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EBF response to the European Commission Inception Impact Assessment on a *Proposal for a legal act of the European Parliament and the Council laying down requirements for Artificial Intelligence*

The European Banking Federation (EBF) welcomes the opportunity to respond to the European Commission's Consultation on its Inception Impact Assessment (IIA) *on a Proposal for a legal act of the European Parliament and the Council laying down requirements for Artificial Intelligence (AI).*

The responses to the different elements in the IIA complement the EBF's response to the European Commission's Consultation on the White Paper on Artificial Intelligence.

1. Context and Problem Definition

EBF members agree that AI can contribute to a wide array of economic and societal benefits across the entire spectrum of industries. For the European banking sector, AI provides significant opportunities ranging from enhancing customer experience, improving financial inclusion, cybersecurity, and consumer protection, to strengthening risk management and process efficiency.

To realize these benefits, **the EU regulatory environment needs to be fit for the use of AI and enable innovation, while providing legal certainty and maintaining a strong level of consumer protection.** This is essential for AI development and uptake across industries, including in the financial sector. It is also crucial for the competitiveness of the EU globally, something which the "context and problem definition" section in the IIA does not mention.

2. Objectives and Policy Options

Before considering the different Policy Options proposed in the IIA, we would like to emphasize **the need to avoid any duplication of requirements or conflicting requirements for areas that are already regulated in order to prevent additional burdens and legal uncertainties.** For example, the General Data Protection Regulation (GDPR) and Law Enforcement Directive already provide strong privacy and data protection regulation, which should not be duplicated.

On the policy options specifically, we are of the opinion that **new, AI specific legislation is not required** and believe it is key to take into account the consequences that any rules could have for the competitiveness of European companies globally. **This is particularly**

the case for prescriptive, wider regulation, as proposed in Option 3 (sub-option three), which could hamper the adoption of AI in Europe by companies of all sizes.

As a general principle, **we believe that regulation should remain technology neutral**. Legal requirements or ethical principles should not apply to the underlying technology but to its application.

We would instead recommend **a policy option centred on guidance** developed by competent authorities on how to apply existing requirements to AI use cases, which could help firms to effectively apply their obligations under different regulatory regimes**. This should be a collaborative process,** with competent authorities working with each other, with input from industry and civil society. In this view, **Option 1 would be preferable.**

Any guidelines should take a technology neutral approach and not be overly prescriptive, as this would be in friction with the rapidly evolving nature of AI-related technologies.

However, EBF members also have some concerns on Option 1, particularly the lack of detail on what the proposed self-reporting/assessment on voluntary compliance would entail, and we would welcome clarification on them.

On **Option 2, an EU legislative instrument setting up a voluntary labelling scheme**, EBF members have significant concerns. A "trustworthy" label for non-high risk applications implies that any application that does not carry the label is deemed "not trustworthy". By asserting this kind of social value, the label can no longer be considered truly voluntary. **This runs counter to a risk-based framework as it would implicitly increase the requirements placed upon applications that are not high-risk, due to market discipline pressures.**

We would also disagree with the assertion in the IIA that voluntary labelling would likely entail limited costs as there are many elements to consider. **Labelling schemes are difficult to set up, and are likely to complicate and prolong the development and implementation of AI systems** (which are often scalable or self-learning building blocks, or encapsulated into larger systems in the form of internal or external components that are difficult to isolate), which could therefore imply additional costs. The supply chain perspective on a labelling scheme is also missing from the IIA (and in the different policy options overall, see below). Would organisations service consumers that are placed later on the chain have to inherit all the high risks resulted from service providers?

Finally, the IIA states that **"*the label would function as an indication to the market that the labelled AI application is trustworthy*". There are three concerns with this**:

a) As the label would be voluntary, what would be the ability of the consumer to recognize whether, if a particular product or service does not have a label, the company *did not apply for it* or whether its absence means that the product/service *does not comply with the requirements* of the label scheme.

b) Subscribing to a scheme that would only show trustworthy AI, regardless of the other technologies that may be in use, could be misleading. The consumer needs to have access to trustworthy products and services as a whole, regardless of the technologies behind it.

c) Subscribing to a labelling scheme of a trustworthy AI *application* is something

different that the trustworthy *output* of an AI application. A label on a trustworthy AI application itself does not need to cohere with the trustworthiness of the generated output. For the user of a service, this distinction might not be understandable.

