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**NOTE**

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From: General Secretariat of the Council  
To: Delegations  
Subject: Digitalisation of justice and fundamental rights challenges

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Delegations will find below a document on digitalisation of justice and fundamental rights challenges, which will serve for the preparation of the meeting of the Working Party on e-Justice on 28 March 2025.

## **Digitalisation of justice and fundamental rights challenges**

### **I. INTRODUCTION**

The digitalisation of justice, the use of Artificial Intelligence (AI) by the judiciary, and the implementation of videoconferencing for hearings pose significant challenges to fundamental rights.

These issues have been addressed by the Council on various occasions, prepared sometimes by the e-Justice Working Party, sometimes by the Working Party on Fundamental Rights (FREMP):

- The **Council Conclusions of 9 June 2020** highlighted the challenges posed by digitalisation, including AI's role in society and the economy<sup>1</sup>.
- The **Council Conclusions of 13 October 2020** focused on how digitalisation can enhance the effectiveness of justice systems<sup>2</sup>.
- The **Council Conclusions of 20 October 2023** emphasized digital empowerment in protecting fundamental rights, particularly within sectors like justice, while fostering a safe digital environment<sup>3</sup>.
- In its **Conclusions of 5 March 2024**, the Council urged the Commission to incorporate a fundamental rights perspective in all EU actions related to legal protection and access to justice, including leveraging digitalisation opportunities<sup>4</sup>.

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<sup>1</sup> Council conclusions on shaping Europe's digital future, 2020/C 202 I/01, OJ C 202I, 16.6.2020, p. 1–12

<sup>2</sup> Council Conclusions 'Access to justice – seizing the opportunities of digitalisation' 2020/C 342 I/01, OJ C 342I, 14.10.2020, p. 1–7

<sup>3</sup> ST 14309/23

<sup>4</sup> ST 7127/24

- In its **Conclusions of 7 March 2025**, the Council commended the wide range of areas in which Union funding has contributed to protecting and enforcing fundamental rights, including providing access to justice through digital means, as well as creating secure and safe online environments<sup>1</sup>.
- At its **December 2024 meeting**, the Council (Justice and Home Affairs) approved conclusions on AI's role in the justice sector<sup>2</sup>.

The **Fundamental Rights Agency** has published reports on AI and fundamental rights, including "Getting the Future Right: Artificial Intelligence and Fundamental Rights"<sup>3</sup> and "Bias in Algorithms - AI and Discrimination."<sup>4</sup>

During the meeting of the e-Justice Working Party scheduled for 28 March 2025, where the delegates of the FREMP Working Party will be convened, , the European Union Agency for Fundamental Rights will present its work on artificial intelligence and fundamental rights based on the above mentioned reports

The European Union Agency for Fundamental Rights will also present the key requirements regarding high-risk artificial intelligence in the Artificial Intelligence Act from the perspective of fundamental rights and will share some preliminary reflections based on the ongoing projects concerning the assessment of high-risk artificial intelligence.

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<sup>1</sup> ST 6878/25

<sup>2</sup> ST 16933/24

<sup>3</sup> <https://fra.europa.eu/en/publication/2022/bias-algorithm>  
<https://fra.europa.eu/en/publication/2020/artificial-intelligence-and-fundamental-rights>

<sup>4</sup> <https://fra.europa.eu/en/publication/2022/bias-algorithm>

Other international institutions have provided relevant insights, such as:

- **The Council of Europe's** the European Ethical Charter on the use of AI in judicial systems and their environment<sup>1</sup>,
- **The Organisation for Economic Co-operation and Development (OECD)'s** recommendations on AI<sup>2</sup>,
- **The UN Human Rights Council Resolution (10 July 2024)** on human rights and the independence of the judiciary<sup>3</sup>,
- **The Council of Europe's Framework Convention on AI and Human Rights, Democracy and the Rule of Law AI**<sup>4</sup>, and
- **The UN High-level Advisory Body's Final Report** on governing AI for humanity<sup>5</sup>.

## **II. CHALLENGES POSED BY THE DIGITALISATION OF JUSTICE, THE USE OF AI IN THE JUDICIARY, AND VIDEOCONFERENCING FOR HEARINGS**

The digitalisation of justice, AI in the judiciary, and videoconferencing in hearings raise several fundamental rights challenges within the EU, affecting access to justice, fairness, privacy, transparency, and equality. These challenges include:

### **1. Access to Justice**

- **Digital divide:** not all individuals have equal access to digital tools, which risks excluding vulnerable groups, such as the elderly, people with disabilities, and those in rural areas, from the justice system.
- **Legal representation disparities:** people unfamiliar with digital platforms may struggle to access legal assistance, leading to unequal access to justice.

