



**2020/2016(INI)**

15.9.2020

# **OPINION**

of the Committee on Legal Affairs

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: Angel Dzhambazki

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## SUGGESTIONS

The Committee on Legal Affairs 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 the right to fair trial is a fundamental and legally binding right enshrined in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights for the purposes of law enforcement; whereas it applies throughout the entirety of criminal proceedings, including in law enforcement, and its safeguarding rules out, at all stages of the procedure, the taking of measures, including technical measures, whose direct or indirect consequence is to deprive the rights of the defence of their substance; whereas the guarantees attaching to this principle, in particular those of an ‘independent court’, ‘equality before the law’ and the presumption of innocence, are more stringent in the area of criminal law; whereas these rights must be upheld in all circumstances, in particular in the context of the use of artificial intelligence (AI), especially given that AI-based technologies could have an impact on various human rights;
- B. whereas the protection of personal data, in accordance with the General Data Protection Regulation (GDPR)<sup>1</sup> and other relevant legislation where applicable, applies at all times;
- C. whereas AI and related technologies, including their self-learning abilities, always involve a certain level of human intervention;
- D. whereas AI has the potential to become a permanent part of criminal law systems;
- E. whereas AI and related technologies are a priority for the Union, given the fast-paced advances in the technology sector and the importance of being vigilant about their current and future impact on the unique European intellectual property rights system; whereas a variety of sectors are already implementing AI and related technologies, such as the robotics, transport and healthcare sectors to name but a few;
- F. whereas technologies such as AI and related technologies could be used in the area of criminal law with the aim of reducing crime rates, facilitating certain procedures through their use in statistical data analytics in crime analysis and prevention, and detecting and investigating criminal cases; whereas the Union should further develop its capacities with regard to software, data storage and AI technologies in order to improve insufficiencies when it comes to data protection and privacy;
- G. whereas these technologies can be used to create anonymised statistical databases that help authorities, academics and legislators to analyse figures and efficiently design policies to prevent criminality and help offenders to successfully reintegrate into society;
- H. whereas the legal framework of AI and its application to criminal law should include

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<sup>1</sup> 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 (OJ L 119, 4.5.2016, p. 1).

legislative actions where required, starting with mandatory measures to prevent practices that would undoubtedly undermine fundamental rights and freedoms;

- I. whereas owing to the intrinsically opaque nature of AI systems, the new tools used in criminal justice contexts might conflict with some fundamental freedoms;
  - J. whereas possible risks linked to the application of AI systems in criminal justice matters need to be prevented and mitigated in order to safeguard the fundamental rights of suspects and accused persons in criminal proceedings;
1. Emphasises the crucial importance of duly assessing the risks of using AI systems, such as discrimination and breaches of privacy, and of considering all the ethical and operational implications of the use of AI and related technologies in our society, in particular by state authorities, the police and judicial authorities in criminal justice systems, as well as liability and evidentiary issues in the case of potential errors associated with the operation of AI systems; considers that a clear regulatory framework is necessary for setting limits and providing the necessary safeguards; considers that ethical principles, such as those laid down in the Council of Europe's European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment, should be taken into account and adhered to by public and private entities responsible for the initial design and development of AI tools and services, so that all social stakeholders can have comprehensive information on the corporate structures of companies that produce AI programmes; stresses the importance of the human factor, which must always be the final decision-maker in the use of AI technology-based software and within the criminal system, whether in police enforcement or criminal justice; reiterates that biometric recognition software should only be deployed in situations in which it is clearly warranted;
  2. Stresses the need to establish and maintain a balance between the use of AI systems in criminal proceedings and respect for all fundamental rights and procedural guarantees provided for under European and international law;
  3. Emphasises the importance of AI being used with due respect for the principles of the rule of law and the independence of the judiciary in the decision-making process;
  4. Calls on the Commission to further clarify the rules on the protection and sharing of the data collected through AI and related technologies by authorities authorised to collect and/or process such data, including non-personal and anonymised data that directly or indirectly identify individuals, with full respect for the GDPR and the ePrivacy Directive<sup>2</sup>; underlines, furthermore, that the right to a fair trial should encompass the right of citizens and litigants to access these data, especially when collected from their personal devices or equipment, in accordance with the GDPR, but also for the purposes of their right of defence as soon as their legal liability is engaged;
  5. Underlines the importance of increasing the transparency of AI systems that are used in criminal justice matters in order to enable judicial oversight and of ensuring that developers of AI and related technologies provide for a sufficient level of transparency of

