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Subject matter
Third advice on the supervisory structure for the AI Act

Dear Mr. Beljaarts, Mr. Szabó and Mr. Struycken,

1. The AI Act 2024/1689, which recently entered into force, requires the establishment of a supervisory structure at national level. In this context, the Dutch Authority for Digital Infrastructure ('Rijksinspectie Digitale Infrastructuur', RDI) – as chair of the Working Group on the Supervision of AI – and the Dutch Data Protection Authority ('Autoriteit Persoonsgegevens', AP) – as national coordinating algorithm supervisor – have been asked to come up with a joint advice on how the supervision of the AI Act can be organised in an effective way. The proposed supervisory structure aims to solve the complexity of the AI Act among the supervisory authorities in order to prevent this complexity from being 'exported' to supervised organisations.

2. On 7 November 2023 and 16 May 2024, respectively, our first and second interim advice were sent to the Minister of Economic Affairs, the Minister for Digitalisation and the Minister for Legal Protection. These advices were discussed on 1 December 2023 and 16 May 2024. In this third and final advice, the supervisory authorities have further developed the desirable supervisory structure.

3. The recommendations and points of attention set out in this letter are once again the result of intensive and unique cooperation between many relevant supervisory authorities that will have to jointly supervise the same legal framework. With the drawing up of this advice, the supervisory authorities on AI have created a solid basis for the further cooperation and coordination that is also necessary for the (preparation for the) supervision on AI. This advice is the result of various workshops, knowledge

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sessions, exchange of notes and other forms of exchange between the different supervisory authorities. The new supervisory structure has also been regularly discussed and coordinated by the boards and directors of the authorities. This has already established a stronger network of supervisory authorities for AI and it fosters a cooperative supervisory culture that is needed to jointly supervise the development and deployment of AI, in particular with respect to the system of market surveillance set out by the AI Act.

4. This advice has been approved at board level in the Inspection Board ('Inspectieraad') on 8 October 2024 and in the Algorithm & AI Chamber of the Cooperation Platform of Digital Supervisory authorities ('Samenwerkingsplatform Digitale Toezichthouders', SDT) on 17 October 2024. This final opinion addresses the organisation of the necessary roles, tasks and powers to provide a basis for the implementing legislation and to serve as a basis for the preparations to be carried out in parallel by the supervisory authorities, with the necessary resources that should be made available. This parallel process is necessary because the AI Act is already in force and has strict deadlines.

5. First of all, we provide you with an overview of our most important previous findings. In addition, with this letter we inform you of the recommendations of the supervisory authorities on the topics below. This letter is therefore structured as follows: (1) overview of relevant previous findings; (2) the organisation of supervision based on Annex I; (3) notification of conformity assessment bodies; (4) the organisation of supervision of GPAI; (5) the organisation of supervision of transparency obligations (Art. 50); (6) national governance and cooperation; (7) European representation; (8) priorities and outstanding issues; (9) follow-up.

1. Overview of relevant previous findings

6. In the first two advices, we set out a number of recommendations that are important for the continuation of the advisory process and in this final advice. These advices are set out in [Annex 1 and 2]. The recommendations are summarised as follows:

- **Supervision of compliance with the AI Act demands that different supervisory authorities in the supervisory system, including the market surveillance authorities, authorities protecting fundamental rights and the existing sector-specific and domain-specific supervisors be placed in the best possible position.** The AI Act requires a supervisory structure that serves the public interests involved in the AI Act – in particular the health, safety and protection of fundamental rights – as effectively and efficiently as possible.¹
- **When allocating new tasks to supervisory authorities, they can only be taken up if sufficient resources and capacity are available.** This explicitly also applies to the role of relevant sector-specific or

¹ The concept of 'sector-specific or domain-specific supervisory authorities' is used to refer to supervisory authorities operating in a certain sector (of the market) or a certain domain and supervising AI based on existing mandates, tasks and powers. The use of the term 'market surveillance authority' aligns with the terminology used in the AI Act, i.e. Article 3(26) where this term is defined. The market surveillance authority is the authority 'carrying out the activities and taking measures referred to in Regulation (EU) 2019/1020.' The term 'authorities protecting fundamental rights' is used to refer to the authorities referred to in Article 77 and Recital 157, which are defined as 'national public authorities or bodies which supervise the application of Union law protecting fundamental rights, including equality bodies and data protection authorities.'

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domain-specific supervisors who will not be market surveillance authorities or authorities protecting fundamental rights.

- **When designing the supervision of the AI systems listed in Annex III and the prohibited AI systems, it is recommended to create a system of market surveillance authorities that cooperate closely and complementarily in market surveillance activities with sector-specific and domain-specific supervisors and authorities protecting fundamental rights (and vice versa).** The AP, the Dutch Central Bank ('De Nederlandsche Bank', DNB) and the Dutch Authority for the Financial Markets ('Autoriteit Financiële Markten', AFM) should be designated as new market surveillance authorities, and should work closely with the relevant sector-specific and domain-specific supervisors and authorities protecting fundamental rights. The ability to share information is crucial for this.
- **When designing the supervisory structure, the existing goals, roles, mandates, and powers of the sector-specific and domain-specific supervisors should be complemented as much as possible.** At the same time, a joint analysis by the supervisory authorities shows that, for the supervision based on Annex III and the prohibitions, not every sector and domain supervisor with a link to the areas of application in the AI Act can be equipped as a market surveillance authority under the AI Act. Or it turns out that appointing these supervisory authorities does not fit in well with the existing role and goals of these supervisory authorities. This refers to considerations about the scope of supervision required by the AI Act (the entire value chain from providers to deployers), the type of supervision (market surveillance), and the scope and nature of the risks and incidents that will have to be monitored under this regulation. The authorities therefore recommend that a limited number of market surveillance authorities (AP, RDI/Inspectorate for Human Environment and Transport ('Inspectie Leefomgeving en Transport', ILT), DNB and the AFM) cooperate with sector-specific and domain-specific supervisors for the supervision based on Annex III and the prohibitions. These sector-specific and domain-specific supervisors include the Inspectorate of Education ('Inspectie van het onderwijs'), the Inspectorate of taxes, allowances and border control ('Inspectie belastingen, toeslagen en douane', IBTD), the Netherlands Labour Authority ('Nederlandse Arbeidsinspectie', NLA), the AFM, the DNB, the Health and Youth Care Inspectorate ('Inspectie Gezondheidszorg en Jeugd', IGJ), the Inspectorate of Justice and Security ('Inspectie Justitie en Veiligheid', IJenV) and the Netherlands Authority for Consumers and Markets ('Autoriteit Consument en Markt', ACM).
- **The proposed supervisory structure can only be successful if the tasks, powers and responsibilities of the relevant sector-specific and domain-specific supervisors are being strengthened by market surveillance under the AI Act and if these are not affected by it.** This requires close cooperation between the existing sector and domain supervisors, which supervise (the effects of) AI, and the market surveillance authorities. Sector-specific and domain-specific supervisors should be able to have a say in identifying the priorities in market surveillance, identifying risks and impacts of AI use, and identifying relevant developments and trends to avoid unintended additional risks.
- **Such cooperation is only possible if there is an adequate and clear legal basis for the exchange of information, a governance structure for cooperation and coordination and if additional resources are**

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made available to the sector and domain supervisors.² This current advice elaborates on this recommendation.

- **The supervisory authorities advise that at least the Netherlands Institute for Human Rights ('College voor de Rechten van de Mens', CRM) and the AP be identified as supervisory authorities that supervise the application of Union law protecting fundamental rights, because their supervision is based on other Union law.**³ The CRM should be considered to be identified in its capacity as a supervisory authority of fundamental rights in a broad sense, including the right to equal treatment and non-discrimination. The AP should be considered in its capacity as a data protection supervisory authority.⁴ These supervisory authorities will be given specific powers and will also be able to participate effectively in the system of market surveillance.

2. Establishment of supervision of high-risk AI systems based on Annex I

7. This section discusses the responsibilities of the existing market surveillance authorities, and the role of conformity assessment bodies for the oversight of the high-risk AI systems under Annex I of the AI Act. In addition, the cooperation between market surveillance authorities is discussed and a proposal is made to designate the RDI as coordinating market surveillance authority with regard to Annex I.

8. Several market surveillance authorities are already supervising based on other existing product legislation. The table below lists the responsible market surveillance authorities supervising based on existing product legislation relating to the product groups listed in Annex I. In addition, a column is included with the proposed supervisory authorities with regard to the product groups, as set out in the legislation in Annex I.

9. Annex IB is being reviewed by the European Commission and is not yet applicable. This annex contains 8 regulations and directives aimed at, among other things, traffic products, rail and aviation. If this Annex enters into force, the ILT will be the intended supervisor for the vast majority of the regulations and directives (with the exception of item 13 on civil aviation security).⁵

² This of course also applies to authorities protecting fundamental rights, but this follows directly from the AI Act and therefore does not require separate attention.

³ At the end of September 2024, the European Commission provided Member States with an interpretative note to support compliance with Article 77(2) of the AI Act. This interpretative note was not available at the time of drafting this advice and has therefore not yet been taken into account.

⁴ The processing of personal data has now been brought almost entirely within the scope of EU law. Therefore, the entire Charter applies. This means that the Autoriteit Persoonsgegevens as data protection authority can already enforce whenever the processing of personal data results in a violation of one or more fundamental rights in the Charter, such as non-discrimination, the protection of children, or right to a fair trial.

⁵ See Articles 2(2) and 112(12) of the AI Act.

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Legislation		Existing market surveillance authority	Proposed market surveillance authorities
<u>ANNEX IA</u>		Collectively: - Netherlands Food and Consumer Product Safety Authority ('Nederlandse Voedsel- en Warenautoriteit', NVWA) - ILT - NLA - RDI - IGJ	Collectively: - NVWA - ILT - NLA - RDI - IGJ
1	Machinery Directive*	NVWA (consumers) + NLA (professional purposes)	NVWA (consumers) + NLA (professional purposes)
2	Toys	NVWA	NVWA
3	Recreational craft and personal watercraft	ILT	ILT
4	Lifts and safety components of lifts	NLA	NLA
5	Explosion-proof equipment	NLA	NLA
6	Radio equipment	RDI	RDI
7	Pressure equipment	NLA	NLA
8	Cableway installations	ILT	ILT
9	Personal protective equipment*	NVWA (consumers) + NLA (professional purposes)	NVWA (consumers) + NLA (professional purposes)
10	Gas installations	NVWA	NVWA
11	Medical devices	IGJ	IGJ
12	In vitro diagnostic medical devices	IGJ	IGJ
<u>ANNEX IB</u>			
	All legislation mentioned in IB.	ILT	ILT

* In general, it is not always clear per supervisory case what the exact allocation will be between supervisory authorities under the above-mentioned regulations and directives. This is particularly the case in relation to the above-mentioned regulations and directives marked with an *. These proposals therefore concern only the granting of formal decision-making power in a given area to a market surveillance authority which is broadly the closest to the existing supervisory task.

For example: Machines intended for professional use are covered by the NLA. If the failure of AI in such machines results in unsafe food (NVWA), it is not yet clear who exactly is the responsible supervisor for, for example, the Machinery Directive (item 1 in the table).

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10. The determination of the necessary capacity for supervision based on Annex I requires further analysis.

