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BKU Working Group „Digital Policy“

Commentary on the European Commission’s Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on Artificial Intelligence (COM(2021) 206 final)

With this commentary, we, the Working Group “Digital Policy” of the Bund Katholischer Unternehmer (BKU)/Federation of Catholic Entrepreneurs, take a position on the European Commission’s Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on Artificial Intelligence (Artificial Intelligence Act). The BKU is an association of small and medium-sized entrepreneurs committed to Christian values and concerned with the economic, social and ethical implications of the global advance of digitalization - in short, with "Digital Humanity".

We welcome the Commission's value-based and risk-oriented regulation proposal. With this commentary, we would like to point to a few areas that we believe require further social and political work. For us, the focus is on maintaining human autonomy and respecting the primacy of human action in the context of the increasing use of artificial intelligence (AI) in all areas of human life. Also in the digital world, human dignity and the right to self-determination remain inviolable. In particular, we oppose digital monopolies and data colonialism, because they invalidate the principle of free and open competition as a mechanism for good problem solving in the market. From a perspective shaped by the diversity and dynamism of German small and medium enterprises (SMEs), we are very interested in a legally secure, transparent, and manageable regulatory framework for AI. In order to be able to participate in the digital world as responsible citizens and to better assess and manage personal and societal risks, everyone should receive a certain level of digital education throughout their lives (Digital Literacy). This also applies, just to give an example, to the handling of everyone’s own personal data. Such a legal framework based on our person-based image of humanity with its concepts of dignity and autonomy can thus become an innovation driver in Europe and beyond.

We assess the Commission's proposal as a value-based and proportionate regulation

In principle, we welcome the Commission's approach of presenting a regulation proposal that reflects European and Christian values both in terms of content and in the form of a regulatory framework. This includes both, person-based values which as legal assets justify protection as well as to the goal of creating a legally secure institutional framework which supports the functioning of a social market economy. The proposal is based on the principles of risk (of technology) and proportionality (of regulation). We consider the application-related definition and classification of AI, especially with regard to algorithm-based detection and guidance of human behavior and human decisions, to be fundamentally sensible.

Such a definition is oriented toward the social role of technology and is flexible and expandable with future technological development. Finally, we also welcome the Commission's focus on supporting innovation and economic development, including the underlying self-assessment of Europe's market position in the global digital economy.

The proposal's risk orientation is factually and ethically imperative

Algorithmic or AI-based systems are critical to the functioning of our economy and society in several aspects: they enable the coordination of social and economic communication and thus participation in real time. De facto, they have become a central link between individual and environment. However, this inevitably entails risks.

On the one hand, there are risks that affect the robustness of technical systems and their role in the functioning of society and economy. Other risks concern participation in a global, dynamic, and disruptive market with high complexity, immature rules of the game, and great susceptibility to monopolies and political interference, thus potentially invalidating the principle of competition as a mechanism for good problem solving in the market. And finally, there are the risks for the participating users with regard to informational self-determination and the transformation of formerly interpersonal "analogous" interaction into partially digital areas of life with other laws and dependencies. The use of AI in decision support can lead to the neglect of people with atypical resumes in job application situations. The requirements resulting from the increasing diversity of our society cannot be left to algorithms alone either. Experiments show that discrimination is not eliminated by delegating decisions to algorithms; at best, it is better concealed.

Given this background, ethical principles are affected, above all autonomy and fairness in economic and social transactions. Both are fundamental personal values and citizen rights, and as such are reflected in the constitutional framework of the EU and its member states. In order to guarantee these values, it is necessary to establish a regulatory framework for state, economy and society – the foundation for a free and democratic order. Therefore, interventions in the use of and the market for algorithmic technology are justified. With a focus on the role of individual autonomy, attention to the primacy of human action is imperative, not only in the context of AI. AI has great potential to support human decisions and actions and, based on European and Christian values, should be used for this very purpose. The concurrent risk of curtailing the role of humans or bypassing humans in their role as decision makers must be mitigated. The "practical wisdom" of values-based leaders as critical authorities in an AI-dominated business practice will, in our view, become more important than ever.

We welcome the fact, that the intensity of regulatory requirements is linked to the risk of an application for human values and rights. However, the required risk assessment must not degenerate into a bureaucratic compulsory exercise. We expressly refer to human oversight, agency, and the retention of human control as

the final decision-making and judicial authority over algorithmic processes and systems are fundamental requirements. Of course, this in particular applies to digital weapons systems.

Challenges in the industrial and economic policy part of the proposal

First, we consider the linking of the present regulation proposal to an economic and industrial policy strategy (set out in the latest version of the 'Coordinated Plan for AI', COM(2021) 205 final - ANNEX) to be realistic and fundamentally sensible. However, we see de facto challenges in implementation resulting both from the interaction of European and national institutions and from the coordination and enforcement of common economic policies at the member state level. As we consider an efficient, EU-wide digital infrastructure to be desirable, we call on all parties involved in this political process to cooperate and be solution-oriented. Provided to be enforceable within Europe, we assume that such an infrastructure and regulatory framework is also practicable in cooperation with non-EU companies and institutions, not least because of European market power achieved through functioning coordination.

From a perspective characterized by the diversity and dynamism of German SMEs, we are interested in a regulatory AI policy framework that is legally secure, but also transparent and manageable in terms of administration. Provided such a functioning framework is in place, SMEs either directly or through appropriate consulting support, have the necessary know-how for a higher level of digitization. A functioning regulatory framework would accordingly be helpful in tapping innovation potential and competitiveness of European companies. Due to economic connections, not only of German SMEs, into other markets with different cultural and ethical conditions, there is hope for the spread of European business and digital ethical standards, which are often among the highest globally (see GDPR).

Involvement and participation of the EU workforce and civil society

In addition to an ethically-based regulatory AI framework and a corresponding economic policy strategy that provides European companies with legal and planning security as innovation driver, digital transformation of economy and society must also involve citizens as individuals. From a socio-ethical and economic perspective, it is imperative to systematically promote individual empowerment for participation in a digitized economy and society. Personal maturity and the ability to act in the digital sphere requires relevant practical education in the sense of Digital Literacy. This includes school education oriented to digital realities in economy and society as well as lifelong learning in order to enable civil society and workforce to keep pace with the speed of technological development. A striking example is the protests of older people in rural regions of Spain who, in the face of bank branch closures and the switch to digital-only, feel left behind because they no longer have access to their accounts at all.

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We therefore explicitly suggest that, in addition to the industrial policy agenda, a corresponding education policy and civil society strategy must also be considered. What a regulatory framework for AI does in economic terms must be completed with defining the extent of digital competence that society may expect and demand from a responsible citizen. It must be possible to realistically acquire this level of digital competence, understood as an expression of digital self-determination, through schooling and continuing education. Furthermore, governance principles are needed for digital processes that ensure a human decision-making authority in the area of fundamental economic or administrative participation (see Human Oversight) – not only because digital transformation is forcing us to self-reflect and reposition ourselves.

Our European and Christian values with their person-based image of human beings and their concepts of dignity and autonomy can form the basis and the core for such a socio-political strategy, which can serve as a point of orientation for Europeans across national borders and technological epochs.