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ARTIFICIAL INTELLIGENCE AND JUDICIAL ACTIVITIES: THE POSITION OF THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

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1. The CEPEJ of the Council of Europe: its Role and Activities.

Scope of this presentation is to show the view of the European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) on the subject of AI.

For the benefit of those of you who do not come from the European continent, I will first of all briefly explain what the European Commission for the Efficiency of Justice is and why it is tackling also with the matter of artificial intelligence.

The European Commission for the Efficiency of Justice (*Commission Européenne pour l'efficacité de la justice* – CEPEJ) is a commission created within the Council of Europe ([1]). In setting up this body, at the end of 2002, at the initiative of the European ministers of Justice who met in London (2000), the Committee of Ministers of the Council of Europe wanted to establish an

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([1]) The official web site of the CEPEJ is available here: https://www.coe.int/en/web/cepej/home/. On this organ of the Council of Europe, see also OBERTO, *The Work Of The Cepej On Judicial Time Management – General Presentation*, 2023, https://www.giacomooberto.com/Oberto_Work_of_CEPEJ.pdf; ID., *Strumenti e documenti CEPEJ per la gestione dell'efficienza e dei tempi dei processi*, 2023, https://www.giacomooberto.com/Giacomo_Oberto_Strumenti_e_documenti_CEPEJ.pdf; ID., *Il «Programma Strasburgo» del Tribunale di Torino e le direttive del* Groupe de pilotage SATURN *della* CEPEJ*: Breve raffronto*, in *Richterzeitung*, 2012/3; ID., *Il Consiglio d'Europa e i temi della giustizia*, 2015, https://www.autonomiaeindipendenza.it/wp-content/uploads/2016/10/Oberto_Consiglio_Europa_Temi_Giustizia.pdf.
See also JOHNSEN, *The European Commission for the Efficiency of Justice (CEPEJ) - Reforming European Justice Systems - "Mission Impossible?"*, International Journal for Court Administration, 2012, https://iacajournal.org/articles/83/files/submission/proof/83-1-180-1-10-20131025.pdf; UZELAC, *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ*, https://www.academia.edu/15515370/Civil_Justice_between_Efficiency_and_Quality_From_Ius_Commune_to_the_CEPEJ.

innovative organization for improving the quality and efficiency of the European judicial systems and strengthening the court users' confidence in such systems.

The CEPEJ develops concrete measures and tools aimed at policy makers and judicial practitioners in order to:

- Analyse the functioning of judicial systems and orientate public policies of justice;
- Have a better knowledge of judicial timeframes and optimize judicial time management;
- Promote the quality of the public service of justice;
- Facilitate the implementation of European standards in the field of justice;
- Support member states in their reforms on court organisations.

The CEPEJ also contributes with specific expertise to debates about the functioning of the justice system in order to provide a forum for discussion and proposals and bring the users closer to their justice system.

The aim of the CEPEJ is the improvement of the efficiency and functioning of justice in the member States, and the development of the implementation of the instruments adopted by the Council of Europe to this end.

To achieve these goals the CEPEJ created four Working Groups, tasked of studying different aspects of judicial efficiency:

- The CEPEJ-EVAL, which prepares every two years the evaluation report on the state of justice in Europe and manages the different online data bases, which provide the most relevant pieces of information on every aspect of the administration of justice in Europe ([2]);
- The CEPEJ-SATURN, which deals with questions related to the judicial time management, elaborating tools and guidelines on how to assure the compliance with the "reasonable timeframe" requirement set by Article 6 of the ECHR ([3]);
- The CEPEJ-QUAL, which tackles with issues related to the quality of justice ([4]) and
- The CEPEJ-CYBERJUST, which treats of the problems referring to the use of IT and AI in the judicial realities of our time ([5]).

2. The European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems.

The question of the relations between justice and artificial intelligence has been developed during these last years by the CEPEJ, mainly through the elaboration of rules, aiming to assure the respect of ethical standards in the use of AI.

