Working Group on Ethics and Data Protection in Artificial Intelligence

Report – adopted October 2020

Privacy Commissioner for Personal Data (PCPD), Hong Kong, China

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 2020, 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. While the unexpected challenges of the COVID-19 pandemic required reviews of priorities and resource allocation for many organisations, work on a number of work packages proceeded so that deliverables can be made available to the GPA Closed Session 2020. For others, the scheduling of deliverables is under review.

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.
- **A repository of AI use cases**, aiming at obtaining a meaningful overview of real-life applications of AI technology, which are relevant for ethics and data protection.
- **A proposed draft Resolution on Accountability in the development and use of Artificial Intelligence**: this follows a survey conducted between May and June 2020 to collect the opinions of the members of the GPA on the measures for demonstrating accountability in the development and use of AI. It aims at encouraging organizations that develop or use AI systems to implement accountability measures to address the risks of interference with human rights, by also calling on tighter cooperation between data protection and privacy authorities.
- **A survey on data protection and privacy authorities' capacity in addressing ethical and data protection issues in AI**: this is aimed at having 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 and should be the first step towards the development of a 'gap analysis' in the longer run.
- In terms of outreach activities, the Group's co-chairs have also forwarded their **comments on the European Commission's White Paper "On Artificial Intelligence - A European approach to excellence and trust"** (published in February 2020), laying down its approaches for the European Union to achieve a strong position in AI markets and business, while ensuring that the EU's values and fundamental rights are preserved at the same time.
- The Group has also participated in the **Council of Europe Ad-Hoc Committee on AI (CAHAI)**: the CoE invited one of the Group's co-chairs, the EDPS, to participate in the work of its Ad-Hoc Committee on Artificial Intelligence (CAHAI), as a non-voting stakeholder.

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 phase of work of the Group will on the one hand be characterized by the monitoring of concrete legislative initiatives by some national and regional entities, and by the need to take account of long term challenges to human rights, such as environmental developments and global inequality. At the same time, the effect of the COVID-19 pandemic on the future development of Artificial Intelligence (AI) technologies and applications will require scrutiny.

In addition to its work on substantial policy orientations, the Group will continue its outreach activities with a focus on international organisations and civil society.

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].

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

Member authorities of the Group are:

- AAIP (Argentina);
- IPC New South Wales (Australia);
- OPC (Canada);
- OIPC British Columbia (Canada);
- CAI Quebec (Canada);
- SDPD (Colombia);
- Datatilsynet (Denmark);
- DPC (Gabon);
- BfDI (Germany);
- Bavarian DPC (Germany);
- LfDI Rheinland-Pfalz (Germany);
- HDPA (Greece);
- ODPC (Guernsey);
- GPDP (Italy);
- PPC (Japan);
- OIC (Jersey);
- OPC (New Zealand);
- ICO (United Kingdom);
- 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).

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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.

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.

As elements of the work programme correspond to work streams identified as priorities in the Assembly's Strategic Plan 2019 – 2021 and associated Policy Strategy, a call with the Strategic Direction Sub-Committee (SDSC) in the second quarter 2020 allowed to identify needs and possibilities for coordination. Synergies between the Group's work and the Policy Strategy Working Groups (PSWG) will benefit from the common membership in the relevant teams, in particular of CNIL for the Digital Education Working Group, of OPC Canada for PSWG 3 and of the EDPS for PSWG 2. The Group will be able to adjust its deliverables so that they reinforce and strengthen the general strategic orientation in the field of AI.

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 resources allocations, as well as reconsidering the scheduling of committed activities. At the time of writing of this report, the corresponding revision of the work program schedule is still ongoing. The Group's co-chairs intend to use their oral presentation at the Closed Session to provide the latest update to participants.

As a general observation, the first wave of policy orientation initiatives regarding AI seems to be ending, and a new phase of more specific programs and legislative initiatives appears to begin. This new phase will again require the attention of data protection and privacy authorities. 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.

Repository of cases

This work item aims at obtaining a meaningful overview of real-life applications of AI technology, which are relevant for ethics and data protection. To collect a first set of relevant cases, the Group asked the GPA members' collaboration and sent them in early August 2020 a use case form. The deadline for this first information gathering exercise was 15 September 2020. Since its goal is to keep track of the dynamic development of the domain, the repository will be a living document. Consequently, GPA members are encouraged to send any meaningful addition or update they come across in the future.

Draft Resolution on Accountability in the development and use of Artificial Intelligence

The Group conducted a survey in May - June 2020 to collect the opinions of the members of the GPA on the measures for demonstrating accountability in the development and use of AI. The survey results showed, *interalia*, that AI development and use was still largely unregulated and/or unguided in the data protection field and how the importance of different accountability measures was perceived. Upon analysis of the survey results, members of the Group have formulated a draft "resolution on accountability in the development and use of artificial intelligence", which is to be presented for adoption at the GPA closed session meeting in October 2020. The draft resolution aims to urge organizations that develop or use AI systems to implement accountability measures to address the risks of interference with human rights. The resolution also calls upon tighter collaborations among GPA members, AI developers and AI service providers to promote accountability in the development and use of AI and encourage government to consider making legislative changes in personal data protection laws to make clear the legal obligations regarding accountability. The resolution is sponsored by various GPA members from different cultural, geographic and legal backgrounds.

