Position Paper

Liability for Artificial Intelligence (AI)

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At present policymakers in the European Union (EU) discuss the legal framework for Artificial Intelligence (AI). The regulatory framework for AI, especially the applicable liability rules, will have fundamental effects on the use and the development of this technology in the near future. Likewise it will strongly influence the competitiveness of the EU's economy. Bitkom*s position on liability for Artificial Intelligence can be summed up in the following five points:

1. The current law within the EU sufficiently covers the risks which may arise from AI systems. Individual rights and interests of potential AI users are adequately protected by non-discrimination rules, product safety standards and liability legislation. **New legislation which exclusively applies to artificial intelligence is not justified, neither with regard to product liability nor to market access control.** However, when adapting existing product liability and market access rules, care should be taken to ensure that specific aspects of AI applications are adequately covered. When adapting the existing product liability and market access rules, legislators should ensure that specific aspects of AI systems are adequately covered.

2. The liability concepts presently in force are based on a **technology-neutral approach**. Thus liability rules are aiming at compensating damages regardless of how the damage has been caused. This must be maintained with respect to the assessment of product safety and liability for artificial intelligence. Therefore, there should not be a specific liability linked to the technology of artificial intelligence.

3. There is **no need for a specific strict liability with compulsory liability insurance for operators of high-risk AI systems**, since the risks of such systems (e.g. autonomous motor vehicles, drones, autonomous cleaning machines) have already been covered adequately by existing regulations (by national traffic rules, air safety rules). A dynamic definition of high-risk AI creates the substantial risk that operators and manufacturers of AI systems will subsequently be faced with much stricter requirements regarding liability for use and production of these AI systems within a short period of time. Specific regulations for new high-risk AI systems should therefore only be introduced for specific areas and not before un-regulated high-risk AI-Systems are

about to be launched on the market. Otherwise, due to the diversity of different AI systems and their use in different areas, inappropriate regulation becomes very likely.

4. Presently and in the foreseeable future **only "weak" AI systems or assistance systems** are deployed. These AI systems either provide recommendations to prepare a final human decision or follow learning and decision-making processes in a human-defined frame and within pre-defined limits. Therefore their application is **not connected with an increased risk**. On the contrary, by avoiding human errors (e.g. delayed reaction, overlooking essential data/information, subjectivity), AI systems can **reduce human errors and thus the risk of damages.** To promote and make full use of these opportunities, legislators should not burden operators and manufacturers of AI systems with additional liability risks that exceed the liability risks of other technologies. In particular, regulations of AI systems aiming at mitigating the risks of complexity, autonomy or connectivity of a system would lead to excessive regulation, because these qualities are not specific characteristics of all AI Systems.

5. Any software, including AI applications, cannot be error-free. Accordingly, the **manufacturer or operator of an AI system must not be penalized if a status of freedom from error has not been achieved** (e.g. by extended product monitoring obligations).