Article 88

Enforcement of the obligations of providers of general-purpose AI models

Commentary by Matt Hanrahan | Submitted: February 2026

AI Act provision

Article 88

1. The Commission shall have exclusive powers to supervise and enforce Chapter V, taking into account the procedural guarantees under Article 94. The Commission shall entrust the implementation of these tasks to the AI Office, without prejudice to the powers of organisation of the Commission and the division of competences between Member States and the Union based on the Treaties.

2. Without prejudice to Article 75(3), market surveillance authorities may request the Commission to exercise the powers laid down in this Section, where that is necessary and proportionate to assist with the fulfilment of their tasks under this Regulation.

Recitals

Recital 118

This Regulation regulates AI systems and AI models by imposing certain requirements and obligations for relevant market actors that are placing them on the market, putting into service or use in the Union, thereby complementing obligations for providers of intermediary services that embed such systems or models into their services regulated by Regulation (EU) 2022/2065. To the extent that such systems or models are embedded into designated very large online platforms or very large online search engines, they are subject to the risk-management framework provided for in Regulation (EU) 2022/2065. Consequently, the corresponding obligations of this Regulation should be presumed to be fulfilled, unless significant systemic risks not covered by Regulation (EU) 2022/2065 emerge and are identified in such models. Within this framework, providers of very large online platforms and very large online search engines are obliged to assess potential systemic risks stemming from the design, functioning and use of their services, including how the design of algorithmic systems used in the service may contribute to such risks, as well as systemic risks stemming from potential misuses. Those providers are also obliged to take appropriate mitigating measures in observance of fundamental rights.

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 (45) 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.

(45) Commission Decision of 24.1.2024 establishing the European Artificial Intelligence Office C(2024) 390.

Recital 162

To make best use of the centralised Union expertise and synergies at Union level, the powers of supervision and enforcement of the obligations on providers of general-purpose AI models should be a competence of the Commission. The AI Office should be able to carry out all necessary actions to monitor the effective implementation of this Regulation as regards general-purpose AI models. It should be able to investigate possible infringements of the rules on providers of general-purpose AI models both on its own initiative, following the results of its monitoring activities, or upon request from market surveillance authorities in line with the conditions set out in this Regulation. To support effective monitoring of the AI Office, it should provide for the possibility that downstream providers lodge complaints about possible infringements of the rules on providers of general-purpose AI models and systems.

Recital 164

The AI Office should be able to take the necessary actions to monitor the effective implementation of and compliance with the obligations for providers of general-purpose AI models laid down in this Regulation. The AI Office should be able to investigate possible infringements in accordance with the powers provided for in this Regulation, including by requesting documentation and information, by conducting evaluations, as well as by requesting measures from providers of general-purpose AI models. When conducting evaluations, in order to make use of independent expertise, the AI Office should be able to involve independent experts to carry out the evaluations on its behalf. Compliance with the obligations should be enforceable, inter alia, through requests to take appropriate measures, including risk mitigation measures in the case of identified systemic risks as well as restricting the making available on the market, withdrawing or recalling the model. As a safeguard, where needed beyond the procedural rights provided for in this Regulation, providers of general-purpose AI models should have the procedural

rights provided for in Article 18 of Regulation (EU) 2019/1020, which should apply mutatis mutandis, without prejudice to more specific procedural rights provided for by this Regulation.

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1. General remarks

1.1. Introduction

1. Section 5 of Chapter IX of the AI Act, which is concerned with supervision, investigation, enforcement and monitoring powers of the Commission, begins with Article 88.[1] These supervision, investigation, enforcement and monitoring powers relate to the substantive obligations for providers of general-purpose AI ("GPAI") models found in Chapter V AI Act (Articles 51–56).[2] Article 88(1) declares that it is the Commission that has exclusive powers to supervise and enforce the obligations imposed upon providers of GPAI models by the AI Act, with implementation tasks entrusted to the AI Office. Although it does not specify this in Article 88(1), some authors have observed that these powers are exhaustive.[3]

1.2. Legislative history

2. The Commission's April 2021 proposal for an AI Act did not make provision for the regulation of GPAI models at all and did not provide for centralised enforcement by the Commission.[4] In that proposal, AI systems were to be supervised by national competent authorities, which had reporting obligations to the Commission.[5]

3. In the European Parliament's proposal in June 2023, a body called the AI Office was introduced,[6] as was the concept of a foundation model. This concept of a foundation model can be seen as a precursor to the concept of GPAI models used in the enacted version of the AI Act,[7] and many of

[1] The AI Act, in art 75(1), also provides for centralised enforcement by the Commission of obligations pertaining to certain AI systems: 'Where an AI system is based on a general-purpose AI model, and the model and the system are developed by the same provider, the AI Office shall have powers to monitor and supervise compliance of that AI system with obligations under this Regulation. To carry out its monitoring and supervision tasks, the AI Office shall have all the powers of a market surveillance authority provided for in this Section and Regulation (EU) 2019/1020.' See further forthcoming commentary on Article 75 in this work.

[2] Clemens Bernsteiner and Thomas Rainer Schmitt, 'Art. 88 Durchsetzung der Pflichten der Anbieter von KI-Modellen mit allgemeinem Verwendungszweck' in Mario Martini and Christiane Wendehorst (eds), *KI-VO: Verordnung über Künstliche Intelligenz: Kommentar* (2nd edn, C H Beck 2026) paras 11–13.

[3] ibid paras 11–13.

[4] 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 ("Commission Proposal").

[5] Ibid, see, for example, art 63(2) 'The national supervisory authority shall report to the Commission on a regular basis the outcomes of relevant market surveillance activities.'

[6] Susanne Wende, 'Art 64 Büro für Künstliche Intelligenz' in David Bomhard, Fritz-Ulli Pieper and Susanne Wende (eds), *Kommentar KI-VO: Verordnung über Künstliche Intelligenz* (Fachmedien Recht und Wirtschaft 2025) paras 5–8.

[7] In the AI Act, art 3(63): '"general-purpose AI model" means an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market

the AI system obligations applied *mutatis mutandis* to the providers of foundation models.[8] As envisaged by the European Parliament's proposal, the AI Office was not a component part of the Commission and was a separate entity with legal personality. However, the Parliament's proposal did not confer enforcement powers vis-à-vis foundation model providers on the AI Office, although it did give the AI Office what might be considered monitoring and implementation tasks.[9] The enacted version of Article 89(1) AI Act, not Article 88(1), is drafted in similar terms to that provision within the Parliament's proposal; it provides that the AI Office can take 'necessary actions to monitor the effective implementation, and compliance with, this Regulation by providers of general-purpose AI models'.[10]

4. The point at which the drafts began to contain the same terms as the enacted AI Act in relation to supervision and enforcement of GPAI models appears to have occurred just before or during the trilogues in late 2023 that ultimately resulted in the political agreement enshrined in the AI Act. A Council Presidency trilogue preparation document dated 28 November 2023 contains a revised text of the AI Act that provides for GPAI models and includes a chapter dealing with supervision, investigation, enforcement and monitoring of such models. Moreover, it contains a draft provision very similar to what became Article 88.[11] A similar provision to Article 89(1) is also found in the trilogue preparation document under Chapter 3A, Article B(1).[12] It is also notable that the provisions

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and that can be integrated into a variety of downstream systems or applications, except AI models that are used for research, development or prototyping activities before they are placed on the market;' whereas, in the European Parliament, 'Amendments adopted 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 intelligence (Artificial Intelligence Act) and amending certain Union legislative acts' P9_TA(2023)0236 ("Parliament Amendments"), Amendment 168 '"foundation model" means an AI system model that is trained on broad data at scale, is designed for generality of output, and can be adapted to a wide range of distinctive tasks'.

[8] Parliament Amendments (n 7) Amendment 168 introduces a definition for foundation model as follows: '(1c) '"foundation model" means an AI system model that is trained on broad data at scale, is designed for generality of output, and can be adapted to a wide range of distinctive tasks'.

[9] Parliament Amendments (n 7) Amendment 529, in particular:

> 'The AI Office shall carry out the following tasks: [....] o) provide monitoring of foundation models and to organise a regular dialogue with the developers of foundation models with regard to their compliance as well as AI systems that make use of such AI models[;]
>
> p) provide interpretive guidance on how the AI Act applies to the ever evolving typology of AI value chains, and what the resulting implications in terms of accountability of all the entities involved will be under the different scenarios based on the generally acknowledged state of the art, including as reflected in relevant harmonized standards;
>
> q) provide particular oversight and monitoring and institutionalize regular dialogue with the providers of foundation models about the compliance of foundation models as well as AI systems that make use of such AI models with Article 28b of this Regulation, and about industry best practices for self-governance. Any such meeting shall be open to national supervisory authorities, notified bodies and market surveillance authorities to attend and contribute.'

[10] Article 89(1) provides in full: 'For the purpose of carrying out the tasks assigned to it under this Section, the AI Office may take the necessary actions to monitor the effective implementation and compliance with this Regulation by providers of general-purpose AI models, including their adherence to approved codes of practice.'

[11] Council of the European Union, 'AI Act – Preparation for the trilogue' (Note from the Presidency to the Permanent Representatives Committee, 16097/23, 28 November 2023) (Interinstitutional File 2021/0106(COD)) ("Preparation for the Trilogue") 25, art A: 'Enforcement of obligations on providers of general purpose AI models

> 1. The Commission shall have exclusive powers to supervise and enforce Chapter/Title [general purpose AI models] and shall entrust the implementation of these tasks to the European [Commission/AI Office] without prejudice to the powers of organisation of the Commission.
>
> 2. Market surveillance authorities may request to the Commission to exercise the powers laid down in this Chapter, where this is necessary and proportionate to assist their tasks under this Regulation.'

[12] ibid 25: '1. For the purposes of carrying out the tasks assigned to it under this Chapter, the European [Commission/AI Office] may take the necessary actions to monitor the effective implementation and compliance

that became Articles 88–93 and 101 did not include any provision for the procedural rights now found in Article 94.[13] What became Article 94 was introduced only in the final compromise text from the trilogue of 6–8 December 2023.[14]

5. The legislative history of Article 88 does not provide clarity as to the status of the AI Office and its relationship to the Commission. The revised text proposed by the Council Presidency in the November 2023 document refers to the Commission and the AI Office interchangeably, marked by '[AI Office/Commission]'. For example, in what would become Article 88(1), the November 2023 document reads under Chapter 3A, Article A(1):

> 'The Commission shall have exclusive powers to supervise and enforce Chapter/Title [general purpose AI models] and shall entrust the implementation of these tasks to the European [Commission/AI Office] without prejudice to the powers of organisation of the Commission'.[15]

6. It is difficult to draw a firm conclusion on the institutional status of the AI Office and the role it ought to have in supervision and enforcement from this drafting. On the one hand, it may indicate that the choice between referring to the AI Office or the Commission was not regarded as consequential, such that either reference was acceptable. On the other hand, it is also possible to argue that the choice to refer to the AI Office rather than the Commission turned on what was to be agreed concerning the institutional status of the AI Office, in particular whether it was to be part of, or independent of, the Commission. This is addressed in greater detail below in the context of the discussion of the distinction between the AI Office and the Commission.

