Monitoring Report – 01 /02/2019 (No. 3 of 2019)

The efamro monitoring report covers selected legal and regulatory developments and events in data protection and privacy of particular interest to the research sector.

After marking Data Protection Day on Monday 28 January several interesting privacy stories made headlines including Facebook's "market research app" that was used to collect extensive information from young people on how they use their smartphones. A timely reminder of the importance of promotion and adherence to our national and global ethical codes to underpin and sustain competitive advantage in market research.

Regulatory guidance

CNIL, data protection regulator in France, published guidance on the disclosure of data to business partners for direct marketing purposes.

Policy developments and legislative initiatives

The joint statement from the EU Commission on Data Protection Day praised the GDPR and other data protection regulation for granting more power to citizens and allowing them to have more control over their data. Highlighted that more than 95,000 complaints have been received from citizens but there are five Member States who are still to adapt their legal framework to the new EU-wide rules. Commissioner Jourova's speech at a recent conference reflected some of these themes but also lauded the developing convergence in privacy standards at international level which allows data to flow easily but expressed scepticism at likelihood of US reforms to create a horizontal privacy law.

Research, artificial intelligence and data ethics

Explosion of studies and initiatives on algorithms and artificial intelligence makes it increasingly difficult to keep track in this crowded policy space.

The Committee of the Council of Europe´s data protection treaty "Convention 108" published Guidelines on Artificial Intelligence and Data Protection. The guidelines aim to assist policy makers, artificial intelligence (AI) developers, manufacturers and service providers in ensuring that AI applications do not undermine the right to data protection. The EC High Level expert group on AI shared presentations on the Ethical Guidelines for Trustworthy AI currently out for consultation. European Parliament published a briefing on challenges of AI for citizens and consumers. We'll keep a watching brief on these in light of use of AI in research and analytics. Less directly relevant as researchers do not make decisions about individuals (but still of interest) is the Report "Automating Society- Taking Stock of Automated Decision-Making in the EU" which looks at examples of automated decision-making at the EU level and in 12 Member States. Commission DG CNECT also published a State of the Art report in this area.

CNIL publishes guidance on the disclosure of data to business partners for direct marketing purposes

Fieldfisher reports on publication of CNIL guidance on the disclosure of data to business partners for direct marketing purposes. In essence, the CNIL enumerates five principles that companies collecting data directly from data subjects must comply with when disclosing such information to business partners and other organizations.

Rule 1: the data subject must give consent prior to any disclosure of his/her to a business partner and/or other organization who intends to use the data for the purposes described above.

Rule 2: the data subject must be able to identify the recipients of data (i.e. business partners) via the form used to collect the data.

Rule 3: the data subject must be informed about any changes in the list of recipients, in particular when new business partners have been added.

Rule 4: consent of the data subject must be obtained by the initial data controller and is only valid for the processing activities that are carried out by the business partners with whom it shares the data.

Rule 5: Each business partner who is a recipient of the data and who in turn contacts the data subjects, must indicate, at the time of their first communication, how data subjects may exercise their rights, in particular their right to object as well as the source of the data.

The essential provisions of the said guidelines are summarized in the Fieldfisher article available here.

Source: Fieldfisher

URL: https://privacylawblog.fieldfisher.com/2019/cnil-publishes-guidance-on-the-disclosure-of-data-to-business-partners-for-direct-marketing-purposes

Policy developments and legislative initiatives

European Commission publishes Joint Statement for Data Protection Day

The Commission published a [joint statement](#) from Vice-President Timmermans, Vice-President Ansip, Commissioners Jourová and Gabriel ahead of Data Protection Day.

This year Data Protection Day comes eight months after the entry into application of the General Data Protection Regulation on 25 May 2018. We are proud to have the strongest and most modern data protection rules in the world, which are becoming a global standard.

The Facebook/Cambridge Analytica case and recent data breaches have shown that we are doing the right thing. What is at stake is not only the protection of our privacy, but also the protection of our democracies and ensuring the sustainability of our data-driven economies.

One of the main aims of the General Data Protection Regulation is to empower people and give them more control over one of the most valuable resources in modern economy - their data. We can only reach this goal if and when people have become fully aware of their rights and the consequences of their decisions.

We are already beginning to see the positive effects of the new rules. Citizens have become more conscious of the importance of data protection and of their rights. And they are now exercising these rights, as national Data Protection Authorities see in their daily work. They have by now received more than 95,000 complaints from citizens.

