European Financial Services Round Table

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EFR PAPER ON FRAMING AI TO FOSTER ITS USE IN FINANCIAL SERVICES

Opportunities and challenges for the industry

Artificial Intelligence (AI) has now become a real-world application technology and its use in financial services is growing. Recent surveys and reports by the UK FCA[1] and the EBA[2] show that the majority of financial services firms in the UK and in Europe are using AI, and that more than half have already deployed Machine Learning. This technology shows huge potential to enhance customer experience, to provide the most suitable products and services to clients, to increase the efficiency of internal processes, as well as to strengthen security and risk management.

However, despite these promising new opportunities, AI systems also introduce new and evolving risks which explain why European authorities are concerned by the use of AI for automated decision making. For instance, the *EDPB guidelines on data protection by design and by default* are still reluctant about a bank relying solely on the AI to decide whether to grant loans[3]. Concerns mostly arise from the challenge of **interpreting and explaining "black box" algorithms** as well as from the difficulty to prove that algorithmic decision-making processes are **fair and non-discriminant**. Finally, the **robustness and safety** of AI systems remains a critical issue. As such, regulators and auditors are increasingly engaging in discussions on financial institutions' ability to regulate AI technologies and manage associated risks.

Divergent regulatory approaches

Over the past few years, the European Union has been very active in the field of governance to the use of AI. In 2019, this led to the publication by the European Commission's expert group of AI ethics guidelines (April) and policy and investment recommendations (June) to boost AI adoption in the EU. Furthermore, the European Commission has published on 19 February 2020 the White Paper on AI[4] and its related consultation. The ethics guidelines – of a voluntary nature – aim at developing "trustworthy AI" in Europe by ensuring that the technology (i) complies with applicable laws and regulations, (ii) observes ethical principles and values, and (iii) is sufficiently robust to avoid (un)intentional harm. By presenting AI as one of its first 100-day priorities, **the new Commission has confirmed its ambition to promote a "human centric" and "ethical" approach of this technology**.

On the contrary, China and the US have opted for **a light-touch regulatory approach**. The risk is that companies based in regions where the regulatory burden is higher can be put at a disadvantage. Therefore, when regulating, authorities should consider the global competitive environment in which companies operate.

Currently, when using AI, financial services firms face two main regulatory challenges. First, AI technology is often offered as a service, through the cloud, by third-party providers (in most cases BigTechs) and is therefore **subject to outsourcing regulation**. Second, AI adoption faces **regulatory issues** which can stem from legal uncertainty due to vague requirements on certain issues (e.g. unfair discrimination or explainability), as well as from either **cross-sectoral or financial regulations**. While aiming at protecting citizens' rights or ensuring financial stability, non-discrimination laws, General Data Protection Regulation (GDPR), CRD/CRR or the MCD[5] may indeed pose challenges and limit the adoption of technologies such as AI by setting too vague or too rigid requirements, for instance by limiting the ability of firms to collect data or use them in innovative AI models.

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[1] https://www.fca.org.uk/publication/research/research-note-on-machine-learning-in-uk-financial-services.pdf

[2] EFR report identifying key challenges in the roll out of Big Data and Advance Analytics (BD&AA), including Machine Learning dated 13 January 2020

[3] https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_201904_dataprotection_by_design_and_by_default.pdf - Example 1 pp 21-22

[4] White Paper on Artificial Intelligence – A European approach to excellence and trust dated 19 February 2020

[5] Mortgage Credit Directive

EFR policy recommendations

The EFR supports the "human centric" approach chosen by the EU to promote the use of AI while addressing the top concerns around the technology. In order to find the right framework that protects European values whilst encouraging innovation, the EFR recommends EU authorities to:

(1) Adapt the regulatory framework to foster the use of AI:

- We see neither the need for a new AI-specific regulation nor for the creation of a new supervisor body focusing on AI, since the existing EU regulatory and supervisory framework can already serve as a strong foundation. Besides, cross-sectoral regulations (e.g. GDPR), **the financial sector already has a comprehensive regulatory and supervisory framework** to ensure an adequate risk management by financial institutions (e.g. within Solvency II prudential framework for insurance) and high consumer protection levels while also ensuring financial stability (e.g. Consumer Credit and Mortgage Credit Directives, MiFID 2, etc.). Moreover, we support the fact that the White Paper on AI does not regard financial services among the "High-Risk Artificial Intelligence Applications" that should be subject to specific requirements and ex ante assessments.
- Therefore, the EU regulatory framework should focus on providing guidance regarding safety, explainability, fairness and accountability of AI systems. Such **a principle-based approach** would provide enough leeway for companies to determine the most appropriate measures and ways to comply with those standards. If not, companies subject to a higher compliance burden, such as in the EU, will be put at a disadvantage.
- A key focus must be on **facilitating access to data and removing barriers to the use and development of AI**. Moreover, while protecting consumers' rights, **there is a need to encourage innovation** through the development of regulatory sandboxes that grant conditional exemptions on certain requirements which could otherwise limit the ability of financial firms to innovate or experiment with new techniques. This would allow incumbents to benefit from the same innovation facilitators as other market players.

(2) Provide certainty on the expectations of supervisors:

- **Supervisors must understand all the technology's potential to provide guidance regarding the application of AI principles** (e.g. transparency and fairness), both to clarify supervisory expectations as well as to avoid different interpretations. For instance, deciding what unfair discrimination is, and checking when it occurs, without being able to neither collect nor use sensitive data for that checking, is challenging for financial firms. That guidance should be applied in a **differentiated risk-based approach** for each use case and **remain technology-neutral**.
- Finally, **a proper allocation of liabilities among all parties** intervening in the process (developers, users, etc.) is needed to avoid losing trust in case of a failure in a process reliant on AI.

(3) Ensure coordination between Member States:

- Due to the cross-sectorial and global nature of AI technology, the coordination between Member States' efforts and different competent authorities (financial, consumer protection, data protection) is necessary to **(i) avoid overlaps and contradictions, (ii) help maximise the outcome of any intervention and (iii) ensure equal competition among firms competing in the same market, regardless of their legal form and the jurisdiction where they are based.**

(4) Promote the European approach on AI worldwide:

- The EU should promote and **participate in the international dialogue on AI** at the level of the G20, the FSB, the BCBS and the IAIS. More precisely, the EU should contribute to the development of globally aligned principle-based frameworks, to avoid isolated European approaches to AI that would increase regulatory asymmetries between jurisdictions and result in unequal competition.
- Unequal competition is also created if **European companies do not have sufficient access to the right talents in a competitive landscape** vis-à-vis companies from other sectors or regions, such as with US companies (e.g. EBA guidelines on remuneration limit opportunities for talent retention).

The European Financial Services Round Table (EFR) was formed in 2001. The Members of EFR are Chairmen and Chief Executive Officers of international banks or insurers with headquarters in Europe. EFR Members believe that a fully integrated EU financial market, a Single Market with consistent rules and requirements, combined with a strong, stable and competitive European financial services industry will lead to increased choice and better value for all users of financial services across the Member States of the European Union. An open and integrated market reflecting the diversity of banking and insurance business models will support investment and growth, expanding the overall soundness and competitiveness of the European economy.

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