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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Artificial Intelligence Act - PowerPoint Presentation : Articles 56-59, 63-68

Delegations will find in annex the PowerPoint Presentation on Artificial Intelligence Act (Articles 56-59, 63-68) made by the Commission at the Telecommunications and Information Society Working Party on 26 October 2021.

PUBLIC

Proposal for AI Act: governance and enforcement (Artt. 56-59, 63-68)

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European Commission, CNECT A2

26 October 2021

Governance: overview

National level

Key role for implementation

▶ National competent authorities
(art. 59)



▶ Enforcement incl. cooperation with
authorities supervising fundamental
rights (artt. 63 - 68)



EDPS acts as a competent
authority for supervision of EU
institutions, bodies and agencies

European level

Coordination of implementation and
exchange

▶ Artificial Intelligence
Board (Artt. 56-58)



▶ EC as Secretariat for AI
Board



▶ Expert Group*



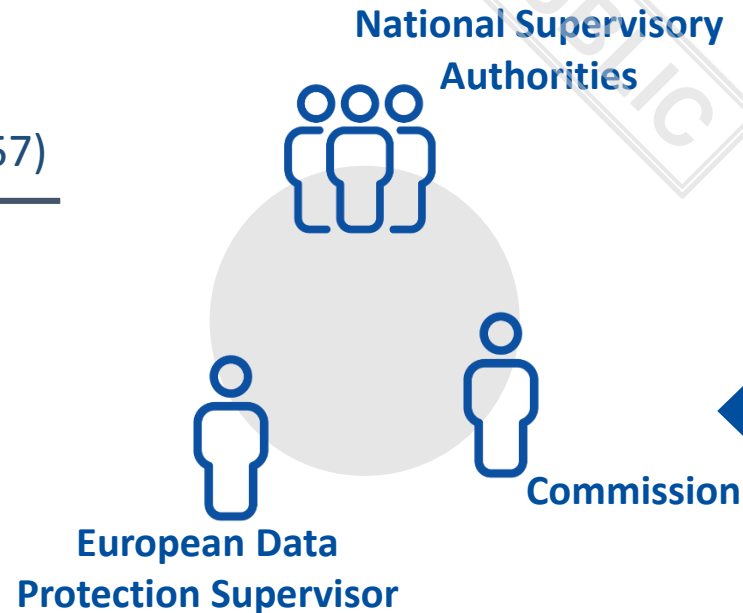
*Not foreseen in AIA proposal, but EC intends to introduce it in the implementation process

Governance: EU level

European AI Board

Structure and mandate (artt. 56 and 57)

- ▶ contribute to **effective cooperation** of national supervisory authorities and EC
- ▶ contribute to **guidance and analysis** on emerging AI issues
- ▶ assist in ensuring the **consistent application of the AI Regulation**



Other national authorities may be invited where the issues discussed are of relevance for them

The Board may invite **external experts and observers**

European Commission Secretariat of the Board

- ▶ Chair the Board
- ▶ Prepare/follow-up Board meetings
- ▶ Provide administrative and analytical support
- ▶ Facilitate exchanges between the Board and other Union bodies, offices, agencies and advisory groups



Subgroups

- ▶ The AI Board may establish sub-groups as appropriate for the purpose of examining specific questions

Tasks of the AI Board – Art. 58

When providing advice and assistance to the Commission, the Board may:

Collect and share expertise and best practices among Member States

Contribute to **uniform administrative practices in the Member States**, including for the functioning of regulatory sandboxes

Issue **opinions, recommendations or written contributions** on matters related to the implementation of the Regulation, in particular:

- on technical specifications or existing standards
- on the use of harmonised standards or common specifications
- on the preparation of guidance documents, incl. on setting administrative fines

Governance: national level

Member State designates

National
Competent
Authority/ies

National Supervisory Authority

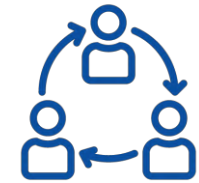
- Supervises the implementation and application of the AIA



