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Strasbourg, 6 May 2025 CDBIO (2025) 6

STEERING COMMITTEE FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDICINE AND HEALTH (CDBIO)

Draft Concept note and programme for a workshop on human rights and neurotechnologies

Background

Previous work carried out by the CDBIO and other intergovernmental organisations, including OECD[1], UNESCO[2] and the UN Human Rights Council,[3] showed that the new possibilities offered by neurotechnologies to record, analyse, monitor but also modify the nervous system activity and structure raise multiple implications for individuals. These emerging technologies hold the potential to significantly improve quality of life and foster societal progress, yet their misuse could pose serious threats to human dignity.

Recording, analysis and monitoring and altering of the structure and functioning of the nervous system could drastically improve diagnosis and treatment of various neurological conditions or impairments. Beyond the medical context, neurotechnologies may also find interesting applications in areas such as lifestyle, gaming, employment, and criminal justice.

Through interference with the nervous system, these technologies have the ability to interfere with conscious and unconscious mental states - including thoughts, opinions, emotions, intentions - and underlying processes. Neurotechnologies make it possible to access and alter individual internal "territory", including what is relevant to the "forum internum". Ultimately, such interferences can affect individuals' cognitive, sensory and motor experience and abilities, their self-consciousness and -perception, and ultimately externalised speech, actions and interactions.

The mentally intrusive nature of neurotechnologies has direct implications for individuals' mental privacy, autonomy, and integrity, and also carries broader societal repercussions for justice and equality. The advancement of neurotechnologies therefore raises profound ethical concerns, particularly given the potential for misuse. Human rights issues also arise, as concepts such as privacy, autonomy, integrity, and justice lie at the core of human rights legal instruments

Existing international/European human rights framework were developed without necessarily considering such possibilities. The human rights challenges raised by the applications of neurotechnologies and the legal implications have been at the center of many academic debates. However, the analyse of whether existing human rights framework provides adequate protection has so far not concluded on the matter, and analyses based on relevant case law have been rather scarce.

The analyses of neurotechnologies have identified a number of human rights challenges and ethical concerns.On the basis of the aforementioned conclusions and findings, and taking into account the work carried out by CDBIO and other intergovernmental organisations, as well as the case law of the European Court of

[1] Recommendation of the Council on responsible innovation in neurotechnology
[2] Draft recommendation on the ethics of neurotechnologies
[3] Report of the (independent) Advisory Committee of the Human Rights Council, "Impact, opportunities and challenges of neurotechnology with regard to the promotion and protection of all human rights". It should be noted that last April the Human Rights Council adopted Resolution 58/6 on "Neurotechnology and Human Rights", which, inter alia, requests the Advisory Committee to "draft a set of recommended guidelines for applying the existing human rights framework to the conception, design, development, testing, use and deployment of neurotechnologies" and to present it to the Council at its sixty-fourth session (February-March 2027)

Human Rights, the Bureau proposes that the CDBIO organises a workshop to assess the scope and extent of protection provided by existing human rights frameworks to characteristics inherent to the human being, such as the possibility to think and to hold ideas.

Objective of the workshop

The workshop intends to start from the existing human rights frameworks and do an in-depth analysis on how the scope and the protection that they provide can be applied on the challenges raised by neurotechnologies.

It will explore whether there are gaps in the existing protection, and in which way this protection may be bolstered as to adequately address the complex challenges arising from swift neurotechnological advancement.

Speakers

To achieve its objective, the workshop would gather legal practitioners (lawyers and judges) to analyse the relevant notions such as “thinking” and “thoughts”, “freedom of thought”, “mental privacy, “mental integrity” in existing frameworks and relevant case law, and discussed the level of protection provided with regard to the challenges raised by neurotechnologies. It is also suggest inviting an expert on neurotechnology to explain its possibilities, its most prominent applications, the future prospects, and to answer questions.

