STATEMENT

The Association of Nordic Engineers (ANE) and the Nordic Privacy Center (NPC) welcome the EU proposal for a Regulation on Artificial Intelligence, published on 21st April 2021. While we acknowledge the importance and ambition of this regulatory framework, we want to draw attention to some challenges brought forth by this document.

Privacy and data protection

We consider that all artificial intelligence (AI) systems identified as high-risk systems in the proposed regulation, especially where threats to human life exist[1], should be subject to third-party conformity assessment. The AI systems used for recruitment, task allocation and monitoring work performance, educational and exam assessment, as well as systems used for social scoring, tracking and surveillance purposes (high-risk AI systems outlined in paragraphs 2-8 of Annex III), should also be subject to external assessment, and not solely to the conformity assessment procedure based on internal control, as currently proposed. For labour protection and regulating AI in work environments, this proposal should not overrule sovereign national laws and collective bargaining agreements. The high-risk AI systems used in employment scenarios pose severe consequences for workers' privacy and their working conditions – therefore, needing to be subject to greater scrutiny, e.g., conformity assessment by a third party carried out with the involvement of diverse social partners.

The exemption given for the use of high-risk AI systems – "a real-time" remote biometric identification system in public spaces by public authorities in order to safeguard security (art.5.3.) – risks leading to prospects of mass surveillance, especially when the provision allows deploying such systems without an authorisation "in a duly justified situation of urgency". We consider that this exemption is detrimental to people's fundamental and universal rights and freedoms, including one's right to privacy, as such systems process biometric data in mass, generally without consent, and therefore should be forbidden.

We also endorse the requirements outlined in the letter[2] from civil society on the introduction of regulatory limits on the deployment of artificial intelligence that restrict human rights.

Human oversight, responsibilities, and accountability

It is noteworthy to mention the human oversight component (art. 14) and the obligation of providers of AI systems to develop the responsibility and accountability frameworks (art.17. 1 (m)) in the proposal. The responsibility to implement technical solutions for social issues cannot be shouldered alone by an individual engineer or AI system developer. Especially in the cases when the developed systems are subject to a self-assessment procedure, as it might lead to a situation where the individual developer is to be blamed for the deployment of the system, rather than the organisational setting within which the developer operates. Distributing responsibility[3] across the process and its stakeholders successfully requires a no-blame culture, where taking responsibility includes providing space for empowering and training the workforce to ensure human oversight, especially when "disregarding, overriding or reversing

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[1] AI4People
[2] The letter from 12.01.2021 by European Digital Rights
[3] Report: Addressing Ethical Dilemmas in AI: Listening to Engineers, 2021 ANE

the output of the high-risk AI system" is a part of the responsibility. This should be better prioritised in the current proposal.

In terms of external oversight by citizens – the consumers of the AI systems – it remains unclear what type of complaint procedure with the national supervising authority is reserved for them. There should be established an appeal and instance process enabling individuals to address the AI behaviour and decisions citizens find potentially harmful and illegal.

Governance

While governance for the consistent application of this proposed regulation is thoroughly described in the (art. 56-59), the requirement and obligation for the providers of AI systems and their organisational setting to put in place the governance structure, especially for the big companies, is absent from the text. The governance framework with collective mechanisms of control, including the employees' and social partners' voices over decision-making throughout AI development is crucial and needs a regulatory push to be established. This framework is also essential in the culturally diverse EU, where cultural values must be considered in AI development[4]. The hierarchies of power can be complicated when traditional methods of AI systems' development span cultural and national boundaries.[5]

It is unfortunate to notice that civil society and social partners are not explicitly mentioned in the category of "external experts and observers" in the (art. 57.4) to be invited to exchange views with the European Artificial Intelligence Board. The high-risk AI systems "may appreciably impact future career prospects and livelihoods" of the very people many civil society and social partners represent, and therefore, the voices of their constituents should be heard.

Sandboxes and innovation

Sandboxes provide a great opportunity to test and explore innovative AI systems, and we gladly recognise them as a measure to support innovation in this proposed regulation. The regulatory sandboxes (art. 53) should also provide an environment for enhanced understanding of the socio-technical nature of the development process. Expanding the interdisciplinary orientation of AI innovation and research will ensure deeper attention to social contexts, and more focus on potential hazards when these systems are applied to human populations. Therefore, prioritisation should be given to explore and develop innovative tools to gain transparency into the AI systems and understand their behaviour in novel situations ahead of time.

Sandboxing schemes should also include examination of AI research projects financed by the EU, which use machine-learning tools, to learn from the loopholes, avoid bias, discrimination, or stigmatisation, and to promote responsible innovation and research.

In order to help the small-scale providers, the text as described in the (art. 55), should be broadened to include direct financial support for developing high-risk systems to cover the additional costs associated with processes required for compliance with this proposed regulation.

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[4] Trust, transparency, and openness: How inclusion of cultural values shapes Nordic national public policy strategies for artificial intelligence (AI), 2020
[5] ANE 2021 report, p.18.

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