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POSITION PAPER · FEEDBACK TO THE EUROPEAN COMMISSION

Draft Commission Implementing Regulation under Articles 75c and 75d of the AI Act

'Have your say' initiative No 19292 · Ref. Ares(2026)9589403

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SUBMISSION

The authors of this document, Francesca Donato, lawyer and former MEP, and Giulia Arangüena, lawyer, both of ADLP Studio Legale, Rome, jointly and in their personal capacity, submit the following feedback to the European Commission regarding the proposal for a Commission Implementing Regulation (EU) (Ref. Ares(2026)9589403, published for feedback on 12 October 2026 under 'Have your say' initiative No 19292; the **'Draft Proposal'**) on practical and specific arrangements for the conduct of certain proceedings by the Commission pursuant to Article 75c and Article 75d of Regulation (EU) 2024/1689 of the European Parliament and of the Council (the **'AI Act'**), as amended by Regulation (EU) 2026/1744 (the **'Digital Omnibus on AI'**).

The authors' comments and suggestions are set out in the attached position paper.

Method of analysis

The Draft Proposal has been examined having regard to the implementing powers conferred by Articles 75d and 75c of the AI Act, as introduced by the Digital Omnibus on AI, and by reference to Regulations (EU) 2023/814 (the **'DMA Implementing Regulation'**), which implements Regulation (EU) 2022/1925 (the **'DMA'**), and 2026/1755 (the **'GPAI Implementing Regulation'**, implementing the AI Act for proceedings against providers of general-purpose AI models).

Introduction and scope

The Draft Proposal is intended to set out the procedural framework applicable to the operators referred to in Article 75(1) of the AI Act, namely providers of AI systems based on a general-purpose AI model (**'GPAI model'**, as defined in Article 3(63) of the AI Act) of the same provider or of providers forming part of the same undertaking, and providers of AI systems that constitute or are integrated into very large online platforms or very large online search engines (**'VLOPs'** and **'VLOSEs'**) designated in accordance with Regulation (EU) 2022/2065 (the **'DSA'**). Providers of GPAI models themselves remain subject, in fining proceedings, to the distinct procedural regime laid down in Article 101 of the AI Act and in the GPAI Implementing Regulation, adopted, inter alia, under the broader empowerment of Article 101(6). The resulting dual procedural track raises questions of consistency and legal certainty, both for the same undertaking subject to the two regimes and, where a system integrated into a VLOP or VLOSE relies on another provider's GPAI model, for different providers involved in the same matter, who would enjoy unequal safeguards. Where the AI system constitutes or is integrated into a VLOP or VLOSE, a third regime may also apply to the provider of the platform or search engine, namely that of the DSA, with its own implementing rules (Commission Implementing Regulation (EU) 2023/1201) and a minimum of 14 days for observations on the preliminary findings (Article 79(2) of the DSA).

The Draft Proposal also exercises the empowerment conferred by Article 75d(3), as supplemented by Article 75c(8). The Draft Proposal largely transposes the procedural model of the DMA Implementing Regulation, already replicated in the GPAI Implementing Regulation, without adapting it either to the narrow empowerment in Article 75d(3) or to addressees who are not gatekeepers. When exercising implementing powers, the Commission may neither amend nor supplement the basic act, even as to its non-essential elements (judgment of 15 October 2014, *Parliament v Commission*, C-65/13, EU:C:2014:2289, paragraph 45). Against this background, the following observations and amendments are proposed.

01 Exceptions to access to the file (Article 2(5) of the Draft Proposal)

Article 75d(2) of the AI Act provides that operators' rights of defence and of access to the file "shall be fully respected" and exhaustively lists the categories of information that may be excluded. The Draft Proposal nevertheless inserts additional grounds of exclusion covering the Advisory Forum, the scientific panel, Union bodies, international organisations, third-country authorities and correspondence in general. This expansion goes beyond the closed list of the basic act (1.1) and is inconsistent with the approach taken in the DMA Implementing Regulation (1.2). Clarification is also required as to the status of acts performed by national authorities on behalf of the AI Office pursuant to Article 75a(5) (1.3).

1.1 Exceeding the basic provision

Article 2(5) of the Draft Proposal expressly states that it implements Article 75d(2) of the AI Act ("In accordance with Article 75d(2)"). Yet, unlike the basic provision (*"The right of access to the file shall not extend to confidential information and internal documents of the AI Office, the Board, competent market surveillance authorities or other public authorities of the Member States. In particular, the right of access shall not extend to correspondence between the AI Office and those authorities"*: Article 75d(2), fourth and fifth sentences), it extends the restriction of the right of access to new entities and to wider categories of documents (*"In accordance with Article 75d(2) of Regulation (EU) 2024/1689, the right of access to the Commission's file shall not extend to confidential information, correspondence, and internal documents of the Commission, the AI Board, the Advisory Forum, the scientific panel, the competent authorities of the Member States, and other competent authorities, including EU bodies, international and intergovernmental organisations, third-country authorities"*: Article 2(5), first sentence, of the Draft Proposal). Such a wide array of exceptions contradicts the requirement that the rights of defence "shall be fully respected" and risks depriving that guarantee of its substance.