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<sup>2</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

algorithms and algorithmic decisions for the benefit of competent authorities and citizens; emphasises the general right of parties to be given access to processes relating to data collection, prognostic assessments used for crime prevention, the cataloguing and evaluation of criminal evidence and the determining of whether a suspect might be a danger to society if not restricted by existing EU law, such as Directive (EU) 2016/680<sup>3</sup>; underlines, in addition, the importance of being able to access AI-produced or AI-assisted outputs and, ultimately, of defining responsibility for notification procedures and the role of AI and related technologies in criminal matters, in particular with regard to the analysis of large amounts of evidence in criminal investigations and the identification of suspects or victims of crime; recalls the importance of questions related to governance, fundamental rights and procedural guarantees, non-discrimination, accountability, transparency, impartiality, fairness and the intellectual integrity of AI and related technologies, while stressing the need to ensure human oversight at all times; insists that judicial authorities must be obligated to justify their decisions, including when using elements of proof provided by AI-assisted technologies, which require a high level of judicial scrutiny and strict admissibility criteria, in keeping with its resolution of 16 February 2017 on robotics<sup>4</sup> which stresses that it should always be possible to supply the rationale behind any decision taken with the aid of AI that can have an impact on one or more persons' lives; recalls the distinction between the use of AI and related technologies in crime prevention and criminal justice; stresses that AI technologies must fulfil a subordinate role at all times;

6. Recalls that the most severe misuses of AI and related technologies, such as mass surveillance, profiling and predictive policing programmes which could assess where crime is likely to occur, where suspects are likely to be located, a person's chances of victimisation, vulnerability, being reported missing or being the victim or the perpetrator of domestic violence or a sexual offence, and breaches of due process rights, can come from public authorities acting in law enforcement;
7. Underlines the importance of using auto-generated data in evidence collection and analysis; recalls that, in both crime prevention and criminal justice, errors in or the possible misuse of data-input and -output analysis, as well as interpretation thereof, may be rooted in the human factor involved and calls, therefore, for a cautious approach when analysing the effectiveness and appropriateness of using AI technologies in all decision-making processes;
8. Calls on all competent public authorities, particularly law enforcement authorities such as the police and the judiciary, to inform the public about and ensure sufficient transparency as to their use of AI and related technologies when implementing their powers, especially in criminal law matters;
9. Considers it vital that the application of AI systems in the context of criminal proceedings should ensure respect for the fundamental principles of criminal proceedings, including

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<sup>3</sup> 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 (OJ L 119, 4.5.2016, p. 89).

<sup>4</sup> European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (OJ C 252, 18.7.2018, p. 239).

the right to a fair trial, the principle of the presumption of innocence and the right to an effective remedy, as well as ensuring monitoring and independent control of automated decision-making systems;

10. Underlines the importance of the human-in-command principle and verification of AI-produced or AI-assisted outputs; recalls the importance of questions related to governance, transparency, explainability and accountability to ensure respect for fundamental rights and avoid potential faults in the AI;
11. Stresses its cautious approach to the use of biometric recognition software; highlights the ambiguity resulting from an inherent insufficiency when it comes to data protection, as well as infringements of data privacy; notes with concern the amalgamation of personal data on citizens in the European Union by foreign countries, through private sector developers and providers;
12. Recalls that, in accordance with the current EU data protection rules and the Charter of Fundamental Rights of the European Union, AI can only be used for remote biometric recognition purposes, where such use is duly justified, proportionate and subject to adequate safeguards; welcomes the recommendations of the Commission's High-Level Expert Group on AI for a proportionate, considerate and risk-based use of biometric recognition technology in compliance with the legislation on the protection of personal data; suggests that the application of such technology must be clearly warranted under existing laws and suggests that the Commission assess how to effectively incorporate these recommendations, with particular regard to the right to privacy and the protection of personal data;
13. Strongly believes that decisions issued by AI or related technologies, especially in the areas of justice and law enforcement, that have a direct and significant impact on the rights and obligations of natural or legal persons should be subject to strict human verification and due process;
14. Considers it necessary to analyse whether it is expedient for law enforcement decisions to be partly delegable to AI and if so, under what conditions and in what regard such a use of AI could be allowed; considers that AI and related technologies that can replace public authority decisions should be treated with the utmost precaution; stresses the need to develop strong ethical principles and specific codes of conduct for the design and use of AI to help law enforcers and judicial authorities in the event that law enforcement decisions are delegated to AI; refers to the ongoing work in the Committee on Legal Affairs.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	10.9.2020
<b>Result of final vote</b>	+: 22 -: 3 0: 0
<b>Members present for the final vote</b>	Manon Aubry, Gunnar Beck, Geoffroy Didier, Angel Dzhambazki, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Liesje Schreinemacher, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Heidi Hautala, Emil Radev

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

22	+
EPP	Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Emil Radev, Axel Voss, Marion Walsmann, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
RENEW	Karen Melchior, Liesje Schreinemacher, Stéphane Séjourné, Adrián Vázquez Lázara
ID	Gunnar Beck, Jean-Paul Garraud, Gilles Lebreton
ECR	Angel Dzhambazki, Raffaele Stancanelli
NI	Mislav Kolakušić

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VERTS/ALE	Heidi Hautala, Marie Toussaint
GUE/NGL	Manon Aubry

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Key to symbols:

+ : in favour

- : against

0 : abstention