

Challenges to Human Rights in the age of Artificial Intelligence

Systems: the EU AI Act

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Outline

- Inside the European digital legal order: EU AI Act
- AI impact on fundamental human rights
- ‘New’ fundamental rights



Inside the European digital legal order: EU AI Act

The advancement of the European digital legal order

- The ‘European digital legal order’ has now gained more importance than the overarching concept of European (public) legal order.
- The European legal order traditionally entails a set of **fundamental human rights, Rule of Law principles and Democratic values** as enshrined in:
 - the UN Charter (1945);
 - the Council of Europe Statute (1949);
 - the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
 - the EU Treaties (Articles 2, 6 and 7 TEU);
 - the Charter of Fundamental Rights of the European Union (EU Charter);
 - the case law of the ECtHR and CJEU.

From maintaining the Rule of Law derive the sustainability of Democratic values and freedoms under the law enshrined in fundamental human rights.

This remains unchanged in the digital world. Importance of Digital Ethics.

‘Inside’ the European digital legal order

- No uniform definition of AI/AI systems – but several attempts to provide ‘all-encompassing but change-resistant’ definitions as AIS’s serious impact on fundamental human rights:
 - European Declaration on Digital Rights and Principles for the Digital Decade (anthropocentric interaction vis-à-vis AI systems, digitalisation and algorithmisation);
 - Risk-based EU instruments (GDPR, Digital Markets Act, Digital Services Act and EU AI Act).
- Need to re-examine regulatory standards and potential new/renewed/modernised rights that should enhance and/or supplement the current catalogue of fundamental human rights, as contained in the EU Charter and the ECHR.

The EU AI Act

<https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law>

- EU Regulation laying down harmonised rules on AI and amending certain Union legislative Acts, agreed with EU MS in December 2023 and adopted on 13th March 2024 by the EP. Needs more work still and adoption by the Council.
- Based on the functioning of the internal market.
- Lays down a “uniform legal framework for the development, the placing on the market, the putting into service and the use of AI systems in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy AI while ensuring a high level of protection of health, safety, fundamental rights as enshrined in the Charter, including democracy, the rule of law and environmental protection, against the harmful effects of AI systems in the Union, and to support innovation”.
- Ensures the free movement, cross-border, of AI-based goods and services, thus preventing MS from imposing restrictions on the development, marketing and use of AI systems, unless explicitly authorised by the Regulation.

EU AI Act: Main features

- **Banning** certain AI applications that threaten citizens' rights (facial recognition databases, emotion recognition in certain places, manipulating human behaviour);
- **Limiting** the use of biometric identification systems by law enforcement;
- **Obligations for high-risk systems:**
 - 'significant potential harm' to health, safety, fundamental rights, environment, democracy and RoL in critical infrastructure, essential private and public services (including banking), law enforcement, democratic processes, etc'.
 - Such systems must 'assess and reduce risks, maintain use logs, be transparent and accurate and ensure human oversight'.
 - Right of complaints and to receive explanations about decisions based on high-risk AI systems that affect their rights.
- Transparency requirements for General-purpose AI (GPAI) systems and their models: compliance with copyright law and open data training materials. If systemic risks, additional requirements: 'performing model evaluations, assessing and mitigating systemic rights and reporting on incidents'. Deepfakes (artificial or manipulated images/audio/video) must be clearly labelled.
- To support innovation and SMEs, regulatory sandboxes and 'real-world testing' needed at national level before placement on the market.

EU AI Act - Next steps

- Entry into force: 20 days after its publication in the EU official Journal;
- Fully applicable: 24 months after its entry into force
- EXCEPT for:
 - bans on prohibited practices: will apply 6 months after the entry into force date;
 - codes of practice: 9 months after entry into force
 - General-purpose AI rules including governance: 12 months after entry into force; and
 - Obligations for high-risk systems: 36 months.



