AFME submission to the European Commission on key aspects of the AI Act where the financial industry seeks clarifications and guidance

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Introduction

Many financial institutions have been integrating artificial intelligence (AI) and machine learning into their operations across a wide range of business functions and use cases for many years, and consequently have developed governance processes to oversee, manage and monitor their application of AI, in accordance with their existing regulatory obligations.

Over the years, the Association for Financial Markets in Europe (AFME) has been discussing with its members the challenges and opportunities linked to the increasing use of AI and we have regularly published reports on its adoption in capital markets.

Ensuring legal certainty on the implementation of the AI Act

AFME is committed to fostering a regulatory environment that supports innovation while ensuring compliance with the European Union's legislative framework. Regarding the recently enacted EU AI Act, our members have encountered challenges in interpreting and implementing some of its provisions effectively. We appreciate the European Commission's pathbreaking efforts in drafting this comprehensive legislation, which aims to regulate artificial intelligence across the EU. We also appreciate that the AI Act must apply to a broad range of scenarios, must stand the test of time, and will be supported by a variety of standards, guidance and codes of practice.

However, time and legal certainty are both of the essence in relation to AI. To ensure that our members can meaningfully comply with the AI Act and continue to leverage its potential successfully and responsibly, we seek urgent clarification and guidance on several key aspects of the legislation.

We urge the Commission to provide further specificity in relation to the scope of 'AI', particularly in relation to clarifying the definition of "autonomy".

We also request a more precise definition of "substantial modification" and examples of its application, especially in the context of high-risk AI systems. Additionally, we ask for clarity on the recalibration timelines for compute thresholds and other aspects of what qualifies as a general-purpose AI model. Lastly, we emphasise the need for urgent guidance on the scope of Annex III concerning high-risk AI systems and the timelines for conducting Fundamental Rights Impact Assessments.

Acknowledging that guidance is expected to be issued in several critical areas, as set out in the AI Act itself, our members would benefit from updates on the timelines for issuing guidance on AI systems inventories, GPAI models, and the human oversight provisions.

We trust that the European Commission will consider these requests for clarification and guidance, which are crucial for ensuring compliance and fostering a robust AI ecosystem in the EU. We look forward to continued collaboration with the Commission to address these concerns and support the

responsible development and deployment of AI technologies. The detailed questions our members would be grateful for clarity on are set out below:

1. **The scope of what qualifies as an 'AI system' needs further refining and clarification.**

   Please clarify the definitions of "autonomy" and particularly the term, "varying levels of autonomy". In our members' view, any AI model that relies entirely on human input for its design and training (e.g. to preprocess data, select features and interpret results), and which does not have capacity to take decisions independently which directly influence the final user, should not be considered autonomous, and therefore should not be considered an AI system.

2. **Clarity is required on the threshold between fine-tuning models and 'substantial modification', and the scope of substantial modification more broadly.**

   The definition of "substantial modification" as stated in Article 25(1)(b) of the AI Act, that could lead to an operator being deemed a provider, is unclear. Recital 128 refers to substantial modification as being in line with established EU law, which we read as a broad test to refer to a change to an AI system after its placing on the market or putting into service, which (i) is not foreseen or planned in the initial conformity assessment and affects compliance of the AI system with the requirements in Chapter III, Section 2, or (ii) results in a modification to the intended purpose.

   Further metrics and examples of the most commonly applicable use cases, particularly in reference to High-Risk AI Systems and minor changes e.g. reformatting output, should be provided. Our members would appreciate specific clarity from the Commission that, as is commonly understood in relation to existing EU legislation, the substantial modification of an AI system would have to go to the heart of its purpose, as opposed to changes such as refinements and fine tuning.

3. **Clarifications in relation to General Purpose AI models.**

   Recital 97 clarifies that (i) when a provider of a general-purpose AI model incorporates their model into an AI system that is then made available on the market or put into service, the model is considered to be "placed on the market." In such cases, the regulatory obligations for both the model and the AI system apply; and (ii) the obligations for models do not apply if the model is used solely for internal processes that are not essential for providing a product or service to third parties, and where the rights of natural persons are not affected. This exemption recognises that internal uses, which do not impact external stakeholders or infringe on individual rights, do not necessitate the same level of regulatory oversight. However, it is unclear whether a deployer would be designated as a provider if a firm develops GPAI based on systemic GPAI registered in the EU GPAI Register, which should be exempt for the same reasoning as above.

   Additionally, our members would appreciate additional clarity on the timeline on which the metrics, such as the 10^25 FLOPS, for compute thresholds designating general purpose AI models as those with systemic risk will be recalibrated and updated.

4. **Clarity on what falls into scope of Annex III on High-risk AI systems.**
   Clarity on what examples fall into scope of Annex III on High-risk AI systems is crucially needed. We understand that the target for publishing Guidance in this area is currently "no later" than 2 February 2026, however, given the length of time required to assess systems and implement compliance programs, we would appreciate early clarity on timelines and proposed content that may impact our members.

5. **Timelines for issuing guidance**

   As a general comment, it should be considered that many requirements under the AI act are entirely new for operators under the AI Act and, therefore, guidance on how to comply with it is needed well in advance, in order for operators to be able to implement the supporting internal procedures and incorporate it in their internal governance frameworks. Hence, we request the Commission to work towards ensuring guidance is provided with adequate time for operators to consult, feedback, test and implement.

   Please also clarify whether, in the absence of, or in the event of delays to certain guidance (e.g. fundamental rights impact assessments), the Commission and regulators under the AI Act would support formats developed proactively by in-scope operators.

Thank you for your consideration of these topics and we look forward to continuing to work with you on behalf of our members to ensure effective implementation of the AI Act.

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