Single Contact
Point

Representation

European
Commission



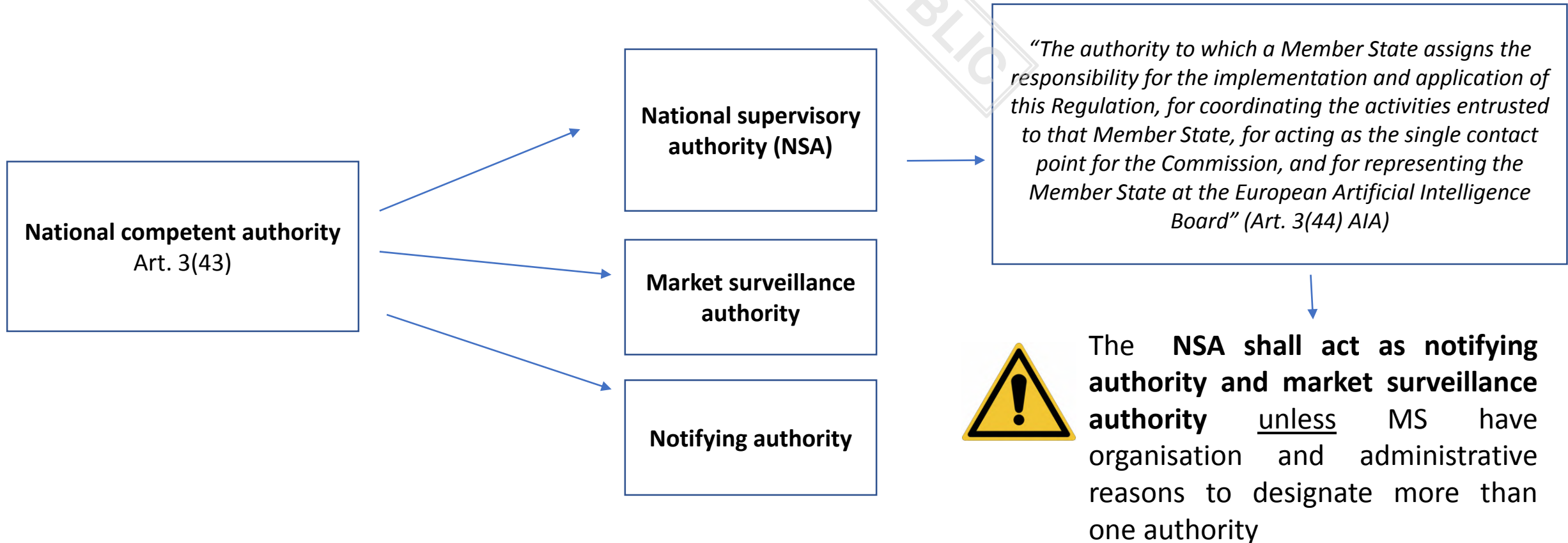
AI Board

Notifying Authority

Market Surveillance
Authority

Cooperate with national public
authorities supervising Union law
protecting fundamental rights

Governance: national level - additional considerations



- MS to safeguard the **objectivity and impartiality** of activities and tasks of authorities through appropriate organizational measures
- MS to ensure that authorities have **adequate financial and human resources** and must report to the EC on this subject on an annual basis

Art. 63: Market surveillance and control (1/2)

Regulation 2019/1020 on market surveillance (Market Surveillance Regulation – MSR) applies, with two important caveats:



- Any reference to **economic operators** under MSR shall be understood as including all **operators** under AIA – Art. 3(8) (i.e. including users)
- Any reference to **product** under MSR shall be understood as including all **AI systems** under AIA (e.g. including stand-alone software)

Background – Most relevant contents of MSR:

- Article 11: Activities of Market surveillance authorities (incl. independence)
- Article 14: Powers of market surveillance authorities
- Article 18: Procedural rights of economic operators
- Chapter IV: Mutual Assistance mechanisms between market surveillance authorities
- Article 32: Role and tasks of administrative cooperation groups
- Article 34: Information and communication system

Art. 63: Market surveillance and control (2/2)

Ad hoc considerations to streamline enforcement and avoid duplications:

- ▶ For **high-risk AI systems related to products to which legal acts listed in Annex II, Section A apply**, the market surveillance authority designated under those acts shall be responsible for the market surveillance activities under the AI Act
- ▶ For **high-risk AI systems placed on the market or put into service or used by financial institutions** regulated by EU legislation on financial services, the supervisory authority designated under that legislation shall be the market surveillance authority also for the purpose of the AI Act
- ▶ For **RBI for law enforcement and high-risk AI systems used for law enforcement, migration and asylum and border control (Annex III, 6-7)**, the responsible market surveillance authority under AIA shall be either the competent DPA or a national competent authority supervising the activities of the law enforcement, immigration or asylum authorities which put into service or use the systems in question
- ▶ The **EDPS** shall be the market surveillance authority in relation to Union institutions, agencies and bodies falling within the scope of the AIA

Art. 64: Access to data and documentation (1/2)

► Market surveillance authorities have power to access:

- Training, validation and testing datasets used by the provider
- Source code of the AI systems, subject to:

- a reasoned request
- access is necessary to assess the compliance of the system

(NB: in line with ongoing international negotiations related to source code protection)

Art. 64: Access to data and documentation (2/2)

► National public authorities or bodies supervising or enforcing EU law obligations protecting fundamental rights are entitled to :

► **Access any documentation created or maintained by the provider under AIA if:**

- 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 informs the responsible market surveillance authority

