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NOTE

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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 56-58a et 63-69

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.

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 sous 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 avec l'annexe IV, les articles 16 à 29, les articles 30 à 39, les articles 40 à 52, les articles 53 à 55 bis, les articles 59 à 62 et les articles 70 à 85.** 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 56 à 58 bis et 63 à 69**, 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 56 à 58 bis et aux articles 63 à 69 lors de la réunion du groupe TELECOM du 10 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 56 - Création et structure du Comité européen de l'intelligence artificielle

1.1 Les articles 56 et 57 ont été fusionnés et le titre du reste de l'article 56 a été modifié en conséquence.

1.2 Les modifications apportées à l'article 56, paragraphe 2, en ce qui concerne la création et la structure du comité européen de l'intelligence artificielle (ci-après le «comité») ont été introduites afin d'assurer une plus grande autonomie et de renforcer son rôle dans l'architecture de gouvernance de l'AIA. La composition du comité a été modifiée pour inclure les représentants des États membres et des experts indépendants, le président étant choisi parmi les représentants des États membres.

1.3 Les modifications supplémentaires apportées à l'article 56 précisent davantage le rôle de la Commission au sein du comité, les exigences auxquelles doivent satisfaire les représentants des États membres et les modalités d'adoption du règlement intérieur et la création de sous-groupes.

2. Article 58 - Tâches du Comité

2.1 À l'article 58, les modifications précisent que le comité jouera un rôle plus important dans l'application harmonisée de l'AIA. Le texte comprend une liste élargie de tâches pour le comité, telles que la fourniture de conseils et de recommandations à la Commission, par exemple sur la nécessité de modifier les annexes I et III, ou l'émission d'avis sur une série d'autres questions liées à l'application de l'AIA.

3. Article 58 bis — Lignes directrices de la Commission

3.1 Un nouvel article 58 bis a été ajouté afin d'imposer à la Commission l'obligation de produire des orientations sur l'application de l'AIA proposée, en mettant l'accent sur une série de sujets, tels que l'application des exigences applicables aux systèmes d'IA à haut risque, les pratiques interdites en matière d'IA ou la mise en œuvre pratique des dispositions relatives aux modifications substantielles.

3.2 **L'article 58 bis** précise également que des orientations pourraient être demandées tant par les États membres que par le comité, ou qu'elles pourraient être élaborées à l'initiative de la Commission.

4. **Articles 63 à 68 — Surveillance du marché (sans l'article 63 bis)**

4.1 Les modifications apportées aux **articles 63 à 69** visent à clarifier les pouvoirs des autorités de surveillance du marché et les modalités d'exercice de ces pouvoirs, ainsi que la mesure dans laquelle elles devraient avoir accès aux données et informations pertinentes, en particulier le code source..

4.2 Les modifications apportées aux **articles 63 à 69** visent à clarifier les pouvoirs des autorités de surveillance du marché et les modalités d'exercice de ces pouvoirs, ainsi que la mesure dans laquelle elles devraient avoir accès aux données et informations pertinentes, en particulier le code source.

4.3 Enfin, la procédure de sauvegarde de l'Union a été clarifiée, notamment en tenant compte de la nécessité de raccourcir les délais d'action dans le cas de systèmes d'IA soupçonnés de violer les interdictions prévues à **l'article 5**.

5. **Article 69 - Codes de conduite**

5.1 Les modifications apportées à **l'article 69** visent à mieux refléter le fait que les codes de conduite devraient encourager l'application volontaire des exigences énoncées dans l'AIA en ce qui concerne les systèmes d'IA autres que les systèmes d'IA à haut risque.

