



**GPA**

Global Privacy Assembly

# Working Group on Ethics and Data Protection in Artificial Intelligence

Report – July 2022

Commission Nationale de l'Informatique et des Libertés (CNIL), France

European Data Protection Supervisor (EDPS), European Union

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## Executive Summary

In early 2021, the AI Working Group (the Group) agreed on its objectives for the year and organised itself in teams of rapporteurs and co-rapporteurs for the implementation of its work packages.

Among the work projects and deliverables of the Working Group, we are pleased to present a quick summary of the key outputs of the Group:

- **A repository of AI related documents accessible by all GPA Members and Observers:** this is regularly updated with new documents, and all members and observers of the GPA are invited to inform the Group's Secretariat at the EDPS with information of new documents to be added to the repository.
- **Preparation of a document entitled '*Risks for Rights and Freedoms of Individuals posed by Artificial Intelligence Systems – Proposal for a general Risk Management Framework*':** the work on this item will be presented in the 2022 GPA annual meeting. The aim of the analysis is to also cover other relevant risks considered in the Declaration on Ethics and Data Protection in Artificial Intelligence, in particular risks for the whole society, giving basic indications for managing these risks with reference to the various stakeholders involved. The inclusion of the risks to sustainability and inequality at global level will also be evaluated. The WG will present the document for adoption at the Closed Session of the 2022 GPA.
- **A survey on authorities' capacity and expertise in addressing ethical and data protection issues in AI systems applications:** As part of its work programme 2019-2021, the GPA AIWG undertook to conduct a survey on members' capacity and expertise in addressing ethical and data protection issues in AI systems applications. This survey constituted a first step in order to pursue the working group work in the future on capacity and expertise in the field of AI, supporting the development of a gap analysis and relevant recommendations in order to improve knowledge sharing and capacity building within the GPA in this field. In order for the current rapporteurs to advance the work on this item towards a declaration, more rapporteurs would be needed.
- **Use of AI in the employment context:** As part of its Work Programme, the GPA AIWG will prepare a high-level report on how data protection may intersect with employment in general and with employers monitoring in particular. A survey has been conducted and preliminary results will be presented at the Closed Session of the 2022 GPA.
- **IEWG-AIWG FRT sub-group:** The GPA in 2020 adopted a resolution to follow up on its FRT declaration. The resolution tasked the IEWG and AIWG with developing a set of principles and expectations for the use of personal data in FRT. With coordination from the IEWG Secretariat, an IEWG-AIWG FRT sub-group was established in late 2020 to progress work mandated by the resolution. The sub-group comprises the EDPS, the FDPIC (Switzerland), the ICO (United Kingdom), the Japan Personal Information Protection Commission, the OAIC (Australia), and the OPC (Canada). A set of FRT principles and draft Resolution will be presented and adopted at the Closed Session of the 2022 GPA.

Additional information on the work and deliverables of the Group will be presented in more detail in the report. In general, the identified priorities appear still valid. The next work phase of the Group will on the one hand be characterized by the monitoring of concrete legislative initiatives by some national, regional and international entities, and on the other by the need to take account of long term challenges to human rights, such as environmental developments and global inequality.

## Introduction

The 40th ICDPPC (now Global Privacy Assembly) adopted in October 2018 in Brussels a Declaration on Ethics and Data Protection in Artificial Intelligence<sup>1</sup> (the Declaration), which endorses six guiding principles as core values for the preservation of human rights in the development of Artificial Intelligence. The Declaration establishes the Permanent Working Group on Ethics and Data Protection in Artificial Intelligence and mandates it with promoting the principles of the resolution *“by all relevant parties involved in the development of artificial intelligence systems, including governments and public authorities, standardization bodies, artificial intelligence systems designers, providers and researchers, companies, citizens and end users of artificial intelligence systems”*<sup>2</sup>.

With the help of the Executive Committee of the GPA (the ExCo), the Group started in early 2019. CNIL (France) and EDPS (EU) currently co-chair the Group, with the EDPS providing the secretariat function for the Group.