The Data Protection Authorities are also enforcing the new rules and better coordinating their actions in the European Data Protection Board. They are guiding companies, especially small and medium sized enterprises, and citizens, explaining them their rights and obligations.

Practical implementation by Member States is now well advanced. We count, however, on the five remaining Member States to adapt their legal frameworks to the new EU-wide rules as soon as possible. The Commission continues to monitor this process to address potential shortcomings and help see the EU fully covered by the Data Protection rules as soon as possible.

There is a clear convergence at international level towards a modern data protection regime. This facilitates data exchanges and supports trade. The best example is the recent adoption of our mutual adequacy findings with Japan. With this, we have created the world's largest area of free and safe data flows. Today, Europe is not only ensuring strong privacy rules at home, we are leading the way globally."

For More Information

[Infographic – GDPR in numbers](#)

[Myth busting factsheet](#)

[Online tool](#)

[Commission guidance](#)

[Seven steps for businesses to get ready for the General Data Protection Regulation](#)

[Call for proposal for Data Protection Authorities](#)

[Commission Guidance](#) on the application of Union data protection law in the electoral context

Commissioner Jourová delivers speech on GDPR at the 'Computers, Privacy and Data Protection' Conference

Today's conference comes a little more than **eight months after the GDPR began to apply** . But Europe's journey on data protection is much longer and many of you in this room have been on board of a data protection ship even when others were announcing 'the end of privacy'.

I would like you to reflect for one moment on **how far we have come** to get to this point.

A few years ago, a conference like this one would have brought "experts" together. Outside of the data protection community, some critics argued this is a European obsession! They said that people simply do not care about their personal data or that legislation is not the right tool to deal with such issues. I think that many events of the past years but also the success of this conference, the number of participants and the diversity of speakers proves this theory wrong. I realised that we have come a long way when in November last year I went for the first time to the WebSummit in Lisbon. The event is very business oriented, yet in the first hours of the conference all I heard was a praise of privacy, data protection and of the GDPR. For me that was a symbolic moment that many of those who tried to criticise the GDPR in the making, finally embraced it and understood why we need it. Of course the massive **data breaches** or revelations of the **mishandling of personal data** , such as in the Facebook Cambridge Analytica scandal helped our case. They remind us what is at stake - from preserving our most intimate sphere to protecting the functioning of our democracies and ensuring the sustainability of our increasingly data-driven economy.

The title of the panel that will take place shortly is **'defending the GDPR'** . But I do not feel the GDPR is any longer under heavy attack. It is the **EU response to the challenges** of a modern, digital world and a tool for businesses to try to regain the lost trust. And I do not see any offers of a better response. On the contrary, our European ship has now reached many global ports. When we look around the world, from Asia to Latin America, we see that a growing number of countries are

adopting new privacy laws that are inspired by our European law. For example, a **comprehensive legislation** that applies across industries and sectors, **a core set of enforceable rights** and **enforcement by an independent supervisory authority** . This approach allows us to continue and expand our adequacy dialogues that allow for secure flow of data between the countries. Just a couple of weeks ago we recognised Japan in this way, and received the same honour from Japan. With this, we created the biggest area of free and secure data flow in the world. And this is just the right thing to do when this Friday the important trade deal between the EU and Japan will enter into force. More so, I think the real testimony of our joint success is that last week many leaders and prime ministers in Davos called for global data governance and data flows based on security and trust. Prime Minister Abe wants to make it a key theme during the G20 meeting in Osaka.Europe is well equipped to play a key role in this debate.

There is one place though where I didn't expect a privacy debate to change very much under my mandate. Yet, it's nice to be proven wrong sometimes. The US recently started a debate about horizontal privacy legislation and we have participated in their public consultations. I think this is an important development, because the convergence between the EU and the US on data protection would strengthen the Privacy Shield and send a clear signal to those who still have some doubt that strong rules are not a luxury; it's a necessity.

The fact that **privacy and data security are becoming truly global issues** should not come as a surprise. The world is facing similar **challenges** and wants to seize similar **opportunities** of the digital economy. People around the world want to see their privacy protected. Consumers **want their data to be safe** . In turn, businesses recognise that strong privacy protections give them a **competitive advantage** as confidence in their services increases. This developing **convergence** in privacy standards at international level **allows data to flow easily** . It therefore **boosts trade** , while **improving the level of protection** of personal data when transferred abroad.