Annex I contains various pieces of product legislation that regard different kinds of economic operators. In the sector-specific product legislation listed in Annex I, other terms are used for the actors that will be supervised. This terminology from the product legislation in Annex I does not always overlap with the terminology that is used in the AI Act. As a result, it is not clear exactly how many actors will operate in the chain for a particular sector-specific supervisor and therefore how extensive the task of supervision under Annex I in relation to the sector-specific product regulations will become. This is an issue that will need to be further elaborated upon. The elaboration on this point also concerns the question of how much additional capacity will be needed.

11. All market surveillance authorities for Annex I will need some basic knowledge for the supervision of compliance with the AI Act.

These supervisory authorities should also be able to rely on the RDI for specialist AI knowledge. See also the first and second interim advices. The extent to which this is necessary will vary among supervisors. This advice therefore only concerns the designation of roles and tasks, but should not be understood as a concrete elaboration of the necessary capacity and expertise that supervisory authorities need for Annex I. The latter is something that we, as joint product supervisory authorities, want to discuss further.

12. It is therefore clear that all market surveillance authorities need resources to build up and/or expand the necessary level of knowledge.

For this to work properly, the starting point is that each market surveillance authority must have sufficient knowledge to be able to assess the impact of AI in its own domain, because this is where the responsibility for the sector-specific product groups already lies. As mentioned above, the elaboration of this expertise (knowledge) aspect will still have to be completed after the publication of this advice.

13. However, it may still be the case that a market surveillance authority does not have sufficient knowledge about AI (in relation to specific requirements in the AI Act) in its own organisation or it will not be efficient in acquiring that in-depth knowledge in order to be able to carry out effective supervision.

In that case, it is up to the RDI to provide support. The RDI will also have a signalling and agenda-setting function, for issues that need to be tackled jointly under Annex I or that would otherwise not be tackled by anyone.

14. The support of the RDI in market surveillance for Annex I may thus consist of the following:

- Coordination in the sense of coordination between the various supervisory authorities (not letting anything fall between the cracks, learning from each other's approach, removing ambiguities).
- Coordinating and addressing cross-supervisory issues and notifications (conformity assessment bodies).
- Responsibility for collecting information and drafting reports under the AI Act in a European context, where necessary in cooperation with the AP. For example, feedback on issues under Annex I to the European Commission.
- Building generic knowledge and expertise for the other market surveillance authorities to provide support on more complex technical issues related to AI.

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15. In the event that the supervision of an AI system is not limited to a single domain of one of the existing market surveillance authorities, the RDI is responsible for addressing this and should be made competent to do so. Some of the high-risk AI systems used will have wider use than within a single regulatory scheme or domain. In that case, the RDI, in coordination with relevant market surveillance authorities, will take this up. It may be possible for the RDI to carry out the enforcement itself or also with other market surveillance authorities. This requires further elaboration.

3. Notification of conformity assessment bodies

16. Building on the starting point set out in the first interim advice on AI oversight, the formal powers of the existing notifying authorities for the sector-specific product legislation should be maintained. For many AI systems listed in Annex I, conformity assessments will have to be carried out before the products can be placed on the market or put into service. This is done by conformity assessment bodies (CABs). Those CABs shall be designated by notifying authorities. At present, the responsibility for designating conformity assessment bodies for the product legislation listed in Annex I lies with the market surveillance authorities or responsible ministries (depending on whether this task is mandated or not).

17. It is recommended that the role of the notifying authorities be maintained as it already is under Annex I (see table below). This can then be extended under the AI Act in case a CAB wants an extension for the AI Act with regard to an existing designation, or when a CAB, for the purposes of the AI Act, wants to be newly designated for one of the pieces of product legislation listed in Annex I. The responsibility for the designation is therefore allocated in a decentralised manner. In addition, a CAB may also only be designated for conformity assessment under the AI Act. Should this occur, the proposal is to bestow the power of designation on the coordinating market surveillance authority for Annex I (the RDI).

18. In addition, there is a need to centralise (part of) the knowledge required to appoint a CAB. As mentioned above, it is recommended to give the RDI a fallback function there. The proposal is for the RDI to generically support the aspects for the designation of CABs where this is not specifically already done by a market surveillance authority and where an overarching action is needed. For example with regard to the promotion of harmonisation of the various Annex I assessments, but also in the feedback to European bodies. How this elaboration and support will take place exactly is something that will have to be further elaborated by the various Annex I supervisory authorities.

19. Supervisory authorities advise, in essence, that the notifying authority remain the same for CABs. In line with the conditions set out for notifying authorities, the picture is as follows:

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	Regulation or Directive in the field of:	Notifying Authority (and Adviser):	Additional adviser for the purposes of the AI Act:
1	ILT	ILT (and/or M-I&M?)	RDI
2	NVWA	Ministry of Health, Welfare and Sport ('Ministerie van Volksgezondheid, Welzijn en Sport', VWS)	RDI
3	IGJ	VWS	IGJ
4	RDI	RDI	RDI
5	NLA	NLA	RDI

NB: The AI Act provides scope for the Dutch Accreditation Council ('Raad voor Accreditatie', RvA) to carry out the assessment and supervision regarding certain parts of Annex I. Therefore, if a notifying authority referred to above wishes to make use of it, that possibility exists *in addition to* the formal competence of the notifying authority itself. The task can therefore be carried out by a notifying authority, outsourced to the RvA, but can also be conducted on the basis of the advice of the RvA.

Whether and when support of the RDI is desired will also depend on the way in which the monitoring of a CAB will take place, the wishes of the respective MSAs and the availability of capacity at the RDI.

20. In the event that a designation is not limited to a single domain of one of the existing market surveillance authorities or falls outside the scope of Annex I, the RDI should be responsible for addressing this and should be made competent to do so. Some of the applications from CABs will ask for broader designation than just within one piece of product legislation or domain and may concern an application broader than just Annex I. In that case, the RDI, in consultation with relevant market surveillance authorities, will address this issue. The RDI may be able to make this designation itself or it may in part also be made by other competent notifying authorities. This will be worked out in more detail.

21. The supervisory authorities advise that the RDI be given a coordinating role with regard to overarching issues and notifications. This concerns the central coordination of advice on the designation of conformity assessment bodies, because a uniform approach is necessary.

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4. Supervision of GPAI

22. Although the task of supervising general purpose AI (GPAI) models lies with the AI Office, the supervision of the AI systems into which these models are integrated will in many cases lie with the national market surveillance authorities.⁶ This means that, in practice, supervision of GPAI will be a matter for both the AI Office and the national market surveillance authorities. According to the supervisory authorities, national market surveillance authorities play an important role in the supervision of GPAI. This is because GPAI models often form the basis for the (further) development of (high-risk) AI systems and because the obligations for the providers of both models and systems must as such be coherently interpreted and enforced. It also follows from the AI Act that, in the cases above, market surveillance authorities are given powers to cooperate with the AI Office by making requests for information on GPAI models and requesting the AI Office to enforce the obligations for GPAI models. The essential role of national market surveillance authorities is all the more important when it comes to AI systems and/or GPAI models released under free and open source licences, because in some cases the AI Office can supervise the underlying open source models to a limited degree only or not at all.⁷ Eventually, supervision by the AI Office has both a legal limit (the scope of 'open source models') and a quantitative limit (in practice, countless GPAI models are already being provided) so that not every GPAI model can be supervised.⁸

23. By cooperation between the AI Office and the national market surveillance authorities, the expertise and knowledge of the national market surveillance authorities can be used optimally; and this will allow for the effective building of relationships with, and knowledge of, actors that are being supervised. Market surveillance authorities and the AI Office can jointly contribute to supervision of the entire value chain from model providers to downstream providers and users of (high-risk) AI systems.

24. Effective supervision of (the application of) GPAI models requires market surveillance authorities to build expertise on GPAI technology. Given that, in practice, GPAI (models) play a major role in the (further) development of AI systems, it is inevitable that for optimal supervision of AI systems, knowledge and expertise must also be built on the functioning of, and the legal rules for GPAI (models). This allows market surveillance authorities to supervise AI systems that integrate GPAI models. From the point of view of efficient and effective supervision, the supervisory authorities propose to give the RDI and the AP a coordinating role in the development of that expertise. Both supervisory authorities can then support other market surveillance authorities if they are encountering the application of GPAI in their supervision and ensure that knowledge on GPAI in supervision is shared among themselves, but also that specific expertise and knowledge related to GPAI in the sectors and domains is unlocked and made available to other market surveillance authorities. The exact form of this coordination will still have to be worked out by the AP and the RDI. This could encompass a form of joint coordination, or an allocation of coordinating roles on different topics (e.g. Annex I, Annex III), or an intermediate form.

⁶ Article 88 and Recital 161 of the AI Act. See also Articles 75 and 101 of the AI Act. The AI Office shall have all the powers of a market surveillance authority for AI systems that are based on a general-purpose AI model, and where this system and the model are developed by the same provider, but this will often not be the case.

⁷ See, for example, Articles 2(12), 25(4), 53(2) and 54(6) of the AI Act.

⁸ Here, it particularly considers GPAI models and not necessarily GPAI models with systemic risk.

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25. Supervision of GPAI requires a systemic (*safety*) perspective on the technical, social and fundamental rights risks. When identifying and countering systemic risks, the national perspective is important because at this level the effects of AI systems that integrate GPAI models are first experienced and can be monitored and investigated. National supervisory authorities are well positioned to monitor how GPAI models work out in practice and therefore also in the identification of systemic risks. At the same time, identification and assessment of systemic risks require an overarching and broad view, as well as specific expertise on systemic risks. It is reasonable to give the RDI and the AP this expert task, in line with their aforementioned coordinating role, and to explicitly seek supervisory cooperation within the AI Board and with the AI Office.

26. In addition to the aforementioned, the AI Act also provides for a possibility for downstream providers (the providers of AI systems based on GPAI models) to lodge a complaint alleging an infringement of the AI Act (including the rules for GPAI). It is important that complaints lodged at the national point of contact and which regard GPAI can be referred to the AI Office. The question is whether this requires a basis for information exchange with the AI Office under national law. Whether this is the case should be evaluated by your ministries.

5. Supervision of the transparency obligations (Art. 50)

27. Article 50 of the AI Act lays down specific transparency obligations for providers and deployers of certain AI systems. These transparency obligations aim to regulate the dissemination of AI-generated content and to make sure natural persons are informed about the origin of such content. Article 50 also contains a transparency obligation that aims for natural persons to be informed when they are interacting with an AI system, such as a chatbot. Finally, the article contains an obligation to inform natural persons on the operation of certain biometric AI systems.

28. With regard to the supervision of transparency obligations from Article 50, it is important to note that these obligations also apply to AI systems that are not high-risk systems. For example, AI systems that interact with natural persons (Article 50(1)) also include providers of chatbots for citizen communication by public authorities. The aforementioned also applies to providers of AI systems that generate synthetic audio, image, video or text content (Article 50(2)). This includes, for example, providers of software that is used to generate images, summarise texts or generate answers to questions. In particular, the transparency provision on deepfakes (Article 50(3)) also focusses on an actor and a system that could soon fall outside the scope of Annex I or III. These are the *deployers that use systems* for making deepfakes, imitating persons, events, places, etc., and the deployer must in principle be transparent on the fact that the material has been generated by AI.

