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WORKING PAPER

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Artificial Intelligence Act - FI comments on 1st part of 3rd compromise proposal (doc. 12206/1/22 REV 1; Arts 1-29, Annexes I-IV)

Delegations will find in the Annex the FI comments on 1st part of 3rd compromise proposal on Artificial Intelligence Act (doc. 12206/1/22 REV; 1 Arts 1-29, Annexes I-IV).

MEMBER STATE comments on first part of third compromise proposal on AIA
(document 12206/1/22 REV 1; Arts 1-29, Annexes I-IV)

Reference	Third compromise proposal	Drafting suggestion	Comment
Article 2		3aa. This Regulation shall not apply to use of AI systems by natural persons in the course of a purely personal or household activity.	FI has previously suggested to exclude the use of AI systems for non-professional or household activities from the scope of AI Act. This would be in line with the scope of GDPR Art. 2(2)(c). Natural persons should not be subject to burdensome requirements or harsh administrative fines of the Act. It is important to clarify what are the AI Act's implications on natural persons.
Article 3(4) and Recital 6(d)	'user' means any natural or legal person, <u>including a</u> public authority, agency or other body, using an AI system under its <u>under whose</u> authority <u>the system is used;</u> except where the AI system is used in the course of a personal non-professional activity;	'user' means any natural or legal person, <u>including a</u> public authority, agency or other body, using an AI system under its <u>under whose</u> authority <u>the system is used;</u> , except where the AI system is used in the course of a personal non-professional activity;	In Article 2, FI suggests to exclude use of AI systems for non-professional or household activities from the scope of AI Act. This should be also reflected in the definition of 'user'. Therefore, FI prefers to keep the original wording in Article 3(4). It should be also considered whether "deployer" is a more appropriate definition than "user". We would also like to ask what 'under its authority' means in Article 3(4).
Article 6(3)	3. AI systems referred to in Annex III shall be considered high-risk if in any of the following cases: (a) the output of the system is immediately effective with	(3) AI systems referred to in Annex III shall not be considered high-risk <u>if in any of the following cases:</u>	FI has concerns on removing text in points a and b in paragraph 3 because these amendments may not help to narrow down sufficiently the high-risk AI systems in Annex III. We propose to amend the wording in point b so that it is

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	<p>respect to the intended purpose of the system without the need for a human to validate it;</p> <p>(b) the output of the system consists of information that constitutes the sole basis or is not purely accessory in respect of the relevant action or decision to be taken by the human, and may therefore lead to a significant risk to the health, safety or fundamental rights.</p> <p>In order to ensure uniform conditions for the implementation of this Regulation, the Commission shall, no later than one year after the entry into force of this Regulation, adopt implementing acts to specify further the purely accessory nature of the information across the relevant high-risk AI systems referred to in Annex III. Those implementing acts shall be adopted in accordance with the examination</p>	<p>(a) the output of the system is immediately effective with respect to the intended purpose of the system without the need for a human to validate it;</p> <p>(b) the output of the system consists of information that constitutes the sole basis or is not purely accessory in respect of the relevant action or decision to be taken by the human, and may therefore lead to a significant risk to the health, safety or fundamental rights.</p> <p>In order to ensure uniform conditions for the implementation of this Regulation, the Commission shall, no later than one year after the entry into force of this Regulation, adopt implementing acts issue guidelines in accordance with Article 58a to specify further on assessing the purely-accessory nature of the information across the relevant high-risk AI systems referred to in Annex III. Those implementing acts shall be</p>	<p>not in a negative form – this would help to clarify the paragraph.</p> <p>We are unsure whether “<i>purely</i>” <i>accessory</i> is an appropriate wording in this paragraph. Therefore, we suggest to remove the word “purely” for clarity.</p> <p>We suggest to replace the Commission’s implementing acts by Commission’s guidelines (under Article 58a) on assessing the accessory nature of the information across the relevant high-risk AI systems referred to in Annex III. We find the Commission’s implementing acts a wrong instrument to provide for this issue in the AI Act. The classification of AI systems as high-risk may also become unnecessarily too complex if the Commission has powers to adopt implementing acts under this paragraph.</p>

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	procedure referred to in Article 74, paragraph 2.	adopted in accordance with the examination procedure referred to in Article 74, paragraph 2.	
Article 7(1)	The Commission is empowered to adopt delegated acts in accordance with Article 73	The Commission is empowered to adopt implementing delegated acts in accordance with Article 74 Article 73	FI prefers implementing acts to delegated acts.
Annex III category 2(aa)			FI has a reservation on including critical digital infrastructure in Annex III. There are no sufficient impact assessments on this inclusion. Issues of critical infrastructure have also a close link to national security.
Annex III category 5a.			FI finds category 5a too broad. It should be clarified which public services are included in this category for legal certainty. We have open questions whether statutory insurances or taxation falls into this category. Finland supports adding the word “essential” to this category.

For specifying the relevant provision, please indicate the relevant Article or Recital in 1st column and copy the relevant sentence or sentences as they are in the current version of the text in 2nd column. For drafting suggestions, please copy the relevant sentence or sentences from a given paragraph or point into the 3rd column and add or remove text. **Please do not use track changes**, but highlight your additions in yellow or use ~~strikethrough~~ to indicate deletions. You do not need to copy entire paragraphs or points to indicate your changes, copying and modifying the relevant sentences is sufficient. For providing an explanation and reasoning behind your proposal, please take use of 4th column.