Ladies and gentlemen, Privacy belongs to everyone! But does the GDPR succeed in guaranteeing individuals their rights? Let me return to the question you will be asking in the next panel debate. The GDPR has been in place for eight months. And we can already draw some lessons. But **what have we learnt? Did it defend itself?** By complying with the GDPR, companies have had the chance to **put their data house in order** by taking a closer look at what data they are collecting, what they use it for, how they keep and share it, and whether they really need to collect and process all this data. It has allowed businesses to reduce exposure to unnecessary risks and to get a better idea of what data they hold and develop a more trustworthy relationship with their customer and commercial partners.

Citizens also took advantage of the GDPR. From what we hear from Data Protection Authorities, since May, EU citizens sent **more than 95,000 data protection complaints** to the national authorities. And NGOs active in the field of data protection have started to use the possibility to bring collective actions before data protection authorities and courts. But, it is also now clear that, contrary

to some alarmist predictions, our data protection authorities did not become fining machines. Firstly, because **fines are only one of the tools** the DPAs can use to enforce the GDPR. And, when they use it, it is only after a thorough investigation of the facts of the case and always on the basis of the circumstances of each case. However, the recent fines by CNIL on Facebook show that the DPAs make full use of the powers the GDPR have given them. What we have seen in these first months is that compliance is a dynamic process that involves close dialogue between regulators and stakeholders. In that context, following broad public consultations, European DPAs have adopted **sixteen detailed guidelines on all novel aspects of the GDPR** . This work will continue as new questions emerge, and I want to praise the DPAs for their active and open engagement with stakeholders. It is essential for the data protection authorities to forge a common EU approach and a European culture of data privacy.

Ladies and gentlemen, To conclude, let me just say that I don't think GDPR is just plain sailing. We all have a lot of work to do and we still need to answer some important questions. This is why we will organise a "one year after" conference in June to look at the experience of business and citizens in particular. But it's clear we have now wind in our sales. We have a window of opportunity to promote this gold standard we have established and inspire others. For this to happen, we still need more work to do so people and businesses can fully embrace and understand concepts and ideas that are still at times very complex. This is why we have relaunched this Monday our targeted campaigns for citizens and for small businesses. I think we are in a very good place to lead this debate, as the GDPR is based on a **modern approach** to regulation, which **empowers users** and **rewards new ideas and technologies** that address privacy and data security. This should also guide us in our further discussions on topics such as artificial intelligence.

Research, artificial intelligence and data ethics

Council of Europe - New guidelines on artificial intelligence

On the occasion of [Data Protection Day](#) on 28 January, the Committee of the Council of Europe's data protection treaty "Convention 108" has published [Guidelines on Artificial Intelligence and Data Protection](#) .

The guidelines aim to assist policy makers, artificial intelligence (AI) developers, manufacturers and service providers in ensuring that AI applications do not undermine the right to data protection.

The Convention's Committee underlines that the protection of human rights, including the right to protection of personal data, should be an essential pre-requisite when developing or adopting AI applications, in particular when they are used in decision-making processes, and be based on the principles of the updated data protection convention, "Convention 108+, opened for signature in October 2018. In addition, any innovation in the field of AI should pay close attention to avoiding and mitigating the potential risks of processing of personal data, and allow meaningful control by data subjects over the data processing and its effects.

Minister for Foreign Affairs of Finland and [Chair of the Committee of Ministers](#) of the Council of Europe Timo Soini welcomed the adoption of the guidelines and said: "Artificial intelligence brings benefits to our daily lives. At the same time, it is necessary to look into the ethical and legal questions that it raises. To ponder this, we have invited many high-level experts from all member states to a conference on the impacts of artificial intelligence development on human rights, democracy and the rule of law in Helsinki on 26 and 27 February that will allow us to exchange thoughts and knowledge".

Stefano Rodotà Award

The first Council of Europe´s [Stefano Rodotà Award](#) has been awarded to Ingrida Milkaite and Eva Lievens, for their work in a research project carried out at Ghent University aimed at putting children's rights and data protection into perspective: A [children's rights perspective on privacy and data protection in the digital age](#) . The winners will have the opportunity to present their project at the next plenary session of the Committee of Convention 108 in Strasbourg in June 2019. To be awarded annually on the occasion of Data Protection Day, the Stefano Rodotà Award honours innovative and original academic research projects in the field of data protection.

