

Getting the Future Right Artificial Intelligence and Fundamental Rights

Report presentation



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The need for a rights-based approach

- Extensive policy development on AI
- Ethics and rights-based approaches
- Fundamental and human rights are legal obligations

The need for an evidence-based approach

- Broad field of AI led to generic and abstract discussions
- Scattered knowledge and lack of evidence on fundamental rights
- Focus on concrete use cases to avoid abstract discussions

Evidence and policy on AI

- FRA's study provides insight into practices
- This study is part of a larger FRA project
- Any future regulation of AI needs to
 - be evidence-based
 - include fundamental rights safeguards ('rights-based')
 - be followed by practical application

Study overview

- Five countries – Estonia, Spain, Finland, France, Netherlands
- 101 interviews
 - public administration
 - private sector
 - experts
- Country research including policy developments and laws

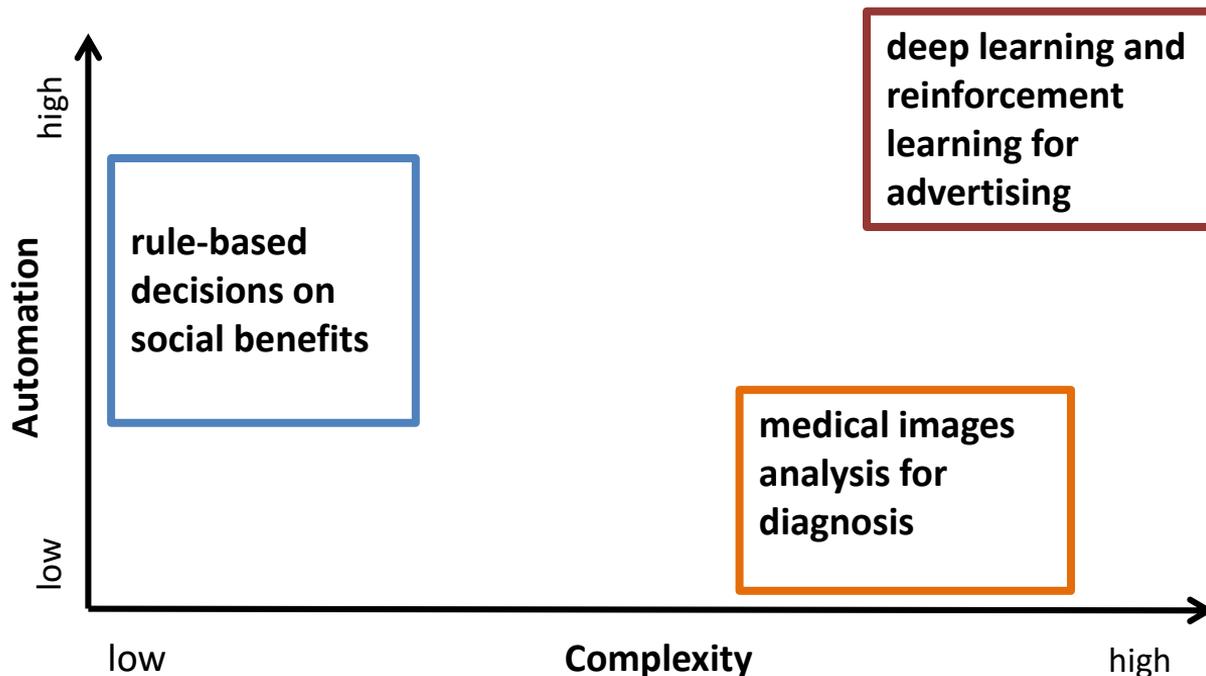
What is AI?

- No accepted definition of AI
- Definition of AI from the HLEG on AI:
‘Artificial intelligence (AI) refers to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals.’
- Different views on AI among those interviewed

*“It is an umbrella term.”
(Private company, Estonia)*

*“There is no lawyer who can tell you the definition of AI and we’ve asked around pretty thoroughly.”
(Public administration, Netherlands)*

Examples of AI from the fieldwork



Purpose of using AI

“It is mostly used to save time [...] when you have to go through a lot of material.”

“The most important is to deal with cases more efficiently. It’s about making use of your workforce, the people who handle cases, as effectively as possible.”



Fundamental rights framework

- Charter of Fundamental Rights of the EU
- Secondary EU law
 - data protection law
 - non-discrimination law
 - ...
- International treaties (Council of Europe and United Nations)
- National and sector specific laws

Data protection

*“There is the GDPR but it does not give you specific rules. It gives principles but it comes down to ethical issues and interpretation.”
(Private company, Estonia)*

- High level of awareness about data protection
- Personal data use – when it is used and isn't used
- Automated decision making and human review
- Uncertainty about the applicability of data protection

*“There is a risk of having too much trust in the machine.”
(Public administration, France)*

Equality and non-discrimination

- Lack of in-depth analysis of non-discrimination
- Interviewees convinced that their system does not discriminate
- Question of proxies – information linked to protected characteristics
- Rights of special groups almost absent in discussions

*“[I]f you do not have access to sensitive personal data, it is impossible to check if you are profiling on that basis.”
(Public administration,
Netherlands)*

Access to effective remedy

*“The topic of transparency is very important nowadays, there are many procedures on how to publish the information, ...”
(Public administration, Spain)*

- Awareness that people have the right to complain
- Not many complaints received
- Importance of transparency and explainability

Other fundamental rights impacted

- Good administration
- Consumer protection
- Social security and assistance
- Freedom of expression
- Right to assembly
- Right to education
- Right to asylum
- Right to collective bargaining and action
- Right to fair and just working conditions
- Right to access preventive care
- ...

Impact assessments in practice

- Many calls for fundamental rights impact assessments
- Focus on technical aspects, not fundamental rights
- Those using AI are not always sure which bodies are responsible for overseeing AI systems

“When testing the system, we did not really look at the legal aspects, we looked at whether the system is profitable.” (Private company, Estonia)

“Yes, we assess the legality of personal data protection and the conformity with their specific legal acts.” (Public administration, Estonia)

The use of AI should ...

- process data legally
- not lead to unfair treatment
- be contestable
 - make people aware that AI is used
 - inform people where and how to complain
 - make sure that decisions can be explained

“We are proactive not only among ourselves to mitigate risks.” (Private company, Estonia)

What does FRA say?

- Take into account the full scope of fundamental rights with respect to AI
- Consider making mandatory prior impact assessments that cover the full spectrum of fundamental rights
- Ensure effective oversight and overall accountability – the role of different bodies

What does FRA say?

- Specific safeguards are needed to ensure non-discrimination when using AI – including targeted research
- Provide more guidance on data protection when using AI
- Ensure effective access to justice in cases involving AI-based decisions

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