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The interplay between protection and further use of artificial intelligence

FINANCE DENMARK

Position paper

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Position

Finance Denmark supports regulation of AI. It is important to provide a regulation that protects the customer, through which trust in AI can be build. Much of what the financial sector does, is fundamentally based on trust. Therefore, it is important that AI-solution now and in the future can be trusted through a sound and appropriate regulatory framework on AI.

The proposal from the European Commission distinguishes between high and low risk. Finance Denmark recommends that a risk-based approach with several levels will be used instead.

We support that the future supervision of the financial sectors use of artificial intelligence is placed with the regulatory authorities that currently has the supervisory oversight of the financial sector

Finance Denmark proposes that it will be possible to apply the same regulatory risk-based approach for artificial intelligence as the approach used in connection to fintech.

Higher focus on the interplay between protecting the European citizens and the further use of artificial intelligence

The European Commission presented on the 21st of April 2021 its proposal for future harmonized regulation on artificial intelligence – *Proposal for a regulation of the European parliament and of the council laying down harmonized rules on artificial intelligence (Artificial intelligence act) and amending certain union legislative acts.*

Finance Denmark considers that it is important to have a clear and coherent European regulation on artificial intelligence and we therefore welcome the Commission's proposal.

Finance Denmark assess that there can be a wide variety of opportunities in the use of artificial intelligence. For example, artificial intelligence enables Europe to increase the prosperity of its citizens and can accelerate/boost the growth of businesses - and thereby include both economic and social benefits.

Artificial intelligence in the financial sector will contribute to improve the customer experience with smarter more convenient and safer ways to access, spend, save and invest. AI will further increases cybersecurity, consumer protection and improves the risk management by streamlining and optimizing business processes. Furthermore, it will support the fight against economic crimes including combatting money laundering.

It is important for both businesses and consumers that there is a harmonized, coherent and robust regulation of artificial intelligence and the use hereof. On one hand AI-regulation must secure and provide a framework that will support the development and further application of artificial intelligence in businesses. On the other hand, adequate and effective regulation must ensure that the citizens and consumers can safely use and interact with services and solutions that are based on artificial intelligence.

Notat

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For the general provisions, we have the following general considerations on the proposed regulation of artificial intelligence:

- It is imperative to maintain a high level of customer protection in the legislation. This will ensure that customers have the confidence and trust to use artificial intelligence.

- The proposal from the European Commission distinguishes between high and low risk. Finance Denmark recommends that a risk-based approach with several levels will be used instead. A risk-based approach with only two levels is likely to reduce the use of artificial intelligence by both large and established companies as SME's and start-ups. We believe that a more gradual setup, will encourage companies to apply AI-solution gradually and swiftly. Such a gradual approach will keep customer assured and the level of trust high as well as increasing the overall application of AI across all sectors.

- It is important to ensure a level playing field for all industries and geographies. This is crucial if you want to ensure an increased and appropriate use of artificial intelligence across industries.

- It is worth mentioning that artificial intelligence is still a technology under development. In connection to this, it is worth mentioning that it must be expected that there will be an ongoing need to reassess which artificial intelligences that are high risk, and which are not. If an ongoing adjustment is not established, the regulation will probably over time be distorted in relation to the purpose and desire to secure, protect the consumers and innovate European businesses.

- The wish in the proposal for businesses to voluntarily submit their AI solutions to the AI-regulation, will perhaps not have the desired effect. This is likely due to the binary distinction between high and low risk. It is Finance Denmark's assessment that a more differentiated and risk-based approach as the one mentioned above will make it more likely that providers of AI-solution will voluntarily comply with the new regulation of artificial intelligence.

- Furthermore, Finance Denmark supports the implementation of financial AI-solutions also must comply with current legislation on GDPR and consumer protection legislation.

For the special provisions we have the following comments.

In the stated proposal the supervision of the financial sector, will be placed with the existing financial supervisory authorities. For that we have following comments:

- We support that the future supervision of the financial sectors use of artificial intelligence is placed with the regulatory authorities that currently has the supervisory oversight of the financial sector.

