



ANNUAL EUD FOCAL POINTS FORUM

THE ANNUAL FORUM OF EU DELEGATION FOCAL POINTS FOR
HUMAN RIGHTS, DEMOCRACY, CIVIL SOCIETY AND GENDER EQUALITY

Digitalisation and Human Rights

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Policies, contracts, and technical tools

Scenario

- ✓ A multi-layered structure
- ✓ A system of contractual obligations (general criteria for human rights protection)

Protecting human rights in adverse contexts

- ✓ Internal mechanisms for human rights compliance
 - Project-specific (e.g., contractual clauses, ad hoc technical solutions, policies)
 - Covering an entire group of activities/projects (e.g., general policies, guidelines, standard contractual clauses, technical standards)
- ✓ Limited role of best practices (case-focused approach and replicability problems)





Policies, contracts, and technical tools

Integrating human rights into the contractual framework

✓ Goals

- To place human rights at the core of project design and development
- To establish clear roles and responsibilities
- To set appropriate risk management strategies

✓ Key elements

- A contractual framework: clearly defined expected levels of protection
- A compliance monitoring system (audits, periodical inspections, self-assessment procedures)

✓ Key tools: (i) contractual clauses, (ii) policies, and (iii) technical tools





Policies, contracts, and technical tools

Pros/Cons Analysis

Standard clauses [General instruments]

PROS

They can set legal requirements for human rights protection (e.g., by referring to specific international instruments) and compliance and monitoring obligations.

Reduced cost of implementation, as they can be reused in all contexts.

Transparency of the instrument adopted: the set of clauses used can be made publicly available, including explanatory notes to facilitate interpretation and implementation.

CONS

Given their general application, they cannot address the specific needs of a given project or take into account the development context.

A general standard may undermine more ambitious goals in terms of human rights compliance that are achievable in some specific projects/contexts.

Such clauses cannot set detailed requirements concerning human rights and necessarily have to refer to other instruments, binding and non-binding, such as international conventions, policies, guidelines etc.

Ad hoc technical solutions [Project-specific instruments]

PROS

Easier and faster update procedures.

Increased local acceptance and integration with existing practices or local standards.

Customised solutions based on contextual factors, such as available technologies and user skills.

CONS

Low interoperability with similar solutions.

Higher management costs of developing different context-specific solutions.



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Policies, contracts, and technical tools

Context analysis

- ✓ Legal zoning process (human rights scenarios, relations with local governments and human rights protection bodies)
- ✓ Partnerships with local governments/private entities and risk assessment
- ✓ Inherent risks
 - ✓ Technical measures (e.g., data encryption; data compartmentalisation; remote data storage via VPN)
 - ✓ Organisational measures (e.g., sensitive data in separate annexes)
- ✓ Focus on the project life cycle





Human rights-oriented practices based on legal principles

- ✓ Recommendation-based and assessment-based tools
- ✓ The most important tools
 - Data Management Plan (DMP) and Data Protection Impact Assessment (DPIA)
 - Human Rights Impact Assessment (HRIA)

HRIA

- ✓ The cornerstone of future AI regulation
- ✓ Traditional HRIA methodologies cannot be straightforwardly applied in the digital context
 - Ex ante nature of the assessment
 - Little relevance of the local/territorial dimension
 - Greater focus on quantifiable risk thresholds





Human rights-oriented practices based on legal principles

A model for risk estimation

- ✓ Key factors: risk identification, likelihood, and severity
 - Likelihood
 - Probability of adverse consequences
 - Exposure
 - Severity
 - Gravity of the prejudice
 - Effort to overcome prejudice caused and to reverse adverse effects





Human rights-oriented practices based on legal principles

- ✓ A four-level scale to avoid average positioning
- ✓ Use of cardinal scales (combinations not multiplications)
- ✓ Expert-based evaluation

Tab. 1 Probability

Low	The risk of prejudice is improbable or highly improbable	1
Medium	The risk may occur	2
High	There is a high probability that the risk occurs	3
Very high	The risk is highly likely to occur	4

