SAP Response to Inception Impact Assessment (IIA) on the EU AI Regulatory Framework

We strongly agree with the Commission's assessment that Europe needs a harmonized policy framework for AI in order to establish a single market for AI products and services, to provide legal certainty for AI developers and users, and to build consumers' trust in the technology across Europe.

As addressed by the IIA, if the European Commission proceeds with a regulatory intervention for AI, a clear and precise definition will need to be established for the sake of legal clarity, the effective enforcement of an EU regulation and having a common understanding of the technology.

We differentiate between two types of AI systems:

- Rule-based AI systems are characterized by the fact that the behaviour of their components is fully defined by rules created by human experts. These systems are often described as symbolic or expert systems.
- Learning-based AI systems are differentiating themselves by the fact that their initial configuration made by humans is only the basis for the final form of their functions. With the help of data, they train how to solve a problem and continuously adapt their function in this process. For learning-based AI systems, humans define the problem and the goal, but the behaviour rules and relationships required for the solution are learnt in an automized way.

As the IIA points out, the potential harms identified by the Commission are not new and not necessarily related to AI only. SAP is of the opinion that concerns around AI needs to be addressed, but the context and purpose of AI systems will be key to determine the implications and relevance of the ethical and legal challenges that may emerge in specific use cases.

Therefore, we believe it is important not to look at solely the specific characteristics of AI systems (opaque decision-making) but to clarify concrete risks associated with some use cases of AI based on an outcome-based risk assessment.

We believe that the concerns addressed in the White Paper and the objectives outlined above can be achieved with the revision of horizontal and sector specific EU legislation outlined in the White Paper. As mentioned by IIA, the Commission has already started the revision of the EU legislative framework on safety and liability to address AI related concerns. In addition, we can build on our existing comprehensive legal framework for data in the European Union, in particular for the processing of personal data under the GDPR. Building on the GDPR is a major step to foster a digital trust that is essential for AI acceptance by individuals and other stakeholders.

We recommend the European Commission to complete the review of EU legislation in other areas that are potentially applicable to AI and make them fit for AI (e.g.: employment, anti-discrimination and relevant sector specific legislation). This is the first crucial step to have a holistic and comprehensive overview on the identified legislative gaps in order to address them through additional guidance or concrete amendments of existing EU legislation.

A potential EU regulatory framework for AI should make an emphasis on the protection of individuals and analysing risks from the perspective of the consumer. Given the identified legislative gaps, if the European Commission deems that a regulatory intervention for AI is necessary, we support a principle-based framework limiting the scope to high risks AI systems arising in B2C context impacting consumers directly. B2B AI applications should be left out of scope with B2B

matters handled by the supply chain effect (i.e. B2C players cascade their requirements through the supplier network). Risks related to B2B AI applications can be addressed in private contract ensuring a fair allocation of risks among developer and deployer. This way, compliance with any AI regulatory requirements will be ensured throughout the supply chain by private contracts.

When defining the scope of high-risk AI systems, it will be important to tailor mandatory requirements and potential compliance costs to the actual risks imposed by the AI system. The European Commission should also take into account companies' existing business practises on addressing AI related ethical concerns.

If the European Commission deems to proceed with a regulatory framework **addressed to high-risk B2C AI systems**, we strongly recommend adopting a legislative instrument consisting of high-level principles that could be transformed into operational requirements set up in the form of industry-led standards/certification schemes.

Such a regulatory framework should be enforced through the application of existing self-assessment tools for Trustworthy AI systems such as the DPIA under GDPR that is built upon companies' existing practises.

We believe that a potential certification scheme should be process -based for high-risk AI systems instead of individual product or algorithm-based certifications in order to avoid "repeated assessments over the lifetime of AI systems" as suggested in the White Paper. With process certification, one can provide the required insights into the best practises of AI Ethics applied to the development and deployment activities that each AI system undergoes. Therefore, it would enable new product versions without the need to re-assess AI systems throughout their lifetime each time. This will require defining the criteria and a methodology for evaluation. Following this approach, a process-based certification scheme could serve as the baseline across industries that will provide a transparent and effective processes to develop and deploy Trustworthy AI systems.

Finally, we would caution the European Commission against the application of new ex-ante conformity assessments that could cause significant delays in releasing AI products and services to the European market.