EC High-Level Expert Group on AI - January 2019 meeting: Presentations

A meeting of the High-Level Expert Group on Artificial Intelligence (main group) [was held](#) on 22-23 January 2019. Presentations from this meeting have been published and can be accessed [here](#) .

The upcoming meetings of the HLEG are scheduled for [14/02/2019](#) and [19/03/2019](#)

European Parliament EP IPOL - Study on 'Artificial Intelligence: Challenges for EU Citizens and Consumers'

This briefing addresses the regulation of artificial intelligence (AI), namely, how to ensure that AI benefits citizens and communities, according to European values and principles. Focusing on data and consumer protection, it presents risks and prospects of the applications of AI, it identifies the main legal regimes that are applicable, and examines a set of key legal issues.

WIPO's First "Technology Trends" Study Probes Artificial Intelligence: IBM and Microsoft are Leaders Amid Recent Global Upsurge in AI Inventive Activity

A new WIPO flagship study has documented a massive recent surge in artificial intelligence-based inventions. The first publication in the " *WIPO Technology Trends* " series defines and measures innovations in artificial intelligence (AI), uncovering more than 340,000 AI-related patent applications and 1.6 million scientific papers published since AI first emerged in the 1950s, with the majority of all AI-related patent filings published since 2013. This inaugural Technology Trends report provides a common information base on AI for policy and decision makers in government and business, as well as concerned citizens across the globe, who are grappling with the ramifications of a new technology that promises to upend many areas of economic, social and cultural activity.

"Patenting activity in the artificial intelligence realm is rising at a rapid pace, meaning we can expect a very significant number of new AI-based products, applications and techniques that will alter our daily lives – and also shape future human interaction with the machines we created," said WIPO Director General Francis Gurry . AI's ramifications for the future of human development are profound. The first step in maximizing the widespread benefit of AI, while addressing ethical, legal and regulatory challenges, is to create a common factual basis for understanding of artificial intelligence. In unveiling the first in our "WIPO Technology Trends" series, WIPO is pleased to contribute evidence-based projections, thereby informing global policymaking on the future of AI, its governance and the IP framework that supports it," said Mr. Gurry.

DIGITALEUROPE - Response to ICDPPC public consultation on Ethics and Data Protection in Artificial Intelligence

DIGITALEUROPE welcomes the International Conference of Data Protection and Privacy Commissioners' (ICDPPC) Declaration on Ethics and Data Protection in Artificial Intelligence as well as the establishment of the related permanent working group.

Please click here to access the full policy paper.

European Parliament event on "Automating Society: Taking Stock of Automated Decision-Making in the EU"

Automating Society – Taking stock of Automated Decision-Making in the EU

A report by AlgorithmWatch in cooperation with Bertelsmann Stiftung, supported by the Open Society Foundations

- To read the report online, please click here .

- To download the report as a PDF file click here .

About the report

Systems for automated decision-making or decision support (ADM) are on the rise in EU countries: Profiling job applicants based on their personal emails in Finland, allocating treatment for patients in the public health system in Italy, sorting the unemployed in Poland, automatically identifying children vulnerable to neglect in Denmark, detecting welfare fraud in the Netherlands, credit scoring systems in many EU countries – the range of applications has broadened to almost all aspects of daily life.

This begs a lot of questions: Do we need new laws? Do we need new oversight institutions? Who do we fund to develop answers to the challenges ahead? Where should we invest? How do we enable citizens – patients, employees, consumers – to deal with this?

For the report "Automating Society – Taking Stock of Automated Decision-Making in the EU", experts have looked at the situation at the EU level but also in 12 Member States: Belgium, Denmark, Finland, France, Germany, Italy, Netherlands Poland, Slovenia, Spain, Sweden and the UK. It was assessed not only the political discussions and initiatives in these countries but also present a section "ADM in Action" for all states, listing examples of automated decision-making already in use.

This is the first time a comprehensive study has been done on the state of automated decision-making in Europe. On January 29, MEPs Liisa Jaakonsaari (S&D), Michał Boni (EPP), and Julia Reda (Greens/EFA) hosted a European Parliament event for the launch of the report "Automating Society – Taking Stock of Automated Decision-Making in the EU", by AlgorithmWatch in cooperation with Bertelsmann Stiftung, supported by the Open Society Foundations. The European Commission also took part in this discussion.

