



Input from the European Savings and Retail Banking Group (ESBG) on the technical negotiations on the Artificial Intelligence Act

Follow-up to the AI info session of 15 November 2022

Article 53 – AI regulatory sandboxes

Batch #4

Article 53

AI regulatory sandboxes

3. The AI regulatory sandboxes shall not affect the supervisory and corrective powers of the competent authorities, **including at regional or local level (ITRE 72)**. Any significant risks to fundamental rights, **democracy and rule of law, health and safety or the environment (AM 2313, 2314, 2316, 2317)** identified during the development and testing of such **AI (AM 2319)** systems shall result in immediate **and adequate (AM 176)** mitigation.

Competent authorities shall have the power to temporarily or permanently suspend the development and testing process, or participation in the sandbox if no effective mitigation is possible (AM 2313) and inform the European Artificial Intelligence board of such decision without delay.

4. Participants in the AI regulatory sandbox shall remain liable under applicable Union and Member States liability legislation for any harm inflicted on third parties as a result of (AM 177, 2321) the experimentation taking place in the sandbox. **However, provided that the participant(s) respect the sandbox plan and the terms and conditions for their participation and follow in good faith the guidance given by the authorities, no administrative enforcement action shall be taken by the authorities for infringement of applicable Union or Member State legislation (AM 2315)**

What do you think about this compromise proposal?

The use of sandboxes should not be limited, the development of those is necessary to foster innovation; experimenting in a safe environment to later be able to develop safe systems. It is necessary to encourage the participation of the private sector in sandboxes by establishing safeguards, for example by guaranteeing confidentiality, instead of adding additional impediments.



Article 54 - Further processing of personal data for developing certain AI systems in the public interest in the AI regulatory sandbox

Batch #4

Article 54

Further processing of personal data for developing certain AI systems in the public interest in the AI regulatory sandbox

Many political groups would like to delete the whole article. What is your opinion? If you would like to keep the article, do you think certain parts of it should be amended?

The article should be maintained. The processing of personal data in a sandbox is in the public interest, with the aim of experimenting in a secure environment in order to later be able to develop secure systems.



Article 9 – Risk management system

Batch #5

Article 9

Risk management system

2. The risk management system shall consist of a continuous iterative process run throughout the entire **lifecycle lifetime** of a high-risk AI system, requiring regular **review and updating of the risk management process, including when the high-risk AI system is subject to significant changes, to ensure its continuing effectiveness, and documentation of any decisions and actions taken (AM 1579, 1580, 1581) systematic updating.** It shall comprise the following steps:

- (a) identification and analysis of the known and **the reasonably** foreseeable risks **that the associated-with-each** high-risk AI system **can pose to (AM 90):**
- i. the health or safety of natural persons;**
 - ii. the legal rights or legal status of natural persons;**
 - iii. the fundamental rights of natural persons;**
 - iv. the equal access to services and opportunities of natural persons;**
 - v. the Union values enshrined in Article 2 TEU**
 - vi. the environment (AM90, 1582, 1583, 1584, 1585, 1587, 1588)**
- (b) estimation and evaluation of the risks that may emerge when the high-risk AI system is used in accordance with its intended purpose and under conditions of reasonably foreseeable misuse;
- (c) evaluation of **other-possibly-new and significant (AM 1597, 1598)** arising risks **as described and referred to in paragraph 2(a) (AM 1597)** based on the analysis of data gathered from the post-market monitoring system referred to in Article 61;
- (d) adoption of **suitable appropriate and targeted** risk management measures **designed to address known and reasonably foreseeable risks (AM 1600, 1601)** in accordance with the provisions of the following paragraphs.

What do you think about this compromise proposal? Can the provider of a high-risk AI system perform such a risk assessment at this stage of the AI value chain?

The ability to perform this assessment will depend, to a large extent, on what ends up being considered a “high-risk AI system”. The more models that fit into the definition, the greater the workload. Additionally, the periodicity implied by the expression “continuous interactive process” established in paragraph 2 should be clarified.

Article 9 (cont.)

Risk management system

8. When implementing the risk management system described in paragraphs 1 to 7, **providers shall give** specific consideration **shall be given (AM 1661)** to whether the high-risk AI system is likely to:

- a. adversely impact specific groups of people, in particular on the basis of gender, sexual orientation, age, ethnicity, disability, religion, socio-economic standing, religion or origin, including asylum seekers, migrants and refugees (AM 1662);**
- b. be implemented on (AM 1664), accessed by or have an impact on children;**
- c. be implemented on natural persons with disabilities that render them legally unable to give their consent (AM 1659);**
- d. ca) have an adverse effect on the environment (AM 1663);
amplify the spread of disinformation and amplify polarisation (AM 1666, 1667)**

What do you think about this compromise proposal? Can the provider of a high-risk AI system perform such a risk assessment?