29. Regarding the supervision of the transparency obligations, there are two options, one whereby (1) the supervision is allocated as much as possible to one market surveillance authority, or (2) the supervision of these obligations is divided between several market surveillance authorities along the lines set out in Annexes I and III. The first option is preferable in the opinion of the supervisory authorities. Supervisory authorities estimate that a large part of the AI systems subject to the transparency obligations do not always fall within the high-risk application areas, or that they can be used for several areas of application at the same time. This means that the authorities to a large extent supervise a different group of providers and deployers of AI systems than the actors that market surveillance authorities will supervise under

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Annexes I and III. Or it regards providers or deployers of AI systems that fall under several of the areas of application in Annex I or III. Allocation of competences among market surveillance authorities along the lines of Annexes I and III will actually lead to a situation where supervision is unnecessarily fragmented and complicated. In addition, the rationale behind the transparency provisions (ensuring the integrity of, and trust in the information ecosystem and thus preventing manipulation, deception, misinformation, etc.) and the aim of the rules (that natural persons are informed) are different from the rationale and aim behind the rules relating to high-risk AI systems in Annexes I and III, which are essentially about risks to health, safety and fundamental rights, and taking appropriate risk management measures. The transparency obligations are therefore of a different nature in terms of both content and supervision if compared to the market surveillance to be organised for high-risk AI systems. It is therefore reasonable to allocate supervision of the transparency obligations to a single market surveillance authority instead of to different market surveillance authorities in the different areas of application, which may overlap and where an (other) market surveillance authority should be designated for the 'residual' actors and AI systems that to a large extent fall outside the high-risk domain. Conversely, the designation of a single market surveillance authority for the transparency obligations provides legal certainty for market participants and a clearer supervisory structure.

30. The supervisory authorities therefore advise that, in principle, the AP be designated as the market surveillance authority for the transparency obligations. This supervision of compliance with the transparency obligations in Article 50 of the AI Act fits well with the planned and coordinating market surveillance capacities of the AP. The AP could then be designated in respect of its capacity of as a broad market surveillance authority for Annex III and its role as a coordinating algorithm supervisor, as has been advised before. In addition, the obligations regarding the provision of AI systems for emotion recognition and biometric categorisation are closely linked to the legal protection provided by the GDPR and the transparency obligations applicable to the processing of personal data. When considering the role of the AP as a single market surveillance authority for the transparency obligations, another important argument is that part of this supervision will require regular interaction and coordination with the AI Office. The AI Office supervises compliance with the rules with respect to the *general purpose AI models* and, in some cases, is also the competent authority for AI systems integrating these models – and thus for the transparency obligations that apply to these systems.⁹

31. The supervisory authorities advise that the AFM and the DNB be appointed as market surveillance authority for the supervision of the transparency obligations from Article 50(1), (2) and (4) with regard to AI systems provided or deployed by financial institutions. This follows from the AI Act itself. It could regard services integrating chat apps provided by financial institutions, which are already supervised by the AFM and the DNB in the case of high-risk AI systems directly related to the provision of financial services. In addition to the second interim advice, it is also recommended that the supervision of the ban on AI systems that use manipulative or exploitative practices be entrusted to the AFM.

32. Transparency obligations regarding generated content overlap with existing legal frameworks and supervision by sector-specific and domain-specific supervisors. Effective supervision requires market surveillance authorities to closely cooperate and coordinate with other relevant supervisory authorities for all transparency obligations and to jointly determine how, given different areas of expertise, mandates and

⁹ Article 75 of the AI Act.

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supervisory tools, the issues related to AI-generated content and AI systems interacting with humans can best be addressed. For example, there is an interrelation with the ACM's supervision of compliance with the Digital Services Act (DSA) and the transparency obligation in the AI Act to mark generated content as such. This interrelation of obligations is important in the approach to, for example, tackling disinformation by platform providers. Furthermore, the transparency obligations also affect consumer law provisions, for example when it comes to direct interaction of an AI system with a consumer (e.g. recommender AIs, reviews, customer journeys, dark patterns, clicks, text input). There is also an interrelation, for example, with the supervision of the Dutch Media Authority ('Commissariaat voor de Media', CvdM), which supervises compliance with, among other things, the Dutch Media Act, which also contains provisions on video-sharing platform services in implementation of the Audiovisual Media Services Directive. For example, these service providers should take steps to protect minors and prevent content from inciting hatred. The transparency obligations in the AI Act that apply to deepfakes can complement this. The CvdM also supervises public and commercial media services. The CvdM ensures that media content is independent, accessible, diverse and secure. Generative AI may have an impact on these values. As a result, there may be an overlap with the oversight of the transparency obligations in the AI Act. In order to ensure that issues relating, for example, to the dissemination of synthetic content from the supervisory perspective are effectively addressed, close cooperation with these supervisory authorities is required. Finally, the AI systems covered by the transparency obligations for generated content will also integrate GPAI models and thus interact with the rules and supervision of GPAI models. Given the role that the RDI wishes to take up together with the AP in the supervision of GPAI, the AP will also work closely with the RDI in these cases.

6. National governance and cooperation

33. Effective supervision of the AI Act requires a mandatory national structure for cooperation and information sharing. Market surveillance authorities, sector-specific and domain-specific supervisors and authorities protecting fundamental rights stand for a comprehensive system of supervision of AI, making the best use of limited supervisory capacity, and will therefore pay particular attention to the implementation of this structure for cooperation. This structure requires a legal basis for drawing up a cooperation agreement and proportionate (legal) possibilities for information sharing. The AP and the RDI are happy to discuss this with you in order to explain this need in more detail and how this legal basis can be shaped.

34. Existing rules on market surveillance and the AI Act already contain principles for the cooperation and exchange of information between market surveillance authorities and authorities protecting fundamental rights. Together with your ministries, the supervisory authorities wish to explore to what extent these principles are sufficiently in line with the supervisory authorities' recommendations to achieve effective cooperation and appropriate exchange of information. Still, account must be taken of the special nature of the AI Act in the system of market surveillance and the special role and powers of certain market surveillance authorities therein, such as the AFM and the DNB. This also applies to the role of authorities protecting fundamental rights and their special roles and powers in the AI Act. Next to that, differences in the structure supervision of Annex I and Annex III may also have to be taken into account. Prohibitive existing legal barriers to effective cooperation and exchange of information should be removed as far as possible, taking into account these particularities.

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35. Additional conditions need to be created for cooperation with sector-specific and domain-specific supervisors, which play an indispensable role in supervision. These supervisory authorities do not operate within the formal frameworks of the market surveillance structure that follows from the AI Act and the related Market Surveillance Regulation (2019/1020). Cooperation with sector-specific and domain-specific supervisors, who will oversee AI based on existing tasks, powers and responsibilities, is therefore likely to rely only to a limited extent on the AI Act and the Market Surveillance Regulation. Cooperation with these supervisory authorities in the field of AI can therefore only be achieved with a sufficiently solid basis that provides the groundwork for cooperation, agreements on joint prioritisation and information sharing. When it comes to information sharing, it should be possible, for example, for supervisory authorities to inform each other about incidents involving AI, to share signals about risks and to inform each other about (ongoing) investigations. Supervisory authorities must also be able to make agreements about the aforementioned.

36. The supervisory authorities will explore to what extent the current consultation and coordination structures are suitable to ensure effective and efficient collaboration among the regulators. Following this advice opinion and in preparation of the designation of supervisory authorities for the purposes of the AI Act, the supervisory authorities involved to date will start a new process to come to a joint cooperation structure to which all parties involved can commit, including by practising with case studies. This includes, among other things, what an appropriate structure for consultation and coordination is or could be. Attention will therefore also be paid to current consultation structures, such as the Alliance Consultation, the Working and Core Group on AI Supervision, the Inspection Board and the Cooperation Platform for Digital Supervisors (SDT) and how the eventual AI collaboration relates to this. The starting point that supervisory authorities endorse is that there will be an efficient form of consultation and cooperation, which builds on the best practices from the current collaborations in the most effective way possible in a way that (1) does justice to the specific characteristics of the AI Act; in particular, the horizontal nature of this new piece of product legislation and (2) at the same time avoid unnecessary duplication and overlap in forms of cooperation.

37. Supervisory authorities advise that a broad legal basis be provided in the implementing legislation for the drafting of (1) a generic multilateral cooperation agreement for AI supervision and (2) additional separate bilateral cooperation arrangements between supervisory authorities. This gives supervisory authorities the opportunity to work out in detail, collectively and given everyone's independent role, over time, an integral system of cooperation in the supervision of AI. The AP and the RDI will set up and facilitate that process as coordinating supervisory authorities. When drawing up such a system of a multilateral cooperation agreement with additional bilateral arrangements, the following shall apply:

- **Such a cooperation agreement includes, among other things, how and when one informs each other about, for example, incidents with AI, signals about risks and (ongoing) investigations.** A cooperation agreement will also have to specify how to deal with concurrence of competences, the interpretation of concepts and mutual advice. In particular, the concurrence of competences may arise between market surveillance authorities on the one hand and sector-specific and domain-specific supervisors on the other. Cooperation and information sharing arrangements can avoid unnecessary accumulation of supervisory interventions and duplication of information requests to the supervisory organisations.

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- **In unexpected circumstances, there may be a difference of understanding between supervisory authorities about possible interventions in a specific case, for example when it affects different supervisory domains.**¹⁰ The multilateral cooperation agreement offers scope to also include provisions on how supervisory authorities mutually agree to deal with these situations. This is all the more important where the supervision by sector-specific supervisors such as the Inspectorate of Education, NLA or IJenV overlaps with market surveillance (Annex III). Agreements can, for example, relate to informing each other in time about intended supervisory interventions, coordinating them, and the way (the model) in which any differences of opinion between the supervisory authorities are addressed. The legal basis should take into account the different legal bases that supervisory authorities have for their tasks and organisations and the consequences this has for the way in which differences of understanding between supervisory authorities can be resolved.
- **The multilateral cooperation agreement can, according to the needs of each supervisor, also give substance to practical agreements** in the field of financing, human resources, use of each other's research facilities and other matters for mutual cooperation.
- **The multilateral nature means that agreements can be made between several supervisory authorities by means of a single agreement.** In line with the independence of individual supervisory authorities, it is up to the supervisory authorities to determine the precise form of the cooperation agreement.
- **But customisation should also be possible.** In order to tailor the relationships between specific individual supervisory authorities, such as cooperation on one specific scope of AI for which specific agreements are appropriate, the multilateral cooperation agreement can be complemented by corresponding bilateral cooperation agreements that are complementary and build on the multilateral cooperation agreement. This is conceivable, for example, when it comes to the agreements on the demarcation of supervision between market surveillance authorities and certain sector-specific or domain-specific supervisors (Annex III).
- **The drafting of a multilateral cooperation agreement leads to a system of agreements that will develop over time and can be further developed.** It should also be in line with rules from the AI Act and its future (European) elaboration, for example in the field of cooperation and information exchange. The multilateral cooperation agreement shall be adapted on the basis of an agreement between supervisory authorities.

¹⁰ An example may clarify this. Suppose that a certain high-risk AI system for assessing student performance is used by almost all secondary schools in the Netherlands. At a certain point, it appears that this AI system does not comply with the product requirements of the AI Act – with the result that the system may, for example, discriminate and infringe fundamental rights. There will then be a point where the market surveillance authority can instruct the manufacturer to initiate a recall and recovery action and, until that time, restrict the sale and use of the AI system. This can have far-reaching consequences for secondary school education, as they will no longer be able to use this system to assess student performance. It is clear that in a case such as this, despite the mutual independence of supervisory authorities, there is good coordination between the market surveillance authority and the sector-specific supervisor for education, in order to shape the intervention from the AI product supervision in such a way that the continuity of education is guaranteed and the risks and harmful consequences of the AI system are controlled, corrected or terminated.