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 VI

GOVERNANCE

CHAPTER 1

EUROPEAN ARTIFICIAL INTELLIGENCE BOARD

Article 56

*Establishment **and structure** of the European Artificial Intelligence Board*

1. A ‘European Artificial Intelligence Board’ (the ‘Board’) is established.

~~2. The Board shall provide advice and assistance to the Commission in order to:~~

~~(a) contribute to the effective cooperation of the national supervisory authorities and the Commission with regard to matters covered by this Regulation;~~

~~(b) coordinate and contribute to guidance and analysis by the Commission and the national supervisory authorities and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;~~

~~(c) assist the national supervisory authorities and the Commission in ensuring the consistent application of this Regulation.~~

Article 57

Structure of the Board

2. The Board shall be composed of **one representative per Member State** ~~the national supervisory authorities, who shall be represented by the head or equivalent high-level official of that authority,~~ **and of eight independent experts representing SMEs and start-ups, large enterprises, academia and civil society, in equal proportions of 2 members per category.** ~~and~~ ~~†~~The European Data Protection Supervisor **shall participate as an observer.** **The Commission shall also attend the Board's meetings without taking part in the votes.**

Other national **and Union** authorities, **bodies or experts** may be invited to the meetings **by the Board on a case by case basis,** where the issues discussed are of relevance for them.

2a. **Each representative shall be designated by their Member State for a period of 3 years, renewable once. The eight independent experts referred to paragraph 2 shall be selected by the Member States national representatives in a fair and transparent selection process established in the Board's rules of procedure, for a period of 3 years, renewable once.**

2aa. **Member States shall ensure that their representatives in the Board:**

- have the relevant competences and powers in their Member State so as to contribute actively to the achievement of the board's tasks referred to in Article 58;**
- are designated as a single contact point vis-à-vis the Board and, where appropriate, taking into account Member States' needs, as a single contact point for stakeholders;**
- are empowered to facilitate consistency and coordination between national competent authorities in their Member State as regards the implementation of this Regulation, including through the collection of relevant data and information for the purpose of fulfilling their tasks on the Board.**

~~23.~~ The Board **designated representatives of the Member States** shall adopt its **the Board's** rules of procedure by a ~~simple~~ **two-thirds** majority ~~of its members, following the consent of the Commission.~~ The rules of procedure shall also contain the operational aspects ~~related to the execution of the Board's tasks as listed in Article 58.~~

The rules of procedure shall, in particular, lay down procedures for the selection process for the eight independent experts referred to in paragraph 1, as well as the selection process, duration of mandate and specifications of the tasks of the Chair, the voting modalities, and the organisation of the Board's activities.

The Board may establish **standing or temporary** sub-groups as appropriate for the purpose of examining specific questions. **Where appropriate, organisations representing the interests of the providers and users of AI systems, including SMEs and start-ups, as well as civil society organisations, representatives of affected persons, researchers, standardisation organisations, notified bodies, laboratories and testing and experimentation facilities may be invited to such sub-groups in the capacity of observers.**

~~3a.~~ **The Board shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.**

~~34.~~ The Board shall be chaired by **one of the representatives of the Member States.** ~~the Commission.~~ **Upon request of the Chair,** ~~the~~ Commission shall convene the meetings and prepare the agenda in accordance with the tasks of the Board pursuant to this Regulation and ~~with~~ its rules of procedure. The Commission shall provide administrative and analytical support for the activities of the Board pursuant to this Regulation.

~~45.~~ ~~The Board may invite external experts and observers to attend its meetings and may hold exchanges with interested third parties to inform its activities to an appropriate extent. To that end the Commission may facilitate exchanges between the Board and other Union bodies, offices, agencies and advisory groups.~~

Article 58
Tasks of the Board

~~When providing advice and assistance to the Commission in the context of Article 56(2),~~ **The Board shall advise and assist the Commission and the Member States in order to facilitate the consistent and effective application of this Regulation. For this purpose** the Board ~~may~~ **shall** in particular:

- (a) collect and share **technical and regulatory** expertise and best practices among Member States;
- (b) contribute to ~~uniform~~ **the harmonisation of** administrative practices in the Member States, including **in relation to** ~~for~~ **the derogation from the conformity assessment procedures referred to in Article 47,** the functioning of regulatory sandboxes and **testing in real world conditions** referred to in Article 53, **54 and 54a**;
- (c) **upon the request of the Commission or on its own initiative,** ~~issue opinions,~~ ~~recommendations or~~ written **opinions** contributions **on any relevant** matters related to the implementation of this Regulation **and to its consistent and effective application,** **including:** ~~in particular~~
 - (i) on technical specifications or existing standards regarding the requirements set out in Title III, Chapter 2,
 - (ii) on the use of harmonised standards or common specifications referred to in Articles 40 and 41,
 - (iii) on the preparation of guidance documents, including the guidelines concerning the setting of administrative fines referred to in Article 71-;
- (d) ~~issue an advisory opinion on the need for amendment of Annex I and Annex III,~~ **including in light of available evidence,** **advise the Commission on the potential need for amendment of Annexes I and III in accordance with Articles 4 and 7, taking into account relevant available evidence and the latest developments in technology**

- (e) advise the Commission during the preparation of delegated or implementing act pursuant to this Regulation;**
- f) cooperate, as appropriate, with relevant EU bodies, experts groups and networks in particular in the fields of product safety, cybersecurity, competition, digital and media services, financial services, cryptocurrencies, consumer protection, data and fundamental rights protection;**
- g) provide relevant advice to the Commission in the development of the guidance referred to in Article 58a or request the development of such guidance;**

CHAPTER 1A

GUIDELINES FROM THE COMMISSION

Article 58a

Guidelines from the Commission on the implementation of this Regulation

- 1. Upon the request of the Member States or the Board, or on its own initiative, the Commission shall issue guidelines on the practical implementation of this Regulation, and in particular on**
- (i) the application of the requirements referred to in Articles 8 - 15;**
 - (ii) the prohibited practices referred to in Article 5;**
 - (iii) the practical implementation of the provisions related to substantial modification;**
 - (iv) the identification and application of criteria and use cases related to high risk AI systems referred to in Annex III;**
 - (v) the practical implementation of transparency obligations laid down in Article 52;**
 - (vi) the relationship of this Regulation with other relevant Union legislation.**
- When issuing such guidelines, the Commission shall pay particular attention to the needs of SMEs including start-ups and sectors most likely to be affected by this Regulation.**

CHAPTER 3

ENFORCEMENT

Article 63

Market surveillance and control of AI systems in the Union market

1. Regulation (EU) 2019/1020 shall apply to AI systems covered by this Regulation.
However, for the purpose of the effective enforcement of this Regulation:
 - (a) any reference to an economic operator under Regulation (EU) 2019/1020 shall be understood as including all operators identified in ~~Title III, Chapter 3~~ **Article 2** of this Regulation;
 - (b) any reference to a product under Regulation (EU) 2019/1020 shall be understood as including all AI systems falling within the scope of this Regulation.
2. **As part of their reporting obligations under Article 25(6) of Regulation (EU) 2019/1020, the Member States** ~~national supervisory authority~~ shall report to the Commission ~~on a regular basis~~ **about** the outcomes of relevant market surveillance activities **under this Regulation**. ~~The national supervisory authority shall report, without delay, to the Commission and relevant national competition authorities any information identified in the course of market surveillance activities that may be of potential interest for the application of Union law on competition rules.~~
3. For high-risk AI systems, related to products to which legal acts listed in Annex II, section A apply, the market surveillance authority for the purposes of this Regulation shall be the authority responsible for market surveillance activities designated under those legal acts **or, in justified circumstances and provided that coordination is ensured, another relevant authority identified by the Member State.**

The procedures referred to in Articles 65, 66, 67 and 68 of this Regulation shall not apply to AI systems related to products, to which legal acts listed in Annex II, section A apply, when such legal acts already provide for procedures having the same objective. In such a case, these sectoral procedures shall apply instead.

