



**Homo
Digitalis**

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Submission of Homo Digitalis' input Chapter 3 of the draft feasibility study

[Homo Digitalis](#) is a Greek civil society organisation based in Athens that focuses on the promotion and protection of human rights in the digital age. Moreover, we serve as a member organisation at the [European Digital Rights \(EDRi\)](#) network. Please, find below our comments and recommendations for chapter 3 of the draft feasibility study. We would like also to state that we officially endorse the related submissions of the Conference INGOs and Access Now.

Comments & Suggestions

-To begin with, we would like to mention that Homo Digitalis expresses its reservations as regards the distinction between “green and red areas” of artificial intelligence applications from a human rights, the rule of law and democracy perspective. The development and use of AI systems has a dynamic nature, and therefore such an approach may not take into consideration in the long run the benefits and challenges that may arise. Moreover, red or green areas of AI development and deployment will usually be determined in a specific context of application, rather than be dependent on the technology used per se. For example, the processing of biometric information (facial images, fingerprints, etc) to identify individuals who want to access a private high security facility might be a green area, while when the same technology is used in public places for mass surveillance purposes is definitely a red area.

-Nevertheless, specific AI applications in specific contexts could already be considered to pose important risks to human rights, the rule of law, and democracy, and thus be considered as red areas. More precisely, **Homo Digitalis strongly holds that the processing of biometric information (such as facial images) in public and publicly accessible spaces, wherever has the potential to establish mass surveillance, shall be considered as a red area.** Such biometric processing is incompatible with the Council of Europe human rights framework, and the principles of necessity and proportionality. The development and use of such technologies could lead to a massive increase in the capabilities for omnipresent state surveillance and catalyse human rights abuse. Thus, such a use is in an fundamental conflict with the essence of human dignity and the protection of human rights and freedoms in public spaces, such as the rights to privacy, data protection, freedom of expression, and freedom of assembly. The risk of increased authoritarian societal control outweighs any alleged “benefits” that the use of these technologies promise. As EDRi rightly states: “The use of

biometric surveillance systems creates a dynamic where the powerful watch and the powerless are watched".¹

-Homo Digitalis also firmly believes that another red area for AI deployment is the use of risk assessment tools for offenders' classification in a criminal justice context. The European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment of Council of Europe's CEPEJ is a well-drafted and insightful document that reaches the same conclusion by clearly stating that the use of algorithms in criminal matters in order to profile individuals "shall be considered with the most extreme reservations".² These tools base their assessments on a vast collection of personal data that are unrelated to the defendants' alleged misconduct, for which they stand before the court. More precisely, the questionnaires used in the context of risk assessment tools, such as the famous COMPAS, are composed of hundreds of questions and collect an immense amount of answers which include personal data related to different aspects of a person's life.³ Such a collection of personal data for the purpose of predicting the risk of recidivism allows very precise conclusions to be drawn concerning the private lives of the defendants. This personal data does not always have a link, or at least a direct one, to the crimes the defendants are accused to have committed. Thus, this collection of a vast amount of personal data cannot be perceived as adequate, relevant, and not excessive in relation to the purpose of predicting recidivism. Consequently, such interference with the right to respect for one's personal and private life in order to assess the risk of recidivism could not be perceived as necessary in a democratic society or as proportionate to the pursuit of that aim. Finally, the intimate data processing on which the risk assessment tools base their prediction upon, covers a wide spectrum of defendants' lives, and thus interferes with other human rights as well, such as freedom of thought, conscience, and religion⁴ and freedom of expression,⁵ while simultaneously placing the protection of human dignity at risk.

-Having in mind the above Homo Digitalis suggests the processing of biometric information (such as facial images) in public and publicly accessible spaces, wherever has the potential to establish mass surveillance, as well as the use of risk assessment tools for offenders' classification in a criminal justice context shall be considered to be red areas of artificial intelligence applications from a human rights, the rule of law and democracy perspective.

**For more information about this submission please contact Eleftherios Chelioudakis at [e\[dot\]chelioudakis\[at\]homodigitalis\[dot\]gr](mailto:e[chelioudakis@]homodigitalis[dot]gr)*

¹ European Digital Rights (EDRI), Ban Biometric Mass Surveillance: A set of fundamental rights demands for European Commission and EU Member States (2020), Available at: <https://edri.org/wp-content/uploads/2020/05/Paper-Ban-Biometric-Mass-Surveillance.pdf>

² European Commission for the Efficiency of Justice (CEPEJ), European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment (2018), Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>

³ Julia Angwin et al, 'Machine Bias', Propublica (2016) Available at: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>. The questionnaire of the COMPAS version used by the Department of Corrections of the State of Wisconsin, is composed of 137 questions related to information ranging from a defendant's criminal history to his or her social life and thoughts. It was acquired by Julia Angwin, after her submission of a Freedom of Information (FOI) request in the context of her research. Please find the questionnaire at <https://www.documentcloud.org/documents/2702103-Sample-Risk-Assessment-COMPAS-CORE.html>.

⁴ ECHR, art 9

⁵ ECHR, art 10