To date, the Member authorities of the Group are:

- IDP (Albania);
- AAIP (Argentina);
- OAIC (Australia);
- CNIL (Burkina Faso);
- OPC (Canada);
- OIPC British Columbia (Canada);
- IPC Canada Ontario (Canada);
- CAI Quebec (Canada);
- SDPD (Colombia);
- Datatilsynet (Denmark);
- DPC (Gabon);
- BfDI (Germany);
- Bavarian DPC (Germany);
- LfDI Rheinland-Pfalz (Germany);
- HDP (Greece);
- ODP (Guernsey);
- PCPD (Hong Kong);
- GPDP (Italy);
- PPC (Japan);
- OIC (Jersey);
- PIPC (Korea);
- INAI (Mexico);
- OPC (New Zealand);
- ICO (United Kingdom);
- FTC (USA);

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<sup>1</sup> Declaration on Ethics and Data Protection in Artificial Intelligence; 40th ICDPPC, 23rd October 2018, Brussels, [http://globalprivacyassembly.org/wp-content/uploads/2018/10/20180922\\_ICDPPC-40th\\_AI-Declaration\\_ADOPTED.pdf](http://globalprivacyassembly.org/wp-content/uploads/2018/10/20180922_ICDPPC-40th_AI-Declaration_ADOPTED.pdf).

<sup>2</sup> The Declaration, p. 6.

- FDPIC (Switzerland).

The Observers part of the Group are:

- Council of Europe (COE);
- Fundamental Rights Agency (FRA- EU);
- International Committee of the Red Cross (ICRC);
- Office of Privacy and Civil Liberties (US Department of Justice);
- Qatar Financial Centre (Qatar);
- Organisation for Economic Co-operation and Development (OECD).

The Group developed a work programme covering 2019 to 2021, with 11 work packages and corresponding deliverables. Seven work packages are completed or proceeding according to schedule, while for the others the new demands due to the COVID-19 pandemic have required the Group member authorities to review priorities and resource allocations. During this year, the GPA AIWG focussed its activities on Action Points 6, 7, 8 and 13 of the Group's Work Plan. Since the GPA Closed Session 2021, the Group held three meetings: on 2 February 2022, 11 May 2022 and 26 July 2022.

## Working Group Activities

### Implementation of the Work Program

After its establishment in early 2019, the Group discussed a draft work program. A physical meeting alongside the Closed Session was held in Tirana to allow Group's members to review this draft. At the meeting, the Group achieved consensus about the work packages and deliverables scheduled for 2019 and 2020 and agreed to review future work schedules at a later stage. During a teleconference in February 2020, the Group's members and observers fielded resources as rapporteurs and co-rapporteurs for the agreed work packages.

Due to the COVID-19 pandemic emergency in the following months, GPA member authorities were confronted with a huge additional workload. Many organisations had to review their priorities and readjust resource allocations, as well as reconsider the scheduling of committed activities. Therefore, following the last GPA Closed Session in 2021, the Group updated the GPA AIWG Work Plan accordingly by prioritising the work on action points 6, 7, 8 and 13 of the Work Plan. The Group's co-chairs intend to use their oral presentation at the Closed Session to provide the latest update to participants.

The work of the Group should lay the foundations for the more detailed work in the coming years. Focussing on current experiences and sound principles, as well as proven practices, will enable GPA members and observers to make a significant contribution to the forthcoming debates.

While some of the enthusiastic forecasts of the capabilities of systems based on AI technology might have created the expectation that such systems could have a significant effect in the fight against the pandemic, there is little evidence of such impact. While there are reports about successful use of some of the more advanced AI applications (analysis of medical imagery, statistical analysis of mass data, guidance of complex diagnostics, and analysis of complex molecules) in the context of COVID-19, the main effect on AI appears to be increased funding for related research and development, and possibly financial support in the phase of economic recovery.

In the sections below, the report will be presenting the key outputs of the Group's activities.

### Repository of documents

As there are many policy initiatives addressing the development of AI, and in particular its impact on human rights, including privacy and data protection, the Group's work program includes the creation of a repository of policy documents issued by GPA member authorities and observers or other entities which are setting the legal and regulatory framework for the development and use of AI technologies and applications and their impact on the rights of individuals.

The repository is constantly updated with new documents, and all members and observers of the GPA are invited to inform the Group's Secretariat at the EDPS with information of new documents to be added to the repository. The repository may be accessed by all members and observers of the GPA. Interested organisations are invited to contact the Group's Secretariat at the EDPS for instructions on access. If appropriate, the Group may consult the GPA Executive Committee to determine time and format of publication on the GPA's website.

Analysis of the risk to data protection, especially data minimisation, as brought about by the demands to maximise personal data collection on the grounds of ‘eliminating’ bias and discrimination (Action Point 6)

As part of its Work Programme 2019-2021, the GPA AIWG decided to perform an analysis of the risk to data protection, particularly data minimisation, as brought about by the demands to maximise personal data collection on the grounds of ‘eliminating’ bias and discrimination.

