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From:	Presidency
To:	Delegations
Subject:	2020 Council Conclusions on the Charter of Fundamental Rights Focus on Artificial Intelligence and Digital Change

In preparation of the discussion that will be held at the next FREMP meeting on 2 September, delegations will find attached draft Council Conclusions on the Charter of Fundamental Rights with a focus on Artificial Intelligence and Digital Change.

2020 COUNCIL CONCLUSIONS ON THE CHARTER OF FUNDAMENTAL RIGHTS

FOCUS ON ARTIFICIAL INTELLIGENCE AND DIGITAL CHANGE

The COVID-19 pandemic has shown more clearly than ever that Europe must achieve digital sovereignty in order to be able to act self-determinedly in the digital sphere. We therefore want to work together on European responses for approaching digital technologies, such as artificial intelligence. We thereby want to ensure that we and increase our competitiveness and prosperity, while upholding our values and maintaining high levels of IT-Security and data protection.

We are committed to the responsible, human-centric development and use of artificial intelligence (AI). We should harness the potential of this key technology in promoting economic recovery in all sectors.

I. Introduction

1. Digital technologies, including artificial intelligence (AI), are essential for European digital sovereignty, security, innovations and economic development. They have an increasing and positive effect on the daily lives of Europeans, for example in industry, services, research, justice and law enforcement. Their use can have a far-reaching impact on the individual and society; on people's self-perception, social structure, the value and organisation of work and the formation of political will and opinion. Digital technologies can contribute significantly to the protection and promotion of fundamental rights and democracy. The Council therefore welcomes the Commission's efforts to establish an AI ecosystem of excellence trust based on European principles and values, bringing the benefits of this technology to all European societies and economies.
2. However, while they present increasing opportunities and benefits, the application and the misuse of digital technologies, including AI, may also entail risks to fundamental rights. The far-reaching impact on the individual and society potentially affects fundamental rights in many aspects of life. Therefore, efforts are necessary to ensure that the respect for fundamental rights as enshrined in the EU Charter of Fundamental Rights, remains guaranteed.

3. To address possible risks effectively, specific requirements must be met for the development and use of AI systems. In this context, challenges such as opacity, complexity, a certain degree of unpredictability and partially autonomous behaviour need to be addressed in order to facilitate the assessment of the compatibility of automated systems with fundamental rights and to facilitate the enforcement of legal rules. In this regard, standardisation can contribute to addressing these challenges and help foster trust and confidence in the technology. The Council welcomes the approach, proposed by the European Commission, of reviewing existing EU legislation to determine whether it adequately addresses the risks and requirements of AI applications, whether it can be effectively enforced and whether any adjustments or new legislation are necessary.
4. The European Union and its Member States must seize the opportunities of digital change, while also addressing potential risks. The promotion of and respect for fundamental rights is key to ensuring that the EU is a place where people can prosper, enjoy their rights and freedoms and live without discrimination. The Council emphasises that the European approach to digital transformation and in particular AI should be human-centric and ensure the full respect of fundamental rights. [In the context of the public sector, the Council acknowledges the ongoing work on the draft text of a joint Member State declaration to be concluded at the ministerial meeting on value-based digitalisation in December 2020.
5. The COVID-19 pandemic has once again highlighted that the protection of fundamental rights is a continuous endeavour. It has brought numerous challenges for fundamental rights to the fore, in particular issues such as racism, gender, discriminatory measures against minorities and the risk of violations of the principles of rule of law and democracy arising from the adoption of certain emergency measures. Furthermore, the COVID-19 pandemic has brought a rise in disinformation. On the other hand, the COVID-19 pandemic has demonstrated the value of digital technologies and AI in improving healthcare, reaching people and keeping the economy running. The Council reaffirms its commitment to jointly overcome this crisis, to bring the added value of future-oriented technologies and applications to the people and to jointly uphold our European principles and values.
6. The EU and its Member States agree that, for example, AI should be used to support and enhance human capabilities and serve the good of society. The Council therefore seeks to actively shape how AI applications are developed and used with a view to a human-centric use by society and business, oriented to the common good and based on the principles of democracy and European values.
7. The EU and its Member States must foster their digital sovereignty and actively participate in the global debate on the use of AI with a view to continuing to shape the rules-based international order and its norms and values in this area. In this context, the Council recalls the EU Action Plan for Human Rights and Democracy 2020-2024, which sets the promotion of human rights and democracy in the use of digital technologies, including AI, as a priority in all areas of EU external action.
8. The Council acknowledges and will consider the valuable work and initiatives carried out on fundamental and human rights in the context of digitalisation in other fora, in particular by the European Commission, the European Parliament, the EU Agency for Fundamental Rights, the Council of Europe, the OECD and the United Nations, and stresses the importance of coherence.

II. A human-centric, fundamental rights-based approach to the development and application of AI

9. The EU is a 'union of values', as enshrined in Article 2 of the Treaty on European Union, founded on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The Council underscores that the development and use of AI must fully respect fundamental rights and existing legal rules. The same degree of protection should be applied in the digital and in the physical world.
10. Human oversight and transparency can help to ensure that AI systems do not undermine human autonomy or cause other adverse effects. The Council supports the European Commission's proposition to develop requirements for the human oversight of AI systems. The Council calls on the EU and its Member States to assess whether existing EU and national legal rules are adequate to take advantage of the opportunities and address potential risks that the use of digital technologies and especially AI systems may create, and develop them further where necessary.
11. The Council highlights the importance of creating awareness about the use of digital technologies, including AI, in government institutions, the judiciary, law enforcement, in economy and science, civil society and the general public. Digital transformation requires people to develop their competencies and skills to engage positively with AI technologies, including through information about existing rights and remedies. The needs of marginalised individuals and groups and those in vulnerable situations require special attention. The Council therefore welcomes initiatives to raise citizens' awareness of AI and to increase people's 'AI literacy', including through research, training and education.