7. In the Committee of Permanent Representatives' document dated January 2024 approving the political agreement that resulted from the trilogue negotiations in December 2023, the following is stated regarding governance under the AI Act:

> 'While for AI systems the market surveillance system on the national level will apply, these new rules for GPAI models provide for a new more centralised system of oversight and enforcement. For this purpose, the AI Office will be established as a new governance structure with a number of specific tasks in respect of GPAI models, and with a strong link with the scientific community to support its work.'[16]

8. Whilst the AI Office is referred to as a 'new governance structure with a number of specific tasks [...]', even from this language it is difficult to draw any firm conclusion on the institutional status of the AI Office and the role it ought to have in supervision and enforcement. The text does suggest that the AI Office will be a 'new governance structure' but it does not address the question of whether it is a structure with operational autonomy or whether it is one that is to operate within the Commission.

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with this Regulation by providers of general purpose AI models or general purpose AI models with systemic risk, including adherence to approved codes of practice.'

[13] ibid 25.

[14] Council of the European Union, 'AI Act – Analysis of the final compromise text with a view to agreement' (Note from the Presidency to the Permanent Representatives Committee, 5662/24, 26 January 2024) (Interinstitutional File 2021/0106(COD)) ("Council Analysis") 221.

[15] Preparation for the Trilogue (n 11).

[16] Council Analysis (n 14) 7.

9. The final content of Article 88 appeared as Article 68f in a provisional agreement resulting from the interinstitutional negotiations, that is, the trilogues, dated February 2024.[17]

1.3. Rationale for a centralised approach

10. Despite the lack of clarity mentioned in the foregoing subsection, it is clear that Article 88(1) establishes a centralised approach to the supervision and enforcement of GPAI models. This approach finds its rationale in Recital 162 AI Act which highlights the need to make use of 'the centralised Union expertise and synergies at Union level' for the supervision and enforcement of GPAI model provider obligations under the AI Act.[18] This contrasts with the scheme adopted by EU law in relation to, for example, the regulation of data protection under the General Data Protection Regulation ("GDPR") where enforcement is led by supervisory authorities within the Member States.[19] The decentralised nature of GDPR enforcement has, in the view of some authors, resulted in forum shopping, inconsistent enforcement and inefficiencies in enforcement.[20] For example, a 2024 Commission report details diverging approaches to enforcement by national data protection authorities on key data protection concepts.[21] The same report states that data protection authorities in Member States consider that insufficient resources and gaps in technical and legal expertise are the main factors affecting their enforcement capacity.[22] A separate report noted that the inadequate resourcing of national data protection authorities was also hampering their effectiveness.[23] Compared to GDPR enforcement, a relatively small number of actors building GPAI models means that centralised monitoring, supervision and enforcement by the Commission, rather than market surveillance authorities ("MSAs"), is feasible.[24]

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[17] European Parliament, 'Provisional Agreement Resulting From Interinstitutional Negotiations' (2 February 2024, PE758.862v01-00), 194 <https://artificialintelligenceact.eu/wp-content/uploads/2024/02/AIA-Trilogue-Committee.pdf>.

[18] AI Act, recital 162 'To make best use of the centralised Union expertise and synergies at Union level, the powers of supervision and enforcement of the obligations on providers of general-purpose AI models should be a competence of the Commission.'

[19] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1 ("GDPR"), art 4(21) and art 4(22).

[20] Stella (Ziyu) Zhou, 'From Data Processing to Artificial Intelligence: The Evolution of EU Technology Enforcement Under the GDPR and the AI Act' (2025) Stanford-Vienna European Union Law Working Paper 118 <https://law.stanford.edu/wp-content/uploads/2025/06/EU-Law-WP-118-Zhou.pdf>; Estelle Massé, 'Three Years Under the EU GDPR: An Implementation Progress Report' (Access Now 2021) <https://www.accessnow.org/wp-content/uploads/2021/05/Three-Years-Under-GDPR-report.pdf>; See further: Herwig C H Hofmann and Lisette Mustert, 'The Future of GDPR Enforcement: Key Issues in the Procedural Reform' (*Verfassungsblog*, 28 November 2024) <https://verfassungsblog.de/the-future-of-gdpr-enforcement/> accessed 4 October 2025 '[...] unequal enforcement can become a problem for the acceptability of EU law, the existence of a single market, and arguably contributes to the ongoing competition between business locations (Opinion A-G Geelhoed in Case C-304/02). In the procedure leading up to the decision, often involving well-resourced companies such as Meta, Alphabet or others, an information imbalance exists between a DPA and the company under investigation.'

[21] European Commission, 'Second Report on the application of the General Data Protection Regulation' COM (2024) 357 final, para 2.5.3.

[22] ibid para 2.5.3.

[23] European Union Agency for Fundamental Rights, *GDPR in Practice – Experiences of Data Protection Authorities* (Publications Office of the European Union 2024) <https://fra.europa.eu/en/publication/2024/gdpr-experiences-data-protection-authorities>.

[24] Kasia Söderlund and Stefan Larsson, 'Enforcement Design Patterns in EU Law: An Analysis of the AI Act' (2024) 3 Digital Society <https://doi.org/10.1007/s44206-024-00129-8> 16–17.

11. Given the difficulties with the approach under the GDPR, it is unsurprising that the Digital Markets Act[25] ("DMA") and the Digital Services Act[26] ("DSA") are both indicative of a move towards centralised enforcement. The DMA and DSA both concern regulated entities and harms that, by their nature, may have cross-border effects. Similar to the AI Act, the DMA and the DSA allow for centralised enforcement once a specified threshold level is passed.[27] In each of the DMA and DSA, the Commission has been given direct powers to *inter alia* investigate[28] and enforce through, for example, fines[29].

12. Against this backdrop, it is unsurprising that, in the AI Act, the EU legislature opted for centralised enforcement for GPAI model providers, given that the technical gaps and under-resourcing that have plagued GDPR enforcement were also likely to arise in the enforcement of the AI Act's obligations for GPAI model providers. Indeed, the enforcement challenges were likely to be exacerbated due to the need for highly specialised technical expertise and resources to assess whether GPAI models conform to the provisions of the AI Act.[30] Further, this centralised approach extends to situations where an AI system is based on a GPAI model and the provider of both the system and the model is the same; in such cases, under Article 75(1) AI Act, the AI Office is granted certain powers that MSAs enjoy.[31] However, despite these provisions, the role of centralised enforcement should not be overstated. In essence, the AI Act's use of centralised enforcement turns on the AI Office's expertise in monitoring, supervising, investigating and enforcing against *GPAI models* and, therefore, accounts for only a small portion of overall enforcement activity under the AI Act. Otherwise, generally in relation to AI *systems* (albeit subject to Article 75(1)), the AI Act requires Member States to enforce the obligations of the AI Act and to establish or designate as national competent authorities at least one notifying authority and at least one MSA to do so.[32]

13. The interaction of centralised enforcement and enforcement at Member State level is recognised in Article 88(2) AI Act, which allows, subject to the conditions of necessity and proportionality, MSAs to request that the Commission exercise its powers of supervision, monitoring and enforcement to

[25] 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) [2022] OJ L 265/1 ("DMA").

[26] 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 277/1 ("DSA").

[27] DMA, art 38(7).

[28] DMA, arts 20, 21 and DSA, art 67.

[29] DMA, art 30 and DSA, art 74.

[30] It is worth stating that the AI Act does require national competent authorities to be adequately resourced but, from a practical perspective, this may prove difficult. AI Act, art 70(3) states that 'Member States shall ensure that their national competent authorities are provided with adequate technical, financial and human resources, and with infrastructure to fulfil their tasks effectively under this Regulation. In particular, the national competent authorities shall have a sufficient number of personnel permanently available whose competences and expertise shall include an in-depth understanding of AI technologies, data and data computing, personal data protection, cybersecurity, fundamental rights, health and safety risks and knowledge of existing standards and legal requirements. Member States shall assess and, if necessary, update competence and resource requirements referred to in this paragraph on an annual basis.'

[31] See forthcoming commentary on Article 75(1) in this work; AI Act, art 75(1); Matthias Schmidl and Andreas Rohner, 'Article 64: AI Office' in Ceyhun Necati Pehlivan, Nikolaus Forgó and Peggy Valcke (eds), *The EU Artificial Intelligence (AI) Act: A Commentary* (Wolters Kluwer 2024) 986, s 3.2.1.

[32] AI Act, art 70(1).

assist them in their tasks.[33] Article 88(2) can be seen as part of an approach to ensure that there are no enforcement gaps arising from the bifurcated enforcement system that the AI Act enshrines.

1.4. Overview of this chapter

14. The remainder of this chapter follows a paragraph-by-paragraph analysis of Article 88 and refers to the wider context of the AI Act where appropriate.

2. Analysis

2.1. Article 88(1)

2.1.1. The Commission's exclusive function

15. Article 88(1) reserves exclusively to the Commission the supervision and enforcement of the obligations of providers of GPAI models found in Chapter V AI Act. Supervising, monitoring and enforcement are provided for in Articles 89–93 AI Act.

16. Article 88(1) specifies that the 'implementation of these tasks' is entrusted to the AI Office, without prejudice to the powers of organisation of the Commission and the division of competences between the Member States and the Union as set out in the Treaties. For completeness, penalties for breach of obligations are provided for elsewhere, in Article 101 AI Act, in the form of fines that may be levied against GPAI model providers by the Commission.[34]

17. It is of note that 'monitoring' appears in the section heading, whereas Article 88(1) itself does not refer to monitoring in respect of GPAI models. There are a number of plausible explanations for this.

18. One possible explanation is that Article 88(1) is to be interpreted as a competence allocation provision. It declares that the Commission has the exclusive function in relation to supervision and enforcement, as these are powers that are exercised vis-à-vis a specific GPAI provider, whereas it is possible to conceive of 'monitoring' as the description of an activity that is carried out continuously. This conception of monitoring would mean that the purpose of Article 89 AI Act is to *declare* that the AI Office has a role as a monitor, without creating a power that the AI Office may exercise against a particular GPAI model provider. On this interpretation, the AI Office is able to monitor the information that providers of GPAI models with systemic risk are required to disclose[35] but, depending on the circumstances, need not take any further action by exercising a power against a

[33] Although article 88(1) does not refer to monitoring powers, article 88(2) allows MSAs to request powers laid down in 'this section'. Article 88(2) is contained in Chapter IX, Section 5, which includes monitoring actions under article 89.