([2]) See https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems. The Group is also tasked of updating the CEPEJ-STAT Database, an impressive repository, which allows to find, study and retrieve data related to judicial systems of Council of Europe Member States/entities and observers collected by the CEPEJ. These data, as well as the attached comments, are collected by the CEPEJ Secretariat already for many years via the network of National correspondents from Council of Europe member states as well as some observer countries and are available for researchers, also in a comparative way: https://public.tableau.com/app/profile/cepej/viz/OverviewEN/Overview.

([3]) See https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management. Among the main achievements of the Group we may recall the following: Concept note on the database of backlog reduction practices (12/2023); Backlog reduction tool (06/2023); Time Management Checklist (06/2023); Explanatory Note for the Time Management Checklist (06/2023); SATURN Guidelines for judicial time management (12/2021); Handbook on court dashboards (06/2021); Implementation guide: Towards European timeframes for judicial proceedings (12/2016); Handbook for implementing CEPEJ-SATURN tools (05/2017); Implementing the SATURN time management tools in courts a guide (12/2015); Report on case-weighting in public prosecution services (12/2023); Case weighting in judicial systems - CEPEJ Studies No. 28 (also available in Latvian and in Ukrainian) (07/2020). All these documents are available in the above mentioned web page.

([4]) See https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice.

([5]) See https://www.coe.int/en/web/cepej/cepej-working-group-cyber-just.

Talking about soft law rules, let me first cite in this framework the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems, adopted by the CEPEJ in 2018 ([6]). This document provides a framework of principles that can guide policy makers, legislators and justice professionals when they grapple with the rapid development of AI in national judicial processes. Since its adoption, the Ethical Charter has become a reference in the field of artificial intelligence in judicial systems. It has been presented worldwide and received a huge media coverage.

The CEPEJ published as well a draft action plan to ensure a wider dissemination and implementation of the European Ethical Charter on the use of AI in judicial systems and their environment ([7]).

As for the Charter, the document is articulated around following 5 main principles:

- Respect for Fundamental Rights (AI tools must be designed and implemented in a way that respects fundamental human rights, such as the right to a fair trial, the presumption of innocence, and the right to privacy).
- Non-Discrimination (AI systems should prevent any form of discrimination between individuals or groups, ensuring equal treatment and fair outcomes).
- Quality and Security (AI systems must use certified and secure data sources and models, maintaining high standards of data quality and system integrity).
- Transparency, Impartiality, and Fairness (The processes within AI tools should be transparent and allow for external audits, ensuring impartiality and fairness in the decision-making process).
- Under User Control (AI systems should ensure that users are informed and retain control over decision-making processes, with the ability to override or intervene in AI-driven decisions).

3. The Assessment Tool for the Implementation of the Principles of the European Ethical Charter.

A further step about the implementation of the Charter is represented by the initiative of "operationalizing" it. Actually, the CEPEJ has developed an Assessment Tool ([8]) to help judicial decision makers implement the principles of the European Ethical Charter on the use of Artificial Intelligence (AI) in judicial systems.

We must first of all consider that, when AI systems are intended to be used by a judicial authority or on their behalf to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts, they should not affect the independence of judges in their decision-making process. The final decision making should remain a human-driven activity and decision. In all such cases, the ethical compliance of these systems with the CEPEJ Charter's principles should be evaluated. Therefore, the CEPEJ thought that decision makers within judicial systems would benefit from more practical guidance on how to apply the five principles laid down in the CEPEJ Charter, therefore a detailed operationalisation of the principles was deemed necessary.

This comprehensive tool, officially adopted by the CEPEJ's Plenary Meeting in December 2013, provides practical guidance to ensure the ethical and effective integration of AI technologies while safeguarding fundamental rights and maintaining public trust in the justice system. The tool

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([6]) See https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment.

([7]) See https://rm.coe.int/cepej-gt-qual-2019-1-en-possible-actions-to-promote-ethical-charter-on/168097a351.

