**Human Rights Council resolution 25/2 on freedom of opinion and expression– Response of Slovakia**

We have the honor to provide our comments and information on the relevant measures regulating the issues mentioned in the request listed above. We would also like to inform you that these issues affect different legal areas and therefore our scope is limited to the provision of comments and information primarily from the area of Electronic Communications.

1. *Laws, regulations and other measures (including where applicable contractual agreements and extra-legal action) that may permit authorities to require Telecommunications and Internet Service Providers to (a) suspend or restrict access to websites and telecommunications networks or (b) provide or facilitate access to customer data.*
2. The national legal framework for the area of electronic communications covers Act No. 351/2011 Coll. on Electronic Communications (hereinafter „Electronic Communications Act“). Since the Electronic Communications Act does not regulate the information transmitted via electronic communication networks, there are no specific legal instruments created to achieve the suspension or restriction of the access to websites.

According to *Section 63 (7) (d) of the Electronic Communications Act*

(“The undertaking providing public networks or public services shall be also obliged (…) on the basis of a justified summons, to restrict, without delay, the traffic of a public network or the provision of a public service for the time and in the scope necessary, if it is necessary to protect the constitutional establishment or internal order or state security or state defense and there is an imminent danger to the detriment of life and health; …”)

1. The provisions permitting authorities to require undertakings providing public communications networks or public communications services to provide or facilitate access to customer data can be found throughout the Part Four of the Electronic Communications Act, entitled Protection of Privacy and Personal Data. The main areas consulted in this part are protection of personal data, traffic data and location data, presentation and restriction of identification, unsolicited communication and telecommunications secrecy.

Based on the following provisions of the Electronic Communications Act, authorities may require undertakings to provide or facilitate access to customer data:

*Section 55 (5)*

(“Every person that stores or gains access to information stored in the terminal equipment of a user shall be authorized for that only if the user concerned has given his consent on the basis of clear and comprehensive information about the purpose of the processing (…) The obligation to gain the consent shall not apply to a body acting in criminal proceedings or other state body[[1]](#footnote-1)…”)

*Section 57 (5)*

(“If it is necessary for the billing of subscribers and network interconnection payments, the undertaking shall be obliged to store the traffic data until the expiration of the period, during which the bill may be legally challenged or the claim for the payment may be asserted. The undertaking shall be obliged to provide traffic data to the Regulatory Authority for Electronic Communications and Postal Services or court in case of a dispute between undertakings or between an undertaking and a subscriber…”)

*Section 57 (6)*

(“Traffic data under Subs. 4, 5 and 7 shall be processed only by persons acting as the entrusted or on the basis of power of attorney of the undertaking in the scope necessary for the purposes of ensuring the network traffic control, billing, answering user requests, exposing, frauds, cooperation with other state bodies under S. 55, Subs. 6, service marketing purposes or for the provision of value added service. ”)

*Section 63 (5) to (7)*

(“(5) On the basis of a written request of other state body under S. 55, Subs. 6 , the undertaking providing public networks or public services shall be obliged to permit online, direct and continuous access to the subscribers data of its own network or services in the scope of data under Subs. 4 and the user allocated identification and Internet protocol address; it shall be obliged, upon a request, to provide such data together with the data on the base stations of the public telephone network and database of International Mobile Subscriber Identity (IMSI) in an electronic form and intelligible manner without delay also on a physical information carrier. The state body to which such access has been enabled shall cover the cost for ensuring the online access up to the interface of the undertaking and the physical information carrier.”

(6) The undertaking shall be obliged to provide body acting in criminal proceedings or other state body under S. 55, Subs. 6 for the purposes of fulfilling its tasks under special regulations, with the data which are subject to telecommunications secrecy under Subs. 1, Letter b) to d)[[2]](#footnote-2) (...) The undertaking shall be obliged to provide those data in a written form or encrypted electronic form and in an intelligible manner. The state body to which such data have been provided shall cover the cost for physical carrier.

(7) The data under Subs. 6 shall be provided only on the basis of a written request and with the court´s consent…”)

*Section 63 (14) (a) to (c), (e) and (f)*

(“The undertaking providing public networks or public services shall be also obliged: a) To operate public networks or provide public services by means of such technology, including its individual parts and software, which makes it possible to connect and operate the equipment for listening and tapping of traffic in a network owned by the state and the online access under Subs. 5 and 6,

b) On the basis of other state body under S. 55, Subs. 6, to permit the connection of the equipment for listening and tapping of traffic under the technical specification of such equipment to be connected…. ,

c) To cooperate with the Police corps and authorities acting in a criminal proceedings when disclosing malicious calls and scaremongering,

e) On the basis of a written request in justified cases related to fulfilling the tasks of state security and defense to provide other state body under S. 55, Subs. 6 with the service presentation of calling line identification, and this even in case that the calling line has restricted presentation of its identification; the state body shall be held responsible for any detriment caused by the misuse of the information provided about personal data since the moment it was provided with the requested data,

f) To act in subsequent conjunction with the court, the authority acting in a criminal proceedings and other state body under S. 55, Subs. 6 which is necessary to fulfill their tasks and execute their powers under this Act and special regulations.”)

1. *Laws, regulations and other measures (including where applicable contractual agreements and extra-legal action) on the public disclosure of requests made or action taken to (a) suspend or restrict access to websites and telecommunications networks and the requests to (b) provide or facilitate access to customer data.*

The Electronic Communications Act does not include any specific legal mechanism related to the public disclosure of the above mentioned requests made or action taken. However, the National Council of the Slovak Republic is competent to review requests for access to data subject to telecommunication secrecy.

1. *Laws, regulations and other measures (including where applicable contractual agreements and extra-legal action) governing the activities of private entities that provide network components or related technical support, such as network equipment providers, submarine cable providers, and Internet exchange point.*

The Electronic Communications Act does not include such provisions.

1. *Remedies available in the event of undue restrictions on Internet and telecommunications access or undue access to customer data.*

 The Electronic Communications Act does not include such provisions.

1. *Other relevant laws, policies or initiatives to promote or enhance Internet accessibility and connectivity, including measures to promote network neutrality*

In the field of internet accessibility and connectivity Regulation (EU) of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users´ rights relating to electronic communication networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (hereinafter „Regulation“) was issued. According to Art. 1, the regulation establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users´ rights. Since there is no need it to be transposed into the national law, the regulation became immediately part of the legal order of the Slovak Republic as one of the member states of the European Union and was thus enforceable as law from the day it entered into effect.

##

1. According to S. 55 Subs. 6 of the Electronic Communications Act other state body means armed security corps and the state body which to the extent defined by special regulations fulfill tasks in the sphere of protection of constitutional establishment, inner order and state security. [↑](#footnote-ref-1)
2. b)The related data of the communicating parties which are the telephone number, business name and the place of business of a legal person, or business name and the place of business of a natural person – undertaker or the personal data of a natural person which are the name, surname, title and permanent residence address; the data published in the telephone directory shall not be subject to telecommunications secrecy.

c) Traffic data, and

d) Location data. [↑](#footnote-ref-2)