In Bratislava, 28 May 2021

**INPUT OF THE SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS FOR REPORT ON THE RIGHT TO PRIVACY IN THE DIGITAL AGE**

About the Slovak National Centre for Human Rights:

*The Slovak National Centre for Human Rights (the “Centre”) is a national human rights institution established in the Slovak Republic, accredited with status B by the Global Alliance of National Human Rights Institutions (GANHRI). As an NHRI, the Centre is a member of the European Network of NHRIs (ENNHRI). The Centre was established by the Act of Slovak National Council No. 308/1993 Coll. on the Establishment of Slovak National Centre for Human Rights. Pursuant to the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection from Discrimination, as amended (the Anti-discrimination Act), the Centre also acts as the only Slovak equality body. As an NHRI and equality body, the Centre performs a wide range of tasks in the field of protection and promotion of human rights and fundamental freedoms including the observance of the principle of equal treatment.*

*The Centre among other powers:*

*1) monitors and evaluates the observance of human rights and the observance of equal treatment principle;*

*2) gathers and, upon request, provides information on racism, xenophobia and antisemitism in the Slovak Republic;*

*3) conducts research and surveys to provide data in the field of human rights; gathers and distributes information in this area;*

*4) prepares educational activities and participates in information campaigns aimed at increasing tolerance of the society;*

*5) provides legal assistance to victims of discrimination and manifestations of intolerance;*

*6) issues expert opinions on matters concerning the observance of the equal treatment principle;*

*7) performs independent inquiries related to discrimination;*

*8) prepares and publishes reports and recommendations on issues related to discrimination; and provides library services and other services in the field of human rights.*

1. **Specific impacts on the enjoyment of the right to privacy caused by the use of artificial intelligence, including profiling, automated decision-making and machine-learning technologies (hereinafter referred to in short as "AI") by governments, business enterprises, international organizations and others. Of particular interest is information concerning:**
2. ***relevant technological developments, the driving economic, political and social factors promoting the use of AI and the main actors in and beneficiaries of deploying and operating AI (developers, marketers, users);***

The tools of artificial intelligence are already applied today in the daily life of the citizens, and sometimes even without us realizing it. Artificial Intelligence (“AI”) systems are being used eve by the public sector to an increasing extent. AI is fast evolving and can indeed be effectively used in a number of areas which could ultimately benefit human rights, democracy and the rule of law. In fact, AI can bring a wide range of economic and societal benefits across the entire spectrum of industries and social activities.

Whether it is by improving prediction, or optimizing operations and resource allocation, and personalizing service delivery, AI can support socially and environmentally beneficial outcomes as well as support the private sector and encourage potential commercial benefits by provide competitive advantages to companies and the European economy.

For instance, in the area of healthcare, AI could be effectively used to analyze population health data, support new medical discoveries, improve medical diagnosis and treatment. For example, a number of new research in this field show that AI could be effectively used when detecting early signs of lung cancer. AI systems could also help in preventing natural disasters and reducing disaster related to the issue of climate change. Similarly, in the area of education, it could not only increase the general availability of education, but also advance the research, focusing on improving the manner in which research is conducted. AI can also be used in the case of allocation of social services, where algorithms are being employed when making the decision on the eligibility for social welfare. Such processes could lead to reduction of the cost of determining the eligibility as well as it could foster the predictability.

In the specific context of the use and application of AI in the Slovak Republic, practical deployments include, for example, image recognition. The Slovak Road Administration already uses a similar AI algorithm for visually recognizing road debris. In addition, reading and recognizing medical scans can significantly help doctors in making decisions, and even today some Slovak hospitals are buying foreign devices with this functionality.

One example of the application of AI by a public administrative body is the city of Trenčín, which has deployed intelligent cameras placed in lamps that are able to count the passages of cars, cyclists and pedestrians or detect vandalism. They can also count, for example, the number of visitors to public cultural events, find out if supply vehicles are moving in the right direction, and even measure the speed of passing cars. [[1]](#footnote-1)

1. ***ways in which AI can help promote and protect the right to privacy;***
2. ***challenges posed by the use of AI for the effective exercise of the right to privacy and other human rights, including features and capabilities of AI that present existing or emerging problems;***

When it comes to the development, use and application of AI systems, the same elements and techniques that power the benefits of AI can also bring about new risks or negative consequences for individuals or the society in general. Therefore, it is important to ask not only whether the algorithm is sufficiently effective in achieving the set goals, but also the potential consequences that will result from its decisions. For example, when we use AI to make decisions that affect human lives and their quality, we must ensure that this process is fair, comprehensible and transparent, we must prevent the AI decision to be burdened with various, racial or gender prejudices. In addition, we it is important take advantage of the analysis and prediction of human behavior with AI without breaking the boundaries needed for human privacy.