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38. In addition, supervisory authorities advise that a broad legal basis be provided for the necessary information sharing between all supervisory authorities involved in the implementing legislation, where supplementation is necessary. Where possible, legal barriers to information sharing should be removed. Then every AI supervisor will be in a position to share relevant supervisory information with other supervisory authorities on AI, taking into account, among other things, the protection of personal data and trade secrets and intellectual property. This includes, for example, the passing on of signals by the AP to IJenV or the Inspectorate of Education (according to Annex III) and vice versa. However, account should be taken of the specificities of the legal frameworks within which individual supervisory authorities operate. This concerns, for example, legal frameworks within financial supervision, which are dealt with by the AFM and the DNB, in which data sharing has limitations.

39. Finally, supervisory authorities stress the importance of ensuring coordination between supervisory authorities and recommend that a coordination task be laid down in the implementing legislation that will be structured by the AP and the RDI in conjunction. Effective and efficient organisation of the supervisory structure of the AI Act requires coordination, and sometimes specifically requires Member States to *ensure* such coordination. Implementing the comprehensive supervisory approach to the AI Act requires coordination of cooperation between different supervisory authorities to ensure consistent interpretation and application of the rules at national level and to ensure effective and efficient supervision of AI. Member States should facilitate coordination between (1) market surveillance authorities, (2) other relevant national authorities or bodies supervising Annex I and (3) national authorities or bodies supervising compliance with other Union legislation that may be relevant to the systems listed in Annex III (such as authorities protecting fundamental rights).¹¹ With regard to Annex I, as already described in point 3, a coordinating role is needed in the area of notification of CABs. And specifically with regard to market surveillance of Annex III of the AI Act, close cooperation will be needed with existing sector and domain supervision from which (the effects) of AI will also be monitored.¹² The organisation of, and work in the Dutch sandbox also requires coordination between supervisory authorities.¹³ Finally, the European dimension of supervision also requires, among other things, that national supervisory authorities prepare and coordinate their work on behalf of the AI Board or subgroups in consultation,¹⁴ as well as consistent cooperation with the AI Office.¹⁵ Furthermore, the new market surveillance requires specific knowledge and expertise building for market surveillance and knowledge exchange between supervisory authorities. In addition to the practical implementation, the *establishment* of such a system as a (continuous) process also requires support and coordination, including in the elaboration (and maintenance) of a cooperation agreement and the establishment of a governance model.

¹¹ Article 74(10) of the AI Act.

¹² See the advice of May 2024, point 1.1.

¹³ Article 57(14) of the AI Act. See also the advice of May 2024, paragraph 4.

¹⁴ See Article 65(4)(c) of the AI Act with regard to the need for coordination in relation to the AI Board.

¹⁵ See Recital 114 of the AI Act on the need to cooperate with the AI Office.

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7. European representation

40. The supervisory authorities emphasise the importance of the AI Board as a body where, among others, supervisory authorities, from their independent position, cooperate at European level. For the supervisory authorities, this is particularly important where the tasks of this Board aim to facilitate the consistent and effective application of this Regulation. It should be ensured that all market surveillance authorities that will be designated, and sector-specific or domain-specific supervisors, will, where appropriate, be involved in the AI Board and its subgroups. It is also recommended that a national secretariat – in which the AP and the RDI play a coordinating role on behalf of the supervisory authorities – be set up. Here, the work for and input to the AI Board will be prepared and coordinated on a national level. In order to ensure the perpetuation of this task and to guarantee the involvement of all supervisory authorities, it is recommended that the secretariat function for the coordinated input be given a legal basis. Finally, clarification is needed on the establishment of the AI Board, including on the relationship with the ADCO and other subgroups and the role of market surveillance authorities therein, in order to provide more complete advice.

8. Priorities and outstanding issues

41. In addition to the recommendations above, as well as the first and second interim advice opinions, there are a few other things we would like to mention:

- The scope of the critical infrastructure in the AI Act, as referred to in section b of Annex III determining which AI systems qualify as high-risk, differs from the scope for critical infrastructure in, for example, the NIS2 and the CER. As a result, part of the *usual* critical infrastructure when deploying AI does not have to meet the requirements of the high-risk AI systems. It is desirable to determine how to deal with this in the elaboration of the implementing legislation between policy and supervisory authorities.
- For item 13 of Annex IB focusing on civil aviation security, it remains to be verified whether there is an existing market surveillance authority or whether it still needs to be designated.
- As regards the role of authorities protecting fundamental rights, it has previously been advised that at least the AP and the CRM be identified. Other supervisory authorities may also need to be identified as such. In order to work out how the interactions between market surveillance authorities and these authorities protecting fundamental rights should be conducted, organised and coordinated, the supervisory authorities, after identifying the first authorities protecting fundamental rights, would be open to providing additional advice on these issues.
- The AI Act entered into force last August. Based on the advice opinion, the supervisory authorities will work in line with this and prepare for or, where necessary and appropriate, sometimes already give substance to the future tasks. Supervisory authorities will do this as soon as the instructions of the supervisory authorities are official, so they can supervise compliance with the AI Act on time and effectively.

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- The advices opinions dealt with the role and division of tasks and the most urgent issues. However, there are also a number of topics that have not yet been addressed, such as incident reporting, reporting obligations and the secretariat for governance. These issues will be addressed at a later stage.
- In particular, the supervisory authorities ask you to give priority to:
 - The designation of market surveillance authorities, in particular with regard to the prohibitions in the AI Act.
 - Identifying authorities protecting fundamental rights and notifying them to the European Commission in November 2024.
 - Creating foundations for cooperation agreement(s) and exchange of information.

9. Follow-up

42. With this advice, the supervisory authorities have described the most efficient and effective way of supervising AI. However, this advice can only be implemented in practice if the preconditions are met with regard to human resources and finances. For this purpose, the usual implementation and enforcement test (or its variants) will have to be carried out by the supervisory authorities concerned.

43. Finally, we would like to thank you for giving us the opportunity to draw up this advice. We would be happy to explain the content of this final advice in more detail.

Sincerely,

Dutch Data Protection Authority

Dutch Authority for Digital Infrastructure

[Signature]

[Signature]

Monique Verdier
Vice-Chair

Angeline van Dijk
Inspector General

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Annex 1 – first advice on structure for AI act supervision (7 November 2023)

The AI Act is currently being negotiated at European level. This legislation entails a supervisory framework to be set up by Member States at national level. In this context, you have asked the Dutch Authority for Digital Infrastructure (“*Rijksinspectie Digitale Infrastructuur*”, RDI) - as chair of the Working Group on the Supervision of AI - and the Dutch Data Protection Authority (“*Autoriteit Persoonsgegevens*”, AP) - as coordinating algorithm supervisor - to come up with a joint advice on how the supervision of the AI Act can be organized in an effective way.

Through this letter we provide you with our first (interim) advice. The recommendations and points of attention in this letter are the result of close cooperation with many supervisory authorities involved. On the basis of several workshops and subsequent consultations, the supervisory authorities have tried to jointly get a sense of the supervisory tasks, points of attention and principles for the organisation of supervision under the AI Act. This letter provides a representation of the aforementioned points. This advice was approved at board-level in the Inspection Board (“*Inspectieraad*”) on 17 October and in the Algorithm & AI Chamber of the Cooperation Platform of Digital Supervisory authorities (“*Samenwerkingsplatform Digitale Toezichhouders*”, SDT) on 26 October.

1. Market surveillance, coordination and general AI expertise

The supervisory authorities underline the complexity of the AI Act and the need to align with existing regulations, powers, practices and mandates of the authorities. The AI Act aims to promote the use of AI while addressing different types of risks: from tangible risks such as safety and health to breaches of fundamental rights such as non-discrimination, equality and freedom of expression. As a result, divergent AI systems are covered by one specific regulation. The AI act to a great extent complements existing sectoral and horizontal rules and as a consequence AI systems need to be assessed in the context in which they are used. As a result, there is an inextricable relationship with the role of sectoral and horizontal regulations and supervisory authorities. At the same time, it is precisely because of this complexity that supervisory authorities see the need for national and European coordination and uniform interpretation.

Supervisors find complexity can be reduced by aligning new supervisory roles with existing supervisory roles.

- For the products within the scope of Annex I of the AI Act (which are already subject to market surveillance), this means that the five existing Dutch market surveillance authorities should be given a role as market surveillance for AI Act surveillance. These market surveillance authorities already have specific sector knowledge.
- For high-risk AI systems that will fall under Annex III of the AI Act, these are new areas of application, the risks of which are in many cases linked to other public values and fundamental rights. For example, education, public services and justice. There are a total of eight diverging categories of high-risk applications: 1) biometrics, 2) critical infrastructure, 3) education and training, 4) Employment, workers management and access to self-employment, 5) access to and use of public and essential private services, 6) law enforcement, 7) migration, asylum and borders and 8) administration of justice and democratic processes). Within these eight categories, there are likely to be about 25 to 30

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concrete applications. In many cases, these areas of application do not fall within the scope of the five existing Dutch market surveillance authorities (an exception being critical infrastructure). At the same time, given their diversity, the areas of application fall within the remit of several sectoral supervisory authorities who are not currently market surveillance authorities. Broadly speaking, there are two variants for assigning the formal role of market surveillance authority to these Annex III areas of application. The trade-off can be made for each area of application. The first possibility is to designate market surveillance competences in the area of application at a sector or domain-specific supervisory authority that is “nearest” to this area of application. This may require an adjustment of the role, scope and functioning of the relevant authority. This clearly requires further analysis. The possibility to designate market surveillance competences in the areas of application to a “general” market surveillance authority for Annex III that in practice cooperates with and makes use of the sector-specific knowledge of the sectoral supervisory authority. As mentioned above, a trade-off between the two variants can be made per area of application. In addition, the “general” formal market surveillance authority for Annex III will also be needed for those areas of application that cannot be traced back to sectoral supervisory authorities – for example in the field of access to and use of public services. Through dialogue, the supervisory authorities aim to take the next step by identifying 1) possibilities and 2) advantages and disadvantages of different options for each field of application.

The supervisory authorities see room for facilitative coordination and the construction of ‘AI expertise units’ - this coordination leaves the principle unaffected that, when deploying powers under the AI Act, the relevant market surveillance authority will take the lead. This coordination can take place along the lines of Annex I (mainly aimed at product safety) and Annex III (mainly aimed at protecting other public values and fundamental rights). The establishment of coordinating tasks is in line with the establishment requirements resulting from the AI Act and the importance of consistent and coherent application of supervision:

- In coordinating the oversight of AI systems within the existing structure of market surveillance, a role for the Dutch Authority for Digital Infrastructure could be envisaged. This is in line with the structure of market surveillance that currently exists.
- A role for the Dutch Data Protection Authority (as coordinating algorithm supervisor) could be envisaged in the coordination of supervision of high-risk AI systems mentioned in Annex III. This is in line with its current task as (coordinating) algorithm supervisor, for which tasks are assigned to the Directorate for Algorithmic Oversight at the Dutch DPA (“*Directie Coördinatie Algoritmes*”, DCA), with a focus on public values and fundamental rights in the digital society.
- The coordinating role should not affect the ultimate responsibility for tasks in supervision by competent supervisors; the coordinating authorities will have to take the aforementioned into account. Moreover, the coordinating activities will be the link to cooperation at European level.