[34] See further: Bernsteiner and Schmitt, 'Art. 88' (n 2) paras 3–5 where it is observed that the legislature has placed fines directly in the competence of the Commission, whereas other monitoring and supervision powers may be placed in the hands of the AI Office.

[35] For example, providers of GPAI models with systemic risk are required to report to the AI Office relevant information about serious incidents and possible corrective measures to address them pursuant to AI Act, art 55(1)(c); see also European Commission, 'Code of Practice for General-Purpose AI Models – Safety and Security Chapter' (2025) <https://ec.europa.eu/newsroom/dae/redirection/document/118119> accessed 17 December 2025, Commitment 7.

particular GPAI model provider in light of that information. The difficulty with this interpretation is that it runs counter to the express wording of Article 89. Article 89 states that the AI Office should be able to take the 'necessary actions', which does suggest that 'monitoring' is not simply a description of the AI Office's activities but is itself an empowering provision as well. It is of note that a comparable provision in the DSA has been used to enable the Commission to take necessary actions.[36] However, the DSA also provides for particular monitoring tasks on which the AI Act is silent. These include: 'provide access to, and explanations relating to, its databases and algorithms' and 'imposing an obligation on the provider of the very large online platform or of the very large online search engine to retain all documents deemed to be necessary' to assess the implementation and compliance with the DSA. The Safety and Security Chapter of the GPAI Code of Practice, adopted under Article 56 AI Act, does require signatories to report certain matters to the AI Office that could be seen to *facilitate* the AI Office's monitoring powers.[37] For instance, pursuant to that Chapter of the Code, GPAI model providers 'commit to reporting to the AI Office information about their model and their systemic risk assessment and mitigation processes and measures by creating a Safety and Security Model Report ("Model Report") before placing a model on the market' and '[f]urther, Signatories commit to keeping the Model Report up-to-date' and 'notifying the AI Office of their Model Report'.[38] GPAI model providers are also required to adopt a safety and security framework to 'outline the systemic risk management processes and measures that Signatories implement to ensure the systemic risks stemming from their models are acceptable'.[39] The GPAI model provider is required to provide the AI Office with access to the framework.[40] Additionally, GPAI model providers are required to draw up and keep up to date certain other information which the AI Office may request.[41]

19. The Code of Practice, as it is not binding in itself, does not have the same legal status as an obligation found in the AI Act. However, insofar as GPAI model providers choose to adhere to the Code of Practice in order to demonstrate compliance with the AI Act, the effect of the Code of Practice is significant.[42]

20. An alternative interpretation of Articles 88 and 89 is that the legislature considered that 'monitoring' is captured by the term 'supervision'. The first reason to support this interpretation is that the description of monitoring in Article 89(1) is 'to "monitor" the effective implementation and compliance' with the obligations in the AI Act. This description of Article 89(1) could easily be understood as a supervisory power captured by Article 88.[43] Moreover, it is noteworthy that there was

[36] DSA, art 72(1). See, for example, Commission Implementing Regulation (EU) 2023/1201 of 21 June 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council ('Digital Services Act') [2023] OJ L 159/51, art 3 which is the implementing act that provides for certain monitoring actions.

[37] Code of Practice, Safety and Security Chapter' (n 35) Commitment 1, Measure 1.4.

[38] ibid Commitment 7.

[39] ibid Commitment 1.

[40] ibid Commitment 1, Measure 1.4.

[41] ibid Measure 10.1. The information that may be requested by the AI Office pursuant to Measure 10.1 is: '(1) a detailed description of the model's architecture; (2) a detailed description of how the model is integrated into AI systems, explaining how software components build or feed into each other and integrate into the overall processing, insofar as the Signatory is aware of such information; (3) a detailed description of the model evaluations conducted pursuant to this Chapter, including their results and strategies; and (4) a detailed description of the safety mitigations implemented (pursuant to Commitment 5).'

[42] See further the commentary addressing Article 56, Section 1.1. in this work.

[43] See further Clemens Bernsteiner and Thomas Rainer Schmitt, 'Art. 89 Überwachungsmaßnahmen' in Mario Martini and Christiane Wendehorst (eds), *KI-VO: Verordnung über Künstliche Intelligenz: Kommentar* (2nd edn, C H Beck 2026) para 7 where, indeed, the authors suggest that the monitoring function described in Art 89(1) is an expression of the general mandate to supervise and enforce.

no reference to supervision in the Parliament's proposal for the role of the AI Office, whereas that proposal did refer to a 'monitoring' function by which the AI Office was to provide 'particular oversight and monitoring and institutionalize regular dialogue with the providers of foundation models about the compliance of foundation models [...]'.[44] This sounds broadly similar to what might be understood as 'supervision'.

21. It is also notable for these purposes that the AI Act does not contain a standalone article entitled 'supervision'. Therefore, it seems plausible that 'monitoring' was included in earlier drafts and was intended to be captured by the term 'supervision' used in Article 88(1) as enacted.

22. Whilst the use of 'supervision' and 'enforcement' may be considered inconsistent in some provisions of the AI Act,[45] there is no apparent reason to suggest that discrepancies in the use of 'monitoring' between the title of Section V of Chapter IX AI Act, Article 88(1) and Article 89 mean that 'monitoring' ought to be considered as falling outside of supervision.

23. Looking outside Article 88 AI Act, the Commission's powers to supervise and enforce Chapter V AI Act in respect of GPAI model providers include:
    1. requesting documentation and information from GPAI model providers;[46]
    2. carrying out evaluations on GPAI models;[47] and
    3. requesting compliance measures from GPAI model providers.[48]

24. A noteworthy feature of the Commission's supervision and enforcement powers in relation to GPAI model providers is that they are cast more broadly and, in several respects, with far less detail than the MSAs' powers. For example, Article 74(5) AI Act,[49] which relates to the MSAs' enforcement of obligations pertaining to AI systems, provides that those MSAs have the power to conduct 'unannounced on-site inspections and physical checks of products'[50] and 'the power to acquire product samples, including under a cover identity, to inspect those samples and to reverse-engineer them in order to identify non-compliance and to obtain evidence'.[51] No such specific powers are granted to the Commission in its supervisory and enforcement capacity vis-à-vis GPAI models.

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[44] Parliament Amendments (n 7) Amendment 529, see in particular (q).

[45] See further the forthcoming commentary addressing Article 75(1) in this work.

[46] See article 91(1): 'The Commission may request the provider of the general-purpose AI model concerned to provide the documentation drawn up by the provider in accordance with Articles 53 and 55, or any additional information that is necessary for the purpose of assessing compliance of the provider with this Regulation.'

[47] AI Act, article 92(1): 'The AI Office, after consulting the Board, may conduct evaluations of the general-purpose AI model concerned: (a) to assess compliance of the provider with obligations under this Regulation, where the information gathered pursuant to Article 91 is insufficient; or, (b) to investigate systemic risks at Union level of general-purpose AI models with systemic risk, in particular following a qualified alert from the scientific panel in accordance with Article 90(1), point (a).'

[48] See article 93(1): 'Where necessary and appropriate, the Commission may request providers to: (a) take appropriate measures to comply with the obligations set out in Articles 53 and 54; (b) implement mitigation measures, where the evaluation carried out in accordance with Article 92 has given rise to serious and substantiated concern of a systemic risk at Union level; (c) restrict the making available on the market, withdraw or recall the model.'

[49] AI Act, art 74(5): 'Without prejudice to the powers of MSAs under Article 14 of Regulation (EU) 2019/1020, for the purpose of ensuring the effective enforcement of this Regulation, MSAs may exercise the powers referred to in Article 14(4), points (d) and (j), of that Regulation remotely, as appropriate.'

[50] Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 OJ L 169/1 ("Market Surveillance Regulation"), art 14(4)(d).

[51] ibid art 14(4)(j).

Instead, the powers granted to the Commission in, for example, monitoring under Article 89 AI Act are expressed as follows: 'the AI Office may take the necessary actions to monitor the effective implementation of, and compliance with, this Regulation by providers of GPAI models, including their adherence to approved codes of practice'.[52] It should also be noted that Article 91(1) includes a catch-all phrase enabling the Commission to request 'any additional information that is necessary for the purposes of assessing compliance of the provider with this Regulation.' Similarly, Article 92 permits the Commission to conduct evaluations in certain circumstances and, under Article 92(3), for such an evaluation, the Commission may request 'access to the general-purpose AI model concerned through APIs or further appropriate technical means and tools, including source code.' Moreover, the EU is not conferred with police or law enforcement powers under the Treaties and, pursuant to Article 5(1) and (2) TEU, the principle of conferral means that the EU does not have powers that it is not afforded under the Treaties.[53] As such, the Commission is not permitted to exercise physical coercion in the territories of Member States in cases of non-cooperation[54] and, therefore, it is remarkable that national authorities are not expressly called upon to assist the Commission when it pursues enforcement against GPAI model providers under Section 5 of Chapter IX AI Act.[55] That said, the Commission can rely on Member States to assist enforcement of a fine against a GPAI model provider under Article 299 TFEU.[56]

25. It is worth comparing and contrasting the AI Act and the DMA in this regard. The DMA permits the Commission to conduct all necessary inspections of an undertaking or association of undertakings.[57]

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[52] AI Act, art 89(1): 'For the purpose of carrying out the tasks assigned to it under this Section, the AI Office may take the necessary actions to monitor the effective implementation and compliance with this Regulation by providers of general-purpose AI models, including their adherence to approved codes of practice.'

[53] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2007] OJ C 202/1 ("TEU", "TFEU"). Article 5 TEU provides: '1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.'

[54] Article 4(2) TEU expressly provides that 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.' Koen Lenaerts and Piet Van Nuffel, *EU Constitutional Law* (Oxford University Press 2021) para 50.41, fn 15.

[55] This sort of composite enforcement where there is coordination between EU and national authorities is described as 'administrative assistance' and 'mostly comprises the use of coercive power in cases of non-cooperation or assistance of a practical nature': Michiel Luchtman, 'Setting the Scene: The Rise of EU Law Enforcement Authorities' in Michiel Luchtman, Katalin Ligeti and John Vervaele (eds), *EU Enforcement Authorities: Punitive Law Enforcement in a Composite Legal Order* (Hart Publishing 2023) 1, 23; C-94/00 *Roquette Frères SA v Directeur général de la concurrence, de la consommation et de la répression des fraudes, and Commission of the European Communities* [2002] ECR I-09011, paras 56–58; see also forthcoming commentary addressing Article 75(1) in this work.

