Article 68

Scientific panel of independent experts

Commentary by Tekla Emborg | Submitted: September 2025

AI Act provision

Article 68

1. The Commission shall, by means of an implementing act, make provisions on the establishment of a scientific panel of independent experts (the 'scientific panel') intended to support the enforcement activities under this Regulation. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 98(2).

2. The scientific panel shall consist of experts selected by the Commission on the basis of up-to-date scientific or technical expertise in the field of AI necessary for the tasks set out in paragraph 3, and shall be able to demonstrate meeting all of the following conditions:

(a) having particular expertise and competence and scientific or technical expertise in the field of AI;

(b) independence from any provider of AI systems or general-purpose AI models;

(c) an ability to carry out activities diligently, accurately and objectively.

The Commission, in consultation with the Board, shall determine the number of experts on the panel in accordance with the required needs and shall ensure fair gender and geographical representation.

3. The scientific panel shall advise and support the AI Office, in particular with regard to the following tasks:

(a) supporting the implementation and enforcement of this Regulation as regards general-purpose AI models and systems, in particular by:

> (i) alerting the AI Office of possible systemic risks at Union level of general-purpose AI models, in accordance with Article 90;
>
> (ii) contributing to the development of tools and methodologies for evaluating capabilities of general-purpose AI models and systems, including through benchmarks;
>
> (iii) providing advice on the classification of general-purpose AI models with systemic risk;
>
> (iv) providing advice on the classification of various general-purpose AI models and systems;
>
> (v) contributing to the development of tools and templates;

(b) supporting the work of market surveillance authorities, at their request;

(c) supporting cross-border market surveillance activities as referred to in Article 74(11), without prejudice to the powers of market surveillance authorities;

(d) supporting the AI Office in carrying out its duties in the context of the Union safeguard procedure pursuant to Article 81.

4. The experts on the scientific panel shall perform their tasks with impartiality and objectivity, and shall ensure the confidentiality of information and data obtained in carrying out their tasks and activities. They shall neither seek nor take instructions from anyone when exercising their tasks under paragraph 3. Each expert shall draw up a declaration of interests, which shall be made publicly available. The AI Office shall establish systems and procedures to actively manage and prevent potential conflicts of interest.

5. The implementing act referred to in paragraph 1 shall include provisions on the conditions, procedures and detailed arrangements for the scientific panel and its members to issue alerts, and to request the assistance of the AI Office for the performance of the tasks of the scientific panel.

Recitals

Recital 113

If the Commission becomes aware of the fact that a general-purpose AI model meets the requirements to classify as a general-purpose AI model with systemic risk, which previously had either not been known or of which the relevant provider has failed to notify the Commission, the Commission should be empowered to designate it so. A system of qualified alerts should ensure that the AI Office is made aware by the scientific panel of general-purpose AI models that should possibly be classified as general-purpose AI models with systemic risk, in addition to the monitoring activities of the AI Office.

Recital 148

This Regulation should establish a governance framework that both allows to coordinate and support the application of this Regulation at national level, as well as build capabilities at Union level and integrate stakeholders in the field of AI. The effective implementation and enforcement of this Regulation require a governance framework that allows to coordinate and build up central expertise at Union level. The AI Office was established by Commission Decision and has as its mission to develop Union expertise and capabilities in the field of AI and to contribute to the implementation of Union law on AI. Member States should facilitate the tasks of the AI Office with a view to support the development of Union expertise and capabilities at Union level and to strengthen the functioning of the digital single market. Furthermore, a Board composed of representatives of the Member States, a scientific panel to integrate the scientific community and an advisory forum to contribute stakeholder input to the implementation of this Regulation, at Union and national level, should be established. The development of Union expertise and capabilities should also include making use of existing resources and expertise, in particular through synergies with structures built up in the context of the Union level enforcement of other law and synergies with related initiatives at Union level, such as the EuroHPC Joint Undertaking and the AI testing and experimentation facilities under the Digital Europe Programme.

Recital 151

To support the implementation and enforcement of this Regulation, in particular the monitoring activities of the AI Office as regards general-purpose AI models, a scientific panel of independent experts should be established. The independent experts constituting the scientific panel should be selected on the basis of up-to-date scientific or technical expertise in the field of AI and should perform their tasks with impartiality, objectivity and ensure the confidentiality of information and data obtained in carrying out their tasks and activities. To allow the reinforcement of national capacities necessary for the effective enforcement of this Regulation, Member States should be able to request support from the pool of experts constituting the scientific panel for their enforcement activities.

Recital 163

With a view to complementing the governance systems for general-purpose AI models, the scientific panel should support the monitoring activities of the AI Office and may, in certain cases, provide qualified alerts to the AI Office which trigger follow-ups, such as investigations. This should be the case where the scientific panel has reason to suspect that a general-purpose AI model poses a concrete and identifiable risk at Union level. Furthermore, this should be the case where the scientific panel has reason to suspect that a general-purpose AI model meets the criteria that would lead to a classification as general-purpose AI model with systemic risk. To equip the scientific panel with the information necessary for the performance of those tasks, there should be a mechanism whereby the scientific panel can request the Commission to require documentation or information from a provider.

Related articles

- Article 51 (Classification of general-purpose AI models as general-purpose AI models with systemic risk)
- Article 52 (Procedure)
- Article 69 (Access to the pool of experts by the Member States)
- Article 90 (Alerts of systemic risks by the scientific panel)
- Article 91 (Power to request documentation and information)
- Article 92 (Power to conduct evaluations).

Related laws

- Commission Implementing Regulation (EU) 2025/454 of 7 March 2025 laying down the rules for the application of Regulation (EU) 2024/1689 of the European Parliament and of the Council as regards the establishment of a scientific panel of independent experts in the field of artificial intelligence.

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Commentary

1. General remarks

1. The scientific panel of independent experts forms part of the broader governance framework that aims to support the application of the AI Act, build capabilities at an EU level, and integrate stakeholders, including the scientific community.[1] The purpose of the panel is to support the enforcement activities under the AI Act,[2] in particular focusing on the monitoring activities of the AI Office as regards general-purpose AI ("GPAI") models.[3] As scholars have pointed out, information asymmetries pose a central challenge in AI governance: 'Private industry that develops AI may learn about emergent risks, but government currently lacks the ability to identify, verify, and act on such risks as they emerge'.[4] In this light, the scientific panel can be seen as an evidence-seeking body that supports the AI Office in identifying, verifying and acting on (systemic) risks and harms from GPAI models as they emerge.[5] From a broader risk governance perspective, knowledge is essential for the legitimacy of the regulator as an authority, including as measured by the credibility of the expert bodies they consult.[6] Thus, the scientific panel also serves to strengthen the legitimacy of the AI Office and national market surveillance authorities ("MSAs").

[1] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 168/1 ("AI Act"), recital 148.
[2] ibid art 68(1).
[3] ibid recitals 151 and 163.
[4] Neel Guha and others, 'AI Regulation Has Its Own Alignment Problem: The Technical and Institutional Feasibility of Disclosure, Registration, Licensing, and Auditing' 92 The George Washington Law Review 1473.
[5] Depending on the level of transparency and publicity of the scientific panel's work, it may also become an important body for informing the public about such risks and harms.
[6] David Demortain 'Expertise, Regulatory Science and the Evaluation of Technology and Risk: Introduction to the Special Issue' (2017) *55* Minerva 139.

2. Article 68 is located within Section 1 of Chapter VII AI Act, titled 'Governance at Union level'. Key actions of the scientific panel are laid down in separate provisions in Section 5 of Chapter VII, titled 'Supervision, investigation, enforcement and monitoring in respect of providers of general-purpose AI models'. These include providing qualified alerts to the AI Office under Article 90 AI Act[7] and requesting the Commission to require documentation or information from a provider in accordance with Article 91(3) AI Act.[8] Further, independent experts from the panel may be appointed by the Commission to carry out evaluations on its behalf in accordance with Article 92(2) AI Act.[9] That being said, the scientific panel does not have powers to force the AI Office or the Commission to take specific actions, it merely 'advises and supports'.[10]

3. The Implementing Regulation[11] establishing the scientific panel ("Implementing Act") entered into force on 30 March 2025.[12] As part of the drafting procedure, there was an open feedback process,[13] and the provisions of the Implementing Act were scrutinised and approved by the Artificial Intelligence Committee, consisting of Member States representatives, in accordance with the comitology procedure as required by Article 68(1) AI Act.[14] The Implementing Act includes details on the panel, its constitution, and its operation. In particular, it elaborates on the 'conditions, procedures and detailed arrangements' related to raising qualified alerts and requesting assistance of the AI Office for performing tasks, as required by Article 68(5) AI Act.[15] However, many details remain unaddressed in the Implementing Act. These will likely be fleshed out once the scientific panel is constituted and adopts rules of procedure, which is yet to occur as of the time of writing (September 2025).