For this report, experts have looked at the situation at the EU level but also in 12 Member States: Belgium, Denmark, Finland, France, Germany, Italy, Netherlands Poland, Slovenia, Spain, Sweden and the UK. They assessed not only the political discussions and initiatives in these countries but also present a section "ADM in Action" for all states, listing examples of automated decision-making already in use.

European Parliament also held an event on "Automating Society: Taking Stock of Automated Decision-Making in the EU" Please find below an overview of the discussions.

Brigitte Alfter, Research network coordinator for the report and facilitator of the event , opened the event by drawing attention to the fact that algorithms and Automated Decision-Making (ADM) represent a topic that can affect everybody and should therefore concern everybody. Considering its scope, the report is, in her view, "a genuinely European report" as it involved concrete cooperation between various experts of all the countries comprised in the report.

Welcoming remarks

Ralph Müller-Eiselt, Director, Bertelsmann Stiftung , was of the view that ADM can either strengthen social equality or weaken it and that it is up to us as a society to ensure that ADM and algorithms are implemented while bearing this in mind. He explained that at Bertelsmann Stiftung they aim at promoting social inclusion for everybody and that this concern is now transposed to the digital age. The consequences of ADM ought therefore to be considered and these systems must be used to serve society.

The report is intended to inform society, help provide solutions and also better inform the discussions on how to govern the use of ADM systems. The report shows how widely ADM systems are used in Europe but also how inconsistently they are used.

His main takeaway is that the existing policy gap between the different EU countries regarding ADM ought to be bridged . While many countries in the EU have developed strategies for digitisation/digitalisation, big data, or Artificial Intelligence (AI), others are lagging behind when it comes to discussing the consequences that ADM can have on individuals and society.

Presentation of the core findings of the report

Matthias Spielkamp, Executive Director AlgorithmWatch , noted that AlgorithmWatch is a non-profit research and advocacy organisation that evaluates and sheds light to the general public, civil society, stakeholders on algorithmic decision-making processes that have a social relevance, meaning they are used either to predict or prescribe human action or to make decisions automatically. They have also drafted an " [ADM Manifesto](#) ".

Mr Spielkamp stressed that, when addressing ADM, "we are not talking about technology but of important political and societal issues". This is about socio-technological systems, where an interdependence occurs, she remarked.

The US and China are currently shaping the ADM landscape and so it is time to look at the EU and its countries and assess the state of play. For cultural reasons, discussions on ADM in Europe tend to develop differently than in the aforementioned countries. The EU, he noted, is very diverse, and this can pose a problem. Compiling all the examples included in the report also demands a knowledge of local countries, languages and cultures.

The report serves 2 purposes: (i) present the state of ADM in the EU; and (ii) build a network of researchers focusing on the impact of ADM on individuals and society, which is necessary to understand what is really happening. This network includes journalists specialising in the nascent field of algorithmic accountability reporting, academics from economics, sociology, media studies, law and political sciences, as well as lawyers working in civil society organisations looking at the human rights implications of these developments. In his view, this diverse background has enriched the report.

The report is divided in 4 categories:

- **How is society discussing automated decision-making?** Here they look at the debates initiated by governments and legislators on the one hand, like AI strategies, parliamentary commissions and the like, while on the other hand listing civil society organisations that engage in the debate, outlining their positions with regard to ADM;

- **What regulatory proposals exist?** Here, they include the full range of possible governance measures, not just laws;

- **What oversight institutions and mechanisms are in place?** Oversight is seen as a key factor in the democratic control of automated decision-making systems. Here they looked for examples of those who took the initiative;

- **What ADM systems are already in use?** Here, they tried to look in all directions: are there cases where automation poses more of a risk, or more of an opportunity? Is the system developed and used by the public sector, or by private companies?

They found that priorities diverge greatly from country to country, and this appears reflected in the amounts allocated to research funding. In Sweden, for instance, besides the Swedish government, there are a number of additional stakeholders who are investing in knowledge production and the development of AI on a large scale. One initiative mentioned in the report is the Wallenberg Autonomous Systems and Software Programme, which granted €100 million to two leading universities in Sweden to develop machine learning, AI, and the mathematical apparatus behind them over the next eight years. In other countries, even big countries, the amounts at stake can be lower.