In addition, organisations can build general AI expertise, each with its own perspective: e.g. product safety and AI (Dutch Authority for Digital Infrastructure) and fundamental rights and AI (Dutch Data Protection Authority). This division is in line with the core competences of both organisations. The build-up of general AI expertise contributes to uniform interpretation of standards, timely signaling and can be used to support formal market surveillance and adjoining horizontal and sectoral supervision by other

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organisations – to this end, workable mechanisms should be considered to make this knowledge accessible and deployable among the organisations.

2. Generic requirements and alignment of horizontal regulation/supervision

In addition to the regulation of high-risk AI systems, the AI Act will (1) prohibit certain AI systems, (2) impose transparency obligations, (3) lay down rules regarding the development of generative AI, *general purpose AI* and/or *foundation models* and (4) may impose additional requirements on the use of high-risk AI systems. Supervisory tasks can be invested along the lines above, with the designation of (market) supervisory authorities and coordination by the Dutch Data Protection Authority and the Dutch Authority for Digital Infrastructure, but these aspects will still have to be worked out by the authorities. The aforementioned generic and cross-sectoral rules in the AI Act cannot easily be linked to a sector or domain. For these aspects, too, the organisation of the supervisory roles depends to a large extent on the outcome of the negotiations on the AI Act and the precise implementation of the rules therein. Attention will have to be paid to the fact that developments in the field of generative AI (also) have an impact on many existing supervisory tasks.

The supervision of AI systems (and their deployment) involves more than just compliance with the AI Act. Sectoral supervisory authorities will also have to take into account (the interaction with) requirements regarding human rights, personal data, cybersecurity and competition and consumer rights when assessing high-risk AI systems – the relevant authorities must be able to take an active role in AI supervision in their field, and must therefore also be adequately equipped for this. This requires cooperation and alignment of market surveillance under the AI Act with supervision based on other frameworks. This aspect will also be worked out by the supervisory authorities. For example, an incident with an AI system that appears to discriminate can possibly be picked up by several supervisory authorities depending on, among other things, the cause and effects of the incident. In addition, the AI Act provides for a system in which Authorities protecting fundamental rights (such as the Netherlands Institute for Human Rights (“*College voor de Rechten van de Mens*”, CRM) in the field of human rights and equal treatment and the Dutch Data Protection Authority on the protection of personal data and the impact on fundamental rights in the digital society) can urge market surveillance authorities to investigate.

3. Supervisory roles

In view of the above, and given the aspects that require further elaboration, the supervisory authorities at this stage see room for the following roles:

- Designation of the role of the market surveillance authority in the AI Act to one or more supervisory authorities. Further elaboration will follow.
- Designation of coordinating tasks and developing general AI expertise at The Dutch Data Protection Authority (from the coordinating algorithm task, focusing on Annex III and risks to public values and fundamental rights) and the Dutch Authority for Digital Infrastructure (based on its task in digital infrastructure and products, focusing on Annex I and the technical dimension of market surveillance).

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- The building of sectoral AI knowledge within sectoral and horizontal supervisory authorities that will not become market surveillance authorities within the meaning of the AI Act, for the purposes of their own supervisory tasks and the identification and alignment between sectoral and horizontal supervision, on the one hand, and market surveillance, on the other hand. Existing market surveillance authorities should also be able to build up further sectoral AI knowledge.
- Embedding the roles for the Authorities protecting fundamental rights and Notifying Authority. Further elaboration should follow.

4. Focus points and open questions

The supervisory authorities stress that the aforementioned only provides a broad outline of how the supervisory roles should be filled in. In particular, there are currently the following points of attention:

- The implementation of the supervisory roles becomes appropriate once the AI Act is final. This applies both to the designation of market surveillance authorities (the content of Annex III is also decisive here) and to the coordination tasks (which must be embedded within the bandwidth that the AI act will provide). Certainly in the area of Annex III, this requires research at a more detailed level on some points. It should be noted that, as explained in Section 2 of this letter, Annex III identifies almost 30 specific types of high-risk applications, sometimes with a further specification within them.
- Supervisory authorities should be provided with sufficient additional (financial) resources to fulfil their possible roles. The direction of the proposed supervisory structure under the AI Act requires a lot of cooperation and coordination between supervisory authorities. It is in the common interest of the authorities that everyone should have sufficient capabilities.
- The precise way in which coordination and cooperation can take shape requires more reflection and dialogue between supervisory authorities. That in order to find a right balance (what kind of cooperation do the tasks under the AI Act exactly require, where is a greater and where is less need for cooperation, and how should this be reflected in the distribution of roles?).
- Individual supervisory authorities still have to assess to what extent market surveillance competences under the AI act are sufficiently compatible with their existing tasks. For some existing Dutch market surveillance authorities, it is questionable whether a supervisory task under the AI Act is in line with their current scope of supervision, for example because this form of supervision concerns different types of companies, organisations and applications. For sectoral supervisory authorities within whose domains high-risk applications are at play, it is questionable whether the additional role as market surveillance authority is sufficiently aligned with the current purpose, mission and role of the authority.
- The supervisory authorities attach importance to the involvement of all relevant Ministries in the process. This applies in particular to sectoral supervisory authorities that primarily cooperate with ministries other than the Ministry of Economic Affairs and Climate Policy, the Ministry of the Interior and Kingdom Relations and the Ministry of Justice and Security.

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Annex 2 – second advice on structure for AI act supervision (16 May 2024)

1. The AI Act requires the establishment of a supervisory structure at national level for the supervision of the new regulation. In this context, you have asked the Dutch Authority for Digital Infrastructure (“*Rijksinspectie Digitale Infrastructuur*”, RDI) - as chair of the Working Group on the Supervision of AI - and the Dutch Data Protection Authority (“*Autoriteit Persoonsgegevens*”, AP) – as national coordinating algorithm supervisor - to come up with a joint advice on how the supervision of the AI Act can be organised in an effective way.

2. Our first interim advice was sent to you on 7 November 2023. This advice has been discussed with you on 1 December 2023. In the meantime, the supervisory authorities have further developed the desirable supervisory structure in this second interim advice. The recommendations and points of attention in this letter too are the result of close cooperation with many involved supervisory authorities. This advice has been approved at board-level in the Inspection Board on 1 May 2024 and in the Algorithm & AI Chamber of the Cooperation Platform of Digital Supervisory authorities (“*Samenwerkingsplatform Digitale Toezichthouders*”, SDT) on 25 April 2024.

3. In this letter, we inform you of the progress and the proposed choices regarding the designation of market surveillance authorities and cooperation with the relevant sectoral or domain-specific supervisors. By jointly exploring the supervisory structure, risk-based supervision on AI can be shaped effectively and benefit from synergies and scale advantages. In doing so, the supervisory authorities have been able to take into account the latest texts of the AI Act in the European Parliament and the European Council. In this letter, the supervisory authorities advise on the following topics:

1. The organization of supervision on high-risk AI systems in Annex III;
2. The organization of supervision on prohibited AI;
3. The identification of the authorities protecting fundamental rights;
4. The governance of the regulatory sandbox.

4. As a preliminary point, it should be noted that when assigning tasks following from the AI Act to supervisory authorities, these tasks can only be performed if sufficient resources and capacity are available for this purpose. This explicitly also applies to the role of relevant sector- or domain-specific supervisors that¹⁶ are not market surveillance authorities. Should the Minister decide to take over (parts of) this advice on task allocation, agreement on the allocation of resources must also be found in order to accept these tasks. Moreover, several prerequisites must be met as to ensure effective cooperation between supervisors, which will be discussed in various places later in this advice.

¹⁶ The use of the term ‘market surveillance authority’ aligns with the terminology used in the AI Act, i.e. Article 3(26) where this term is defined. The market surveillance authority is the authority ‘carrying out the activities and taking the measures pursuant to Regulation (EU) 2019/1020’; ‘The concept of ‘sector or domain-specific supervisory authorities’ is used to refer to authorities operating in a certain sector (of the market) or domain and supervising AI based on existing mandate, tasks and powers.

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1. Organisation of supervision of high-risk AI systems in Annex III

5. Following their interim advice of 7 November 2023, the supervisory authorities have worked out the desired designation of market surveillance authorities for high-risk systems set out in the areas of application in Annex III. Above all, the supervisory structure must serve the public interests involved in the AI Act, in particular the health, safety and protection of fundamental rights, and help to protect these interests effectively and efficiently. In the previous interim advice, two approaches were outlined to this end:

1. The possibility to designate market surveillance competences in the area of application at a sector or domain-specific supervisory authority that is “nearest” to this area of application. This may require an adjustment of the role, scope and functioning of the relevant authority.
2. The possibility to designate market surveillance competences in the areas of application to a “general” market surveillance authority. In its practice, this market surveillance authority would cooperate with the sector- or domain-specific authority to ensure an integrated risk-based approach.

6. With that, it is important to take into account the current supervisory landscape and to connect with existing goals, roles, mandates and powers of the sector- and domain-specific supervisory authorities. A relevant consideration is also that, given current tasks, mandates, scope and organisational structure, not every sector and domain supervisory authority that has a link with the areas of application in Annex III can be equipped as a market surveillance authority. This has resulted in the creation of a structure of market surveillance authorities that, while exercising their market surveillance competences, should cooperate closely with and complementary to sector and domain supervisory authorities (and vice versa). In their next advice, the supervisory authorities intend to explore how this cooperation can be implemented. This may include issues of a more principled and constitutional nature.

7. For the purposes of this interim advice, the supervisory authorities examined which authority would be most obvious market surveillance authority in each area of application. For this purpose, also the relevant sector- or domain-specific supervisory authorities that will be involved in the supervision were identified. Next to that, for each supervisory authority, its goals, role, mandate and powers were mapped. Moreover, the supervisory authorities have jointly formed a better picture of what market surveillance of the AI Act requires and the extent to which it can be distributed along lines of sectors or domains. Finally, in sub-areas, the AI Act itself imposes requirements on the market surveillance authority to be designated,¹⁷ or to a greater or lesser extent, it designates an existing supervisory authority as a market surveillance authority.¹⁸ These aspects have been taken into account in the advice.

8. A bottom-up joint exploration showed that the designation of sector- or domain-specific supervisors as market surveillance authorities is not an obvious choice in most areas. During several workshops, the authorities prepared a memo for each category of Annex III, which explored the considerations for the possible options in assigning market surveillance competences. They established that that the involved

¹⁷ See Article 74(8) of the AI Act on points 1 (in case of law enforcement) 6, 7 and 8 in Annex III.

¹⁸ See Article 74(6) and (7) of the AI Act on the role of financial supervisory authorities.