4. The structure of Article 68 is somewhat disjointed. The first paragraph addresses the function of the scientific panel and its establishment by means of an implementing act. The second paragraph concerns the composition of the panel. The third paragraph details the tasks of the panel. The fourth paragraph concerns the independence of panel experts. The fifth and last paragraph relates to the content of the Implementing Act. Paragraphs two and four both relate to the composition of the scientific panel but are separated by paragraph three relating to its tasks. To provide a coherent analysis, this chapter is structured thematically rather than paragraph-by-paragraph.

[7] AI Act, art 90.
[8] ibid recital 163, arts 90 and 91.
[9] ibid art 92(2).
[10] ibid art 68(3).
[11] Commission Implementing Regulation (EU) 2025/454 of 7 March 2025 laying down the rules for the application of Regulation (EU) 2024/1689 of the European Parliament and of the Council as regards the establishment of a scientific panel of independent experts in the field of artificial intelligence [2025] OJ L 2025/454 ('Scientific Panel Implementing Act').
[12] ibid art 20 (that is, on the 20th day after publication in the Official Journal of the European Union on 10 March 2025).
[13] European Commission, 'Artificial intelligence – implementing regulation establishing a scientific panel of independent experts' <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14398-Artificial-intelligence-implementing-regulation-establishing-a-scientific-panel-of-independent-experts_en> accessed 7 September 2025.
[14] For comitology procedure, see Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L 55/13; Scientific Panel Implementing Act, recital 13.
[15] AI Act, art 68(5).

5. The following sub-section analyses the origins and development of the scientific panel in the legislative history.[16] The next section, on substance, first addresses the purpose of the scientific panel and its tasks as laid down in Article 68(3).[17] This is followed by sub-sections concerning the choice to exclude the scientific panel from the framework of so-called Commission expert groups,[18] the composition and selection of members for the scientific panel,[19] the particular roles of its members,[20] and lastly, the transparency of the scientific panel's work.[21]

1.1. Legislative history

6. The recognition of the need for a body of experts was present in the Commission's 'White Paper On Artificial Intelligence' issued in early 2020.[22] The paper envisioned a 'committee of experts' to provide assistance to the Commission, including in relation to identifying emerging trends and facilitating the implementation of the anticipated new legal framework.[23] However, once the Commission adopted the 'Proposal for a Regulation on Artificial Intelligence' in 2021 the proposal did not contain a 'committee of experts' nor any other equivalent to a scientific panel.[24]

7. The first indication of a scientific panel in the drafting process was introduced in the Council's 'General Approach'.[25] The General Approach advocated for a 'central pool of independent experts' which had the aim of supporting enforcement activities.[26] It is clear that this proposal influenced the role of the scientific panel in the AI Act because three of the four tasks in the proposal made it into the final text: supporting the work of MSAs based on request, supporting cross-border investigations, and supporting the Commission regarding Union safeguarding.[27] Thus, contrary to suggestions in earlier commentaries, the seeds of some of the functions of the scientific panel were planted by the Council's General Approach.[28]

8. The European Parliament's final negotiating position also included a proposal for a pool of experts.[29] However, the role of the pool of experts as envisaged by the European Parliament was less developed

[16] See Section 1.1.
[17] See Section 2.1.
[18] See Section 2.2.
[19] See Section 2.3.
[20] See Section 2.4.
[21] See Section 2.5.
[22] European Commission, 'White Paper on Artificial Intelligence - A European approach to excellence and trust 2020' COM (2020) 65 final.
[23] ibid, 24.
[24] European Commission, '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' COM (2021) 206 final.
[25] Council of the European Union, 'General Approach - 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' (2022) 2021/0106(COD).
[26] ibid, art 68b.
[27] ibid; AI Act, art 68(b)–(d).
[28] David Roth-Isigkeit, 'Art. 68 Wissenschaftliches Gremium unabhängiger Sachverständiger' in Mario Martini and Christiane Wendehorst (eds), *KI-VO: Verordnung Über Künstliche Intelligenz: Kommentar* (CH Beck 2025) para 1–3.
[29] European Parliament, 'Amendments adopted by the European Parliament on 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on artificial

than the Council's position. It was mentioned briefly in the proposed Article 56b(g), which suggested that the pool of experts would contribute to 'developing the organizational and technical expertise required for the implementation' of the proposed AI Act for Member States' national supervisory authorities and the Commission.[30]

9. The orientation of the scientific panel towards GPAI models took shape during the trilogue along with the introduction of the concepts of GPAI models[31], GPAI models with systemic risk[32] and qualified alerts.[33] In contrast to the Council's General Approach, the 'scientific panel of independent experts' that came out of the trilogue negotiations is a standing advisory body (as opposed to a 'pool of experts' available on an ad hoc basis) with an express mandate to proactively issue 'qualified alerts'[34] which can trigger follow-ups, such as investigations[35] and classification of GPAI models with systemic risk;[36] potential involvement during the drafting of the Codes of Practice;[37] the power to request the AI Office to issue a request for documentation and information to providers of GPAI models;[38] and the potential for members of the scientific panel to be appointed to carry out evaluations on behalf of the Commission.[39] Thus, the scientific panel of independent experts in its current form was a result of the trilogue and it significantly differs from previous proposals in legal status, scope and powers. This orientation towards GPAI models and the 'central role' of the scientific panel as enshrined in the final text of the AI Act was also emphasised by the Commission press release announcing the political trilogue agreement.[40]

10. In summary, while an appreciation of external expertise was evident from the Commission's White Paper on AI and some functions of the scientific panel were introduced with the Council's General Approach, the central role of the scientific panel with regard to enforcement related to GPAI models as per Articles 68(3)(a), 90,[41] 91(3) and 92(2) AI Act was only introduced in the trilogue negotiations.

intelligence (Artificial Intelligence Act) and amending certain Union legislative acts COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)' P9_TA (2023) 0236.

[30] ibid art 56b(g).

[31] AI Act, art 3(63).

[32] AI Act, art 3(65) and 51.

[33] AI Act, art 90.

[34] AI Act, art 68(3)(a), art 90 and recital 113.

[35] ibid art 92(1)(b) and recital 168.

[36] ibid art 51(1)(b) and 52(4).

[37] ibid recital 116.

[38] ibid art 91 and recital 163.

[39] ibid art 92(2).

[40] European Commission, 'Commission Welcomes Political Agreement on AI Act' (9 December 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6473> accessed 16 July 2025, stating that 'For general purpose models, a scientific panel of independent experts will play a central role by issuing alerts on systemic risks and contributing to classifying and testing the models'.

[41] See also AI Act, arts 51(1)(b), 52(4) and 92(1)(b) for actions following qualified alerts under article 90 AI Act.

2. Substance

2.1. Purpose and tasks of the scientific panel

11. The purpose of the scientific panel is expressly to support the enforcement activities under the AI Act,[42] with a particular focus on monitoring related to GPAI models, as emphasised by the recitals. Recital 113 highlights the role of qualified alerts from the scientific panel in complementing the GPAI monitoring activities of the AI Office.[43] Recital 151 states that a scientific panel should be established to support the implementation and enforcement of the AI Act, 'in particular the monitoring activities of the AI Office as regards general-purpose AI models'.[44] Recital 163 states that the scientific panel should support the monitoring activities of the AI Office 'with a view to complementing the governance systems for general-purpose AI models'.[45]

12. In accordance with the first sentence of Article 68(3), the scientific panel shall 'advise and support the AI Office'.[46] Providing more detail about the panel's functions, Article 68(3) goes on to stipulate a non-exhaustive list of tasks that the panel shall 'in particular' carry out.[47] With this in mind, each task expressly listed in Article 68(3) is addressed in turn.