a. AI and Dignity

12. Fundamental rights are universal, indivisible, interdependent and interrelated. Protecting and promoting fundamental rights and the underlying idea of human dignity lies at the heart of a human-centric approach to AI.

b. AI and Freedoms

13. The Council welcomes the fact that digital technologies, including AI, can enhance the protection and promotion of fundamental rights and democracy, for example by making public participation easier and more effective, by increasing access to public services, by facilitating the documentation of violations and abuses of fundamental rights or by using AI analyses to detect and counter hybrid threats. As AI enables data analysis without human intervention, it could also contribute to improving the confidentiality of personal data.
14. Where necessary and appropriate, the use of AI could improve the results of the work of law enforcement authorities, and could thereby contribute to improving the safety and security of EU citizens. Areas of potential improvement include mass data analysis, the understanding of new and previously unknown patterns and links and the search for reliable evidence in criminal cases, provided that full compliance with data protection rules is ensured and appropriate safeguards are in place.

15. At the same time, businesses and governments are increasingly using personal data and AI to try to understand and predict human behaviour at a macro level. The Council is aware of the respective risks and the need for safeguards, especially with regard to the use of surveillance technology and facial recognition systems and the effects they may have on the exercise of democratic participation, including the right to freedom of expression and the right to freedom of assembly. The Council notes the ongoing discussion about whether such systems should be used in principle and hence about possible prohibitions against their use. To the extent that these systems are to be used, the Council reaffirms that clear legal requirements need to be formulated beforehand. In particular, the use of AI must not disproportionately interfere with people's freedoms, it must be in conformity with data protection and privacy laws and effective legal remedies must be guaranteed.
16. The use of AI is particularly sensitive when online platforms and search engines aggregate, select and prioritise content, as the possibilities to freely access information and pluralism in terms of sources of information and diversity are at stake. A free society needs access to diverse information, a free discourse and the exchange of different perspectives. It is necessary to fight illegal hate crime but at the same time to protect freedom of expression. It should be discussed in which circumstances and to what extent the results delivered by AI systems to delete a content should be checked by a human being. In sensitive areas, service providers should make their AI systems transparent, for example by granting research access to them.

c. AI and Equality

17. AI-based applications present opportunities for assessing fundamental rights compliance including in the field of equality. Decisions based on algorithmic systems of predefined rules and accurate data that is fit for purpose could be less prone to biased results than human-made decisions. At the same time, the use of AI may in certain cases also perpetuate the risk of reinforcing discrimination, including structural inequalities. Data used to train AI systems should therefore be fit for purpose and potential biases should be addressed while allowing for sufficient flexibility in R&D for the further development of these systems. In this respect, the Council underlines the importance of the principles of equality and non-discrimination in the design, development, deployment and evaluation of AI, and of ensuring that such systems are subject to adequate safeguards and oversight, including market surveillance. The Council reaffirms its commitment to the prohibition of any unlawful discrimination based on any ground as enshrined in Article 21 of the Charter.

d. AI and Solidarity

18. Digital technologies can enhance the protection of social rights, for example by facilitating access to social security and social systems. The Council underlines that while digital algorithms, including AI-based ones, may allow the development of better-targeted individual treatments, the application of such technologies should benefit the whole social community and should not be used to weaken the principle of solidarity.
19. AI has great potential to improve the level of human health protection, especially through personalised diagnosis and medicine. In this context, the Council emphasises the need for suitable, high-quality data sets to train artificial intelligence algorithms. The Council underlines that AI used in the social and health sectors needs to be applied with particular respect for the dignity of the human being, protection of patients' privacy and in compliance with all relevant legal provisions regarding personal data protection, including mechanisms to ensure the confidentiality and safety of such data.

e. AI and Citizens' Rights

20. The Council recognises the potential of digital technologies, including AI applications, to improve the right to good administration as well as the administration of access to document requests or petitions. Direct, universal suffrage, free and secret elections are the basis of the democratic process and a core element of our common values. They need to be preserved in the digital era. Cyber-attacks targeting electoral processes, campaigns and candidates have the potential to polarise public discourse and undermine the secrecy of the ballot, the integrity and fairness of the electoral process and citizens' trust in elected representatives. In this context, the Council stresses the importance of safeguards against disinformation campaigns, the abuse of private data, hybrid threats and cyber-attacks.

f. AI and Justice

21. Access to justice and an independent judiciary are essential to ensure the rule of law. While digital technologies provide the potential to enhance access to justice and increase efficiency, they can also have adverse effects, for example through the use of biased algorithms. The Council remains committed to upholding the rule of law in the Union and its Member States.

III. The way forward

22. In order to ensure that the rights, freedoms and principles as enshrined in the Charter are effectively protected throughout the design, development, deployment and evaluation of AI, the Council calls on the Union and its Member States to follow the guidance provided in these Council conclusions. Legal and regulatory frameworks, such as the European Commission's announced proposal for a future regulatory framework for AI, should strengthen trust, intelligently balance the various interests and leave room for research and development and further innovation and technical and socio-technical developments. They should foster an environment where all actors respect and promote fundamental rights.
23. The Council invites the Union and its Member States to involve various stakeholders in the potential development of legal and regulatory frameworks so as to include expertise and different perspectives.
24. The Council welcomes the extensive analysis provided by the Fundamental Rights Agency on AI and fundamental rights and encourages the Agency to continue its research on the protection of our fundamental rights and values in the age of digitalisation.
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