



Council of the
European Union

Brussels, 24 September 2020
(OR. en)

11035/20

LIMITE

JAI 723
FREMP 76

NOTE

From: Presidency
On: 24 September 2020
To: Delegations

Subject: Conclusions on the Charter of Fundamental Rights in the context of
Artificial Intelligence and Digital Change

Delegations will find attached a revised version of the above Council Conclusions as a result of discussions at the VTC of the FREMP Working Party on 15 September, subsequent written comments by delegations, as well as suggestions by the editing service. Changes to the previous document in 10519/20 have been indicated in ~~striketrough~~ and **bold**.

**COUNCIL CONCLUSIONS ON THE CHARTER OF FUNDAMENTAL RIGHTS
IN THE CONTEXT OF 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 **with self-determination** ~~self-determinedly~~ in the digital sphere and to foster the resilience of the European Union. We therefore want to work together on European responses for ~~approaching~~ digital technologies, such as artificial intelligence (AI). We ~~thereby~~ want to ensure that the ~~concept~~ **design**, development, **deployment** and use of new technologies uphold and promote our **common** values and the fundamental rights guaranteed by the EU Charter of Fundamental Rights (hereinafter ‘the Charter’), while increasing our competitiveness and prosperity. High levels of IT security ~~and data protection~~ must be maintained within a framework **that is open to** ~~for~~ innovation.

We are committed to the responsible and human-centric **design**, development, deployment, use and evaluation of AI. We should harness the potential of this key technology in promoting economic recovery in all sectors, **in a spirit of European solidarity, while upholding and promote fundamental rights, democracy and the rule of law** ~~as well as~~ **and** ~~maintaining~~ high **legal and ethical standards.** ~~and European solidarity.~~

I. Introduction

1. new 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. **All Member States have the responsibility to uphold these values in order to make them a reality in the daily life of all their citizens. The Council recalls in this respect the legally binding nature of the Charter for the EU and for the Member States when they are implementing Union law.**

2. new ~~The COVID-19 pandemic has~~ **Ongoing challenges and developments over the past year have** once again highlighted **the fact** 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-based domestic violence, violence against children and difficulties in effectively protecting vulnerable groups elderly people, discriminatory measures against vulnerable people,~~ **the a rise in disinformation and the risk of violations of the rule of law and democracy persist. The COVID-19 pandemic has exacerbated many of these challenges and introduced new ones, in particular balancing access to health care with other fundamental rights. Against this background, the Council takes note of the relevant surveys and reports of the FRA, in particular the FRA Fundamental Rights Survey.**

~~Cognisant of the surge of domestic violence and especially violence targeting women since the outbreak of the COVID-19 pandemic~~ **The Council reaffirms its commitment to the for accession of the EU to the Istanbul Convention and the European Convention on Human Rights and Fundamental Freedoms as enshrined in Article 6(2) of the Treaty on European Union. Moreover, the EU will cooperate with the Council of Europe in the promotion of gender equality and women’s rights and on combating violence against women and domestic violence: the Council of Europe’s ‘Istanbul Convention’ has been ratified and is being implemented by 21 EU Member States.,** ~~The Council recognizes the timely reports by the EU Agency for Fundamental Rights on the impact of the COVID-19 pandemic on fundamental rights in the EU.~~

3. new ~~On the other hand, t~~ ~~What~~ **The COVID-19 pandemic has also demonstrated is the value of digital technologies, and including AI,** in improving healthcare, reaching ~~citizens people~~ and keeping the economy running. **In this context it is important to safeguard proper connectivity and inclusion.** The Council reaffirms its commitment to jointly overcome this crisis, to bring the added value of future-oriented technologies and applications to ~~all the members of society people~~ and to jointly uphold and promote our **common** principles and values as enshrined in Article 2 of the Treaty on European Union.

1. Digital technologies, including ~~AI artificial intelligence,~~ are essential for European digital sovereignty, security, innovations and economic development and ~~thus~~ can contribute significantly to the protection and promotion of fundamental rights and democracy and the rule of law. **To be digitally sovereign, the EU must reinforce its ability to define its own rules, to make autonomous technological choices, and to develop and deploy strategic digital capacities and infrastructure.** The digital transition is the EU’s most important enabler of sustainable growth and competitiveness. The EU must make full use of and develop its strengths in the digital economy and climate-neutral technologies. Digital technologies have an increasing **and largely positive** effect on the daily lives of Europeans, for example in industry, services, research, justice and public security. The Council therefore welcomes the Commission’s efforts to establish an AI ecosystem of excellence and trust based on our **common** principles and values, bringing the benefits of this technology to all European societies and economies.