2.1.1. Support relating to GPAI models and systems (Article 68(3)(a))

13. Article 68(3)(a) sets out five non-exhaustive[48] sub-tasks in which the scientific panel will 'support[...] the implementation and enforcement of [the AI Act] as regards general-purpose AI models and systems'.[49] The first is 'alerting the AI Office of possible systemic risks at Union level of [GPAI models and systems]' by issuing qualified alerts in accordance with Article 90.[50] This is a noteworthy mechanism in the enforcement activities of the AI Office because such a request may trigger the Commission, through the AI Office, to exercise the powers laid down in Section 5 of Chapter IX AI Act[51] as well as potentially trigger a classification of a GPAI model with systemic risk under Articles 51(1)(b) and 52(4) AI Act.[52]

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[42] AI Act, art 68(1).
[43] ibid recital 113.
[44] ibid recital 151.
[45] ibid recital 163.
[46] ibid art 68(3).
[47] Roth-Isigkeit (n 28). It could be argued that the non-exhaustive character of this list is supported by the power of the Commission to appoint members of the panel to carry out evaluations under article 92(2). Further, article 12 Scientific Panel Implementing Act suggests that the panel will issue 'opinions and recommendations'. Neither appointments for carrying out evaluations nor opinions and recommendations are mentioned in article 68(3), but these are clearly potential tasks of the scientific panel.
[48] Indicated by 'in particular'; Matthias Schmidl & Andreas Rohner, 'Article 68 Scientific Panel of Independent Experts' in Peggy Valcke, Ceyhun Necati Pehlivan and Nikolaus Forgó (eds), *The EU Artificial Intelligence (AI) Act: A Commentary* (Wolters Kluwer 2024); Roth-Isigkeit (n 28).
[49] AI Act, art 68(3)(a).
[50] ibid art 68(3)(a)(i).
[51] ibid art 90(2).
[52] ibid art 51(1)(b) and 52(4).

14. The second sub-task is 'contributing to the development of tools and methodologies for evaluating capabilities of [GPAI] models and systems, including through benchmarks'.[53] There is no express mention of GPAI models with systemic risk. However, the mentioning of 'benchmarks' links the provision to the classification of GPAI models with systemic risk because Recital 111, Article 51(1)(a), and Annex XIII all mention benchmarks in particular as a means to evaluate high-impact capabilities for the purposes of classifying GPAI models with systemic risk.[54]

15. The third sub-task is advising on the classification of GPAI models with systemic risk,[55] and the fourth is advising on the classification of 'various GPAI models and systems'.[56] Separation of the third and fourth sub-tasks suggests that the legislator intended to underscore the distinct nature of GPAI models with systemic risk from GPAI models and GPAI systems, while emphasising that the scope of the scientific panel encompasses all three categories.[57] It is not clear what form such advice should take, but it could possibly include advice on when to update the compute threshold in Article 51 or how the Commission could exercise its discretion to make designation decisions.[58]

16. The fifth sub-task is contributing to the development of tools and templates.[59] 'Tools' are already mentioned earlier in the list in relation to evaluating capabilities.[60] In contrast, Article 68(3)(a)(v) refers to 'tools and templates' more generally, making clear that the contributions of the scientific panel need not be limited only to tools related to evaluations.

17. In addition to this non-exhaustive list of sub-tasks, it can be contemplated what the role of the scientific panel may be in monitoring and advising the AI Office related to whether all systemic risks have been identified, assessed and mitigated to an acceptable level in compliance with Article 55(1) and the Code of Practice.[61] For example, it might be within scope for the scientific panel to contribute to the identification of 'state-of-the-art' model evaluation techniques, risk modelling methods, and Safety and Security Frameworks as referred to in the Safety and Security Chapter of the Code of Practice.[62] Such monitoring and assessment would be in line with the broader purpose of the scientific panel elaborated above,[63] namely to support enforcement activities under the AI Act, and could arguably fall within the broad scope of Article 68(3)(a) AI Act.

[53] ibid art 68(3)(a)(ii).
[54] ibid art 51(1)(a), annex XIII and recital 111.
[55] ibid art 68(3)(a)(iii).
[56] ibid art 68(3)(a)(iv).
[57] As defined in articles 3(63), 3(65), 3(66) and 51(1) and (2) AI Act respectively.
[58] See commentary on Article 51 in this work.
[59] AI Act, art 68(3)(a)(v).
[60] ibid art 68(3)(a)(ii).
[61] European Commission, 'The General-Purpose AI Code of Practice: Safety and Security Chapter' ('Code of practice') (2025) <https://ec.europa.eu/newsroom/dae/redirection/document/118119> accessed 17 December 2025.
[62] ibid Commitment 1, Measure 3.2 and 3.3, and Glossary.
[63] See Section 2.1., elaborating that 'The purpose of the scientific panel is expressly to support the enforcement activities under the AI Act, with a particular focus on monitoring related to GPAI models' in accordance with article 68(1) AI Act and related recitals.

2.1.2. Supporting the work of MSAs at their request (Article 68(3)(b))

18. Article 68(3)(b) suggests that the scientific panel shall support the work of MSAs,[64] national authorities designated by Member States that have a different remit from the AI Office.[65] However, despite this distinction, the scientific panel's support of MSAs' work is listed under Article 68(3) under the heading of advising and supporting the AI Office. Article 69(1) states that 'Member States may call upon experts of the scientific panel to support their enforcement activities under the [AI Act]'.[66] This sentence clarifies two important points. First, Member States can request support of the scientific panel. This is in line with the wording, 'at their request', used in Article 68(3)(b). Second, the scientific panel can be requested to support the enforcement activities of the Member States, indicated by the wording 'their enforcement activities'. In light of this, one may ask whether it is coherent for Article 68(3)(b) to be included as a subparagraph under Article 68(3).

19. The origin of this incoherence can be traced in the legislative history. As noted above, an expert body to support implementation of the AI Act was first introduced with the 'pool of experts' in the Council's General Approach. This was before the introduction into the draft AI Act of a separate framework addressing GPAI models[67] and the establishment of the AI Office, a separate body with exclusive powers to supervise and enforce the AI Act's provisions on GPAI.[68] Thus, the 'pool of experts', as originally conceived, was designed to support the enforcement of the AI Act by national authorities, not a centralised body at EU level. Whilst the language ultimately incorporated in Article 68(3)(b)–(d) stayed largely unchanged from the Council's proposal, subsequently the AI Office was introduced into the governance framework of the AI Act with a specific remit over GPAI and the purpose and focus of the scientific panel was redirected to GPAI, with a corresponding set of new, weighty functions.[69]

20. It should be noted that, at the time of writing (September 2025), access to the experts by the Member States shall be facilitated by the Commission.[70] In particular, the AI Office shall provide for practical means for MSAs to submit requests and evaluate the necessity and proportionality of requests before either granting the request by appointing a rapporteur or refusing the request.[71]

2.1.3. Cross-border market surveillance activities (Article 68(3)(c))

21. In accordance with Article 68(3)(c), the scientific panel may play a role in joint activities, for example when specific categories of high-risk AI systems present a serious risk across two or more Member

[64] AI Act, art 3(26) stating that '"market surveillance authority" means the national authority carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020'.
[65] ibid art 3(26), 28 and 70.
[66] ibid art 69(1).
[67] ibid art 51–55.
[68] ibid art 64 and 88.
[69] ibid art 68(3)(a), 90, 91 and 92; see Section 1.1.
[70] ibid art 69(3); Editorial note: European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI)' COM (2025) 836 final, art 1(22)(b) proposes to delete article 69(3) AI Act.
[71] Scientific Panel Implementing Act, art 14(1), (3), (4) and (5); see Section 2.1.5.

