

Article 3

Definitions

(xx) ‘foundation model’ means an AI model trained on a large amount of data and capable to perform a wide range of distinctive tasks, including, for example generating video, text, images, conversing in natural language, computing or generating computer code.

(xx) ‘high-impact foundation model’ means any foundation model reaching the threshold set out in Article xxx.

(xx) ‘general purpose AI system’ means an AI system that has the capability to serve a variety of purposes, both for direct use as well as for integration in other AI systems;

(xx) ‘general purpose AI system’ means an AI system that can be used in and adapted to a wide range of applications for which it was not intentionally and specifically designed;

TITLE X

FOUNDATION MODELS AND GENERAL PURPOSE AI SYSTEMS

Article X

Obligations of providers of foundation models

1. Prior to making a foundation model available on the market or putting it into service or use, providers of foundation models shall

a) draw up, keep up-to-date and make available information and documentation in a machine-readable format or otherwise to providers of AI systems who intend to integrate the foundation model in their AI system; the information and documentation shall:

i. enable providers of AI systems to understand the capacities and limitations of the foundation model and comply with their obligations pursuant to this Regulation; and

ii. contain, at a minimum, the elements set out in Annex XY;

2. Providers of foundation models shall cooperate as necessary with the Commission and the national competent authorities in the course of the exercise of their competences and powers pursuant to this Regulation.

Article Xa

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Commented [A1]: we believe this mixes up FM with generative AI, and the language is recitalish EP version: (1c) ‘foundation model’ means an AI system model that is trained on broad data at scale, is designed for generality of output, and can be adapted to a wide range of distinctive tasks;

Deleted: The Commission, taking into account the views of the scientific community, civil society and market participants, is empowered to adopt implementing acts/delegated acts in accordance with Article X to specify the technical elements including benchmarks of the distinctive tasks that can be performed by foundation models as well as the degree of competence with which such tasks are performed in the light of market and technological developments

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[add in recital reference to scientific community, training on broad data sets]¶

Commented [A3]: either we keep a shorter definition as proposed or decide we don’t need it and just have the article on designating high impact FM

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Moved down [1]: The Commission is empowered to adopt [no later than 18 months after the entry into force of this Regulation] taking in outmost account the views of the scientific community, civil society and market participants implementing acts/delegated acts in accordance with Article X with a view to specify the technical tools and methodologies to assess the capabilities and complexity of high-impact foundation models, including through combination of indicators and proxies such as:¶ the size of the data samples used for training ¶

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Obligations for providers of high-impact foundation models

1. In addition to the obligations listed in Article X, providers of high-impact foundation models regardless of whether they are provided under free and open source licences, as a service, as well as other distribution channels, shall:

- a) perform model evaluation and testing through an adversarial approach (red-teaming) in accordance with standardised protocols and tools reflecting the state of the art;
- b) draw up the technical documentation of the model and of the training and the testing process, including the results of the evaluation, which shall contain, at a minimum, the elements set out in Annex XX. The provider shall ensure that this documentation is kept up to date.
- c) inform the AI Office, once the conditions established in Article Xx [classification of a model] are met, prior to placing the high-impact foundation model on the market or putting it into service.
- d) draw up, keep up-to-date and make available general information accessible to the public on capacities and performance limitations of a model, including discussion and assessment of the evaluation results, model's effects and risks to health, safety and fundamental rights, [democracy, the rule of law and the environment]. This public reporting shall not entail sharing of any proprietary or confidential information.
- e) upon request by the AI Office, or a [national competent authority], provide the Office, and that authority with all the information and documentation referred to in this Article with a view to demonstrate compliance with the obligations of this Regulation.
- f) pursuant to Articles Xb and Xc, establish, implement, document and maintain a risk management system to assess and mitigate systemic risks throughout the entire lifecycle of the foundation model, taking into account the generally acknowledged state of the art, including as reflected in codes of conduct;
- g) shall, upon reasoned request by the Office, be subject at their own expenses to independent controls/audits to assess compliance with the obligations applicable to them as well as any commitments undertaken pursuant to the codes of conduct referred to in Articles XX]. In implementing this provision, as provided in Article G para 6, the Commission shall take into account the needs of SMEs including start-ups.
- h) [possibly additional] [have a system in place to keep track, document and, upon request, report to the Office, and, as appropriate, national competent authorities, relevant information about serious incidents and the corrective measures put in place to address them].
- i) register that foundation model in the EU database referred to in Article 60, in accordance with the instructions outlined in Annex VIII point C.

