

We propose that, in developing an ecosystem of excellence and trust in AI, the European Commission should pay close attention to the ways in which AI-based targeting may infringe the neglected human right to mental integrity.

AI-based targeting of private sector advertising and public sector communications is allowing companies and governments to influence individual preferences and behaviour more powerfully than would be possible without such targeting. We will refer to the use of AI in this way as AI-based manipulation.

At present, AI-based manipulation is virtually unregulated. The contrast with *biomedical* forms of psychological and behavioural influence—for example, through the administration of psycho-active drugs—is particularly striking. For example, Member States stringently regulate most physiologically addictive or harmful drugs. Yet, with the arguable exception of gambling, no comparable measures exist to regulate harmful psychological addictions—e.g. to engagement with social media platforms—of the sort that AI-based manipulation often seeks to promote. Moreover, even *non-injurious* forms of bodily interference are stringently regulated, both at domestic and at EU level (most straightforwardly under article 8 ECHR). There is no similarly clear and direct protection for mental integrity that might serve as a basis for regulating AI-based manipulation.

However, European law and jurisprudence does contain the kernel of a basis on which AI-based manipulation, and other powerful forms of psychological influence, might be regulated.

The EU Charter of Fundamental Rights recognises a **right to mental integrity**, alongside the right to bodily integrity, under article 3(1). This right can arguably be derived from article 8 ECHR (the right to private and family life) or article 9 ECHR (freedom of thought).¹ Several cases that have come before the European Court of Human Rights have referred to mental integrity (or some aspect of it) as something worth protecting and that is protected by the ECHR. For example, *Pretty v United Kingdom* (2002) 35 EHRR 1 [61] refers to the ‘physical and psychological integrity of a person’ afforded by article 8 ECHR.

However, the precise scope, force and basis of the right to mental integrity has never been clearly specified. The right has rarely figured in court judgments, and the protection afforded to it by the relevant ECHR articles is unclear. Moreover, commentators have sometimes assumed that, insofar as this right protects against

¹ Susie Alegre, ‘Rethinking Freedom of Thought for the 21st Century’, *European Human Rights Law Review* 3, 2017: 221–33.

‘technologically assisted’, forms of psychological influence it would apply only to influence that employs *neurotechnology* to directly intervene on the brain, not technologies, like AI, that might enable powerful external forms of influence.²

Existing protection afforded to mental integrity is much less strong than the protection for bodily integrity, and its scope is less clear. In part for this reason, there is currently no regulation on the European level that would afford individuals adequate protection against AI-based manipulation.

There is thus an urgent need to determine (i) whether the right to mental integrity can developed in such a way that it would protect against AI-based manipulation, and if so (ii) which precise which forms of AI-based manipulation would be covered, and (iii) what legal remedies should be available to those whose right to mental integrity is infringed by AI-based manipulation. This will require the input of both ethicists, lawyers, psychologists and computer scientists, among others. We invite the European Commission to consider this in developing an ecosystem of excellence and trust in AI.

Dr Thomas Douglas
Oxford Uehiro Centre for Practical Ethic
University of Oxford

Dr Lisa Forsberg
Faculty of Law
University of Oxford

Oxford, United Kingdom
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² See, for example, Marcello Ienca and Roberto Andorno, ‘Towards new human rights in the age of neuroscience and neurotechnology’, *Life Sciences, Society and Policy* 13 (2017): 5.