States.[72] Such activities naturally involve MSAs,[73] but they also involve the AI Office in a coordination role.[74] It is unclear from the wording of Article 68(3)(c) itself whether the panel is to support the MSAs directly or indirectly through the AI Office.[75]

2.1.4. Supporting the AI Office with regard to the Union safeguard procedure (Article 68(3)(d))

22. Article 68(3)(d) states that the scientific panel shall support the AI Office in carrying out duties in the context of evaluating whether measures taken by MSAs[76] are contrary to Union law in accordance with Article 81 AI Act.[77] Article 81 outlines the role of the Commission as evaluating and deciding whether national measures are justified, but it does not mention the scientific panel or the AI Office. Further, there is no mention in the Implementing Act of the Union safeguard procedure as laid out in Article 81.[78] Thus, at the time of writing (September 2025), the role of the scientific panel in such procedures remains unclear.

2.1.5. Prioritisation of tasks of the scientific panel

23. The preceding sections demonstrate that the scientific panel has a broad range of tasks relating both to the AI Office and national MSAs.[79] However, the scientific panel does not have unlimited capacity. In practice, the potential tasks may exceed its capacity. This is expressly recognised in Article 14(3) Implementing Act, stating that the AI Office shall consider the 'available capacity of the scientific panel' when evaluating requests by national MSAs for support from the scientific panel.[80] The work of the scientific panel will depend on the prioritisation of its different tasks. The question arises of who decides which tasks are prioritised? The role of the scientific panel itself, the Commission and the MSAs is discussed in turn below.

24. The scientific panel is empowered to initiate several of its own tasks. In contrast to other expert groups, the scientific panel does not mainly operate 'at the request' or 'by approval' of the Commission.[81] For example, in accordance with Article 7(2) Implementing Act, any panel member may initiate the preparation of qualified alerts.[82] Such an alert may be issued if a simple majority of the scientific panel so approves.[83] Accordingly, the preparation and issuance of a qualified alert does not require prior request or approval from the AI Board, the AI Office or the Commission. The

[72] See also AI Act, art 74(11).
[73] AI Act, art 3(26) ('"market surveillance authority" means the national authority carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020').
[74] ibid art 74(11).
[75] Roth-Isigkeit (n 28) paras 11–18.
[76] AI Act, art 3(26) ('"market surveillance authority" means the national authority carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020').
[77] AI Act, art 81.
[78] Scientific Panel Implementing Act.
[79] AI Act, art 3(26) ('"market surveillance authority" means the national authority carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020').
[80] Scientific Panel Implementing Act, art 14(3).
[81] See Section 2.2.; This is in contrast to the AI Advisory Forum, which may only prepare opinions, recommendations and written contributions at the request of the AI Board or the Commission, see commentary on Article 67 in this work.
[82] Scientific Panel Implementing Act, art 7(2); for a detailed discussion of this article, see Section 4.2.1.
[83] Scientific Panel Implementing Act, art 18(1).

same holds true for other tasks, including requests for assistance from the AI Office to obtain documentation or information from providers of GPAI models[84] and requests for the Secretariat to organise thematic hearings.[85] The ability to initiate tasks without Commission request and/or approval requires the scientific panel itself to prioritise its tasks.

25. On the other hand, the Commission can initiate tasks listed under Article 68(3) by appointing rapporteurs and contributors.[86] In accordance with Article 7(2) Implementing Act, the Commission, in consultation with the chair of the Scientific Panel, may appoint a rapporteur and two contributors for each of the tasks listed in Article 68(3).[87] The Commission is not required to 'request' or 'approve' activities of the panel, but these appointments will likely be decisive in the initiation and prioritisation of some of the scientific panel's activities. Further, the Commission indirectly influences prioritisation by selecting the members of the scientific panel[88] and determining the content and timing of calls for expressions of interest from independent experts. The first call, for example, expressly sought expertise for implementation and enforcement of the AI Act as regards GPAI models and systems, 'given the entry into application of the rules on general-purpose AI models'.[89] This indicates the priority of tasks related to Article 68(3)(a) for the first two-year appointment of the scientific panel.

26. Further, the MSAs can initiate tasks related to Article 68(3)(b) by requesting support from the scientific panel.[90] However, this process is facilitated by the AI Office and requires the AI Office to prioritise amongst such requests.[91] Member States must substantiate the necessity and proportionality of requesting assistance,[92] and the AI Office will evaluate this, considering the 'available capacity of the scientific panel and the necessity of ensuring effective access to experts for all Member States.'[93] The AI Office must process a request within two weeks by either approving it and appointing a rapporteur and two contributors[94] or refusing the request giving reasons.[95] Thus, it is for the AI Office to prioritise requests from MSAs in a manner that considers the capacity of the scientific panel (including the scientific panel's capacity to initiate tasks itself related to GPAI models) as well as to ensure effective and timely access to expertise for Member States in line with Article 69(2) and (3) AI Act.[96]

27. To conclude, Article 68 sets out a broad scope of activities for the scientific panel. The provision expresses a clear focus on GPAI for the scientific panel, but its tasks also include support for MSAs and cross-border activities. The scientific panel, the Commission and the MSAs can all initiate tasks, but it is for the scientific panel (its members and the chair[97]) and the Commission to prioritise between the tasks. Arguably, to fulfill the scientific panel's monitoring purpose,[98] prioritisation of its tasks and

[84] Scientific Panel Implementing Act, art 15.
[85] ibid art 7(5).
[86] See Section 2.4.2.
[87] Scientific Panel Implementing Act, art 7(2).
[88] AI Act, art 68(2).
[89] European Commission, 'Commission Seeks Experts for AI Scientific Panel' <https://digital-strategy.ec.europa.eu/en/news/commission-seeks-experts-ai-scientific-panel> accessed 15 July 2025.
[90] Scientific Panel Implementing Act, art 14.
[91] AI Act, art 69(3); Scientific Panel Implementing Act, art 14(1) and recital 9.
[92] Scientific Panel Implementing Act, art 14(1) and recital 9.
[93] ibid art 14(3).
[94] ibid art 14(4).
[95] ibid art 14(5).
[96] AI Act, art 69(2) and (3).
[97] See Section 2.4.
[98] See Section 2.1.

the allocation of its resources should ensure that the scientific panel always has capacity to issue qualified alerts.

2.2. Nature of the scientific panel in light of the Commission expert group framework

28. The scientific panel does not seem to have been modelled on any pre-existing expert panels or expert groups. In particular, it is relevant to note that the scientific panel does not constitute a so-called Commission expert group ("CEG"). CEGs are consultative bodies set up by the Commission to receive specialist advice from outside experts, providing a basis for sound policymaking.[99] For example, they advise the Commission in relation to the preparation of delegated acts, the implementation of EU legislation, and the preparation of implementing acts in fields such as climate policy, state aid, good manufacturing practices, and fertilisers.[100] As of 2025, there are more than a thousand active CEGs.[101] While the scientific panel is an expert body that (amongst others) advises the Commission, through the AI Office, it is clearly not constituted within the framework for CEGs.[102] This is in contrast to the high-level expert group on AI, a CEG set up in 2018 to advise the Commission on AI strategy;[103] the High-Level Group for the Digital Markets Act, a CEG established in 2023 to advise the Commission, on its request, on the implementation or enforcement of the Digital Markets Act;[104] and the AI Act Advisory Forum, a CEG set up in 2025 under the AI Act to provide technical expertise and advise the AI Board and the Commission.[105]

29. The choice to exclude the scientific panel from the CEG framework illuminates key characteristics of the scientific panel, giving some indication of the latter's nature. At the outset, the choice may be explained by the fact that the scientific panel is not limited to advising the Commission in the form of the AI Office; it also advises national MSAs on their request.[106] Thus, the tasks of the scientific panel

[99] European Commission, 'Expert groups explained' <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups-explained> accessed 6 August 2025.

[100] European Commission, 'Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups' C(2016) 3300 final ("Commission Decision on CEGs").

[101] European Commission, 'Register of Commission Expert Groups and Other Similar Entities' <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups> accessed 3 September 2025.

