation and functioning of the Advisory Forum are subject to rules of procedure to be adopted by its members [Article 67paragraphs (4) and (6)].

members. Experts and other interested parties may be invited to attend its meetings.[70]

For the purpose of its operation, permanent or temporary sub-groups may be set up to examine specific issues regulated in the AI Act.

Article 67 of the AI Act does not identify any specific task for the Advisory Forum beyond the generic task provided for in paragraph (1), of supporting the Commission and the European Artificial Intelligence Board with its advice and the possibility of drawing up opinions, recommendations and written contributions at the request of one or the other. The articles of the Regulation contain a few specific references, but these are scarce and linked to the formulation by the Commission of requests for standardisation or the drafting of common specifications, actions for which the knowledge and opinion of the Advisory Forum must be sought.[71]

The content of all this activity shall be included in an annual report, which shall be made publicly available.

6. *Scientific Panel of Independent Experts*

The Panel of experts is an unprecedented body in the design of AI governance, as it was not foreseen in any of the text versions, until the one that was born after the agreement finally reached between the institutions in December 2023.

Previously, only the possibility of creating a group of experts with technical and organisational knowledge that could facilitate the implementation of the AI Act had been mentioned as one of the functions to be assumed by the AI Office envisaged by the European Parliament in its text.[72] Its novelty and the fact that it has not been analysed by other institutions would explain why the regulation contained in Articles 68 and 69 is not very organised and clear.

It is a group of scientific experts in varying numbers according to the

---

[70] Meetings shall be held at least twice a year [Article 67 paragraphs (5) and (7)].

[71] Articles 40 and 41.

[72] Article 56 b (new) of the text approved by the European Parliament (Amendment 529).

needs required, [73] with an equal number of men and women and a balanced composition in terms of the geographical origin of its members.

Its members shall be experts selected by the Commission based on their scientific or technical expertise in the field of artificial intelligence, enabling the Group to fulfil its mandated tasks. Although it is not entirely clear whether these are attributes of the Panel or the members, it appears that, with regard to the latter, they are required to have particular expertise and competence concerning artificial intelligence, to be independent of any provider of AI systems or general purpose AI systems or models, and to have the ability to carry out the activities assigned to them with diligence, accuracy, and objectivity. [74] In any case, they must perform their functions with impartiality, maintaining the confidentiality of the information and data they obtain, and they may not seek or accept instructions from anyone while performing their activity. It would seem that with this last reference, the AI Act intends to guarantee the independence of the experts both with the Union institutions, bodies, offices, and agencies, as well as in relation to the Member States, as neutrality also with regard to providers of AI systems is imposed elsewhere. However, the poor drafting and organisation of this provision does not make it possible to ensure this. [75]

The regulation of this Scientific Panel shall be included in an implementing act to be adopted by the Commission [76] and shall include provisions on conditions, procedures, and arrangements enabling the Panel of experts to issue alerts and request assistance from the AI Office in performing its tasks.

The objective of this Scientific Panel is to support both the Commission

---

[73] It is unclear whether this number may vary according to circumstances or whether some members will be appointed that is not determined a priori and can be determined at the time of appointment in the light of circumstances. In any case, this number shall be fixed by the Commission after consultation with the European Artificial Intelligence Board [Article 68(2)(c)].

[74] Article 68(2).

[75] Article 68 (4). In any case, this independence is served by a declaration of interests to be completed by each expert and made public. In addition, the AI Office shall establish systems and procedures to prevent and manage potential conflicts of interest.

[76] Following the examination procedure laid down in Article 5 of Regulation (EU) No 182/2011.

through the AI Office and the Member States in activities related to implementing and enforcing of the AI Act.

In particular, the Scientific Panel should support and advise the AI Office in the implementation and enforcement of the AI Act with regard to general-purpose AI systems and models,[77] by issuing warnings on potential systemic risks of a general-purpose AI model, advising on the classification of general-purpose AI models with systemic risk or contributing to the development of tools or methodologies to assess the capabilities of general-purpose AI systems and models. Nevertheless, beyond these AI systems or models, it should also support the AI Office in its coordination of cross-border market surveillance actions and, in cooperation with national competent authorities, contribute to detecting non-compliance, raising awareness, and providing guidance on specific categories of high-risk AI systems that present a severe risk in two or more Member States.

For their part, Member States may also call on experts from the Panel (and not the Panel itself) for support in complying with the AI Act, although in that case, they may be obliged to pay the corresponding fee for the advice provided.[78] The scope of the support and the functions they may perform are not specified here, with the AI Act here merely calling on the Commission to ensure the maximum possible efficiency and effectiveness when Member States make use of this resource and, in addition, to use the Union's AI testing support structures made available to them with the objective to ensure the reliability and consistency of testing for the purposes of market surveillance.[79]

---

[77] It is striking that Article 92 of the AI Act, which refers to the assessment procedures that may be carried out with respect to general-purpose AI models, allows the Commission to appoint independent experts to carry out the assessments on its behalf, other than the experts of the Scientific Panel referred to here, who, in any case, must meet the requirements set out in Article 68 for the members of this Scientific Panel.

[78] The structure and amount of the fee, if any, to be charged shall be laid down in the implementing act adopted by the Commission to instruct and regulate the Panel.

[79] Within the meaning of Article 21 of Regulation (EU) 2019/1020 to which Article 84 of the AI Act refers.

7. *National Competent Authorities*

The AI Act prescribes how the governance of artificial intelligence is to be addressed in each Member State by providing for the creation in each of them of corresponding national competent authorities and at least two, a notifying authority on the one hand and a market surveillance authority on the other.[80] The regulation contained in Article 70 of the AI Act in this respect is, however, of a generic nature, as it does not dwell on the characteristics or functions of one or the other but refers to the regulatory context that the Member States will have to configure in order to guarantee the correct functioning of these authorities and, therefore, the adequate application and execution of the AI Act.

The approach finally adopted by the AI Act on this point differs from the initial Proposal that was also assumed (with differences) in the version approved by the European Parliament. In both cases, the designation of a national supervisory authority as the competent authority was envisaged, which would act, in turn, as both notifying authority and market surveillance authority, assuming responsibility for implementing and applying the regulatory framework approved in the Union and acting as a single point of contact at State and Union level.[81]

Finally, as mentioned above, it has been decided to dispense with any reference to a macro national supervisory body and to provide for at least two types of specific national competent authorities in order to better comply with the provisions of the AI Act.

On the one hand, a notifying authority is understood as the national authority responsible for setting up and carrying out the necessary procedures for the assessment, designation, and notification of conformity assessment bodies, as well as for their monitoring.[82] Its regulation is contemplated outside the chapter on governance, specifically in Article 28, which establishes the essential parameters to which these

---

[80] Article 3(48) identifies or defines a national competent authority as a notifying authority or market surveillance authority. Both types are, in turn, defined in Article 3 itself, without prejudice to the regulation and functions deriving from the Articles of the AI Act.

[81] Article 59 of the Commission proposal and Article 59 of the text adopted by the European Parliament under Amendments 553 to 564.

[82] As defined in Article 3(19).

bodies must respond, and the possibility of their function being assumed by the respective national accreditation body designated in a Member State for the accreditation of conformity assessment bodies. [83] Moreover, on the other hand, a market surveillance authority that will assume, strictly speaking, the supervision of AI systems (without prejudice to the competence of the AI Office in relation to general purpose AI models) [84] and will act as a single point of contact for the purposes of the AI Act. [85] This entity responds to the model implemented in the European Union to monitor those products subject to Union harmonisation legislation with the aim of ensuring that only those products that are compliant and meet requirements providing a high level of protection of public interests, such as health and safety in general, health and safety at work, protection of consumers, the environment and public safety, and any other public interest protected by such legislation, are made available on the market in the Union. [86]

A better systematisation of these entities would have been desirable, allowing for a better understanding of their role also from a governance perspective, inserting the appropriate references both to the regulation contained in the AI Act and to the specific sectorial regulations that apply to them.

In the context described above, Member States should designate the entity or entities that will be configured in each Member State as competent

---

[83] Regulated in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008, setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

[84] According to Article 3(26), the market surveillance authority is defined as the national authority that carries out the activities and takes the measures provided for in Regulation (EU) 2019/1020.

[85] Article 70(2).