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<sup>1</sup> <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>

<sup>2</sup> <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>

<sup>3</sup> <https://documents.un.org/doc/undoc/gen/g24/120/36/pdf/g2412036.pdf>

<sup>4</sup> Council of Europe Treaty Series - No. [225], [Vilnius, 5.IX.2024]

<sup>5</sup> [https://www.un.org/sites/un2.un.org/files/governing\\_ai\\_for\\_humanity\\_final\\_report\\_en.pdf](https://www.un.org/sites/un2.un.org/files/governing_ai_for_humanity_final_report_en.pdf)

## 2. Fair Trial

- **AI transparency:** when AI is used in helping decision-making, the lack of transparency in how decisions are made can compromise fairness. Defendants may not be able to challenge AI-generated elements of the decisions.
- **Risk of bias:** AI can perpetuate existing biases, leading to discriminatory outcomes, especially if trained on biased data sets.
- **Decision-making assisted by AI:** overreliance on AI for legal decisions could undermine impartiality, as human judgment may be sidelined.
- **Correlational errors:** AI may find correlations that are difficult to spot and challenge and/or that could result in unjust legal outcomes.

## 3. Lack of transparency and accountability

- **Opaque decision-making:** the use of complex algorithms may reduce transparency, eroding trust in the fairness of the justice system.
- **Accountability gaps:** it is unclear who is responsible when AI systems make errors or discriminatory decisions, which can erode trust in the judiciary.

## 4. Erosion of Human Agency

- **Overreliance on AI:** excessive use of AI in decision-making may diminish judges' ability to apply human judgment and empathy, which are essential for fair outcomes.
- **Dehumanisation of justice:** relying on AI for decisions affecting individuals' lives risks reducing the human element of justice, which is based on empathy and moral reasoning.

## 5. Right to privacy and data protection

- **Privacy risks in videoconferencing:** there are potential dangers or concerns related to the protection of personal data when using videoconferencing tools (like Zoom, Microsoft Teams, etc.).
- **Virtual hearings may expose sensitive personal data:** in the context of virtual hearings, there is a risk that sensitive personal information (like private details shared during the hearing) might be exposed if proper security measures are not in place. If security precautions are not set up (such as encryption, secure login, and other protective measures), there is a greater chance that personal information could be accessed by unauthorized individuals.
- **Technical vulnerabilities could compromise the integrity of hearings:** videoconferencing platforms may have weaknesses (like software bugs or flaws) that could be exploited by hackers or malicious actors. These vulnerabilities could interfere with the fairness, security, or accuracy of the hearing itself, potentially allowing outside influence or manipulation of the proceedings.
- **Data security:** AI tools in the judiciary process large volumes of personal data, raising concerns about compliance with GDPR and the protection of privacy.

## 6. Equality before the law

- **Inequality of access:** the digital divide may exclude individuals without access to the necessary technology or skills, undermining the principle of equality before the law. Videoconferencing might also make it harder for defendants or witnesses to fully participate in proceedings, weakening the right to a fair trial.

## 7. Right to an oral hearing

- **Remote hearings vs. physical presence:** videoconferencing can limit the effectiveness of hearings by hindering communication and the ability to read body language, affecting fairness.
- **Impersonal proceedings:** virtual hearings may lack the personal interaction of physical hearings, potentially undermining the perception of justice.

## 8. Public trust in the judiciary

- **Perception of AI in courtrooms:** if AI is seen as replacing or influencing too much human judgment, it may erode public trust in the judicial system, especially if AI decisions are opaque or biased.

The digitalisation of justice, AI in the judiciary, and videoconferencing for hearings present thus complex challenges to fundamental rights in the EU.

### **III. COMMON DISCUSSION E-JUSTICE AND FREMP DELEGATES WITH THE FUNDAMENTAL RIGHTS AGENCY**

The **Presidency** has invited the **Fundamental Rights Agency** to present its views on the use of AI systems in Justice at the **e-Justice Working Party on 28 March 2025, organised in collaboration with the FREMP WP**. Active participation of delegates from both working parties will foster collaboration on key issues.

In the context of this upcoming discussion, delegations are invited to indicate the issues they wish to see addressed during this exchange.

Suggestions can be sent to the Presidency and the General Secretariat by 21 March 2025, via the following e-mail addresses: [anna.romanowska@ms.gov.pl](mailto:anna.romanowska@ms.gov.pl); [iwona.dukat@ms.gov.pl](mailto:iwona.dukat@ms.gov.pl); [jai.e-law.e-justice@consilium.europa.eu](mailto:jai.e-law.e-justice@consilium.europa.eu)