([8]) See the Assessment Tool for the Operationalisation of the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment, https://rm.coe.int/cepej-2023-16final-operationalisation-ai-ethical-charter-en/1680adcc9c.

covers various aspects of AI implementation in judicial environments, such as data protection, bias and discrimination, transparency, explainability, and the potential impact on judicial independence. The Assessment Tool can be used at different stages of the AI system lifecycle, including pre-implementation, postimplementation, and during updates, to ensure ongoing compliance with ethical standards.

A relevant number of risks are taken into account by the tool:

- Risk of reusable data and/or use of an AI model trained for another purpose.
- Risk of personal data or trade secret disclosure.
- Risk of judge profiling and forum shopping.
- Risk of misleading AI results.
- Risk of unclear criteria and inadequate weight for criteria for AI processing.
- Risk of AI replacing the access to the judge.
- Risk of unclear/unjustified grounds for the judgment.
- Risk of unfair advantage for one party to the trial.
- Risk of infringement of fundamental rights or inappropriate arbitration between two fundamental rights.
- Risk of discrimination or amplification of discrimination.
- Risk of generation and use of inexistent legal provisions by generative AI.
- Risk of disempowerment and limitation of accountability of the judge through the use of non-explainable AI.
- Risk of misuse of AI.
- Risk of forced use of AI Assessing Data Protection and Privacy Personal Data.

The Assessment Tool examines how AI systems handle personal and sensitive data, ensuring compliance with data protection regulations and protecting individual privacy. The tool ensures that AI systems use certified and secure data sources, maintaining the integrity and reliability of the information used in judicial decision-making. The tool evaluates the transparency of AI algorithms, requiring that the decision-making processes are understandable and can be audited by relevant stakeholders.

The Assessment Tool checks that users are informed about the use of AI and retain control over the decision-making process, with the ability to override or intervene in AI-driven decisions.

In Addressing Bias and Discrimination, The Assessment Tool helps identify potential biases in AI algorithms that could lead to discrimination against individuals or groups, ensuring fair and equitable outcomes. It provides guidance on implementing effective strategies to mitigate algorithmic biases, such as diverse data sets, AI model testing, and regular monitoring and auditing.

The Assessment Tool emphasizes the importance of continuously monitoring AI systems for biases and making necessary adjustments to maintain non-discrimination and fairness over time. The Assessment Tool requires that the decision-making processes of AI systems are transparent and can be explained to users, enabling accountability and trust. The tool encourages the use of explainable AI techniques, which provide clear and understandable explanations for the outputs and decisions generated by the AI system.

The Assessment Tool facilitates external audits of AI systems, allowing independent verification of the transparency and fairness of the decision-making processes. The tool ensures that users are informed and retain control over the AI-driven decision-making process, with the ability to override or intervene when necessary. The Assessment Tool examines the potential for AI systems to influence or interfere with the independence of judicial decision-making, ensuring that human judges maintain full control over the process. The tool encourages the implementation of robust judicial oversight mechanisms, allowing human judges to monitor and intervene in AI-driven decisions to maintain the integrity of the justice system. The Assessment Tool's emphasis on transparency and external audits helps to ensure that the use of AI in judicial systems is aligned with the principles of judicial independence and the rule of law.

The CEPEJ's Assessment Tool provides therefore a robust framework for embracing the benefits of AI in judicial systems while upholding the fundamental principles of human rights, non-discrimination, and judicial integrity. By implementing this tool, judicial decision-makers can harness the power of AI technology in a responsible and ethical manner, fostering public trust and maintaining the integrity of the justice system.

4. The European Cyberjustice Network (ECN).

In this framework the CEPEJ has also established in 2021 a network, called European Cyberjustice Network (ECN) ([9]), which is a structure that allows the exchange of good practices and helps to define future initiatives by the Council of Europe to support its member States in the digital transformation of their judiciary in line with Human Rights standards. The network supports the activities of the CEPEJ and its working groups; its activities are steered by the CEPEJ Working group on Cyberjustice and Artificial Intelligence (CEPEJ-GT-CYBERJUST).