[102] Commission Decision on CEGs (n 100) art 4 and 7. The scientific panel is not set up in accordance with the CEG Decision's provision of creation of expert groups; there are no references to the CEG Decision or its provision in the Implementing Act, including a lack of specification of the 'types of members' as required by article 7 Commission Decision on CEGs; and the scientific panel is not registered in the Commission CEG registry. All three points are in contrast to the Advisory Forum, which is expressly constituted as a CEG. See commentary on Article 67 in this work. Further note that the scientific panel is neither a body, institution or agency within the meaning of EU law, see European Commission, 'Types of institutions and bodies' <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/types-institutions-and-bodies_en> accessed 12 September 2025.

[103] European Commission, 'Register of Commission Expert Groups and Other Similar Entities - High-Level Expert Group on Artificial Intelligence (E03591)' <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?groupID=3591> accessed 5 September 2025, whose main tasks were to assist the Commission in the preparation of legislative proposals and policy initiatives.

[104] European Commission, 'Register of Commission Expert Groups and Other Similar Entities - High-Level Group for the Digital Markets Act (E03904)' <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?groupID=3904> accessed 5 September 2025.

[105] European Commission, 'European Commission launches call for applications to join AI Act Advisory Forum' <https://digital-strategy.ec.europa.eu/en/funding/european-commission-launches-call-applications-join-ai-act-advisory-forum> accessed 5 September 2025; see commentary on Article 67 in this work.

[106] AI Act, art 68(3)(b); see Section 2.1.2.

exceed the typical remit of CEGs. However, the same applies to the Advisory Forum which *does* constitute a CEG.[107] More interestingly, there are (at least) five noteworthy differences between the scientific panel provisions and those typically applicable to CEGs. These differences provide important advantages for the scientific panel in fulfilling its advisory and supportive role in monitoring the fast-paced developments in the field of GPAI models.

30. The first difference concerns *operation*. CEGs typically have to act on the request of the Commission or the chair acting with Commission approval.[108] In contrast, the scientific panel is set up to work more autonomously and act on its own initiative in several circumstances. For example, 'any member' of the scientific panel is allowed to initiate the preparation of a qualified alert.[109] This allows panel members to overcome potential procedural and informational bottlenecks.

31. The second difference relates to *tasks*. The tasks of CEGs typically centre on the publication of opinions, recommendations and reports adopted by consensus.[110] In contrast, the scientific panel is given powers in the AI Act itself to adopt qualified alerts[111] and request the AI Office for support in requesting information from providers.[112] This requires the approval of a simple majority and a third of the members of the scientific panel, respectively.[113] The scientific panel tasks are geared towards speedily alerting and informing the Commission in the context of an emerging and rapidly changing scientific field that presents great uncertainty and encompasses limited scientific consensus.

32. The third difference concerns *flexibility in rules of procedure*. CEGs adopt rules of procedure mirroring standard rules of procedure.[114] The standard rules may be departed from or supplemented when 'justified by specific requirements'.[115] In contrast, the scientific panel adopts its rules of procedure without any express requirement that these mirror standard rules of procedure. The requirements for the rules of procedure for the scientific panel laid out in the AI Act and the Implementing Act are more limited than standard rules of procedure are.[116] This allows for more flexible, expedited procedures tailored to the unique tasks of the scientific panel and the rapidly evolving context in which it operates.

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[107] See commentary on Article 67 in this work.

[108] European Commission, 'Annexes to the Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups' C(2016) 3301 final ("Annexes to Commission Decision on CEGs") annex 1 art 7(1).

[109] Scientific Panel Implementing Act, art 7(2).

[110] Annexes to Commission Decision on CEGs (n 108) annex 1, art 7(6).

[111] AI Act, art 90.

[112] ibid art 91.

[113] Scientific Panel Implementing Act, art 18(1) and 15(2); See Section 2.3.

[114] Commission Decision on CEGs (n 100) art 17(1).

[115] Annexes to Commission Decision on CEGs (n 108) annex 3; Commission Decision on CEGs (n 100) art 17(1). The standard rules of procedure include that a CEG shall act on request of the Directorate General (annex 3 point 1); meetings shall be convened by the chair with agreement of the Directorate General either at the initiative of the Directorate General or at the request of a simple majority of members after the Directorate has agreed (annex 3 point 2(1)); meetings of the group shall be held on Commission premises (annex 3 point 2(3)); invitations to meetings along with a draft agenda shall be sent at least thirty calendar days in advance (annex 3 point 4(1)).

[116] The rules of procedure for the scientific panel must include rules for carrying out tasks in article 68(3) AI Act (article 8(2)(a) Scientific Panel Implementing Act); rules ensuring application of the principles of independence, impartiality, objectivity, commitment, transparency and confidentiality in accordance with articles 10–13 (article 8(2)(b) Scientific Panel Implementing Act); and rules related to voting, including through silence procedure (article 8(2)(c) Scientific Panel Implementing Act). The rules of procedure for the scientific panel must be reviewed, and where necessary updated, at least every two years to ensure an 'effective functioning', see Scientific Panel Implementing Act, art 8(3).

33. The fourth difference pertains to *remuneration*. CEG members may only be remunerated in 'exceptional cases' on certain conditions,[117] and such payment must not exceed 450 euros per full working day.[118] In contrast, members of the scientific panel appointed as rapporteurs and contributors are to be remunerated for carrying out tasks requested by the AI Office pursuant to Article 68(3).[119] This may improve the ability of the scientific panel to attract technical talent in the context of fierce competition for scarce expertise in the field of GPAI models.

34. The fifth difference relates to *transparency*. CEGs require publication of 'all relevant documents'.[120] In contrast, the transparency obligations for the scientific panel are more limited.[121] While it may, at times, be advantageous for the scientific panel to publish documents, the possibility for the scientific panel to effectively communicate confidential information to the AI Office and advise on sensitive matters presents its own advantages.

35. Compared to the standard framework for CEGs, the scientific panel will, in theory, be able to operate more autonomously; raise speedy alerts rather than demonstrate scientific consensus; attract scarce talent through remuneration; adopt tailor-made rules of procedure allowing flexibility, speed and adaptation in a rapidly changing field; and balance trade-offs between transparency and handling sensitive information. These differences present particular advantages for the scientific panel in fulfilling its purpose and tasks. These are central characteristics that hint at the nature of the scientific panel and indicate that the legislator made an intentional, well-reasoned choice to establish the scientific panel outside the CEG framework.

2.3. Composition and selection of members

2.3.1. Overview

36. The size of the scientific panel is omitted from the AI Act itself, but the Implementing Act clarifies that it shall consist of up to 60 members.[122] The Commission, in consultation with the AI Board, sets

[117] Commission Decision on CEGs (n 100) art 21(1), (2) and (3). This article states 'In principle, participants in the activities of an expert group or sub-group shall not be remunerated for the services they offer. Payment of a 'special allowance' (remuneration) to members and invited experts is only possible in exceptional cases in compliance with the procedure and conditions...'. The applicable procedures and conditions are laid out in the same article and include that the activities carried out are essential to the development and monitoring of Union policies or legislation or to the adoption of implementation measures; individuals receiving remuneration must be highly qualified, specialised, independent experts selected on the basis of objective criteria, following an open call for applications; relevant information justifying the remuneration in relation to the work to be accomplished must be included in official Commission documents to be made publicly available either in the Register of Commission expert groups or via a link from the Register to a dedicated website containing this information; prior authorisation from the Secretariat-General and the Directorate General for Budget to provide remuneration by formal request, in which the departments shall adequately justify the requested remuneration in light of the specific tasks.

[118] Commission Decision on CEGs (n 100) art 21(3).

[119] Scientific Panel Implementing Act, art 9(1); see Section 2.3.

[120] Commission Decision on CEGs (n 100) art 26(1). This includes agendas, minutes and participant's submissions.

[121] Scientific Panel Implementing Act, art 12. This includes names of members, CVs, rules of procedure, opinions and recommendations when these do not disclose confidential business information, and the participation and conclusions to thematic hearings initiated under article 7(5) Scientific Panel Implementing Act; See Section 2.4.