Therefore, the co-rapporteurs to this action point, developed a paper addressing the modalities according to which specific threats may be identified and their impact on individuals. The paper also covers the countermeasures that can be taken to mitigate the risks and the accountability of the relevant actors.

The primary goal of the report is to identify the big points and provide an overview of the most important aspects, which must be considered for a value-based approach.

The paper will be presented to the GPA Assembly during the GPA 2022 Closed Session.

Document on how data protection and privacy are essential to sustainable digital growth and AI innovation (Action Point 7)

As part of its work programme 2019-2021, the GPA AIWG plans to prepare a document on how data protection and privacy are essential to a sustainable digital growth and AI innovation.

The work on this Action Point has been postponed to 2023.

Survey on authorities’ capacity and expertise in addressing ethical and data protection issues in AI systems applications (Action Point 8)

As part of its work programme 2019-2021, the GPA AIWG undertook to conduct a survey on members’ capacity and expertise in addressing ethical and data protection issues in AI systems applications. The survey aims at drawing a first overview in terms of GPA members’ capacity and expertise in addressing ethical and data protection issues related to the application of AI systems, as well as identifying possible upcoming challenges. In the long run, the survey is a first step towards the development of a ‘gap analysis’, informing GPA members in terms of resources strategies and best practices. The survey has been conducted during Q2 2021 and the AIWG received a total of 38 responses. While most replies come from European authorities, other world regions are also represented.

The co-rapporteurs presented during the 2021 GPA a preliminary summary of the survey focusing on quantitative analysis of the answers. The sample of authorities having responded to the survey reflected a fair balance in terms of staffing and financial resources, thus allowing the development of future analysis on the basis of these criteria. The vast majority of respondents considered relevant to increase knowledge sharing and capacity building between authorities at regional or international level.

The co-rapporteurs presented during the last 2022 AIWG meeting a preliminary summary of the survey focusing on qualitative analysis of the answers regarding the main challenges identified by authorities in assessing compliance of AI systems applications with privacy and data protection principles. Along with legal and technical challenges, the lack of sufficient human, material and financial resources was identified as a relevant challenge.

The co-rapporteurs plan to present a report on the survey results, with some first overall conclusions based on the analysis carried out, at the Closed Session of the 2022 GPA.

### [AI in the employment context \(Action Point 13\)](#)

The co-rapporteurs of this action point (ICO, UK, lead, and BfDI, Germany) conducted a survey among GPA members on AI in employment between the end of April and the end of June.

The goal of the survey was to identify key policy and legal issues in relation to the development and use of AI in the employment context (including recruitment) that are important for the data protection and privacy authorities across the world. This Action Point 13 sub-group received twenty-eight responses to the survey.

While the analysis of the responses is ongoing, initial findings indicate that:

- Many authorities believe that the use of AI for monitoring purposes in the workplace or for hiring purposes pose the greatest privacy and data protection risks.
- Regarding the most significant data protection and privacy risks, frequently mentioned answers include, inter alia, a lack of transparency, the presence of bias or discrimination, a lack of meaningful human intervention, a lack of consideration over the necessity and proportionality of the use of AI in the workplace or a lack of valid legal basis for the processing and/or of specific laws governing the use of AI in the workplace.
- There were a variety of mechanisms proposed to help mitigate these risks to the rights and freedoms of the employees, ranging from the creation of an extensive regulatory framework for AI in the workplace to banning or restricting the use of AI for certain high-risk employment purposes to providing clarificatory guidance to help make employers aware of the potential harms and the ways to prevent them.

The co-rapporteurs will continue to analyse the responses and produce a more in-depth report on the findings to circulate among the GPA membership. If the AIWG decides to use the future findings of this survey to start working towards a more general text, interested GPA members are invited to join the sub-group.

### [IEWG- AIWG FRT sub-group](#)

#### *Background*

The IEWG-AIWG Facial Recognition Technology (FRT) sub-group was established to develop a set of agreed principles and expectations for the appropriate use of personal information in FRT, as mandated by the [resolution on FRT](#), adopted at the virtual GPA in 2020.

The sub-group members are:



- European Data Protection Supervisor (EDPS)
- Information and Privacy Commissioner of Ontario (IPC)
- Japan Personal Information Protection Commission (PPC)
- Office of the Australian Information Commissioner (OAIC)
- Office of the Privacy Commissioner of Canada (OPC)
- Swiss Federal Data Protection and Information Commissioner (FDPIC)
- UK Information Commissioner's Office (ICO)

### *2021 progress update*

The sub-group updated the Assembly on its progress as part of the [IEWG](#) and [AIWG](#) Working Group reports in 2021. At this stage, the sub-group had:

- developed a phased project plan, summarised as below:
  - 1. Research
  - 2. Development and consultation
  - 3. Adoption and promotion; and
- partially completed the first phase of the project plan by:
  - undertaking desk-based research and a literature review;
  - surveying the GPA membership; and
  - preparing a survey for external stakeholders.