4. For **high-risk** AI systems placed on the market, put into service or used by financial institutions regulated by Union legislation on financial services, the market surveillance authority for the purposes of this Regulation shall be the relevant **national** authority responsible for the financial supervision of those institutions under that legislation; **in so far as the placement on the market, putting into service or the use of the AI system is in direct connection with the provision of those financial services. When the placement on the market, putting into service or the use of the AI system is not in direct connection with the provision of financial services, or in justified circumstances and provided that coordination is ensured, another relevant authority may be identified by the Member State. National market surveillance authorities supervising regulated credit institutions shall report, without delay, to the European Central Bank any information identified in the course of their market surveillance activities that may be of potential interest for the European Central Bank's prudential supervisory tasks as specified in Council Regulation (EU) No 1204/2013 establishing the Single Supervisory Mechanism (SSM).**
5. For **high-risk** AI systems listed in point 1(a) in so far as the systems are used for law enforcement purposes, points 6~~2~~ and 7 and 8 of Annex III, Member States shall designate as market surveillance authorities for the purposes of this Regulation either **the national authorities supervising the activities of the law enforcement, immigration or asylum authorities systems**, or the competent data protection supervisory authorities under Directive (EU) 2016/680, or Regulation 2016/679 ~~or the national competent authorities supervising the activities of the law enforcement, immigration or asylum authorities putting into service or using those systems.~~
6. Where Union institutions, agencies and bodies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as their market surveillance authority.

7. Member States shall facilitate the coordination between market surveillance authorities designated under this Regulation and other relevant national authorities or bodies which supervise the application of Union harmonisation legislation listed in Annex II or other Union legislation that might be relevant for the high-risk AI systems referred to in Annex III.
- 8. Without prejudice to powers provided under Regulation (EU) 2019/1020, and where relevant and limited to what is necessary to fulfil their tasks, the market surveillance authorities shall be granted full access by the provider to the documentation as well as the training, validation and testing datasets used for the development of the high-risk AI system, including, where appropriate and subject to security safeguards, through application programming interfaces ('API') or other relevant technical means and tools enabling remote access.**
- 9. Market surveillance authorities shall be granted access to the source code of the high-risk AI system upon a reasoned request and only when the following cumulative conditions are fulfilled:**
- a) Access to source code is necessary to assess the conformity of a high-risk AI system with the requirements set out in Title III, Chapter 2, and**
- b) testing/auditing procedures and verifications based on the data and documentation provided by the provider have been exhausted or proved insufficient.**

Article 64

Powers of authorities protecting fundamental rights *Access to data and documentation*

- ~~1. Access to data and documentation in the context of their activities, the market surveillance authorities shall be granted full access to the training, validation and testing datasets used by the provider, including through application programming interfaces ('API') or other appropriate technical means and tools enabling remote access.~~

- ~~2. Where necessary to assess the conformity of the high-risk AI system with the requirements set out in Title III, Chapter 2 and upon a reasoned request, the market surveillance authorities shall be granted access to the source code of the AI system.~~
3. National public authorities or bodies which supervise or enforce the respect of obligations under Union law protecting fundamental rights in relation to the use of high-risk AI systems referred to in Annex III shall have the power to request and access any documentation created or maintained under this Regulation when access to that documentation is necessary for the fulfilment of the competences under their mandate within the limits of their jurisdiction. The relevant public authority or body shall inform the market surveillance authority of the Member State concerned of any such request.
4. By 3 months after the entering into force of this Regulation, each Member State shall identify the public authorities or bodies referred to in paragraph 3 and make ~~a~~ **the** list publicly available ~~on the website of the national supervisory authority~~. Member States shall notify the list to the Commission and all other Member States and keep the list up to date.
5. Where the documentation referred to in paragraph 3 is insufficient to ascertain whether a breach of obligations under Union law intended to protect fundamental rights has occurred, the public authority or body referred to paragraph 3 may make a reasoned request to the market surveillance authority to organise testing of the high-risk AI system through technical means. The market surveillance authority shall organise the testing with the close involvement of the requesting public authority or body within reasonable time following the request.
6. Any information and documentation obtained by the national public authorities or bodies referred to in paragraph 3 pursuant to the provisions of this Article shall be treated in compliance with the confidentiality obligations set out in Article 70.