When it comes to political debates, he noted that in Germany a number of commissions, expert groups, platforms and organisations, as well as the data protection authorities, are all assessing the consequence of a wider application of AI. However, in other countries, such as Poland or Slovenia, ADM is used in practice but is almost invisible in the political debate.

As regards legislation and oversight, he noted that in France, following a law change in 2016, it became mandatory for all branches of government to make their algorithms transparent. However, journalists who reviewed three ministries discovered that none of them had complied with the regulation.

Finally, as regards recommendations, which are general and concern the EU as a whole, Mr Spielkamp highlighted the following:

- **Focus the discussion on the politically relevant aspects** . Current debates on AI range from relatively simple rule-based analysis procedures to the threat of machine-created 'super-intelligence' to humanity. It is crucial to understand what the current challenges to our societies are;

- **Mandate the public sector to provide transparency about the use of ADM systems** (where, how, what for, bought from whom?);

- **Consider ADM systems as a whole, not just the technology** . ADM processes are often framed as technology and this risks overlooking many of the crucial aspects of automated decision-making: the decision itself to apply an ADM system for a certain purpose, the way it is developed (i.e. by a public sector entity or a commercial company), and how it is procured and finally deployed);

- **Empower citizens and public administrations** ;

- **Involve a wide range of stakeholders in the development of criteria for good design processes and audits, including civil liberty organisations** . In some of the countries surveyed, governments claim that their strategies involve civil society stakeholders in the current discussion in order to bring diverse voices to the table. However, it is often the case that the term civil society is not well defined;

- **Ensure that adequate oversight bodies exist and are up to the task** . Oversight bodies ought to have the expertise to analyse and probe modern automated decision-making systems and their underlying models for risk of bias, undue discrimination, and the like. Here, Member States and the EU are called upon to invest in applied research to enable existing institutions to catch up, or to create new ones where needed.

Comments on the report by the hosting MEPs

Liisa Jaakonsaari (S&D, FI) , praised the report and the holistic approach there adopted. In her view, the report provides the first real overview of ADM in Europe as well as good insights and recommendations. ADM systems are complex and operate in complex societies, she remarked.

Trust is key, but she argued that it must be "an enlightened trust" and that legality, accountability, ethics, and understanding by the users are all important factors. She was of the view that citizens need and want to understand AI and the new technology and must be taken on board in this debate.

As regards the General Data Protection Regulation (GDPR), MEP Jaakonsaarideemed it is a step in the right direction but recalled that, as a tool, it has its shortcomings. shewas interested in understanding what governance tools should be put in place for ADM systems in situations where the GDPR does not apply.

MEP Jaakonsaari called for a human centric approach, where humans remain in charge of the decision-making. "Is ADM a bad thing?" The report answers that it depends, and she agrees with this assessment.

Julia Reda (Greens/EFA, DE) , started by underlining the importance of promoting education on AI in the policy debates that are taking place. She noted that the report shows that the ADM being used in the public sector is aimed at "the weaker parts of the society" and argued that probably this is "not a coincidence".

AI systems, she argued, are not intelligent because they understand patterns but do not really understand the issues at stake. The current debate is very difficult. On the one hand, there is a narrative of singularity that is going to destroy jobs and civilization, and on the other hand an almost child-like belief that this technology will solve all problems. She noted that in the Copyright proposal the public sector is asking the private sector to make decisions on legality and feared that the Directive on combating terrorism goes in the same way. The idea that "intention" plays a role is something that an algorithm cannot truly assess, she remarked.

Michał Boni (EPP, PL) , on the special added value of the report, noted that the report defines more accurately what ADM is and also what separates AI schemes from ADM, while also shedding light on its interconnections.

He underlined the importance of having oversight institutions and mechanisms in place as well as of establishing a network of researchers focusing on the impact of ADM on individuals and society. Safeguards and the possibility of human control and verification need to be built into the process of automated and algorithmic decision-making. Democratic control by a combination of regulatory tools, oversight mechanisms, and technology is key. The recommendation that a clear understanding that algorithmic systems should be treated as a whole and not just the technology is also very important.

MEP Boni further stressed that empowering the citizens to adapting to new challenges is crucial and public administrations too must adapt to new challenges. Public administration uses ADM for purposes that have a big impact on individuals and society, i.e. border control, crime prevention and welfare management. Such expertise should, in his view, be available at EU level to assist member states.

