Privacy International's oral statement at the private briefing on the European Union of the Committee on the Convention for the Rights of Persons with Disabilities

CRPD Committee, 32nd session, 10 March 2025

Privacy International welcomes the opportunity to participate in this private briefing.

We're concerned by the implications for the right to privacy and other human rights of persons with disabilities when it comes to the digitisation of public services – particularly the impact of Automated Decision Making (ADM) in social protection in EU member states. This technology carries documented risks of unreliability, biased, and opacity as it often operates as a "black box" system, posing transparency, redress and accountability problems.

There's a right not to be subject to full ADM enshrined in EU GDPR Article 22, Recital 71.[1] The use of such technology requires data processors to have additional safeguards in place and that individuals be able to opt out of ADM processes,[2] and have a right to be informed of the existence of ADM, the logic involved and the envisaged consequence of the data processing for them.[3] Where semi-ADM is used, it's critical that the human review element be <u>meaningful</u>. Such ADM systems are now classed as "high risk" under article 6 of the EU AI Act, with reference to Recital 58, and deployers of these systems will be subject to obligations under the Act. Concerns over the infringement of these rights have materialised in EU countries, including:

1. **France:** The French Social Security Agency is using a risk-scoring algorithm found to be discriminatory and to treat people with disabilities with suspicion.[4]

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[1] See definitions distinguishing "full" and "semi" ADM here: Amnesty International, p.4 "Glossary" in "Xenophobic machines: Discrimination through unregulated use of algorithms in the Dutch childcare benefits scandal" (2021) https://www.amnesty.org/en/documents/eur35/4686/2021/en/

[2] For example, EU GDPR Article 22 provides rights in relation to solely automated decisions which have legal or other significant effects, stating: "The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling [...]".
See also: Convention 108+, https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regar/16808b36f1

[3] Privacy International "The Keys to Data Protection" (August 2018) https://privacyinternational.org/sites/default/files/2018-09/Data%20Protection%20COMPLETE.pdf

[4] Amnesty International, "France: Discriminatory algorithm used by the social security agency must be stopped" (2024) https://www.amnesty.org/en/latest/news/2024/10/france-discriminatory-algorithm-used-by-the-social-security-agency-must-be-stopped/

2. **Austria:** An AI system used by Austria's employment agency was found to discriminate against disabled people.[5]
3. **Denmark**: The Danish Welfare Authority's use of AI risks discriminating against people with disabilities.[6]
4. **The Netherlands:** Dutch tax authorities' use of an ADM fraud-detection system[7] and the City of Rotterdam's welfare fraud algorithm were found to be discriminatory.[8]

As the Committee noted in relation to the UK, the use of these technologies without necessary safeguards is a violation of the right to adequate standard of living and social protection (Convention art. 28).[9] We encourage to Committee to urge the EU and its institutions to:

1. Ensure members states uphold and enforce the EU GDPR;
2. Ensure member states fulfill and enforce the obligations stipulated in the by the EU AI Act regarding the use of AI systems in social welfare; and,
3. Ensure the digital technologies are deployed in accordance with the rights of persons with disabilities and with data protection principles.

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[5] Algorithm Watch, Nicolas Kayser-Brill, "Austria's employment agency rolls out discriminatory algorithm, sees no problem" (2020) https://algorithmwatch.org/en/austrias-employment-agency-ams-rolls-out-discriminatory-algorithm/

[6] Ibid; see also Amnesty International, "Denmark: AI-powered welfare system fuels mass surveillance and risks discriminating against marginalized groups – report" (2024) https://www.amnesty.org/en/latest/news/2024/11/denmark-ai-powered-welfare-system-fuels-mass-surveillance-and-risks-discriminating-against-marginalized-groups-report/

[7] Amnesty International, "Xenophobic machines: Discrimination through unregulated use of algorithms in the Dutch childcare benefits scandal" (2021) https://www.amnesty.org/en/documents/eur35/4686/2021/en/

[8] HRW https://www.hrw.org/news/2019/11/08/welfare-surveillance-trial-netherlands
Eva Constantaras, Gabriel Geiger, Justin-Casimir Braun, et. al., "Inside the Suspicion Machine" (2023) https://www.wired.com/story/welfare-state-algorithms/

[9] CRPD Committee, Report on follow-up to the inquiry concerning the United Kingdom of Great Britain and Northern Ireland (2024) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FGBR%2FFUIR%2F1&Lang=en