The European Cyberjustice Network contributes to the content of the CEPEJ Resource Centre on Cyberjustice and Artificial Intelligence which provides concrete resources on Cyberjustice and gives an overview of the development, implementation and use of artificial intelligence tools in the judicial environment in Europe and beyond.

In particular, the ECN's role is:

- to exchange information on good practices as well as challenges encountered in member States concerning cyberjustice and artificial intelligence in the judicial environment. It should monitor and exchange information on pilot and ongoing projects in member States;
- to consult on matters falling within the scope of the mandate of CEPEJ-GT-CYBERJUST to provide up-to-date background and statistical information on the situation in member States;
- to initiate proposals for new tools, actions and co-operation projects and new actions based on the needs identified by member States and the CEPEJ working groups;
- to disseminate information and tools developed by the CEPEJ-GT-CYBERJUST and, where appropriate, to organise training sessions for the competent authorities in member states;
- to support local initiatives to test the new CEPEJ tools in practice and inform the CEPEJ-GT-CYBERJUST on their results;
- to provide a platform for bilateral and multilateral co-operation for the development of e-justice applications.

Among the subjects currently discussed within the European Cyberjustice Network (ECN) we may cite the interplay between the Methodology for the Risk and Impact Assessment of AI Systems (HUDERIA) (see below, § 7) with justice specific tools such as the CEPEJ "Assessment Tool for the operationalisation of the European Ethical Charter on the use of artificial intelligence in judicial Systems and their environment," as well as national approaches.

5. Effects of AI on Judicial Efficiency and the Role of CEPEJ-SATURN.

The European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) has recently tasked its Working Group on Time Management of Judicial Proceedings (CEPEJ-SATURN) (see above, § 1) to examine the potential effects of using AI systems on the efficiency of

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([9]) See https://www.coe.int/en/web/cepej/european-cyberjustice-network.

courts, in cooperation with the CEPEJ-GT-CYBERJUST. This reflection aims in particular to study the impact of different categories of AI systems on the duration of judicial proceedings and the impact on the efficiency of courts with respect to the two CEPEJ efficiency indicators (Clearance Rate and Disposition Time) and to explore the potential effects on human resources and organization in courts and/or prosecutor's offices.

To initiate reflection on this issue, CEPEJ-SATURN decided to have an expert prepare a conceptual note for presentation at the meetings of the CEPEJ-GT-CYBERJUST and CEPEJ-SATURN, held in 2024. During these meeting it was decided to task the expert to prepare a draft questionnaire on the impact (real and potential) of the use of AI's tools on the efficiency in judicial systems. The questionnaire might be piloted on selected AI tools together with the pilot assessment of the operationalisation of the CEPEJ AI Charter. The questionnaire shall apply to tools already used in practice, as well as to the tools under development. The questionnaire aims to contain questions and indicators for each category of AI tools to facilitate impact assessments by authorities of the use of AI tools on the efficiency in the judiciary.

Here we have to consider indicators for the nine categories of AI in the judicial domain as listed in the Resource Centre on Cyberjustice and Artificial Intelligence in its latest available version at the time of the questionnaire's drafting. The nine categories are as follows:
- Document Search, Review, and Large-scale Discovery;
- Online Dispute Resolution;
- Prediction of Litigation Outcomes;
- Decision Support;
- Anonymisation and Pseudonymization;
- E-Filing;
- Triaging, Allocation, and Workflow Automation;
- Transcription and Translation;
- Information and Assistance Services.

Many systems using symbolic and/or connectionist forms of AI have been developed specifically in the judicial domain, particularly for jurisdictions, judges, and prosecutors. Ongoing work at the Resource Centre on Cyberjustice and Artificial Intelligence established by the CEPEJ ([10]) has identified 92 AI systems in the judicial field among the Council of Europe member states, at the time of writing this note. The majority of these listed AI systems are intended for several distinct audiences, with judges targeted by 46 AI systems, courts (in their management) by 47, and prosecutors by 6. It is therefore noteworthy that the tools specifically deployed for prosecutors remain in the minority.