[122] ibid art 3(2).

out an exact number in each call for expression of interest.[123] The initial panel, which as of the time of writing (September 2025) has not yet been constituted, will consist of 60 members.[124]

37. Members are appointed for a term of two years with the possibility of the term being renewed.[125] The Commission may dismiss members if they resign or if they breach the obligations of independence, impartiality and objectivity; commitment; transparency; or confidentiality or the obligations of members or officials of the Union to not disclose information covered by the obligation of professional secrecy under Article 339 TFEU.[126]

38. The independent experts are to be selected on the basis of 'up-to-date scientific or technical expertise in the field of AI necessary for the tasks of the scientific panel'.[127] Article 68(2)(a)–(c) and Article 68(4) AI Act set out four cumulative criteria that must be met for selection to the scientific panel. Furthermore, the overall composition of the panel must ensure fair gender and geographical representation.[128] These criteria are elaborated in the Implementing Act and in calls for expression of interest. They are addressed in turn below.

2.3.2. Expertise and competence in the field of AI (Article 68(2)(a))

39. To be members of the scientific panel, experts must demonstrate 'particular expertise and competence and scientific or technical expertise in the field of AI'.[129] The Implementing Act stipulates that expertise refers to 'multidisciplinary and interdisciplinary adequate and up-to-date scientific, technical, or sociotechnical expertise related to AI, the impacts of AI or otherwise relevant to the effective enforcement of [the AI Act]'.[130] This includes 'expertise pertaining to applied sectors, fundamental rights and equality, as appropriate'.[131] In the June 2025 Commission call for expression of interest, the Commission has detailed eight areas that constitute up-to-date 'relevant expertise'.[132] In particular, the call includes two cumulative eligibility criteria regarding educational background and professional experience: (1) having obtained a PhD in a relevant area or equivalent experience and (2) having professional experience and proven scientific impact on AI/GPAI research or the study of AI impacts. It can be noted that the Implementing Act does not mention 'competence' a single time, compared to 13 mentions of 'expertise'. Similarly, the call for expression of interest mentions 'competence' once (under the Privacy statement annexed) in contrast to 16 mentions of 'expertise'. In this light, it is reasonable to interpret the requirement of 'competence' as satisfied by 'expertise'.

[123] ibid.
[124] European Commission, 'Commission Seeks Experts for AI Scientific Panel' (n 89).
[125] Scientific Panel Implementing Act (n 10) art 3(2).
[126] ibid art 4(2).
[127] AI Act, art 68(2).
[128] AI Act, art 68(2) second paragraph.
[129] ibid 68(2)(a).
[130] Scientific Panel Implementing Act (n 10) art 3(3)(a).
[131] ibid.
[132] European Commission, 'Commission Seeks Experts for AI Scientific Panel' (n 89) para 3.2 states 'Relevant expertise must be substantiated for a least one of the following areas: Evaluation of GPAI model capabilities, propensities, and impacts[...]; Risk assessment methodologies for AI and GPAI models[...]; GPAI technical risk mitigations and best practices[...]; Misuse and deployment systemic risks of GPAIs[...]; Cyber Offence systemic risk[...]; GPAI provider cybersecurity and information security[...]; Emergent systemic risks of GPAIs[...]; Compute measurements and thresholds[...]'.

2.3.3. Independence from providers (Article 68(2)(b))

40. Experts who are appointed as members of the scientific panel shall demonstrate 'independence from any provider of AI systems or general-purpose AI models'.[133] According to the Implementing Act, this requires that an expert sitting on the scientific panel is neither an employee nor in a contractual relationship with a provider of AI systems or GPAI models 'which could affect their independence, impartiality and objectivity' throughout the term of the panel appointment.[134] A literal interpretation of the quoted phrase suggests that contractual relationships with providers may be permitted in principle if such relationships do not affect the independence, impartiality and objectivity of members. However, the first call for expression of interest states that 'at the time of expressing interest to the scientific panel, and throughout the term of office, the candidate shall not be an employee of, or in a contractual relationship with a provider of an AI system or general-purpose AI model'.[135] This follows the more absolute wording of Article 68(2)(b) and leaves little room for a permissive interpretation of independence.

41. The topic of independence in this context is not entirely straightforward. On the one hand, the importance of independence of the experts on the scientific panel is crucial, given the panel's purpose of supporting enforcement activities under Article 68(1) AI Act and the panel's tasks of advising and supporting the AI Office and MSAs under Article 68(3). Furthermore, the importance of independent scientific expertise has increased over time in the EU institutional framework.[136] This is evidenced in the case law of the General Court, for example in the case of *Alpharma Inc v Council*, where the Court explicated that 'expert scientific advice meeting the requirements of excellence, independence and transparency is of the utmost importance [...] to ensure that the regulatory measures adopted by the Community institutions have a proper scientific basis and to ensure that the institutions were in a position to examine carefully and impartially all relevant evidence in a particular case'.[137] This broader significance supports a restrictive interpretation of the wording of Article 68(2)(b) discussed above.

42. On the other hand, there is a tension between the strictness of the independence requirement and the number of experts (and their degree of expertise) who satisfy the criterion. Often, experts on a particular topic have conflicts of interest, for example through research funding, investments, consultation services, previous employment, etc.[138] This is particularly true in the field of GPAI models. In this field, academia dominated the development of notable models up until 2014, but its influence has rapidly decreased since then, with 90% of notable models developed by industry in 2024.[139] Valuable expertise rests with the individuals and organisations developing the most advanced models. Thus, there may be a very limited number of experts with a sufficient level of expertise regarding the most capable GPAI models and GPAI models with systemic risk who are not in a

[133] AI Act, art 68(2)(b).
[134] Scientific Panel Implementing Act (n 10) art 10(2).
[135] European Commission, 'Commission Seeks Experts for AI Scientific Panel' (n 89) 2.
[136] Simone Gabbi, 'Independent Scientific Advice: Comparing Policies on Conflicts of Interest in the EU and the US' (2011) 2 European Journal of Risk Regulation 213, 216; Elissaveta Radulova, Johanna Breuer and Aneta Spendzharova, 'The European Commission's Expert Groups: Adapting to the Contestation of Expertise' in Vigjilenca Abazi, Johan Adriaensen and Thomas Christiansen (eds), *The Contestation of Expertise in the European Union* (Springer International Publishing 2021).
[137] Case T-70/99 *Alpharma Inc v Council of the European Union* [2002] ECR II-3495, para 211.
[138] Gabbi (n 136) 255.
[139] Nestor Maslej and others, 'The AI Index 2025 Annual Report' (AI Index Steering Committee, Institute for Human-Centered AI, Stanford University 2025) <https://hai.stanford.edu/assets/files/hai_ai_index_report_2025.pdf>, 48.

contractual relationship with a provider. While this policy consideration does not bring to bear on the literal interpretation of the AI Act, it does hint at a potential conflict between a restrictive interpretation and the effective fulfillment of the purpose of the scientific panel.

43. One potential way to alleviate this tension is a cooling-off period following the termination of a contractual relationship that compromised an expert's independence, after which the expert could be appointed to the scientific panel.[140] The AI Act and the Implementing Act are silent on this matter. From a policy perspective, such a cooling-off period seems sensible in order for sufficiently independent expertise to join the scientific panel in the future, although the duration of such a period could jeopardise the currency of the individual's particular expertise in the fast-paced evolution of GPAI science. It is likely to be necessary to assess such cooling-off periods on a case-by-case basis (rather than pursuant to an *ex ante* policy), given the variety of contractual relationships, the roles that candidate experts are likely to have had with GPAI model providers,[141] and the pace of change in the field.

