Stakeholder statement

While there is much to agree with in these proposed guidelines, we have identified what we consider to be a number of generalizations and assumptions that we do not find persuasive and which, in our view, should be addressed on redrafting. For instance, one of these generalizations is found very early on in the document, where it is claimed, "on the whole, AI's benefits outweigh its risks". Given the technology's lack of real world scenario testing, this is a large and mainly undocumented assumption.

Further into the document, we find that they at several places emphasize that "Trustworthy AI" has two components:

>   1) ethical purpose, and;

>   2) technological robustness

While we fully agree with the need for AI solutions to be both ethically and technologically sound, we take issue with the way the document is phrased in regard to an 'ethical purpose'.

On p. 2, it notes that Trustworthy AI, in its development, deployment, and use should "… respect fundamental rights and applicable regulation, as well as core principles and values, ensuring an "ethical purpose". While we agree that AI must be implemented in society in a way that respects basic ethical principles, we think that it may be inappropriate to phrase this as a requirement that AI should have an "ethical-first" focus. While we do not disagree with the need for ethical reasoning applied to the field of AI technology where this technology connects with human agency, it is our firm belief that **the achievement of ethical defensibility is best realized through legal procedure.**

AI is to a large extent demanded by the private and public sector, either because it enhances efficiency or because it allows for companies and/or public institutions to enhance their knowledge and thereby act in smarter ways. The development of AI is largely driven by the wish to meet the request for technological solutions that enhance efficiency or a knowledge base. Therefore, we think it is a little misleading to focus on "ethical purpose" as the driver of AI development, which in reality is as helpful as it is vague. The market demands are, and should continue to be, the drivers of this development, but the markets should not be allowed to operate freely. Instead, regulation of AI should be made to ensure that the technology is used only for purposes that are ethically sound and oversight by public agencies should be put in place to ascertain that such regulation is respected to its full extent.

In light of this, we emphasize that **specific legal regulation** rather than "ethical reasoning" (see p. 2) should be at the center of ensuring the ethically defensible use of AI. It is incumbent on the Commission to draft guidelines that highlight the regulatory framework. Ideally, it should go far beyond a mere regurgitation of GDPR principles, which see citizens merely as data subjects (which is just one aspect of AI regulation), and go beyond the model of mere consent (see p 10).

The document, to some extent, recognizes the need for a legal framework for AI technology, in that it emphasizes that AI in its development, deployment and use should respect fundamental rights and

applicable regulation (p. 2). However, a legal framework for AI entails more than respect for fundamental rights and existing applicable regulation. A legal framework for AI that is to meet both the efficiency and knowledge gains that drives the demand for AI and simultaneously meets the ethical requirements considered by the High Level Expert Group requires **a more detailed commitment to legal analysis of AI** as used in various domain and institution specific settings. Without a robust description of the specific gaps in legislation and what is needed to close them, this document pays no more than lip service to legal regulations' role in protecting citizens. This, we think, is a big problem, since free-floating ethical reasoning will have no bearing on the ability to effectively formulate, enact and enforce principles and rules pertaining to the proper use of AI in society.

Lastly, in regard to the standards applied to AI ethics and AI regulation, we would like to point out that the technological quality and ethical soundness of AI should not be judged against some kind of ideal or perfectionist ethical standard. AI is a technology that is being introduced to make human labor more efficient or better. The best we can demand from AI is that it is successful in this regard while not undermining the quality of human lives or the legal commitments made to ensure that quality.

Sincerely,

Prof. Henrik Palmer Olsen, Dr. Jacob Livingston Slosser & Cornelius Wiesener
Faculty of Law, University of Copenhagen