1.2 Inconsistency with the DMA model

Article 75d(2) of the AI Act reproduces almost verbatim Article 34(4) of the DMA. The DMA Implementing Regulation implements that provision without adding categorical exclusions: correspondence with third-country authorities and other sensitive documents may be withheld only in exceptional circumstances and following a case-by-case balancing (Article 8(4), second sentence). The Draft Proposal, which otherwise follows that model closely, takes over only the first

sentence of Article 8(4) in its Article 2(4) and turns the second into the categorical exclusion of Article 2(5). The same basic provision is thus implemented, under the same model, with the opposite result. A similar exclusion appears in Article 8(5) of the GPAI Implementing Regulation, albeit without Union bodies, international organisations and third-country authorities; that Regulation, however, was adopted, inter alia, under the broader empowerment of Article 101(6), whereas here Article 75d(2) itself lays down a closed list, which an implementing act cannot widen.

1.3 Acts performed on behalf of the AI Office (Article 75a(5) of the AI Act)

Under Article 75a(5) of the AI Act, national market surveillance authorities may carry out investigations, inspections and other fact-finding measures on behalf of the AI Office. It should be clarified that the records of such measures form part of the AI Office's file and are not "internal documents" of the competent authorities of the Member States within the meaning of Article 2(5) of the Draft Proposal.

02 Absence of rules on observations on the preliminary findings in the Draft Proposal

The Draft Proposal is silent on the right of the operator to submit written observations on the preliminary findings. By contrast, the DMA provides for a minimum period of 14 days (Article 34(2) of the DMA), while the GPAI Implementing Regulation grants at least 21 days (Article 7(2) thereof) and imposes a 50-page limit (Annex thereto). Operators falling under Article 75(1) of the AI Act are left with the residual minimum of ten working days laid down in Article 18(3) of Regulation (EU) 2019/1020 on market surveillance and compliance of products (the **'Market Surveillance Regulation'**), which applies to them by virtue of Article 75d(1) of the AI Act. As the Draft Proposal already lays down time limits, it should give full effect to the rights of defence, which "shall be fully respected" under Article 75d(2) of the AI Act. An explicit provision establishing a minimum period of 21 days (as in the GPAI Implementing Regulation), a page limit and the possibility of an oral hearing should therefore be introduced.

03 Interruption of the limitation period (Article 4(2) of the Draft Proposal)

Article 4(2) of the Draft Proposal provides that any act of the Commission for the purpose of the investigation or proceedings against an operator falling under Article 75(1) of the AI Act interrupts the limitation period for the imposition of fines or periodic penalty payments, and lists six such acts. Under Article 32(3) of the DMA, by contrast, the limitation period is interrupted with effect from the date of notification of the relevant act. The Draft Proposal does not follow this model and, moreover, extends the catalogue of interrupting acts to include access for the purposes of assessments, invitations to structured dialogue and the reopening of proceedings under Article 75b. Invitations to structured dialogue, in particular, are not investigative acts, yet each of them would start the five-year period running afresh. This would deprive the limitation period of its function of ensuring legal certainty, which recital 3 of the Draft Proposal itself invokes, and would impair the rights of defence, as the ability to contest facts diminishes with the passage of time. It

would also discourage operators from engaging in structured dialogue with the AI Office. A similar catalogue, including requests for access to conduct evaluations and invitations to a structured dialogue, appears in Article 10(3) of the GPAI Implementing Regulation, adopted, inter alia, under the broader empowerment of Article 101(6); it should not be replicated for operators falling under Article 75(1) of the AI Act. It is proposed that the interruption should commence upon notification and that the list of interrupting acts should be confined to formal investigative acts notified to the operator.

