Position

Artificial Intelligence Act

Proposal of the European Commission submitted on April 21, 2021

#weareready

Berlin, February 2022

Preliminary remark

The German Association of the Automotive Industry (VDA) represents the interests of the German automotive industry at national, European and international level. As the representative of the key sector of the German economy, the VDA exercises its responsibility for around 600 member companies.

The automotive industry also includes the financial services and leasing companies (automotive financial services providers) that are structurally integrated into the automotive groups as subsidiaries. These automotive financial services providers are an indispensable partner of the vehicle manufacturers in the marketing of passenger cars and commercial vehicles. Only a uniform business model among manufacturers and automotive financial services providers ensures that the automotive value chain and therefore the interplay between production, sales and sales promotion are optimally exploited by financial services. In this way, manufacturers and financial services providers make a significant contribution to Germany's real economy.

On 21 April 2021, the European Commission (EU-COM) published a proposed Regulation laying down harmonised rules for artificial intelligence (Artificial Intelligence Act). The aim of the draft is to create a regulatory framework for artificial intelligence (AI) systems. Within the framework of the so-called horizontal regulation, all companies in the European Economic Area (EEA) that use artificial intelligence systems will be affected, with the exception of smaller companies. The regulatory proposal focuses on so-called high-risk AI systems.

In the view of the VDA, the proposed Regulation will also have a detrimental effect on the automotive financial services sector and on consumers, since over and beyond the generally understood notion of artificial intelligence systems, established procedures for assessing the creditworthiness of natural persons and for determining a credit score that have been

developed using statistical methods, some of which have already been used for 25 years in vehicle financing and private vehicle leasing, would also be classified as high-risk AI systems. The associated requirements would lead to disproportionate over-regulation for these procedures, without providing any discernible additional benefit for consumers. However, these procedures enable fast and straightforward credit approval for the benefit of consumers. They have demonstrably led to an increase in the granting of credits and the conclusion of leasing contracts, thus making automotive mobility additionally possible for many people.

Problem

The procedures developed with the help of statistical methods that are used to assess the creditworthiness of natural persons or to determine a credit score, in particular in vehicle financing and leasing, would be classified as high-risk AI systems under the proposed Regulation (cf. Article 3(1) in conjunction with Annex I(c) in conjunction with Article 6(2) in conjunction with Annex III(5)(b)). This would result in high requirements for these systems as well as for governance, the underlying data, documentation, etc., without any discernible additional benefit for the customers.

The provisions of the Regulation are to be applicable for the first time two years after its entry into force (cf. Article 85(2)). A grandfather clause is planned for existing procedures. However, this right of continuance loses its effect as soon as the design of these procedures is significantly changed (cf. Article 83(2)). It is not clear when a significant change actually exists. New developments in scoring procedures are not likely to be covered by the grandfathering protection anyway. Violations are to be punishable by administrative fines of up to 6% of worldwide annual turnover.

The draft defines the sphere of application of AI systems too broadly, since it would also affect traditional procedures for assessing the creditworthiness of natural persons that have been developed with the help of statistical methods, such as those, for example, that have been used by the automotive captives in some cases for around 25 years and are continuously being enhanced. This applies in particular to new developments of score cards using statistical methods to assess the credit standing of natural persons.

There is a danger that the procedures for assessing creditworthiness in vehicle financing and private customer leasing, which have been well-established and continuously refined over many years, will be over-regulated by additional requirements relating to high-risk AI systems. It would also have direct consequences for consumers and the provision of credit and leasing to them if the improvement and development of existing and new procedures created or elaborated with the help of statistical methods were to cease. The performance capabilities of the score procedures deployed decreases over time. The additional inappropriate requirements of this Regulation make it uneconomical for credit providers to implement further and new developments in the procedures. The consequence would be a more restrictive lending policy to protect against payment defaults. In this case, consumers with weaker credit ratings would lose out, and in case of doubt they would no longer be offered a credit or a leasing contract. This outcome would be the opposite of what the draft Regulation aims to achieve with regard to AI procedures for assessing the creditworthiness of natural persons.