- We believe it will be appropriate to ensure further coherency with existing financial regulation. The regulation regarding development and use of AI-solution should apply a risk-based approach. This will make it possible for the financial supervisory authorities to deviate from the narrow high risk and low risk approach in the proposal. We believe that a more risk-based approach will provide better protection and assurance for the consumers as well as support innovation and the use of AI.

- Finance Denmark proposes that it will be possible to apply the same regulatory risk-based approach for artificial intelligence as the approach used in connection to fintech.

- We support that financial companies that are regulated under Capital Requirements Directives (CRD) also shall apply the elements described in paragraphs 1to 8 in the proposed article 9 (Risk management system) in their risk management procedures described in Article 74 of the CRD. Again, it is our believe that for this to have the indented effect and support the adaption of AI, minimize the negative hazards by AI and help promote trust, a more risk-based approach will be appropriate. The present binary high-risk / low-risk approach will impose unnecessary barriers to implementing new AI-solution that e.g., is intended to support human decisions.

- The proposal and general regulation do not clearly distinguish between artificial intelligence used to support human decisions and when the artificial intelligence works autonomously. Therefore, Finance Denmark suggest applying a risk-based approach that should lead to lighter regulatory requirements for artificial intelligences that are used to support human decisions. Whereas autonomous artificial intelligences should be regulated in more detail and thereby adding a proportionality consideration into the regulatory setup.

- For example: If a specific AI-system is used to autonomously decide whether a consumer should be granted credit or not - we agree that this should be classified as high-risk. But if the AI-systems only work as a guideline and will be followed by a human assessment, we suggest that a risk-based proportionality is added to the narrow and binary high and low risk approach in the proposal.

- We strongly suggest that expert systems are exempt from the very broad AI definition in annex I. The very nature of expert systems makes its contradicting to include them in this regulation, because they have no elements that makes them in any way 'intelligent'. An expert system will always render deterministic results whereas AI systems will render probabilistic results.

- As an alternative to a broad exemption of expert systems from the AI definition, we suggest that a narrower AI definition will be applied with regard to future AI regulation of the financial sector where expert systems are not included. We suggest that an AI definition for the financial sector will be based on the current work and experience that e.g. Danish and German FSA have done on AI. This will ensure that the general regulations of the financial sector and the future AI regulation will work well together.

- An exemption will also support a more risk-based approach in regard to the financial sector which will ensure greater coherency with existing regulation as stated above. Today most banks use expert system to help support the individual credit decisions. By supplementing such expert systems with simple statistical features does not make them probabilistic AI systems. If more statistical and probabilistic elements are added, then the expert systems will eventually become an AI-system. To ensure that such gradual development is regulated in a coherent way, a risk-based approach to AI-regulation is beneficial. If a risk-based approach is not adopted with regard to the financial sector we fear that the proposed high-risk low / low risk setup will create a regulatory mismatch between this proposal and existing regulation in the financial sector.

The annex to the proposal specifically states:

> *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*

The proposal presents a somewhat unclear and vague argument for this exemption: "Considering the very limited scale of the impact and the available alternatives on the market". This undocumented speculation leads to the conclusion that: ", it is appropriate to exempt AI systems for the purpose of creditworthiness assessment and credit scoring when put into service by small-scale providers for their own use".

This will most likely lead to an unlevel playing field and harm general trust in AI. An ill-conceived AI, that is used by a small-scale provider is potential equally harmful towards the individual consumer as a large-scale provider. An unchecked AI based creditworthiness assessment will undermine trust in AI solutions in general and should be avoided.

It is also unclear what is meant by 'their own use'. Does it mean internal use or as support to help make a human decision or something else? Again, the risk towards the customer is not any different whether 'their own use' is done in the context of a small or large provider.

To ensure a coherent and risk-based approach, we recommend that this exemption is removed from the regulation, because it will most likely be counterproductive to the overall goals of this regulation of establishing trust and it will also result in an unlevel playing field. On this basis we strongly recommend that any future regulation of AI within the financial sector will use a similar risk-based approach and be in correspondence to the existing risk-based regulatory setup used towards the financial sector. And here it seems obvious and natural to adapt the same risk-based approach as is presently used towards fintech as mentioned above.