[56] Article 299 TFEU provides 'Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union.' Article 4(3) TEU and the principle of sincere cooperation may be relied upon in this regard. Lenaerts and Van Nuffel suggest that '(1) ancillary obligations with which the Member States and the institutions must comply in implementing a specific provision of Union law or even independently of such implementation': Lenaerts and Van Nuffel (n 54) para 5.045.

[57] DMA, art 23(1) 'In order to carry out its duties under this Regulation, the Commission may conduct all necessary inspections of an undertaking or association of undertakings.'

However, in cases of non-cooperation, the Commission is not given powers of physical coercion. Accordingly, the DMA enforcement architecture expressly recognises that it requires the assistance of national courts and the police to enable the Commission to exercise coercive powers. Thus, Article 23(2) DMA defines in detail the inspection powers, including entering business premises and means of transport, examining and copying business records, sealing premises and records, and questioning staff.[58] Article 23(3) permits the Commission to request the assistance of, *inter alia*, the national competent authority of the Member State in whose territory the inspection is to be conducted.[59]

26. These DMA provisions create an express regime in which national authorities and courts are under a positive obligation to facilitate the Commission's powers of inspection, including by deploying police powers and by granting judicial authorisation. By contrast, Section 5 of Chapter IX AI Act contains no equivalent provisions requiring national authorities to assist the Commission in the execution of its enforcement powers vis-à-vis providers of GPAI models. National authorities may ask the Commission to intervene (Article 88(2)), but the Commission cannot, in turn, rely on a DMA-style express duty of active assistance when exercising its own powers under Articles 89–93.

27. However, it is of note that Article 64(2) provides that Member States 'shall facilitate the tasks entrusted to the AI Office'.[60] Although this obligation is not expressed specifically in relation to the AI Office's tasks under Articles 89–93, its terms are broad enough to capture those tasks.

28. Further, Member States are under a duty of sincere cooperation pursuant to Article 4(3) TEU, and the Court of Justice in *Sea Watch* stated that this means:

> '[...] account must be taken of the principle of sincere cooperation referred to in Article 4(3) TEU, which lays down an obligation for Member States, [...] to assist each other, in full mutual

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[58] DMA, art 23(2) 'The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered to:

> (a) enter any premises, land and means of transport of undertakings and associations of undertakings;
> (b) examine the books and other records related to the business, irrespective of the medium on which they are stored;
> (c) take or obtain in any form copies of or extracts from such books or records;
> (d) require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given by any technical means;
> (e) seal any business premises and books or records for the duration of, and to the extent necessary for, the inspection;
> (f) ask any representative or member of staff of the undertaking or association of undertakings for explanations of facts or documents relating to the subject-matter and purpose of the inspection, and to record the answers by any technical means.'

[59] DMA, art 23(3) 'To carry out inspections, the Commission may request the assistance of auditors or experts appointed by the Commission pursuant to Article 26(2), as well as the assistance of the national competent authority of the Member State, enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted.' See also: DMA, art 23(8) 'Where the officials and other accompanying persons authorised by the Commission find that an undertaking or association of undertakings opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.'

[60] See further the commentary addressing Article 64(2), Section 2.2. in this work. AI Act, recital 148, fourth sentence: '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.' See also: Anne Paschke and Sarah Rachut, 'Art. 64 Büro für Künstliche Intelligenz' in Jens Schefzig and Robert Kilian (eds), *Beck'scher Online-Kommentar KI-Recht* (3rd edn, C.H. Beck 2025) para 23; David Roth-Isigkeit, 'Art. 64 Büro für Künstliche Intelligenz' in Mario Martini and Christiane Wendehorst (eds), *KI-VO: Verordnung über Künstliche Intelligenz: Kommentar* (2nd edn, C H Beck 2026) para 17.

respect, in carrying out tasks which flow from the Treaties, to take any appropriate measure to ensure fulfilment of the obligations resulting from, inter alia, acts of the institutions of the Union, and to refrain from any measure which could jeopardise the attainment of the Union's objectives.'[61]

29. It has been described as a two-fold duty requiring '(1) ancillary obligations with which the Member States and the institutions must comply in implementing a specific provision of Union law or even independently of such implementation'[62] and '(2) a prohibition on Member States or institutions to act where acting would constitute a misuse of powers'.[63]

30. Accordingly, while there may not be an *express* duty of active assistance in relation to the exercise of powers under Articles 89–93, Article 64(2) and the Treaty obligations of Member States require Member States to, at least, facilitate the AI Office and arguably imply a duty of active assistance.

2.1.2. Taking into account the procedural guarantees under Article 94

31. In exercising its exclusive supervision and enforcement powers, it is clear from the wording of Article 88(1) that the Commission must take into account the procedural guarantees under Article 94 AI Act. Article 94 provides certain procedural safeguards in enforcement that are without prejudice to more specific safeguards elsewhere in the AI Act.[64]

32. Article 94 is not the only source of procedural protections for GPAI model providers. Article 101(6), for instance, requires the Commission to adopt implementing acts containing 'detailed arrangements and procedural safeguards for proceedings in view of the possible adoption of decisions' pursuant to Article 101(1) AI Act. It may be that the investigation stage of proceedings is covered by Article 94 AI Act, whereas the fines proceedings are subject to the safeguards arising from the expressly contemplated implementing regulation. In any event, safeguards established specifically under Article 101 do not seem to be intended to displace Article 94 but rather to supplement the protections the latter offers. This interpretation is supported by the fact that the rights which Article 94 incorporates are basic ones which might be implied in relevant circumstances by various Charter of Fundamental Rights provisions including, *inter alia*, the right to good administration.[65] This is explored further below.

33. Whilst a full and detailed analysis of Article 94 and its consequences falls outside of the scope of this chapter, it would be remiss not to highlight certain aspects of Article 94 because it contains a number of substantial procedural protections that are crucial to understanding how the supervision and enforcement powers can be exercised. Before doing so, it is worth noting a curious feature of Article 94: rather than specifying those procedural rights in the Article itself, it refers to Article 18 of the Market Surveillance Regulation and states that these rights apply *mutatis mutandis*.

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[61] Joined Cases C-14/21 and C-15/21 *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Others* EU:C:2022:604 para 156.

[62] Lenaerts and Van Nuffel (n 54) para 5.045.

[63] ibid para 5.045.

[64] AI Act, art 94: 'Article 18 of Regulation (EU) 2019/1020 shall apply mutatis mutandis to the providers of the general-purpose AI model, without prejudice to more specific procedural rights provided for in this Regulation.'

[65] Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 ("CFREU"), art 41.

34. It is unclear why the AI Act did not simply list the procedural rights that apply, as in, for example, the DMA[66] and the DSA.[67] It is possible that the incorporation of procedural rights by reference to another legislative instrument was simply an expedient measure because Article 94 was only introduced in the final trilogue negotiations that resulted in a political agreement. The legal consequences of this incorporation by reference do not seem significant: the applicable rights are clear in the Market Surveillance Regulation, and it cannot be said that this approach gives rise to interpretive friction.

35. Notwithstanding this drafting choice, the applicable rights include: (i) the right to know the grounds on which a decision, measure or order is taken; (ii) the right to have that decision, measure or order communicated without delay; and (iii) save in exceptional circumstances, the right to be heard before such a decision, measure or order is adopted. Even if these rights were not explicitly provided for, they are rights which have similar provisions under the right to good administration pursuant to Article 41 Charter of Fundamental Rights of the European Union ("CFREU") and Article 298 TFEU.[68]

36. The right to know the grounds on which a decision, measure or order is taken is a reflection of the obligations found under Article 296 TFEU[69] and Article 41(2)(c) CFREU[70] to state reasons for decisions. Determining the adequacy of reasons will, of course, be context dependent. However, what is required in principle is set out by the Court of Justice of the European Union (CJEU) in various judgments. In *HeidelbergCement AG v European Commission*, in the context of competition law, the obligation to state specific reasons is said to be a:

> '[...] fundamental requirement, designed not merely to show that the request for information is justified but also to enable the undertakings concerned to assess the scope of their duty to cooperate whilst at the same time safeguarding their rights of defence [...]'[71]

37. There is a link between the right to be heard prior to the adoption of a decision and the right to reasons, which is explained below.

38. The right to have that decision, measure or order communicated without delay reflects, in part, Article 41(1) CFREU, which provides that a person is entitled to have his or her affairs handled, *inter alia*, within a reasonable time by the institutions, bodies, offices and agencies of the Union.

39. The right to be heard prior to a decision, measure or order being adopted, save in exceptional circumstances, is also reflected in the right to good administration under Article 41(2)(a) CFREU.[72] The Charter right does not provide for the caveat 'save in exceptional circumstances' which appears in Article 18 Market Surveillance Regulation and is incorporated into the AI Act via Article 94. This right has been considered by the CJEU. In *Khaled Boudjlida v Préfet des Pyrénées-Atlantiques*, the CJEU explained that the right to be heard 'guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely'[73] The Court stated that:

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[66] DMA, art 36.
[67] DSA, art 79.
[68] Bernsteiner and Schmitt, 'Art. 88' (n 2) paras 6–7.
[69] TFEU, art 296.
[70] CFREU, art 41(2)(c) '2. This right includes: [...] (c) the obligation of the administration to give reasons for its decisions.'
[71] Case C-249/14 *HeidelbergCement AG v European Commission*, ECLI:EU:C:2016:149, para 18.
[72] CFREU, art 41(2)(a) '2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken.'
[73] Case C-249/13 *Khaled Boudjlida v Préfet des Pyrénées-Atlantiques* ECLI:EU:C:2014:2431, para 36.

'In accordance with the Court's case-law, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person concerned is in fact protected, the purpose of that rule is, inter alia, to enable that person to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see the judgments in Sopropé, C-349/07, EU:C:2008:746, paragraph 49, and Mukarubega, EU:C:2014:2336, paragraph 47).'[74]

40. The Court went on to explain that the authorities are obligated to pay due attention to the observations submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case. Importantly, and linked to the right to reasons, the authorities must give a 'detailed statement of reasons for their decision.'[75]

41. Similarly, the right to be heard under Article 41(2)(a) CFREU applies where it concerns 'any individual measure which would affect him or her adversely is taken', whereas under Article 94 there is no express requirement for the individual measure to have an adverse effect, only where a measure, decision or order concerns the economic operator. Practically, it may be difficult to see a distinction between the two.