04 Suspension pending judicial authorisation (Article 4(5) of the Draft Proposal)

Under Article 4(5) of the Draft Proposal, the limitation period is also suspended for as long as the authorisation of a judicial authority for an on-site inspection requested by the AI Office is pending. Neither the DMA nor the GPAI Implementing Regulation contains a comparable rule allowing suspension of the limitation period pending judicial authorisation, nor does the Draft Proposal impose any maximum duration on the suspension, which could therefore last indefinitely, leaving the operator's legal position unsettled. Article 75c(8) does not expressly cover suspension: it empowers the Commission to specify the limitation periods laid down in the AI Act, "including the circumstances in which the limitation periods shall be interrupted"; specifying those periods does not extend to creating an open-ended ground of suspension. Unlike suspension during proceedings before the Court of Justice (Article 4(4)), which follows the DMA, this suspension depends on a national procedural step that the AI Office itself sets in motion. If, as appears intended despite its reference to a non-existent "paragraph 6" (point 5), Article 4(3) of the Draft Proposal extends the ten-year ceiling by the duration of any suspension, an indefinite suspension would make the ceiling itself indefinite. Together with the broad catalogue of interrupting acts criticised in point 3, the operator could never know when the power to impose fines would lapse: the legal certainty that limitation periods exist to ensure, and that recital 3 of the Draft Proposal itself invokes, would be nullified. The provision should therefore be deleted or, in the alternative, subjected to a strict temporal ceiling (six months, as set out in Annex 1) and excluded from the extension of the ten-year ceiling.

05 Incorrect cross-references, recital 1 and Article 1 of the Draft Proposal

Several cross-references are erroneous or residual. Article 4(3) refers to a non-existent "paragraph 6" (a remnant of Article 25(5) of Council Regulation (EC) No 1/2003, rather than of Article 32(4) of the DMA, which refers to paragraph 5); the reference should read "paragraph 4". Article 4(3) also opens with a reference to "the period referred to in paragraph 1", which governs only continuing or repeated infringements and is therefore inaccurate; Article 4(4) refers to a decision "referred to in paragraph 1" that does not appear therein; paragraphs 1 and 2 of Article 5 are duplicated; and Article 6 contains paragraphs numbered 6 and 7 that cross-refer to paragraphs 1 and 2. There are also minor typographical errors ("paragraph6" in Article 2(8); the date in footnote 3). In addition, Article 1 fails to encompass the subject-matter of Articles 6 to 8; those provisions

should be confined to what is ancillary to access to the file and to limitation periods. Recital 1 also describes the exclusive competence under Article 75(1) of the AI Act without the exceptions listed in point (a)(i) to (iv) thereof, including AI systems provided by financial institutions insofar as they fall under Article 74(6), for which the market surveillance authority is the national authority responsible for financial supervision. These technical defects should be corrected so that the text is internally consistent and fully reflects the scope of the implementing powers exercised.

Conclusions

The amendments proposed above and tabled in Annex 1 — narrowing the exceptions in Article 2(5), introducing a dedicated provision on written observations, aligning the interruption rules in Article 4(2)–(5) with the DMA model, correcting the cross-references, completing recital 1 and Article 1, and clarifying the status of acts performed on behalf of the AI Office—would ensure coherence with the AI Act, the DMA and the GPAI Implementing Regulation while safeguarding the rights of defence of the operators concerned. Where the empowerment allows it, and in particular as regards the time limit for written observations, the Draft Proposal should be aligned with the GPAI Implementing Regulation, so that the same undertaking is not subject to two procedural regimes before the AI Office. Provisions which that Regulation lays down, inter alia, under the broader empowerment of Article 101(6), such as its exclusions from access to the file and its catalogue of interrupting acts, should not, however, be replicated.

