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Subject: Call for inputs to a report on "the right to privacy in the digital age"

Dear Sir/Madam,

Information Commissioner of the Republic of Slovenia herewith provides its submission to **Office of the High Commissioner for Human Rights' call for inputs to a report on "the right to privacy in the digital age"**.

Obviously, there are many topics, standards and best practices with regard to the promotion and protection of the right to privacy that we that a supervisory authority for protection of personal data could emphasise. Having assessed different options we decided to focus our submission on the issue that was promoted by the Fundamental Rights Agency in the EU (FRA) as a promising practice in the field of personal data protection and privacy.

Having encountered on numerous occasions the increasing trend of law enforcement to obtain new powers and to use sophisticated new technologies in prevention and combating crime, a clear need to develop a tool that would enable law enforcement to duly investigate the negative impacts of the use of new surveillance technologies (such as drones, biometrics and automated number plate recognition systems), the Information Commissioner developed **Privacy Impact Assessment (PIA) guidelines for the introduction of new police powers**.

The main purpose of these guidelines is to provide a tool that law enforcement policy makers can use when introducing new police powers, particularly those entailing the use of technical measures. This tool aids in conducting of a thorough privacy impact analysis (PIA), help in assessing the necessity, adequacy, effectiveness and proportionality of the new measures, allow for due public debate on the subject, and assist in providing adequate safeguards against serious infractions of fundamental constitutional rights.

In a democratic society, any decisions regarding the use of surveillance technologies are to be made by the people, not (just) by law enforcement bodies themselves. Should the latter be the case, then that is not a country ruled by law, but a police state.

The public has the right to be fully informed about all new police powers and should have the right to critically assess them before they are adopted; if anything, that right only grows stronger as the technology at the heart of those powers enables the police to collect and process more data than ever before. It is thus in the best interest of the police that any new powers are introduced as transparently as possible, in a manner that will promptly identify any privacy related risks associated with the new powers, provide appropriate safeguards that mitigate those risks, and thus gain acceptance, not rejection, from both the general public and the competent legal authorities.

We believe that these guidelines form but a small piece of that puzzle, and hope that those proposing new police powers will see that and be inclined to use them as much as possible recognizing it is in their own and common interest to do so.

Fostering exchanges between a law enforcement agency and data protection authority while assessing new privacy-invasive practices proved to be a promising practice. In Slovenia, when the police started the test phase of the national scheme for collecting and processing (Passenger Name Records – PNR) information, the Criminal Police Directorate collaborated with the Slovenian Data Protection Authority (the Information Commissioner) and for the first time made use of guidelines drafted by the Information Commissioner. Such a **prior assessment of the impact of new police powers on privacy and protection of personal data** represents a notable shift towards more transparency in the use of police powers, as was noted by the Fundamental Rights Agency in the EU in their 2016 Annual Report and promoted as promising practice¹.

For more information, see: Slovenia, Information Commissioner (Informacijski Pooblaščenec) (2014), Privacy Impact Assessment (PIA) guidelines for the introduction of new police powers (*Presoje vplivov na zasebnost pri uvajanju novih policijskih pooblastil*) also available in English:

https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/PIA_guidelins_for_introduction_of_new_police_powers_english.pdf

Done in Ljubljana, 16 April 2018

Mojca Prelesnik,

Information Commissioner