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From:	Presidency
To:	Working Party on e-Justice
Subject:	Draft Council Conclusions on the use of Artificial Intelligence in the field of justice - Revised Presidency text

Delegations will find below a revised version of the draft Council Conclusions on the use of Artificial Intelligence in the field of Justice, which were discussed during the meeting of the Working Party on e-Justice on 22 and 23 October 2024.

This document shows the most recent changes in **bold and underlined**, with the most recent deletions being marked in ~~strikethrough~~. Previous changes still appear in **bold** and deletions as [...].

DRAFT COUNCIL CONCLUSIONS ON
THE USE OF ARTIFICIAL INTELLIGENCE IN THE FIELD OF JUSTICE

I. INTRODUCTION

[...]

1. ~~Since October 2020 and the approval of the Council Conclusions (13 October 2020) on ‘Access to justice – seizing the opportunities of digitalisation’ (13 October 2020)¹ ([...]),~~ **Over the last few years,** the evolution and use of artificial intelligence (hereinafter: AI) have seen extraordinary growth, significantly enhancing its relevance for Member States’ justice systems. This development provides considerable opportunities as well as challenges for the justice system and has highlighted ~~stressing~~ the need and timeliness of ~~the~~ newly adopted policies.
2. **The Fundamental Rights Agency has produced studies and reports on relevant topics, such as the report “Getting the future right: Artificial intelligence and fundamental rights”² or the report “Bias in algorithms - Artificial intelligence and discrimination”³.**
3. **The Council Conclusions on digitalisation on ‘Access to justice – seizing the opportunities of digitalisation’ (13 October 2020⁴) stressed the importance of digital transition to increase the effectiveness and efficiency of justice systems.** The Council Conclusions of 20 October 2023 on digital empowerment to protect and enforce fundamental rights in the digital age⁵, are centred around the digital empowerment of individuals and key sectors for the defence of fundamental rights, such as justice, as well as the construction of a safe digital environment where fundamental rights are protected.

¹ 2020/C 342 I/01

² <https://fra.europa.eu/en/publication/2020/artificial-intelligence-and-fundamental-rights>

³ <https://fra.europa.eu/en/publication/2022/bias-algorithm>

⁴ 2020/C 342 I/01

⁵ 14309/23

4. ~~{Following up on t[...]he Regulations on service of documents⁶ and on taking of evidence in civil and commercial matters⁷, which by design include rules on digitalised procedures, the Digitalisation of justice package adopted in 2023⁸; notably provides for a digital-by-default approach to cross-border judicial cooperation, along with a framework for a broader use of videoconferencing in a cross-border context and the legal basis for a European Electronic Access Point, aiming at providing access to certain online cross-border judicial procedures.}~~
4. The 2024-2028 European e-Justice Strategy provides guidance on strategic and operational objectives, identifies the actions necessary to achieve the aforementioned objectives and establishes the groundwork of a follow-up mechanism for monitoring Member States' progress in fulfilling the requirements and expectations for e-Justice solutions, including the leveraging of innovative technologiesAI, taking into account the need for flexibility in the use of new technologies and the necessary respect for individuals' rights within this context. It acknowledges that digital transformation comes with a need to identify specific and appropriate actions adaptable to the challenges and opportunities resulting from AI and other emerging technologies.

⁶ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), OJ L 405, 2.12.2020, p. 40–78

⁷ Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ L 405, 2.12.2020, p. 1–39

⁸ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2844/oj> and Directive (EU) 2023/2843 of the European Parliament and of the Council of 13 December 2023 amending Directives 2011/99/EU and 2014/41/EU of the European Parliament and of the Council, Council Directive 2003/8/EC and Council Framework Decisions 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, as regards digitalisation of judicial cooperation, OJ L, 2023/2843, 27.12.2023, ELI: <http://data.europa.eu/eli/dir/2023/2843/oj>

