Vodafone Group Response
European Commission Roadmap Inception Impact Assessment Proposal for a legal act of the European Parliament and the Council laying down requirements for Artificial Intelligence

Vodafone welcome the opportunity to respond to the European Commission Roadmap Inception Impact Assessment (IIA) on the proposal for a legal act of the European Parliament and council laying down the requirements for AI to operate within the single market. These comments, alongside our full response to the AI white paper consultation falls within the wider plan we have established for supporting Europe through the Coronavirus crisis and helping to rebuild our economies and societies thereafter. In addition to our five point plan to respond to the immediate health crisis, Vodafone has developed a long term package of measures to assist with the recovery from the protracted economic crisis we are entering into.

Adoption of AI and data driven tools is a vital part of this strategy and Vodafone wholeheartedly supports the objective of the European Commission to encourage the development of an ecosystem of excellence and an ecosystem of trust for AI development and adoption in Europe. We consider that increased use of AI and data driven technology is a necessary precondition for establishing a resilient European digital society.

On the key areas of regulation proposed by the Commission to establish a clear and predictable legal framework for AI operating within the single market, Vodafone has the following holds the following high level views:

- **Regulation of high-risk AI**: We broadly support the approach outlined by the Commission to avoid duplication of existing regulatory obligations, and ensure that any new requirements are proportionate and strictly targeted at AI applications that pose a high risk.

- **Voluntary labeling**: We raise particular concerns with the lack of focus given to incentives to develop Trustworthy AI (voluntary labeling, certification, industry codes) and ask for more clarity on how such a labeling scheme would be established and maintained.

- **Product Liability**: we note that the existing EU horizontal and sector-specific legislative framework governing liability has proven to be robust and reliable. Any new requirements should be targeted at providers of high-risk AI applications & must not impose excessive high burdens on industry deploying AI that presents a low risk to EU citizens.

- **Access to data**: we underline the importance of availability of high quality training data for AI, to ensure that European businesses can continue to innovate and succeed in this field, and call for joined up policy making in view of the EU Data Strategy and legislative actions outlined therein.

With regards to the specific policy options outlined in the Roadmap IIA, we agree with the preliminary assessment of the European Commission that the 'baseline scenario' whereby no EU policy change is introduced would have a harmful effect on the integrity of the single market and safety of European citizens and consumers. By failing to intervene, the baseline scenario risks increasing fragmentation and resulting in the development and propagation of untrustworthy and potentially unsafe AI applications that could lead to a significant public backlash and hinder the adoption of transformational AI technologies.

Vodafone considers that are significant advantages to options 1 & 2 (soft-law/non-legislative approach, EU legislative instrument establishing a voluntary labelling scheme) as these would

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help to incentivise industry-led intervention and best practice without overburdening firms or preventing the application of transformative AI technology through over-rigorous ex ante requirements.

These options should also allow for deployment of ex post enforcement mechanisms to ensure that AI applications that fail to meet relevant standards for security, privacy and consumer safety are removed from the market. In particular we think that options 1 & 2 would be optimum in updating existing EU product liability rules to address the challenges posed by AI applications (opacity and complexity of technology ecosystems, lack of sufficient redress possibilities for consumers, uncertainty about attribution of liability between industrial actors).

With regards to option 3 (EU legislative instrument establishing mandatory requirements for certain types of AI applications) Vodafone is of the view that such requirements should only be applicable in situations of severe potential risk. For all AI applications falling below this designation, existing regulation combined with voluntary schemes and EU accredited certification/labelling as outlined under options 1 & 2 would be sufficient.

For a number of narrowly prescribed high risk AI applications, we consider that certain mandatory ex ante requirements could be appropriate (the approach described under option 3.b). We elaborate in our response to the AI white paper the criteria which we believe should be used to determine whether an AI application is deemed to be 'high-risk' and therefore subject to additional regulatory requirements. At a high level, we believe such an assessment should rest on a calculation of the likelihood of harm occurring, the degree of harm to an individual user and the scale of harm (i.e. number of those who could be affected). In addition, the Commission should also consider a number of other normative requirements for additional obligations to bite, for example the intended purpose of the AI application, the risk level present in a given sector, or the market position of the firm developing the AI application.

It follows that this approach should be backed up by EU-wide enforcement mechanisms to ensure compliance with applicable requirements. However we note that a huge amount of regulation exists in this space already, particularly for firms such as ours that are subject to both horizontal and sectoral regulation. Any new enforcement mechanism would need to ensure consistency with and not duplicate existing enforcement bodies and processes, and where possible should take account of and instrumentalise organisational, firm level best practice.

Such an approach will help to embed "organisational accountability" as the key element of the EU approach to AI to foster trust and sustainable AI practices and provide incentives for organisations, in both the public and private sector in the EU, to develop accountable frameworks for AI.