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sector and domain-specific supervisory authorities, all from their existing supervisory mandate, have a good insight into the (materialisation) of risks of, in particular, the use of AI systems in, for example, schools, the workplace and the government. At the same time, market surveillance under the AI Act will certainly not only focus on parties deploying AI systems in a sector or domain ('deployers'), but also, in particular, on providers of AI systems that may be located outside those sectors and domains and the question of whether they adequately mitigate risks. In other words, market surveillance competences can be used in the entire chain of for example providers, importers, distributors and deployers of AI systems. Also, supervision will have to be set up within the framework of the Market Surveillance Regulation (2019/1020). Moreover, the supervisory authority will have to be equipped as a market surveillance authority and act as such in the event of incidents (for example by removing or ordering to remove an AI system from the market). In addition, for the areas of application listed in Annex III, it is necessary for the market surveillance authority to build up knowledge, expertise and experience regarding, in particular, the risks posed by AI to fundamental rights.¹⁹ While sector- and domain-specific oversight of issues can be traced back to the protection of specific fundamental rights, the AI Act addresses fundamental rights risks in a broad sense, including the rights to equal treatment, privacy and legal protection.²⁰ In summary, the designation of sector and domain supervisory authorities as market surveillance authorities in the different areas of application would always entail a significant extension of their mandate, tasks, powers and the (type of) actors to be supervised. An extension that would not fit well with the existing role and objectives of these authorities. In addition, designating each sector or domain supervisory authority as a market surveillance authority would require a significant increase in both the supervisory perimeter and the required AI specialisation and associated costs. In order to achieve effective and efficient market surveillance, it is therefore not obvious to designate the sector- or domain-specific supervisors as market surveillance authorities per respective area in Annex III.

9. The supervisory authorities therefore recommend the following supervisory structure for the areas of application set out in Annex III (see table). This supervisory structure is explained in more detail below.

¹⁹ This is not to say that there are only fundamental rights risks in the areas of application listed in Annex III. The AI Act addresses risks to safety, health and fundamental rights.

²⁰ For a further discussion of fundamental rights risks, see also the role of fundamental rights authorities, as discussed in section 3.

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	Category	Sector or domain specific supervisors involved	Proposed Market Surveillance Authorities
1	<u>Biometric identification, categorization and emotion recognition</u>	Dutch Authority for Digital Infrastructure	Dutch Data Protection Authority ¹
2	<u>Critical infrastructure</u>	Dutch Authority for Digital Infrastructure and Human Environment and Transport Inspectorate (" <i>Inspectie Leefomgeving en Transport</i> ", ILT)	Dutch Authority for Digital Infrastructure or Human Environment and Transport Inspectorate (domain dependent) ²
3	<u>Education and vocational training</u>	Inspectorate of Education (" <i>Inspectie van het onderwijs</i> ")	Dutch Data Protection Authority ¹
4	<u>Employment, workers management and access to self-employment</u>	Netherlands Labour Authority (" <i>Nederlandse Arbeidsinspectie</i> ")	Dutch Data Protection Authority ¹
5(a)	<u>Assessing eligibility for public benefits and -services</u>	Inspectorate of taxes, allowances and border control (" <i>Inspectie belastingen, toeslagen en douance</i> "); and Netherlands Labour Authority	Dutch Data Protection Authority ¹
5(b)	<u>Assessment of creditworthiness or credit score</u>	Dutch Authority for the Financial Markets (" <i>Autoriteit Financiële Markten</i> ", AFM) and Dutch Central Bank (" <i>De Nederlandsche Bank</i> ", DNB)	Dutch Authority for the Financial Markets and Dutch Central Bank (financial services); Dutch Data Protection Authority (non-financial services) ³
5(c)	<u>Calculation of premiums for health and life insurance</u>	Dutch Authority for the Financial Markets and Dutch Central Bank	Dutch Authority for the Financial Markets and Dutch Central Bank (financial services); Dutch Data Protection Authority (non-financial services) ³
5(d)	<u>Emergency calls and deployment of emergency services</u>	Health and Youth Care Inspectorate (" <i>Inspectie Gezondheidszorg en Jeugd</i> ", IGJ) and Inspectorate of Justice and Security (" <i>Inspectie Justitie en Veiligheid</i> ", IGJ)	Dutch Data Protection Authority ¹
6	<u>Law enforcement</u>	Inspectorate of Justice and Security	Dutch Data Protection Authority ⁵
7	<u>Migration, asylum and border control management</u>	Inspectorate of Justice and Security	Dutch Data Protection Authority ⁵
8	<u>Administration of justice and democratic processes</u>	-	Dutch Data Protection Authority ⁵ ⁶

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- 1) In line with the current task as (coordinating) algorithm supervisory authority, for which the work within the AP is assigned to Directorate for Algorithmic Oversight (“*Directie Coördinatie Algoritmes*”, DCA)
- 2) For a more detailed explanation of the domains for which the Dutch Authority for Digital Infrastructure and the Human Environment and Transport Inspectorate should be designated, see paragraph 14.
- 3) The purpose of this advice is to designate those authorities, insofar as the placing on the market, putting into service, or the use is in direct connection with the provision of those financial services. However, the precise definition of this scope requires elaboration by the financial supervisory authorities. One possibility is to designate the Dutch Data Protection Authority as a market surveillance authority if creditworthiness tests and credit scores are deployed and developed outside the financial sector.
- 4) This scope – despite its limited size – requires further reflection as it does not have an obvious link with the group of market surveillance authorities to the AI Act that follows from the other parts of Annex II and Annex III.
- 5) In line with the role of coordinating AI and algorithm supervisory authority and given the conditions set in the AI Act regarding the oversight of these application areas.
- 6) In this respect, Article 74(8) of the AI Act requires that “market surveillance activities shall in no way affect the independence of judicial authorities, or otherwise interfere with their activities when acting in their judicial capacity.” How this requirement affects market surveillance will need to be further explored.

1.1 Sector- and domain-specific supervision

10. The tasks, powers and responsibilities of the relevant sector- and domain-specific supervisors will not be affected and will need to be strengthened by market surveillance of the AI Act. In order to ensure that supervision is complementary and mutually reinforcing, close cooperation is needed between the market surveillance system of the AI Act and the existing supervision on sectors and domains in which (the effects) of AI are also supervised upon. This concerns in particular the supervision that is carried out by the Inspectorate of Education, Netherlands Labour Authority, the Inspectorate of Justice and Security and the Inspectorate of taxes, allowances and border control. By way of illustration: it should be possible for the Inspectorate of Education to pass on perceived risks and problems of AI use in education to support market surveillance on the placing on the market, putting into service, or the use of AI systems in the area of education (and vice versa). It is also important that these inspectorates have a say in identifying the priorities in market surveillance, identifying risks and impact of AI use, and identifying relevant developments and trends to avoid unintended additional risks. This requires exchange at employee-level, but also regular consultation at board-level. Furthermore, this requires a governance structure in which the sector and domain-specific supervisory authorities cooperate with market surveillance authorities. Moreover, cooperation requires resources and conditions that allow for effective cooperation. In any case, clear legal bases will have to be created for the exchange of information between the various authorities. To this end, the ministries, in consultation with the supervisory authorities, will have to identify the extent to which existing frameworks need to be adapted, or whether additional frameworks are needed, in order to enable the exchange of information for the purposes of AI supervision. The structure of cooperation (governance) will be based on the aforementioned. Feasibility and enforcement assessments will also have to be carried out by all authorities involved when it comes to (additional) implementation legislation, for example to create legal bases for the exchange of information between the various authorities.

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11. Market surveillance will need to be carefully coordinated with the relevant sector- and domain-specific supervisory authorities in the event of an AI-related incident. Agreements must be made that are set in coordination protocols and through the elaboration of work processes. Which supervisory authority can best act in the AI-supply chain given the mandate, available tools, and the desirability of intervention? Does the market surveillance authority address the provider or deployer of the AI system under the AI Act, or does something (also) go wrong in the responsibility that, for example, an employer, educational institution or governmental organisation has as a user with regard to which a sector- or domain-specific supervisory authority can act on the basis of its own frameworks and supervisory tools? The starting point is that market surveillance of the AI Act should support and strengthen existing supervision and not frustrate it. Sector and domain-specific supervisors involved will need to exchange and coordinate extensively and frequently with market surveillance authorities. This requires a multilateral coordination and consultation structure that requires capacity and for which resources must also be made available.

12. Domain and sector-specific supervisors should benefit from the AI expertise build-up in particular at the Dutch Authority for Digital Infrastructure and the Dutch Data Protection Authority and vice versa. This will require organising different forms of knowledge sharing with respect to technology, risks and fundamental rights. Attention will also need to be paid to increasing 'AI literacy' among operators of AI systems and in society. Resources will have to be made available for knowledge sharing to both the coordinating supervisors (Dutch Data Protection Authority and Dutch Authority for Digital Infrastructure) and the sector- and domain-specific supervisory authorities. Finally, supervisory authorities should make efforts to enable 'exchanges' or secondments, so as to create a stronger network of the authorities' staff who can then exchange valuable knowledge and experience and return it to their supervisory organisations.

1.2 Market surveillance

13. For high-risk systems listed in points 1, 3, 4, 5(a) of Annex III, the supervisory authorities advise to designate the Dutch Data Protection Authority as market surveillance authority. This role as market surveillance authority suits the Dutch Data Protection Authority well because of its role as coordinating algorithm supervisory authority in which expertise and experience is built up within the Directorate of Algorithmic Oversight with regards to the identification of risks to fundamental rights and public values when AI is developed or used. In addition, the Dutch Data Protection Authority has expertise and experience in the field of supervision of AI and algorithms from the perspective of personal data protection.²¹ In this respect, the Dutch Data Protection Authority often already supervises upon providers, including the IT sector, and users of AI systems. For these other supervisory authorities in specific sectors or domains will bring important knowledge and experience that can inform and strengthen market surveillance competences. Moreover, fundamental rights authorities have a particular role to play in market surveillance under the AI Act (see section 3 of this advice). Conversely, the role of the market surveillance authority allows to intervene at the level of an AI system (as opposed to interventions against

²¹ For remote biometric identification for *law enforcement purposes*, the same starting point of designation of the DPA applies as for sections 6.7 and 8 below.

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one or a few users) if risks of AI manifest themselves in a sector or domain, which can strengthen supervision in the sectors and domains. Effective supervision of AI (not only on AI systems) therefore requires close cooperation and alignment between the market surveillance authority and the supervisors in the sectors and domains (see also section 1.1 of this advice).

14. For high-risk systems listed in point 2 (Critical Infrastructure), the Human Environment and Transport Inspectorate and Dutch Authority for Digital Infrastructure will both be responsible for the Critical Infrastructure application area. But, the Human Environment and Transport Inspectorate and Dutch Authority for Digital Infrastructure will be responsible for oversight that falls within their sector or domain, regardless of the exact category of critical infrastructure that a product strictly speaking falls under. In concrete terms, this means that in most cases the Human Environment and Transport Inspectorate will be responsible for the ‘road traffic’ and ‘supply of water’ categories. The Dutch Authority for Digital Infrastructure will in most cases be responsible for critical digital infrastructure and supply of gas, heating and electricity. In the case of borderline cases or products within its other supervisory domain, the most convenient approach will be coordinated among the two supervisory authorities. In addition, any changes to the scope of ‘critical infrastructure’ must be coordinated with the Human Environment and Transport Inspectorate and Dutch Authority for Digital Infrastructure on what constitutes an appropriate distribution. Also the possible role of the of the State Supervision of Mines (“*Staatstoezicht op de Mijnen*”, SodM) and the Authority for Nuclear Safety and Radiation Protection (“*Autoriteit Nucleaire Veiligheid en Stralingsbescherming*”, ANVS) will have to be considered.