5. **The Council Conclusions of 5 March 2024 on the application of the EU Charter of Fundamental Rights: promoting trust through effective legal protection and access to justice⁹ called on the Commission to ensure that a fundamental rights perspective is included in all EU actions related to guaranteeing effective legal protection and access to justice, including by seizing the opportunities of digitalisation.**
6. **Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (hereinafter: AI Act) is the first comprehensive legislative instrument in the world to regulate AI. The AI Act classifies AI systems for certain applications of AI in the fields of law enforcement, justice and alternative dispute resolution¹⁰ as high-risk subjecting them to a set of requirements for a high level of trustworthiness such trustworthy AI as well as conformity assessment procedures and controls.**

~~In addition, the Fundamental Rights Agency has produced studies and reports on relevant topics, such as the report “Getting the future right: Artificial intelligence and fundamental rights”¹¹ or the report “Bias in algorithms – Artificial intelligence and discrimination”¹².~~

⁹ 6569/24

¹⁰ In particular AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution; (AI Act Annex III. paragraph 8. a.)

¹¹ <https://fra.europa.eu/en/publication/2020/artificial-intelligence-and-fundamental-rights>

¹² <https://fra.europa.eu/en/publication/2022/bias-algorithm>

7. General principles on the use of AI have also been adopted by several international organisations. Special attention should be paid to those set out in:
- a) ~~the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law¹³, which aims to ensure that the activities within the lifecycle of AI systems are fully consistent with the protection of human rights, democracy and the rule of law¹⁴, the European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe¹⁵; alongside related guidelines of the CEPEJ on the use of AI in the Judiciary,~~
 - b) the OECD Recommendation of the Council on Artificial Intelligence¹⁶ and
 - c) the UN Human Rights Council Resolution (10 July 2024) on Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development¹⁷, in particular its provisions on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers,
 - d) the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law¹⁸, which aims to ensure that the activities within the lifecycle of AI systems are fully consistent with the protection of human rights, democracy and the rule of law¹⁹,
 - e) the report from the United Nations Secretary-General's High-level Advisory Body on Artificial Intelligence on Governing AI for Humanity²⁰.

¹³ Council of Europe Treaty Series – No. [225], [Vilnius, 5.IX.2024]

¹⁴ It should be noted that the EU has already signed this Convention.

¹⁵ <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>

¹⁶ <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>

¹⁷ <https://documents.un.org/doc/undoc/gen/g24/120/36/pdf/g2412036.pdf>

¹⁸ Council of Europe Treaty Series - No. [225], [Vilnius, 5.IX.2024]

¹⁹ It should be noted that the EU has already signed this Convention.

²⁰ https://www.un.org/sites/un2.un.org/files/governing_ai_for_humanity_final_report_en.pdf

8. AI technologies ~~have~~ **has** tremendous transformative potential. ~~Their~~ **Its** use [...] **can assist facilitate access to quick faster, and more efficient and more effective judicial proceedings.** [...] ~~They~~ **It would** allows, for example, for automation of **certain routine judicial tasks**, such as the scheduling of hearings and booking of court rooms, for **guiding individuals through legal information, or for removal of personal data anonymisation from of court decisions.** Such improvements to the judicial proceedings **will could** benefit ~~EU citizens~~ **both individuals and businesses in the EU.** ~~This promotes the attractiveness of~~ **improves** EU and Member States' legal systems, thus providing competitive advantages for the EU.
9. [...] **Some other use cases, such as the use of AI technologies systems for analysing case law, present greater risks**[...]. [...] Justice systems ~~need to~~ **should** embrace this technological challenge, as AI ~~could~~ **has the potential to** assist greatly in judicial work, **such as summarising judicial content and proposing texts.**
10. **Research and innovation initiatives aimed at advancing the development of AI technologies, tailored for special legal applications, in line with EU law, are important. Collaboration between academia, industry, judicial and public authorities and justice professionals are is key for driving innovation and fostering progress in this field.**
11. The need to further train legal practitioners **and administrative staff of judicial authorities** involved in judicial proceedings, particularly in light of **AI and other** technological developments, at national and EU level, is also extremely important. [...] [...]

[...]