If the Commission proceeds with horizontal AI regulation and takes **option 3,** as described in the AI White Paper, we would generally support the proposed approach to **focus only on high risk AI applications (Sub-option b).** In this case, the Commission **should develop clear and objective criteria for high-risk applications** ensuring that **only those applications that could cause serious harm to citizens (e.g. by putting their lives at risk) are captured**. These potential new requirements should be consistently applied only to use cases that pose the same level of high risk regardless of the type of provider, and not be extended to other cases with significantly lower risks.

We believe that **in the financial sector, current regulation (both sector specific regulation as well as cross-sectorial regulation such as the GDPR) and the internal processes it requires is already sufficient to guarantee consumer protection, risk management, financial stability and data protection, in all services provided to customer, including those applications that could include the use of AI**. Best practices from the financial services sector could serve as inspiration for creating or adapting the legal framework to address AI-specific risks.

Finally, several EBF members would like to point out that the Objectives and Policy Options section does not include the aspect of the responsibility of third party providers (TPPs). When AI is provided by a TPP and is then integrated into a service/product provided by the final service provider, only the TPP will have the full knowledge of all the specific features of the AI at any particular time, not the final service provider. This makes the supply chain perspective an important one and we recommend that it is included in the Commission's assessment of policy options.

In addition, some providers and solutions have a predominant influence on the market; a failure in these cases could cause wider disruption and needs to be considered.

3. Definition of AI

The IIA states that "*Another core question **relates to the scope of the initiative, notably how AI should be defined** (narrowly or broadly) (e.g. machine learning, deep neural networks, symbolic reasoning, expert systems, automated decision-making).*"

EBF members agree with the European Commission that the question of how to define AI within any future initiative is a crucial one. We would like to stress that **any definition of AI must be future-proof and avoid being overly broad in a way that could inadvertently include technologies that are not AI and do not pose the same risks**. It should be **clear, narrow, and specific**, as well as future-proofed, for example by focusing on the technology's adaptive qualities. Using a definition such as the one proposed by the AI High-Level Expert Group (HLEG), risks that any system, including general automation processes, is subject to AI specific rules. In terms of the risks, it is also important to keep in mind that it would not be fair to have a bad human-made-rule based system not treated as risky, but a well-validated data-driven ML-system as high-risk.

In addition, it seems essential, for a good understanding of the issues related to AI, to exclude from the scope of any possible, future Regulation any reference, even implicit, to the emergence of a "strong artificial intelligence" or "artificial consciousness". It follows that the AI to which we are referring can only be considered as a *technical object*, therefore not having in any way the character of an *autonomous subject*.

Regarding the different policy options in the IIA, if Policy Option 3, sub-option b is pursued by the Commission, the definition should not bring into scope non-high risk applications.

We welcome the opportunity to discuss in more detail, ahead of the issuance of potential legislation, a potential definition of AI that focuses on its key characteristics and is fit for regulatory purposes, i.e. easily understood, unambiguous and succinct.

4. Governance

On the proposal to create a framework for the cooperation of national competent authorities, we are concerned that this may not fully address the risk of fragmentation of supervisory and regulatory practices. If such a structure is created, we recommend that encouraging information sharing and cooperation on AI issues by different sectoral authorities is included as part of the mandate. **This would help to avoid situations were standards for similar activities are regulated more rigorously in some sectors than in others.** Especially important is the collaboration between Data Protection Authorities (DPAs) and sectoral authorities in order to avoid overlapping of contradictory practices.

It would also be important to help authorities in this network increase their knowledge of AI, to better understand the technology and gain insight on how companies are using AI on specific applications.

5. Preliminary assessment of expected outcomes

In regard to likely environment impacts, we would encourage the Commission to continue exploring the environmental considerations with regards to AI.

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About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

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