

European Commission
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ENNHRI's work to promote and protected fundamental rights related to artificial intelligence

Dear Madam / Sir

ENNHRI welcomes *the White Paper on "Artificial Intelligence - A European approach to excellence and trust"*, which is an important contribution to developing a fundamental rights approach to AI within the EU.

ENNHRI, [the European Network of National Human Rights Institutions](#), brings together over 40 National Human Rights Institutions (NHRIs) across Europe. NHRIs, as national guardians of the EU Charter and fundamental rights, are independent state mandated actors in EU Member States¹, which have a legal mandate to promote and protect all fundamental rights, including the EU Charter. [The 2019 Council Conclusions](#), for example, recognise that NHRIs are 'crucial actors for the promotion and protection of fundamental rights and in ensuring compliance with the Charter'.

NHRIs as a part of effective and independent oversight help to ensure fundamental rights compliance

EU has a well-developed set of bodies with a clear mandate to protect and promote fundamental rights, including, NHRIs, equality bodies and data protection authorities.

NHRIs are already playing a crucial role in monitoring fundamental rights in the EU members states. They do so through a wide array of functions, including consistent monitoring and reporting, providing advice to government and parliament, assisting individuals' access to justice, as well as through human rights education, training, and awareness raising.

¹ ENNHRI has members in 25 out of 27 EU Member States. While Malta and Italy do not have an NHRI yet, ENNHRI engages with national authorities to support the establishment of an NHRI in those countries. Further information on ENNHRI's work can be found on ENNHRI's webpages, regarding NHRI establishment in Malta and in Italy.

NHRIs should be equipped with sufficient resources, powers and – importantly – expertise to prevent and assess fundamental rights violations and effectively support those whose fundamental rights are affected by AI.

In cooperation with other bodies, NHRI can:

- conduct monitoring activities and legislation reviews to establish impact of AI on fundamental rights.
- establish legal gaps and advise how AI systems can be regulated to prevent violations of fundamental rights and identify actions at national or EU level.
- act as a platform to bring AI, legal and fundamental rights experts together to co-create guides on a human rights-based approach to AI taking into account the EU Charter and legislation.
- engage in discussion with AI specialists and provide advice on fundamental rights safeguards throughout the design, development and deployment of AI systems.
- cooperate with their peers through ENNHRI issues with European relevance and conduct joint advocacy actions in this area.

Key issues highlighted by European NHRIs

All fundamental rights are affected by AI

Even though the White Paper underlines the issues of data protection and non-discrimination as essential elements, AI naturally impacts on every aspect of individual's life. Any fundamental rights-based approach to AI should take into account the potential impact on the full range of rights, and not be limited to data protection, privacy and non-discrimination. Also it shall be avoided that the lack of access to internet, along with digital illiteracy, in the context of a true 'digital revolution' enhances fundamental rights violations impacted disproportionately on certain vulnerable groups.

A rights-based approach to AI is key

Many AI initiatives are guided by ethical frameworks, which typically are voluntary. A fundamental rights-centred approach to AI is underpinned by legal regulation, where the responsibility for protecting rights rests with the state.

Fundamental Rights Impact Assessments are key to assessing risk

There is an increase in use of AI and automation (automated decision-making) in public administration and judiciary, banking and insurance sector and it may lead to discriminatory impact on certain groups while violating right to due process and data protection. Fundamental rights impact assessments should be conducted prior to the deployment of an AI-system and – drawing on established good practice from other fields – repeated on a regular basis post deployment.

Facial recognition technology presents particular fundamental rights challenges

The use of so-called high-risk AI technologies such as facial recognition and other investigative tools ("predictive policies") by law enforcement agencies raise serious human rights concerns and led to calls [for an immediate moratorium](#) on the sale, transfer and use of surveillance technology until a human rights-compliant regulatory framework is in place.

Conducting a thorough fundamental rights impact assessment before deploying any facial recognition technology can help to avoid potential fundamental rights violations. Specifically there is a need to carefully consider how facial images are obtained and used – and whether this is done with consent and the opportunity to opt out – given the potential impact on people's dignity. Any use of the technology needs to be thoroughly assessed for its potential consequences for non-discrimination and the rights of particular groups such as children, older persons and persons with disabilities. Evidence suggests that currently the technology is less accurate for people with certain protected characteristics. Moreover, use of the technology must not undermine freedom of expression and information (Article 11) or freedom of assembly and association (Article 12); the use of facial recognition may create a chilling effect, leading individuals to change their behaviour.

Technological companies compliance with human rights standards

There is an increase in contracting tech companies and businesses by states to supply them with AI solutions to essential services such as health, education or even law enforcement. Despite the positive aspect that these solutions bring they raise range of human and fundamental rights concerns and they should always be preceded by a democratic debate. All states entering into contractual relations with a company need to ensure its compliance with [the UN Guiding principles of Business and Human Rights](#) and standards related to data protection.

Increased fundamental rights risks during COVID-19 pandemic

In order to ensure to protect individuals' right to health and rights to life, during the time of pandemic, we saw an increase in design of tracking apps. It is essential that these apps meet [international human rights standards](#) of necessity and proportionality and ensure input of those most marginalised whose right to life and health can be impacted by lack of access to digital tools internet and knowledge. Additionally, a spread of online or tele-schooling prevented children especially from marginalised group to access education. In line with international standards, it is essential that all children can some form of education is accessible to all children even in case that some may lack digital tools, internet or knowledge.

ENNHRI's future work

ENNHRI aims to work with European NHRIs and AI experts and develop a working tool for NHRIs (and other human rights defenders) on human rights-based approach to AI. The tool will build on work of [the Council of Europe Ad Hoc Committee on Artificial Intelligence](#), where ENNHRI has its observer status and [Equinet report](#) on the topic, as many of NHRIs are also National Equality Bodies.

We are looking forward to a continued dialogue with the EU on this important matter.

Yours faithfully,



Debbie Kohner
ENNHRI Secretary General