Survey on DPAs' capacity in addressing ethical and DP issues in AI

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. This work item should serve as a first step towards the development of a 'gap analysis' in the longer run, also informing GPA members in terms of resources strategies and best practices. The schedule for the roll out of the survey has been delayed due to members' workload and priorities in addressing the issues arising from the COVID-19 pandemic. The Group intends to run the survey among all GPA members through an appropriate platform by the end of the year. The results would then feed into the Group's activities and future initiatives ahead of the 2021 annual meeting of the whole GPA.

Outreach activities

Comments on the European Commission White Paper on AI

In February 2020, the European Commission published a White Paper "On Artificial Intelligence - A European approach to excellence and trust" laying down its approaches for the European Union to achieve a strong position in AI markets and business, while ensuring that the EU's values and fundamental rights are preserved at the same time. The co-chairs of the Group analysed the Commission's White Paper in the light of the principles laid down in the GPA Declaration of 2018 and communicated their observations via the GPA Secretariat to the European Commission (see Deliverables).

Participation in Council of Europe Ad-Hoc Committee on AI (CAHAI)

The Council of Europe invited one of the Group's co-chairs, the EDPS, to participate in the work of its Ad-Hoc Committee on Artificial Intelligence (CAHAI), as a non-voting stakeholder. The Committee comprises members of the Council of Europe, i.e. European countries, as well as observer countries such as Canada, Israel, Japan, Mexico and the USA. Further representatives of International Organisations, notably from the EU and the UN System participate in the work. Representatives of the EDPS participated in two meetings of the CAHAI and took the opportunity to make the CAHAI community aware of the GPA's work on AI. As the Council of Europe is itself an observer to the GPA and contributes to the Group, there is a high potential for synergies between the work of the GPA and the CoE.

Forward looking plan 2020-2021

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 2021 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 2019 – 2021 the Group will also dedicate 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 2019 - 2021, the Group will conclude the discussion about the challenges on which it had postponed a decision. In particular, in view of the Action on the integral relationship of data protection to other rights and freedoms, the Group will discuss the best way for approaching the analysis of the societal and environmental impact of data intensive technologies and the analysis of the impact of AI technologies on inequality at global and local level. While there seems to be a growing consensus that environmental challenges and social justice need to be taken into account in all fundamental rights contexts, the GPA may consider to address these issues in a broader context than the development of AI technologies and 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.

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.

Annexes

- Comments of the AI WG Co-chairs to the European Commission's White Paper on AI

GPA Permanent Working Group on Ethics and Data Protection in Artificial Intelligence

Comments on the European Commission White Paper "On Artificial Intelligence - A European approach to excellence and trust"

In 2018, the 40th International Conference of Data Protection and Privacy Commissioners (ICDPPC, now renamed as the Global Privacy Assembly 'GPA') in Brussels adopted a Declaration on Ethics and Data Protection in Artificial Intelligence[1] ('the Declaration') annexed to this contribution, which endorsed guiding principles as its core values to preserve human rights in the development of artificial intelligence, and established a permanent working group on Ethics and Data Protection in Artificial Intelligence ('the Group'). This working group is observing developments regarding AI, Ethics and Data Protection globally and developing guidance and advice where appropriate.

The Group has been following the European Commission's policy initiatives in the field of AI, as it considers these initiatives are of global relevance and will have an impact on the future development of AI applications beyond the European Union. Therefore, the Group, represented by its co-chairs (Privacy Commissioner for Personal Data, PCPD, Hong Kong, China; Commission Nationale de l'Informatique et des Libertés, CNIL, France; European Data Protection Supervisor, EDPS, EU), recommends to the European Commission to consider the application of the six principles laid down in the Declaration. While the Group is not in a position to evaluate all measures considered in the Commission's White Paper, it wishes to indicate that GPA members, including EU data protection authorities, may bring such detailed assessment[2]2 to the attention of the Commission.

The Group welcomes the Commission's initiative to present a White Paper and accompanying documents on its intentions and policy options and to request input from stakeholders through a public consultation. It appreciates the Commission's approach to define an Ecosystem of Trust as one of its objectives. It takes note that the Commission welcomed the seven principles identified by its High Level Expert Group, which reflect many of the elements endorsed in 2018 by the GPA, and encourages the Commission to use these principles constantly in the design and assessment of specific policy and legislative measures that it will propose and implement.