42. Whilst the rights detailed under Article 94 AI Act are not the only ones that will apply,[76] these rights do set a baseline for the administrative or procedural protections that GPAI model providers will have when subject to monitoring, supervision and enforcement by the Commission or the AI Office, as appropriate.

43. It is arguable that the rights under Article 41 CFREU and Article 94 AI Act are not necessarily coextensive; however, the interaction between CFREU rights and the rights in Article 94 AI Act falls outside the scope of this chapter.

2.1.3. The role of the AI Office

44. The text of the AI Act does make a distinction between the AI Office and the Commission in Article 88(1). However, it is important to recall two matters: (a) the AI Office does not have a legal personality distinct from the Commission and (b) Article 3(47) AI Act defines the AI Office as the function of the Commission responsible for contributing to the implementation, monitoring[77] and supervision of AI systems and GPAI models, and to AI governance, as provided for in the Commission Decision of 24 January 2024 establishing the European Artificial Intelligence Office ("Establishment Decision").[78] Article 3(47) also sets out that the AI Act's references to the AI Office shall be construed

[74] ibid paras 36–37.

[75] ibid para 38.

[76] One such example is the limited right to avoid self-incrimination for undertakings, which has been recognised by the courts in Case C-466/19 P *Qualcomm Inc and Qualcomm Europe Inc v European Commission* ECLI:EU:C:2021:76, paras 140–143. It should be noted that this standard is applied in the context of proceedings that may result in a fine, whereas it is unclear the extent to which these rights will be applicable in the context of an investigatory or fact-finding stage. It is noteworthy that in the context of multistage proceedings, the Court stated that at the preliminary investigation stage the rights of defence could still be engaged: Case C-113/04 P, *Technische Unie BV v Commission of the European Communities* EU:C:2006:593, para 55.

[77] It is of note that article 88(1) does not make reference to monitoring powers as discussed above.

[78] Commission Decision of 24 January 2024 establishing the European Artificial Intelligence Office [2024] OJ C C/2024/1459 ("Establishment Decision"), art 1(1). AI Act, art 3(47): '"AI Office" means the Commission's function of contributing to the implementation, monitoring and supervision of AI systems and general-purpose AI models,

as references to the Commission. The AI Office is a directorate within the administrative framework of the Commission.[79] It is unusual for a Commission directorate to be given a role as the EU AI Act envisages. The usual course is that a power is assigned to the Commission and the Commission then assigns that task to an individual Commissioner, Director-General or Head of Service in accordance with the Commission's Rules of Procedure.[80]

45. In light of this anomaly, the AI Office's status within the Commission and the entrusting of the implementation of supervision and enforcement of GPAI model providers' obligations to the AI Office per Article 88(1), it is useful to look beyond Article 88(1).

46. Although the clear aim of Article 88(1) AI Act is to permit tasks to be performed by the AI Office, Article 88(1) does not list the specific tasks themselves. As has been acknowledged by other authors, it is necessary to view it alongside the Establishment Decision for a more detailed list of the specific tasks to be performed by the AI Office.[81]

47. Further detail in relation to the role of the AI Office in supervision and enforcement can be found in the Establishment Decision.[82] It refers to the AI Office:[83]
    1. investigating possible infringements of rules by GPAI models and systems including by, inter alia, assisting in the preparation of decisions of the Commission and conducting evaluations pursuant to the AI Act;[84] and
    2. assisting the Commission in the preparation of relevant Commission Decisions.[85]

48. The text of Articles 89–93 AI Act also affords the AI Office certain tasks or functions. These include:
    1. monitoring compliance of GPAI model providers with the AI Act;[86]
    2. conducting model evaluations;[87] and

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and AI governance, provided for in Commission Decision of 24 January 2024; references in this Regulation to the AI Office shall be construed as references to the Commission.'

[79] See commentary on Article 64, Section 3.1. in this work.

[80] There are a number of examples of this. Under the Digital Markets Act, Chapter V provides for supervision, enforcement and monitoring powers, and for those, only the Commission is empowered under that chapter. That chapter does not mention which Directorate of the Commission is to carry out the tasks associated with the Commission's function. Similarly, under the DSA an independent European Board for Digital Services is given an advisory role under that Act (article 61(2) DSA); however, where the Commission is given a function, it is given to the Commission as a whole rather than to a directorate of the Commission; see, for example, the ability to engage in a dialogue under article 36(6) DSA.

[81] Bernsteiner and Schmitt, 'Art. 88' (n 2) paras 19–20.

[82] Establishment Decision (n 78) art 1(1).

[83] Schmidl and Rohner (n 31) 986, sec 3.2.2.

[84] Establishment Decision (n 78) art 3(1)(d).

[85] ibid art 3(2)(c).

[86] See AI Act, art 89(1): 'For the purpose of carrying out the tasks assigned to it under this Section, the AI Office may take the necessary actions to monitor the effective implementation and compliance with this Regulation by providers of general-purpose AI models, including their adherence to approved codes of practice.' It is of note that article 88(1) itself does not (expressly) provide for monitoring, and the significance of this is explored elsewhere in this chapter.

[87] See AI Act, art 92(1): 'The AI Office, after consulting the Board, may conduct evaluations of the general-purpose AI model concerned:

> (a) to assess compliance of the provider with obligations under this Regulation, where the information gathered pursuant to Article 91 is insufficient; or,
> (b) to investigate systemic risks at Union level of general-purpose AI models with systemic risk, in particular following a qualified alert from the scientific panel in accordance with Article 90(1), point (a).'

3. structured dialogues with GPAI model providers.[88]

49. A useful illustrative example of the interplay between the Commission's and the AI Office's powers and tasks in the supervision and enforcement of Chapter V AI Act obligations is provided by Article 91(3) AI Act. It provides that the Commission may issue a request for documentation or information to a GPAI provider upon a duly substantiated request from the scientific panel in certain circumstances. Although Article 91(3) does not provide a role for the AI Office, and Article 15 of the 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 ("Scientific Panel Implementing Act") confirms that a request is made by the scientific panel to the AI Office for the Commission to request documents or information.[89] Article 16 of the Scientific Panel Implementing Act references the AI Office in the '[p]rocessing of the request for assistance'. Article 16(1) of the Scientific Panel Implementing Act provides that the AI Office shall assess whether issuing a request is, *inter alia*, 'necessary and proportionate', and Article 16(2) of the Scientific Panel Implementing Act provides that the AI Office may prepare a decision for the Commission to issue a request for documentation or information if it concludes that the scientific panel's request is necessary and proportionate. As such, the importance of the AI Office's role lies in carrying out, that is, implementing, the tasks necessary for the Commission to discharge its function. However, the ultimate legal decision-making power remains with the Commission.[90]

2.1.4. Article 88(1) AI Act: The express delegation of tasks to the AI Office?

50. The second sentence of Article 88(1) provides that the 'Commission shall entrust the implementation of these tasks to the AI Office, without prejudice to the powers of organisation of the Commission and the division of competences between Member States and the Union based on the Treaties.'

51. Entrusting tasks to the AI Office by the Commission is consistent with the orthodox competences of the Commission under EU administrative law.[91] The wording of Article 88(1) indicates that the

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[88] See AI Act, art 91(2): 'Before sending the request for information, the AI Office may initiate a structured dialogue with the provider of the general-purpose AI model.' Further, article 93(2) provides: 'Before a measure is requested, the AI Office may initiate a structured dialogue with the provider of the general-purpose AI model.'

[89] 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"), arts 15(1) and 15(2).

[90] Jasper Siems, 'Art. 88 Durchsetzung der Pflichten der Anbieter von KI-Modellen mit allgemeinem Verwendungszweck' in David Bomhard, Fritz-Ulli Pieper and Susanne Wende (eds), *Kommentar KI-VO: Verordnung über Künstliche Intelligenz* (Fachmedien Recht und Wirtschaft 2025) para 18.

[91] See further commentary on Article 64, Section 4.1.3. in this work. It is difficult to determine the precise limitations on the powers that can be delegated to a unit within a Directorate-General. The position is clear in other circumstances; for example, the CJEU has placed restrictions on the sort of powers that can be delegated by the legislature to agencies or quasi-regulatory bodies, although this is not a comparator for a situation in which a unit within a Directorate-General of the Commission is delegated a function. The general principles on the Commission's authority to delegate powers were explored in Case C-270/12 *United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union* ECLI:EU:C:2014:18 where at paras 41 and 42, the CJEU considered that consequences resulting from a delegation of powers are different depending on whether the delegation involves defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority, or whether the delegation involves a 'discretionary power implying a wide margin of discretion which may, according to the use which is made of it, make possible the execution of actual economic policy'. The CJEU considered that a delegation of the first kind cannot appreciably alter the consequences involved in the exercise of the powers concerned, whereas a delegation of the second kind, since it replaces the choices of the delegator with the choices of the delegate, brings

'implementation' of enforcement and supervision tasks will be carried out by the AI Office. That said, the second sentence of Article 88(1) makes the implementing role of the AI Office expressly subject to the caveat that it is 'without prejudice' to the powers of organisation of the Commission.[92]

52. It has been suggested that 'shall entrust' in Article 88(1) is comparable to a delegation found under the Rules of Procedure of the Commission[93] and that the legislature has delegated directly through the express language of Article 88.[94] It has also been suggested that Article 88(1) is a mandatory provision that *requires* the Commission to entrust certain tasks to the AI Office.[95]

53. Moreover, a 'direct' delegation effected by Article 88(1) might, unless expressly or impliedly limited, deviate from the substantive and procedural features of an orthodox delegation of powers by the Commission pursuant to its Rules of Procedure. The Rules of Procedure do not provide for the delegation of powers to units within the Commission, but rather to the delegation (or sub-delegation) to Directors-General or Heads of Service. Accordingly, the Rules of Procedure allow the grant of a general empowerment by the Commission to one or more of its Members to adopt 'management or administrative acts of a routine and recurring nature on [the Commission's] behalf and under its responsibility'.[96] These Commission Members may then sub-delegate all or part of their delegated powers to Directors-General or Heads of Service, unless the original delegation decision prohibits them from doing so.[97] It is also possible for a delegation of powers to be made by the Commission to a Director-General or a Head of Service.[98] There is, however, an important caveat in both circumstances: despite the delegation, the Commission 'retains the right to exercise itself the powers it has granted. It may also give instructions to the Member(s) of the Commission exercising the general empowerment'.[99] Therefore, if Article 88(1) does, contrary to the analysis above, bring about a 'direct' delegation from the Commission to the AI Office, it could be argued that such a delegation would be much broader than that envisaged under the Commission's Rules of Procedure, would seem to call into question the lawful extent of the delegation and would create tension with core principles of primary EU law. In response, it could be argued that the 'without prejudice' caveat found in Article 88(1) would limit any direct delegation; however, the scope of the delegation would remain unclear even if a maximum allowable upper limit was set. In other words, it may be clear under EU administrative law that a direct delegation under Article 88(1) cannot go further than a particular point, but precisely what the delegation entails would remain unclear.

about an 'actual transfer of responsibility'. See further, Paul Craig, *EU Administrative Law* (3rd edn, OUP 2018) 167–172.

