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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representative Committee/Council

Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) **(first reading)**
- Adoption of the legislative act
= Statements

Statement by France

France welcomes the adoption of this innovative text, which will ensure that all European citizens have safe access to the innovations made possible by artificial intelligence and which constitutes the first building block of AI regulation on a global scale.

As we now enter the implementation phase of this Regulation, France would like to see it implemented within a framework conducive to the development of innovation in Europe, so that this regulation is truly part of a resolute European strategy to support the strengthening of a European AI innovation ecosystem.

France therefore reiterates its support for the European Commission's declaration made at the COREPER meeting on 2 February 2024, which provided in particular for:

- the establishment of expert groups and consultations with stakeholders to facilitate the joint implementation of the Regulation with other applicable sectoral regulations, in order to avoid any unnecessary administrative burden or redundancy for our businesses;
- the adoption of a model for a 'sufficiently detailed summary' of the data used to train general-purpose AI models and of guidelines for its use, to ensure a balance between protecting business confidentiality and facilitating the exercise of rights by copyright holders;
- a flexible and future-proof implementation of the Regulation, so that this legal corpus is amended and updated as necessary and to take technological advances into account, in particular for the classification parameters applicable to general-purpose AI models.

Statement by Austria

From the beginning of the negotiations, Austria has worked towards regulating artificial intelligence in a way that focuses on its safe use and its benefits for humans. A legal act of this kind must be in line with fundamental and human rights and help to promote confidence in artificial intelligence among those concerned.

It is noted that the compromise on the *Artificial Intelligence Act* has not fully dispelled certain concerns Austria has relating to data protection and consumer rights. These concerns are set out below:

- We question the substance of the decision to regulate the admissibility and the limits of law enforcement practices in a market regulation tool such as the Artificial Intelligence Act. The need to use artificial intelligence and the risks associated with its use vary significantly depending on whether it is used in a private/commercial environment or in the context of law enforcement.
- The exceptions laid down in Article 5(1)(h) regarding the use of ‘real-time’ remote biometric identification applications in publicly accessible spaces for the purpose of law enforcement are too far-reaching and are not in keeping with Austria’s understanding of proportionate interference with citizens’ fundamental rights. We recognise the inclusion of important safeguard clauses in the text during the negotiations. These, however, are not sufficient to dispel concerns about interference with fundamental rights, in particular with regard to the protection of citizens’ personal data.
- The use of ‘post’ remote biometric identification applications for the purpose of law enforcement also represents intense interference with citizens’ fundamental rights and should therefore have been included in the list of (strictly) prohibited practices laid down in Article 5. Their classification as high-risk AI applications does not correspond to the risk potential associated with the use of such applications.
- Similarly, the use of emotion recognition and biometric categorisation applications should have been included in the list of (strictly) prohibited practices laid down in Article 5, as they constitute intense interference with citizens’ fundamental rights. Their classification as high-risk AI systems does not correspond to the risk potential associated with the use of such applications.

- The exemption of participants in regulatory sandboxes from the imposition of fines, as provided for in Article 57(12), is not consistent with Article 83 GDPR, which does not provide for such an exemption in the event of data protection violations. To the extent that this constitutes an enforcement order to data protection supervisory authorities, it is contrary to Article 52 GDPR because national supervisory authorities must act with complete independence in the performance of their tasks under Article 52(1) GDPR and must be able to decide on the imposition of fines entirely independently.
- Article 59(1) provides for a blanket, indiscriminate and horizontal authorisation for the processing of any personal data in regulatory sandboxes. From a data protection perspective, this provision is too vague and therefore cannot constitute a legal basis for data processing. The re-use of personal data collected for a specific purpose for purposes that have no substantive or formal connection with the initial purpose is in no way foreseeable for the data subject. To the extent that the provision is intended to be a form of re-use that is ‘compatible’ within the meaning of Article 6(4) GDPR, it should be noted that Article 59(1) does not constitute a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1) pursuant to Article 6(4) GDPR. Moreover, the provision does not distinguish between special categories of personal data pursuant to Article 9(1) GDPR and other personal data. In Austria’s view, the processing of special categories of personal data is not permissible on the basis of Article 6(4) GDPR and runs counter to the risk assessment underlying the GDPR.
- Furthermore, Article 59(1) completely disregards the data protection principle of data minimisation pursuant to Article 5(1)(c) GDPR, because neither the scope nor the categories of personal data potentially processed in regulatory sandboxes are limited in any way.

- The authorisation to amend Annex III remains too narrow from a consumer policy point of view. If the European Commission should determine that applications such as connected products or virtual assistants warrant inclusion in the list of high-risk systems in accordance with Annex III, they would not fall under points 1 to 8 of Annex III and therefore could not be taken into account.
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