Solution approach

1. Exception covering classical procedures to assess the creditworthiness of natural persons that have been developed with the help of statistical methods.

New and further developments of classical procedures for assessing the creditworthiness of natural persons that have been developed using statistical methods should be exempted from the Regulation through a specific exception.

In definitional terms, classical procedures for assessing creditworthiness are characterised by the fact that the result of the procedure developed using statistical methods is a deterministic function or contains a deterministic assignment rule that is permanently implemented in the system and is completely transparent and predictable. In the case of a deterministic function, the same input values of the variables explaining the creditworthiness in the statistical sense always generate the same unique function value, which is a credit score value or, on the basis of a Bayes function, a firmly assigned probability value.

Reasoning

Scoring procedures developed using statistical methods to assess the creditworthiness of natural persons have been used in some cases for around 25 years and are accordingly well established. Consumers benefit from the quick availability of credit and leasing offers on favourable terms. The procedures have proved their effectiveness and have significantly increased the supply of credits and leasing to customers. The risk for customers of being cut off from a credit or leasing contract due to an incorrect classification is nowadays already greatly reduced by the right to information to which they are entitled. If mistaken assessments are made as the result of faulty data, customers have a right to have their data corrected. In addition, customers may also be granted the right to a manual assessment in the event of a credit rejection. If the debt service capacity, the financial ability of a customer to meet credit obligations, is negative, there is no entitlement to a credit, since the debt service capacity assessment also serves to protect against over-indebtedness. The risk that a customer does not receive a credit despite an existing „objectifiable creditworthiness" with positive debt service capacity could be eliminated in this way. That being so, there would be no reason that the extensive requirements of this Regulation have to be taken into account in the case of significant changes and new developments to procedures that have been developed on the basis of statistical methods.

Moreover, the classical methods for assessing the creditworthiness of natural persons that have been developed using statistical methods already represent a low risk for use in relation to typical AI systems based on neural networks and machine learning due to their high transparency and reproducibility. This high level of traceability results from the fact that, given the same input values, the same result is always generated by means of a function or a unique assignment rule, whereby this result can be a credit score or a unique probability value. This also provides verifiability at any time. In addition, it is common practice for the effectiveness of these procedures to be regularly checked by means of backtesting and, in the event of a decline in performance capabilities, for both further and, where appropriate, new development to take place with the inclusion of newer data. However, the deployment of further or newly developed procedures for assessing creditworthiness usually only tales place once the effective performance of the procedure has been proven on the basis of historical data by means of backtesting and the function or the assignment rule has been firmly implemented in the system following a decision by the competent body. A subsequent change to this function or assignment rule is not possible after its fixed implementation without a new decision.

2. Supplementary transitional provision additionally required for procedures in use that are only subject to significant changes after the Regulation has entered into force

Article 85(3) should be supplemented to the effect that a transitional period of two years is also provided for systems in use within the scope of Article 83(2) that are only subject to significant changes in their design after the Regulation has entered into force in such cases where the further development objectively leads to an improvement in the quality of assessment.

Reasoning

This supplementary transitional provision is necessary because otherwise the implementation period would be shortened for procedures in use that fall within the scope of Article 83(2) and that are significantly changed after the Regulation has entered into force. In the event of a significant change taking place after the expiry of the implementation period specified in Article 85(2) for the implementation of the Regulation, there would then be no implementation period available at all, which is not feasible.

The proposed supplemental transition provision would give companies the time necessary to fully implement the requirements of this Regulation with respect to the respective procedure and the requirements for the data needed for the purpose. It would also avoid a situation where significant further developments to improve the quality of assessments are not implemented simply because not all requirements of the Regulation have been fully implemented at that time.

Contact Persons

Dr. Ralf Scheibach
Head of Legal Department
ralf.scheibach@vda.de

Dr. Ricarda Leffler
In-house Lawyer / Consultant
ricarda.leffler@vda.de

Version   Version 1.0, February 2022

🐦 @VDA_online
in Verband der Automobilindustrie

VDA