



Frankfurt,
6 August 2021

BVI¹ position on the Commission's proposal laying down harmonised rules on artificial intelligence

BVI welcomes the opportunity to provide its views on the European Commission's proposal laying down harmonised rules on artificial intelligence.

The use of artificial intelligence (AI) and machine learning (ML) in asset management bears great potential. An increasing degree of automation of processes and interfaces has been common practice in the asset management industry for decades and is described with the keywords 'business process automation' (BPA) or 'robotic process automation' (RPA). RPA aims to automate even more complex process steps along the value chain in the asset management industry. An example of this would be a standardised online client check and initial advice in the securities business, possibly using language programmes. The use of AI is a major issue in the financial sector, as these technologies will bring about a profound change in society and the economy. AI goes beyond BPA and RPA by combining the use of large or increasingly available, but often unstructured and internal and/or external data sets with the improved possibilities for using these data. Through a combination of analytics and mass available data, new insights are to be gained that would not be possible with traditional research methods. The German supervisory authority BaFin was one of the first supervisors to analyse the challenges and implications for supervision and regulation of financial services in its report 'Big Data meets artificial intelligence'. BaFin concludes that big data and AI bring about a profound change and enable innovation, successful implementations can spread rapidly, and supervision and regulation must address innovative developments early. Thus, we welcome the European Commission's proposal on harmonised rules on artificial intelligence to establish a principal-based regulatory framework in the EU.

Asset management will be significantly influenced by improved availability of data, algorithms, digitalisation of assets, new processes in custody and settlement, and reporting. Quality data is a prerequisite for the provision of any service along the entire value chain in asset management, from research, portfolio and risk management, trading to clearing and settlement. Secure access to and availability of high-quality financial market data at all times is also indispensable in fund distribution or in regulatory and reporting. In the future, more and more non-traditional data sources ("big data") will be integrated into the asset managers' business operations.

Financial market data are often offered by natural monopolies and oligopolies such as stock exchanges and companies with a dominant market position. These have great market power and can set one-sided conditions, since the users on the asset manager side rely on such data and any disruption would jeopardise their business. The use of financial market data has therefore for years been associated with regular, sometimes massive price increases and the conclusion of increasingly complex data licences

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



for the asset managers. With increasing cost pressure and the change of business models to more quantitative or passive investment, data costs are becoming more and more a success factor for many asset managers. The BVI advocates a revision of the existing EU regulations for the provision and use of financial market data on appropriate commercial terms, e.g. in MiFID/MiFIR, Credit Rating Agencies Regulation (CRAR), and an implementation of data user effectively protective regulations, e.g. in the Benchmark Regulation and the various EU regulations on regulatory reporting. Data charges should be determined on the basis of the marginal cost of producing and disseminating the data.

Important aspects to be considered in relation to the supervision and regulation of AI

A key question related to AI models from the supervisory perspective is how they can be integrated/classified into existing regulatory frameworks. In our view, this depends on the businesses' ability to continue operating without accountability or intermediaries. This is evident in the area of blockchain technology for instance. The application of technologies based on decentralised computing structures pushes regulation to its limits. Thus, supervisors face the challenge of how to regulate companies whose business models are based on technologies that cannot be regulated. In this case, the focus should not be on the classification in existing regulatory frameworks but rather on the business models and the technologies used.

In general, we believe the classification of AI applications should not be based on the function as such but rather on the share of the value chain within the company. A chatbot, for example, could be highly critical if it is used as the primary medium for customer contact and for concluding contracts. Other areas of application of a chatbot could in turn be completely uncritical. We therefore welcome the proportionality principle in the Commission's proposal.

We recommend that additional requirements be carefully examined and internationally coordinated as we see the risk that different regions will be regulated to varying degrees. This means that a locational disadvantage could arise in highly regulated countries (keyword "regulatory arbitrage"). Furthermore, this could hamper innovation if regulation is applied to different degrees. With Luxembourg and Singapore, financial centres are already emerging that are very open to new technologies and provide a corresponding infrastructure (also in terms of regulation). A race should be avoided here.

Another aspect relates to documentation. We support the idea that there should be documentation of the algorithms. This is necessary for further development of the technology but should already be sufficiently regulated. AI applications sometimes make decisions based on several million data points, i.e. although the original algorithm can be documented, the characteristics depend on the data used to train the algorithm. A simple rule-based description of which decisions are made for which reason is then no longer possible (this is also obvious, if this were possible, a simple rule-based system could be used).

Promotion of open global standards

For the success of big data and AI applications in the market and with consumers, there is a need for regulators to promote the development and application of open global standards that can be freely used by all market participants:

1. AI is based on standards. AI needs at least standards for data structure, model interpretation, identification of the AI application and AI governance.



2. AI and big data: leading big data and AI applications require large, parallel computer systems to process large data sets to identify patterns and correlations. However, the data sets required for self-learning systems – including those from the public sector – are often not available to the public or only at unreasonable conditions. The open data / eGovernment initiatives in Germany, the EU, but also the USA are to be supported in order to enable the development of a big data and AI market.

3. Big data and AI applications are reliant on other capabilities such as speech recognition, universal translation systems and text analysis tools. In addition to voice, photo, image and video streaming sources of all kinds are other high-volume data sources that applications must be able to process. However, the best algorithm, e.g. for investment advice between (bank) sales and the customer/consumer, cannot be offered if speech recognition is necessarily performed by "Alexa", "Siri" or similar proprietary applications. In contrast to the Internet with open http/html standards that can be freely used by all market participants, the communication channels mentioned are legally and practically sealed off and can contribute to the formation of monopolies by predominantly US and Asian providers. BDAI must therefore not be seen as the application of various scientific findings but should be regarded as a science in its own right, which must be based on global standards that are open and freely usable for all market participants.