12. Over the last few years, continuous development of legal, operational[...] and technical solutions fostering judicial cooperation and access to justice in cross-border civil, commercial and criminal matters have occurred in the European Union and its Member States.
13. Cross-border cooperation between Member States in sharing lessons learned, best practices, expertise and information on achievements in the integration of AI into their respective justice systems is particularly important for ensuring equal access to justice across the EU, ~~as well as emphasising the importance of cross-border cooperation between Member States in terms of sharing digital technologies, including AI tools, used for the administration of justice.~~
14. Interoperability standards and mechanisms for secure data sharing are crucial for the use of AI. Digital exchange of information between justice systems and [...] **related users** [...] is important to facilitate seamless cross-border cooperation.
15. ~~[...] Effective access to justice includes the right to a fair and public hearing within a reasonable time, the right to an effective remedy and the right to a fair trial as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.~~

[...]

15. [...]The use of AI in justice should be done in full respect of the Charter of Fundamental Rights of the EU and in compliance with, inter alia, the AI Act and ~~the~~ the General Data Protection Regulation **and the Law Enforcement Directive**²¹, to ensure transparency, accountability, and oversight ~~to ensure~~ **guaranteeing** that AI technologies ~~systems~~ are trustworthy, safe and **that their use** respects ~~and~~ fundamental rights. **[Effective access to justice includes the right to an effective remedy, the right to a fair and public hearing within a reasonable timeframe, the right to an effective remedy and the right to a fair trial the presumption of innocence and the right of defence as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.]**
16. **AI systems used in justice must support fairness and impartiality. The right to a fair trial, the rights to an effective defence, equality before the law, the presumption of innocence, the right not to be subject to a decision with legal effect concerning the individual based solely on automated processing along with preventing, remedying and combatting inequalities and discrimination [are key issues in the design, development or use application of these systems / must be preserved]**²².
17. Access to justice should be guaranteed **to all** even in a situation where individuals ~~are~~ **unable to do not** use IT tools or services **or are in vulnerable situations. In cases involving children in judicial proceedings, it is essential to prioritise the best interests of the child.**

²¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131

²² [These two options are proposed. Delegations are invited to indicate which one they would prefer.]

18. Practical and user-friendly guidelines **and standards** are necessary for the ethical and responsible **development and** use of AI in justice, in accordance with the AI Act and **should be** built on the basis of coordinated exchanges and cooperation between the Commission[...], the Member States and relevant stakeholders.
- ~~19. AI systems used in justice must remain support fairness and impartiality. The right to a fair trial, the rights of to an effective defence, the right to equality before the law, the presumption of innocence, the right not to be subject to a decision with legal effect concerning the individual based solely on automated processing along with preventing, remedying and combatting inequalities and discrimination [are key issues in the design, development or use application of these systems / must be preserved]²³.~~
19. The use of AI tools can support the [...] **judicial** [...] and alternative dispute resolution [...] **processes** but should not replace ~~it~~ **them**: [...] **judicial** decision-making must remain a human-driven activity. Therefore, the decisions should follow a [...] ~~human~~ controllable process where ~~the~~ [...] **use** of AI and its impact **should** remain transparent to [...] **ensure that** [...] **decision-making** [...] **remains** [...] **interpretable** [...] **and** [...] **explainable and that, regardless of the AI system used, the outcome of the decision-making process is compliant with the motivational requirements provided for by law and is suitable for human logical and legal check.**]

²³ [These two options are proposed. Delegations are invited to indicate which one they would prefer.]

20. [...]It is crucial to ensure that these principles **mentioned previously** are considered and assessed already at the design stage and throughout the whole lifecycle of AI systems used in the justice sector.
21. [...] **In addition, ensuring the availability of large amount of lawfully acquired quantities of quality data (Big Data) and defining a framework for identifying data solely relevant to a specific issue (Deep Data) are is key to providing an environment conducive to the development of AI applications with added value, as has been mentioned in Recital 8 of the Open Data Directive²⁴.**
22. [...]The availability of anonymised²⁵ **[or pseudonymised] judicial decisions [in compliance with the data protection rules / without personal and other sensitive data], is [...] an important** enabler for supporting AI applications in the field of justice, which require large-scale accessibility to these decisions to perform their analysis **in particular in the training phase of the systems.** [...].