Tab. 2 Exposure

Low	Few or very few of the identified population of rights-holders are potentially affected	1
Medium	Some of the identified population are potentially affected	2
High	The majority of the identified population is potentially affected	3
Very high	Almost the entire identified population is potentially affected	4

Tab. 3 Likelihood table(L)

		Probability			
		1	2	3	4
Exposure	1	1	2	3	4
	2	2	3	5	9
	3	3	5	9	12
	4	4	7	12	15

Likelihood	
Low	1
Medium	2
High	3
Very high	4





Human rights-oriented practices based on legal principles

Tab. 4 Gravity of the prejudice

	Gravity of the prejudice	
Low	Affected individuals and groups may encounter only minor prejudices in the exercise of their rights and freedoms.	1
Medium	Affected individuals and groups may encounter significant prejudices.	2
High	Affected individuals and groups may encounter serious prejudices.	3
Very high	Affected individuals and groups may encounter serious or even irreversible prejudices.	4

Tab. 5 Effort to overcome the prejudice and to reverse adverse effects

	Effort	
Low	Suffered prejudice can be overcome without any problem (e.g. time spent amending information, annoyances, irritations, etc.)	1
Medium	Suffered prejudice can be overcome despite a few difficulties (e.g. extra costs, fear, lack of understanding, stress, minor physical ailments, etc.).	2
High	Suffered prejudice can be overcome albeit with serious difficulties (e.g. economic loss, property damage, worsening of health, etc.).	3
Very high	Suffered prejudice may not be overcome (e.g. long-term psychological or physical ailments, death, etc.).	4

Tab. 6 Severity table (S)

		Gravity			
		1	2	3	4
Effort	1	1	2	4	6
	2	2	3	5	8
	3	3	5	8	10
	4	5	8	10	12

Tab. 7. Overall risk impact table

		Severity [impacted right/freedom]			
		Low	Medium	High	Very high
Likelihood	Low				
	Medium				
	High				
	Very high				

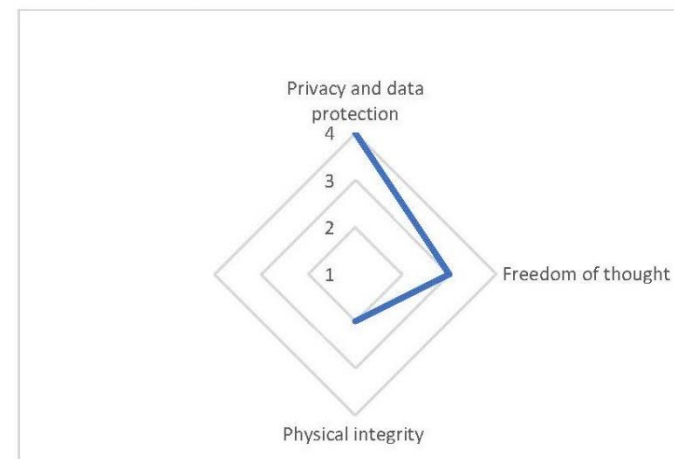




Human rights-oriented practices based on legal principles

- ✓ Question-based planning and scoping
- ✓ Factors to be considered include those that may justify the prevalence of competing interests or exclude the risk (e.g., mandatory nature of certain impacting features)
- ✓ Participatory assessment (rightsholders and stakeholders)
- ✓ Circular process (radial graph)

Radial graph (impact)



- 1 Low impact
- 2 Medium impact
- 3 High impact
- 4 Very high impact





Human rights-oriented practices based on legal principles

From contract to co-design

- ✓ Important role of contractual instruments
- ✓ Going beyond mere legal compliance (contractual agreements)
- ✓ Active cooperation and co-design in human rights due diligence process





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**Co-funded by
the European Union**

Project: 101047818 - DIGIMED - ERASMUS-JMO-2021-CHAIR