



Equinet AI Study Visit

13 April | Paris, France
9:30 - 17:30 CET



Co-funded by
the European Union

LOCATION

Defender of Rights office, 3 Place de Fontenoy 75007 Paris, room 5107 (5th floor)

OBJECTIVES

This study visit hosted by the Defender of Rights (DDD) will focus on the links between EU non-discrimination and EU data protection law in the context of protecting against algorithmic discrimination. It is envisioned to feature a series of representations and discussions, both by staff of DDD and Data Protection Authority (CNIL) as well as by other relevant French stakeholders, which explain and give practical examples of how the data protection legal framework could enhance and complement non-discrimination protection in the context of AI systems and other digital automatic technologies.

AGENDA

Day 1 – Study visit

In-person only session

9:30 – 11:00

Exchanges with the Defender of Rights

- Welcoming words
Sarah Benichou, Director, Promotion of Equality and Access to Rights Department, Defender of Rights
- Cooperation between DDD and CNIL on algorithmic bias
Valérie Fontaine, Advisor, Promotion of Equality and Access to Rights Department
- The way in which the law applicable to the data protection provides for or enables discrimination to be captured in law/soft law. Which limits?
Gabrielle du Boucher, Promotion of Equality and Access to Rights Department

11:00 – 12:30

Exchanges with Data Protection Authority (CNIL)

- Presentation of the new AI service¹
Féliçien Vallet, Deputy Head Of Technology Experts Department, AI lead, Data Protection Authority (CNIL)
- Presentation of the Digital Innovation Lab-LINC²
Vincent Toubiana, Head of LINC (CNIL's Digital Innovation Lab) at Data Protection Authority (CNIL)

12:30 – 14:30

Lunch

¹ <https://www.cnil.fr/fr/creation-dun-service-de-lintelligence-artificielle-la-cnil-et-lancement-des-travaux-sur-les-bases-de>

² <https://linc.cnil.fr/>



14:30 – 15:30 **Presentation of PEREN, Digital platform expertise for the public³,**

PEReN was created to answer the need to understand how digital platforms work, and set or adapt their regulation. It is a centre of expertise in data science that can provide technical support and guidance to state administrations in need. It can assist services with regulatory powers. PEReN can also provide its expertise in research work commissioned by state administrations by conducting exploratory or scientific studies.

- **Nicolas Deffieux**, Director
- **Victor Amblard**, Data scientist

15:30 – 16:30 **Presentation of La Quadrature du Net’s work dealing with data protection and non-discrimination**

La Quadrature du Net (LQDN) promotes and defends fundamental freedoms in the digital world. This NGO fights against censorship and surveillance, both from States or private companies, questions how the digital world and society influence each other and work for a free, decentralised and empowering Internet.

16:30 – 17:30 **Presentation of a pending case on indirect discrimination**

- **Aurélie Stolfique**, lawyer, private employment and access to goods and services Unit, Defender of Rights

Day 2 – Equinet AI Cluster meeting

Hybrid session – online access:

<https://us02web.zoom.us/j/85814953655?pwd=SXppQlRYd214TDhZZW5CUklOdDZVZz09>

Meeting ID: 858 1495 3655

Passcode: 919539

9:30 – 9:35 **Welcome**

9:35 – 10:20 **Tour de Table and presentations by members**

Moderator: **Milla Vidina**, Equinet Secretariat

Preparation required: Identify any work by your equality body and, if relevant, any developments (policy and/or legal) at the national level related to the impact of Artificial Intelligence (AI) and other forms of digital automation on the protection against discrimination.

10:20 – 10:45 **Protecting human rights in the digital space**

Alexandra Giannopoulou, DIGIRISE Project manager, Digital Freedom Fund

³ <https://www.peren.gouv.fr/en/>



- 10:45 – 11:20** **European Union’s Proposal for a Regulation on Artificial Intelligence (AI Act): state of play and potential implications for the legal protection against discrimination**
- Yordanka Ivanova, Legal and Policy Officer, DG CNECT
- Preparation required:** Please read [this presentation](#) of the AI Act (AIA) and a limited number of **select specific provisions** of the AIA proposal. Please see the list of specific provisions below in the section on preparation for the Cluster meeting.
- Q&A session**
- 11:20 – 11:50** **Coffee break**
- 11:50 – 12:20** **Discussion on the next steps in Equinet’s engagement with the EU AIA: elaboration of possible amendments**
- Moderator: **Milla Vidina**, Equinet Secretariat
- 12:15 – 12:50** **Work Plan 2024: Brainstorming and identification of activities**
- Moderator: **Milla Vidina**, Equinet Secretariat
- 12:50 – 13:00** **Any other business**



Preparation for Day II – Equinet AI Cluster Meeting

The below list of suggested provisions to read will guide the work of the Equinet Artificial Intelligence Cluster (14 April meeting) in discussing **possible amendments** to the proposed regulation (also known as Artificial Intelligence Act or AIA), which Equinet could submit at the next stage (“trilogues”) of [the proposal’s development](#), namely the negotiations between the two co-legislators, the European Parliament and the Council.