The table below allows us to identify the fields of application of AI systems according to these three types of users:

Areas of application	Type of user (number of system)		
	Judges (46)	Tribunals (47)	Prosecutors (6)
Document search	10	5	4
Automated Online Dispute Resolution	/	1	/
Prediction of Litigation Outcomes	/	/	1
Decision-Support and Decision-Making	14	9	1
Anonymization	11	3	/
E-Filing	/	6	/
Triaging, allocation and workflow automation	11	15	1
Natural Language Processing	10	12	2
Information/assistance services	2	2	/

([10]) See https://www.coe.int/en/web/cepej/resource-centre-on-cyberjustice-and-ai.

To these systems, we must add the emergence of individual uses by judges and judicial staff of generative AI systems, tools that are generally non-specialized and accessible without a license negotiated with the judicial institution of attachment, such as Chat-GPT.

Also, in this context of analyzing efficiency in the use of AI systems in the judicial domain, it is necessary to consider the ethical stakes related to the use of AI, especially the CEPEJ's AI Charter and the operationalization works of the latter.

Among the main objectives of measuring jurisdictional efficiency related to the use of AI systems are:

- The identification of efficient AI systems from a national and international replication perspective;
- The identification of complementary AI systems that, in their cumulative use, allow for efficiency gains for jurisdictions;
- The identification of states at various stages of AI system deployment that allow for efficiency gains, to share good practices and/or identify useful investments for efficiency gains.

As far as the concrete way of studying the impact of AI on judicial efficiency, the concept note elaborated by the CEPEJ-SATURN suggested three methods:

- Method 1 (Overall Efficiency Measurement): envisaged to strengthen the CEPEJ evaluation of judicial systems by analysing the possible correlation between the use of AI tools and efficiency and by adjusting the questionnaire for the next 2026 evaluation cycle to enhance the questions concerning the deployment and usage of AI tools;
- Method 2 (Granular and Incremental Efficiency Measurement): provided for the comparison of efficiency of a pilot jurisdiction using an AI tool versus a jurisdiction not using it , or alternatively the comparison of AI tools among themselves within different pilot jurisdictions, of distinct AI systems but addressing the same objective and field of application;
- Method 3 (Joint Risk and Efficiency Measurement): envisaged to join the assessment for operationalisation of the AI Charter to be carried out by the CEPEJ-GT-QUAL. The assessment tool for operationalisation of the AI Charter adopted by the CEPEJ in December 2023 (see above, § 3) will be piloted in selected areas of applications of AI tools (e.g. anonymisation, speech-to-text and decision-support).

The CEPEJ-SATURN agreed to begin with the implementation of Method 3 and instructed its scientific expert to develop a questionnaire with indicators adapted to each field of application of AI systems as identified in the CEPEJ Resource Centre on Cyberjustice and Artificial Intelligence. In parallel, the information received in the framework of the evaluation of judicial systems would be analysed to see whether any conclusions can be drawn on the use of AI and efficiency (Method 1).

6. The Hard Law Profile: Council of Europe Framework Convention on Artificial Intelligence (AI) and Human Rights, Democracy and the Rule of Law.

After having illustrated the soft law approach by CEPEJ and the Council of Europe, we may now say something about the hard law profile. Here, we must note that, on 17th May 2024, the Committee of Ministers of the Council of Europe adopted the Council of Europe Framework Convention on Artificial Intelligence (AI) and Human Rights, Democracy and the Rule of Law ([11]).

([11]) See https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence. On this instrument see also CASS-BEGGS ET AL., *Framework Convention on Global AI Challenges. Accelerating international cooperation to ensure beneficial, safe and inclusive AI*, 2024, https://www.cigionline.org/static/documents/AI-challenges_OW6rTMD.pdf; RAZMETAEVA, *Artificial Intelligence and*

The text will be opened for signature as of September 2024. Scope of the Convention is clearly larger than covering the mere field of Justice, but it appears evident that also this domain shall be affected by such new international principles, and this time in a binding way, at least for the Countries which will sign this new instrument.