²⁴ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast), OJ L 172, 26.6.2019, p. 56–83

²⁵ The term “anonymised” should be understood as removing any information which would allow for tracing the decision back to the parties involved.

II. CONCLUSIONS OF THE COUNCIL

A. GENERAL CONSIDERATIONS

23. [...]The Council of Europe and the Organisation for Economic Cooperation and Development and the United Nations, have achieved important progress on this topic.
24. [...]The Council invites the European Judicial Training Network to take into account the need for training and empowering justice professionals to cope with the digitalisation of justice systems, in particular the use of AI in justice, to adapt to the evolving legal environment, and to reduce digital skills gaps **and to strengthen the awareness for the chances and risks of AI systems used in the justice field, such as automation and biases**. Existing tools for the training focusing on digitalisation of justice, including AI for justice professionals, should be further developed and updated. **Particular attention should be paid to raising awareness on personal data protection and safe use of AI tools.**

B. ACTIONS SUPPORTED BY THE COUNCIL

25. The Council supports **the sharing of information and collaboration between Member States and sharing of information on the use of AI in justice - including through existing platforms -, focusing on priority topics and contributing to the objectives defined in the 2024-2028 European e-Justice Strategy.** ~~It~~ **This** would allow for the identification of **common use cases, and of their expected** benefits, **the** challenges **they pose** and areas for ~~further~~ improvement while **tracking** ~~monitoring~~ Member States' progress in digitalising justice.

C. INVITATION TO THE COMMISSION

26. The Commission is invited to continue its development of policy initiatives that aim at further improving the digitalisation of justice, with the approach of the having Digitalisation package as a reference for any further legislation in the area of e-Justice in the European Union.
27. The Commission is invited to explore further and exploiting the potential of AI in the justice field.
28. The Commission is also invited to ensure promote adequate funding for research, development and use of AI in justice, for example, through the Technical Support Instrument for the new Multiannual Financial Framework, with a view to increasing the legal and overall competitiveness of the EU and its Member States, on a global scale, and further reflect on ways to limiting administrative burden for accessing EU funding opportunities[...].
29. These Council Conclusions are without prejudice to the negotiations on the post-2027 Multiannual Financial Framework.
30. The Commission is invited to support Member States' efforts on information sharing by ~~coordinating a mapping exercise, collecting such information on the use of AI tools, in their national justice systems, whether financed by the EU or by the national budgets. Such an mapping exercise should foster the creation of common ground regarding the use of AI tools in justice across borders and encourage Member States to capitalise on AI technologies and facilitate the development of AI tools for use in the justice sector, and It should also support Member States in their decision to use AI tools and for which purposes in their national justice systems, taking into consideration their differences between these systems. It should also foster the creation of common ground for and promote common work on AI tools in justice across borders, for example through mutualised projects, , such as the use of common AI tools. [...]~~ This e mapping exercise would should also contribute to establishing thea 'Justice AI toolbox'.

31. [...]

31. This collection of information toolbox should also inform allow the Commission to have at its disposal the information needed to draft Other future possible outcomes of this process may be guidelines on the classification of high-risk AI systems in the justice sector and the guidelines on the implementation of the AI Act requirements how to use AI tools in justice, interoperability solutions requirements or, as appropriate, other policy initiatives aimed at improving digitalisation of justice and exploiting the potential of AI in justice. [...]

32. ~~The Council supports the sharing of AI [...]tools and linked information between Member States.~~ The Council invites the Commission to ~~This sharing would contribute to the creation~~ create and operate, within its competencies, ~~functioning of a common ‘Justice AI toolbox’;~~ which will be developed by the Council invites the Commission to develop, taking into account possible synergies with its already established ‘AI on demand platform’. ~~This Justice AI toolbox would be serve as a repository of AI use cases and tools. currently planned, under development or used as well as of AI tools and services, to be made available for all Member States.~~ The AI tools to be included in the toolbox, be they developed with or without EU funding, could be made available for to all Member States and would need to be based on interoperability standards, in accordance with the European Interoperability Framework. This Justice AI Toolbox could foster the creation of common ground among Member States regarding the use of AI tools in justice across borders. as well as encourage The Justice AI Toolbox could also be an incentive for Member States to capitalise on AI technologies, to facilitate the development of AI tools for use in the justice sector and to collaborate on such development. It should also support guide Member States in their decision to use AI tools, and for which purposes, in their national justice systems, taking into consideration their differences. It should promote trigger common work on AI tools in justice across borders, for example through mutualised projects.