AI and in particular machine learning pose a major challenge for personal data protection, the right to privacy and also copyright, including related rights (especially database rights), as data can be considered as a basic source for the current functioning of AI. AI will also affect the area of ​​cyber security, as these systems may present new vulnerabilities in cases of cyber attacks. However, there are other issues that have to be resolved, in particular issues in the field of intellectual property (e.g. identifying the copyright holder in the case of works created by intelligent robots), competition law or labor law.

1. ***discriminatory impacts of the use of AI;***

The use of AI systems can further deepen the existing inequalities including racial and ethnic, gender, social and economic inequalities. Given the severe impacts that judicial systems, law enforcement have on human rights institutional discrimination, any AI systems deployed in these areas have a potential to pose a great risk as well as cause a great harm. Many of the currently employed policies and practices are already entrenched with racial biases and often target persons belonging to already vulnerable and marginalized groups. Such biases will be also coded into AI systems. Mass surveillance systems, such as facial recognition and other indiscriminate biometric surveillance tools, are incompatible with human rights. These applications impact people’s right to privacy, non-discrimination, freedom of expression.

For example, with regard to the facial recognition applications supporting law enforcement, such technology can allow mass surveillance, but also to target and discriminate, thus, such application can enable discriminatory profiling. The use of biometric mass surveillance has previously resulted in the violation of data protection rules and regulations, unduly restricting individuals’ rights to privacy or freedom of speech. Moreover, in the field of criminal justice, AI applications to prevent commission of a criminal offence or those aimed at predicting recidivism can exacerbate bias. For instance, regarding the AI applications to prevent commission of a criminal offence, despite its efforts to allocate police resources to prevent crime, through a risk-based assessment, such use of machine learning for risk scoring of individuals can often further deepen the existing bias that is aimed at mitigating.

In addition, scoring of individuals by public authorities can increase inequalities in exercise of social and economic rights. Especially alarming group are persons from marginalized groups, which are disproportionately at risk as AI applications and scoring systems used for analyzing their performance might impact their right to work, right to education or rights to social security.

1. ***the interlinkages between the promotion and protection of the right to privacy in the context of the use of AI and the exercise of other human rights (including the rights to health, social security, an adequate standard of living, work, freedom of assembly, freedom of expression and freedom of movement);***

In terms of promoting and protecting the right to privacy in the context of the use of AI and the exercise of other human rights, AI, if used efficiently and indiscriminately, can contribute towards the enforcement of other human rights. For instance, in the employment sector, AI could be employed to assist in the provision of labor market services. Namely, it could monitor the activities of job seekers and assist job seekers as well as job providers to match candidates for employment with relevant job openings, therefore fostering the exercise of their employment rights. AI could transform the public services and could significantly contribute to the enhancement of public administration services, by enabling the pubic authorities to better identify the needs of the general public and reflect upon those needs and concerns when developing public policies.

1. **Legislative and regulatory frameworks, including:**
   1. ***information on relevant existing or proposed national and regional legislative and regulatory frameworks and oversight mechanisms;***

*Regional framework*

In light of the speed of technological change and possible challenges, the European Union (“EU”) and its regional framework applies a balanced approach. Legislative and regulatory framework applicable to the use of AI in the EU and its Member States consist of selected fundamental documents and further specific secondary EU law – EU data protection acquis and EU non-discrimination legislation that provide safeguard of fundamental rights in the context of the use and application of AI. The fundamental documents include the Charter of Fundamental rights in the EU and the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)

In 2017 European Parliament recognized the implications of big data and AI on the enjoyment of human rights and adopted a resolution stressing that “prospects and opportunities of big data can only be fully tapped into by citizens, the public and private sectors, academia and the scientific community when public trust in these technologies is ensured by a strong enforcement of fundamental rights.”[[2]](#footnote-2)

