

# REGULATING FOR AN EQUAL AI: A NEW ROLE FOR EQUALITY BODIES

Meeting the new challenges to equality  
and non-discrimination from increased  
digitisation and the use of Artificial Intelligence

EXECUTIVE SUMMARY  
AND A FRAMEWORK FOR ACTION FOR EQUALITY BODIES

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## Executive Summary and a Framework for Action for Equality Bodies

The executive summary was initially developed by DAVID COULTER from the Equality and Human Rights Commission of the UK within the framework of the AI Taskforce of the Equinet Working Group on Communication.



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## OVERVIEW

This Summary presents the information and recommendations from the report commissioned by Equinet on equality in Artificial Intelligence (AI). This report highlights key challenges to equality and non-discrimination from increased digitisation and the use of Artificial Intelligence, and makes proposals for the future work of equality bodies. The full report can be found at [Equinet's website](#).

The report maps and identifies the equality implications of AI systems, and the nature, scope and approach of Equinet's Members in the discussions on AI and algorithmic discrimination. It also provides practical guidance on identifying and assessing the equality-relevant consequences of AI and automated-decision making.

Since this is such a fast-moving area of work, the Equinet Report must be seen as the product of this specific moment in the development of these AI technologies and their impact on equality. It is likely AI systems will develop during 2020, not least because it is expected that both the European Commission and the Council of Europe will move to regulate AI systems. Also the ongoing Covid-19 crisis has accelerated the digitalisation of services and the collection of sensitive data and increased their potential to impact on all kinds of equality issues, for instance, through the rapid increase in the use of contact tracking applications to monitor infection.

## THE KEY QUESTIONS

In the process of preparing this Report it became clear that there were, in essence, six key questions for equality bodies. These questions have been borne in mind in every stage in the preparation of this Report.

The questions are:

- What tasks should equality bodies undertake to ensure that artificial intelligence, machine learning and automatic decision-making advance and do not hinder equality and non-discrimination?
- What capacity do equality bodies have for this?
- How can they be assisted to gain better capacity?
- Who or what are the other actors in this field with which equality bodies should be working?
- Who or what are the other actors in this field with which Equinet's Members should be working?

- Does the current discourse on the ethical approach to AI support legal rights to equality?

## KEY MESSAGES FOR NATIONAL AUTHORITIES AND EUROPEAN DECISION-MAKERS

**Equality bodies have a vital role to play in securing the benefits of AI** across Europe without causing any adverse effect on equality and non-discrimination. It is crucial for **national authorities to enable them to play this role** by providing them with **adequate and meaningful powers** and **secure and sufficient resources**.

Equality bodies are the leading specialised institutions for implementing and enforcing equality legislation. This makes them well positioned to make key contributions to shape **future regulatory developments on the human and ethical implications of AI**. This is because any future AI-related regulatory changes will be dependent on the extent to which existing equality and fundamental rights legislation can be applied and enforced adequately against AI challenges.

The essential characteristics of many AI systems, such as opacity ('black box-effect'), complexity and unpredictability, make it harder for users to identify potential breaches of their rights and to claim them. This makes **the role of independent enforcement and redress mechanisms, such as equality bodies, all the more essential**.

**Equality should be a central consideration in any EU approach on AI**. It enhances the effectiveness of other fundamental rights, could be a precondition for their enjoyment and its violation by AI systems has a much larger and more systemic detrimental effect on society. This results from the specific nature of AI-enabled technology, which acts on large scale and in non-transparent and hard to predict ways, and its decision-making function in several spheres of human life (employment, education, social security, law enforcement etc.).

AI systems have a complex nature and cross-sectoral use. This means that **protecting equality from AI-related threats requires active collaboration and several partnerships. National equality bodies need to work with national and regional authorities as well as with actors typically considered non-traditional for the equality field**. These may include, for example, sectoral regulators such as Data Protection Authorities and Consumer Protection Authorities, computer and data scientists and engineers, within both the private sector, academia, digital rights NGOs and standardization bodies.



