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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	(Digital Omnibus on AI) - MS comments on the second Presidency compromise text - deadline 26 Feb. 2026 - DE and IT (bis)

Following the written consultation launched on 18 Feb. 2026 on the second Presidency compromise text, delegations will find below additional comments from the following Member States: DE (explanatory note and sugestions) + IT

Germany submitted a position paper on 23.10.2025. The positions therein remain the position of the German government. However, taking into consideration the request of the presidency to submit written comments following the Antici Group meeting on 18.2.2026 with regard to the presidency's second compromise text, Germany submits these written comments. Due to the advanced stage of the discussions, the Germany would like to stress **key priorities that are currently not sufficiently reflected in the presidency's text** and that require swift amendments in the legal text of the AI Act.

1. We request staggered deadlines for the transparency obligation under article 50 (2)

Regarding the transparency obligation (point 30 of the Compromise Text), we have examined the proposed grace period regarding that obligation in general. The German government is of the view that article 50 is important for democracy and free speech online, which is why a quick entry into force is crucial. At the same time, it is problematic that the implementation process with the Code of Practice is delayed. Companies need time to implement the requirement. This is why the German government is of the view that **for specific B to B contexts, a delayed deadline schedule is justifiable and necessary** to prevent uncertainties in industrial operations.

This is why we propose staggered deadlines, whereas article 111, as proposed by the presidency, is amended as follows:

> *"(b) the following paragraph 4 is added:*
>
> 4a. Providers of AI systems, including general-purpose AI systems, generating synthetic audio, image, video or text content, that have been placed on the market before 2 August 2026 shall take the necessary steps in order to comply with article 50(2) by 2 February 2027.
>
> ***4b. Providers of AI systems, including general-purpose AI systems, generating synthetic audio, image, video or text content, whose intended purpose is exclusively for industrial applications, shall take the necessary steps in order to comply with article 50(2) by 2 August 2027**."*

2. We must ensure material coherence between the AI Act and Sectoral Legislation (*lex specialis rule*)

The AI Act is intended to set fundamental rules for AI systems. These rules are often basic or very general. There are product sectors (e.g. Medical devices) which are already or – in the near future – will be subject to more specific rules & requirements (compared with the AI Act rules) relating to AI-based products. It is critical that **companies applying both horizontal requirements of the AI Act as well as sectoral requirements of Union harmonisation legislation can clearly discern applicable requirements**. It is essential that we provide clarity and avoid unnecessary bureaucracy for our companies. We are currently examining the implications for industrial companies due to recent questions arising from the industry that relate to legal uncertainties.

Therefore, a ***lex specialis* rule** is **necessary** to avoid that for the same product multiple rules & requirements are applicable, even where these rules & requirements only differ slightly contextually (e.g. two slightly differing quality management systems). This is why Germany requests to include a *lex specialis* rule by adding a new paragraph 2a in article 8:

> *"The requirements of Chapter III, Sections 2 and 3, or Chapter IX, Sections 1, 2 and 3, are deemed to be fulfilled as long as these requirements or obligations are addressed in specific provisions with the same objective in the Union harmonisation legislation listed in Annex I, Section A, and the applicable requirements or obligations therein are met by the provider. The respective conformity assessment shall be carried out as part of the procedures laid out under Union harmonisation legislation listed in Annex I, Section A."*

Moreover, to ensure that **companies are not bogged down by obligations that do not concern risks actually related to their AI systems in practice or that in effect lead to a duplication of efforts**, we propose the following specific amendments:

With regard to the **Fundamental Rights Risk Assessment,** insert new article 9 para 11:
"The obligation to carry out risk management measures referred to in paragraph 2 (a) does not apply with regard to risks to fundamental rights that are obviously not directly affected by the intended purpose of the AI system or that are already addressed in the Union harmonisation legislation listed in Annex I, Section A."

With regard to the **Quality Management system**, insert new article 17 para 5:
"For providers of AI systems according to article 6 paragraph 1 of this Regulation that are subject to the EU Machinery Regulation (EU) 2023/1230, the obligation to put in place a quality management system, with the exception of paragraph 1, points (g), (h) and (i) of this Article, shall be deemed to be fulfilled by complying with the conformity assessment procedure according to Annex IX of Regulation (EU) 2023/1230."

Notwithstanding the above, concerns persist as to whether several obligations under both the AI Act and the Machinery Regulation are coherent. To address this, the German Government requests that the Commission be required to examine the coherence between these two regulatory acts within the existing AI Subgroup on Interplay with a view to issuing guidelines for market surveillance authorities as well as providers and deployers of AI systems that constitute safety components of products falling within the scope of the Machinery Regulation. These guidelines are intended to provide market surveillance authorities and providers with practical assistance for the interaction between the two legal acts and should address the following issues *inter alia*: risk management (article 9), accuracy, robustness, cybersecurity (article 15) and human oversight (article 14). The guidelines should be published at the very least one year before entry into force of article 6 para 1 obligations.

3. There must be better alignment with existing sectoral legislation

Further **regulatory privileges should be considered in areas already governed by sector-specific legislation** (see e.g. articles 17 para 4 or 18 para 3 and 19 para 2). This approach effectively reduces double requirements under multiple legal acts. We propose identifying further instances where the AI Act can reference existing sectoral regulation.

For instance, there is overlap between the cybersecurity requirements of the AI Act (article 15) and other EU cybersecurity legislation such as the Digital Operation Resilience Act (DORA). We request the following changes:

- A new paragraph 6 should be added to article 15 whereunder the **cybersecurity requirements** under the AI Act are automatically met if the provider complies with cybersecurity requirements under DORA. The same applies to **risk management** requirements under this Regulation (article 9) and the respective obligations under DORA (see our comments in the table document).
- A further example: Deployers of high-risk AI systems must report **serious security incidents to the MSA** (see article 26 para 5). However, most companies must already report serious ICT incidents under sectoral laws such as DORA. We therefore request **clarification** in article 26 para 5 that fin**ancial companies have fulfilled their reporting obligati**on under article 26 if they have submitted an **incident report under DORA** (see comments in table document).

4. We request specific changes with regard to conformity assessments and notified bodies

a. To make sure that the objective of a **single application procedure** is reached by the Omnibus proposal, in article 1 (10) the following deletions concerning article 28 (8) are needed, because the **referenced legislation does not foresee a single application** and single assessment procedure:

*"8. Notifying authorities designated under this Regulation (…) undergo a single assessment procedure to be designated under this Regulation and Union harmonisation legislation listed in Section A of Annex I, **~~where~~***

~~the relevant Union harmonisation legislation provides for such single application and single assessment procedure.~~

The single application and single assessment procedure (…) when those notified bodies apply for designation under this Regulation~~, provided that the relevant Union harmonisation legislation provides for such a procedure~~."

b. Additionally we reject the Commission's proposal to amend Article 43 para 3. The provision does not describe any interim or transitional phase. This is why we ask for the **deletion of the limitation by a deadline in Article 43 para 3 sub-para 2**.

c. Furthermore, we ask for **deletion of Article 30 para 2 and Annex XIV establishing the NANDO codes**. The majority of the fully harmonized product regulations use different procedures for determining NANDO codes, namely: outside of the respective regulation. This ensures future flexibility.

d. **Only if the NANDO codes are retained**, at the very least, we request that **AIH codes be abolished**. They contradict the AI Act's technology-neutral, application-based approach, are technically unclear, and would add needless bureaucracy in designating testing bodies. AI systems cannot be clearly separated by technology. Terms such as "agentic" or "generative AI" are fluid and vague. They create legal uncertainty and broad designation scopes. What matters is application-specific testing expertise, not nominal links to fast-changing technologies. During the current implementation phase, AIH codes would increase procedural complexity, costs, delays, undermine simplification goals and timely availability of notified bodies. In this implementation phase, AIH codes risk adding bureaucracy without clear benefit. Most products would fall under multiple codes, complicating competence verification, prolonging designation & certification procedures, increasing costs and exacerbating the shortage of notified bodies. We therefore **request deleting Annex XIV, Section 2, Subsection 3 (new)** alongside consequential amendments to Annex XIV, Sections 1, 2 and 3 (new) and article 30 para 2 (new):

(12) in Article 30, paragraph 2 is replaced by the following:

'2. Notifying authorities shall notify the Commission and the other Member States, based on the list of codes~~, categories, and corresponding types of AI systems~~ referred to in Annex XIV, and using the electronic notification tool developed and managed by the Commission, of each conformity assessment body referred to in paragraph 1.

The Commission is empowered to adopt delegated acts in accordance with Article 97 to amend Annex XIV, in the light of technical progress, advances in knowledge or new scientific evidence by adding to the list of codes~~, categories, and corresponding types of AI systems~~ a new code~~, a category or a type of AI system,~~ withdrawing an existing code~~, category or a type of AI system~~ from that list~~ or moving a code or type of AI system from one category to another.'~~

(33) the following Annex XIV is added:

'Annex XIV
The list of codes~~, categories and corresponding types of AI systems~~ for the purpose of the notification procedure referred to in Article 30 specifying the scope of the designation as notified bodies

1. Introduction
Conformity assessment of high-risk AI systems under this Regulation may require involvement of conformity assessment bodies. Only conformity assessment bodies that have been designated in accordance with this Regulation may carry out conformity assessments ~~and only for the activities related to the types of AI systems concerned~~. The list of codes~~, categories, and corresponding types of AI systems~~ sets the scope of the designation of conformity assessment bodies notified under Article 30 of this Regulation.

