



**About the GFII:** created in 1979, the GFII, the French organization of information professionals, is a unique association in the data landscape **that brings together private and public data producers and re-users**, such as the French Ministry of Interior, INPI, IGN, Total, BNP Paribas, Roquette frères, Saint-Gobain, Wolters-Kluwer, Elsevier, Francis Lefebvre-Dalloz group, Altarès. It gathers lawyers, engineers, data experts, compliance officers...

*The GFII aims to promote the economy of data, that means the recognition of the costs necessary for their manufacture, maintenance, development and dissemination in an assumed commercial environment, which does not exclude free of charge data sharing, but which puts more emphasis on the interoperability of data, their valorisation and their reusability. The 6 working groups produce positions papers and white papers in order to help shaping the future of data policy in France and in the EU by offering a balanced and economically sustainable point of view about data and IA. The GFII promotes a sustainable and ethical use of data and works closely with its members for offering the most expert and efficient feedback about the implementation of data policies. GFII members may be AI systems providers, users or both.*

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT)**

First of all, thanks to the European Commission to enable the GFII to answer this consultation on the draft regulation on AI.

### **1) Readability of the text**

The draft is rather complex to understand; understanding difficulties may then generate difficulties for being compliant, especially for SMEs and start up.

#### **a) We invite then the legislator:**

- to amend the structure of the document by separating:

- requirements dedicated to AI systems defined in the article 6 (1) / annex II and possibly Annex III (1)
- requirements dedicated to AI systems defined in the article 6 (2)
- requirements dedicated to AI systems defined in the annex III (6 to 8)

- to define the requirements from the AI provider point of view, ie the operator that will have to comply with the future regulation, with a logical ie process oriented redactional architecture, step by step,

from the ex-ante conformity assessment, the permanent monitoring procedures to the ex-post controls.

**b)** If the requirements integrate the intervention of a notified body, its role and responsibilities should be provided then and not in a separate chapter.

- not to require from the reader to jump from one article to another to understand the one being currently read,

- to consider that not all AI providers that will have to comply with this future regulation are aware and comfortable with the Union Harmonization Legislation, regulation 2019/1020 etc.

**2)** The definition of AI system (art 3 (1)) is unclear. As a matter of fact, not all users install an AI software internally. Some of them access the output (prediction, recommendation, decision, indicator ...) only, the output being provided by the AI provider that has developed the AI system. In other words, we can have the software and the use of the software, the output only and the use of the output only, or both.

A clarification is then required.

### **3) Unclear notions and functions**

**a)** In article 83(2), a clarification of what are “significant changes in their design or intended purpose” would be welcome, as well as a more precise definition of “substantial modification” (art 3 (23)). What is significant / substantial is rather subjective and difficult to comply with.

**b)** The respective role of national supervisory authority (ies) and market surveillance authorities is not clear, especially for IA systems defined in the article 6 (2) and annex III.

**c)** Relation between the AI regulation and the different Data legislations : cf the article 10 on data and data governance, a strong coherence between the future AI regulation and the existing (GDPR, PSI III) or future (Data Governance Act, Data Act) legislations or other sectoral legislations will be key.

Since the beginning of the Open Data directive recast process, GFII underlines that, as well mentioned in the “Strategy for Data”, “the value of data lies in its use and re-use”, in particular by AI systems.

Practically speaking, it means that one same and unique right, identical for all re-users of data, generates de facto a restrictive right for some of the use cases, which looks quite counterproductive according to the objective of development of the data economy.

There are different categories of re-users, whose economic and legal environments are different, which can / could justify that data could be made available and re-used differently.

Of course, rights and duties should remain equitable, practical and explicit and data should circulate in the EU as well as between sectors.

This is why we would consider pertinent to have different levels of data access / re-use rights as well as different levels of legal rights and duties according to the purpose of re-use and reusers’ end-users. Let’s take an example : notion of “natural persons” in Annex 3 : “AI systems intended to be used to evaluate the creditworthiness of natural persons or establish their credit score, with the exception of

AI systems put into service by small scale providers for their own use” are considered as high risk AI systems according to the Annex III (5) (b).

→ Who are the natural persons considered?

Are they:

- consumers as defined in the Consumer Credit Directive presently into force (consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which are **outside** his trade, business or profession) as well as in the draft revision of that same directive ?

- professionals acting in their trade / business / professional capacity, and as such, being then also a business / an enterprise having to be registered to a public register and having customers and suppliers, just as all businesses?

Some data about those professionals, like sole entrepreneurs, may come from public business / enterprises registers available as open data according to the Open Data / PSI III directive.

In France, the professional is now informed via the registration form that the personal data processing is necessary for compliance with a legal obligation to which the controller / public body is subject.

When those data are made available as open data, they are not anonymized by the public body. As a matter of fact, they are considered necessary for informing the public regarding the organizational conditions of the economic, associative and cultural life. From our understanding, for economic transparency purposes.

An annex to the registration form mentions that those data can be reused for other purposes than the ones for which they have been collected by public bodies. In another words, according to an open licence.

But the professional can then require from the reuser not to reuse the data that have been made publicly available for third party information by public registers, directly via their respective website, or via open data.

→ What is happening practically speaking?

Data on a particular business, and then including professionals like sole entrepreneurs, are easily available from the different registers (please see also the CJEU Manni Case).

Those data are also available as PSI / open data.

But when a professional / sole entrepreneur contacts a re-user for requiring him not to reuse his / her data:

- i) he / she may contact only one / some re-users among many reusing the data,

- ii) his / her personal data will remain available from the public registers, as they must be,

- iii) data erased by the re-user will come back with the next PSI update, as data holder / public body still (has to) deliver them,

In another words, re-users are required to comply with the article 21 of the GDPR **for personal data mandatorily disclosed to the public for legal reasons as they are considered from a business / enterprise / professional point of view.**

**We strongly underline again how important it is to now deal with this contradiction.**

Such a contradiction must be fixed at EU level as:

- the GDPR, the PSI III, the future Data Act and Data Governance are / will be EU legislations
- **business** data are of course re-used a lot in the framework of exportations and importations, in the financial area as well as by trade counterparts for trade credit / cash / payment delays management purposes (cf the Late Payment directive),
- the present Covid crisis has demonstrated how essential it is to monitor and assess businesses' financial health, and not only the one of companies / legal persons.

#### **4) Standardisation and common specifications**

To our knowledge, harmonized standards only exist for Annex II legislations at present time. So, if we refer to article 41 and depending on the high risk AI system considered, requirements linked to the chapter II from the Title III will come from implementing acts.

So, from our understanding, some AI providers will have to wait for implementing acts to know more about the technical options to comply with requirements set out in the chapter II, which generates some difficulties to provide a well-informed feed-back.

Those implementing acts will be key if we consider that "High-risk AI systems which are in conformity with the common specifications referred to in paragraph 1 shall be presumed to be in conformity with the requirements set out in Chapter 2 of this Title, to the extent those common specifications cover those requirements" (art 41 (3)). And we understand the article 41 (4) as the application of a "comply or explain" requirement.

The GFII remains at your disposal for developing further those alerts and remarks.



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