The CoE Framework Convention formulates fundamental principles and rules which not only safeguard human rights, democracy and the rule of law, but at the same time are conducive to progress and technological innovations. This new Convention is complementary to the already existing international human rights, democracy and rule of law standards and aims at filling-in any legal gaps that may have formed as a result of rapid technological advances in the sphere of human rights law but also with regards to the protection of democracy.

The CoE Framework Convention applies to both public and private sectors. In line with the Statute of the CoE, matters relating to national defence do not fall within the scope of the Convention. It mainly requires activities within the lifecycle of AI systems to comply with certain fundamental principles. These are the principles of:

- human dignity,
- individual autonomy,
- equality,
- non-discrimination,
- protection of privacy,
- personal data protection.

In addition, the Framework Convention also requires compliance with the principles of

- transparency and oversight,
- accountability and responsibility,
- safe innovation,
- reliability.

Parties to the treaty will have to ensure the availability of legal remedies where an artificial intelligence system significantly impacts upon the enjoyment of human rights and fundamental freedoms and procedural safeguards, including notifying any persons interacting with AI systems that they are interacting with such systems. The CoE Framework Convention provides also some Risk and Impact Management Requirements. In particular, it obliges relevant AI actors to carry out Risk and Impact Assessments in respect of actual and potential impacts on Human Rights, Democracy and the Rule of Law.

7. *Implementation of the Council of Europe Framework Convention: The HUDERIA Methodology.*

For the concrete implementation of the Council of Europe Framework Convention on Artificial Intelligence (AI) and Human Rights, Democracy and the Rule of Law, the Council of Europe is currently working on some collateral new instruments. The main actor in this field is the Committee on Artificial Intelligence (CAI) of the Council of Europe ([12]).

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the End of Justice, BioLaw Journal, 2024, 345 ff., https://teseo.unitn.it/biolaw/issue/view/204/214; LEVANTINO, and PAOLUCCI, *Advancing the Protection of Fundamental Rights Through AI Regulation: How the EU and the Council of Europe are Shaping the Future (June 27, 2024)*. Forthcoming in "European Yearbook on Human Rights 2024", ed. by Czech, Heschl, Lukas, Nowak, and Oberleitner, Available at SSRN: https://ssrn.com/abstract; VAN KOLFSCHOOTEN and SHACHAR, *The Council of Europe's AI Convention (2023–2024): Promises and pitfalls for health protection*, https://www.sciencedirect.com/science/article/pii/S0168851023002208.

([12]) See https://www.coe.int/en/web/artificial-intelligence/cai.

The CAI is now working on a Methodology for the Risk and Impact Assessment of AI systems on Human Rights, Democracy and the Rule of Law (HUDERIA) ([13]), a stand-alone and non-binding instrument supporting the Framework Convention with detailed guidance on risk and impact management issues, adding a practical layer of measures towards ethical compliance applied to the judiciary. This approach should ensure uniformity towards identifying, analysing, and evaluating the significant levels of risks and the assessment of impact of AI systems in relation to the enjoyment of human rights, the functioning of democracy and the observance of rule of law.

In practice, the HUDERIA methodology consists essentially of an obligation to address a certain number of questions regarding the contexts of design, development, procurement, and use and the potential short-, medium, and long-term impacts of the AI system under examination.

The methodology should also provide clear, concrete and objective criteria for identifying such artificial intelligence systems or combined technologies based on such systems that are likely to pose significant levels of risk to the enjoyment of human rights, the functioning of democracy and the observance of the rule of law. The methodology would ensure a uniform approach towards identification, analysis and evaluation of risk and assessment of impact of such systems in relation to the enjoyment of human rights, the functioning of democracy and the observance of rule of law.