The [Council](#) adopted its common position (‘general approach’) on the AI Act on 6 December 2022. The proposal is still being discussed in [European Parliament](#) and negotiations will start after the European Parliament issues its position (originally expected this March and April). The two co-rapporteurs MEP Brando Benifei and MEP Dragos Tudorache unveiled their [draft report](#) in April 2022. The draft report received more than 3000 amendments that are being considered.

In preparation for the 14 April meeting of the Cluster, please read the following:

- 1) [presentation](#) (also enclosed with the current email) by the European Commission on the proposal (delivered as part of Equinet’s 2021 training on AI after the proposal was released by the European Commission) and [Equinet’s Position Paper on AI](#);
- 2) the below select articles of the proposal. For some of the articles that are broader in scope, a guiding question has been suggested.

Please refer to [the text of the EU Council Agreement on the EU Act](#) to identify the below Recital references and articles.

- **Recital 15** – links the prohibition of AI systems enabling “manipulative, exploitative and social control practices” with the value of equality and the right to non-discrimination.
- **Recital 79a**- mentions that the regulation is “without prejudice to the competences, tasks, powers and independence of relevant national public authorities or bodies which supervise the application of Union law protecting fundamental rights, including equality bodies and data protection authorities.” Also note the explanation about “special safeguard” enforcement procedure against AI systems presenting a risk to health, safety and fundamental rights.
- **Art 5 (prohibited artificial intelligence practices)**, establishing the principle that some AI practices are incompatible with EU rights, freedoms and values)
 - *Guiding question: Does this list capture the most dangerous discriminatory AI systems? If not, how should we change the list and definitions of prohibited practices?*
- **Annex III (list of high-risk AI systems)**
 - *Guiding question: Is the list of high risk uses sufficiently comprehensive? Should we add or remove high risk cases? Is there something missing? Should we remove some exceptions?*



- **Article 10(2)f Data and data governance** (obligations of “providers “ (developers) of high-risk AI system in relation to the training, validation, and testing data sets)
- **Article 56** Establishment and structure of the **European Artificial Intelligence Board** – See **Article 56(2)**
- **Article 59** Designation of **national competent authorities** – See **Article 59(8)**, an obligation to consult competent national authorities in areas covered by other Union legislation when giving “guidance and advice” with regard to an AI system;
- **Article 62 Reporting of serious incidents** – See in specific **Art. 62 (2)** in relation to special guidance to be issued by the European Commission on the obligation of providers to report **serious incidents related to fundamental rights**;
- **Article 63 Market surveillance** and control of AI systems in the Union market – see in specific **Art. 63(7)** in relation to an obligation for Member States to facilitate the **coordination between market surveillance authorities** and “other **relevant national authorities** or bodies which supervise the application [...] **other Union legislation**” that might be relevant for the high-risk AI systems (Annex III). Also see **Art. 63(11)** in relation to a **complaints mechanism** (new addition by the Council);
- **Article 64** Powers of **authorities protecting fundamental rights** – **important, please read carefully**;
- **Article 65** Procedure for dealing with AI systems presenting a risk at national level – in specific, **Article 65 (2)**;
- **Article 67 Compliant high-risk or general purpose AI systems** which present a risk – in specific see **Art. 67(1)** which gives the market surveillance authority to impose measures against a system even if it is compliant with the regulation when it assesses that it presents risks to fundamental rights;

Further Reading Resources — Interactions between Non-Discrimination and Data Protection Law

- [Equinet Report "Regulating for an Equal AI: A New Role for Equality Bodies"](#) (2020), written by Robin Allen QC & Dee Masters. See section on data protection law (pp. 53-59).
- [Algorithmic discrimination in Europe](#), (2021) European Network of Legal Experts in the non-discrimination field, European Commission, Directorate-General for Justice and Consumers, Gerards, J., Xenidis, R. See pp. 47-52.
- [Regulation \(EU\) 2016/679](#) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- [Directive \(EU\) 2016/680](#) on the protection of natural persons regarding processing of personal data connected with criminal offences or the execution of criminal penalties, and on the free movement of such data.
- [Regulation 2018/1725](#) sets forth the rules applicable to the processing of personal data by European Union institutions, bodies, offices and agencies.



