Working Group on Ethics and Data Protection in Artificial Intelligence

Report – July 2023

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.
- **Use of AI in the employment context:** as part of its Work Programme, the GPA AIWG has prepared a high-level report on how data protection may intersect with employment in general and with employers monitoring in particular. A survey has already been conducted and presented at the 2022 GPA Closed Session. The WG has worked on a draft Resolution on the matter, to be adopted at the 2023 GPA Closed Session.
- **Generative AI systems**: concerned about the release, often without any pre-deployment assessment, of generative AI systems to the wider public, and considering the various concerns expressed in the public debate regarding the ethical and legal implications of generative AI technologies, including their impact on fundamental rights and freedoms, notably in relation to the fundamental right to privacy and protection of personal data, the GPA AIWG decided to propose the adoption of a draft Resolution on Generative AI systems.

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 characterised 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[1] (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"[2]*.

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[1] 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.

[2] The Declaration, p. 6.

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);
- Defensoría CABA (Argentina);
- IPC New South Wales (Australia);
- OAIC (Australia);
- OIC Queensland (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);
- PDPS (Georgia);
- HDPA (Greece);
- ODPA (Guernsey);
- PCPD (Hong Kong);
- GPDP (Italy);
- PPA (Israel);
- ARTCI (Ivory Coast);
- PPC (Japan);
- OIC (Jersey);
- ODPC (Kenya);
- PIPC (Korea);
- IMAIP (Mexico);
- INAI (Mexico);
- INFO Ciudad de Mexico (Mexico);
- INFOEM (Mexico);
- OPC (New Zealand);
- KVKK (Turkey);
- ICO (United Kingdom);
- AGESIC (Uruguay);
- FTC (USA);
- 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);
- Office of Technology & Innovation NYC (US);
- Qatar Financial Centre (Qatar);
- Organisation for Economic Co-operation and Development (OECD).

Since the 2022 GPA Closed Session, the Group held three meetings: on 31 January 2023, 2 May 2023 and 7 July 2022. The working group is currently discussing the inclusion of additional work items for the new Work Plan 2023-2025. This will surely include follow-up work on generative AI systems.

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 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.

Following the GPA Closed Session 2022, the Group worked on the key outputs presented below and initiated the discussion on its Work Programme for 2023-2024. In addition, during its meetings, the Working Group also included, as part of the agenda, the sharing of updates on activities and/or enforcement activities related to AI technologies.

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.

AI in the employment context

The co-rapporteurs of this action point (ICO UK [lead], BfDI Germany and GPDP Italy) conducted a survey among GPA members on AI in employment between the end of April and the end of June 2022.

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.

Based on the replies to the survey, the findings indicated 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 guidance to help make employers aware of the potential harms and the ways to prevent them.

Following the survey and its preliminary results, the Group decided to present a Resolution on the use of AI in employment, aimed at underlining the importance of data protection and privacy principles and safeguards in the development of AI tools for deployment in employment contexts. The plan of the Group is to present this Resolution for adoption at the 2023 GPA Closed Session.

Generative AI systems

The Group, noting the widespread deployment of generative AI systems and their increasing adoption across various domains as well as the widespread proliferation of uses around the world and concerned about the ethical and legal implications of generative AI systems, including their impact on fundamental rights and freedoms, notably in relation to the fundamental right to protection of personal data and privacy, decided to work on a draft Resolution on generative AI systems. Given the importance of the topic at hand, the Group plans to submit a resolution at the 2023 GPA Closed Session, with a plan to continue the work on generative AI systems in the next years.

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 2023-2024

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 2023-2024 about any new developments in AI that may be relevant for its future work.

As part of its upcoming activities 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, including specific work on generative AI systems.

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 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 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. The GPA AIWG will continue following these issues and contributing to the work of the GPA by addressing all relevant and topical AI related matters.

Many services based on Artificial Intelligence systems are provided online and worldwide. Regardless of the differences between applicable legal frameworks, many of the data protection and privacy concerns and issues raised by the use of Artificial Intelligence are common to all authorities taking part in the Group. Consequently, the Group will continue to work towards building a more comprehensive view around the best way to protect the right to data protection when using Artificial Intelligence.