15. For high-risk systems listed in point 5(b) and (c) of Annex III, it is recommended to designate the Dutch Authority for the Financial Markets and the Dutch Central Bank as market surveillance authorities insofar as it concerns financial services. It follows from the AI Act that for high-risk AI systems developed or used by financial institutions subject to Union law on financial services, existing national competent authorities should in principle be designated as market surveillance authorities, to the extent that the provision or use of the AI system is directly related to the provision of financial services. The AI Act complements existing financial sectoral legislation and overlaps with parts of it. The AI Act also refers to specific financial sectoral legislation. For example, institutions are presumed to comply with the requirements of the AI Act on specific points if they comply with the rules on financial supervision. A well-aligned application of existing financial supervision and the AI Act is only possible if supervision is in the same hands. Creditworthiness tests and credit scores are also deployed and developed outside the financial sector, for which the Dutch Data Protection Authority could be designated as market surveillance authority, in line with the role as coordinating algorithm supervisory authority and the envisaged new role as market surveillance authority for the AI Act.

16. For high-risk systems listed in point 5(d) of Annex III, it is recommended to designate the Dutch Data Protection Authority as market surveillance authority. There may be fundamental rights risks in classifying emergency calls and sending out emergency services, but certainly also risks to people’s health. For this scope, it is particularly important to establish close cooperation with the Health and Youth Care Inspectorate and the Inspectorate of Justice and Security and exchange expertise to have a clear view of the whole spectrum of risks associated with AI development and use in this domain.

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17. For high-risk systems listed in points 6, 7, 8 of Annex III, the supervisory authorities recommend designating the Dutch Data Protection Authority as the market surveillance authority. It follows from the AI Act that for these parts the data protection supervisor must be designated as a market surveillance authority, or another supervisor that meets the conditions stemming from the Law Enforcement Directive.²² Because the Dutch Data Protection Authority already supervises data protection law, among other things, it is reasonable to appoint it as a market surveillance authority. Because the Inspectorate of Justice and Security also has a good overview of the use of AI systems in the relevant application areas, and in order to enable the Inspectorate of Justice and Security to monitor the use of AI in law enforcement from its own mandate, the supervisory authorities find it important to establish a good cooperation between the Inspectorate of Justice and Security and the Dutch Data Protection Authority in this area.

18. Market surveillance competences under the AI Act interact with the mission, tasks and powers of sector- and domain-specific supervisors. A supervisory intervention by a market surveillance authority under the AI Act can affect the deployment of AI and in that way touch upon the mission and task of a sector- and domain-specific supervisory authority. Conversely, the actions of sector- and domain-specific supervisors can also influence the development and use of (high-risk) AI that falls under the mandate of a market surveillance authority. In line with other supervisory perimeters that overlap between supervisory authorities, the supervisory authorities therefore have the ambition to address this in the further development of the design of supervisory processes by exploring process agreements so that authorities can take all relevant considerations into account while respecting everyone's formal responsibility. For the purpose of further advice, the supervisory authorities intend to explore how this cooperation can be implemented. This may include issues of a more principled and constitutional nature.

2. The organisation of supervision on prohibited AI

19. The designation of the market surveillance authority for prohibited AI systems is particularly urgent. This is due to the fact that these prohibitions apply six months after the entry into force of the AI Act and can be enforced with sanctions after one year.

20. This interim advice advises to designate the Dutch Data Protection Authority as market surveillance authority for all prohibitions in Article 5 of the AI Act. The majority of the prohibitions in the Regulation are closely linked to the areas of application in Annex III. It therefore makes sense to designate the market surveillance authority for those areas – in this advice: the Dutch Data Protection Authority – to also be designated for the related prohibitions. For the remaining prohibitions, it is advised to also designate the Dutch Data Protection Authority as market surveillance authority, because of its role as coordinating AI and algorithm supervisory authority and in order to ensure an efficient organisation of the supervision of the prohibitions.

²² Article 78 (8) of the AI Act.

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	Prohibition	Sector or domain specific supervisors involved	Proposed Market Surveillance Authorities
1	Biometric identification for law enforcement	Inspectorate of Justice and Security	Dutch Data Protection Authority
2	Biometric categorization	-	Dutch Data Protection Authority
3	Emotion recognition	-	Dutch Data Protection Authority
4	Scraping of facial images	-	Dutch Data Protection Authority
5	Predictive policing	Inspectorate of Justice and Security	Dutch Data Protection Authority
6	Manipulative practices	The Netherlands Authority for Consumers and Markets ("Autoriteit Consument en Markt", ACM), and Dutch Authority for the Financial Markets	Dutch Data Protection Authority *
7	Exploitation of vulnerabilities	The Netherlands Authority for Consumers and Markets; and Dutch Authority for the Financial Markets	Dutch Data Protection Authority *
8	Social credit systems	The Netherlands Authority for Consumers and Markets	Dutch Data Protection Authority
<u>Notes</u> * Designation of the Dutch Authority for the Financial Markets as market surveillance authority for prohibited AI systems that use (6) manipulative practices or (7) exploitative practices is also conceivable. This supervision would then cover AI systems deployed for financial services. This demarcation would then be made by analogy and in line with the distinction between categories 5b and 5c of Annex III.			

21. Supervisory authorities recommend the Dutch Data Protection Authority to be designated as a market surveillance authority for prohibited AI systems for (1) biometric identification, (2) biometric categorisation, (3) emotion recognition, (4) facial image scraping for facial recognition and (5) predictive policing, given the close link with supervision of Annex III. The prohibitions relating to biometrics (1, 2, 3 and 5) are closely linked to the concordant high-risk areas listed in Annex III, point 1. The prohibition of (4) AI systems that are intended to, in short, scrape facial images for facial recognition is again closely linked to the regulation and the prohibition of AI systems intended for biometric identification in the AI Act. Furthermore, for the prohibitions of biometric systems and the scraping of facial images, there is a close link between concepts in and the protection provided by General Data Protection Regulation (GDPR). It is therefore desirable to designate the Dutch Data Protection Authority as market surveillance authority for these prohibitions. With regard to the prohibition of biometric identification for law enforcement and *predictive policing*, the supervision carried out by the Inspectorate of Justice and Security

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and the supervision of the prohibition in the AI Act should be strengthened, similar to the lines described in Sections 1.1 and 1.2 in this interim advice on the supervision of Annex III. A further point of attention is the relationship between the market surveillance and the authorisation that will have to be given by a judicial authority or an independent administrative authority if biometric identification is used for law enforcement purposes.

22. Furthermore, the supervisors advise to designate the Dutch Data Protection Authority in principle as a market surveillance authority for the prohibitions relating to (6 and 7) manipulative/misleading practices or exploitation of vulnerabilities (8) and for social credit systems, but also stress the need to closely cooperate, coordinate and exchange information with the Netherlands Authority for Consumers and Markets in this regard. The Dutch Data Protection Authority should be appointed because these prohibitions too can be traced back to data protection, privacy and the prevention of surveillance. It also plays a role that, under this advice, the Dutch Data Protection Authority would already supervise the majority of the other prohibitions and it is advisable, from the point of view of effective and efficient supervision, to also assign supervision on the prohibitions in question to the Dutch Data Protection Authority. There is, however, an overlap, or at least an interface, between the prohibition of systems that (6 and 7) enable the supervision on manipulative/misleading or exploitative practices and provisions in consumer law and the Digital Services Act, which are supervised upon by the Netherlands Authority for Consumers and Markets. For (8) social credit systems, although to a lesser extent, something similar applies and there too there is a possible overlap and interface with the supervision of the Netherlands Authority for Consumers and Markets. It is therefore important that market surveillance of the prohibitions related to manipulation, exploitation and social credit systems is closely coordinated and coordinated with the Netherlands Authority for Consumers and Markets and that supervisory strategies are aligned in this regard. The intersection between the AI Act and the existing prohibitions with regard to manipulation and deception in financial markets and in financial services will be further investigated by the Dutch Authority for the Financial Markets in cooperation with the Ministry of Finance. A proposal on the designation of roles and powers under the AIV will be made on this basis.

3. Authorities protecting fundamental rights

23. The AI Act assigns a special role to 'authorities protecting fundamental rights'. The AI Act will thus strengthen the monitoring of existing Union law frameworks for the protection of fundamental rights, including the frameworks on equal treatment and the protection of personal data (GDPR and the LED).²³ To this end, information obligations are included and market surveillance authorities should cooperate with authorities protecting fundamental rights if risks to the protection of fundamental rights arise. This enables these authorities protecting fundamental rights to supervise more proactively on the possible violations of fundamental rights based on existing legal frameworks. Within three months of the entry into force of the AI Act, the Netherlands will have to communicate which authorities in the Netherlands supervise or enforce the protection of obligations under Union law protecting fundamental rights.

²³ The LED is the Data Protection Law Enforcement Directive (2016/680).

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24. The supervisory authorities advise that at least the Netherlands Institute for Human Rights (“*College voor de Rechten van de Mens*”, CRM) and the Dutch Data Protection Authority should be identified as authorities protecting fundamental rights under the AI Act because their supervision is based on Union law protecting fundamental rights. The Netherlands Institute for Human Rights should be considered to be identified in its capacity as a supervisory authority of fundamental rights in the broad sense, including the right to equal treatment and non-discrimination. The Dutch Data Protection Authority should be considered in its capacity as a data protection supervisory authority.²⁴ These authorities will then be given specific powers and will also be able to play a role in market surveillance.²⁵ The authorities protecting fundamental rights can thus receive signals from market surveillance authorities and actively participate in market surveillance when fundamental rights risks arise.²⁶ Moreover, these authorities are allowed to obtain information from the providers of AI systems that may be useful in monitoring the use of those systems by potentially other actors in the AI chain.

25. The supervision of fundamental rights in the AI Act requires resources and a cooperation structure that adequately empowers authorities protecting fundamental rights. Of course, resources should be made available to fulfil the task of authorities protecting fundamental rights in the evaluation of AI systems. This is particularly important in the case of AI systems that (may) still present a risk to fundamental rights in the event it is compliant with the Regulation (especially in the event of compliance with standards).²⁷ In addition to the information obligation towards authorities protecting fundamental rights,²⁸ it should be possible for these authorities to inform the market surveillance authority of any breaches of Union law in the field of fundamental rights in relation to AI systems, so that market surveillance authorities can take this into account in their supervisory activities. In addition, authorities protecting fundamental rights can contribute to the expertise and knowledge building of market surveillance authorities to help them identify and maintain a clear view on the full spectrum of fundamental rights risks. This requires a cooperation structure that provides for regular consultation and exchange of knowledge and expertise between authorities protecting fundamental rights and market surveillance authorities. The Netherlands Institute for Human Rights and the Dutch Data Protection Authority will also have to work out their structure of cooperation.

²⁴ The processing of personal data has now been brought almost entirely within the scope of EU law. The entire Charter therefore applies. This means that the DPA, as a data protection supervisor, can enforce even now as soon as the processing of personal data leads to a violation of one or more fundamental rights in the Charter, such as the non-discrimination clause, the protection of children or access to an independent court.

²⁵ See, in particular, Articles 73(1), 77(1) and (3), 79(2) and 82(1) of the AI Regulation.

²⁶ This implies that in the internal organisation of the tasks as (a) market surveillance authority for the AI Act and (b) fundamental rights monitor for the AI Act, respectively, the Authority should take into account the division of roles between these two tasks.

²⁷ Article 82(1) of the AI Act.

²⁸ Article 79(2) of the AI Act.

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4. Regulatory sandbox

26. It is recommended to invest the coordination of the sandbox activities with the Dutch Authority for Digital Infrastructure and the Dutch Data Protection Authority in their capacity as (intended) coordinating market surveillance authorities. They should be involved in facilitating sandbox trajectories, supporting and involving the relevant supervisors, monitoring a consistent application of the AI Act by market surveillance authorities and, where relevant, notified bodies, aspects related to communication to providers, and reporting to and interaction with or within the AI Office and the AI Board, as far as general matters are concerned.