AI impact on fundamental human rights

AI cross-cutting impact on fundamental human rights in Europe

- How AI affects fundamental human rights may affect the ideal of human rights in general through the erosion of value bases and recourse to technological determinism/a more utilitarian approach to regulation and practice.
- AI systems can attack individual rights in overt and covert manners, cross-cutting impact on rights via deployment of technologies. Such attacks may affect primarily, but not only, rights enshrined in the EU Charter and the ECHR:
 - to respect for private and family life (Art 7 EU Charter; Art 8 ECHR)
 - to protection of personal data (Art 8 EU Charter)
 - to freedom of expression and information (Art 11 EU Charter; Art 10 ECHR)
 - to freedom of thought, to conscience and religion (EU Charter, Article 10; ECHR, Article 9)
 - to rights of liberty and security (EU Charter, Article 6; ECHR, Article 5)
 - to the right to a fair trial (EU Charter, Article 47; ECHR, Article 6)
 - to the right to non-discrimination (EU Charter, Article 21; ECHR, Article 14)
 - to equality of men and women (EU Charter, Article 23)
 - to rights of the child (EU Charter, Article 24)
 - to the principle of no punishment without law (ECHR, Article 7)

Examples – Solutions?

- **Content moderation algorithms** may affect not only freedom of expression, but also freedom of thought, conscience and religion, the right to non-discrimination, equality of men and women, and the rights of the child.
- Algorithms in their design and/or use may be invasive, selective, promote polarisation of opinions and dilute discussions, as well as generally contribute to the formation of a certain picture of the world among users of digital content.
- When describing the impact of AIS on fundamental human rights, it is not always possible to single out specific rights that are affected by these technologies. **Thus, the question arises as to how to best prepare and protect them.**
- **AI technologies used in public spaces by public authorities can go far beyond what is considered acceptable in a democratic society upholding Rule of Law principles and European values as well as fundamental human rights**
- **The ability of AIS to track users both in the public and the private sphere of life** is outstanding.
- That is so particularly because it is not necessary to use technological artefacts directly to be the object of certain tracking actions.
- Bits of information put into the digital space by others can make it easier for non-users to track them because AI can search, process, combine and analyse those bits with astonishing accuracy, as well as keep track of what people have been interested in and weave it into their online searches, intrusively or more subtly.
- Algorithms can establish a match on a photo with a person who did not take or post this photo on the network and may even not have known that it was taken, then determine the location of this person at a certain time.



‘New’ fundamental rights

Scope of 'new' rights

- A vision of the future with AI systems could open the possibility to create new rights and/or (significantly) change/upgrade the essence and scope of already existing rights.
- Introducing new rights may also mean changing their status from rights that apply to certain categories of persons (such as user rights or data subject rights) to fundamental human rights that are of utmost importance to all human beings.

Comparative table

‘New’ rights (not absolute)

1. ‘right not to be subjected to automatic decision-making and automatic processing’ in the broadest sense. The new dimension must include the requirement to have human-centered decision-making process controlling the AI decision and being ultimately responsible for it.
2. ‘right to influence one’s digital footprint’. Individuals should have the right to participate in their digital lives in such a way that information is reviewed in accordance with time passed and its significance to the individual and not to society.
3. ‘right not to be measured, analysed or coached’. Since states/companies are increasingly resorting to mass surveillance and collecting the smallest detailed information about people. Obligations not to resort to mass surveillance, at least in some places that should remain private, and not to resort to 24/7 surveillance.

Existing/extended rights

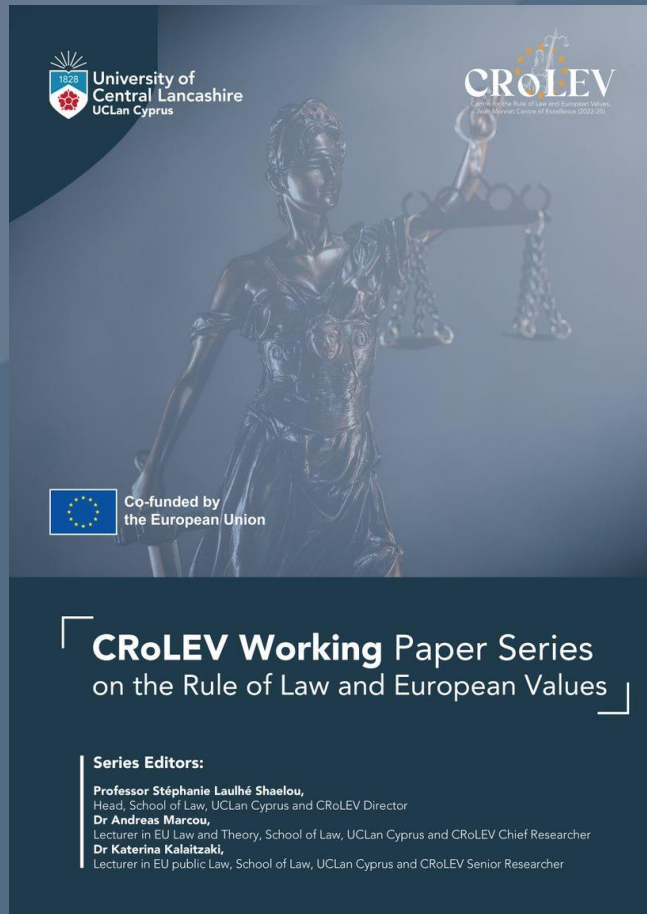
1. Art 22 GDPR (Automated individual decision-making, including profiling) – limited to ‘seriously impactful events’.
2. Art 17 GDPR (right to erasure)
3. Can new rights be introduced in the EU Charter?
 - ‘right not to be manipulated’
 - ‘right to be neutrally informed online’
 - ‘right to meaningful human contact’