Commented [A11]: DSA model is different: platforms publish their number of users etc, THEN the Commission designates on this basis which are the VLOPs. Proposal to add the obligation to disclose the numbers related to the agreed criteria in the previous article and here the Office can make itself the designation

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(j) design and develop the foundation model, making use of applicable standards to reduce energy use, resource use and waste, as well as to increase energy efficiency, and the overall efficiency of the system, without prejudice to relevant existing Union and national law. This obligation shall not apply before the standards referred to in Article 40 are published. Foundation models shall be designed with capabilities enabling the measurement and logging of the consumption of energy and resources, and, where technically feasible, other environmental impact the deployment and use of the systems may have over their entire lifecycle;

2. The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend Annex XX [Article on FM] and Annex XY [Article on HI FM] where necessary to ensure that, in the light of market and technological developments, the information and documentation referred to therein is kept up to date for the purpose of ensuring an adequate degree of transparency vis-à-vis the Commission and relevant national competent authorities as well as providers of AI systems who intend to integrate the foundation model in their AI system.

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Article Xb

Risk assessment

1. Providers of high-impact foundation models shall diligently identify, analyse and assess any systemic risks in the Union that may stem from the placing on the market, putting into service or use of their high-impact foundation models [].
2. They shall carry out the risk assessment before placing on the market or putting into service the high-impact foundation model and at least once every year thereafter, and in any event any time the foundation model undergoes a process of further training or fine-tuning which may have an impact on the systemic risks assessed identified pursuant to this Article. This risk assessment shall be proportionate to the systemic risks, taking into consideration their severity and probability, and shall include the following systemic risks:
 - a) the dissemination of illegal, incorrect, discriminatory or otherwise harmful content;
 - b) any actual or reasonably foreseeable negative effects in relation to serious incidents, disruptions of critical sectors and serious consequences to public safety;
 - c) any actual or reasonably foreseeable negative effects on democratic processes and public security.
 - d) any actual or reasonably foreseeable negative effects for the exercise of fundamental rights;
 - e) any actual or reasonably foreseeable negative effects in relation to gender-based violence, the protection of public health, the environment and minors and serious negative consequences to the physical and mental well-being of people.

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3. Providers of high-impact foundation models shall draw up, maintain and keep up-to-date the documentation of the risk assessments and shall, upon request, communicate them to the Office and to the [national competent authorities].

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Article Xc

Risk mitigation

1. Providers of high-impact foundation models shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article Xb, with particular consideration to the impacts of such measures on health, safety, fundamental rights [democracy, rule of law and the environment].
2. The measures referred to in paragraph 1 may include, where applicable:
 - a) establish appropriate data governance measures, in particular to detect the unsuitability of certain data sources for the purpose of training the model;
 - b) introduce appropriate safeguards;
 - c) adapt the terms and conditions of use or the terms and conditions under which the high-impact foundation models are licensed;
 - d) adapt the release strategy for the placing on the market of putting into service of the high-impact foundation model;
 - e) perform a detailed testing of the high-impact foundation model through an adversarial approach (red-teaming), including as appropriate by independent experts vetted in accordance with Article XX, with a view to discover vulnerabilities and other vectors of systemic risks and introducing risk mitigation measures accordingly;
 - f) [reinforcing the internal processes, resources, testing, documentation, or supervision of any of their activities in particular as regards detection of systemic risk;]

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3. Providers of high-impact foundation models shall draw up, maintain and keep up-to-date the documentation of the risk mitigation and shall, upon request, communicate them to the AI Office and to the [national competent authorities].