2.3.4. Diligence, accuracy and objectivity when carrying out activities (Article 68(2)(c))

44. Article 68(2)(c) stipulates that experts must demonstrate 'an ability to carry out activities diligently, accurately and objectively'. This requirement is briefly elaborated on in the Implementing Act with some overlap with other requirements. Experts appointed to the scientific panel must commit to acting in the public interest and observe the principles of independence, impartiality, objectivity, commitment, transparency and confidentiality in accordance with Articles 10 to 13.[142] Further, they must respond to requests from the Chair and the Secretariat and dedicate the necessary effort to complete assigned tasks to the best of their ability and within prescribed timelines.[143]

2.3.5. Impartiality, objectivity, confidentiality, and instructions (Article 68(4))

45. Article 68(4) makes four points which are further elaborated in the Implementing Act.[144] First, it states the requirement of impartiality and objectivity and stipulates that experts shall ensure the confidentiality of information and data obtained in carrying out their tasks and activities. Elaborating on this, Article 13 Implementing Act requires that experts appointed to the scientific panel sign a declaration of confidentiality, comply with Article 339 TFEU, and comply with Union classified information and sensitive non-classified information in accordance with Commission Decisions 2015/443 and 2015/444.[145] Second, Article 68(4) stipulates that experts shall 'neither seek nor take instructions from anyone when exercising their tasks'. Relatedly, the Implementing Act states that experts are appointed in their personal capacity and cannot delegate their responsibilities to any other person.[146] Third, Article 68(4) requires that experts make a declaration of interests to be published,

[140] Schmidl & Rohner (n 48) 1012.
[141] Note that such evaluation is facilitated by the call for expression of interest, which requires candidates to submit statements of conflict of interest, see European Commission, 'Commission Seeks Experts for AI Scientific Panel' (n 89) annex I, 9.
[142] Scientific Panel Implementing Act, art 11(1).
[143] ibid art 11(2).
[144] AI Act, art 68(4).
[145] Scientific Panel Implementing Act, art 13(1)-(4).
[146] ibid art 10(1).

as is standard under EU administrative law.[147] The Implementing Act elaborates that this declaration must indicate any interest that may compromise or reasonably be perceived to compromise their independence, impartiality and objectivity, including in respect of close family members.[148] In the event of a delay before appointment, this declaration shall be updated before appointment to the panel (or reserve list)[149] and when changes of circumstances occur.[150] Moreover, experts must sign a declaration of commitment to public interest and the principles of independence, impartiality, objectivity, transparency and confidentiality.[151] Fourth, Article 68(4) requires the AI Office to establish 'systems and procedures to actively manage and prevent potential conflicts of interest'.

46. Requirements of impartiality, objectivity and confidentiality are important in panel appointees given the nature of the tasks that members of the scientific panel may perform, not least making qualified alerts under Article 90 AI Act and conducting evaluations under Article 92(2) AI Act. As pointed out by scholars, the main source of legitimacy for expert bodies, like the scientific panel, is the objectivity and quality of their output.[152] Further, Article 41 of The Charter of Fundamental Rights enshrines the right to have affairs handled impartially by EU institutions, bodies and agencies.[153] This right is well-established in case law, and the General Court has held that the requirement of impartiality extends to experts consulted in the context of the adoption of Commission decisions.[154] This is relevant because certain actions of the scientific panel may affect Commission decisions. For example, the Commission may adopt a decision designating a GPAI model as presenting systemic risks following a qualified alert by the scientific panel in accordance with Article 52(4) AI Act.[155]

2.3.6. Fair gender representation (Article 68(2))

47. The second paragraph of Article 68(2) states that the Commission shall ensure 'fair gender [...] representation'. The Implementing Act adds the qualifier 'to the extent possible', suggesting that there is no set gender quota or absolute quantitative requirement.[156] The Implementing Act states that the Commission must give preference to the under-represented gender when deciding between two equally qualified candidates,[157] but is otherwise silent on the topic of gender balance.[158] This is in

[147] Gabbi (n 136) 217.

[148] Scientific Panel Implementing Act, art 10(3).

[149] ibid art 3(6) stating that 'Experts who satisfy the criteria stipulated in the call, but who are not appointed to the scientific panel, shall be included in a reserve list of available experts (the 'reserve list'), which shall be valid for the duration of the term of office of the panel referred to in Article 4'.

[150] ibid art 10(4).

[151] ibid art 11.

[152] Gabbi (n 136) 213; see also Demortain (n 6) for the importance of (legitimate) expert bodies for the broader legitimacy of regulatory authorities and frameworks.

[153] Charter of Fundamental Rights of the European Union [2016] OJ C 202/389, art 41.

[154] Case T-74/08 *Now Pharm AG v European Commission* [2010] ECR II-4661, para 88.The case concerned an opinion by the Committee for Orphan Medicinal Products of the European Medicines Agency, recommending the Commission to reject an application for designation of a medicinal product as an orphan medicinal product. The applicant unsuccessfully appealed the opinion and subsequently brought a case for the annulment of the ensuing Commission decision rejecting the application. In this context, the General Court stated that '[i]t should also be recalled that the requirement of impartiality to which the Community institutions are subject also extends to experts consulted in that regard. In particular, where an expert is requested to give an opinion on the effects of a potential medicinal product, it is necessary for that expert to perform his task impartially'.

[155] AI Act, art 52(4)(1).

[156] Scientific Panel Implementing Act, art 3(5).

[157] ibid.

[158] For comparison, the medium-term aim for gender balance in CEGs is a minimum of 40% representation of each gender for each group, see Commission Decision on CEGs (n 100) art 10(6). Interestingly, the CEG framework

contrast to the requirement for 'fair geographical representation', where the Implementing Act lays down quantifiable conditions.[159]

2.3.7. Fair geographical representation (Article 68(2))

48. According to the second paragraph of Article 68(2), the Commission shall ensure 'fair [...] geographical representation'. The Implementing Act gives more detail, stating that the Commission shall appoint at least one expert, and up to a maximum of three experts, from each Member State as well as each member of the EFTA/EEA countries on two conditions: (1) there are applicants from that country who satisfy the criteria stipulated in the relevant call and (2) a sufficiently comprehensive coverage of relevant areas of expertise can be achieved. Thus, representation from every Member State is not an absolute criterion. However, the Implementing Act sets out an absolute criterion that Member State nationals and EFTA/EEA nationals shall make up at least 80% of the selected experts, allowing up to 20% of the appointed experts from third countries.[160]

2.4. Particular roles for members of the scientific panel under the Implementing Act

49. While the AI Act is silent on the organisation of the scientific panel, the Implementing Act makes clear that members of the scientific panel can be appointed for particular roles: chair, vice-chair, rapporteurs and contributors. The chair and vice-chair mainly have organisational responsibilities. One rapporteur and two contributors can be appointed per task performed by the scientific panel. Certain actions are reserved exclusively for rapporteurs, namely requests for assistance made to the AI Office in accordance with Article 91(3) AI Act. Lastly, most actions may be initiated by any member, including preparing qualified alerts. Each role is discussed in turn below, followed by a short note on rules of procedure.

2.4.1. Chair and vice-chair

50. Two members will be selected as chair and vice-chair by the Commission upon majority recommendation by the members of the scientific panel.[161] The term of office for these positions lasts for the term of the scientific panel, that is two years, and is renewable once.[162] The chair's responsibilities as outlined in the Implementing Act are mainly organisational. The chair is to consult the Commission on the latter's appointment of members as rapporteurs and contributors in different situations, in particular the appointment of members to perform tasks of the scientific panel listed under Article 68(3) AI Act[163] and the appointment of another member when an expert is no longer able to effectively perform their allocated task.[164] Additionally, when the AI Office decides to launch a measure pursuant to Articles 91 to 93 AI Act, Article 19(4) Implementing Act states that the AI

does not set any targets or standards for geographical representation beyond 'ensuring, as far as possible [...] a geographical balance', see Commission Decision on CEGs (n 100) art 10(5).

[159] See Section 2.3.7.

[160] Scientific Panel Implementing Act, art 3(4).

[161] ibid art 5.

[162] ibid art 5(2).

[163] ibid art 7(1).

[164] ibid art 7(3).