Article 65

Procedure for dealing with AI systems presenting a risk at national level

1. AI systems presenting a risk shall be understood as a product presenting a risk defined in Article 3, point 19 of Regulation (EU) 2019/1020 insofar as risks to the health or safety or to ~~the protection of~~ fundamental rights of persons are concerned.
2. Where the market surveillance authority of a Member State has sufficient reasons to consider that an AI system presents a risk as referred to in paragraph 1, they shall carry out an evaluation of the AI system concerned in respect of its compliance with all the requirements and obligations laid down in this Regulation. When risks to ~~the protection of~~ fundamental rights are **identified present**, the market surveillance authority shall also inform the relevant national public authorities or bodies referred to in Article 64(3). The relevant operators shall cooperate as necessary with the market surveillance authorities and the other national public authorities or bodies referred to in Article 64(3).

Where, in the course of that evaluation, the market surveillance authority finds that the AI system does not comply with the requirements and obligations laid down in this Regulation, it shall without **undue** delay require the relevant operator to take all appropriate corrective actions to bring the AI system into compliance, to withdraw the AI system from the market, or to recall it ~~within a reasonable period, commensurate with the nature of the risk,~~ **within a period as** it may prescribe.

The market surveillance authority shall inform the relevant notified body accordingly. Article 18 of Regulation (EU) 2019/1020 shall apply to the measures referred to in the second subparagraph.

3. Where the market surveillance authority considers that non-compliance is not restricted to its national territory, it shall inform the Commission and the other Member States **without undue delay** of the results of the evaluation and of the actions which it has required the operator to take.
4. The operator shall ensure that all appropriate corrective action is taken in respect of all the AI systems concerned that it has made available on the market throughout the Union.

5. Where the operator of an AI system does not take adequate corrective action within the period referred to in paragraph 2, the market surveillance authority shall take all appropriate provisional measures to prohibit or restrict the AI system's being made available on its national market, to withdraw the product from that market or to recall it. That authority shall ~~inform~~ **notify** the Commission and the other Member States, without **undue** delay, of those measures.
6. The ~~information~~ **notification** referred to in paragraph 5 shall include all available details, in particular the ~~data~~ **information** necessary for the identification of the non-compliant AI system, the origin of the AI system, the nature of the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to one or more of the following:
- (-a) non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5;**
- (a) a failure of **a high-risk** AI system to meet requirements set out in Title III, Chapter 2;
- (b) shortcomings in the harmonised standards or common specifications referred to in Articles 40 and 41 conferring a presumption of conformity.
- (c) non-compliance with provisions set out in Article 52;**
7. The market surveillance authorities of the Member States other than the market surveillance authority of the Member State initiating the procedure shall without **undue** delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the AI system concerned, and, in the event of disagreement with the notified national measure, of their objections.

8. Where, within three months of receipt of the ~~information~~ **notification** referred to in paragraph 5, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified. This is without prejudice to the procedural rights of the concerned operator in accordance with Article 18 of Regulation (EU) 2019/1020. **The period referred to in the first sentence of this paragraph shall be reduced to 30 days in the case of non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5.**
9. The market surveillance authorities of all Member States shall **then** ensure that appropriate restrictive measures are taken in respect of the ~~product~~ **AI system** concerned, such as withdrawal of the product from their market, without **undue** delay.

Article 66

Union safeguard procedure

1. Where, within three months of receipt of the notification referred to in Article 65(5), **or 30 days in the case of non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5,** objections are raised by a Member State against a measure taken by another Member State, or where the Commission considers the measure to be contrary to Union law, the Commission shall without **undue** delay enter into consultation with the relevant Member State's **market surveillance authority** and operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide whether the national measure is justified or not within 9 months, **or 60 days in the case of non-compliance with the prohibition of the artificial intelligence practices referred to in Article 5, starting** from the notification referred to in Article 65(5). **It shall** and notify such decision to the Member State concerned. **The Commission shall also inform all other Member States of such decision.**