- [Understanding the algorithmic black box: Discriminatory effects of pricing algorithms – what protection do data protection law and anti-discrimination law provide?](#), E-lecture by Juan Carlos Benito Sánchez, European Rights Academy (ERA).
- Wachter, S., Mittelstadt, B., & Floridi, L. (2017). [Why a right to explanation of automated decision-making does not exist in the General Data Protection Regulation](#). International Data Privacy Law, 7(2), 76–99.
- Sandra Wachter, Brent Mittelstadt & Chris Russell, [Counterfactual Explanations without Opening the Black Box: Automated Decisions and the GDPR](#), 3 HARV. J. LAW TECHNOL. 841–887 (2018);
- [AI Discrimination and Algorithmic Fairness – Technical Solutions and Legal Constraints](#), E-lecture by Prof. Dr Philipp Hacker, European Rights Academy (2021).
- Malgieri, G., 2019. [Automated Decision-Making in the EU Member States: The Right to Explanation and Other ‘Suitable Safeguards’ for Algorithmic Decisions in the EU National Legislations](#). Computer Law & Security Review.



External speakers



Nicolas Deffieux

Director, Digital platform expertise for the public (PEREN)
Formerly Director for economic affairs at Electronic Communications, Postal and Print media distribution Regulatory Authority, deputy general rapporteur at Competition regulator.



Victor Amblard

Data scientist, Digital platform expertise for the public (PEREN)
Formerly Teaching Assistant at Mines Paris.



Félicien Vallet

Deputy Head Of Technology Experts Department, AI lead, Data Protection Authority (CNIL)
(In charge of the coordination of CNIL's AI-related actions, point of contact with industrial and academia researchers. Formerly member of the Scientific Evaluation Panel CE23 at, the French National Research Agency (ANR).



Vincent Toubiana

Head of LINC (CNIL's Digital Innovation Lab) at Data Protection Authority (CNIL)
Formerly Deputy Secretary General of the National Digital Council (CNNum) and member of the Economic analysis and digital intelligence Unit of the Electronic Communications, Postal and Print media distribution Regulatory Authority (ARCEP).



Yordanka Ivanova

Legal and Policy Officer, European Commission (DG CNECT)
Yordanka is part of the DG CNECT unit responsible for AI Policy Development and Coordination. She is one of the team members who drafted the Commission proposal for the AI Act and who follow now the ongoing negotiations with the Council and the European Parliament. Yordanka also follows international activities related to AI, including in particular cooperation with the OECD and Council of Europe.





Alexandra Giannopoulou

DIGIRISE Project manager, Digital Freedom Fund

Alexandra is the Project Manager for the Developing Information, Guidance, and Interconnectedness for (Charter) Rights Integration in Strategies for Enforcement (DIGIRISE) project. She is a licensed lawyer, holds a PhD in law from the University of Paris II Assas, and has broad expertise in information law. Before joining DFF, Alexandra worked as a postdoctoral researcher at the Institute for Information Law (IViR), University of Amsterdam. She is an associate researcher at the CNRS Centre for Internet and Society (CIS) in Paris and has also worked as a research fellow at the Humboldt Institute for Internet and Society (HIIG) in Berlin. Alexandra's research addresses regulatory challenges of emerging techno-social systems, with a strong digital rights focus.



Défenseur des droits, France

The Defender of Rights is an independent constitutional authority created by French organic law no. 2011-333 of March 29, 2011. The Defender of Rights is an independent institution responsible for defending individual rights and freedoms in 5 areas defined by law:

- Defending the rights of public service users,
- Defending children's rights,
- Observance of ethics by security personnel (police, gendarmes, private security services, etc.),
- Anti-discrimination and the promotion of equality,
- Guidance and protection for whistleblowers.

The Defender of Rights intervenes when a claimant has suffered a difference in treatment for one of the reasons prohibited by law or an international convention, in one of the areas covered by the law such as employment, private or public, career advancement, housing, access to a good or service.

For more information, please see their website: <http://www.defenseurdesdroits.fr/>

For inquiries, please contact: communication@defenseurdesdroits.fr

Equinet, European Network of Equality Bodies

Equinet is a membership organisation bringing together 47 Equality Bodies from across Europe. Equinet promotes equality in Europe by supporting and enabling the work of national equality bodies. It supports equality bodies to be independent and effective as valuable catalysts for more equal societies.

Equality bodies are champions for the core EU value of equality and defenders of the right to non-discrimination. They are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and contributing to an awareness of rights and a societal valuing of equality. They are legally required to do so in relation to one, some, or all of the grounds of discrimination covered by European Union (EU) law – gender, race and ethnicity, age, sexual orientation, religion or belief, and disability. By engaging closely with policy makers and partners at EU and international level, Equinet promotes the work of equality bodies through relevant publications, as well as participation at conferences and other meetings.

For more information, please see our website: www.equineteurope.org

Check the directory of Equality Bodies for a list of Equinet members: <https://equineteurope.org/what-are-equality-bodies/european-directory-of-equality-bodies/>

