

***Committee of experts on
human rights dimensions of automated data processing
and different forms of artificial intelligence
(MSI-AUT)***



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**Draft Declaration of the Committee of Ministers
on the manipulative capabilities of algorithmic processes**

1. Council of Europe member States have committed themselves to build societies based on the values of democracy, human rights and the rule of law. This commitment remains and should be honoured throughout the ongoing process of societal transformation that is fuelled by technological advancements. Member States must ensure the rights and freedoms enshrined in the European Convention on Human Rights to everyone within their jurisdiction, equally offline and online, in an environment of unprecedented political, economic and cultural globalisation and connectedness.
2. Digital services are used today as an essential tool of modern communication, including political communication between governments and between public institutions and citizens. Moreover, they are fundamental for a growing number of users for news consumption, education, entertainment, commercial transactions and multiple other forms of everyday activities. This results in unprecedented amounts of new data that are constantly created with mounting speed and scale.
3. Advanced technologies play a pivotal role in maintaining the efficiency and public service value of digitisation, in strengthening individual autonomy and self-determination, and in enhancing human flourishing by creating optimal conditions for the exercise of human rights. Reference is made in this context to Recommendation CM/Rec(2007)16 on measures to promote the public service value of the internet; Recommendation CM/Rec(2014)6 on a guide to human rights for internet users; and Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries.
4. Technology is an ever growing presence in our daily lives and prompt users to disclose their relevant, including personal, data voluntarily and for comparatively small awards of personal convenience. Public awareness, however, remains limited regarding the extent to which everyday devices collect and generate vast amounts of data. These data are used to train machine-learning technologies to prioritise search results, to predict and shape personal preferences, to alter information flows, and, sometimes, to subject individuals to computational experimentation.
5. Current discussions regarding the implementation and strengthening of data protection laws must consider the particular risks for and interests of those persons that may be especially unaware of the dangers of data exploitation. This includes children as well as persons belonging to marginalised communities who may face language barriers or other structural disadvantages. It may also include those who, because of their particularly large digital footprint, are especially exposed to new forms of data-driven surveillance.
6. Increasingly, computational means make it possible to infer intimate and detailed information about individuals from readily available data. This supports the sorting of individuals into categories, thereby reinforcing different forms of social, cultural, legal and

economic segregation and discrimination. It also facilitates the micro-targeting of individuals based on profiles in ways that may profoundly affect their lives.

7. Moreover, data-driven technologies and systems are designed to continuously achieve optimum solutions within the given parameters specified by their developers. When operating at scale, such optimisation processes inevitably prioritise certain values over others, thereby shaping the contexts and environments in which individuals, users and non-users alike, process information and make their decisions. This reconfiguration of environments may be beneficial for some individuals and groups while detrimental to others, which raises serious questions about the resulting distributional outcomes. The effects of the targeted use of constantly expanding volumes of aggregated data on the exercise of human rights in a broader sense, significantly beyond the current notions of personal data protection and privacy, remain understudied and require serious consideration.

8. Contemporary machine learning tools have the growing capacity not only to predict choices but also to influence and alter an anticipated course of action, sometimes subliminally. The dangers for democratic societies that emanate from the possibility to employ such capacity to manipulate and control not only economic choices but also social and political behaviours, have only recently become apparent. In this context, particular attention must be paid to the significant power that technological advancement confers to those – be they public entities or private actors – who may use such algorithmic tools without adequate democratic oversight or control.

9. Fine grained, sub-conscious and personalised levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions. These effects remain underexplored but cannot be underestimated. Not only may they weaken the exercise and enjoyment of individual human rights, but they may lead to the corrosion of the very foundation of the Council of Europe. Its central pillars of human rights, democracy and the rule of law are grounded on the fundamental belief in the equality and dignity of all humans as independent moral agents.

In view of the foregoing, the Committee of Ministers:

- draws attention to the growing threat to the right of human beings to form opinions and take decisions independently of automated systems, which emanates from advanced digital technologies. Attention must be paid particularly to their capacity to use massive amounts of personal and non-personal data to sort and micro-target people, to identify individual vulnerabilities and exploit accurate predictive knowledge, and to reconfigure social environments in order to meet specific goals and vested interests;

- encourages member states to assume their responsibility to address this threat by
 - a) ensuring that adequate priority attention is paid at senior level to this inter-disciplinary concern that often falls in between established mandates of relevant authorities;
 - b) considering the need for additional protective frameworks related to data that go beyond current notions of personal data protection and privacy and address the significant impacts of the targeted use of data on societies and on the exercise of human rights more broadly;
 - c) initiating, within appropriate institutional frameworks, open-ended, informed and inclusive public debates with a view to providing guidance on where to draw the line between forms of permissible persuasion and unacceptable manipulation. The latter may take the form of influence that is subliminal, exploits existing vulnerabilities or cognitive biases, and/or encroaches on the independence and authenticity of individual decision-making;
 - d) taking appropriate measures to ensure that effective legal guarantees are in place against such forms of interference; and
 - e) empowering users by promoting critical digital literacy skills and robustly enhancing public awareness of how many data are generated and processed by personal devices, networks, and platforms through algorithmic processes that are trained for data exploitation. Specifically, public awareness should be enhanced of the fact that algorithmic tools may be used for commercial purposes and, increasingly, for political reasons, as well as for ambitions of anti- or undemocratic power gain, warfare, or to inflict direct harm.
- underlines equally the responsibility of member States to lead and support the exploration and research into the autonomy, equality and welfare enhancing potential of advanced data processing and machine learning technologies. In particular should incentives be created to develop services that strengthen equal access to and enjoyment of human rights, and create broad value for society, among others by encouraging the catering to the needs of historically marginalised or thus far underserved communities. To this end, structural diversity in innovation and research must be promoted.
- acknowledges the need to consider, at both national and international levels, the growing onus on the industry across sectors to live up to their important functions and influence with commensurate levels of increased fairness, transparency and accountability, in line with their responsibility to respect human rights and fundamental freedoms, and under the guidance of public institutions.

- stresses the societal role of academia in producing independent, evidence-based and interdisciplinary research and advice for decision-makers regarding the capacity of algorithmic tools to enhance or interfere with the cognitive sovereignty of individuals. This research must take account of existing diversity in societies, and must include all backgrounds and ages of users not only regarding their behaviours as consumers but including wider impacts on their emotional well-being and personal choices in societal, institutional and political contexts.
- draws attention to the necessity of critically assessing the need for stronger regulatory or other measures to ensure adequate and democratically legitimated oversight over the development, deployment and use of algorithmic tools with a view to ensuring that there is effective protection against unfair practices or abuse of monopolies.
- emphasises in particular the need to assess the regulatory frameworks related to political communication and electoral processes to safeguard the fairness and integrity of elections offline as well as online in line with established principles. In particular it must be ensured that voters have access to comparable levels of information across the political spectrum, that voters are aware of the dangers of political redlining, which occurs when political campaigning is limited to those most likely to be influenced, and that voters are protected effectively against unfair practices and manipulation.
- underlines the vital role played by independent and pluralistic media in overseeing public affairs and processes on behalf of the electorate, thereby acting as public watchdogs and contributing to meaningful and informed debate.
- encourages member States to maintain an open and inclusive dialogue with all relevant stakeholders globally with a view to avoiding path dependencies and fully considering all available options towards effectively addressing this emerging and thus far understudied, and possibly underestimated, concern.