



## **42<sup>ND</sup> CLOSED SESSION OF THE GLOBAL PRIVACY ASSEMBLY**

**OCTOBER 2020**

### **ADOPTED RESOLUTION ON ACCOUNTABILITY IN THE DEVELOPMENT AND USE OF ARTIFICIAL INTELLIGENCE**

#### **MAIN SPONSORS:**

- Privacy Commissioner for Personal Data, Hong Kong, China
- Superintendence of Industry and Commerce, Colombia
- Federal Commissioner for Data Protection and Freedom of Information, Germany
- Information Commissioner's Office, United Kingdom

#### **CO-SPONSORS:**

- Agencia de Acceso a la Información Pública, Argentina
- Office of the Privacy Commissioner of Canada
- Information Access Commission, Quebec, Canada
- European Data Protection Supervisor, European Union
- Data Protection Commission, Italy
- National Institute for Transparency, Access to Information and Personal Data Protection, Mexico
- Office of the Privacy Commissioner, New Zealand
- National Privacy Commission, Philippines
- Personal Data Protection Office, Poland
- National Data Protection Commission, Portugal
- Data Protection Authority, Republic of San Marino
- National Commission for Informatics and Liberties, Burkina Faso

## **The 2020 GLOBAL PRIVACY ASSEMBLY:**

**Recalling** the Declaration on Ethics and Data Protection in Artificial Intelligence made by the 40<sup>th</sup> International Conference of the Data Protection and Privacy Commissioners on 23 October 2018, which endorsed *inter alia* the principle of accountability of all relevant stakeholders to individuals, supervisory authorities and other third parties, and which established a permanent Working Group (**AI WG**) to address the challenges of development of artificial intelligence (**AI**), and promote understanding of and respect for the principles of the Declaration,

**Highlighting** that the Work Programme of the AI WG includes an action to prepare a statement on the essential need for accountability and liability of human actors for AI systems,

**Taking into account** the results of a survey conducted by the AI WG in May and June 2020, to gather the views of the members of the Global Privacy Assembly on accountability for AI systems, as detailed in the Explanatory Note,

**Noting** that international organisations (including the United Nations, the Organisation for Economic Co-operation and Development, the Council of Europe and the European Commission), governments, civil society bodies, and technology companies have produced and continue to produce guidelines and recommendation on the legal and ethical development of AI, and that the need for accountability and a human-centric approach are common themes within these guidelines,

**Noting** that accountability is to be understood as the compliance and demonstration of compliance with personal data protection and privacy regulations, in particular through the adoption and implementation of appropriate, practicable, systematic and effective measures,

**Affirming** that the responsibility for the operation and effects of AI systems remains with human actors,

**Taking the view** that in order to be effective, accountability obligations should be assessed against clearly defined principles and frameworks, and extend to both organisations that develop AI systems and organisations that use them,

**Emphasising** that the principle of accountability encompasses accountability to the people affected by the decisions made by or with AI systems, as well as to supervisory authorities and, where appropriate, to other third parties, and that beyond the compliance element, accountability should also be demonstrated in order to build trust with the stakeholders,

**Recognising** that AI systems may affect human rights in different ways, the application of specific obligations should take into account the risks for human rights as well as the importance of the principle of human accountability,

**Asserting that** in order to support the trustworthiness of organisations developing and using AI systems, these organisations should work closely with policy-makers, individuals and other stakeholders (e.g. non-government organisations, public authorities and academia) to resolve concerns and rectify adverse impacts on human rights.

**The 2020 GLOBAL PRIVACY ASSEMBLY therefore resolves to:**

1. Urge organisations that develop or use AI systems to consider implementing the following accountability measures:
  - (1) Assess the potential impact to human rights (including data protection and privacy rights) before the development and/or use of AI;
  - (2) Test the robustness, reliability, accuracy and data security of AI before putting it into use, including identifying and addressing bias in the systems and the data they use that may lead to unfair outcomes;
  - (3) Keep records of impact assessment, design, development, testing and use of AI;
  - (4) Disclose the results of the data protection, privacy and human rights impact assessment of AI;
  - (5) Ensure transparency and openness by disclosing the use of AI, the data being used and the logic involved in the AI;
  - (6) Ensure an accountable human actor is identified (a) with whom concerns related to automated decisions can be raised and rights can be exercised, and (b) who can trigger evaluation of the decision process and human intervention;
  - (7) Provide explanations in clear and understandable language for the automated decisions made by AI upon request;
  - (8) Make human intervention on the automated decision made by AI upon request;
  - (9) Continuously monitor and evaluate the performance and impacts of AI by human beings, and act promptly and firmly to address identified issues;
  - (10) Implement whistleblowing / reporting mechanisms about non-compliance or significant risk in the use of AI;
  - (11) Ensure the auditability of AI systems and be prepared to demonstrate accountability to data protection authorities on request; and
  - (12) Engage in multi-stakeholder discussions (including with non-governmental organisations, public authorities and academia) to identify and address the wider socio-economic impact of AI and to ensure algorithmic vigilance.
2. Urge organisations that develop or use AI systems to implement accountability measures which are appropriate regarding the risks of interference with human rights.