In 2018, the European Commission included in its Communication on AI for Europe a strong- reference to fundamental rights.[[3]](#footnote-3) Furthermore, on 19 February 2020, the European Commission published a White Paper on Artificial Intelligence – A European approach to excellence and trust.[[4]](#footnote-4) The purpose of the White Paper is to start the process of scoping policy options which are intended to enable a trustworthy and secure development of AI in Europe and to outlines the main principles of a future EU regulatory framework for AI in Europe. The European Commission’s White Paper on AI highlights risks to fundamental rights as one of the main concerns associated with AI. It acknowledges that “the use of AI can affect the values on which the EU is founded and lead to breaches of fundamental rights, be it as a result from flaws in the overall design of AI systems, or from the use of data without correcting possible bias.”

In addition, to promote the development of AI and address the potential high risks it poses to safety and fundamental rights equally, in April 2021, the European Commission presented its a proposal for a regulatory framework on AI and a revised coordinated plan on AI.[[5]](#footnote-5) In essence, the proposal sets harmonized rules for the development, placement on the market and use of AI systems in the EU following a proportionate risk-based approach. It also proposes a single future-proof definition of AI. With regard to the ensuring the principle of non-discrimination, the proposal complements existing Union law on non-discrimination with specific requirements that aim to minimize the risk of algorithmic discrimination, in particular in relation to the design and the quality of data sets used for the development of AI systems complemented with obligations for testing, risk management, documentation and human oversight throughout the AI systems’ lifecycle.

As stated in the explanatory memorandum to the proposal for a regulatory framework on AI, the European Commission recognizes that the use of AI with its specific characteristics (e.g. opacity, complexity, dependency on data, autonomous behavior) can adversely affect a number of fundamental rights enshrined in the EU Charter of Fundamental Rights (‘the Charter’). The proposal therefore seeks to ensure a high level of protection for those fundamental rights and aims to address various sources of risks through a clearly defined risk-based approach. While introducing a set of requirements for trustworthy AI and proportionate obligations on all value chain participants, the proposal will promote the protection of the rights protected by the Charter, including the right to human dignity (Article 1), respect for private life and protection of personal data (Articles 7 and 8), non-discrimination (Article 21) and equality between women and men (Article 23). In addition, the proposal aims to prevent a chilling effect on the rights to freedom of expression (Article 11) and freedom of assembly (Article 12), to ensure protection of the right to an effective remedy and to a fair trial, the rights of defence and the presumption of innocence (Articles 47 and 48), as well as the general principle of good administration.[[6]](#footnote-6)

*National framework*

Slovakia is among the 19 EU Member States which have adopted national strategies on AI. In essence, the Government of the Slovak Republic has adopted in 2019 the Strategy on Digital Transformation Strategy for Slovakia[[7]](#footnote-7), which represents a key document that defines the policy and particular priorities of Slovakia in the context of already on-going digital transformation of economy and society under the influence of innovative technologies and global megatrends of the digital era. In direct connection with the National Strategy is also the Action plan for the digital transformation of Slovakia for 2019-2022[[8]](#footnote-8) which was adopted by the Government of the Slovak Republic in July 2019. The Action Plan offers a set of concrete steps on how to start a sustainable and human-centric and trustworthy AI Ecosystem. For example, it contains measures on how to use artificial intelligence tools, e.g. in the transparency of the regulatory environment, as well as the support of research and science in this area, the creation of an ecosystem of artificial intelligence in Slovakia, so that we know as a society how to make the most effective use of the potential of these innovative technologies.

While the strategy report provides a broader picture, the action plan is more detailed and includes concrete policy measures for the years 2019-2022. The Action Plan sets out a list of policy initiatives with a short-term time horizon that covers the following strategic areas, including supporting digital transformation of schools and education to prepare for digital skills needed in the digital era; strengthening the basis for a digital and data economy; improving abilities of the public administration to innovate and use the data for the benefit of citizens and supporting the development of an AI ecosystem.

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5. European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, COM(2021)206 final, available at: https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=COM:2021:206:FIN. [↑](#footnote-ref-5)
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