Call on achieving democratic societies based on the Rule of Law and fundamental human rights in which everyone benefits equally from technologies.

CROLEV JMCE WP Series

Inaugural Working Paper:
S. Laulhé Shaelou and Y. Razmetaeva,
'Challenges to Fundamental Human Rights in
the age of Artificial Intelligence Systems:
Shaping the digital legal order while
upholding Rule of Law principles and
European values' (CROLEV JMCEWP 1/2023)

<https://crolev.eu/working-paper-series/>



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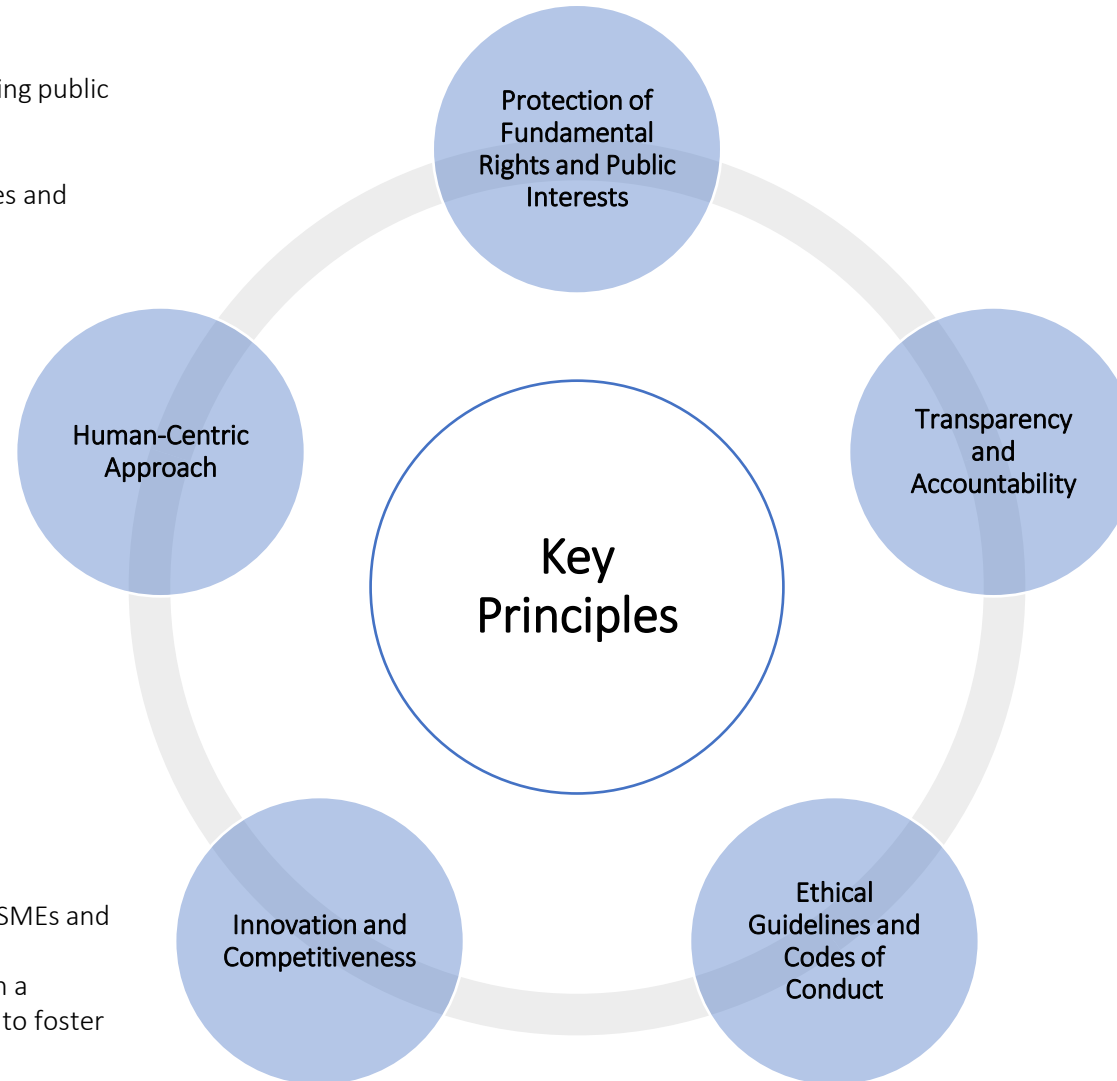
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— EU AI Act – Supporting digital ethics

