



2020/2016(INI)

3.9.2020

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Civil Liberties, Justice and Home Affairs

on artificial intelligence in criminal law and its use by the police and judicial
authorities in criminal matters
(2020/2016(INI))

Rapporteur for opinion: Marcel Kolaja

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas, in view of both the positive societal potential and the inherent risks of artificial intelligence (AI), the functioning of the digital single market should be improved by reinforcing legal certainty for providers of AI systems, and also reinforcing consumer trust and security by strengthening safeguards to ensure the rule of law and respect for fundamental rights, in particular the right to privacy and protection of personal data, the right to equality and non-discrimination, the right to good administration, the right to a fair trial, and the right to a high level of consumer protection; whereas a common European approach to AI and the regulation of its use in criminal matters by police and law enforcement is necessary in order to avoid fragmentation in the single market;
- B. whereas the testing and use of AI by police and judicial authorities is widespread, entailing different types of uses, consequences and risks, namely facial recognition systems, DNA profiling, predictive crime mapping, mobile phone data extraction, advanced case-law search engines, online dispute resolution, and machine learning for the administration of justice;
- C. whereas the use of AI can represent a paradigm shift in the administration of criminal justice;
- D. whereas according to the report by the Fundamental Rights Agency there is still only limited information currently available on the possible use or testing of facial recognition technologies in Member States¹;
- E. whereas in those Member States where some information was available on the use of facial recognition technologies, data protection authorities found that the use of these technologies did not comply with data protection law and lacked a legal basis for their deployment;
- F. whereas in the field of the internal market, by reforming public procurement procedures the Union can make a fundamental difference in aligning government actions and behaviour with secondary policy objectives such as data protection and non-discrimination;
- G. whereas discrimination in data-driven algorithmic decision-making can occur during the design, testing, and implementation phase, through the biases that are incorporated in the datasets or the algorithms;
- H. whereas a principle-based technical development and application of AI is necessary to ensure compliance with human and fundamental rights;
- I. whereas on 4 December 2018 the European Commission for the Efficiency of Justice of

¹ European Union Agency for Fundamental Rights: Facial recognition technology: fundamental rights considerations in the context of law enforcement (FRA Focus), 27 November 2019 - https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-facial-recognition-technology-focus-paper-1_en.pdf

the Council of Europe published the Ethical Charter for the Use of Artificial Intelligence in Judicial Systems, which sets out ethical principles for the use of AI in judicial systems;

- J. whereas certain uses of AI technologies are particularly sensitive and prone to abuse, and this has recently led some technology companies to decide to stop offering related software;
1. Considers that AI used by police and judicial authorities has to be generally categorised as high-risk and treated with the utmost care and the highest standards of data protection, given the role of these authorities in defending the public interest and in view of the nature of their responsibilities; considers that there is an urgent need for a common European regulatory framework for AI in the internal market; believes that the EU should take the lead in laying down regulation at Union level, including on public procurement, based on clear rules and fundamental rights and ethics, in the development and use of AI so as to ensure the same high level of consumer protection and uniform industry standards across the EU, with a view to enabling a better functioning of the internal market while encouraging innovation and fostering legal certainty for businesses, especially SMEs; calls on the Commission to scrutinise the application of existing legislation and its enforcement prior to initiating any possible new legislative proposals;
 2. Recognises that the use of AI in the field of justice can help improve the efficiency and quality of proceedings; stresses in this context that in particular it is necessary to respect the rules laid down in the European Convention for Human Rights and in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;
 3. Calls on the Commission to assess the AI technology available on the market and the level of use by police and judicial authorities on a country-by-country basis;
 4. Stresses that AI should help to ease the administrative burden on public authorities and increase the efficiency of their decision-making, and that AI systems should always rely on human oversight, collaboration and coordination; in this regard, highlights that humans should always bear the ultimate responsibility for any decision-making in criminal matters; stresses the importance of accurate data sets, when these are used to assist related e-government processes and administrative decision-making across the Union;
 5. Emphasises the importance of enabling innovation, transparency, traceability and verification; stresses that open-source AI could contribute to this while also strengthening cooperation and fostering a culture of exchanging ideas and experiences relating to the use and creation of algorithms;
 6. Considers that AI used by police and law enforcement in criminal matters should be released as open source software where possible under the public procurement procedure, in compliance with the applicable legislation, including Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market, with software documentation and algorithms being accessible and thus allowing competent authorities to review how the AI system arrived at a certain conclusion; emphasises that a fundamental rights audit

should be part of a prior conformity assessment; believes that, while ensuring respect for EU law and values and the applicable data protection rules, and without jeopardising investigations or criminal prosecutions, explainable and unbiased algorithms that meet the obligation of sufficient transparency, as well as the use of open data for training in compliance with the applicable legislation, including Directive (EU) 2019/1024 on open data and the re-use of public sector information without prejudice to Regulation (EU) 2016/679, are essential to ensure that businesses and citizens including consumers can trust in, and benefit from, better, accessible, non-discriminatory and reliable public services at a fair cost;