[92] This carries echoes of recital 7 of the Establishment Decision (n 78) that the AI Office shall operate in accordance with the 'internal processes of the Commission'.

[93] Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 [2024] OJ L 2024/3080 ("Rules of Procedure").

[94] Bernsteiner and Schmitt, 'Art 88' (n 2) paras 14–15. It is also important to acknowledge that Bernsteiner and Schmitt do note that there are differences between article 88(1) and the delegation by the Commission's Rules of Procedures. The authors acknowledge that the Commission remains legally and politically responsible for the actions of the AI Office and that the Commission supervises and maintains accountability for the actions of the AI Office, in accordance with the hierarchical structures within the Commission.

[95] Santa Slokenberga, 'Enforcing the AI Act in a Composite EU Administration' in Vera Lúcia Raposo (ed), *The European Artificial Intelligence Act: Promises and Perils?* (Springer 2025) 237.

[96] Rules of Procedure (n 93) art 29(1).

[97] ibid art 32(1).

[98] ibid art 36(4).

[99] ibid art 29(4).

54. Another argument against direct delegation is that there are articles within the section on supervision and enforcement where the AI Office is afforded powers directly and, for that reason, it is clear that where the legislature did intend for powers to be afforded to the AI Office directly it conferred them. For example, Article 92(1) AI Act does afford a power to the AI Office directly – the '[p]ower to conduct evaluations' – by stating that '[t]he AI Office, after consulting the Board, *may* conduct evaluations' of GPAI models in order to assess compliance and investigate systemic risk at EU level.

55. The view that there is a delegation to the AI Office finds some support in Recital 164, albeit that recital does not make the distinction between the Commission and the AI Office. Rather, it states that the AI Office ought to be able to 'take necessary actions to monitor the effective implementation and compliance with the obligations for [GPAI model providers]' and 'investigate possible infringements in accordance with the powers provided for in this Regulation, including by requesting documentation and information, by conducting evaluations, as well as by requesting measures from providers of [GPAI model providers]'. This may blur the distinction between the functions of the Commission and that of the AI Office. Whilst the AI Office is given the responsibility to carry out the necessary monitoring actions under Article 89(1), the powers to request documentation and information and the ability to request measures are powers of the *Commission* in the text of the AI Act itself. Perhaps surprisingly, Recital 164 does not refer to the Commission at all: it discusses monitoring of the effective implementation and compliance with the obligations for GPAI model providers with reference to the AI Office only.

56. On one reading, Recital 164 suggests that the legislature intended for the AI Office to carry out a wide range of monitoring, supervisory and enforcement actions and that although the language utilised is 'should be able to', it suggests the AI Office *has* that power. This lends credence to the interpretation that the legislature has directly entrusted certain tasks to the AI Office. Such a reading of Recital 164, or the AI Act more broadly, elides the distinction made between the AI Office and the Commission in the text of the AI Act itself.[100] A significant difficulty with such an elision is that the Commission's powers of organisation are premised on collegiate decision-making. It is a well-established principle of Union law that the Commission as a college of Commissioners is governed by the principle of collegiate responsibility. Collegiate responsibility finds its basis in the Treaties: Article 17(6)(b) TEU grants the President of the Commission the power to 'decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body'.[101] Furthermore, Article 250 TFEU requires that the Commission is to act by majority.[102] The CJEU has explained the principle in case law, with the effect that the principle of collegiality is based on the equal participation of the Commissioners in the adoption of decisions.[103] For this reason, the delegation of powers by the Commission is subject to limitations. The most important limitation is that, while Union law permits the Commission to delegate certain administrative or management acts in order to provide a certain

[100] See commentary on Article 64, Section 4.2. in this work.

[101] Article 17(6) TEU: 'The President of the Commission shall:
(a) lay down guidelines within which the Commission is to work;
(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
(c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.'

[102] TFEU, art 250: 'The Commission shall act by a majority of its Members. Its Rules of Procedure shall determine the quorum.'

[103] Case C-137/92 P *Commission of the European Communities v BASF and Others* ECLI:EU:C:1994:247, para 62.

degree of flexibility in how the Commission operates, it does not permit the Commission to delegate decisions of principle.[104]

57. Another interpretation is that Recital 164 aligns well with the language in the AI Act insofar as by stating that the AI Office 'should be able to' do a particular thing suggests that there are further steps to be taken before the AI Office has this power. On this interpretation, Recital 164 does suggest that the legislature did intend for the AI Office to carry out a wide range of monitoring, supervisory and enforcement actions. This supports the interpretation that the Commission ought to entrust certain tasks to the AI Office. Recital 164 supplements this interpretation of the AI Office's powers, but the '*shall*' in Article 88 does the critical work, in an operative provision, of making clear the legislature's intention to entrust powers to the AI Office.

58. It is important to caveat the interpretative value of recitals in either case. The primary function of recitals under EU law is to explain the objective pursued by a legislative act. Relatedly, a second well-known function of recitals is to assist with legal interpretation. The Court recently restated this in *Kočner v EUROPOL*, in which the Grand Chamber stated:

> 'In that regard, the Court recalls that, whilst having no binding legal force, a recital of an EU act has important interpretative value, in that it is capable of explaining the content of a provision of the act in question and of clarifying the intention of the author of that act [...].'[105]

59. The Court continued:

> 'It is true that the recital of an EU act cannot be relied on as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording [...].'[106]

60. The interpretative function is not foreseen in the Treaties but has been developed in the Court's case law.[107] The orthodox view is that the CJEU has held that recitals may be used to clarify the intentions of legislators where there is uncertainty regarding operative provisions.[108] Further, some authors point to the Joint Practical Guide for drafting EU legislation which discusses recitals. The Guide states that recitals should not be of norm-setting character, use mandatory language, or be capable of being confused with enacting terms.[109] This demonstrates that recitals are distinct from provisions in the legislation itself.

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[104] The CJEU has applied this in the context of competition law decisions against undertakings or associations of undertakings. Insofar as it concerns the finding of an infringement and the imposition of a penalty under competition law, the Court has clarified that a decision ordering an undertaking to submit to an investigation may be regarded as a straightforward measure of management. *Commission of the European Communities v BASF and Others* (n 103) para 65 *et seq.*

[105] C-755/21 *Marián Kočner v European Union Agency for Law Enforcement Cooperation (Europol)* EU:C:2024:202, para 59.

[106] ibid para 60.

[107] Maarten den Heijer, Teun van Os van den Abeelen and Antanina Maslyka, 'On the Use and Misuse of Recitals in European Union Law' (2019) Amsterdam Law School Research Paper No 2019-31, Amsterdam Center for International Law No 2019-15, 5 <https://ssrn.com/abstract=3445372> accessed 16 December 2025.

[108] den Heijer, van den Abeelen and Maslyka (n 107).

[109] ibid.

61. Maarten den Heijer and his co-authors contend that the Court has on occasion treated recitals as though they are on a par with operative provisions of the legislative act itself.[110] That paper notes that the AI Act contains recitals with details and rules that would purportedly exceed the purely interpretive function of recitals.[111] It is argued that this approach implicitly and uniquely shifts the function of recitals for the AI Act. This view is not substantiated further, and it would be a departure from the case law outlined above.

62. Accordingly, a direct delegation of powers to the AI Office that exceeds the administrative or management acts that the principle of collegiality permits, such as the power to take an enforcement decision against a GPAI model provider, would offend primary EU law and pose difficulties in terms of the principle of legal certainty which EU law also honours. A teleological interpretation of this provision needs to take into account these considerations. On that basis, if it is accepted that not all tasks can be delegated to the AI Office because of these core principles of EU law, which also seem to be reflected in the wording of Article 88(1) ('without prejudice to the powers of the Commission'), it seems reasonable to conclude that any direct delegation from the Commission to the AI Office pursuant to Article 88(1) must operate to respect such limitations.

63. Fundamentally, it seems more likely, pursuant to a systemic and teleological interpretation, that Article 88(1) does not bring about a 'direct' delegation to the AI Office. To the extent a task or power is not provided for in the AI Act or the Establishment Decision, it will be necessary for the AI Office to be given additional powers.[112] It is of note that the Commission must evaluate the AI Office's functioning by 2 August 2028 in order to evaluate whether the AI Office has been given 'sufficient powers and competences to fulfil its tasks' and 'whether it would be relevant and needed for the proper implementation and enforcement of this Regulation to upgrade the AI Office and its enforcement competences and to increase its resources.'[113] The Commission's own Guidelines state that further detail will be provided on how supervision and enforcement powers will be implemented by way of an implementing act adopted under Article 92(6) and Article 101(6) AI Act.[114]

[110] Michèle Finck, 'Legal Imaginations of the AI Act: A Constitutional Perspective on the Preemption of Member State Competence' 2026 Common Market Law Review (forthcoming), 11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5840282>.

[111] ibid 11.

[112] The mechanism for how the AI Office might be afforded additional powers is worth considering briefly. Change to primary legislation would provide the greatest scope for affording the AI Office additional powers. It would be open to the Commission to adopt a decision, akin to the Establishment Decision, that afforded the AI Office additional functions within the administrative structure of the Commission, provided that those functions were consistent with the structure of the AI Act and Commission's powers. Whilst the AI Act makes some provision for the adoption of implementing acts in relation to supervision, investigation, enforcement and monitoring of GPAI model providers, it does not appear that additional powers can be granted to the AI Office via an implementing act. Article 92(6) AI Act provides for the adoption of implementing acts in relation to the power to conduct an evaluation of a GPAI model, more specifically to 'set[...] out the detailed arrangements and the conditions for the evaluations, including the detailed arrangements for involving independent experts, and the procedure for the selection thereof'. Article 101(6) provides for 'implementing acts containing detailed arrangements and procedural safeguards for proceedings' relating to procedures that result in a fine under article 101.

[113] AI Act, art 112(5), see Schmidl and Rohner (n 31) para 3.3.

[114] European Commission, 'Communication from the Commission - Commission Guidelines on the Scope of the Obligations for Providers of General-Purpose AI Models Established by Regulation (EU) 2024/1689 (AI Act)' C(2025) 7719 final, para 103.

