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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	8115/20
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - Progress report

I. INTRODUCTION

1. The Commission adopted the proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act, AIA) on 21 April 2021¹.

¹ doc. 8115/21.

2. The objectives of the Commission proposal, which is based on Articles 16 and 114 TFEU, are to ensure that AI systems placed on the Union market and used in the Union are safe and respect existing law on fundamental rights and Union values, to ensure legal certainty to facilitate investment and innovation in AI, to enhance governance and effective enforcement of existing law on fundamental rights and safety, and to facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation.
3. In the European Parliament, the proposal was assigned to the Committee on Internal Market and Consumer Protection (IMCO). The rapporteur for the file is Brando Benifei (S&D, Italy). The IMCO Committee has not yet adopted its report.
4. Due to the delayed availability of the linguistic versions of the proposal, the European Economic and Social Committee and the European Committee of the Regions have not yet been consulted on the proposal. The formal requests for opinions are expected to be sent to both institutions in the last week of June 2021.

II. WORK WITHIN THE COUNCIL

5. In the Council, the examination of the proposal has been launched in the Working Party on Telecommunications and Information Society (hereinafter: WP TELECOM), with a view to a later submission of the file for analysis and decision by the TTE Telecom Council. The first high-level presentation of the proposal by the Commission to WP TELECOM took place during its meeting on 22 April 2021. The Commission complemented this initial presentation with a brief overview of the 2021 review of the Coordinated Plan on Artificial Intelligence².

² doc. 8334/21 ADD 1.

6. The impact assessment accompanying this proposal³ was presented by the Commission and examined in detail during the WP TELECOM meeting on 6 May 2021. The examination showed that delegations generally supported the aim of the proposal, as well as the methods, criteria and policy options identified by the Commission.
7. The analysis of the proposal was continued in the WP TELECOM during the meetings held on 20 and 28 May 2021 and on 9 June 2021. During those meetings the Commission presented in detail the following parts of the proposal:
- Title III, Chapter 2 (*Requirements for high-risk AI systems*);
 - Article 52 (*Transparency obligations for certain AI systems*) and Article 69 (*Codes of conduct*);
 - Article 3(1) with Annex I (*Definition of AI system*), Article 3 (2-4) (*Definition of provider and user*) and Article 2(1) (*Scope*).
8. Furthermore, on 8 June 2021 the Presidency organized, with the support of the Commission, a dedicated workshop aiming to present and discuss with the Member States some key regulatory choices and building blocks of the proposed AIA. The workshop consisted of three blocks devoted to the following topics:
- The regulatory approach of the AIA (rationale of horizontal approach, internal market legal basis, two core characteristics: risk-based and future-proof, the AIA as a New Legislative Framework piece of legislation);
 - Relationship with other EU legislation (GDPR, Law Enforcement Directive, fundamental rights *acquis*, product liability law, Cybersecurity Act, proposal for a Data Governance Act, proposal for a Digital Services Act); and
 - Requirements and standardisation in New Legislative Framework legislation (the role of standardisation, the standardisation process, Commission's preliminary strategy on standardisation, the relationship between legal requirements and standards).

³ docs. 8115/21 ADD 2 and 8115/21 ADD 3

9. On 8 June 2021, during the Justice and Home Affairs Council, the Ministers held an exchange of views of the AIA proposal, with a view to make a preliminary assessment of the impact of some relevant parts of the proposed regulation regarding law enforcement use of AI tools in the future.

III. MAIN ISSUES

10. Based on the discussions in the WP TELECOM level held so far and the dedicated workshop, which was appreciated by the delegations, the Presidency has identified general support among the Member States for the overall objectives of the proposal and its approach as regards the parts that were debated. However, the discussions are still at a very early stage and only very limited written input has been provided by the delegations. Most have been keen to emphasise that since the proposal is highly technical, transversal and complex, developing national positions will take some time.
11. Regarding the parts that have been presented and discussed, the following points have been identified by the Presidency as potentially more complex issues that will require further analysis⁴:

a) Definition of an AI system and scope

While acknowledging the complexity of the task and its importance for legal certainty, some delegations have indicated that the definition of an AI system as provided in Article 3(1) in conjunction with the list of approaches and techniques in Annex I may be too broad, since it could potentially include more traditional software systems that should not fall under the scope of the proposal. This could lead to the application of the AIA where it would not be proportional. In order to facilitate a comprehensive assessment of this highly technical matter, several delegations stressed that direct exchanges between Commission experts and national experts in a dedicated workshop would be very helpful.

⁴ This is without prejudice to the remaining parts of the AIA proposal which have not yet been presented or discussed in detail in the WP TELECOM.

One delegation enquired whether there are any precedents for the decision to place some elements of the definition of an AI system in an annex, which could be updated by the Commission through delegated powers.⁵

b) Requirements for high-risk AI systems

Many delegations have indicated that the requirements for high-risk AI systems, as provided in Chapter 2 of Title III of the proposal, are sometimes slightly vague and may need to be better defined. To make it less burdensome for businesses to comply, some practical guidance on how to meet them would need to be provided, for instance as regards quality and suitability in the context of the requirements concerning data, and an appropriate type and degree of transparency in the context of information to users.⁶ The interplay between the requirements for high-risk AI systems as set out in the proposal and the future relevant standards, which was subject of the workshop organised by the Presidency with the Commission, was also raised as a key topic that would require further discussions.

IV. CONCLUSION

The COREPER is invited to take note of this progress report from the Presidency.

⁵ The Commission explained the importance of ensuring that the Regulation is future proof and can be swiftly adapted in line with new technological developments, and referred as an example to adaptations via delegated acts to similarly highly technical proposal on Markets in Crypto-assets (COM(2020)593, 2020/265 (COD)).

⁶ The Commission explained that the legal drafting of the AIA is consistent with New Legislative Framework legislation and that standards will operationalize the requirements and facilitate compliance. Furthermore, it referred to Chapter 3 of Title III, not discussed yet, which clarifies the obligations for economic operators.