7. Emphasises that AI-based data collection and the monitoring of individuals should be limited to criminal suspects and court-approved surveillance in accordance with applicable national laws, taking into account respect for private life and the presumption of innocence, including that of other users and consumers who may be inadvertently affected by such systems and practices; emphasises that where decision-making is assisted by statistical calculations, suitable professional training and qualifications should ensure that decision-makers are trained about the potential for bias, as data sets may be based on discriminatory and prejudiced data; highlights in this regard the importance of the quality of algorithms and original data, and recalls that the use of AI must be based on the principle of non-discrimination in data entry and analyses; calls for procurement procedures for such applications to contain safeguards against possible biases; calls for exchanges of information and best practices regarding the application of AI techniques and tools by judicial and police authorities in Member States, in order to avoid a fragmented approach in the single market and ensure the protection of consumers and citizens across the Union;
8. Insists that Member States, in accordance with applicable criminal laws, should ensure that citizens and consumers are informed when they are subject to the use of AI and that simple, effective and easily accessible complaint and redress procedures, including judicial redress, should be made available to citizens in order to allow them to effectively defend their rights;
9. Recalls the high risk of certain types of AI, including facial recognition technologies in public spaces, automated behaviour detection and profiling to divide people into risk categories at borders, biometric detection and recognition for mass surveillance, mass-scale citizen scoring, and predictive policing, and calls on the Commission to regulate the procurement and use thereof in order to eliminate the risk of abuse; in this regard, welcomes the Commission's ongoing work to assess the use of biometric technologies and consider regulatory options, including a risk-based approach and a ban on them in specific circumstances, as well as introducing necessary safeguards where their use is justified;
10. Underlines that the sovereign discretion of judges and case-by-case decision-making have to be upheld in order to avoid the standardisation of decisions based on purely statistical calculations.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	3.9.2020
Result of final vote	+ : 40 - : 4 0 : 0
Members present for the final vote	Alex Agius Saliba, Andrus Ansip, Alessandra Basso, Brando Benifei, Adam Bielan, Hynek Blaško, Biljana Borzan, Vlad-Marius Botoș, Markus Buchheit, Dita Charanzová, Deirdre Clune, David Cormand, Petra De Sutter, Carlo Fidanza, Evelyne Gebhardt, Sandro Gozi, Maria Grapini, Svenja Hahn, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Kateřina Konečná, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Morten Løkkegaard, Adriana Maldonado López, Antonius Manders, Beata Mazurek, Leszek Miller, Dan-Ștefan Motreanu, Kris Peeters, Anne-Sophie Pelletier, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Kim Van Sparrentak, Marion Walsmann, Marco Zullo
Substitutes present for the final vote	Maria da Graça Carvalho, Anna Cavazzini, Krzysztof Hetman

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

40	+
EPP	Maria da Graça Carvalho, Deirdre Clune, Krzysztof Hetman, Arba Kokalari, Andrey Kovatchev, Antonius Manders, Dan-Ștefan Motreanu, Kris Peeters, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Marion Walsmann
S&D	Alex Agius Saliba, Brando Benifei, Biljana Borzan, Evelyne Gebhardt, Maria Grapini, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Leszek Miller, Christel Schaldemose
RENEW	Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Sandro Gozi, Svenja Hahn, Morten Løkkegaard
ID	Hynek Blaško
GREENS/EFA	Anna Cavazzini, David Cormand, Petra De Sutter, Marcel Kolaja, Kim Van Sparrentak
ECR	Adam Bielan, Carlo Fidanza, Eugen Jurzyca, Beata Mazurek
EUL/NGL	Kateřina Konečná, Anne-Sophie Pelletier
NI	Marco Zullo

4	-
ID	Alessandra Basso, Markus Buchheit, Virginie Joron, Jean-Lin Lacapelle

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention