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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	CM 3805/24
Subject:	Questions on the Artificial Intelligence Act to be answered by the Commission

– Compilation of questions and comments by delegations

Following the request for written contributions (CM 3805/24) issued after the LEWP (Police) meeting on 17 July 2024 regarding questions from delegations on the Artificial Intelligence Act to be answered by the Commission at the next LEWP (Police) meeting on 17 September 2024, delegations will find in Annex a compilation of the questions and comments by delegations as received by the General Secretariat of the Council.

**WRITTEN QUESTIONS AND COMMENTS SUBMITTED BY
DELEGATIONS**

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BELGIUM

BE has a question on the creation of two sub-groups within the AI Board, namely the "**Prohibited AI (Art. 5) & Annex III**" sub-group and **Law Enforcement sub-group**. Following the timeline proposed by the EU Commission during the first informal meeting of the AI Board on 19 June, the first sub-group will be created this year while the second one will only be created by 2025.

Given the submitted timeline, **BE** wonders whether the *Law Enforcement sub-group within the AI Board could be created earlier*, just like the "Prohibited AI & Annex III" sub-group in 2024. The earlier creation of this specific sub-group would be justified by the fact that the use-cases applicable to law enforcement mentioned in the AI Act mainly fall under Art. 5 (Prohibited AI systems) and Annex III High-Risk AI-systems which will be dealt with in the first sub-group.

By extension, **BE** believes that an earlier creation of the Law Enforcement sub-group would enable to take more into account the contributions/points of view of the law enforcement community, especially given the challenges linked to the implementation at national level of the law enforcement provisions of the AI Act.

ESTONIA

Regarding your request to provide questions on the Artificial Intelligence Act to be answered by the Commission (document CM 3805/24), we would like to point out that Europol has already consolidated the Member States' proposals on this matter, and our questions and proposals are reflected in their document. However, one of the issues we raised is still not really clear and we would be grateful if it were possible to clarify the matter with your help.

Annex III lists as high-risk Artificial Intelligence (hereinafter *AI*) systems AI systems intended to be used for **emotion recognition**. The recital 18 states:

*“The notion of emotion recognition system for the purpose of in this regulation should be defined as an AI system for the purpose of identifying or inferring emotions or intentions of natural persons on the basis of their biometric data. This refers to emotions or intentions such as happiness, sadness, anger, surprise, disgust, embarrassment, excitement, shame, contempt, satisfaction and amusement. It does not include physical states, such as pain or fatigue. It refers for example to systems used in detecting the state of fatigue of professional pilots or drivers for the purpose of preventing accidents. **It does also not include the mere detection of readily apparent expressions, gestures or movements, unless they are used for identifying or inferring emotions.** These expressions can be basic facial expressions such as a frown or a smile, or gestures such as the movement of hands, arms or head, or characteristics of a person’s voice, for example a raised voice or whispering.”*

Our concern is that this includes the AI systems that merely identify a neutral facial expression for better identification purposes (for example, that smiling is not allowed). The recital seems to give us an exception (readily apparent expressions?), but we find that it contains ambiguity that needs clarification in the guidelines.

FRANCE

NOTE DES AUTORITES FRANCAISES

Objet : Note de commentaires suite au groupe LEWP-Police du 17 juillet 2024

Réf : CM 3805/24

Point 6 : Le Règlement intelligence artificielle - État des lieux (CM 3805/24)

Suite aux échanges menés au cours de la réunion du groupe LEWP-Police le 17 juillet 2024, les autorités françaises souhaitent transmettre les éléments suivants à la Présidence concernant le point susmentionné.

Elles souhaitent interroger la Présidence et la Commission quant à l'interprétation qui doit être faite du paragraphe 10 de l'article 26 du règlement IA, qui prévoit qu'une autorisation par une autorité judiciaire ou une autorité administrative est nécessaire « dans le cadre d'une enquête en vue de la recherche ciblée d'une personne soupçonnée d'avoir commis une infraction pénale ou condamnée pour avoir commis une infraction pénale », sauf « lorsqu'il est utilisé pour l'identification initiale d'un suspect potentiel sur la base de faits objectifs et vérifiables directement liés à l'infraction ».

En effet, il semble qu'une clarification de la différence entre la notion de « recherche ciblée d'une personne soupçonnée [...] ou condamnée » et celle d'« identification initiale d'un suspect potentiel » doit être faite. A ce titre, un avis du Service juridique du Conseil pourrait être utile.

GERMANY

LEWP-P meeting on July 17, 2024

Questions on agenda item 6 “The Artificial Intelligence Act”

- 1) Pursuant to Art. 96 of the AI Regulation, the European Commission will develop guidelines for the implementation of the AI Regulation. This also includes the application of the definition of an AI system in accordance with Article 3(1) and the prohibited practices referred to in Article 5.
 - a) At the AI Board meeting on 19.6.2024, Germany proposed the establishment of a working group to define an AI system. There are specific questions regarding systems relating to the security authorities. If such a working group is set up, will it also deal with these issues? What is the timetable for this working group with regard to the existing obligations after the AI Regulation comes into force?
 - b) Who should be consulted for the interpretation of the definition and practices (especially in the area of security authorities)?
- 2) When applying the definition of an AI system, how can it be ensured that simple databases and systems (e.g. regression analyses in Excel) of the security authorities are not affected?
- 3) How are the concepts of “autonomy” and “learning” operationalized and made verifiable in the AI definition of the AI Regulation for security authorities?
- 4) What specific criteria are used to determine whether a security authority system is classified as AI within the meaning of the AI Regulation? And further: How will the distinction between AI systems and advanced non-AI-based automation technologies be ensured for security authority systems in the AI Regulation, especially in cases where both fulfil similar functions?
- 5) How and with what measures will the Office for Artificial Intelligence (responsible for general-purpose AI systems) take into account the specific requirements of the security authorities when interpreting the definition and drawing up guidelines?

- 6) What exchange opportunities are planned between the Office for Artificial Intelligence and national security authorities?
- 7) In view of the as yet non-existent norms and standards for the implementation and monitoring of the AI Regulation and the fact that the corresponding LEA working group at EU level will not start work until 2025, is there an intention to adapt the controls to these circumstances (in the sense of a “soft entry”)?

GREECE

Following the LEWP (Police) meeting on 17 July 2024, please find below a question on the AI Act, proposed by the Hellenic Police, to be answered by the Commission:

- Given the implementation of Article 5's prohibitions of Regulation 2024/1689 on AI on 2 February 2025 and considering its par. 4, the question of the deadline's significance arises: Is a national law permitting the use of remote biometric identification in public spaces mandatory until this deadline, or is it feasible to enter into force even after this date?

POLAND

Questions from the PL side:

1. Central Bureau for Combating Cybercrime - How will monitoring of the quality and compliance of AI models be ensured in law enforcement agencies?
2. Ministry of Digitalization - How are AI systems for evaluating the reliability of evidence in the course of investigating or prosecuting criminal offences defined (Annex III point 6). Are there examples of such systems?"