Feedback on the Draft Implementing Regulation on Proceedings under Articles 75c and 75d of the AI Act

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Future of Life Institute
Risto Uuk risto@futureoflife.org | Head of European Policy and Research

Introduction

We welcome the opportunity to provide feedback on the draft implementing regulation[1] concerning procedural arrangements for the Commission's enforcement of the AI Act,[2] as required by Articles 75c and 75d. We broadly support the proposed safeguards for access to the file and the rules on limitation periods, which contribute to effective enforcement and legal certainty. We nevertheless recommend targeted improvements to strengthen the protection of third parties providing information to the Commission and ensure equal procedural treatment regarding time limits.

Provisions we support

Safeguards on access to the file

We broadly support Article 2 of the draft implementing regulation which sets out the conditions and safeguards for access to the file, in particular Articles 2(3), (4), (5) and (6).

We welcome Article 2(3) since it appropriately limits unredacted access to the file to certain external legal and economic counsel and external technical experts, none of whom are employed by the operator in question. Pursuant to Article 2(6), extending such access to additional external counsel or experts or providing the operator with access to a non-confidential version of a document where it was not yet provided to it under Article 2(2) is allowed only "exceptionally" and where "indispensable" for the right to be heard. This decreases the risk that access is requested in order to delay proceedings.

Additionally, we welcome the caveat in Article 2(4), which empowers the Commission to deny access to certain unredacted documents where disclosure would cause harm to the party submitting those documents in a way that outweighs the importance of disclosure for the exercise of the right to be heard. This enables the Commission to protect the identity of a complainant, among others, which is necessary for maintaining trust and in particular the effectiveness of the information-gathering mechanism under Article 85 AI Act.

Finally, we welcome Article 2(5), which, like the Implementing Regulation 2026/1755,[3] excludes 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, from the scope of the right of access to the file. In addition, it clarifies that this includes EU bodies, international and intergovernmental organisations, and third-country authorities. This protects the open exchange of scientific and technical advice and fosters cooperation between various bodies, on which the effective supervision of AI systems depends.

Limitation periods and interruption provisions

The five-year limitation period for imposing and enforcing penalties set under Article 75c(8) AI Act and elaborated on in Articles 4 and 5 of the draft implementing regulation matches the approach taken in EU

1 Draft Commission Implementing Regulation 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, Ref. Ares(2026)9589403, 12 October 2026.

2 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (OJ L, 2024/1689, 12.7.2024).

3 Commission Implementing Regulation (EU) 2026/1755 of 20 July 2026 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2024/1689 of the European Parliament and of the Council (OJ L, 2026/1755, 21.7.2026).

competition law,[4] the DSA[5] and the DMA,[6] as well as the Implementing Regulation 2026/1755. We consider this framework appropriate. The interruption provisions in Article 4 help ensure fairness and deterrence, and they allow the Commission to carry out complex regulatory investigations.

Recommendations for improvement

1. Protecting the identity of third parties who provide information

The draft implementing regulation contains detailed provisions on the confidentiality of business secrets and access to the file procedures but does not explicitly provide for a mechanism whereby the identity of third parties that provide information or documents forming part of the proceedings is automatically or by default treated as confidential. This means that it may be disclosed to the operator concerned under Articles 2(2) and 3(2) of the draft implementing regulation.

Furthermore, even if such information is considered confidential, there is no mechanism whereby access to such information by external counsel or experts is automatically or by default denied by the Commission. The current draft only grants the Commission discretion to come to this conclusion "in exceptional circumstances" under Article 2(4).

The lack of these mechanisms may have a chilling effect on the Commission receiving information from third parties, particularly through the AI Act Complaints Tool,[7] set up under Article 85 AI Act. Legal or natural persons that lodge a complaint under the AI Act Complaints Tool must provide identification and their contact details. This is in contrast to whistleblowers that submit anonymous reports under the AI Act Whistleblower Tool.[8]

Both legal and natural persons that lodge their complaint via the AI Act Complaints Tool, as well as third parties that provide information to the Commission via other means, may have reasons for wishing that their identity remains confidential to the operators of the AI systems within the meaning of Article 75(1) AI Act, or the external counsel and experts. They may be business entities, including deployers, who are deeply commercially dependent on the provider of the AI system and who fear retaliation that could threaten their business viability. They may also be research institutes or civil society organisations that receive funding from the operators of the AI system in question, or end-users who rely on the continued access to their accounts. Therefore, the automatic or by-default protection of these third parties' identities would ensure that the entire information-gathering mechanism in Article 85 AI Act is not undermined.

Furthermore, protecting the identity of third parties is established Commission practice. The Commission Notice on the rules for access to the Commission file in competition proceedings states that "the notion of other confidential information may include information that would enable the parties to identify complainants or other third parties where those have a justified wish to remain anonymous".[9]

4 Articles 25 and 26 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003).

5 Articles 77 and 78 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022).

6 Articles 32 and 33 of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022).

7 European Commission, "AI Act Complaints Tool", https://digital-strategy.ec.europa.eu/en/policies/ai-act-complaints-tool (accessed 5 November 2026).

8 European Commission, "AI Act Whistleblower Tool", https://digital-strategy.ec.europa.eu/en/policies/ai-act-whistleblower-tool (accessed 5 November 2026).

9 Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ C 325, 22.12.2005), para. 19.

We recommend an explicit provision treating the identity or any identifying information of third parties that provide information forming part of the Commission's file in the relevant proceedings as confidential information under Article 3. Such information should also, by default, be inaccessible to external counsel and experts under Article 2(3).

2. Equal procedural treatment on time limits

Article 7(2) of the draft implementing regulation states that only "the operator concerned" may ask for an extension of the time limit set by the Commission. However, parties other than the operator may also face time limits pursuant to Article 3(3) and (4) of the draft implementing regulation. Importantly, pursuant to Article 3(5), the consequences of such parties not complying with the given time limit may be that information they consider business secrets or confidential information, including their identity, is not considered as such by the Commission and may be disclosed to the operator in question.

We recommend extending Article 7(2) to any natural or legal person in respect of whom the Commission may set a time limit.

3. Suggested clarifications

First, Article 4(3) refers to "paragraph 6". However, Article 4 has no paragraph 6. We recommend replacing the reference with "paragraphs 4 and 5".

Second, Article 4(4) suspends the limitation period for the period of time that "the decision of the Commission referred to in paragraph 1 of this article, is the subject of proceedings pending before the Court of Justice of the European Union". However, paragraph 1 does not refer to any decision by the Commission. We recommend removing the reference to paragraph 1, in line with the equivalent Article 10(5) of the Implementing Regulation 2026/1755.

Third, the paragraphs of Article 6 are numbered 6 and 7 instead of 1 and 2. We recommend numbering them "1." and "2."

Fourth, Article 5(2) repeats Article 5(1) and does not add anything new. We recommend that the paragraph is deleted.

Conclusion

We encourage the Commission to maintain the proposed procedural safeguards while addressing the identified gaps concerning third-party confidentiality and extensions of procedural time limits. These targeted improvements would strengthen trust in the Commission's information-gathering mechanisms, ensure procedural fairness and ultimately support the effective enforcement of the AI Act.



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For further information, please contact:

Risto Uuk

Head of European Policy and Research

risto@futureoflife.org

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