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4. The AI Office shall publish comprehensive reports, once a year. The reports shall include the following:

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- (a) identification and assessment of the most prominent and recurrent systemic risks reported by providers of high impact foundation models or identified through other information sources.

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(b) best practices for providers of high-impact foundation models to mitigate the systemic risks identified.

Those reports shall present systemic risks broken down by the Member States in which they occurred and in the Union as a whole, as applicable

Article Xc

Codes of conduct for foundation models

1. The Office shall encourage and facilitate the drawing up of codes of conduct at Union level to contribute to the proper application of this Regulation, notably as regards:
 - a) the identification of the systemic risks, including their sources, that may stem from the placing on the market, putting into service or use of high-impact foundation models;
 - b) the obligations established in Articles Xb and Xc, taking into account in particular the specific challenges of tackling systemic risks;
 - c) the obligations established in Article Za, ('generative AI'), taking into account in particular technological developments and the objective to ensure that technical solutions are effective, interoperable, robust and reliable.
2. The Office may invite the providers of high-impact foundation models concerned, as well as relevant [national competent authorities], civil society organisations and other relevant stakeholders, to participate in the drawing up of codes of conduct.
3. When giving effect to paragraphs 1 and 2, the Office shall aim to ensure that the codes of conduct clearly set out their specific objectives, contain key performance indicators to measure the achievement of those objectives and take due account of the needs and interests of all interested parties, including citizens, at Union level.
4. The Office shall aim to ensure that participants report regularly to the Office on any measures taken and their outcomes, as measured against the key performance indicators that they contain. Key performance indicators and reporting commitments shall take into account differences in size and capacity between different participants.
5. The Office shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives, having regard to the key performance indicators that they might contain.
6. The Office shall also encourage and facilitate regular review and adaptation of the codes of conduct.
7. In the case of systematic failure to comply with the codes of conduct, the Office may invite the signatories to the codes of conduct to take the necessary action.
8. When the Commission considers that a code of conduct contributes to the proper application of this Regulation, it may, by way of implementing act, decide to approve

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the code of conduct. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article XX.

9. The Office shall ensure appropriate publicity for the approved codes.

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10. Without prejudice to the enforcement powers of the Office, adherence to an approved code of conduct provides a presumption of conformity with the obligations of this Regulations covered by the approved code of conduct.

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Article Xc

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Classification of a model as a high-impact foundation model

1. This section shall apply to providers of foundation models that meet the conditions X,Y,Z and which are designated as high-impact foundation model pursuant to paragraph.

Commented [A21]: if we want to use the size of data samples, size of parameters, FLOPs, we should put concrete threshold here

2. The Commission is empowered to adopt delegated acts in accordance with Article 73 to adjust the number of a size of data samples, parameters, amount of compute used for the training or performance of benchmark referred to in paragraph 1.

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3. The Commission is empowered to adopt [no later than 18 months after the entry into force of this Regulation] taking into account market and technological developments as well as the views of the scientific community, civil society, market participants delegated acts in accordance with Article 73, with a view to specify the methodology to assess the:

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- the size of the data samples used for training

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- the size of the parameters representing the model

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- the amount of compute used for the training measured in floating point operations (FLOP).

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- performance benchmarks

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4. The Commission shall adopt a decision designating as a high-impact foundation model for the purposes of this Regulation foundation model which reaches a size of data samples, parameters, amount of compute used for the training or performance of benchmark going beyond the threshold referred to in paragraph 1 of this Article. The Commission shall take its decision on the basis of data reported by the provider of the foundation model pursuant to Article X, or information obtained pursuant to Article D or any other information available to the AI Office or the Commission.

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The failure by the provider of the foundation model to comply with Article X or to comply with the request by the AI Office pursuant to Article D shall not prevent the Commission from designating that provider as a provider of a high-impact foundation model pursuant to this paragraph.

