Marc Rotenberg, President

Statement on Draft EU AI Regulation
20 April 2021

To the European Commission, the European Parliament, and the European Council

We write to express support for the draft EU AI Regulation and to offer technical advice as amendments to the text are considered. This initiative may be the single most important legal framework for the digital economy to ensure the protection of fundamental rights.

The Center for AI and Digital Policy is a global research organization. In 2020 we published *Artificial Intelligence and Democratic Values*, a comprehensive review of the AI policies and practices in 30 countries. We also created a methodology to assess AI national strategies. Our aim is to promote a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law.

In our 2020 report *AI and Democratic Values*, we stated:

1. *Countries must establish national policies for AI that implement democratic values*

2. *Countries must ensure public participation in AI policymaking and also create robust mechanisms for independent oversight of AI systems*

3. *Countries must guarantee fairness, accountability, and transparency in all AI systems*

4. *Countries must commit to these principles in the development, procurement, and implementation of AI systems for public services*

5. *Countries must halt the use of facial recognition for mass surveillance*

Our initial assessment of the draft EU AI Regulation is favorable. The draft EU AI Regulation will promote AI policies and practices that are human-centric and trustworthy. The Regulation identifies key concerns for AI systems, takes a comprehensive approach, builds in mechanisms for ongoing evaluation and monitoring, and establishes clear legal procedures to protect public health and safety and fundamental rights.

The draft EU AI Regulation correctly distinguishes between "High-Risk" AI systems that typically involve automated decision-making concerning natural persons, such as employment and credit decisions and judicial determinations, and other AI systems that do not pose similar risks. We note that this distinction will encourage innovative AI developments in such areas as

modelling climate change, making the energy grid more efficient, improving the productivity of farming, and streamlining manufacturing.

We also recognize the important step forward in the evolution of the internal market with the integration of fundamental rights compliance. As AI systems become more critical role for the digital economy, compliance with fundamental rights should be a necessary precondition for market participation.

We further fully support the objective to prohibit certain AI systems. Our review of country AI practices found that the clearest distinction between AI systems in authoritarian countries and AI systems in democratic countries is the use of facial recognition for mass surveillance. Such indiscriminate ongoing surveillance is intended precisely to coerce social behavior and to control populations. This AI technique has been used against political protesters and religious minorities, and will almost certainly be more widely deployed unless a clear prohibition is adopted.

We do share the concerns expressed by others about the drafting of Article 4 ("Prohibition on AI Systems") and the possibility that the text does not fulfill the purpose of the Article. We would also recommend an amendment of the phrase "limited transparency" as pertaining to AI systems. Transparency is a foundational requirement for AI accountability. Advocates of machine learning techniques will contend that transparency is difficult to achieve in data driven learning systems. But we believe that those are precisely the systems where the need for transparency is greatest. We would recommend instead the phrase "robust transparency."

Finally, we urge you to move forward the AI Regulation as expeditiously as possible. Surveillance technology takes hold quickly. In the absence of a legal framework, private companies and administrative agencies will establish systems that will put at risk public safety and health, and fundamental rights.

Thank you for your consideration of our views. We would welcome the opportunity to provide a more detailed assessment.