# Regulatory Framework for Artificial Intelligence in the European Union

## Non-paper of the Czech Republic

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The Czech Republic recognizes the importance of technologies commonly known as Artificial Intelligence and their increasing impact on our everyday lives. The European Commission, with the support of the European Parliament, has expressed its intention to introduce a new AI regulatory framework. So far, the EU has identified several issues related to AI, namely questions of safety and liability, privacy protection, data, copyright (IPRs), consumer protection as well as protection of fundamental human rights. It puts a strong emphasis on setting up an ethical background for the use of AI. This approach is referred to as human-centric AI and should be based on implementing **European values into the research and development** of AI systems from the very beginning to maintain a high level of protection of human rights and democracy. Thirty years after the fall of the Iron curtain, Europe should be in the frontline of preventing a new one based on the misuse of AI.

The Czech Republic believes that the important opportunities for AI deployment based on European values are a focus on AI for social good and benefit to society and AI for security and safety in society. While the former deals with the use of AI for environmental applications, enabling social entrepreneurship, job creation or innovative ways of AI-enabled governance, the latter addresses the opportunities that arise from use of AI for protecting the citizens, communities and cities against unlawful threats, threats enabled by AI and natural disasters, results of the climate change or against AI-enabled manipulation. In fact, **securing the safety of citizens is the very precondition for the true implementation of fundamental human rights and freedoms**.

The aforementioned approach to AI based on the protection of fundamental rights by design and securing the safety of users should provide a **significant competitive advantage for European companies. European AI regulatory framework should aspire to become a new global standard**. Despite many real-life examples, AI research and development is, in fact, in its very beginning. Companies and institutions in most Member States also currently do not employ AI on such a significant scale as in the United States or in China. Therefore, there is still a window of opportunity for the EU to set out clear conditions for the development and use of AI in a socially and economically beneficial manner. The primary aim should be to promote the development and deployment of AI-based solutions by public and private sector organizations across Europe for the benefit of citizens and businesses, in line with the guidelines and recommendations drafted and published by the EU´s High-Level Expert Group on AI.

The rules for AI in the EU should be based on the following principles:

a) **Enabling research and development by refraining from initial overregulation** and administrative oversight that would slow down the R&D and lower the competitiveness of EU companies. The recognized principle of technological neutrality should be respected and only clear negative impacts of AI systems should be prevented and prohibited by law. At the same time, legislators should support research by allowing exceptions from current laws to test the new AI technologies (for instance for testing autonomous vehicles). Special regulatory regimes for the development and testing of AI systems (sandboxes) should be introduced to attract high-end applications to the EU and to support investments into AI-related experiments.

b) ***Emphasizing self-regulation and soft-law based on best practices*** in the first place as guidance for research, development, and use of AI systems. This approach should serve as an additional means of ensuring legal certainty in a form of codices based on GDPR and the principle of Technological social responsibility (TSR). These should especially focus on processing both personal and non-personal data including cases when a provision of data is used as a payment for a service when data is used to predict future development, best practice in testing AI systems and setting up personalized services in order to be most beneficial to the users. The preferred way of AI regulation in the EU should be therefore primarily based on guidelines to GDPR. Any proposed rules should not duplicate the existing ones and should be strictly performance-based. The sector-specific regulation should be taken into consideration and horizontal rules should cover only areas that are not already addressed or cannot be addressed by the vertical rules in a more efficient way.

c) ***Defining the horizontal red lines as a means of ensuring the protection of fundamental rights as well as legal certainty*** for all subjects that develop, use or are otherwise affected by AI. The regulation as such should focus only on practices that would undoubtedly undermine the protection of fundamental rights and freedoms in cases where the soft-law is not efficient enough or the subject matter is not covered by other regulatory means. For instance, the use of credit scoring systems or facial recognition systems proved to be often discriminatory and not functioning correctly. The use of such practices should, therefore, be significantly limited. However, the possible protective measures should not hinder but rather support the R&D and competitiveness of EU companies by creating a legal environment based on clear and ethical rules. The Czech Republic believes that the European Commission should first propose a comprehensive analysis to address all the aforementioned concerns on the basis of which a debate with the Member States and stakeholders would be launched. This analysis could also include a purpose to introduce legislation if the need for it is identified.

The following should be considered in assessing the potential red lines:

● *The potentially most abusive misuse of AI such as facial recognition should **first** be assessed and consulted with stakeholders. **In case of any possible unlimited ban on facial recognition technologies,** as a consequence of current public backlash, we propose **the time-limited moratorium to be considered instead**. It should be **revised in three to five years** with a focus on bias detection and prevention. Sound approach and methodologies for monitoring the impacts on consumers should be developed to assess these systems are free of bias and discriminatory decisions or decisions that may undermine the fundamental right of an individual to personal expression (for instance the right to change physical appearance). Such a time-limited moratorium should apply for both public and private use only in the public spaces, unless for the purpose of the development of the technology that should not be undermined in any way. The exception for security purposes should be based on the warrant issued by the relevant court.*

● ***Prohibition of development and use of social credit scoring systems that interfere with fundamental rights*** and all such systems that are not subject to review by human and judicial procedures. This measure should be based on Art 13 - 15 GDPR as well as the doctrine of horizontal application of fundamental rights.

- ***Limitation of liability to a specified amount of damages in selected areas*** to establish a clear legal framework with fast enforcement of claims, similar to the protection of passengers' rights in air travel. Another possible limitation of liability may be based on the e-Commerce Directive model and the guarantee fund should be also considered. To ensure broader protection of consumers' rights, AI may also be considered to be a service in the EU, not only goods.

- ***Prohibition of use of systems that can recognize and manipulate users' emotions*** and increase informational asymmetry between users and operators of this technology, unless for medical or research purposes and on condition of agreement given by a user and provision of information to the users (monitored persons).

- ***Right to be informed and right to an explanation*** of the AI products and services:
    - regarding the fact that AI is employed,
    - whether a product/service is personalized to its users and whether the personalization can be switched off or otherwise limited,
    - what are the risks of particular AI-based products or services,
    - whether there might be some conflict of interest between a developer/producer of the product/service and the user of such product/service and what are the ways how a user can minimize the impact of this potential conflict of interest.

  Such a measure should be based on the GDPR and existing legal framework.

- ***Auditing, certification, and risk assessment systems*** should be established with a strong emphasis on public-private partnerships as well as on the connection to the networks of European centers of excellence and testing facilities. The main aim should be to provide companies and users with some certainty towards the explainability and AI black-box problem. A similar system to the cybersecurity audits and certification should be considered.

- ***Right to switch off*** AI system by the user, especially when it comes to personalization, including the right to make a choice of source of information to be provided (for instance while using personal AI assistants with voice commands). Applications and systems that are based on AI technologies where AI cannot be switched off must clearly inform the user about the fact before using it.

The AI research is a very dynamic area covering a broad spectrum of technologies, many of which have not yet been fully developed and is almost impossible to assess their impact. Therefore it would be ***very premature to define AI*** - the Internet itself has not yet clear and widely accepted legal definition and the regulators are focused on inputs such as data, or telecommunications. There is also no binding definition of cybersecurity and all the related terms. Such an approach should be taken also in the area of AI.

**Establishment of any form of the regulatory and oversight body on the EU or national level is unnecessary** and maybe even impossible considering the limited expert capacity on both levels. Transfer of these experts from other EU or national organizations may be even harmful for the achievement of overall goals. Any AI-related oversight should respect GDPR and should be entrusted to the specific bodies, not the ex-ante or ex-post regulators, and the overall regulatory approach should be based on the protection of fundamental and other rights, not on the regulation of AI itself.