AMSTERDAM INSTITUTE FOR SOCIAL SCIENCE RESEARCH

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Response to White Paper

On Artificial Intelligence – A European approach to excellence and trust

Dear Madam/Sir,

I gladly take the opportunity to react to your White Paper *On Artificial Intelligence – A European approach to excellence and trust* (COM(2020) 65 final). Europe is currently consolidating its approach to governing artificial intelligence (AI), and it is essential that the switches are set in the right direction. This consultation, like those preceding it and those to come, are therefore a welcome chance to offer input for this process.

As a political scientist specialized in the European governance of complex policy fields, I will focus on those aspects of the White Paper that link most immediately to my own expertise. My response concentrates on three related arguments:

1. It is essential to take EU citizen preferences seriously in AI regulation in order to build citizen trust. This is important even when – and at times especially when – citizens' opinions diverge from those of experts. The proposed approach does that insufficiently. It therefore runs the risk of being dismissed as political overreach by policy elites and failing to build the desired and necessary trust.

2. Cumulatively, "low-risk" AI applications can still dent human autonomy significantly. It is not a foregone conclusion that citizens support their unbridled roll-out. The EU governance framework should consider the possibility that EU citizens might oppose the application of AI in particular domains, even when it does not pose risks narrowly conceived. At present, the Commission approach entails limited scope for such debate and deliberation.

3. Divergent societal preferences around the world may require that EU rules diverge from those outside the EU even more than stakeholders realize at

present. In consequence, the EU should be ready to carve out its own regulatory and commercial space with regard to AI if necessary. The White Paper suggests as much already, but it deserves to be spelled out and acknowledged more forcefully. After all, with concerted action, the EU can and should remain its own master in the societal application of AI-related technologies.

I lay out my observations and concerns in the remainder of this letter. Should you have any questions about them or welcome further elaboration, please do not hesitate to contact me.

Yours sincerely,

Prof. Dr. Daniel Mügge

Professor of Political Arithmetic

1. Taking citizen preferences seriously

Commission policy about AI approaches the implications of AI-related technologies either through the lens of opportunities and threats, or it holds them against fundamental rights that may not be infringed. In particular, the White Paper takes as its point of departure the AI-related ethical concerns that have been identified by a range of expert bodies, including the High-Level Expert Group on AI (HLEG) as well as experts in the OECD, in the Council of Europe, ECOSOC, and so on. This expertise is absolutely essential for a meaningful appraisal of AI's potential implications for society, and hence for an ethics-driven AI policy.

At the same time, such a perspective ignores an additional dimension of legitimate AI policy – one that is rooted in what EU citizens do or do not want. AI is certainly complicated, and its applications and implications are food for speculation. It is therefore reasonable to wonder how well-informed citizen opinions could be.

Nevertheless, citizens may have particular preferences not because they do not understand AI correctly, but simply because their value systems diverge from those of (often highly educated) experts. They may be willing to forego particular efficiency gains AI promises if those would entail drastic changes in how they relate to and interact with other people and organizations. For example, some citizens might dislike interacting with

AI-powered computers in healthcare provision rather than with humans. Such a dislike might be much more pronounced than AI experts might find reasonable. But it would still constitute a legitimate preference with respect to AI. Articulating it and seeing it taken seriously would be an essential pillar of citizen trust in EU policy in this domain.

In essence, the EU's approach to AI should heed the possibility that citizens might favour a more limited application of AI in society than experts do. This is important both from the perspective of democratic legitimacy – citizens should have an opportunity to form a view and feed it into policy – and de facto political support for EU AI policy – a potential lack of citizen buy-in based on a feeling of ignored citizen concerns. As the White Paper emphasizes, trustworthiness is essential to the European AI uptake. But as the populist political dynamics of the past years have demonstrated, at least partially, it lies in the eye of the beholder. The Commission could and should do more to encourage open debate about how much AI we want in our societies, and where, and thereby build further essential support for the policies it promulgates. In the long run, such debate will not be a brake on AI technologies but a boost for their sustainable application in Europe.

2. Consider AI's effects on human autonomy more thoroughly

As the AI label implies, many technologies under that heading display seemingly intelligent forms of behaviour. Supplied with adequate data, they can for example predict individuals' preferences and reactions with surprising accuracy. These AI capabilities hold enormous commercial potential for companies using AI as a tool to promote their business.

At the same time, when we are surrounded by machines capable of anticipating our behaviour, our (fragile) human autonomy is serious affected. Unless individuals understand how these technologies operate and how they may be outwitted, they can quickly feel powerless and alienated. Even though the use of AI to power search engines of large online shopping websites, for example, may not be "high risk" as defined in the White Paper, citizens might still experience it as a loss of autonomy and intrusion into their lives once such AI application becomes ubiquitous.

As argued above, different citizens may have different comfort levels with respect to AI, depending not least on their education level and hence individual sense that they still understand what happens around them. Some may experience a loss of autonomy where others see none. The present conception of rights and values to be considered, and potentially safeguarded, should be extended by a more expansive notion of human autonomy.

3. Carving out a European regulatory and commercial AI space

The White Paper strikes a useful balance between the global character of AI development and the divergent policy preferences we observe around the world. From what we can tell,

Europe prizes a broad consensus on and application of the ethics surrounding AI, and it does so much more than important other jurisdictions around the world. The White Paper notes that the emphasis on Ethical AI holds commercial potential for the EU, also beyond its own boarders.

At the same time, it must be clear that the more cautious European approach will retard certain AI developments here, particularly compared to the United States and China. It would be naïve to pretend otherwise. The European emphasis on ethics comes at a price, quite literally, in commercial terms.

In line with my arguments above, I support this ethics-driven approach, and the EU should stick to its principles. That will entail difficult choices, however. Should the EU allow the use of medically relevant AI that has been trained on data gathered in unethical ways? To what degree should companies be allowed to operate in the EU that have a competitive advantage due to laxer rules in their home countries?

The White Paper section about compliance articulates the extraterritorial reach of future EU provisions, and rightly so. Yet it seems important, and fair, to state even more clearly to what degree the EU would, or would not, be willing to push its defence of its own AI standards. With the GDPR, the EU has set a positive example in this respect. Given the broad applicability of AI-related technologies, the implications of a hard line could be quite wide-ranging, and all stakeholders – from companies to citizens – should be aware of the attendant choices now that the switches are being set.