

Consultation Response

DRAFT GUIDANCE ARTICLE 73 AI ACT- INCIDENT REPORTING (HIGH-RISK AI SYSTEMS)

7 November 2025

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **DRAFT GUIDANCE ARTICLE 73 AI ACT- INCIDENT REPORTING (HIGH-RISK AI SYSTEMS)**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

This consultation response was submitted via the Commission's online response form, which was a mixture of multiple choice and character-limited free text questions. AFME only responded to specific questions within the consultation, as below. To give context to our responses, extracts of the consultation paper are provided in square brackets.

Section 1. Questions in relation to relevant definitions as provided by the AI Act

Question 1. Do you agree with the examples provided by the guidance [on incidents and malfunctions]?

No.

It would be helpful to clarify what does not qualify as a reportable "incident" by virtue of the non-duplicity principle for those already reported within other regimes.

Question 5. Do you agree with the examples provided by the guidance [on "serious and irreversible disruption of the management or operation of critical infrastructure"]?

Yes.

Question 7. Do you agree with the examples provided by the guidance [on what constitutes irreversible]?

Yes.

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Question 8. Do you consider it necessary to include further examples in the list?

No.

Question 9. Do you agree with the examples provided by the guidance [on the infringement of obligations under Union law intended to protect fundamental rights]?

No.

The absence of an explicit “serious” qualifier creates ambiguity. Para 26 refers to infringements “on a large scale”, whereas elsewhere the scope seems to include single incidents. Clarity should be provided through objective criteria on what is considered a large-scale impact (as an example, in the case of property harm, the guidelines mention exceeding 5% of purchase price in paragraph 27). In addition, it is currently unclear whether the large-scale reporting also applies to deployers.

Question 10. Provide one or several examples for an infringement that significantly interferes with Charter protected rights on a large scale.

It is essential that the draft guidelines carefully consider and evaluate existing regulatory frameworks, including employment law. Situations classified as “incidents” under the AI Act may already fall within the scope of these frameworks, even if they do not use the term “incident”. For example, the HR use case raise questions about how reporting obligations would interact with provisions under anti-discrimination and employment law, at EU and national level, as well as Article 22 (automated decision making) under the GDPR. The guidelines should avoid creating conflicts or introducing, indirectly, amendments to existing legislation by indirect means.

Question 16. Do you agree with the examples provided by the guidance [on indirect causation]?

No

The combination of “likely to be causal” and “indirect causality” without quantitative criteria is confusing – we request clarification.

Question 17. Do you consider it necessary to include further examples in the list?

No

Question 20. Do you agree with the indications provided by the guidance [the provider “shall not perform any investigation which involves altering the AI system concerned in a way which may affect any subsequent evaluation of the causes of the incident prior to informing the competent authorities of such action]?

No, we do not agree.

Incident response and management would generally involve software updates, hardware replacements, or configuration changes. We suggest that the guidance should be clarified to the effect that it is only action which “may **significantly** affect” an investigation which is prohibited, in order that the response to an incident is not hampered.

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Question 22. Do you agree with the examples provided by the guidance [on cooperation with authorities]?

No.

Cooperation with the authorities should mean maintaining open communication, timely sharing of information about the investigation and corrective measures.

Question 24. Provide factors to determine when cooperation with the notified body is relevant.

We support the proviso of “within a reasonable time”, and do not seek further stipulation.

Question 25. Do you agree with the example provided by the guidance [regarding that, where deployers have identified a serious incident, they shall immediately inform the provider, and then the importer or distributor as well as the relevant market authorities (Article 26(5) AI Act). Immediately should be understood as within 24 hours. If the deployer is not able to reach the provider, the provider obligations apply mutatis mutandis to the deployer]?

No, we do not agree.

While Article 73(2) gives providers 15 days to report, the Guidance gives deployers only 24 hours. It is unclear why different timelines apply to the two. Further guidance is also requested on scenarios in which the deployer must assume the provider’s reporting obligation, and clarity that the developer can rely on exemptions in the case of equivalent sectoral reports e.g. DORA. In addition, we suggest that a report by the provider should render unnecessary a report by the deployer.