27. Article 57 of the AI Act allows for multiple competent authorities to set up a sandbox.²⁹ This means that the frameworks of the governance structure are broad. Within these broad frameworks, we therefore advise the competent authorities to be³⁰ involved in setting up and operating the sandboxes. Competent authorities shall then mutually determine who takes on which tasks in setting up the sandbox(es) and how they participate in the sandbox. The notion of '(national) competent authority[s]' allows for both notifying authorities and³¹ market surveillance authorities to set up the AI regulatory sandboxes. This is also in line with the other (interim) advice on governance, in which several market surveillance authorities are appointed. In addition, we advocate setting up the test environments within this structure as follows. For each situation (sandbox), it should be considered which competent authorities, including market surveillance authorities and notified bodies, are most involved in relation to a specific AI system being tested. For each test situation, there will then be a competent authority to lead the specific project. This ensures that the competent authority that may encounter the AI system and its provider later in its supervision is also competent to take decisions in the context of the sandbox.

28. For the sandbox to be successful it is important that other supervisors are also closely involved in sandbox projects and that they can actively participate. Examples include the Netherlands Institute for Human Rights, Netherlands Authority for Consumers and Markets, Inspectorate of Justice and Security and other relevant supervisory authorities if this is necessary for the implementation of an AI-sandbox-project. Only then innovation and legal certainty will be fostered while also preventing or mitigating risks related to safety, health and fundamental rights. After all, every supervisor has insight into and knowledge of their specific domain/sector and the other applicable regulations. For that reason, it is desirable that for every sandbox-project supervisory authorities are inquired about their participation by default.

²⁹ Article 57(1) AI Act: 'Member States shall ensure that their competent authorities establish at least one AI regulatory sandbox at national level, ...'

³⁰ Article 3(48) AI Act: "national competent authority' means a notifying authority or a market surveillance authority .

³¹ Article 3(19) AI Act: "notifying authority' means the national authority responsible for setting up and carrying out the necessary procedures for the assessment, designation and notification of conformity assessment bodies and for their monitoring."

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5. Focus points and open questions

29. The designation of market surveillance authorities will need to take place swiftly. These authorities will have to be designated one year after the entry into force, which is likely to take place in May 2024. The organisation of the supervision of prohibited AI is even more urgent, given that the provisions on the prohibitions will apply six months after the entry into force. Moreover, the Dutch Data Protection Authority will have to be designated as market surveillance authority on these points, a role that it does not currently have, and therefore it must also be equipped for this role. This requires preparation and further elaboration. This also applies to the identification of authorities protecting fundamental rights, which should take place within three months of the entry into force. Consequently, discussions on the above will have to be started quickly between the ministries and the relevant supervisory authorities.

30. This advice underlines the importance of close cooperation and alignment of market surveillance authorities with other sector and domain-specific supervisory authorities. This is equally relevant to sector- and domain-specific supervisory authorities that have not been explicitly involved in the making of this advice. The way in which this cooperation and coordination should take shape requires further elaboration. In the coming months, in the run-up to the designation of the various supervisory roles, the supervisory authorities will elaborate in more detail on what the cooperation should look like and the type kind of agreements this requires. In addition, it will be necessary to examine whether and to what extent adaptation or supplementation of legislation is necessary to enable cooperation and exchange of information. This requires further analysis by both supervisory authorities and ministries. In order to ensure the necessary cooperation, exchange of information and coordination, attention needs to be paid specifically to placing different roles and powers within the same supervisor, while also considering the independence requirements of the AI Act and other legislation to which the supervisory authorities must adhere.

31. All relevant ministries should be involved in the implementation of the AI Act and there is a need for swift clarification on how funds are allocated through the different ministries. Various supervisory authorities and ministries play a role in the supervision of the AI Act and in the envisaged cooperation structure. All these ministries should be involved in the elaboration of the supervisory structure of the AI Act. It should also be clarified how the funding of supervision, in particular as regards the role of sector and domain-specific supervisors, will take place. This in order to avoid incomplete funding of AI supervision.

32. If this advice is followed, the Dutch Data Protection Authority will have to prepare organisationally for the expansion of its tasks with a role as market surveillance authority under the AI Act. The AI Act ensures the protection of fundamental rights and public values when deploying (high-risk) AI and the prohibitions on specific AI application. For the Dutch Protection Authority, this is in line with the social objectives pursued in the supervisory task set out in the GDPR and the LED. At the same time, the implementing framework for the supervision of the AI Act, which is based on the new legislative framework for (supervision of) product safety, has a different working method than the supervision of the GDPR and the LED. The role as market surveillance authority under the AI Act therefore is a task for the organisation that must be specifically designed and embedded. The Dutch Data Protection Authority wishes to do this in such a way that this task is properly set up alongside the GDPR and LED task and is separately

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recognisable within the organisation. Here the approach can be followed that is taken for the current coordinating algorithm supervisory task that is embedded within the DPA. With regard to exploring the concrete and practical organisational consequences of the AI Act on its own organisation, the Dutch Data Protection Authority has already launched internal exploratory workshops, also with a view to exploring synergies (e.g. in the area of complaint notifications). Due to the importance of cooperation between market surveillance authorities and sector- and domain-specific supervisors – as underlined in this 2nd interim advice – the Dutch Data Protection Authority intends to also involve other market surveillance authorities and sector- and domain-specific supervisors in its exploration.

33. The collaboration with respect to the involvement of supervisory authorities in the AI Board is another point of attention. The supervisors intend to advise on this in a subsequent and final letter.

34. The establishment of the oversight of the AI systems falling within the scope of Annex I is also the subject of the next advice. This also applies to the supervision of transparency obligations for providers and deployers of certain AI systems.

35. The role and position of notifying authorities and notified bodies will also need to be further elaborated on in the next advice. Not only in relation to the AI systems covered by Annex I, but also in relation to Annex III of the AI Act, for example when it comes to biometric identification. The establishment of frameworks for the designation of notified bodies is a priority and will need to be addressed swiftly.

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Organisations mentioned in this letter, and their roles	
Dutch Authority for Digital Infrastructure ('Rijksinspectie Digitale Infrastructuur', RDI)	The Dutch Authority for Digital Infrastructure is responsible for obtaining and allocating frequency space and monitoring its use. The work of the agency covers the entire field of wireless and wired communication.
Dutch Data Protection Authority ('Autoriteit Persoonsgegevens', AP)	The Dutch Data Protection Authority (Dutch DPA) supervises the processing of personal data in order to ensure compliance with laws that regulate the use of personal data.
Inspection Board ('Inspectieraad')	The Inspection Board is the association for collaboration of the Dutch government inspectorates.
Cooperation Platform of Digital Supervisory authorities ('Samenwerkingsplatform Digitale Toezichhouders', SDT)	In the Cooperation Platform of Digital Supervisory authorities is platform of the Netherlands Authority for Consumers and Markets ("Autoriteit Consument en Markt"), Dutch Authority for the Financial Markets ("Autoriteit Financiële Markten"), Dutch Data Protection Authority ("Autoriteit Persoonsgegevens") and the Dutch Media Authority ("Commissariaat voor de Media"). This platform contains 'rooms' in which these supervisory authorities cooperate with authorities in the platform, but also other authorities. Within the platform, there is a Room for 'AI and algorithms'.
Inspectorate ('Inspectie Leefomgeving en Transport', ILT)	The Human Environment and Transport Inspectorate works on improving safety, confidence and sustainability in regard to transport, infrastructure, environment and housing.
Inspectorate of education ('Inspectie van het onderwijs')	<p>The inspectorate stimulates schools and educational institutions to maintain and improve the quality of the education they offer;</p> <p>assesses the quality of education of the individual educational institutes and the education system as a whole in the Netherlands and its developments;</p> <p>communicates in an accessible way with all its target groups and stakeholders;</p> <p>reports to the public.</p>
Netherlands Labour Authority ('Nederlandse Arbeidsinspectie', NLA)	The Netherlands Labour Authority works for fair, healthy and safe working conditions and socio-economic security for everyone.
Inspectorate of taxes, allowances and border control ('Inspectie belastingen, toeslagen en douance', IBTD)	The inspectorate of taxes, allowances and border control examines if Dutch government treats people and businesses fairly with respect to taxes, allowances and border control.
Dutch Authority for the Financial Markets ('Autoriteit Financiële Markten', AFM)	The authority supervises the conduct of the entire financial market sector: savings, investment, insurance, loans, pensions, capital markets, asset management, accountancy and financial reporting.
Dutch Central Bank ('De Nederlandsche Bank', DNB)	<i>De Nederlandsche Bank</i> seeks to safeguard financial stability and sustainable prosperity.

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Health and Youth Care Inspectorate ('Inspectie Gezondheidszorg en Jeugd', IGJ)	The inspectorate's role is to supervise healthcare and youth care services in the Netherlands and the international market for medicines and medical devices.
Inspectorate of Justice and Security ('Inspectie Justitie en Veiligheid', IJenV)	The Inspectorate of Justice and Security contributes to a just and safe society. The Inspectorate achieves this by supervising the implementing organisations of the Ministry of Justice and Security.
Directorate for Algorithmic Oversight at the Dutch DPA ('Directie Coördinatie Algoritmes', DCA)	The Department for the Coordination of Algorithmic Oversight of the Dutch Data Protection Authority monitors the possible effects of the use of algorithms and AI on public values and fundamental rights.
State Supervision of Mines ('Staatstoezicht op de Mijnen', SodM)	The State Supervision dedicates itself to safety of people and the protection of the environment in energy production and the utilization of the subsurface.
Authority for Nuclear Safety and Radiation Protection ('Autoriteit Nucleaire Veiligheid en Stralingsbescherming', ANVS)	The Authority for Nuclear Safety and Radiation Protection (ANVS) ensures that the highest standards of nuclear safety and radiation protection are met in the Netherlands. The ANVS performs that role by laying down rules, issuing licences, ensuring that licence-holders abide by the conditions and, if the need arises, taking enforcement action.
Netherlands Authority for Consumers and Markets ('Autoriteit Consument en Markt', ACM)	The Netherlands Authority for Consumers and Markets (ACM) ensures fair competition between businesses, and protects consumer interests.
Netherlands Institute for Human Rights ('College voor de Rechten van de Mens', CRM)	The Netherlands Institute for Human Rights is an independent monitoring human rights institute.
Dutch Media Authority ('Commissariaat voor de Media', CvdM)	The Dutch Media Authority protects the independence, plurality, and accessibility of audiovisual media in The Netherlands. By doing so it supports the freedom of information in Dutch society.
Netherlands Food and Consumer Product Safety Authority ('Nederlandse Voedsel- en Warenautoriteit', NVWA)	The Netherlands Food and Consumer Product Safety Authority protects the safety of food and consumer products, animal welfare and nature.
Dutch Accreditation Council ('Raad voor Accreditatie', RvA)	The Dutch Accreditation Council assesses, tests, inspects and certifies companies and institutions and aims to ensure the quality of products and services.
Ministry of Health, Welfare and Sport ('Ministerie van Volksgezondheid, Welzijn en Sport', VWS)	The Ministry of Health, Welfare and Sport is the ministry responsible for the aforementioned policy fields.