Office shall appoint, in consultation with the chair, a rapporteur and two contributors to advise it.[165] As Article 19(4) Implementing Act does not expressly mention qualified alerts, it is unclear from the provision itself whether this appointment and consultation requirement only applies when the AI Office adopts measures pursuant to Articles 91 to 93 AI Act as a response to a qualified alert, or whether it applies whenever the AI Office adopts measures pursuant to Articles 91 to 93 AI Act. However, from a systematic view, Article 19 Implementing Act is titled 'Handling of qualified alerts'. Article 19(1) Implementing Act requires the AI Office to evaluate the qualified alert; to decide which, if any, measures to take; and to close the alert if it decides not to launch any measures following a qualified alert. Articles 19(2) and (3) Implementing Act lay down the AI Office's evaluation process of qualified alerts, including giving the AI Office the right to request more information from the scientific panel to facilitate the AI Office's decision-making. In these circumstances, it is reasonable to conclude that Article 19(4) Implementing Act should be read as outlining the implications when the AI Office decides to launch measures in response to a qualified alert. Lastly, the chair is also involved when members want to conduct a thematic hearing with stakeholders to gather evidence, as it is the chair that shall request the Secretariat to organise such a hearing following the request of at least three members of the scientific panel.[166]

2.4.2. Rapporteurs and contributors

51. In accordance with the first sentence of Article 7(2), the Commission, in consultation with the chair, may appoint a rapporteur and two contributors 'for each task pursuant to Articles [sic] 68(3)'.[167] The purpose of this organisational structure is to 'ensure flexibility so that specialised knowledge can be deployed based on requisite needs.'[168] When appointing rapporteurs, the Commission and chair should take into account the candidates' expertise, availability, possible conflicts of interest, and security concerns.[169] Appointed rapporteurs and contributors will be remunerated when carrying out tasks for the scientific panel.[170] The roles of rapporteurs and contributors are significant for (at least) two reasons.

52. First, according to the Implementing Act, the Commission is required to appoint a rapporteur in two distinct situations. The first situation is when an MSA[171] requests support from the scientific panel and the AI Office concludes that the request is necessary and proportionate.[172] Then, the Commission shall appoint a rapporteur and two contributors. The second situation relates to Article 19(4) Implementing Act.[173] This Article stipulates that the Commission is required to appoint a rapporteur and two contributors from the scientific panel when, following a qualified alert, the AI Office launches a measure pursuant to Articles 91 to 93 AI Act in order to receive advice about the adoption of the measures.[174]

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[165] ibid art 19(4).
[166] ibid art 7(5).
[167] ibid art 7(2).
[168] ibid recital 6.
[169] ibid.
[170] ibid art 9(1); for an overview of remuneration rules, see Anne Paschke and Sarah Rachut, 'Artikel 68 Wissenschaftliches Gremium unabhängiger Sachverständiger', in Jens Schefzig and Robert Kilian (eds), *BeckOK KI-Recht* (3rd edn) para 20–23.
[171] AI Act, art 3(26) ('"market surveillance authority" means the national authority carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020').
[172] Scientific Panel Implementing Act, art 14(4).
[173] ibid art 19(4).
[174] ibid.

53. Second, according to the Implementing Act, certain panel activities may only be initiated by rapporteurs. Namely, requests for assistance made to the AI Office in accordance with Article 91(3) AI Act may only be issued by an appointed rapporteur with the support of at least one-third of the panel members.[175] If such a request is granted, the information received shall only be made available to the rapporteur and contributors appointed for the specific task for which the assistance was requested.[176]

2.4.3. Members

54. In accordance with the second sentence of Article 7(2) Implementing Act, *any panel member* may initiate the preparation of *qualified alerts* and *perform other tasks* of the scientific panel. This sentence stipulates that 'members of the scientific panel may at any time decide to prepare qualified alerts pursuant to Article 90 [AI Act] or other tasks of the scientific panel on their own initiative'.[177] The text refers to 'members of the scientific panel' rather than 'rapporteurs', 'the Chair', or 'appointed members', suggesting that any member may take such an initiative. On a systematic interpretation, the second sentence of Article 7(2) clarifies that its first sentence is not to be understood as generally requiring Commission initiative or the appointment of rapporteurs for the initiation of panel tasks. Unless otherwise specified, members can take their own initiative to perform the tasks of the panel.[178]

55. From a policy perspective, this possibility for members to take actions of their own motion indicated by the second sentence of Article 7(2) may prevent undue delays, for example from bottlenecks if the Commission is slow to or fails to appoint rapporteurs. It does confer a degree of agency on all members of the panel, ensuring that the chair or rapporteurs do not have de facto veto powers over the preparation of qualified alerts or other tasks.[179] It could be argued that this organisational structure could bring with it the unilateralist's curse, where a number of experts could take an action with far-reaching consequences without requiring the permission of others, and thereby leading to more frequent or less co-ordinated action than is optimal.[180] However, this risk seems to be mitigated because a simple majority of members is required for raising qualified alerts under Article 90 AI Act[181] and only rapporteurs, with the support of one-third of the scientific panel, are empowered to request assistance from the AI Office to obtain information from a provider under Article 91(3) AI Act.[182]

2.4.4. Rules of procedure

56. The rules of procedure of the scientific panel may provide further clarification on the responsibilities of different roles outlined above. Once the scientific panel has been constituted, the members will

[175] ibid art 15(2), recital 12.
[176] ibid art 17(2) and recital 12.
[177] ibid art 7(2).
[178] For example, article 15(2) Scientific Panel Implementing Act explicitly states that a 'member of the scientific panel who has been appointed by the Secretariat as rapporteur' may issue a request for assistance of the AI Office to request documentation or information from a provider, indicating that *only* rapporteurs may make such requests in contrast to other tasks of the scientific panel.
[179] ibid art 18(1) and (3).
[180] Nick Bostrom, Thomas Douglas and Anders Sandberg, 'The Unilateralist's Curse: The Case for a Principle of Conformity' 30 Social Epistemology 350.
[181] Scientific Panel Implementing Act, art 18(1) and recital 10.
[182] ibid art 15(2).

adopt rules of procedure by a simple majority.[183] The Secretariat, a role jointly performed by the AI Office and the Joint Research Centre,[184] is tasked with monitoring compliance with the rules of procedure.[185] The scientific panel may have some flexibility in determining the design and content of the rules of procedure as the panel does not constitute a so-called Commission expert group.[186] However, the Implementing Act stipulates that the rules of procedure shall at least provide the procedure for carrying out the tasks of the scientific panel referred to in Article 68(3);[187] rules to ensure the application of the principles of independence, impartiality, objectivity, commitment, transparency and confidentiality in accordance with Articles 10 to 13;[188] and rules related to voting, including through silence procedures.[189] Furthermore, the Implementing Act explicitly allows for more specific procedures relating to issuing qualified alerts in accordance with Article 90(1) to be introduced in the rules of procedure.[190] The rules of procedure are to be made public, which supports the transparency of the panel's work addressed below.[191] Further, they shall be reviewed, and where necessary updated, every two years by the scientific panel in agreement with the Secretariat.[192]

2.5. Transparency

57. Article 68 AI Act is largely silent about particular requirements regarding transparency of the scientific panel's work, with the exception of Article 68(4) which requires that experts draw up a public declaration of interest. However, Article 12 Implementing Act states that the activities of the panel shall be 'carried out in a transparent manner'.[193] This has the important function of ensuring trust in the work of the scientific panel.[194] A dedicated Commission website will contain the list of experts along with their CVs and declarations of interest, confidentiality and commitment.[195] As noted above, the rules of procedure of the scientific panel are to be made public.[196] Further, the opinions and recommendations that the panel provides when fulfilling tasks listed in Article 68(3) shall be public if they do not disclose confidential business information, trade secrets, or strategic interests of the Union.[197] The participation and conclusions from thematic hearings shall also be public.[198] These requirements for transparency are at the centre for the delicate balancing, case-by-case, between transparency of the scientific panel's work on the one hand and confidentiality and business secrecy on the other hand.

[183] ibid art 8(1).
[184] ibid art 6(1).
[185] ibid art 6(2).
[186] See Section 2.2.
[187] Scientific Panel Implementing Act, art 8(2)(a).
[188] ibid art 8(2)(b).
[189] ibid art 8(2)(c).
[190] ibid art 18(1) reads as follows: 'A decision by at least a simple majority of the members of the scientific panel shall be necessary to issue a qualified alert to the AI Office pursuant to Article 90(1) of Regulation (EU) 2024/1689. The scientific panel may introduce more specific procedures in its rules of procedure referred to in Article 8.'
[191] ibid art 8(4).
[192] ibid art 8(3).
[193] ibid art 12.
[194] ibid recital 8; see also Radulova, Breuer and Spendzharova (n 136).
[195] Scientific Panel Implementing Act, art 12.
[196] ibid; Section 2.4.4.
[197] ibid.
[198] Scientific Panel Implementing Act, art 12.