The Regulation should allow banking entities to require third-party providers to comply with all the obligations imposed on us, with a requirement equivalent to that of the data controller.



Article 10 – Data and data governance

Batch #5

Article 10

Data and data governance

3. Training **datasets, and where applicable**, validation and testing datasets, **including the labels (1718)**, shall be relevant, representative, **up-to-date, and to the best extent possible, taking into account the state of the art and in accordance with industry standards, (AMs 96; 1715; 1716; 1718; 1720; 1721)** free of errors and **be as complete as possible (AM 96)**. They shall have the appropriate statistical properties, including, where applicable, as regards the persons or groups of persons ~~on which~~ **in relation to whom (AM 1722)** the high-risk AI system is intended to be used. These characteristics of the datasets may **shall (AMs 1712; 1718; 1719)** be met at the level of individual data sets or a combination thereof.

~~5. To the extent that it is strictly necessary for the purposes of ensuring bias monitoring, detection and correction in relation to the high-risk AI systems, the providers of such systems may process special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679, Article 10 of Directive (EU) 2016/680 and Article 10(1) of Regulation (EU) 2018/1725, subject to appropriate safeguards for the fundamental rights and freedoms of natural persons, including technical limitations on the re-use and use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued. (AM 98; 1734, 1735; 1736; 1737)~~

6b. The principles of data minimisation and of data protection by design and by default, as referred to, respectively, in Article 5(1), point (c) and in Article 25 of Regulation (EU) 2016/679 shall be applied when developing and using high-risk AI systems and during the entire lifetime of those systems. (AM 100)

Is the problem with paragraph 3 fixed by the new wording?

Paragraphs 3 and 6b are redundant with the GDPR (unless synthetic or anonymized data is processed). It is necessary to remove them to avoid cohesion problems.

Is the deletion of paragraph 5 a problem?

Entities must be able to study whether their models have biases with respect to a proxy variable, precisely in order to eliminate such biases. For this, it is necessary to have sensitive data. The deletion of paragraph 5 makes it impossible to carry out this examination.

Does the addition of paragraph 6b have a negative effect?

Paragraphs 3 and 6b are redundant with the GDPR (unless synthetic or anonymized data is processed). It is necessary to remove them to avoid cohesion problems.



Article 12 - Record-keeping

Batch #5

Article 12 *Record-keeping*

4. For high-risk AI systems referred to in paragraph 1, point (a) of Annex III, the logging capabilities shall provide, at a minimum:
- (a) recording of the period of each use of the system (start date and time and end date and time of each use);
 - (b) the reference database against which input data has been checked by the system;
 - (c) the input data for which the search has led to a match;
 - (d) the identification of the natural persons involved in the verification of the results, as referred to in Article 14 (5).

EPP AM 1779 deleted the whole paragraph. What do you think about paragraph 4? Keep it, delete it, or amend it?

We are not impacted by the removal of this paragraph. The entity could continue to maintain records on a voluntary basis.

ANNEX IV

TECHNICAL DOCUMENTATION referred to in Article 11(1)

A general description of the AI system including:

(aa) the categories and nature of data likely or intended to be processed by the system and, in the case of personal data, the categories of natural persons and groups likely or intended to be affected (AM 3248, 3249);

(b) how the AI system interacts or can be used to interact with hardware or software, **including other AI systems, that are (AM 3250, 3251)**, not part of the AI system itself, where applicable;

3b. Detailed information about the carbon footprint and the energy efficiency of the AI system, in particular with regard to computational resources, algorithm design and training processes (AMs 3275, 3277), as well as the expected energy consumption during use (AM 3276);

5. A description of any **relevant** change made **by providers (AMs 3279, 3280)** to the system through its lifecycle;

Are those things possible to fulfil for the provider of a high-risk AI system?

We agree with the introduction of paragraph (aa). However, paragraph 3b should be deleted as it carries an impact for entities that will have to establish new processes and invest additional resources.

What about EPP AM 3278 that wants to delete paragraph 5?

Regarding paragraph 5, the Regulation should allow us to require third-party providers to comply with all obligations imposed on us, with a requirement equivalent to that of the controller.



Article 50 - Document retention

Batch #2

Article 50 *Document retention*

The EPP asked with AM 2237 for its deletion but the article would now stay almost like it was proposed by the Commission?

- **What do you think about that? Do you consider this article as helpful or harmful?**

The document retention period must coincide with the responsibility for the use of the model, also being consistent with the AI Systems Responsibility Directive. On the other hand, the period should start at the moment when the model is stopped being used, not when the AI system is introduced to the market or put into service.