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## EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

## *"Towards the Artificial Intelligence Act"*

Conference organised by Brando Benifei, MEP

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European Data Protection Supervisor

Dear Ladies and Gentlemen,

Thank you for the invitation. I am pleased to summarise today's discussion and provide the EDPS' perspective at the end of this very important debate.

Although we discuss future developments of Artificial Intelligence, we have to bear in mind that AI is already being used in entities' decision-making processes, even judicial activities. Therefore AI is no longer and so science fiction.

These past few weeks, many of us popular tools, like Chat GPT, now even integrated in Bing, and other big players' solutions. We may expect that 2023 will be a breakthrough, not only from a legal point but also in the very practice of these very fast developing phenomena.

Regulations are not generally known for their adaptability. There is therefore a real challenge to regulate artificial intelligence through the legislative proposal that would provide the rigour where it is needed, but also flexibility where necessary. Today's conference on the Artificial Intelligence Act proves that this debate is very timely.

Personal data is, in many cases, a key premise for autonomous decisions by AI systems, which will inevitably affect individuals' lives at various levels. This is why the Artificial Intelligence Act has important data protection implications.

I welcome the idea of a European society empowered by new technologies; technologies that will serve us and will respect our common values, and a secure environment that respects privacy, data protection, dignity, integrity and other fundamental rights, in full transparency. Likewise, I am in favour of AI solutions helping advances in medicine, environment and many other fields.

However, to "move fast and break things" has never been the European way of developing or using technology. This is why I very much welcome the European Commission's risk-based approach. An approach that clearly defines the set of high-risk sectors or the various use of AI, including the judiciary, asylum and migration, where the use of AI could certainly break very important things if not properly regulated and supervised. I very much agree with this approach that reflects our collective growing awareness that in such areas the potential for undesirable yet serious adverse consequences for individuals' lives is significant. In relation to the legislative process, I find it important to reference the representative of Access Now of the risk of watering down Article 6 of the draft AI Act.

AI technology has the potential to improve our lives and our safety and security, individually and as a society, but it should never come at the cost of our values and fundamental rights. Let's not fall into "technology solutionism", an endemic ideology that recasts complex social phenomena like politics, public health, education, and law enforcement as "*neatly defined problems with definite, computable solutions or as transparent and self-evident processes that can be easily optimised—if only the right algorithms are in place!*" AI might be helpful in solving some problems. However, there will be cases in which we could use AI but we should not do it. The best example being Paul Nemitz' nightmare of AI systems being used to replace electoral systems.

I remain convinced that, as a society, we need to draw some clear "red lines" and be brave enough to simply ban certain uses of AI technology. In particular, those uses that pose an 'unacceptable risk' to fundamental rights. This would not be the first time that scientists, philosophers, lawyers and politicians call for a ban on certain uses of some technology. The Council of Europe's Convention on Human Rights and Biomedicine, better known as the [Oviedo Convention](#), explicitly bans heritable human genome editing and 29 countries have signed and ratified it.



Remote biometric identification of individuals in publicly accessible spaces is one example of AI use that should be banned.

The problem is not the Remote Biometric Identification technology itself - no matter if we use it with AI or without - as it is in use at the moment with success and indeed it may find new fields in which it can be used.

The use of such technology in public spaces would lead to the processing of data of an indiscriminate and disproportionate number of individuals for the identification of only a few individuals. *Especially, but not exclusively, when it is in use without a clear notice to the people.* We have to remember that the right to information became the right to “explainable AI”.

Remote Biometric Identification in public spaces represents a frontal attack on our right to privacy and means the end of anonymity in those spaces. It amounts to mass surveillance that calls into question the essence of our rights and freedoms. Given that it is not possible to provide sufficient safeguards, a blanket ban is in my opinion the only viable and effective solution. In the same vein, I consider that the use of AI for social scoring of individuals and the categorisation of individuals on the basis of their biometric data (e.g. their ethnicity) should also be prohibited by default. The same applies for the use of AI categorising individuals according to their perceived emotions, what we call ‘Emotional AI’.

AI systems that undermine individuals’ rights to human dignity in general should also be prohibited. Such systems are against the values we collectively stand for.

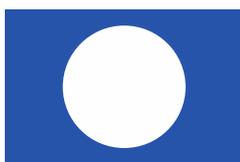
Please do not understand it as a complaint, it is only a complaint against bias in assessment. Elimination of bias is somehow the purpose of all developers and users (at least declarative). Perfectly unbiased systems will be awful as well.

Collection of special categories of data under Article 10.5 of the draft AI Act, which can only be used to fight the bias of the systems, may - in connection with the mandatory checks referred to in Article 10(3) of the draft AI Act - drive us to the situation where such special categories of data will be collected for each and every system in order to pass such mandatory test. It then means that everybody shall be ready to reveal such information (for example racial ethnic origins and sexual orientation) much more often than today. We try to mitigate the risk of bias and in fact we are making people used to the additional intrusion in their rights.

We need to ensure that the future AI Act covers all relevant areas, in particular areas such as migration and law enforcement, where the asymmetry between the individual and the State is even greater than in other areas. Use of technologies like AI in the field of criminal justice, law enforcement or migration is highly sensitive and warrants particular scrutiny.

The AI safeguards we consider necessary for the protection of our citizens should extend equally (and immediately) to non-EU-country migrants. Migration and law enforcement are areas where AI systems are already being developed and they should be properly regulated.

It is for these reasons that I am very concerned by the proposal to exclude large-scale EU information systems currently in use and that are planned to be deployed in the context of migration control. In the same vein, the exclusion of international law enforcement cooperation from the scope of the AI Act also raises serious concerns. This exclusion would allow EU public authorities to circumvent their obligations by relying on AI systems operated by non-EU countries or international organisations.



I would like to draw your attention to Ursula Pahl from BEUC who expresses pertinent views on the lack of proper redress mechanism that may help defend the rights of consumer and the necessity of further discussions on collective redress.

I cannot end my intervention without expressing my disappointment with one of the amendments included in the draft report of the European Parliament. An amendment to Article 57 of the AI Act proposal that would take away from the EDPS its voting capacity in the European AI Board. According to both the draft report and the initial proposal, the EDPS is to become a fully-fledged AI supervisory authority, so I cannot understand why the Parliament would want to move in that direction.

The EDPS agrees that it is well positioned in the framework of EUIs in order to play the role of a fully-fledged AI supervisory authority for them. This task might be more challenging on national level for the national data authorities.

Both Garante and CNIL have already started preparations of the new tasks by creating new departments. You have also heard both authorities as well as Norwegian DPAs now strongly advocating for a leading role of DPAs in the governance of AI.

As we have heard earlier today, a number of important questions remain unanswered. However, I think we can all agree that we need to set clear limits where clear limits are called for. And we need to ensure that when AI is deployed, we have all the necessary safeguards in place to mitigate the risk for fundamental rights.

Check Against Delivery