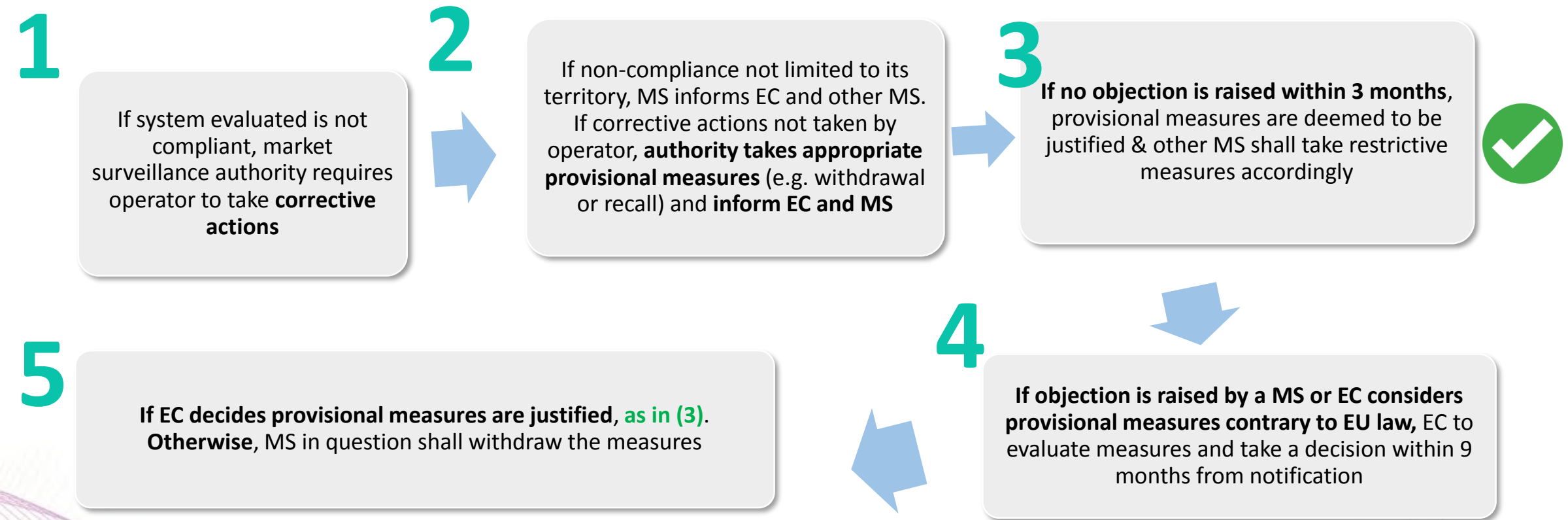
► **Request the market surveillance authority to organize (with its close involvement) the testing of an AI system if:**

- documentation obtained is insufficient to ascertain breach of obligations under Union law intended to protect fundamental rights
- reasoned request is made to market surveillance authority

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- These targeted provisions strengthen the enforcement of fundamental rights within the EU, without prejudice to the specific responsibility of the market surveillance authority for the enforcement of the AIA provisions
 - MS shall identify such national public authorities and bodies, communicate them to EC and other MS and make list public

Procedure for dealing with non-compliant AI systems presenting a risk – artt. 65 and 66

Art. 3(19) Market Surveillance Regulation: ‘product presenting a risk’ means a product having the potential to affect adversely health and safety of persons in general, health and safety in the workplace, protection of consumers, the environment, public security and other public interests, protected by the applicable Union harmonisation legislation, to a degree which goes beyond that considered reasonable and acceptable in relation to its intended purpose or under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements



Procedure for dealing with non-compliant AI systems presenting a risk – artt. 65 and 66

Additional considerations:

- ▶ If **risks to the protection of fundamental rights are present**, market surveillance authority shall also inform the relevant national public authorities or bodies which supervise fundamental right protection - Art. 65(2)
- ▶ When **non-compliance is linked to issues with harmonized standards**, EC shall apply procedure under Article 11 of Regulation 1025/2012 on standardisation (objection to HS) – Art. 66(3)

Artt. 67-68

Art. 67

Compliant AI systems which present a risk

- Procedure for situation where authority finds out that, **although the system is compliant with the Regulation, it nevertheless presents a risk to safety and fundamental rights**
- Authority shall require the operator to take all the necessary measures and informs EC and other MS accordingly
- EC shall without delay enter into consultation with MS and the relevant operators and evaluate the national measure taken

Art.68

Formal non-compliance

- **Cases of non-compliance:**
 - CE affixed in violation of Article 49,
 - CE not affixed,
 - declaration of conformity not drawn-up or or not drawn-up correctly;
 - identification number of notified not affixed correctly
- Market surveillance authority asks operator to put an end to non-compliance
- If non-compliance persists, the authority may take the necessary measures (e.g. restrict/prohibit making available or recall/withdrawal)