

Risks and opportunities of digitalisation in the judiciary

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Background paper

Public administrations need to ensure **high-quality services** within short delays to citizens and businesses ([EU eGovernment Action Plan 2016-2020](#)ⁱ). This is equally valid for justice systems.

The use of **information and communications technology (ICT)** in justice systems, including digitalisation, can contribute to an increase in quality ([Warsaw Declaration](#)ⁱⁱ). The availability of electronic means throughout the judicial procedure can improve access to justice and reduce delays and costs. ICT systems in courts can facilitate the implementation of EU legislation, for example, on small claims procedures, and play an increasing role in cross-border cooperation between judicial authorities. Ensuring access to judgments online increases the transparency of justice systems and can contribute to consistency in case-law. For contributing to the overall effectiveness of justice systems, a shift to digital technology in justice systems needs to be well prepared, gradual, and accompanied with adequate resources and training.

The [EU Justice Scoreboard](#)ⁱⁱⁱ presents certain information on how ICT is used in the justice systems. In particular, it contains information on the availability of electronic means for submitting and following a claim online, the use of ICT between courts and lawyers, the training of judges on IT skills, the availability of ICT for case management, and also the use of the European Structural and Investment Funds for digitalisation and ICT.

Artificial intelligence (AI) is one of the most strategic technologies of the 21st century and could also have an increasing impact on justice systems. Digitalisation of justice systems can result in a wealth of data that can feed AI systems. The more data available, the more AI refines models improving their predictive ability.

In its [Communication on Artificial Intelligence for Europe](#)^{iv}, the Commission explained the importance of investments in key application areas such as public administration, including justice. A study commissioned by the European Commission for the Efficiency of Justice (CEPEJ) has shown that the **use of AI algorithms** in European justice systems remains primarily a private-sector commercial initiative aimed at legal departments of companies (in particular insurance companies), at lawyers and at individuals. The main areas where AI is

already applied include advanced case-law search engines, online dispute resolution, assistance in drafting deeds, analysis in specific cases (e.g. compensatory allowance and severance pay awarded by courts in particular cases), categorisation of contracts according to different criteria, detection of divergent or incompatible contractual clauses, and "chatbots" to inform litigants or support them in their legal proceedings.

Thanks to its ability to go through large sets of data and information, AI could be used as a tool for analysis of court decisions with the aim to assist the identification of precedents and related cases and to provide a preliminary input to the judge on a specific legal question. That same feature could possibly also be used by lawyers in the preparation of court cases or for advising clients, which could eventually mean lower legal fees for the client. Furthermore, AI could turn out to be a valuable tool in the hands of consumers and citizens to empower them *vis-à-vis* businesses and help re-balance the asymmetry of information and resources.

However, it should also not be underestimated that the processing of judicial decisions in structured computer databases may pose certain risks and requires appropriate safeguards. Concerns can relate to confidentiality, privacy, protection of personal data, discrimination, and ranking and profiling of judges and lawyers. In designing and applying AI in courts, it is essential to **guarantee the respect for the right to a fair trial** (Article 47 of the EU Charter of Fundamental Rights) and **EU data protection rules** (the [General Data Protection Regulation](#)^v and the [Data Protection Law Enforcement Directive](#)^{vi}).

The **use of AI to predict judicial decisions** may also run the risk of having a certain normative effect, which could conflict with the law. As predictions are based on the data used for training an algorithm, any bias in those data could result in biased predictions. The possible bias of the algorithms themselves may undermine public trust when it comes to their application in the judicial system.

Questions for the discussion:

- **How can digitalisation and Artificial Intelligence contribute to the quality of justice systems?**
- **How to address the risks and challenges involved in the digitalisation of the justice systems, including the use of Artificial Intelligence?**
- **What are the latest trends in the European "legal tech" industry (using technology and software to provide legal services), and how would these developments reshape the European market of legal services**

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- i EU eGovernment Action Plan 2016-2020 – Accelerating the digital transformation of government, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2016) 179 final: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52016DC0179>
- ii The Warsaw Declaration on the Future of Justice in Europe, adopted by the General Assembly of the European Network of Councils for the Judiciary (Warsaw, 1-3 June 2016): https://www.encj.eu/images/stories/pdf/GA/Warsaw/encj_warsaw_declaration_final.pdf
- iii The 2018 EU Justice Scoreboard, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, COM(2018) 364 final: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf
- iv Artificial Intelligence for Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2018) 237 final: http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51625
- v Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1: <https://eur-lex.europa.eu/eli/reg/2016/679/2016-05-04>
- vi 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: <http://data.europa.eu/eli/dir/2016/680/oj>