**To:**

Ms. Nathalie Prouvez

Chief

Rule of Law and Democracy Section

Ref: NP/HV

Dear Ms. Prouvez,

On behalf on Metamorphosis Foundation for Internet and Society a member of the IFEX network and related to the Call for contributions for the thematic report by the UN High Commissioner for Human Rights, I would like to highlight the following conclusions deriving from the activities of our organization in North Macedonia:

* With regard to specific provisions of the proposed text of the **Law on Free Access to Public Information of Public Character**, Foundation for Internet and Society – Metamorphosis holds the positions below and suggests the following: the defining of the public interest through exhaustive numbering of cases (7) in which the exercising of the right to information shall be considered public interest does not demonstrate clearly whether the injury test will be applied in cases different that the numbered ones as a mechanism for assessing the (non)existence of the public interest. We do not recommend the attempt to define the public interest since every defining of the public interest bears the risk of limiting the exercise of the human rights. To avoid such limited interpretation of this definition, we suggest the injury test, defined as mandatory, to be used for assessing the (non) existence of the public interest, without being defined by law. (The full text of the Metamorphosis proposal is available online in English <https://metamorphosis.org.mk/en/aktivnosti_arhiva/position-of-foundation-for-internet-and-society-metamorphosis-regarding-the-proposed-text-of-the-law-on-free-access-to-public-information/>)
* With regard to specific provisions of the **Law on Agency for National Security**, the Foundation for Internet and Society – Metamorphosis shared concerns and proposals regarding the following: all the personal data collections (in paper and electronical) should be clearly defined in the law; all the exemptions from the law connected to processing of sensitive personal data should be clearly defined and considered as criteria prescribed by law; defining the cases of data breach notification i.e. clear direction on how and when will the Agency for National Security notify the Directorate for Personal Data Protection on the data breaches.
* Regarding the recommendations on how to improve the notifying of persons whose communications had been intercepted and the legal remedies on their disposal, Metamorphosis proposes: introducing an obligation to notify the concerned persons about the special investigation measures after they have been terminated, except when it can be proven that it contains hindrances or prejudice relative to the criminal prosecution; and introducing effective *legal remedies* that can be used when a person believes that the interception of communications carried out by the competent authorities has violated their rights. Relevant nonprofits to be legally entitled to lodge objections and represent concerned persons in cases related to the interception of communications.
* The implementation of the **Law on Interception of Communications** has been problematic in regard of development of oversight mechanisms including the Council for Civic Oversight. While the Assembly conducted a procedure for forming the 7-member Council through an open call for legal experts and civil society activists starting in November, appointing 4 members in January and 3 others in May, it has not provided the necessary infrastructure for its work. The Council members who conducted the process of adopting rules of procedures as envisioned by the law have been repeatedly faced with lack of support regarding use of the resources allocated with the State Budget for 2019 with relevant officials refusing to provide approval until the law is changed to explicitly authorize them to provide administrative and financial conditions beyond designating an office within the parliament building. Similar kind of feedback has been provided by high officials of the Parliament and the Ministry of Finance in July – that nothing can be done until the legal status of the Council is better defined. Bipartisan group of MPs have notified the Council that they would initiate urgent procedure for amending the law, but no results have been evident by October. A similar issue of blockade of allocated resources has been affecting the implementation of the law regarding engaging external experts to assist the Parliamentary Committee on Oversight of the Implementation of the Special Investigation Measure Interception of the Communication by the Ministry of Interior, the Financial Police Management, Customs Management and the Ministry of Defense. The draft versions of the amendments circulated have only partially tackled the relevant issues, and the supposed urgent procedure has been delayed for several months already. This state of limbo deprives the Council of its basic function to serve as interface for the citizens who would demand protection of their human rights to privacy from the Parliamentary Committee. The Law on Interception of Communications adopted by the end of 2018 need to be amended immediately in order to enable functioning of the initial forms of oversight mechanisms which have been *de facto* blocked.
* North Macedonia has been advancing in the sphere of e-government, including developing a flagship application enabling citizens to receive return of the portion of VAT (Value Added Tax) at the end of the year. The application is called “MojDDV” (My VAT) and has been issued on Google Play Store and App Store without a clear privacy policy. Metamorphosis contacted the Public Revenue Office to recommend amending the application in line with data protection legislation, but has not received any response since. The recommendation is available online (<https://metamorphosis.org.mk/en/aktivnosti_arhiva/metamorphosis-foundations-opinion-on-the-establishment-of-a-privacy-policy-while-using-the-mobile-application-moj-ddv/>).
* North Macedonia has not aligned its data protection laws with the **GDPR** even though as a candidate country it has an obligation to harmonize the legal framework with the European Union. The process has been delayed without explanation by the authorities. Before aligning the relevant laws with the GDPR the country also needs to transpose the EU Police Directive in order to provide for full adherence with the framework that encompasses the GDPR. The approach taken so far of attempting to add the elements of the GDPR in the existing legislation by amendments would not be sufficient to enable its full implementation a wider overhaul of the laws needs to be conducted, including a process of public consultations that would take into account the neglected opinions of the civil society and academia.
* In regarding to providing **conditions for development of civil society** the EU progress report for 2019 clearly noted that “Additional efforts are needed to address the financial sustainability of civil society organisations such as a broader tax harmonisation and predictable public budgeting.” The government and the parliament made a positive step forward by providing authentic interpretation of Article 115 the Law on Personal Income Tax that contained loopholes enabling arbitrary interpretation that were used for administrative harassment and draining of financial resources of civil society organizations during the period of state capture (until May 2017. However so far, the legislators have not addressed the need for creating mechanisms for enabling sustainability of civil society which has mainly been relying on donations from foreign sources. Transparent and accountable mechanisms for distribution of resources from the state budget needs to be developed through wide public consultations by taking into consideration models implemented in EU countries including recent members like Croatia.

Sincerely,

Bardhyl Jashari

Executive Director

Metamorphosis Foundation

October 15, 2019

Skopje, North Macedonia