



DG for Communications Networks, Content and Technology
European Commission
1049 Bruxelles
Belgium

02 August 2021

(submitted online)

Dear Mr Viola

Standard Chartered's comments on the proposed Regulation on Artificial Intelligence (2021/0106)

Standard Chartered welcomes the European Commission publishing the above consultation which seeks to achieve a coordinated European approach on the human and ethical implications of Artificial Intelligence (AI).

We believe that harmonised rules which aim to both (i) protect EU citizens and (ii) enhance the take up of AI across the EU will be beneficial to the EU economy and EU companies.

Standard Chartered offers a range of banking services in 59 markets. We are increasingly using automated, data-driven methods, to enhance both our internal processes and our client facing activities. We deploy such methods for activities such as customer engagement; customer onboarding; AML and fraud detection; management reporting and talent acquisition.

The existence of extensive regulatory requirements within the financial services sector, contribute to ensuring the safety and soundness of firms, financial markets, and consumers. Therefore, the Financial Services sector is particularly well placed to respond to challenges that AI use may pose and already have in place a number of tools to manage risks in relation to AI use. At Standard Chartered, we have developed our Responsible AI Standards which are benchmarked against existing AI regulatory standards including the MAS FEAT Principles and the HKMA High Level Principles of AI. Our internal Standards enforce principles such as accountability, explainability, fairness, transparency and auditability, and we have comprehensive governance which oversees our use of AI.

We believe AI requires an adaptative regulatory structure which can respond to the technology as it evolves. Therefore, a policy approach based on outcomes rather than focusing on a particular technology or application of a technology would seem appropriate. We would like to make the following specific comments, for your consideration.

- **Definition of AI:** Article 3 defines an "AI system" according to the techniques that it uses. This definition at face value – which includes "statistical approaches" - would



result in even a simple linear regression model meeting this definition and having to be subject to the requirements within the Regulation. This seems disproportionately burdensome for the level of risk posed by such techniques. We suggest greater articulation and nuance in relation to this definition which would result in a more risk-based, proportionate regulatory scope. We believe the OECD or the Commission's High Level Expert Group (HLEG) definition of AI which is more abstract and does not depend on the techniques used to define AI, offers an alternative approach. This definition could be enhanced with reference to (i) non-deterministic behaviour and (ii) a lack of direct visibility into causation of outcomes. It is this latter aspect that introduces risk and the element which we believe warrants particular attention and potentially standalone regulation.

In the absence of a comprehensive amendment to the proposed definition within the Regulation, we suggest the text would read clearer if "high-risk AI systems" were systematically replaced by the term "high-risk uses (of AI systems)". We believe this is better suited to refer to what is covered by Annex 3 – a set of intended uses. Likewise, the terms "unacceptable-risk AI systems"; "low-risk AI systems" and "minimal-risk AI systems" could be replaced with "unacceptable-risk AI uses (of AI systems)"; "low-risk AI uses (of AI systems)"; and "minimal-risk AI uses (of AI systems)".

- **Extraterritorial application:** We appreciate that an extra-territorial approach is intended and that the AI Regulation as proposed will apply to (i) providers placing on the market or putting into service AI systems in the EU; (ii) users of AI systems located in the EU; and (iii) providers and users of AI systems that are located outside the EU, where the output is used in the EU. We would welcome clarity on how scenarios such as (i) hosting an AI application on a Cloud Service Provider in the EU, but using it outside the EU without impacting EU customers, or (ii) buying an AI product developed in the EU but using it solely with non-EU clients, is captured by the proposed Regulation. We suggest that the definition of "user" and "putting into service" could be sharpened to clarify the expectations in such a scenario, or if such scenarios are meant to be outside of scope, an exemption to that effect be explicitly included.
- **Potential regulatory duplication:** We observe that AI is largely reshaping the delivery of *existing* services. AI is used as a tool to support human judgement, rather than replace it. To that end, certain activities within scope of the Regulation, such as retail credit decisioning, are already subject to extensive obligations. We would urge that the use of AI itself to support – and arguably, enhance and mature – such activities are not subject to obligations which are duplicative of existing requirements. Rules relating to consumer protection, client communications, third party risk-management and model risk management for example, already exist to ensure that firms' use of AI is not to the detriment of regulators' objectives.

We urge the Commission to consider whether compliance with existing regulatory requirements should be deemed compliance with the requirements under the Proposed Regulation, or at least such existing requirements should be recognised



as a solid foundation from which only supplemental obligations might be required. In the absence of this, there may be a risk that regulators assess Financial Services firms against different, but similar, sets of standards.

There is a further risk of duplication between various participants along a supply chain. Based on current definitions, it is not fully clear when a given player would be a “user” as opposed to a “provider”. This could create confusion, particularly in relation to notification obligations. It is also important to ensure that these definitions are appropriately calibrated to ensure that regulatory loopholes are avoided and that the right incentives are in place for all parties involved. Regulated entities in particular should not be unduly disincentivised from using third party technologies.

- **Data Governance:** We note that Article 10(3) proposes that data used for AI purposes is “*free from errors*”. We do not believe it is realistic to expect data to not contain any errors, and such an unattainable standard may have a detrimental impact on innovation. We strongly believe that this should be replaced with a requirement for firms to take *appropriate steps to identify the risk of errors and mitigate as appropriate*. This is particularly important given the heaviest fines are for non-compliance with the data governance requirements.
- **International collaboration and engagement:** We appreciate the Commission’s endeavours in pioneering a legally binding regulation on AI. We urge the Commission to continue to partake in the development of international standards and principles on the use of AI with international bodies. This is particularly important given the extra-territorial application of the proposed Regulation.

In particular, we suggest the Commission should look to international best practice, for example the Monetary Authority of Singapore’s Veritas Consortium, which brings together industry practitioners with the primary financial services regulator to develop practical, proportionate and implementable Standards.

We would be very pleased to discuss our views in further detail.

Yours Sincerely

Pier Luigi Culazzo
Group Chief Data Officer