3. Call upon all members of the Global Privacy Assembly to work with organisations that develop or use AI systems in their jurisdictions and globally to promote the principles adopted in its 2018 resolution, and accountability in the development and use of AI, and the adoption of accountability measures;
4. Encourage governments to consider the need to make legislative changes in personal data protection laws, to make clear the legal obligations regarding accountability in the development and use of AI, where such provisions are not already in place; and
5. Encourage governments, public authorities, standardisation bodies, organisations developing or using AI systems and all other relevant stakeholders to work with data protection authorities in establishing principles, standards, and accountability mechanisms, such as certification, for the purpose of demonstrating legal compliance, accountability and ethics in the development and use of AI systems.

#### **Explanatory note**

**The GLOBAL PRIVACY ASSEMBLY WORKING GROUP ON ETHICS AND DATA PROTECTION IN ARTIFICIAL INTELLIGENCE conducted a survey in May and June 2020 to collect the opinions of the members of the Global Privacy Assembly on the measures for demonstrating accountability in the development and use of AI. Responses were received from 38 members. The survey results indicated the following:**

1. AI development and use was still largely unregulated and/or unguided in the data protection field. A majority of members surveyed (68%) did not have laws or guidelines specific to accountability in the use of AI.
2. The majority of the respondents considered that 13 out of the 14 accountability measures proposed in the survey were very important or important for either AI developers or AI users. The 13 measures are listed in below:
  - (1) Assess the ethical impact before development and/or use of AI;
  - (2) Test the robustness and reliability of AI before putting into use;
  - (3) Require record-keeping on impact assessment, design, development and use of AI;
  - (4) Disclose the ethical impact assessment of AI;
  - (5) Disclose the use of AI;
  - (6) Continuously monitor and evaluate of the performance of AI by human beings;
  - (7) Ensure human oversight of the automated decisions by AI;
  - (8) Provide explanation by human beings on the automated decisions by AI upon request;
  - (9) Allow human intervention on the automated decision by AI upon request;

- (10) Require whistleblowing/reporting about non-compliance or significant risk in the use of AI;
  - (11) Comply with the duty to cooperate in an investigation by data protection authority;
  - (12) Hold organisations liable in the event of design/operation failure of AI; and
  - (13) Accredite or certify AI systems.
3. According to the results of the survey, the importance of the aforementioned 13 accountability measures did not vary much between AI developers and organisations using AI systems. In other words, the respondents considered that it was similarly important for the 13 measures to be put into practice by both AI developers and AI users in order to achieve accountability.
4. Among the 14 accountability measures proposed in the survey, the only measure considered relatively less important was holding directors or officers of organisation personally liable in the event of design or operation failure of AI. Only about half of the respondents rated it as important or very important.
5. Among the 14 accountability measures suggested in the survey, the following are not covered in many existing laws or guidance of the members specifically on accountability of AI:
- (1) Holding directors/officers of organisation personally liable in the event of design/operation failure of AI;
  - (2) Requiring disclosure of the ethical impact assessment of AI;
  - (3) Requiring whistleblowing or reporting about non-compliance or significant risk in the use of AI; and
  - (4) Accreditation or certification of AI systems.
6. Generally, a minority of the respondents considered the organisations in their jurisdictions were ready to adopt most of the 14 suggested accountability measures.
7. However, among the 14 suggested accountability measures, respondents largely considered organisations in their jurisdictions as ready to adopt the following:
- (1) Comply with the duty to cooperate in an investigation by data protection authority (79% considered ready or very ready);
  - (2) Hold organisations liable in the event of design/operation failure of AI (55% considered ready or very ready);
  - (3) Disclose the use of AI (53% considered ready or very ready); and
  - (4) Keep records on impact assessment, design, development and use of AI (50% considered ready or very ready).

8. The following factors were considered by respondents to be relatively more relevant in determining the level of an organisation's accountability in the use of AI:
  - (1) Extensiveness and magnitude of the human rights impact of the AI system (84% considered relevant);
  - (2) Level of involvement of organisations in the design and development of the AI system (50% considered relevant); and
  - (3) Technical capability of organisations (44% considered relevant).
9. With regard to governmental actions to be taken to improve accountability in the use of AI, 68% of the respondents considered making legislative change as the most important action.
10. With regard to actions to be taken by data protection authorities to promote accountability, 63% of the respondents considered that it was most important for data protection authorities to engage with data users, controllers, and processors.