

Artieri & Rohmer (Law Offices): Taking AI into account in banking and financial regulations

by Arthur Rohmer

In the Principality of Monaco as elsewhere, artificial intelligence (AI) is profoundly transforming the banking and finance sector, generating both unprecedented challenges and opportunities.



AI deployments, particularly in banking and finance, continue to raise complex legal and regulatory issues, made even more difficult by developments in business law. A wide range of AI-related activities is already being reported within banking and financial players, with adaptation varying considerably from an institution to another.

Today, AI is already supporting crucial internal functions such as anti-money laundering and know-your-customer (KYC) verification. Risk management is also one of the first areas of use. This includes tools for monitoring, detecting and managing various types of risk, such as operational, market, credit or regulatory risks. Automating fraud detection in payment transactions is now common practice. But one of the most promising areas of AI is generative AI (GenAI), which is attracting the attention of banks keen to explore its applications while complying with current regulatory standards.

Indeed, GenAI, has the ability to perform tasks that traditional AI cannot - it can analyze more types of data, process large datasets faster and perform a wider range of tasks. The use of GenAI in front office roles, such as one-to-one marketing or providing advice, remains exceptional and presents more regulatory risks than conventional use of AI

for back or middle office functions. We also note that some banks prefer to experiment with in-house versions of GenAI, limiting the use of large public language models (LLMs) such as OpenAI's ChatGPT, due to regulatory concerns over data and reliability of results. Indeed, regulators have already had occasion to warn against the risk of large models producing inconsistent, invented or "hallucinated" information with an assertive presentation likely to call into question their reliability. Around the world, regulators are actively working to understand the risks specific to AI and to develop guidelines to prevent potential damage.

In the Principality of Monaco, despite the absence of any specific local text regulating or even referring to AI, there is no doubt that current banking and financial regulations are already likely to apply to the use of AI by licensed entities. This is the case for all the rules of good conduct laid down by Sovereign Order no. 1.284 of September 10, 2007, implementing Law no. 1.338 of September 7, 2007 on financial activities.

It should be remembered, for example, that entities which are duly licensed by the Commission de Contrôle des Activités Financières (CCAF) must behave loyally and act fairly in the best interests of their

customers. In addition, specific regulations applicable in the Principality of Monaco, such as certain articles of the French Monetary and Financial Code, or the recommendations of the Autorité de Contrôle Prudentiel et de Résolution (ACPR) on outsourcing arrangements, impose detailed requirements relating to the management of banks' systems and controls, including preparation for disruptions to AI systems.

In this way, Monegasque applicable law already includes tools to make management teams accountable in the event of non-compliance with regulatory obligations, encouraging them to better understand and manage AI-related risks. Moreover, the risk-based approach of the May 21, 2024 European regulation on artificial intelligence is largely inspired by the texts already applicable to banking and finance, with an emphasis on transparency, accountability and human supervision.

For this reason, banks, with their risk management and compliance processes already in place, are very well placed to absorb these new regulations. What remains, however, is for banking and financial players to identify, on an ongoing basis, the gaps between their current governance processes and the ever-innovative practices that will result from the use of GenAI.