2. However, while digital technologies, including AI, present increasing opportunities and benefits, their design, **development, deployment, application** and misuse may also entail ~~considerable~~ risks to fundamental rights, democracy and the rule of law. Therefore, efforts are necessary to ensure that the respect for fundamental rights as enshrined in the Charter remains guaranteed. **In this context, challenges such as opacity, complexity, bias, a certain degree of unpredictability and partially autonomous behaviour need to be**

addressed in order to ensure the compatibility of automated systems with fundamental rights and to facilitate the enforcement of legal rules.

3. To address potential risks effectively, specific requirements must be met for the **design**, development, **deployment** and use of AI systems. ~~In this context, challenges such as opacity, complexity, bias, a certain degree of unpredictability and partially autonomous behaviour need to be addressed in order to ensure the compatibility of automated systems with fundamental rights and to facilitate the enforcement of legal rules.⁴~~ In this regard, **developing common technical standards** ~~standardisation can~~ **could** contribute to addressing these challenges and help foster trust and confidence in the technology. The Council welcomes the approach proposed by the European Commission **in its White Paper ‘On Artificial Intelligence - A European approach to excellence and trust’**, of reviewing existing EU legislation to determine whether it adequately addresses the risks and opportunities, as well as **the** requirements of AI applications, whether it can be effectively enforced and whether any adjustments or new legislation are necessary, also with regard to the protection of our common **principles and values**.
4. The European Union and its Member States must seize the opportunities of digital change, while also addressing potential risks and benefits. The **protection and 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 and promotion 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. *Moved to para 2 new and para 3 new*
6. ~~The EU and its Member States agree that AI in particular should be used to support and enhance human capabilities and serve the common good and the best interest of society. Its 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, the formation of political will and opinion and on people’s ability to exercise their rights. 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, focused on the common good and based on European principles and values.~~
7. The EU and its Member States must foster their digital sovereignty, **while remaining open to all companies complying with European rules and standards. They must** ~~and~~ actively participate in the global debate on the use of AI with a view to continuing to shape the international ~~legal~~ framework, **the processes and discussions** in this field in accordance with our **common** principles and values, and ensure **effective** application and implementation of existing norms. In this context, the Council acknowledges the proposed 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 stresses the importance of coherence with the valuable work and initiatives carried out on fundamental and human rights in the context of digitalisation by the European institutions and agencies, in particular the European Commission, the European Parliament, the EU Agency for Fundamental Rights, and in the relevant case-law of the European Court of Justice, as well as in other fora, in

¹ *Moved to para 2*

particular the Council of Europe and its Ad Hoc Committee on AI, the OSCE, the OECD and the United Nations.

