



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels
CNECT/RV

Dear representatives of All Out, Access Now and Reclaim Your Face,

I would like to thank you for your letter of 20 April addressed to President von der Leyen, to Executive Vice-President Vestager, to Vice-President Jourová, and to Commissioners Breton, Dalli, Johansson and Reynder, expressing your concerns about automated recognition of gender and sexual orientation. They have asked me to reply on their behalf.

First of all, let me say that we greatly appreciate your work and are impressed by the thousands of signatures you have gathered to support your cause.

As you probably know, the Commission proposed on 21 April clear and comprehensive rules for human-centric Artificial Intelligence (AI) in the European Union, the first of its kind in the world. It aims to balance the risks and benefits associated with the use of the technology by following a very simple logic: the higher the risks to our fundamental rights and safety, the stricter the rules.

As regards your call supported by 22 855 signatures to ban automated recognition of people's sexual orientation and gender, I would like to recall that Article 9 of the General Data Protection Regulation prohibits in principle the processing of data concerning a natural person's sexual orientation unless limited conditions for the processing of such data apply. Article 22 of the General Data Protection Regulation also gives people the right not to be subject to a decision based solely on automated processing, including profiling on the basis of one's gender or sexual orientation.

Our intention with the legislative proposal on AI is not to replace existing regulation, but to complement this solid framework of rules and to provide further transparency and legal certainty for the implementation of the right to non-discrimination and other relevant fundamental rights of individuals.

In this context, we have proposed that AI systems that are used in certain high-stakes situations in the context of employment, education, access to and enjoyment of essential private and public services, law enforcement, migration, asylum and border control and the judiciary, as well as all remote biometric identification systems, should be classified as 'high-risk' and subjected to an ex ante conformity assessment for compliance with a set of requirements for trustworthy AI.

Specifically, high-risk systems should be trained and tested with a sufficiently representative and relevant dataset to minimize the risk of unfair biases embedded in the

model with appropriate bias detection, correction and other mitigating measures. In addition, high-risk AI systems must be traceable and auditable with appropriate documentation that would be key in ex-post investigations. Human oversight measures to be implemented by users will also ensure that due attention is paid to the risk of discrimination when the system is in operation.

Finally, all biometric categorisation systems will always be subject to specific transparency obligations. This will allow affected persons to challenge their use if they consider that this violates their right to data protection, equality or gender identity.

I would like to thank you for your active involvement in the protection of equality rights. We remain fully committed to work together with All Out, Access Now and other civil society organizations in the course of the forthcoming legislative negotiation process.

Yours faithfully,

Electronically signed

Roberto Viola