**Equality bodies are key advisers** to states, the European Commission and the Council of Europe on the **gaps in the protection against discrimination within their states. They provide expertise on how these gaps might be filled**, and this may now also include discrimination **in the context of AI systems**. It is therefore essential that national and European authorities enable their **full involvement in national and European expert bodies working on strategies and legislation for AI**.

The first step for regulating AI in compliance with the principle of equality and non-discrimination is **ensuring transparency in the uses of AI at the national level**. This should be done through proposals introducing a legal requirement for transparency through measures such as registers for the public uses of AI.

**Equality bodies can be a first point of reference about AI systems and their impact on equality and non-discrimination** for individuals, workers, NGOs, businesses, trade unions and even government. In order to fulfil this role however, they must be properly supported with resources and powers.

Equality bodies should consider undertaking **test cases and strategic litigation** to challenge discriminatory AI systems. This will serve both as a means of supporting individuals and to make it clear that the regulatory enforcement of the principle of equality and non-discrimination could actually happen against AI risks.

### What can Equality Bodies do?

#### At equality body level

##### Action n°1

Dedicate staff to monitor and guide responses to AI developments

Designate a team to keep your organisation up-to-date with developments in the AI field. This team should have the primary responsibility to understand the breadth of use of AI systems, their impact on equality, and the ways in which discrimination by the use of AI systems can occur in your respective state. To support this team, or as a part of it, you should consider employing data scientists and other relevant experts in technology.

##### Action n°2

Map the breadth of use of AI systems in your state

Together with national authorities and with their support, you should launch public inquiries, or undertake desktop research to start a process of understanding the ways that AI is being rolled out in your state. You could invite regulators and academics to assist with this exercise.

Action  
n°3

Work toward ensuring greater transparency in the use of AI systems

Together with national authorities and with their support, you should work on ensuring that the above mapping exercise becomes part of a broader effort to safeguard greater transparency in the use of AI systems. The results of this exercise should be made publicly available and could underpin detailed proposals for the introduction of a legal requirement for transparency through, for example, the creation of a registry for the public uses of AI.

Action  
n°4

Conduct legal “gap analysis” to identify need for legislative or administrative reform

You should undertake a legal “gap analysis” by checking whether, within your national context, existing legislation can be applied and enforced effectively to protect against the equality risks of AI systems. The findings of this analysis should support you to identify whether there is a need for local legislative or administrative reform or further Europe-wide legislation.

Action  
n°5

Use the results of the “gap analysis” to make the case before your state authorities for strengthening the overall national equality architecture

You should use the “gap analysis” as a “springboard” from which to advance the case for action by your state, for instance, to –

- extend the scope of the national equality, non-discrimination and human rights legislation to cover all protected characteristics and all goods, facilities and services,
- strengthen your mandate to ensure that you have adequate powers to undertake the tasks identified as necessary in your national context to tackle the new challenges posed by AI, and
- increase the financial and logistical resources of your organisation to allow you to meet the locally identified challenges to equality posed by AI.

Action  
n°6

Consider the possible need for AI-specific human rights protocols, or specialist AI courts

You should consider the possible need for AI- specific human rights protocols, or new legal forums such as specialist AI courts, to address the equality and non-discrimination implications of AI within your state. These new AI-specific human rights legal instrument and AI-specific jurisdiction will be distinct from and complementary to existing equality and human rights legislation in your state and its enforcement through the general court system.

Action n°7	Review your mandate to ensure its effectiveness in the new AI context	Based on the findings of the mapping exercise in Action n°2 and the legal “gap analysis”, you should review the mandate of your institution to ensure that it has adequate and meaningful powers to address the new challenges posed by AI.
Action n°8	Identify the additional resources needed to do the additional work required by AI challenges	Building upon the findings of the review of the mandate of your institution, you should also identify the financial and logistical resources that your equality body will need to undertake the work identified in the Equinet Report on AI.
Action n°9	Rely on ethical principles on AI in the absence of AI-specific regulation	Your institution should play a leading role in developing and disseminating European and national ethical principles and strategies to guide the implementation of existing laws to address the new challenges posed by AI. Equinet’s Report on AI shows how these developing ethical principles enhance the impact of already existing equality law even before there is any AI specific equality legislation. In addition, there is an ongoing discussion both within the EU and the CoE that some of these ethical principles need to be turned into legal rules.