- Aims to develop AI while safeguarding public interests like health, safety, and fundamental rights.
- Ensures alignment with Union values and legal standards.

- Prioritizes AI development in line with Union values for the well-being of society.
- Ensures AI serves as a tool for enhancing human welfare.

- Supports innovation, especially for SMEs and startups.
- Balances ethical considerations with a supportive regulatory environment to foster creativity.



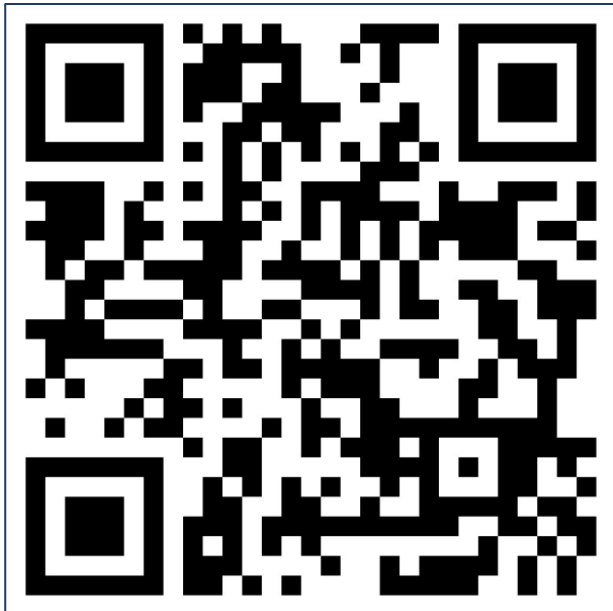
- Establishes transparency obligations for AI providers and deployers.
- Requires disclosure of artificially generated outputs to build trust and ensure accountability.

- Encourages the adoption of codes of conduct for AI systems.
- Focuses on ethical AI practices, AI literacy, and preventing negative impacts on vulnerable groups.

— Thank you!



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BUSINESS ISSUES UNDER EU AI ACT

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CISI PRESENTATION – 11 APRIL 2024

KEY ISSUES UNDER EU AI ACT FOR ENTITIES BUILDING OR USING AI

- Deciding which systems are “high risk” and therefore subject to substantial regulatory obligations
- Obligations on “developers” vs “deployers” of AI systems
- Treatment of general purpose AI (GPAI) systems, including “systemic risk” systems and open source systems
- Many details of implementation remain to be defined by regulators and others

EU AI ACT IN GLOBAL CONTEXT

- EU AI Act provides a more extensive regulatory framework than other major jurisdictions:
 - US – limited regulation to date on specific issues, under Executive Order on AI
 - UK – almost no regulation to date, under explicit “pro-innovation” approach
 - China – targeted regulation of specific activities and a draft Artificial Intelligence Law; more extensive and specific than US or UK, but less so than EU
- Can the EU become a leader for AI innovation with the regulatory environment created by the AI Act?
- Has the EU regulated rapidly evolving AI technology too extensively at an early stage?