2.2. Article 88(2)

2.2.1. Purpose of Article 88(2)

64. Article 88(2) provides that MSAs may, where necessary and proportionate for the fulfilment of their tasks under the Act, request that the Commission exercise its powers under Section 5 of Chapter IX AI Act. As noted above, the purpose of Article 88(2) is to avoid enforcement gaps in situations where Member States' MSAs, in order to ensure the compliance of AI systems with the AI Act, need the Commission to exercise its powers of supervision, monitoring and enforcement of the obligations owed by GPAI model providers. In effect, Article 88(2) is a component of a composite enforcement process (broadly understood), whereby an EU authority and a national authority coordinate their enforcement activities by exercising their respective competences, thereby making the process, among other things, more coherent.[115] This is because Article 88(2) recognises the interaction between AI systems and GPAI models such that, to understand whether an AI system is compliant, it may be necessary to understand the GPAI model and how its provider has complied with Chapter V obligations. Even in the context of centralised enforcement mechanisms in EU law, Article 88(2) seems to be unusual within the EU acquis. One point of comparison is Article 22 of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("EU Merger Control Regulation"). This permits Member States to request that the Commission examine acquisitions that lack an EU dimension but may affect trade and competition, although this mechanism makes the Commission the enforcement body, rather than providing assistance as in Article 88(2).[116]

65. It has been suggested in some of the literature that Article 88(2) permits the delegation of the Commission's powers to MSAs.[117] However, this interpretation is not supported by the text of the AI Act, which states that MSAs are entitled to *request* that the Commission exercises *its* powers.[118]

66. A more plausible reading appears to be that the Commission's exclusive competence as regards the powers under Articles 89 AI Act *et seq.* militate against the notion that Article 88(2) creates an enforceable right of national MSAs to take specific actions, but that the general principle of sincere cooperation means that the Commission must, in any case, consider a reasoned request from an MSA and decide within a reasonable period whether and to what extent it intends to comply with it.[119] Nevertheless, although Article 88(2) is a discretionary power the criteria as to whether the Commission ought to facilitate the MSA's tasks are provided for in Article 88(2): necessity and proportionality.

67. Article 88(2) will be engaged where the MSA cannot properly assess or address the non-compliance of a high-risk AI system without the Commission exercising its powers vis-à-vis the underlying GPAI model. In that sense, if the AI system is compliant and the MSA's tasks are not impeded, a request

[115] Luchtman (n 55) 22.

[116] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2004] OJ L 24/1, art 22.

[117] Quentin B. Schäfer, 'Article 88: Enforcement of the Obligations of Providers of General-Purpose AI Models' in Ceyhun Necati Pehlivan, Nikolaus Forgó and Peggy Valcke (eds), *The EU Artificial Intelligence (AI) Act: A Commentary* (Wolters Kluwer 2024); Luchtman (n 55) 22.

[118] Indeed, recital 162 confirms this: 'It [the AI Office] should be able to investigate possible infringements of the rules on providers of general-purpose AI models both on its own initiative, following the results of its monitoring activities, or upon request from MSAs in line with the conditions set out in this Regulation.'; Luchtman (n 55) 22.

[119] Bernsteiner and Schmitt, 'Art 88' (n 2) paras 16–18.

under Article 88(2) might be difficult to justify as 'necessary and proportionate'. A broader reading could support the submission of requests to the Commission in situations where a non-compliant GPAI model poses systemic risks to future conformity of a high-risk AI system, even if the specific system under current investigation meets the AI Act's requirements.

68. While the exact parameters of the making of a request by a Member State for the Commission to exercise its powers or functions are unclear, it would appear to follow that where there are preconditions on the exercise of those powers or functions by the Commission, then those preconditions would equally apply to the consideration of the request by a Member State. For instance, a precondition to Article 92 AI Act is that there has been consultation with the AI Board by the AI Office and that information gathered under Article 91 is insufficient.[120] There is nothing in the wording of Article 88(2) that would displace those preconditions.

2.2.2. Without prejudice to Article 75(3)

69. Article 88(2) states that it is without prejudice to Article 75(3) AI Act. Article 75(3) reads as follows:

> 'Where a market surveillance authority is unable to conclude its investigation of the high-risk AI system because of its inability to access certain information related to the GPAI model despite having made all appropriate efforts to obtain that information, it may submit a reasoned request to the AI Office, by which access to that information shall be enforced. In that case, the AI Office shall supply to the applicant authority without delay, and in any event within 30 days, any information that the AI Office considers to be relevant in order to establish whether a high-risk AI system is non-compliant. Market surveillance authorities shall safeguard the confidentiality of the information that they obtain in accordance with Article 78 of this Regulation. The procedure provided for in Chapter VI of Regulation (EU) 2019/1020 shall apply mutatis mutandis'.

70. The interaction between Articles 88(2) and 75(3) arises because one of the Commission's powers that the MSA can request under Article 88(2) is to request documentation under Article 91. Article 91 relates to the provision of documentation and information, and overlaps with the information that can be accessed under Article 75(3). Under the latter provision, the AI Office shall supply that information to the applicant authority 'without delay, and in any event within 30 days'. One interpretation is that Article 75(3) relates only to information that the AI Office already possesses. Indeed, the requirement that the AI Office must supply the information 'without delay', and within the strict maximum timeline of 30 days, supports the view that this is information to which the AI Office already has access, as it offers little time for the AI Office to make a successful request of the GPAI model provider under Article 91. On this interpretation, where the information is not in the AI Office's possession, the MSA ought to seek the information under Article 88(2) AI Act, requesting that the Commission exercise its powers under Article 91.

71. There is little merit in an argument that the AI Office (the body named in Article 75(3)) does not have powers to obtain information under Article 91 because the power to obtain information and documentation under that section is a power of the Commission. That is because Article 3(47) makes it clear that references to the AI Office can be read as references to the Commission, as discussed

[120] AI Act, art 92(1): 'The AI Office, *after consulting the Board,* may conduct evaluations of the general-purpose AI model concerned: (a) to assess compliance of the provider with obligations under this Regulation, *where the information gathered pursuant to Article 91 is insufficient*; or (b) to investigate systemic risks at Union level of general-purpose AI models with systemic risk, in particular following a qualified alert from the scientific panel in accordance with Article 90(1), point (a).' (emphasis added).

above. Rather, the primary difficulty with an interpretation of Article 75(3) that requires an exercise of Article 91 in response to a request made by an MSA is, as noted above, the strict and relatively tight 30-day timeline within which responsive information is to be provided to the MSA by the AI Office, particularly if the AI Office engages in a structured dialogue in advance of using its powers under Article 91.

2.2.3. Necessary and proportionate

72. Article 88(2) conditions the ability of MSAs on such a request being 'necessary and proportionate to assist with the fulfilment of their tasks' under the AI Act. It is difficult, in the abstract, to imagine the precise circumstances in which Article 88(2) will be engaged, but consideration of the scope of MSAs' functions is useful in delineating its likely application. It appears that Article 88(2) will be of most use where Article 75(1) AI Act does not apply and the MSA identifies that a potentially non-compliant AI system is based on a non-compliant GPAI model over which it does not have jurisdiction to conduct an investigation.[121] The requirement of necessity and proportionality seems likely to impose a limit on the circumstances in which the MSA can make a request and on the scope of the request made.

73. As for necessity, there is a comparable requirement for necessity in competition law from which some guidance can be gained as to how necessity in Article 88(2) will be understood and applied. For instance, the Commission's decision to request information under Article 18(3) of Regulation 1/2003 must be limited to information that can reasonably be regarded as necessary for the Commission's investigation. In that context, necessity is given a wide meaning, and in *Qualcomm Inc v European Commission,* the CJEU considered that, on judicial review, necessity is to be judged in relation to the purpose stated in the request for information by the Commission. The Court went on to state that:

> 'The requirement that a correlation must exist between the request for information and the suspected infringement is satisfied if the Commission could reasonably suppose, at the time of the request, that the information may help it to determine whether the infringement has taken place.'[122]

74. It is clear, therefore, that necessity is determined in relation to the suspected infringement which the Commission intends to investigate.

75. One specific point arises on necessity under Article 88(2) where the power under Article 91 is sought to be utilised. Article 88(2) is expressed to be 'without prejudice' to Article 75(3) and, insofar as an MSA can avail itself of Article 75(3), a question arises as to whether it must do so instead of invoking Article 88(2) when it is available. Put another way, it may be possible for a GPAI model provider to argue that an MSA ought to have first sought to use Article 75(3) before Article 88(2) is invoked to request that Article 91 be used. The GPAI model provider could argue that invoking Article 88(2) is not 'necessary and proportionate' in circumstances where an argument can be made that Article 75(3) would have sufficed. On one view, this might mean that if Article 91 is relied upon by the Commission following a request under Article 88(2) in circumstances where Article 75(3) has not been used, a GPAI model provider may be entitled to seek judicial review of any decision of the Commission to utilise Article 91 on this basis. Such a challenge to a decision under Article 91 would be predicated on the basis that the information or documentation would be available via Article 75(3). Other authors

[121] Siems (n 90) paras 8–11.

[122] *Qualcomm Inc and Qualcomm Europe Inc v European Commission* (n 76) paras 69 and 70.

have not addressed this issue. It seems that, in circumstances where a reason can be given as to why it is appropriate to use Article 91 rather than Article 75(3), a judicial review on this basis would not be successful. However, if no such reason is given, the attempt to utilise Article 91 (following an Article 88(2) request) would not be 'necessary and proportionate'.

76. It is well established that, when assessing the question of necessity, reasons are important. In *HeidelbergCement AG v European Commission*, the Court explained the importance of reasons in the context of determining what is necessary:

> 'As correctly noted by the General Court in paragraph 34 of the decision at issue, "the Commission is entitled to require the disclosure only of information which may enable it to investigate presumed infringements which justify the conduct of the investigation and are set out in the request for information".
>
> Since the necessity of the information must be judged in relation to the purpose stated in the request for information, that purpose must be indicated with sufficient precision, otherwise it will be impossible to determine whether the information is necessary and the Court will be prevented from exercising judicial review (see, to that effect, judgment in *SEP v Commission*, C-36/92 P, EU:C:1994:205, paragraph 21).'[123]

77. Turning to proportionality, this is a general principle of EU law that arises in different contexts, and it requires that the means for attaining a legitimate objective must not go beyond what is appropriate and necessary to achieve that objective and that recourse must be had to the least onerous where there are several appropriate measures and that disadvantages caused must not be disproportionate to the aims pursued.[124] Essentially, proportionality is concerned with balancing conflicting interests.[125] Disproportionate interference with a legitimate interest or right renders the action unlawful.

