



SHERPA
BRIEFING

SIS and Security, Dual Use, and Misuse

The SHERPA project explored the implications of the rapid developments of AI systems on human rights. This briefing paper addresses the threats these modern developments pose and the need to regulate and monitor their development across different sectors to ensure compliance with human rights.

THE CASE/SCENARIO

AI and big data provide a wide range of benefits to society including the improvement of efficiency in the public sector and industry. Nevertheless, their rapid development can pose security threats, requiring the detection and prevention of the misuse of data or the framing of their dual use for civil and military use as per Article 2(1) of the EU Regulation 428/2009. Dual-use items should be monitored and controlled to ensure the non-proliferation and misuse of such technologies. These systems can be used across different sectors such as economy, governance structure, business, and national defence. Their regulation is consequently paramount to ensure the protection of human rights.

ETHICAL ISSUES

- AI systems benefit society by helping to tackle poverty and climate change.
- The rapid technological developments may give rise to autonomous weapons, economic disruption, and machines with a will of their own, potentially in conflict with humanity and human rights values. There is therefore a need for a legal framework that will combat the challenges such developments pose to the enforcement of human rights.

LEGAL ASPECTS

- The guiding principles endorsed by the International Conference of Data Protection for the creation, development and use of AI systems were incorporated in the Declaration on Ethics and Data Protection in Artificial Intelligence. The six principles enshrined in the Declaration seek to uphold human rights during the design, development and use of AI systems and software, and expand on ethical considerations linked to governance principles on AI. Although the Declaration will not form a legally binding document on States or other stakeholders, it calls for the establishment of common principles of governance on AI in full respect for human values and dignity and for the creation of a permanent working group on ethics and data protection in AI, much needed at the international level.





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- The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has adopted a list of fundamental principles entitled 'European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment' (Charter). They concern the public and private stakeholders responsible for the design and deployment of AI tools and services that involve the processing of judicial decisions and data as well as the public decision-makers in charge of the legislative or regulatory framework of the development, audit or use of such tools and services. The principles under the Charter overlap to a great extent with the values outlined in the Declaration on Ethics and Data Protection in AI discussed above. The Charter provides guidance for policy makers, legislators and justice professionals in the development and use of AI systems in national judicial processes. It is also used in parallel with the European Convention on Human Rights (ECHR) and hence full compliance with the ECHR is expected.

LESSONS LEARNED

The Charter is a great achievement, supplementing European legal instruments, namely the European Convention on Human Rights (ECHR) and the Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data. Several Contracting Parties have taken steps to amend national laws to comply. Nevertheless, progress has been slow and restricted to the use of AI entities and software in the judicial systems. However, the scope of application is much broader and encompasses other sectors such as national defence by addressing autonomous weapons programmed to kill. Nonetheless, by not being legally binding, the Declaration only paves the way. A more effective avenue would be the drafting and adoption of a Charter at a pan-European or EU level, based on the ethical foundations set out in the Declaration. Human rights risk assessments are also necessary so as to combat their exploitation. Finally, the EU needs a good blueprint of European digital integration, leading to enforceable common standards and encompassing multiple aspects of SIS, including but not limited to the Digital Single Market and fundamental human rights. This requires the use of an alternative legal basis in the EU Treaties, such as Article 2 of the Treaty on the European Union preserving all EU values and encompassing the area of freedom, security and justice. This process would then elevate standards internationally, through an international enforcement process thanks to the international legal personality of the EU and its membership in relevant fora.