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Where the Commission bases its decision on other information available to the Commission pursuant to the first subparagraph of this paragraph or on the basis of

additional information obtained pursuant to Article D, the Commission shall give the provider of the foundation model concerned 10 working days in which to submit its views on the Commission's preliminary findings and on its intention to designate the foundation model as a high-impact foundation model. The Commission shall take due account of the views submitted by the provider concerned.

The failure of the provider of the foundation model to submit its views pursuant to the third subparagraph shall not prevent the Commission from designating that foundation model as a high-impact foundation model based on other information available to it.

4. The Commission shall terminate the designation if, during an uninterrupted period of one year, the online platform or the online search engine does not have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1.

The Commission shall notify its decisions pursuant to paragraph 4, without undue delay, to the provider of the foundation model concerned.

The Commission shall ensure that the list of designated high-impact foundation model is published in the Official Journal of the European Union, and shall keep that list up to date. The obligations set out in this Section shall apply, or cease to apply, to the high-impact foundation model concerned from four months after the notification to the provider concerned referred to in the first subparagraph.

5. [Power to check compliance with classification rules].

6. [Further details to clarify what happens when thresholds and capabilities evolve]

Article Za

Obligations of providers of Generative foundation models and AI systems

1. Providers of foundation models and AI systems generating synthetic audio, image, video or text content, based on correlations and patterns learnt from data shall, prior to making the model or system available on the market or putting it into service or use:

a) ensure the outputs of the model or system are marked in a machine-readable format and detectable as artificially generated or manipulated.

b) train, and where applicable, design and develop the foundation model or AI system in such a way as to ensure adequate safeguards against the generation of content in breach of Union law, without prejudice to fundamental rights, including freedom of expression.

c) demonstrate that adequate measures have been taken to ensure the training of the model or system is carried out in compliance with Union law on copyright and related rights, in particular, with regards to Article 4(3) of Directive (EU) 2019/790:

Commented [A27]: From DSA if a high-impact FM goes under the threshold Shall we keep 1 year as a period of time?

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Obligations for providers general purpose AI systems

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Providers of GPAI systems that enter into agreements with downstream providers of AI systems to be used for at least one purpose that is classified as high-risk pursuant to this Regulation shall, in addition to the obligations referred to in paragraph 1, either:
explicitly state in the instructions of use or information accompanying the AI system the high-risk uses [referred to in Annex III] for which the system may be used; and
ensure compliance of the system with the specified and adapted requirements referred to in paragraph 4; all other provisions of this Regulation applicable to high-risk AI systems are applicable mutatis mutandis;
In all other cases providers of GPAI systems should:
explicitly prohibit the use of the AI system for high-risk uses in the instructions of use or information accompanying the AI system;
take all necessary and proportionate measures to detect any possible use of the system contrary to the prohibition referred to in point a);
upon detection or being informed of a use contrary to the prohibition referred to in point b), take all necessary and proportionate measures to prevent such further misuse, in particular taking into account the scale of the misuse and the seriousness of the associated risks
The Commission is empowered to adopt in accordance with the examination procedure referred to in Article 74(2) [no later than 18 months after the entry into force of this Regulation] implementing acts with a view to specify and adapt the application of the requirements established in Title III, Chapter 2 to general purpose AI systems in the light of their characteristics, technical feasibility, specificities of the AI value chain and of market and technological developments. When fulfilling those requirements, the generally acknowledged state of the art shall be taken into account

d) draw up and make publicly available a [sufficiently detailed] summary about the content used for training of the model or system and information about the provider's internal policy to manage copyright-related aspects. The Office shall provide a template to ensure uniform application of this obligation.

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2. Providers shall ensure their technical solutions are effective, interoperable, robust and reliable as far as this is technically feasible, taking into account specificities and mutations of different types of content, [costs of implementation] and the generally acknowledged state of the art, as may be reflected in relevant technical standards.

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we could rather use art. 28 value chain obligations as another idea, where the concept is spelled out anyway

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still to be drafted according to the state of the document. Maybe we can take inspiration from Annex IV?

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