78. An affected party can invoke proportionality in judicial review proceedings in, among others, the following circumstances: if an administrative sanction is imposed that is excessive,[126] if an EU measure or action adversely and excessively affects a CFREU right, or if an interest is impacted by EU legislation in a way which offends the principle of proportionality enshrined in Article 5(4) TEU.[127]

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[123] *HeidelbergCement AG v European Commission* (n 71) paras 3–24.

[124] Case C-97/21 *MV - 98 v Nachalnik na otdel & 'Operativni deynosti' – Sofia v Glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite* ECLI:EU:C:2023:371 ("MV - 98"), para 87 'As regards, [...] observance of the principle of proportionality, suffice it to bear in mind that it requires that the cumulation of proceedings and penalties provided for by national legislation, such as that at issue in the main proceedings, not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued [...]'; Case T-249/17 *Casino, Guichard-Perrachon and Achats Marchandises Casino SAS (AMC), formerly EMC Distribution v European Commission* EU:T:2020:458 ("Casino"), para 130.

[125] Vasiliki Kosta, 'The Principle of Proportionality in EU Law: An Interest-Based Taxonomy' in Joana Mendes (ed), *EU Executive Discretion and the Limits of Law* (Oxford University Press 2019) 217–219.

[126] *MV - 98* (n 124) para 87: 'As regards, [...] observance of the principle of proportionality, suffice it to bear in mind that it requires that the cumulation of proceedings and penalties provided for by national legislation, such as that at issue in the main proceedings, not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued [...]'; *Casino* (n 124) para 130.

[127] Article 5(4) TEU provides that 'Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.' See further: C-541/20 *Republic of*

79. In the context of Article 88(2) AI Act, proportionality will require that the use of the supervision and enforcement powers of the Commission is appropriate for attaining the legitimate objectives pursued by the AI Act and that the use of that power does not go beyond what is necessary in order to achieve that legitimate objective. The identification of the legitimate objective is crucial to carrying out the proportionality assessment. As appears from the above analysis, necessity and proportionality are reasons-based standards and either the Commission or the MSA will need to provide those reasons. As the exercise of the power is requested by the MSA under Article 88(2), it would appear logical that the MSA demonstrates, at least to the Commission as part of the relevant request, that it has met the conditions required. A demonstration of necessity requires the MSA to, at a minimum, (a) identify the task that cannot be fulfilled effectively without resort to Article 88(2), (b) explain why existing powers are insufficient, and (c) link the MSA's difficulty to the Commission's power sought. A proportionality assessment requires the MSA to articulate why the requested action is no more than what is required to achieve the object and that the measure is appropriate for attaining the legitimate objectives pursued by the action the MSA seeks to take.

3. Enforcement powers of other EU regulatory bodies and their interaction

80. While Article 88(1) is the provision of the AI Act that declares the Commission as the body with exclusive powers for enforcing obligations of GPAI model providers, GPAI model providers also have obligations under other EU legislation. It is beyond the scope of this chapter to examine the wider EU regulatory landscape in detail, but it is worth highlighting briefly a selection of obvious interactions between the AI Act and other pieces of EU legislation to illustrate the multilayered complexity of the governance ecosystem, given that each regulation or directive establishes separate regulatory entities and institutions.

81. It has been argued that the governance arrangements under the AI Act itself are complex.[128] In addition, it is obvious that the AI Act sits within a broader EU regulatory landscape that encompasses numerous regulations, directives and legal regimes. However, to the extent that there is overlap between these regimes, it is notable that the AI Act does not provide any coordination mechanism between the bodies entrusted with enforcing those instruments and the bodies responsible for enforcing the AI Act.[129] For example, data protection is an area of particular regulatory importance given how reliant AI is on data for training and post-training purposes. The GDPR, the Data Governance Act (DGA), the DSA, the DMA, and the Data Act (DA) are all relevant in this regard.[130]

82. While there are mechanisms within the AI Act to prevent overlap between the Commission and national authorities when exercising their respective powers under the AI Act, such as the demarcation of those enforcement responsibilities that are centralised pursuant to Article 88(1), these

Lithuania and Others v European Parliament and Council of the European Union ECLI:EU:C:2024:818, para 240. See generally, Lenaerts and Van Nuffel (n 54) para 5.034.

[128] Abeer Malik and Barry Solaiman, 'Appraising the Institutional Framework of the EU's Artificial Intelligence Act (AI Act)' in Vera Lúcia Raposo (ed), *The European Artificial Intelligence Act: Promises and Perils* (Springer 2025) 124.

[129] Siems (n 90) para 21.

[130] Malik and Solaiman (n 128) 124.

provisions do not address conflicts or overlaps between different regulatory areas. Under Recital 118 AI Act, it is stated that where there is regulatory overlap in relation to the regulation of AI systems and AI models embedded into designated very large online platforms or very large online search engines, those systems and models are subject to the risk-management framework under the DSA. The Recital states that the corresponding obligations under the AI Act 'should be presumed to be fulfilled, unless significant systemic risks not covered by Regulation (EU) 2022/2065 emerge and are identified in such models'.[131] The Commission's webpage introducing the Digital Omnibus Package points to the 2024 Draghi Report which critiques the EU's competitiveness deficit in part by reference to administrative burdens and regulatory inconsistencies regarding the body of EU legislation governing emerging digital technologies, cybersecurity, online platforms and electronic communications.[132] Consideration of the interplay between the various different regulatory regimes may raise further questions about the complexity arising from the regulatory overlap and, as some have argued, the increased regulatory burden.[133]

83. In addition to the complexity added by regulatory overlap, it is also unclear whether different regulatory regimes that overlap ought to have regard to each other. To provide one example of this, in implementing Article 55 AI Act, the Safety and Security Chapter of the GPAI Code of Practice, adopted under Article 56 AI Act, includes measures addressed to providers of GPAI models with systemic risk for identifying risks relating to privacy and protection of personal data.[134] It is unclear whether, in assessing adherence to those Code of Practice measures concerning personal data risks, the Commission ought to have regard to the decisions of the national lead data protection authority in the Member States made under the General Data Protection Regulation.

84. In this regard, it is of note that the CJEU has outlined a coordination framework between data protection and competition authorities in a recent judgment.[135] Although this arose in the context of powers under different EU regulations, in *Meta Platforms v Bundeskartellamt,* the CJEU determined that the duty of sincere cooperation binds the various national authorities involved and, under that principle, Member States, including their administrative authorities, must, *inter alia*, assist each

[131] AI Act, recital 118 '[...] To the extent that such systems or models are embedded into designated very large online platforms or very large online search engines, they are subject to the risk-management framework provided for in Regulation (EU) 2022/2065. Consequently, the corresponding obligations of this Regulation should be presumed to be fulfilled, unless significant systemic risks not covered by Regulation (EU) 2022/2065 emerge and are identified in such models. Within this framework, providers of very large online platforms and very large online search engines are obliged to assess potential systemic risks stemming from the design, functioning and use of their services, including how the design of algorithmic systems used in the service may contribute to such risks, as well as systemic risks stemming from potential misuses. Those providers are also obliged to take appropriate mitigating measures in observance of fundamental rights.'

[132] European Commission, 'An Agile Digital Rulebook for the EU' (2025) <https://digital-strategy.ec.europa.eu/en/policies/digital-rulebook> accessed 2 December 2025.

[133] Malik and Solaiman (n 128) 124.

[134] Article 55(1) AI Act sets out obligations and article 55(2) AI Act provides that: 'Providers of general-purpose AI models with systemic risk may rely on codes of practice within the meaning of Article 56 to demonstrate compliance with the obligations set out in paragraph 1 of this Article, until a harmonised standard is published. Compliance with European harmonised standards grants providers the presumption of conformity to the extent that those standards cover those obligations. Providers of general-purpose AI models with systemic risks who do not adhere to an approved code of practice or do not comply with a European harmonised standard shall demonstrate alternative adequate means of compliance for assessment by the Commission.' Code of Practice, Safety and Security Chapter' (n 35) Measure 2.1, point (1), app 1.1.

[135] Simona Demková and Giovanni De Gregorio, 'The Looming Enforcement Crisis in European Digital Policy: A Rule-Of-Law Centered Path Forward' (*Verfassungsblog*, 10 February 2025) https://verfassungsblog.de/the-looming-enforcement-crisis-ai-dsa-eu/ accessed 1 November 2025.

other.[136] The Court further held that a national competition authority may, in examining an abuse of a dominant position by an undertaking within the meaning of Article 102 TFEU, find that the undertaking's terms of use relating to the processing of personal data are not consistent with the GDPR, provided that that finding is necessary to establish the existence of such an abuse. However, the national competition authority cannot depart from a decision by a competent lead supervisory authority concerning those general terms or similar terms.[137] It has been noted that such an approach may not suffice where a function overlaps with multiple authorities.[138] For now, the *Meta Platforms* judgment leaves open questions as to the extent to which a national authority is bound by the decisions of other national authorities and the extent to which the duty of sincere cooperation applies. It also raises questions about the ability of one national supervisory authority, in separate proceedings, to make findings that produce broad effects whose consequences may (even unforeseeably) impact the Commission's supervision and enforcement of the AI Act. Nevertheless, in the absence of a specific mechanism in the AI Act, the judgment provides a relevant guiding principle about the relationship between potentially competing regulatory authorities. Whether it is the optimal mechanism is beyond the scope of this commentary.

85. It appears that the Commission recognises that there may be undesirable regulatory overlap between the AI Act and other EU legislation as, in November 2025, the Commission proposed the Digital Omnibus on AI Regulation.[139] This proposes 'targeted simplification measures to ensure timely, smooth, and proportionate implementation of certain of the AI Act's provisions'. One such proposal concerns 'Guidelines on the AI Act's interplay with other Union legislation, for example joint guidelines of the Commission and European Data Protection Board on the interplay of the AI Act and EU data protection law, guidelines on the interplay between the AI Act and the Cyber Resilience Act, and guidelines on the interplay between the AI Act and the Machinery Regulation'.[140] In this regard, it is of note that the Digital Omnibus proposes to amend Article 75(1). That amendment would mean that the AI Office will also be responsible for the supervision, investigation, enforcement and monitoring of the obligations under the AI Act relating to AI systems that are integrated within very large online platforms and search engines within the meaning of the DSA.[141]

[136] Case C-252/21 *Meta Platforms and Others v Bundeskartellamt* EU:C:2023:537, para 53.
[137] ibid paras 62 and 63.
[138] Demková and De Gregorio (n 135).
[139] European Commission, 'Digital Omnibus on AI Regulation Proposal' (2025) <https://digital-strategy.ec.europa.eu/en/library/digital-omnibus-ai-regulation-proposal> accessed 2 December 2025.
[140] 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, 2–3.
[141] ibid 27–28.