II. ~~A fundamental rights-based approach to the development and application of AI~~

9. The Council underscores that the **design, development, deployment** 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. The Council emphasises that, under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms laid down by the Charter may **only** be made ~~only~~ if it is necessary and genuinely satisfies an objective of general interest **recognised by the EU or the need to protect the rights and freedoms of others**, subject to the principle of proportionality, and must be provided for by law and respect the essence of the fundamental rights **and freedoms**.
10. The relevant legislation giving an effect to fundamental rights may be challenged by the complexity and opacity of certain AI applications, which would require specialised expertise and processes to comprehend and control the outcomes of such applications. Human oversight and transparency ~~can help~~ **are an essential element in ensuring** that AI systems are in ~~line~~ **conformity with the the law-relevant legislation, do not undermine human autonomy or cause other adverse effects**. The Council supports the European Commission's proposal ~~tion~~ to develop **proportionate and evidence-based** requirements for the human oversight **and transparency** of AI systems, e.g. requirements on documentation, testing and accountability that benefit the effective enforcement of existing laws.
- 10a. 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 in **particular** may create, and **to** develop them further where necessary. Adequate capacities of supervisory authorities should be ensured to fulfil their mandates where AI applications are used and their cooperation at European level should be enhanced.
11. The Council highlights the importance of creating awareness about the use of digital technologies and embedded AI capabilities in government institutions, the judiciary, law enforcement, ~~in~~ economy and science, civil society, education and the general public. Digital transformation requires people to develop their competencies and skills **in order** to engage positively with AI technologies, including through information about existing rights and **effective legal** remedies. The needs of marginalised individuals and groups and those in vulnerable situations, such as persons with disability, **children**, and the elderly, **may** 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.
14. Where necessary and appropriate, the use of AI could ~~improve~~ **facilitate** the results of the work of law enforcement authorities, and could thereby contribute to improving ~~the people's~~ **the people's** safety and security ~~in the EU~~ **EU** citizens. Areas of ~~potential improvement~~ **particular interest for AI development** include ~~better~~ data analysis, the understanding of new and previously unknown patterns and links, and the search for reliable evidence in criminal cases. ~~provided that~~ Data protection rules and other legal and ethical norms need to be ensured and appropriate safeguards, ~~notably for defendants,~~ have to be in place.
15. At the same time, businesses and governments are increasingly using personal data and AI to try to understand and predict ~~human group~~ **human group** behaviour **and target individuals that are categorised as being part of that group**. Appropriate safeguards need to be in place to ensure that these applications are in conformity with data **protection and** privacy laws, in particular the General Data Protection Regulation (**Regulation (EU) 2016/679**) and national data protection laws, **as well as other fundamental rights**.
- 15a. The Council recognises the respective risks and underlines the need for safeguards, especially with regard to the use of **mass** 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 and association. The Council notes the ongoing discussion ~~on about~~ whether such systems should be used in principle ~~and on about~~ possible **bans prohibitions on** ~~against~~ their use. To the extent that these systems are to be used, the Council ~~reaffirms~~ **recognises** that clear legal requirements need to be formulated beforehand. In particular, the use of AI must **respect fundamental rights and 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 ~~can be are~~ at stake. A free society needs access to diverse information, a free discourse and the exchange of different perspectives.
- 16a. It is necessary to fight illegal content online, including hate crime, but at the same time to protect **the right of** freedom of expression **and the right of information**. ~~There is a need to discuss~~ **It should be discussed** in which circumstances and to what extent the results delivered by AI systems to delete specific content should require meaningful human intervention. 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 and adequate data for this 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 and amplify discriminations, including structural inequalities. ~~Gender~~ Equality is of particular concern in this regard. The Council ~~acknowledges~~ **takes note of** the opinion on 'AI – **opportunities and challenges for and gender equality**' **adopted** by the Advisory Committee on Equal Opportunities for Women and Men. Safeguards are also needed regarding linguistic diversity and accessibility of services to citizens in the official languages of the EU.

17a. Data used to train AI systems therefore have to be **accurate and** adequate for their purpose and potential biases have to be addressed while allowing for sufficient flexibility in Research and Development 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, **use** and evaluation of AI, **particularly in systems integrating machine learning**, and of ensuring that such systems are subject to adequate safeguards and oversight, including market surveillance. The Council reaffirms its commitment to ~~ensuring equality between men and women and 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 **assistance and** treatments, the application of such technologies should benefit the whole social community, promote the adequate **social** protection and healthcare of groups in vulnerable situations and should not be used to weaken the principle of solidarity. **Also, while these technologies may enhance the market surveillance of product safety on the EU market, they may also pose new challenges to consumer protection rights in the product safety area.**

19. AI has great potential ~~for 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 their ~~body-inviolability~~ **physical and mental integrity**, and in compliance with all relevant legal provisions regarding **protection of** 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 **protection of the** right to good administration, ~~of and~~ the right of access to documents as well as ~~of the~~ ~~administration of~~ **right to** petitions.

20a. 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 **and disinformation** 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 and active countermeasures against disinformation campaigns, the abuse of private data, hybrid threats and cyber attacks.

f. AI and Justice

21. ~~Having particular regard to the current work of the Council in this field,~~ **a** Access to justice, transparency and explainability of judicial processes and decision-making, ~~and~~ an independent judiciary **and legal certainty** are essential to **the proper functioning of the justice system in accordance with** ~~ensure~~ the rule of law ~~and legal certainty~~. Digital technologies, including AI, can contribute to improving access to legal information, ~~for courts and parties involved in cases,~~ possibly reducing the duration of judicial proceedings and ~~contributing~~ to enhancing access to justice in general. However, these developments can also have adverse effects, for example through the use of biased algorithms. Effective legal remedies must be guaranteed to ensure the right to a fair trial, the presumption of innocence and the rights of the defence. Moreover, non-digital access to law and justice will remain essential. The Council remains committed to upholding and promoting the rule of law in the Union and its Member States. **The Council in this regard refers to its Conclusions [of 9 October 2020] on 'Access to justice – seizing the opportunities of digitalisation'.**

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 **and invites them to consider effective measures for identifying, predicting and responding to the potential impacts of digital technologies, including AI, on fundamental rights.** Legal and regulatory frameworks, such as the European Commission's announced proposal for a future regulatory framework for AI, should strengthen trust, strike a fair balance between 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 **discussions around these issues, and in including** the potential development of legal and regulatory frameworks so as to include **broad** expertise, ~~civil society actors~~ and different perspectives, **including from civil society.**

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 **common** values in the age of digitalisation.
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