Action n°10	Become a national front-line knowledge-hub on AI and its impact on equality	Your institution should develop a capacity to provide key information within your state about AI systems and their impact on equality and non-discrimination to individuals, workers, NGOs, businesses, trade unions and government.
Action n°11	Provide knowledge on how existing law protects against AI-driven discrimination	You should publish explanatory guides clarifying how existing legal provisions can be used to tackle discriminatory algorithms and how AI can be used to the advantage of your communities without causing discrimination.
Action n°12	Undertake test case and strategic litigation	Your equality body should consider undertaking test case and strategic litigation to challenge discriminatory AI systems, both as a means of supporting individuals and so as to make clear whether existing equality law can be effectively applied and enforced against AI threats and whether regulatory adjustments and reforms are necessary.
Action n°13	Identify and partner with relevant national regulators such as national data protection authorities	Your institution should proactively reach out to and collaborate with all other relevant regulators because discriminatory AI systems affect many areas, such as finance, data protection, health and safety and product safety, that are within the jurisdiction of other regulators.



Action n°14	Build internal staff capacity on data protection law and review existing national data protection framework	Data protection rules are highly relevant and important to the fight against discriminatory AI. While data protection might ordinarily not have fallen within the remit of equality bodies, the challenges posed by AI mean that your institution must be ready to engage with data protection rules so as to ensure that the principle of equality is respected.
Action n°15	Raise awareness on the equality and human rights impact of AI systems	Your institution should develop educational and training programmes for organisations, and the public at large, on the human rights and equality impact of AI systems. This is especially important to trigger cases and fight underreporting which is particularly problematic in the context of AI systems.
Action n°16	Adopt an internal assessment tool to check the equality compliance of AI systems	Your institution could adopt the assessment checklist proposed in Chapter 6 of the Equinet Report on AI as a means to ensure that the discriminatory effects of AI systems are identified.
Action n°17	Partner with academics and expert groups to feed into the development of AI knowledge at European level	Your equality body should engage with academics and similar expert groups to contribute to the development and dissemination of AI related knowledge by the EU and the CoE.

Action n°18	Introduce understanding of equality to the education of AI developers	You should engage with the faculties of national universities and other academic institutions to ensure that the training of coders includes the understanding of equality.
Action n°19	Ensure that standardization initiatives for AI products and services include equality considerations	You should also engage with standardization initiatives to ensure that the necessary safeguards for equality are fully understood and incorporated.

At national level		
Action n°1	Identify key ministries responsible for relevant AI developments	The essential work of mapping the uses of AI systems in your state should incorporate a parallel exercise of mapping the corresponding national authorities and in particular, departments of the executive branch that are responsible for these uses.
Action n°2	Demand greater transparency in the use of AI systems	Convince national authorities of the importance of conducting a comprehensive and systematic mapping of the uses of AI in their territories. The results of this exercise should be made publicly available and your institution could use them to argue for the introduction of a legal requirement for transparency through, for example, the creation of a registry for the public uses of AI. Pay attention that the international trade agreements of your country related to the digital economy do not inhibit transparency.

Action n°3	Insist on a state-led comprehensive legal “gap analysis”	<p>Convince national authorities about the need to undertake a legal “gap analysis” to understand how AI systems can be regulated to protect from and prevent equality and human rights violations, and to identify whether there is a need for local legislative or administrative reform or further Europe-wide legislation. Your equality body should be invited to contribute to this exercise and should be allocated adequate resources to conduct your own independent legal “gap analysis” focused on the effect of AI systems on equality and non-discrimination.</p>
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