Section 2. Question in relation to practical examples (use cases)

Question 27. Further use cases [of reportable incidents] for clarification in the guidance

<i>Provide the paragraph(s) in the guidance the use case relates to (if applicable).</i>	<i>Describe your use case.</i>	<i>Describe why you consider this use case helpful.</i>
2.6. Infringements of obligations under Union law intended to protect fundamental rights	AI recruiting system based on a third-party GPAI model: - Cause: Following an update to the GPAI model, a new bias is introduced, causing the system to repeatedly exclude or negatively assess candidates belonging to a specific group. - Impact: The incident may lead to violations of fundamental rights, particularly the principles of non-discrimination and equality.	This highlights the overlap with labour and employment law, which differs across Member States. This would result in duplication of regulatory burden, and the delegated act should confirm if that is the intention of DG-CONNECT.
2.6. Infringements of obligations under Union law intended to protect fundamental rights	AI system for credit scoring connected to internal data flows:	The incident again highlights how incidents which impact fundamental rights will typically overlap with personal data

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	<p>- Cause: Due to a malfunction in the system's input data streams, information about a group of clients becomes incomplete or inaccurate, for example, clients from a specific geographic area.</p> <p>- Impact: The system repeatedly generates incorrect credit risk assessments for that group, affecting equal treatment and potentially constituting a violation of fundamental rights.</p>	<p>protection requirements and so entail reporting obligations under the GDPR. DG-CONNECT should confirm via the use cases if it is requiring duplicate reports. (See Q28 for AFME's position on extending the exemption over duplicate reports).</p>
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Section 3. Questions on horizontal aspects of the high-risk classification

Question 28: Equivalence of Other Incident Reporting Obligations

<i>Legislation that requires to report incidents that could involve a high-risk system pursuant to Annex III of the AI Act</i>	<i>Do you consider this obligation equivalent to the incident reporting obligation under Art. 73 AI Act, thus reducing the obligation to report to infringements on fundamental rights?</i>	<i>Motivate your answer.</i>
Art. 19 DORA – Regulation (EU) 2022/2554	Always	Due to existing holistic reporting requirements under DORA, the CRA and GDPR, we are unable to identify an incident that would fall outside these regimes and would therefore trigger reporting under the AI Act, bar those relating to fundamental rights, which would be duplicate reports in light of GDPR obligations.
Art. 33 GDPR – Regulation (EU) 2016/679	Always	<p>Due to existing holistic reporting requirements under DORA, the CRA and GDPR, we are unable to identify an incident that would fall outside these regimes and would therefore trigger reporting under the AI Act, bar those relating to fundamental rights, which would be duplicate reports in light of GDPR obligations.</p> <p>We recommend the exemption for incidents covered by equivalent reporting regimes would extend to all eventualities, including breaches to</p>

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		fundamental rights which are covered by GDPR
Art. 14 CRA – Regulation (EU) 2024/2847	Always	Due to existing holistic reporting requirements under DORA, the CRA and GDPR, we are unable to identify an incident that would fall outside these regimes and would therefore trigger reporting under the AI Act, bar those relating to fundamental rights, which would be duplicate reports in light of GDPR obligations.

Question 35. Provide examples of technical measures or additional guidance initiatives that you believe might be helpful for you or the organisation that you represent in addressing concurrent incident reporting obligations under Union legislative instruments

- We support exempting incidents already reportable under equivalent regimes, on a “report once” principle. We request that upcoming guidance on this interplay be fast tracked.
- Further, Para 61 needs amended: “...*insofar AI systems falling under Annex III Point 5 (b) and (c) are considered **ICT systems deployed by financial entities**....”*
- Any future EU incident reporting hub should absorb reports due under the AI Act, with financial authorities to facilitate onward transfers of duplicate DORA reports.

Section 5. Question in relation to the incident reporting template.

Question 38

Section	Need for amendments or deletions	Provide the exact section(s) of the template you are referring to (e.g. 1.3.1.a).	Explain your proposal for amendment
2	Yes		<p>The template should include additional specific fields to enhance precision, consistency and traceability across reporting frameworks. In particular, it should capture:</p> <ul style="list-style-type: none"> • Categories of data involved (including Articles 9 and 10 GDPR); • Legal basis for processing; • Whether <i>automated decision-making</i> occurred (Article 22 GDPR); • Existence of a <i>Data Protection Impact Assessment (DPIA)</i> and the date of its latest review; • Indication of <i>joint controllership</i> or <i>processor relationship</i>;

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			<ul style="list-style-type: none"> • <i>Cross-reporting identifiers</i> (e.g. GDPR Article 33 notification ID) to enable traceability across regimes.
3	Yes		It should be possible to include supporting evidence, such as logs, model and dataset versions, or other technical documentation in a secure way.

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