



Artificial Intelligence

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Guidelines released by the 108 Convention Consultative Committee

The Consultative Committee on Convention 108, chaired since 2016 by the Italian Garante della Protezione dei dati personali, released the guidelines on artificial intelligence and data protection. The Council of Europe established the Convention 108 (Convention for the Protocol of Individuals with regard to Automatic Processing of Personal Data) in 1981, and the Committee worked at updating the provisions of the Convention to a more technological world and in particular focusing on Artificial Intelligence (“AI”). The set of Guidelines cover (i) general principles, (ii) guidelines to AI developers, manufacturers, and service providers and (iii) legislators and policy makers. Below are some of the key provisions.

General Guidelines

- AI development relying on the processing of personal data should be based on the principles of Convention 108+. The key elements of this approach are: *lawfulness, fairness, purpose specification, proportionality of data processing, privacy-by-design and by default, responsibility and demonstration of compliance (accountability), transparency, data security and risk management.*
- An approach focused on *avoiding and mitigating the potential risks* of processing personal data is a necessary element of responsible innovation in the field of AI.
- AI applications should allow *meaningful control by data subjects* over the data processing and related effects on individuals and on society.

Guidelines for developers, manufacturers, and service providers

- AI developers, manufacturers and service providers should assess the possible adverse consequences of AI applications on human rights and fundamental freedoms, and, considering these consequences, adopt a precautionary approach based on appropriate risk prevention and mitigation measures.
- AI developers should critically assess the quality, nature, origin and amount of personal data used, reducing unnecessary, redundant or marginal data during the development, and training phases and then monitoring the model’s accuracy as it is fed with new data. The use of synthetic data may be considered as one possible solution to minimise the amount of personal data processed by AI applications.
- All products and services should be designed in a manner that ensures the right of individuals not to be subject to a decision significantly affecting them based solely on automated processing, without having their views taken into consideration.
- In order to enhance users’ trust, AI developers, manufacturers and service providers are encouraged to design their products and services in a manner that safeguards users’ freedom of choice over the use of AI, by providing feasible alternatives to AI applications.

Guidelines for legislators and policy makers

- Without prejudice to confidentiality safeguarded by law, public procurement procedures should impose on AI developers, manufacturers, and service providers specific duties of transparency, prior assessment of the impact of data processing on human rights and fundamental freedoms, and vigilance on the potential adverse effects and consequences of AI applications (hereinafter referred to as algorithm vigilance).

- Overreliance on the solutions provided by AI applications and fears of challenging decisions suggested by AI applications risk altering the autonomy of human intervention in decision-making processes. The role of human intervention in decision-making processes and the freedom of human decision makers not to rely on the result of the recommendations provided using AI should therefore be preserved.
- AI developers, manufacturers, and service providers should consult supervisory authorities when AI applications have the potential to significantly impact the human rights and fundamental freedoms of data subjects.
- Policy makers should invest resources in digital literacy and education to increase data subjects' awareness and understanding of AI applications and their effects. They should also encourage professional training for AI developers to raise awareness and understanding of the potential effects of AI on individuals and society. They should support research in human rights-oriented AI.

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