D. INVITATION TO MEMBER STATES

33. In addition to the set of legal acts and policies at EU level, designed to enhance judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, Member States are invited to, where appropriate, **leverage capitalise on** and adopt new digital solutions, **including AI**, into their justice system to further improve efficiency, fairness and independence.
34. ~~[National legislations should allow for exploiting~~**Member States are invited to explore** the potential of constantly evolving AI systems, while ensuring compliance with [...] fundamental rights, **data protection rules** and **other** applicable EU legislation.]
35. ~~[Justice systems should be prepared for the implementation of the AI Act, in particular to ensure that:~~
- ~~—— high-risk AI systems in the justice sector are compliant within the deadline set out within the AI Act,~~
 - ~~—— AI is not used for prohibited practices.]~~
35. **In line with the 2024-2028 European e-Justice Strategy**, Member States are ~~thus~~ invited to collaborate **between themselves** and share information on the use of AI in justice as well as **on AI [...]tools] tools, and including details related the linked information linked to these tools, such as configuration or description of their functioning ,in line with the 2024-2028 European e-Justice Strategy,**
36. **Through this exchange of information, Member States are invited to build** ~~in order to~~ create common ground regarding **use cases**, the use of AI tools **and their development** ~~across~~**across** borders, **in order** to improve efficiency of justice and to prepare future interoperability solutions, **taking into account the European Interoperability Framework.**

37. [...]Support of and engagement with legal practitioners, IT professionals and competent authorities should be [...]encouraged to better and timely address the challenges of the digital transformation.[...] **In addition to the obligation of AI literacy [...]**for all justice professionals using AI²⁶, [...]training for justice professionals **and administrative staff of judicial authorities**[...] **should focus on raising awareness, and promoting a better understanding of the implications and risks associated with AI, fostering a better enhancing understanding of the changes in substantive-EU law responding to the needs of the digital economy and society, and improving the effective use of AI and other IT tools to facilitate promote the digitalisation-efficiency of justice systems, while being aware of inherent risks.**
38. [...]Member States are also invited to [...]invest[...] in secure digital infrastructure and capability building initiatives in the field of justice to support the deployment of advanced technologies, including AI tools used in justice systems.
- ~~39. [Member States are finally invited to ensure that national information on the European e-Justice Portal is kept up to date and that the possibility to use AI solutions for this updating is explored in cooperation with the Commission.]~~

²⁶ See Article 4 of the AI Act.

E. INVITATION TO THE COMMISSION

40. The Commission is invited to continue its development of policy initiatives that aim at further improving the digitalisation of justice, **with the approach of the having Digitalisation package as a reference for any further legislation in the area of e-Justice in the European Union.**

41. **The Commission is invited to explore further** and exploiting the potential of AI in the justice field.

42. The Commission is also invited to ensure **promote** adequate funding for research, development and use of AI in justice, **for example, through the Technical Support Instrument [or the new Multiannual Financial Framework],** with a view to increasing the legal and overall competitiveness of the EU and its Member States, on a global scale, **and further reflect on ways to limit administrative burden for accessing EU funding opportunities[...].**

43. The Commission is invited to support Member States by coordinating a mapping exercise, collecting information on the use of AI **tools,** in their national justice systems, **whether financed by the EU or the national budgets.** Such a mapping exercise should foster the creation of common ground regarding the use of AI tools in justice across borders and **encourage Member States to leverage AI technologies, facilitate the development of AI tools for use in the justice sector and** support Member States in their decision to use AI tools and for which purposes in their national justice systems, taking into consideration the differences between these systems. **It should also foster the creation of common ground for and promote common work on AI tools in justice across borders, such as the use of common AI tools.** [...]The mapping exercise should also contribute to establishing the 'Justice AI toolbox'.

44. [...]