

A new “sandbox” for artificial intelligence

The Spanish Government has opened a **public consultation period** from 19 to 29 May on the draft Royal Decree to regulate the regulatory testing environment (“sandbox”) for AI systems.¹

The draft Royal Decree, which is linked to the proposal for a European Regulation laying down harmonised rules on artificial intelligence (the “AI Regulation”), aims to establish a controlled test environment where companies and public administrations may **study how the requirements to be imposed on this technology at a European level operate in practice.**

1. INTRODUCTION

On 19 May, the Spanish Ministry of Economic Affairs and Digital Transformation (“**MEADT**”) launched a public consultation to gather comments and further input on the draft Royal Decree aimed at establishing a controlled test environment where compliance with the proposal of the AI Regulation may be assessed (the “**Royal Decree**”).

This represents the first regulatory approach in Spain to “artificial intelligence” or “AI”. The urgent consultation period will remain open until midnight on 29 May, and interested parties may send their contributions by e-mail to the following address: consulta.sandbox.ia@economia.gob.es.

2. TOWARDS ARTIFICIAL INTELLIGENCE REGULATION

In recent months, few words have been uttered more frequently than “artificial intelligence”. Whether to praise its potential or to highlight the possible risks of malicious or uncontrolled use, this technology has certainly been at the heart of public debate and discussions among managers, executives, politicians and citizens, especially in the wake of the popularisation of systems such as “ChatGPT”.

The European Union identified the need to regulate this technology as early as 2018, when it issued its first communication on artificial intelligence. Ever since then, the various EU institutions have been taking steps towards a comprehensive regulation of artificial intelligence, which will likely culminate in the AI Regulation.

¹ Available at: https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/audienciapublica/Paginas/audiencia_entorno_controlado_pruebas_ensayo_cumplimiento_normas_armonizadas_IA.aspx

The AI Regulation, which will have direct effect and application in all of the EU member states, aims to strengthen Europe's position as a global benchmark in the regulation of new technologies through fostering "reliable, ethical and robust" AI.

To date, AI has not been regulated in Spain, although non-regulatory proposals in the field of digital rights outline the principles that ought to govern the technology, such as the Digital Rights Charter². Therefore, the sandbox represents the first regulatory effort within Spain with regard to AI matters, albeit limited in scope due to its very nature as a test environment.

3. OBJECTIVES OF THE ROYAL DECREE

The main objective of the Royal Decree is to create a regulatory testing environment ("sandbox") in order to study the feasibility of the requirements set out in the AI Regulation proposal. Relevant information is expected to be extracted from these controlled testing environments with a view to generating reports on findings and good practices, as well as to develop evidence-based guidelines for implementation and monitoring. These documents are expected to guide entities in aligning their artificial intelligence systems with the provisions of the AI Regulation.

Due to its very nature as a regulation that aims to facilitate the development of a testing period and environment in preparation for the AI Regulation, the Royal Decree will be in place for 36 months after its entry into force (expiring, in any case, once the AI Regulation enters into force and becomes applicable, if this were to happen before the 36-month period has elapsed).

4. MAIN ASPECTS OF THE ROYAL DECREE

(A) Sandbox participants

The following entities may participate in the sandbox: (i) legal private persons which are residents or have a permanent establishment in Spain; (ii) public administrations; (iii) public sector entities; or (iv) other types of entities, provided that they use or have developed (either directly or through a third party) a high risk or general purpose artificial intelligence system (including foundational models and generative AI systems).

For these purposes, the Royal Decree deems "high risk artificial intelligence systems" to include those that relate to biometry, critical infrastructure, education, employment, access to essential services, prosecution of criminal offences, migration and justice. This list is in line with the AI Regulation proposal. Furthermore, while it does not consider all general purpose AI systems (e.g., foundational models and generative AI systems) to be high risk, it does clarify that they have significant potential to end up as such.

(B) Call for applications and admission

The Secretary of State for Digitalisation and Artificial Intelligence ("SSDAI") will approve the calls for access to the sandbox, and may specify the conditions for access.

² Available at: https://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/140721-Carta_Derechos_Digitales_RedEs.pdf.

The application process will have limited places, and applicants will be assessed in accordance with specific predetermined criteria in the Royal Decree, such as the degree of innovation and maturity of the project, risk, the size of the AI provider, etc.

(C) **Development of the sandbox**

The sandbox's goal is that its participants and their respective artificial intelligence systems comply with specific requirements during the term of the sandbox.

Participants, once admitted to the sandbox, shall (i) continuously carry out any actions required for the purposes of complying with these requirements; (ii) carry out a self-assessment of the degree of fulfilment of these requirements; and (iii) document the implementation of a monitoring system, once the AI system has been launched.

The MEADT will help participants manage the assessment process under the AI Regulation.

(D) **Sandbox results**

During the course of the sandbox, the SSDAI will gather information from the participants on how they implemented the relevant actions. Likewise, it may request additional information from the participants for the purposes of gathering data which may be of interest for producing documentation or conclusions regarding the sandbox.

With this information, the SSDAI will develop technical guides and other documents to support the preparation of the AI Regulation and to facilitate the development of artificial intelligence systems in a reliable, robust and ethical manner, based on the sandbox experiences.

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