As stated in the Declaration, the Group reaffirms that the respect of the rights to privacy and data protection are increasingly challenged by the development of artificial intelligence and that this development should be complemented by ethical and human rights considerations.

The Declaration endorses the **fairness** principle, requiring that AI design, development and use respect fundamental human rights, applying the rules on reasonable expectations and purpose limitation for the use of data, assessing not only individual but also societal impact, and facilitating and not obstructing human development. The Group considers that the EU should apply these rules in the refinement of the measures envisaged within the ecosystem of trust, and take account of them for measures aiming at the ecosystem of excellence, such as in setting the objectives of research and development initiatives.

The Declaration's principle of **continued attention and vigilance,** as well as accountability, for the

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[1] http://globalprivacyassembly.org/wp-content/uploads/2018/10/20180922_ICDPPC-40th_AI- Declaration_ADOPTED.pdf
[2] The EDPS issued an opinion on the White Paper: https://edps.europa.eu/data-protection/our-work/publications/opinions/edps-opinion-european-commissions-white-paper_en

potential effects and consequences of artificial intelligence systems requires monitoring, auditing and impact assessments, as well as a clear allocation of responsibility covering all stakeholders, demonstrable governance processes and awareness raising, education and research. The Group emphasizes the importance of this principle for the research actions, and it recognizes that the White Paper proposes actions for risk assessment and the allocation of liability. It recommends that the EU apply this principle as a benchmark when assessing the concrete measures it envisages implementing and the legal instruments it aims to propose.

Systems transparency and intelligibility as a principle of the Declaration demands research in explainable AI, the development of new ways of communication, transparent organisational practices and algorithmic transparency, guarantee of the right to informational self-determination and provision of adequate information on purpose and effects of AI systems. Again, the Group underlines that these objectives need take-up in the Research and Development measures facilitated by the European Union. While many of the legal instruments considered in the White Paper already contain provisions to ensure transparency and information, the specific properties of AI based systems, for which datasets used in machine learning shape the processing beyond the documented functionality, may require additional efforts and clarification of obligations.

The principle of **responsible design and of privacy by design and by default** as elaborated by the Declaration correspond to a great extent to already existing legal obligations in the EU legal framework for the processing of personal data, such as in data protection impact assessments and the data protection by design and by default principle as such. The Group invites the Commission to support initiatives, such as research or legislative and policy actions, to identify specific requirements for ethical and fair use, both general and specific for individual systems and to resist any efforts to water down or interfere with existing legal obligations.

Empowerment of the individual is a fundamental principle of human rights, and the Declaration reflects this principle in existing data protection and privacy rights, but also in rights to freedom of expression and information and to objection or appeal. It also recognizes that AI may indeed contribute to improving the practical use of these rights of individuals, and should not only not restrict the rights, but also actively promote them. The Group recommends ensuring proper reflection in its policy measures, not only for the ecosystem of trust but also as a distinguishing feature of the ecosystem of excellence.

The avoidance of unlawful **biases and discrimination** has emerged as a challenge for existing AI technologies and its use. Thus, the Declaration emphasizes that this principle requires that all stakeholders respect the relevant international legal instruments on human rights and non-discrimination. There is also a need for more research in identification and mitigation of bias, as well as a commitment to adhere to the data quality principle and elaborating of guidance to stakeholders. Moreover, new technological tools could prolong and reinforce existing bias and discrimination. Therefore, the Group considers that constant assessment of the adjustment and effectiveness of technical measures and operational procedures is necessary in future policies.

The Group expects that the direction the European Union gives to its measures on Artificial Intelligence could influence the technological development globally, and thus have importance and impact beyond the EU borders. It encourages the Commission to be aware of its global responsibility and to adhere to the principles of ethics laid down in its own documents and in the Declaration. It underlines the importance of applying these principles in the ecosystem of excellence as well as in the ecosystem of trust.

The Group underlines that beyond these general comments, the individual member authorities

of the GPA may adopt their own reactions to the Commission's White Paper. It strongly encourages the Commission to consider the advice of the Data Protection and Privacy authorities thoroughly, since they are observing the application of AI systems in practice and their effects on fundamental rights. Many authorities have taken practical measures with respect to concrete uses of AI. Authorities have also established guidance and frameworks for AI related issues, such as accountability and audit frameworks. The Group encourages the Commission and other EU bodies to benefit from this experience and expertise.

Background on the Global Privacy Assembly

The Global Privacy Assembly ('GPA') first met in 1979 as the International Conference of Data Protection and Privacy Commissioners ('ICDPPC'). The Assembly has been the premier global forum for data protection and privacy authorities for more than four decades. At its 41st conference in Tirana in 2019, the ICDPPC decided to change its name and henceforth use the acronym GPA. The GPA is composed of Data Protection Commissioners and Privacy Commissioners from countries across the globe and counts international organisations and bodies as observers. The European Commission is an observer to the GPA.