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**Remarks of Moje Państwo Foundation  
on the European Commission's Proposal for a Regulation Laying  
Down Harmonised Rules on Artificial Intelligence  
(Artificial Intelligence Act) 2021/0106(COD)**

Warsaw, 6th August, 2021

## **I. Introduction**

Moje Państwo Foundation ("**Foundation**") is an organization working for the development of democracy, open and transparent public authority and civic engagement. By exercising the right of access to public information and the right to re-use public sector information, the Foundation collects publicly available data sets and makes them available to citizens through the Foundation's services.

Due to the fact that the context of the consultations run by the European Commission from 26th April to 6th August 2021 are related to many relevant aspects for the Foundation's activity, we present our position in regards to the Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) ("**the AI Act**" or "**the European Commission's Proposal**") below – with particular emphasis on the use of artificial intelligence systems ("**AI systems**") by public institutions.

## **II. General remarks**

We appreciate the work of the European Commission undertaken to create a regulation that aims to ensure that artificial intelligence is safe, lawful and in line with EU fundamental rights. The European Commission's Proposal contains many valuable solutions creating a legal framework for artificial intelligence.

**From the perspective of our Foundation, the AI Act should – to a greater extent – ensure transparency of the public sector in relation to the use of artificial intelligence systems.**

AI systems can be used by public institutions in many key areas, such as, for example, health protection, education, social services, the judiciary and the economy. As a consequence, these systems can have a very broad and varied impact and can affect many different social groups, including those particularly vulnerable to discrimination. The use of AI systems by the state in many situations may lead to shaping the scope of rights and obligations of citizens by these systems.

The European Commission's Proposal presupposes measures to regulate the use of AI systems in relation to public authorities - for example, the proposal prohibits AI-based social scoring for general purposes done by public authorities; the use of 'real time' remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement is also prohibited unless certain limited exceptions apply; Annex III

High-Risk AI Systems referred to in article 6(2) points out that many high-risk artificial intelligence systems which are listed in specific areas, are listed in areas of state operation.

The preamble to the European Commission's Proposal (point 40) states that: "Certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors and opacity, it is appropriate to qualify as high-risk AI systems intended to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts. Such qualification should not extend, however, to AI systems intended for purely ancillary administrative activities that do not affect the actual administration of justice in individual cases, such as pseudonymisation of judicial decisions, documents or data, communication between anonymisation or personnel, administrative tasks or allocation of resources."

The Foundation points out that there may be a situation where the AI system – seemingly intended for ancillary administrative activities – will actually have an impact on the exercise of public authority (e.g. in the administration of justice), including the direct situation of citizens. A misinterpretation in determining whether a given AI system is a high-risk system or not, in particular when this system is used by public authorities, may have a wide range of negative consequences for citizens, due to the lower degree of transparency in the operation of such a system. Due to the fact that most of the AI systems used by public institutions will have a potentially significant impact on shaping the rights or obligations of citizens, we postulate that in the European Commission's Proposal the measures controlling the use and implementation of artificial intelligence by public authorities should be strengthened.

**We propose that all systems based on artificial intelligence, which are implemented in public institutions, should be properly subject to the obligations provided for in the European Commission's Proposal for high risk AI systems.**

We believe that all AI-based systems that are implemented in public institutions can potentially affect the rights and obligations of citizens. Not all of these AI systems will appear to be high-risk, but most of them will have the potential to have a broad and deep impact on society, including possible undesirable effects.

We enthusiastically embrace the concept of establishing an EU database for stand-alone high-risk AI systems ("**EU Database**") (art. 60). We have been supporting this idea since it appeared in WHITE PAPER On Artificial Intelligence - A European approach to excellence and trust, which was subject to public consultation. We recommended this solution in 2019 in the Foundation's report: "alGOVrithm. The State of Play" on the use of algorithms and systems based on Automatic Decision Making in state-citizen relations. The Foundation proposed then the creation of an appropriate governmental body or equipping the existing one with additional competences in the area of supervision of the development, implementation and use of automatic decision-making.

Pursuant to art. 60 of the European Commission's Proposal: "The Commission shall, in collaboration with the Member States, set up and maintain a EU database containing information referred to in paragraph 2 concerning high-risk AI systems referred to in Article 6(2) which are registered in accordance with Article 51."

The EU Database is to include only those AI systems that qualify as high-risk AI systems, which means that some of the systems will operate outside the EU Database. We appreciate that Annex III listing high-risk AI systems is quite broad in scope, but does not cover all systems that may be used by the public sector and that may have a negative impact on fundamental rights. This applies, for example, to systems that allocate judges or officials to specific court cases.

We would also like to point out that the EU Database will be established and administered by the European Commission, while information about the systems will be posted there by their suppliers, not by competent officials. The Foundation sees the risk in the mechanism that allows suppliers to self-assess, especially in high-risk systems. At the same time, we strongly support the idea that the information contained in the EU Database is publicly available.

**In 2019, we recommended creating a publicly available database (at the national level) containing all AI-based systems used by state institutions. We are reiterating this recommendation because we believe that any use of the AI system in the public sector may have an impact on the situation of citizens and as such may generate a high risk for their rights and obligations.** A database should contain at least: basic information about the AI system along with an indication of the public sector entity using the system and the contact information of this entity. Such a database would allow interested citizens to obtain information that a given public institution uses AI-based solutions in the performance of its tasks, and in the next stage

to verify whether the AI systems comply with the requirements contained in the European Commission's Proposal.

### **III.**

The European Commission's Proposal will have its impact not only on the EU and its Member States but also on other countries and will shape the rights of citizens in the context of the use of artificial intelligence for decades. Due to this fact, we consider it extremely important to ensure proper regulation of issues related to AI systems used in any way by public institutions.