

NON – PAPER ON AI GOVERNANCE AND THE WIDER CONTEXT OF GOVERNANCE OF EU’S DIGITAL RULEBOOK

This non-paper is a joint non-paper of Belgium, Bulgaria, Latvia, Slovakia and Slovenia. It is a follow up to the series of Slovakia’s expert workshops on AI governance and wider context of governance of the EU’s digital rulebook held on 6 – 8 September 2022 and to Slovakia’s earlier non-paper on AI governance distributed in December 2021.

AI is globally becoming an important competitive differentiator and a key factor for stability of our societies. In order to create a functioning governance model for AI which will also fit into the wider governance of the EU’s new digital rulebook, we need to be both innovative and ambitious. All digital spheres, such as data management, IoT, digital platforms, digital finance etc. “meet” together in AI technology as they either enable AI itself or are powered by AI. In order to get AI governance right, we need to see the whole of picture of digital governance and make it efficient and meaningfully interconnected.

We see a need for stronger governance at EU level to support the Member States in the application of AIA. Effective enforcement is an issue of general concern also in a wider digital sphere and should be addressed coherently and continuously at EU level.

Once set up, governance structures tend to last. In the future, complexities of EU legislative processes as well as institutional inertia may make it very difficult to revisit and reform thoroughly the governance model for AI on which we agree today.

We support the ambition of the CZ PRES to achieve a general approach on the proposed Artificial Intelligence Act (“AIA”) in the Council by the end of 2022. Before we do so, we believe we need to improve the governance of AI under AIA. Issues and approaches below could also be relevant for other digital policies and we recommend taking them into account in the ongoing negotiations and reviews of other EU’s digital acts, to ensure consistency.

Proposals related to the governance structure as set up in the AIA Act

- 1) Create a **permanent supporting mechanism on EU level** at the AI Board or the European Commission to help national competent authorities on an *ad hoc* basis to apply AIA as regards both technical assessments of AI systems and interpretation of EU law. Such supporting mechanism should be a mandatory part of EU’s governance structures under AIA, should aim at a creation of a truly unified framework on the internal market and should operate continuously. When considering its operational framework we should not shy away from considering new ways of effective teamwork enabled by digital tools operating remotely. The recently proposed use of ADCO structure goes in the right direction. However, we need to make sure that such structure of cooperation is able to respond quickly and continuously (*ad hoc*) to the needs of the national competent authorities and can directly benefit from work of central pool of independent experts.

- 2) Ensure **close cooperation between all relevant EU and national competent authorities envisioned under AIA** (under both Annex II and Annex III) and leave a room for maneuver – in AIA and also other EU digital acts - for the Member States to create cooperation mechanisms or even to integrate national authorities under all EU digital rulebook's acts.
- 3) Secure a **continuous analysis and assessment of systemic risks of AI systems by the AI Board and/or the Commission** as regards their mutual interactions and impacts on society, economy, safety, security, health and fundamental rights. Such analysis and assessment may be inspired by the work of the existing European Systemic Risk Board under the European System of Financial Supervision.
- 4) Set up a **dialogue between the relevant civil authorities and national security authorities** on both national and EU level in order to ensure information sharing and compatibility of approaches taken. This is without prejudice to the exemption of the domain on national security from the scope of AIA.

Proposals for the future implementation of the AI Act and the wider EU's digital rulebook:

- 1) Create institutional conditions and mechanisms for **close and mandatory cooperation between AIA governance structures and other governance structures under wider EU's digital rulebook** (DSA, DA, DGA, sectoral European Data Spaces, DMA, GPSR, GDPR, MiFID, MiFIR, DORA, MiCA, and the European Standardisation Strategy etc.).
- 2) Prepare a **clear guidance for the Member States on the precise required degree of independence, impartiality and objectivity and their practical implications for the new governance structures under AIA and other EU digital acts** (in line with the jurisprudence of CJEU) so that these can be taken into account when Member States consider a possible integration of these governance structures on national level. At the minimum, the required status of authorities pursuant to article 63 (3-5) shall be explicitly specified in AIA.
- 3) Prepare in advance a **contingency governance plan for possible bottlenecks in the conformity assessment of all relevant AI systems** resulting in shortages on the market or other complications, as well as possible complications in ex-post market surveillance, while taking into account already available lessons learned from the conformity assessments of software under the Medical Device Regulation.



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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 - BE, BG, LV, SK, SI revised non-paper on AI Governance

Delegations will find in the Annex the BE, BG, LV, SK, SI revised non-paper on AI Governance.