On the GDPR, the fact that its Article 22 ["Automated individual decision-making, including profiling"] has limited reach is something people should be aware of. The importance of working on education and awareness on AI and ADM was also highlighted.

MEP Boni was also of the view that people also have to acknowledge that companies have recognized these challenges and that there is now a trend to self-regulate. Regulation, he argued, is only part of a wider picture which should also encompass soft law solutions, codes of conduct, co-regulatory schemes and proper technical standards. It is also key to promote transparency and being open about the data and algorithms used, with clear explanations of how this technology is being used.

The EU needs a stronger public debate on ADM and AI systems because, as mentioned in the report, it is not only the technology, MEP Boni concluded.

Panel discussion about the findings

Minna Ruckenstein, Professor at the Consumer Society Research Centre and the Helsinki Center for Digital Humanities, University of Helsinki , said that bad automation is discriminatory. She touched upon the issue of credit scoring, which, she argued, has some beginnings of multiple discrimination. Some people can argue that discrimination has always existed, but this can aggravate the phenomenon, Ms Ruckenstein remarked.

When assessing what is common good when it comes to automation, it is important to consider the aims. Maintaining equality and solidarity is important. But people also want competition and consumer choice. Engineers can also say that they want to use AI systems to increase efficiency. There is an industrial logic that can be a good thing but, when it enters into conflict with equality, a trade-off can take place.

Ms Ruckenstein also argued that innovation as such does not produce a market. To create a market takes years. In the health field, people want better health and vitality and automation can help. From the regulatory perspective, she argued that a lot can be done through self-regulation.

She concluded by drawing attention to the importance of assessing the need for putting in place new infrastructure with a view to addressing ADM-related issues.

Ursula Pachl, Deputy Director General, BEUC, and member of the EU High Level Expert Group on Artificial Intelligence , stated that the report is very important and that the role of regulation is a fundamental question. She expressed her concern with the fact that in the current debate on AI there is an excessive focus on ethics and little attention is being paid to the existing consumer protection mechanisms and legal frameworks and, in particular, how developments led by ADM impact them.

ADM is not just a technology and its overall societal impact ought to be taken into account. The current model is based on collecting consumer data and profiling consumers, she remarked, and people risk losing autonomy and self-determination.

How to ensure fairness in markets is a key concern. Competition law is based on the principle of fairness but "how to apply it in a black-box market?", she questioned.

On the issue of self-regulation, she considered it "a very limited thing". It should be the law makers framing the society in situations where ADM guide decision making, she argued.

Information, transparency and explainability are all key elements. The GDPR offers, in her view, limited protection and it is therefore important to move beyond it.

On public funding – and in particular EU funds – she called for the promotion of innovation which is "socially valuable".

Being a member of the EU High Level Expert Group on AI, she noted that in the HLEG there is a majority of business interest representatives, while data protection academics and some sectors of society (including civil society) lack representation. On the work being developed by the HLEG, she noted that one of its chapters is citizens engagement and another one concerns skills and education.

Prabhat Agarwal, Deputy Head of the E-Commerce and Online Platforms Unit, Directorate-General for Communication Networks, Content and Technology, European Commission , was of the view that the report strikes a commendable balance and sheds light on nuances. He said that this nuance is important and "will take us forward". Nowadays there is, on one side of the debate spectrum, a knee-jerk reaction that algorithms will take over and, on the opposite side of this spectrum, an attitude of "let the market fix this" and this is also not right. A middle ground ought to be found, he argued.

Mr Agarwal said that the EU is getting a map of the landscape that needs to be navigated, which comprises both challenges and opportunities, and he drew attention to the **AlgoAware study** *(available under "meeting documents"),* **procured by the European Commission** to support its analysis of the opportunities and challenges emerging where algorithmic decisions have a significant bearing on citizens, where they produce societal or economic effects which need public attention. This report, as well as the one being presented, will feed into this.

He underlined the need to understand "What is driving all this?" In his view, there are multiple drivers and people need to see what lies underneath. In the public sector there is a reduction of the financial and human resources available and hence people are called to do more with less. Automation enters the picture here and credit scoring has an application both in the private and in the public sector. The increasing availability of technology and of data sets in turn is correlated with everything.

On the need for transparency, he said that enhanced transparency can be ineffectual if it is made in a way that becomes a burden in terms of requiring further additional attention from people whose attention is is already scarce.