### *Completion of phase 1 – Research*

Following submission of Working Group reports in 2021, the FRT sub-group completed the initial research phase of the project plan by finalising and circulating an information gathering survey to elicit the views of relevant external stakeholders including FRT users and developers, lawmakers, regulators, academics, and civil society organisations.

### *Completion of phase 2 – Development and consultation*

In late 2021, the sub-group undertook analysis of the information gathered during the research phase of the project to identify findings on the riskiest use cases, key privacy concerns and mitigation measures for use of personal information in FRT.

Key findings from the sub-group's desk-based research, GPA survey and external stakeholder survey were synthesised and used as a basis for the development of a first draft of the FRT principles in February 2022. Throughout March and April 2022, the sub-group further iterated the principles through rounds of written comments and discussion by video call.

During May 2022, the sub-group carried out an external stakeholder consultation, inviting feedback on the principles from FRT users and developers, lawmakers, regulators, academics, and civil society organisations around the world.

A further draft of the principles, incorporating comments from the external stakeholder consultation, was circulated for review by all members of the IEWG and AIWG during July 2022. Following comments from the Working Groups, the sub-group refined and finalised the principles at the end of July.

### *Next steps*

Following submission of the IEWG and AIWG Working Group reports at the end of July 2022, the FRT sub-group will commence the third phase of the project plan: Adoption and promotion.

In August 2022, the sub-group will submit its final draft to the GPA Secretariat to be adopted as a Resolution on Principles and Expectations for the Appropriate Use of Personal Information in Facial Recognition Technology.

Via the GPA Secretariat, the sub-group will invite and take into account comments on the principles from the entire GPA membership, prior to presentation of the Resolution at the Closed Session of the Assembly in Istanbul in October 2022.

Should the Assembly vote to adopt the Resolution and principles, the IEWG and AIWG will continue to work together in 2022-23 to develop and implement engagement plans to:

- promote the principles with a range of key external stakeholder groups; and
- assess and review the real-world application of the principles by developers and users of FRT.

### [Outreach activities](#)

While there have been no direct outreach activities carried by the Group this year, several members had the opportunity to raise awareness about past and ongoing activities of the Group during public events and exchanges with government, public authorities and external stakeholders in relation to recent developments in the field of AI and data protection.

## Forward looking plan 2022-2023

The challenges of the pandemic have made some of the issues, which are already addressed in the founding Declaration and in the Work Programme, more visible. They have highlighted some of the ethical questions. The potential conflicts or interferences between various individual rights, or between individual freedoms and societal needs, require a thorough analysis at general level. GPA members should consider what guidance they might be able to provide to organisations and individuals faced with such difficult decisions in concrete situations related to the development of AI and its ethical and data protection aspects. The work packages on the relationship between ethics, human rights and data protection and on the capacity and expertise of data protection and privacy authorities in addressing ethical and data protection issues in cases of application of AI systems will allow to look deeper into this context.

The continuous extension of the repositories on documents and on cases will allow a stocktaking exercise to inform the GPA membership community in 2022 about any new developments in AI that may be relevant for its future work. The Group will work with the Executive Committee to determine whether selected information from the repositories may become accessible to the public, and what an appropriate format could be.

As part of its upcoming activities, and in line with the GPA's strategic direction 2021-2023 the Group will also continue, in the year to come, further reflection on how data protection and privacy are essential to sustainable digital growth and AI innovation.

In the light of the GPA's Strategic Direction 2021 - 2023, the Group will conclude the discussion about the challenges on which it had postponed a decision.

The Group will further aim to make suggestions to the GPA on a way forward in addressing the future development of AI technologies and their use, considering their impact on data protection and privacy rights.

Lastly, the Group will continue its cooperation with the IECWG on the FRT activities; it will also explore further opportunities in terms of outreach towards external stakeholders.

## Conclusion

The rollout of systems using technologies from the domain of Artificial Intelligence has illustrated the need for a strategic approach to the challenges for data protection and privacy as human rights.

The occurrence of the COVID-19 pandemic has accentuated even more the urgency to address complex challenges with a longer-term perspective.

The common work on these matters demonstrates that the Global Privacy Assembly has the unique potential to contribute to the determination of global strategies to address global problems.