2. List of Codes~~, categories, and corresponding AI systems~~

1. AI systems subject to Annex I of the AI Act
[LIST OF CODES]

2. AI systems subject to Annex III.1 of the AI Act
[LIST OF CODES] ***Delete rest***

3. Application for designation
Conformity assessment bodies shall use the lists of codes~~, categories and corresponding types of AI systems~~ set out in this Annex when specifying the types of AI systems in the application for designation referred to in Article 29 of this Regulation.'

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5. We request clarification of important definitions / concepts

Key definitions and concepts must be clarified, particularly the notion of a "provider." It should be made explicit that an entity does not become a provider of an AI model merely by making that model available to other entities within the same corporate group. This clarification should be introduced in the definition of "provider" (article 3 para 3) or "placing on the market" (article 3 para 9). At the same time, it must be ensured that provider obligations apply once an AI model is placed on the market, i.e. when it becomes available outside the corporate group.

A clear and legally certain definition of the **point at which an entity becomes a provider** should be established, e.g. in article 53. This definition should specify that a company purchasing and fine-tuning a general-purpose AI model (or having it fine-tuned) and subsequently using it in AI systems, qualifies as a provider of the AI model if the **compute resources used for the modification exceed one third of the training compute of the original model**. Clarification should also be provided that the **determination of provider status in such cases is without prejudice to existing copyright law**.

For the sake of greater legal clarity, we also suggest amendments to **harmonise the definition of "biometric data"** (article 3 point 34) with GDPR's definition of the same term and ensure greater quality of the Commission's guidelines (article 6 para 5 and article 96 para 2).

The guidelines on AI systems should be updated in a timely manner, *inter alia* to clarify that systems primarily based on simple statistical models (such as linear logistic regression) do not qualify as AI systems under the AI Act and are therefore excluded from its scope.

6. With regard to AI Systems relating to nude content and child pornography

Germany **supports** the requests by FR and ES to include **prohibitions relating to AI systems that generate**, alter or reproduce sexually explicit or nude content and child sexual abuse material. We would like to stress that it is crucial to ensure that any such provision is restricted to AI systems (article 5) that are ***intended*** **for such purposes**.

7. We request clarification of the two research exemptions

In article 2 paras 6 and 8, the AI Act contains **research related exemptions**. To **clarify their scope of application**, these should be amended as follows:

Deletion of "sole" in article 2 par 6: "This Regulation does not apply to AI systems or AI models, including their output, put into service for the ***~~sole~~*** *intended purpose of scientific research and development."*

Inclusion of testing under real world conditions in the research exemption in article 2 para 8: *"This Regulation does not apply to any research, (…) market or put into service****, including testing under real world conditions****. Such activities (…) by that exclusion."*

In any case, clear criteria should be provided for when these exemptions apply. Moreover, the applicability of the research exemptions for open-source models should be legally clarified: When researchers open-source their general-purpose AI models, this must not constitute a "placing on the market".

8. No centralization of market surveillance for areas where sector-specific market surveillance exists

We **support the consolidation of market surveillance for VLOPs and VLOSEs at the AI Office** in general. We also believe it to be important that the AI Office oversees AI systems developed by providers of GPAI models with systemic risk as long as these AI systems are not covered by Annex I. We recognize that the proposal may unburden national market surveillance authorities.

However, we continue to remain **skeptical of centralization of oversight of AI systems within the AI Office where it would displace established sector-specific supervisory authorities**, such as in the financial sector. These sectors should be granted the same exemption from centralization as Annex I. As GPAI development spreads across sectors more systems would shift from national oversight to the AI Office, undermining the AI Acts decentralized approach and smooth integration into existing structures. Additionally, Art. 75 would arbitrarily change supervisory responsibility based on the model´s developer rather than the system´s risk resulting in fragmented oversight.

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Additional Comments on the Second Presidency compromise text (Digital Omnibus on AI)

From ITALY

IT would also propose to the Presidency to postpone the sandbox and align its start date with that of high-risk systems (2 December 2027), with the aim is to provide greater legal certainty and predictability for operators, and to allow competent authorities to offer coherent regulatory guidance to sandbox participants.

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