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ANNEX 1

Proposed amendments

DRAFT PROPOSAL	PROPOSED AMENDED TEXT	JUSTIFICATION
Article 2(5) In accordance with Article 75d(2) of Regulation (EU) 2024/1689, the right of access to the Commission's file shall not extend to confidential information, correspondence, and internal documents of the Commission, the AI Board, the Advisory Forum, the scientific panel, the competent authorities of the Member States, and other competent authorities, including EU bodies, international and intergovernmental organisations, third-country authorities. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	**Article 2(5)** Access to the file shall not extend to the categories of information listed exhaustively in Article 75d(2) of Regulation (EU) 2024/1689. In particular, correspondence with third-country authorities may be excluded only in exceptional circumstances and subject to the conditions set out in Article 8(4) of Regulation (EU) 2023/814. Acts performed by national authorities on behalf of the AI Office pursuant to Article 75a(5) of Regulation (EU) 2024/1689 shall be treated as acts of the AI Office for the purposes of access to the file. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	Article 75d(2) AI Act requires the rights of defence and of access to the file to be "fully respected" and lays down an exhaustive list of exceptions. The Draft Proposal improperly broadens that list (Advisory Forum, scientific panel, Union bodies, international organisations, third-country authorities, correspondence). Alignment with the stricter approach of the DMA Implementing Regulation is required; clarification of the status of acts of national authorities acting on behalf of the AI Office is also necessary.
(No provision)	**New Article 2a – Observations on the preliminary findings** 1. The operator shall have the right to submit written observations on the preliminary findings within a period of at least 21 days from the date of notification. The observations shall not exceed 50 pages. 2. The AI Office may, where appropriate, afford the operator the opportunity to develop its arguments at an oral hearing.	The Draft Proposal is silent on written observations. The DMA grants at least 14 days (Art. 34(2) DMA); the GPAI Implementing Regulation grants at least 21 days (Art. 7(2) thereof) and a 50-page limit (Annex thereto). Operators under Art. 75(1) AI Act would otherwise be left only with the residual 10 working days of Art. 18(3) of the Market Surveillance Regulation. An explicit right is required for the rights of defence.
Article 4(2) Any action taken by the Commission for the purpose of its investigation or proceedings in respect of an operator of an AI system falling within the scope of Article 75(1) of Regulation (EU) 2024/1689 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. Actions which interrupt the running of that period shall include the following: (a) requests for documentation, explanations or other information;	**Article 4(2)** The limitation period shall be interrupted by the notification to the operator of a formal investigative act, namely: (a) a decision requiring information or the production of documents; (b) a decision ordering an inspection; (c) the opening of proceedings pursuant to Article 75a(2) of Regulation (EU) 2024/1689; (d) the preliminary findings referred to in Article 75c(2) of Regulation (EU) 2024/1689. The interruption shall take effect from the date of notification.	Under Art. 32(3) DMA the interruption runs from notification and the acts listed are formal investigative acts (requests for information, written authorisations of inspections, opening of proceedings). The Draft Proposal does not link the interruption to notification and includes a broader, less precise list (access for assessments, invitations to dialogue, reopening under Art. 75b). Alignment with the DMA model ensures predictability and proportionality.

DRAFT PROPOSAL	PROPOSED AMENDED TEXT	JUSTIFICATION
(b) requests for access to conduct system evaluations; (c) inspections; (d) invitations to a structured dialogue; (e) the opening of proceedings pursuant to Article 75a(2); or (f) the re-opening of proceedings pursuant to Article 75b.		
Article 4(5) The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as an on-site inspection requested by the AI Office is pending authorisation by a judicial authority.	**Article 4(5)** [Deleted] *or, in the alternative*: The limitation period shall be suspended for the period during which judicial authorisation is pending, provided that the suspension shall not exceed six months and shall not extend the maximum period laid down in the second sentence of paragraph 3.	Neither the DMA nor the GPAI Implementing Regulation provides for suspension pending judicial authorisation. The Draft Proposal sets no maximum duration. Art. 75c(8) AI Act mentions only interruption and does not cover the creation of new grounds of suspension. Deletion is preferable; a strict time limit is proposed only as a residual option.
Article 4(3) Each interruption of the period referred to in paragraph 1 … referred to in paragraph 6 … **Article 4(4)** … decision referred to in paragraph 1 … **Article 5(1) and (2)** [Duplicated text] **Article 6** 6. … Without prejudice to paragraph 2 of this Article … 7. … By way of derogation from paragraph 1 of this Article … **Article 1** [Subject-matter limited to Arts. 2–5] **Recital 1** [Exclusive competence described without the exceptions in Article 75(1)(a)(i)–(iv) of Regulation (EU) 2024/1689]	**Article 4(3)** Each interruption of the limitation period referred to in Article 75c(8), first subparagraph, of Regulation (EU) 2024/1689 shall start time running afresh. … referred to in paragraph 4 … **Article 4(4)** … decision imposing a fine or periodic penalty payment pursuant to Article 75c(4) or (5) … **Article 5** [Single, non-duplicated text for paragraphs 1 and 2] **Article 6** 1. … Without prejudice to paragraph 2 of this Article … 2. … By way of derogation from paragraph 1 of this Article … **Article 1** (c) (new) rules on time limits and on the transmission of documents, insofar as they are ancillary to the arrangements referred to in points (a) and (b). **Recital 1** … where the model and the system are developed by the same provider or providers forming part of the same undertaking as the provider, with the exception of the AI systems referred to in Article 75(1)(a)(i) to (iv) of that Regulation, as well as …	The Draft Proposal contains residual and incorrect cross-references (non-existent "paragraph 6", a residue of Art. 25(5) Reg. (EC) No 1/2003; decision "referred to in paragraph 1" that does not exist; duplicated paragraphs in Art. 5; misnumbered paragraphs in Art. 6). Article 1 fails to cover the subject-matter of Articles 6–8. Recital 1 omits the exceptions in Art. 75(1)(a)(i)–(iv) AI Act, including financial institutions under Art. 74(6). The corrections restore internal consistency and ensure that the scope of the implementing powers is accurately reflected.