Output

The output of the seminar would be a paper proposing possible interpretation lines of existing human rights principles in the context of neurotechnologies, and based on the outcome, proposals for possible avenues for actions that could be taken.

Moderators: one member of the preparatory group and one member of the CDDH/T-PD

Rapporteurs: one from CDBIO (Tesi Aschan, SE), one from CDDH (Elias Kastanas, GR), one from T-PD (Alessandra Pierucci, I)

PROGRAMME OUTLINE

I - Introduction on neurotechnologies

The purpose of this introduction would be to provide legal practitioners with background information on the functioning of neurotechnologies and on the general human rights implications already identified

Key elements

- Description of how and in which fields these technologies are used (including therapeutic and enhancement use), and which effects neurotechnological interventions could generate on the human brain and mind
- Description of the main challenges arising from technological interventions in the brain, with particular emphasis on the effects of increased accessibility to and influence over individuals' thoughts, opinions, moods, and other mental states.
- Identification of the most prominent ethical concerns, including mental privacy, personal identity, (mental) autonomy, physical and mental integrity, freedom of thought, informed consent, justice and equity.
- Indication of the human rights concerns - referencing the relevant human rights frameworks and provisions.

Considered speakers

- *Marcelo Ienca (CH) – technologies and their possibility of intervention (reading, monitoring, modifying) – consequences (tbc)*
- *Anna Austin, Jurist Consult of the European Court of Human Rights – the existing human rights legal frameworks and human rights concerns (confirmed)*

II - Core of the workshop

The purpose would be to assess the meaning and scope of these notions i.e. mental privacy, physical and mental integrity, personal identity and freedom of thought, in existing human rights frameworks, and relevant case law, in particular of the European Court of Human Rights, in relation to the right to freedom of thought, conscience and religion and the right to integrity. The discussion could be fostered by use cases provided beforehand or introduced during the presentation.

Two umbrella topics

a. private life, non-discrimination (*more focus on possibility offered by neurotechnologies to record, process, monitor brain/neural data*)
b. physical and mental integrity, freedom of thought, self-determination (*more focus on possibilities offered by neurotechnologies to modify and control the structure and activity of the brain/nervous system)*

Under each of these "umbrella topic", the following questions would be addressed:

- what are the concerns raised by the intervention?
- what are the legal responses offered to these concerns?
- what is the level of protection offered – blank spots or gaps?

Examples of questions to guide the presentations/discussion

a. Private life
    - *Which notions are relevant to the challenges raised to private life by neurotechnologies?*
        - *e.g. Does the notion of private life apply to "mental sphere"?*
        - *e.g. Does the notion of private life cover conscious and/or unconscious processes/output?*

- *Would the right to private life protect any internal thinking process and outputs from unconsented monitoring, recording, analysis or disclosure?*

b. Physical and mental integrity, freedom of thought, self-determination
   - *Which notions are relevant to the challenges raised to mental integrity by neurotechnologies?*
   - *Would the right to integrity, including the right to mental/psychological integrity, protect against unconsented modification of the thinking process?*

III – Concluding session

- Speakers invited to indicate briefly:
  - what would be needed to ensure appropriate protection of human rights with regard to neurotechnologies?
    - Issues and concerns with sufficient protection
    - Dealing with blank spots and gaps

- Chairs of T-PD, CDDH, CDBIO invited to discuss avenues for possible actions

IV - Closing

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Suggested timing:

9.15 – 9.30 **Opening**

9.30 – 10.15 **Introductory presentations**

10.15 – 11.15 **Private life – Non Discrimination**

11.15 – 11. 45 Break

11.15 – 12.00 Private life (discussion)

12.00 – 13.00 **Physical and mental integrity – Freedom of thoughts – Self-determination**

13.00 – 14.30 Lunch

14.30 – 16.00 Physical and mental integrity – Freedom of thoughts – Self-determination (to continue)

16.00 – 16.30 Break

16.30 – 17.30 **Concluding session**

17.30 Closing