2. If the national **measure taken by the relevant Member State's market surveillance authority** is considered justified **by the Commission, the market surveillance authorities of** all Member States **shall ensure that appropriate restrictive measures are taken in respect of the AI system concerned, such as withdrawal of the AI system from their market without undue delay,** ~~shall take the measures necessary to ensure that the non-compliant AI system is withdrawn from their market,~~ and shall inform the Commission accordingly. If the national measure is considered unjustified **by the Commission, the market surveillance authority of** the Member State concerned shall withdraw the measure **and inform the Commission accordingly.**
3. Where the national measure is considered justified and the non-compliance of the AI system is attributed to shortcomings in the harmonised standards or common specifications referred to in Articles 40 and 41 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

Article 67

*Compliant **high-risk** AI systems which present a risk*

1. Where, having performed an evaluation under Article 65, the market surveillance authority of a Member State finds that although an **high-risk** AI system is in compliance with this Regulation, it presents a risk to the health or safety of persons; **or** ~~to the compliance with obligations under Union or national law intended to protect fundamental rights or to other aspects of public interest protection,~~ it shall require the relevant operator to take all appropriate measures to ensure that the AI system concerned, when placed on the market or put into service, no longer presents that risk, to withdraw the AI system from the market or to recall it **without undue delay** ~~within a reasonable period, commensurate with the nature of the risk,~~ **within a period** it may prescribe.
2. The provider or other relevant operators shall ensure that corrective action is taken in respect of all the AI systems concerned that they have made available on the market throughout the Union within the timeline prescribed by the market surveillance authority of the Member State referred to in paragraph 1.

3. The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the AI system concerned, the origin and the supply chain of the AI system, the nature of the risk involved and the nature and duration of the national measures taken.
4. The Commission shall without **undue** delay enter into consultation with the Member States **concerned** and the relevant operator and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide whether the measure is justified or not and, where necessary, propose appropriate measures.
5. The Commission shall address its decision to the Member States **concerned, and inform all other Member States**.

Article 68

Formal non-compliance

1. Where the market surveillance authority of a Member State makes one of the following findings, it shall require the relevant provider to put an end to the non-compliance concerned, **within a period it may prescribe**:
 - (a) the conformity marking has been affixed in violation of Article 49;
 - (b) the conformity marking has not been affixed;
 - (c) the EU declaration of conformity has not been drawn up;
 - (d) the EU declaration of conformity has not been drawn up correctly;
 - (e) the identification number of the notified body, which is involved in the conformity assessment procedure, where applicable, has not been affixed;
2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the high-risk AI system being made available on the market or ensure that it is recalled or withdrawn from the market.

TITLE IX

CODES OF CONDUCT

Article 69

Codes of conduct for voluntary application of specific requirements

1. The Commission, and the Member States shall ~~encourage and~~ facilitate the drawing up of codes of conduct intended to ~~foster~~ **encourage** the voluntary application to AI systems other than high-risk AI systems **of one or more of** the requirements set out in Title III, Chapter 2 **of this Regulation to the best extent possible, taking into account the available, technical solutions allowing for the application of such requirements.** ~~on the basis of technical specifications and solutions that are appropriate means of ensuring compliance with such requirements in light of the intended purpose of the systems.~~
2. The Commission and the ~~Board~~ **Member States** shall ~~encourage and~~ facilitate the drawing up of codes of conduct intended to **encourage** ~~foster~~ the voluntary application to **all** AI systems of **specific** requirements related, for example, to environmental sustainability, accessibility for persons with a disability, stakeholders participation in the design and development of the AI systems and diversity of development teams on the basis of clear objectives and key performance indicators to measure the achievement of those objectives. **The Commission and the Member States shall also facilitate, where appropriate, the drawing of codes of conduct applicable on a voluntary basis with regard to users' obligations in relation to AI systems.**
3. Codes of conduct **applicable on a voluntary basis** may be drawn up by individual providers of AI systems or by organisations representing them or by both, including with the involvement of users and any interested stakeholders and their representative organisations, **or, where appropriate, by users with regard to their obligations.** Codes of conduct may cover one or more AI systems taking into account the similarity of the intended purpose of the relevant systems.
4. The Commission and the Board shall take into account the specific interests and needs of ~~the small-scale~~ SME providers, including ~~and~~ start-ups, when encouraging and facilitating the drawing up of codes of conduct **referred to in this Article.**