On regulation, he stated that the Commission's impact assessment and better regulation processes are important to understand where problems lie. A black and white answer on what needs to be done as regards algorithms should not be sought. Regulation, he stressed, is not always the best answer, sometimes because of lack of competence of the Commission in the area, or because it is not the most efficient tool to apply. "Hard law sometimes is not the best answer and sometimes it is". It is important to assess, make an evidence-based case and then debate it. If there is a specific case where regulation is deemed needed then the Commission would not shy away, but the Commission will also avoid "overreacting".

While the Commission is the guardian of the treaties and non-discrimination is enshrined in the treaties, one then needs to look at specific areas where this problem can occur. On labor law there is a

huge potential for discrimination based on ADM and reports such as this one and the ones commissioned by the Commission build into this discussion. In areas where the Commission lacks competence the idea is to bring people together and reach an agreement in principle.

Understanding the ecosystems around advertising is also something the Commission wishes to look at.

Matthias Spielkamp, Executive Director AlgorithmWatch , argued that a debate on ethics and legislation will be going on for a while. Ethical guidelines are important but having the capacity to act is also important.

Mr Spielkamp was also of the view that the way the HLEG on AI is set up and its procedures make progress more complicated.,

AlgoAware - Raising awareness on algorithms - Study procured by the European Commission's DG CNECT

Algorithmic systems are changing all aspects of modern lives. This creates great opportunities and challenges which are amplified by the complexity of the topic and the relative lack of accessible research on the use and impact of algorithmic decision-making. This report presents the draft synthesis of the **State-of-the-Art** in the field of algorithmic decision-making, focusing primarily on the online environment. Presented in the report are:

- the scope of the study,

- our definition of algorithmic decision-making and related concepts,

- insight into the academic debates on the topic,

- illustration of actions being undertaken by civil society and industry, and

- existing policy responses adopted by several EU and third countries.

In line with the algoaware design-led methodology, this version of the State-of-the-Art report should be considered the prototype. The information presented here will be tested, challenged and supplemented through a two-part peer-review process:

- Open crowd-sourcing of feedback from any and all interested parties. AlgoAware invites you to review the report and share your thoughts directly through the below MetaPDF link. Alternatively, send an email at contact@algoaware.eu or leave comments below

- Targeted peer-review consultation with experts in the field of algorithmic decision-making through interviews and workshops.

AlgoAware would like to encourage you to **view and download the full** State of the Art report **or read the** executive summary **for an overview of the report;** challenge the findings, and provide additional information you might feel is missing and more generally engage with the study.

About the study

The AlgoAware study was procured by the European Commission to support its analysis of the opportunities and challenges emerging where algorithmic decisions have a significant bearing on citizens, where they produce societal or economic effects which need public attention.

The study is carried out by Optimity Advisors and follows a call from the European Parliament for a pilot project supporting algorithmic awareness building. welcomes the International Conference of Data Protection and Privacy Commissioners' (ICDPPC) Declaration on Ethics and Data Protection in Artificial Intelligence as well as the

Upcoming Events

February 2019

Council of Europe - High Level Conference on artificial intelligence in Helsinki

26 – 27 February 2019, Helsinki

The conference is co-organised by the Finnish Presidency of the Council of Europe Committee of Ministers and the Council of Europe. The overall aim of the Conference is to engage in a critical, open and inclusive discussion on how to address AI development to maximise benefits for society and minimise risks to human rights, democracy and the rule of law. The conference will bring together high-level experts from governments, international organisations, businesses, technology, academia and research, civil society and the media. From the perspective of the Council of Europe's core mandate and values, the debates will explore ways to ensure that emerging technologies are designed, developed and applied to create value for individuals, democratic societies and the viability of legal and institutional frameworks.

- [Concept note](#)

- [Programme](#)

[Background Information](#)

March 2019

Forum Europe - 9th Annual European Data Protection and Privacy Conference

20 March 2019, Brussels, Belgium

The 9th European Data Protection and Privacy Conference will explore how the power of data can truly be harnessed through trust and responsible use, in order to deliver economic growth and societal benefits.

It will also debate how an international system based on shared principles and ethics might be developed – all in the context of increasing technological innovation, on-going regulatory discussions in the EU around digital evidence and ePrivacy, and other global political developments that either distract from or give focus to such developments.

- [Conference Programme & Speakers](#)

- [Registration](#)