The methodology will likely be composed of a number of clearly articulated and interrelated processes and instruments/steps:

- A context-based risk analysis (COBRA) provides an initial indication of the context based risks that an AI system could pose to human rights, democracy and the rule of law. Its main purpose is to identify whether an artificial intelligence system, in view of the context of its deployment and future use as well as other relevant factors, is at all likely to pose significant levels of risk to the enjoyment of human rights, the functioning of democracy and the observance of the rule of law.
- Provided that an artificially intelligence system has been identified as likely to pose significant levels of risk to the enjoyment of human rights, the functioning of democracy and the observance of the rule of law, and depending on the exact level of risk identified, at the next stage the methodology would require some form of stakeholder engagement process to help project teams identify stakeholder salience and to facilitate proportionate stakeholder involvement and input throughout the project workflow.
- The core of the HUDERIA methodology will consist essentially of an obligation to address:
  - a certain number of specific sociotechnical questions regarding the artificial intelligence system under examination and
  - questions reflecting the considerations that are specific to human rights, democracy and the rule of law based on the standards of the Council of Europe.

Both sets of questions are currently under development by a team of experts (with the assistance of the Secretariat). The process of answering these questions essentially contextualises and corroborates potential harms which have been previously identified, enables the discovery of further harms through the integration of stakeholder perspectives, makes possible the collaborative assessment of the severity of potential adverse impacts identified, facilitates the co-design of an impact mitigation plan, sets up access to remedy, and establishes monitoring and impact eventual re-assessment protocols.

At final stages the methodology would require the composition of an impact mitigation plan as well as, if appropriate, mechanisms providing access to remedy(ies) and lastly contain a requirement that the carrying out of such assessments would have an iterative character. This means that it should be repeatable at regular intervals within the lifecycle of the artificial intelligence

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([13]) See https://www.turing.ac.uk/research/research-projects/human-rights-democracy-and-rule-law-impact-assessment-ai-systems-huderia#:~:text=HUDERIA%20offers%20a%20cohesive%20end,of%20the%20rule%20of%20law.

system in question, making sure that the relevant intervening changes in both the context and the system itself are properly identified, understood, taken account of and dealt with.

8. The *"Fundamental Rights Impact Assessment"* (FRIA) for the use of algorithms in the EU Artificial Intelligence Act.

Leaving now the Council of Europe's area and focusing on the (geographically) more restricted area of the European Union, we must now provide some information on the EU Artificial Intelligence Act ([14]), due to enter into force in July 2026. This piece of legislation—we are talking of course about a regulation, binding on all EU member states, whereas, as anybody knows, the above mentioned Council of Europe's Convention will be binding only for those Countries which will ratify it—provides for a mandatory "Fundamental Rights Impact Assessment" (FRIA) for the use of algorithms ([15]). FRIA is a crucial component of the EU AI Act (as defined in Title III, Article 29a), particularly for high-risk AI systems, where such impact assessment will be mandatory. It is important to underline that the Act considers as high-risk AI systems those listed, among others, in the "administration of justice" and "law enforcement" areas.

Therefore, just to quote some of the many possible situations referred to by the Act, we must think to AI systems intended to be used
- as polygraphs or similar tools;
- to evaluate the reliability of evidence in the course of the investigation or prosecution of criminal offences;
- for assessing the risk of a natural person offending or re-offending, or to assess personality traits and characteristics or past criminal behaviour of natural persons or groups;
- for the profiling of natural persons in the course of the detection, investigation or prosecution of criminal offences;
- 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.

A FRIA is a systematic examination of potential risks that an AI system might pose to fundamental rights. These rights include, but are not limited to, privacy, non-discrimination, freedom of expression, and safety. The FRIA process involves analyzing the AI system's design, development, deployment, and intended use to identify potential issues and develop mitigation strategies.

As far as technical measures are concerned, depending on the risk, technical solutions like anonymization techniques, fairness filters in algorithms, or opt-out mechanisms for data collection might be necessary.