[86] This is the model implemented by Regulation (EU) 2019/1020, which grants market surveillance authorities a range of powers aimed at carrying out the activities listed in Article 11 of that Regulation.

national authorities [87] by communicating to the Commission their identity and the functions they will perform. [88]

These entities shall exercise their powers independently, impartially, and without bias to ensure objectivity in performing their duties and in a context of absolute confidentiality. To meet these requirements, Member States must ensure adequate technical, financial, and human resources to serve these competent national authorities, as well as the relevant infrastructures to perform their functions effectively. In particular, the AI Act insists on providing staff with advanced skills and knowledge in AI technologies, as well as data protection, cybersecurity, protection of fundamental rights and the existing legal order. [89] Clearly, it will be up to Member States to determine in the domestic regulatory framework the most appropriate institutional forms to guarantee these requirements and to ensure compliance with the purpose to be served by both types of authorities.

Finally, beyond the competences assigned to each national competent authority according to their own regulations, Article 70 of the AI Act mentions a particular function of the latter, which is the possibility of providing advice and support in relation to compliance with the AI Act, to SMEs, including start-ups, following the guidelines and advice of the European Artificial Intelligence Board and the Commission. [90] It is striking

---

[87] Member States may designate one or more of these national competent authorities according to the organisational needs of each Member State, which must, in any event, meet the requirements set out in Article 70 of the AI Act. Where the European Union institutions, bodies, offices and agencies are responsible for the implementation of the AI Act, the role of the national competent authorities will be played by the EDPS.

[88] Information on how to contact competent authorities and single points of contact should also be made available to the public [Article 70(2)].

[89] In order to ensure that these requirements are met, Member States are required to submit to the Commission, initially by 2 August 2025 and every two years thereafter, a report on the state of financial and human resources of the competent national authorities, including an assessment of their adequacy. This report should be forwarded to the Committee for analysis and possible recommendations for improvement, where appropriate.

[90] In cases where the advice relates to an AI system applicable to areas covered by other acts of Union law, the competent national authorities must be consulted in advance in accordance with the applicable legislation.

that this objective is entrusted to national authorities, as it is a departure from the role and position of notifying authorities and market surveillance authorities, respectively. It seems that this provision is intended to place special emphasis on the need to maintain a constant relationship with stakeholders and, in particular, with the industry in order to achieve a good knowledge and application of the AI Act, intensifying public-private contacts for the benefit of the controlled progress of AI in the European Union.

8. *References*

Bulmer, S.J., *The Governance of the European Union: A New Institutionalist Approach*, in *Journal of Public Policy*, 13 (4), 1993, pp. 351-380 (https://www.jstor.org/stable/4007518).

Chevalier, J., *La gouvernance, un nouveau paradigme étatique?*, in *Revue Française d'Administration Publique*, 105-106, 2003, pp.203-217.

Dias, R.C., Seixas, P.C, Lobner, N., *State transformations through public, multilevel, and territorial governance in European Union: Towards a metagovernance paradigm*, in *European Policy Analysis*, 8(4), 2022, pp. 467-483 (https://doi-org.uniovi.idm.oclc.org/10.1002/epa2.1163).

Hofmann, H.C.H., Rowe, G.C., Türk, A.H., *Synthesis and Assessment*, in Hofmann, H.C.H., Rowe, G.C. Türk, A.H. (Edits.), *Specialized Administrative Law of the European Union. A sectoral review*, Oxford: Oxford University Press, 2018, pp. 613-650.

Kholer-Koch, B., *The evolution and transformation of European governance*, in Kholer-Koch, B. and Eising, R. (eds.), *The Transformation of Governance in the European Union*, London: Routledge, 1999, pp. 13-33.

Nikolinakos, N. Th., *EU policy and legal framework for artificial intelligence, robotics and related technologies*. The AI Act, Cham (Switzserland): Springer, 2023.

Peterson. J., *Policy Networks*, in Wiener, A. and Diez, Th., *European Integration Theory*, 2nd ed., Oxford: Oxford University Press, 2009, pp. 105-143.

Rapoport, C. (2016), *Les catégories organiques du droit primaire de L'Union Européenne*, in Bertrand, B. (Dir.), *Les categories juridiques du droit de l'Union Europénne*, Brussels: Bruylant, pp. 95-126.