According to the above mentioned new Act, prior to deploying a high-risk AI system, deployers that are bodies governed by public law, or are private entities providing public services,

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([14]) See https://artificialintelligenceact.eu/. On this instrument see ZILLER, *The Council of Europe Framework Convention on Artificial Intelligence vs. The EU Regulation: Two Quite Different Legal Instruments (April 29, 2024)*, Available at SSRN: https://ssrn.com/abstract=4822757; ENQVIST, 'Human oversight' in the EU artificial intelligence act: what, when and by whom?, 2023, https://www.tandfonline.com/doi/full/10.1080/17579961.2023.2245683; WIEK, The Artificial Intelligence Act - The Impact of AI on Human Rights Standards in European Law Enforcement, 2023, https://essay.utwente.nl/96320/; ROKSANDIĆ, Protrka and Engelhart, Trustworthy Artificial Intelligence and its use by Law Enforcement Authorities: where do we stand?, 2022, https://ieeexplore.ieee.org/abstract/document/9803606.

([15]) See WAEM, DAUZIER and DEMIRCAN, *Fundamental Rights Impact Assessments under the EU AI Act: Who, what and how?*, 2024, https://www.technologyslegaledge.com/2024/03/fundamental-rights-impact-assessments-under-the-eu-ai-act-who-what-and-how/#:~:text=The%20FRIA%20aims%20to%20mitigate,such%20as%20the%20conformity%20assessments..

and deployers of high-risk AI systems, shall perform an assessment of the impact on fundamental rights that the use of such system may produce. For that purpose, deployers shall perform an assessment consisting of:

- a description of the deployer's processes in which the high-risk AI system will be used in line with its intended purpose;
- a description of the period of time within which, and the frequency with which, each high-risk AI system is intended to be used;
- the categories of natural persons and groups likely to be affected by its use in the specific context;
- the specific risks of harm likely to have an impact on the categories of natural persons or groups of persons identified by the said Act;
- a description of the implementation of human oversight measures, according to the instructions for use;
- the measures to be taken in the case of the materialisation of those risks, including the arrangements for internal governance and complaint mechanisms.

Once the assessment has been performed, the deployer shall notify the market surveillance authority ([16]) of its results. The EU AI Office shall develop a template for a questionnaire, including through an automated tool, to facilitate deployers in complying with their obligations in a simplified manner.

Finally, we may say that the EU AI Act is a big step forward in the governance of artificial intelligence. While navigating the act's intricacies might seem daunting, it also presents a valuable opportunity. By proactively preparing for compliance and adopting responsible AI practices, companies can position themselves as leaders in the ethical development of AI, gaining a significant competitive advantage in the global marketplace.

([16]) It may be of interest to know that compliance with the bulk of the obligations contained in the AI Act is largely overseen by Member State authorities or bodies. The Act designates two relevant authorities at Member-State level, generally referred to in the text as "national competent authorities": notifying authorities and market surveillance authorities. Notifying authorities, rather than monitoring AI systems and AI providers directly, monitor and formally authorise conformity assessment bodies, i.e. the bodies responsible for carrying out the conformity assessment which certifies a high risk AI system is in conformity with the Act's requirements. At least one notifying authority is needed per Member State. (Article 28). Market surveillance authorities (MSAs) are the default oversight entity for all types of AI, including high-risk. They pre-date the AI Act – the concept was actually borrowed from a pre-existing EU law on product safety and regulation. There is no limit to the number of market surveillance bodies that any Member State may have, and a constellation of these authorities already exist across Europe. There must be at least one per Member State, and its nature can be flexible – except in the case where a high-risk AI system is deployed in a law enforcement context, in which case the nature of the authority is prescribed by the Act. Regardless of the number of market surveillance authorities in any given Member State, only one market surveillance authority per State must be designated as the point of contact for the purposes of enforcement of the AI Act (Article 70). (See LAZARO CABRERA and MCGOWAN, Pt. 1 – An Overview, 2024, 8, https://cdt.org/wp-content/uploads/2024/03/2024-03-13-CDT-Europe-EU-AI-Act-series-pt1-Overview-1.pdf).