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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
COMMISSION EUROPÉENNE POUR L'EFFICACITÉ DE LA JUSTICE
(CEPEJ)

**PRELIMINARY FEASIBILITY STUDY ON THE POSSIBLE ESTABLISHMENT OF A MECHANISM TO
CERTIFY TOOLS AND SERVICES OF ARTIFICIAL INTELLIGENCE**

TERMS OF REFERENCE

Document adopted by the CEPEJ at its 33rd plenary meeting, on 5-6 December 2019

1. Background

In December 2018, the European Commission for the Efficiency of Justice (CEPEJ) adopted the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (the IA Charter). The CEPEJ Charter represents a first step in the CEPEJ's efforts to promote the responsible use of artificial intelligence (AI) in European judicial systems, in accordance with the Council of Europe's values.

To this end, it has articulated the following five fundamental principles which, according to the CEPEJ, should guide the development, adoption and use of AI in judicial systems:

1. Principle of respect for fundamental rights: ensure that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;
2. Principle of non-discrimination: specifically prevent the development or intensification of any discrimination between individuals or groups of individuals;
3. Principle of quality and security: with regard to the processing of judicial decisions and data, use certified sources and intangible data with models designed in a multi-disciplinary manner, in a secure technological environment;
4. Principle of transparency, impartiality and fairness: to make data processing methodologies accessible and understandable, authorise external audits;
5. Principle of user control: preclude a prescriptive approach and ensure that users are informed actors and in control of their choices.

Aware of the need to support the implementation of the Charter, the CEPEJ Working Group on the Quality of Justice (CEPEJ-GT-QUAL) adopted on 14-15 March 2019 a document entitled "Possible actions to ensure a wider dissemination and implementation of the European Ethical Charter on the use of AI in judicial systems and their environment". (CEPEJ-GT-QUAL 2019(3)). Among such actions, the Group agreed that priority should be given to fostering the implementation of the Charter, which would entail carrying out the following sub-actions:

a) *To expound on the Charter's principles and to provide further methodological and operational guidance (in particular for public authorities – legislators, public policy makers etc) on the way such principles should be applied. For example, if we take principle n°1, reference is made to the need to develop "human rights by design" solutions, but the Charter does not specify what "human rights by design" implies. Hence, it is felt that a complementary document (like a Manual on the Charter), which would include additional background information and operational steps to better implement the principles, would be particularly useful. This could be accompanied by a more precise Checklist of questions for developers of AI solutions, aimed at making (self-)evaluation easier.*

b) *In parallel, it is essential to reflect on the possible establishment of a mechanism to certify AI solutions and in particular to which extent they are compliant with the Charter's principles. The feasibility of a certification, its pros and cons should be analysed in terms of opportunities and risks. The setting up of an independent, specialised and multi-disciplinary Group under the aegis of the CEPEJ-GT-QUAL, in charge of reviewing applications and granting certification could be explored. Applicable procedures, the resources at its disposal, objectives and features of the certification would obviously have to be addressed as part of this endeavour.*

In its plenary meeting of 13-14 June 2019, the CEPEJ instructed the CEPEJ-GT-QUAL to "continue its analysis as to the feasibility of organising a certification mechanism for Artificial Intelligence products used in judicial systems with regard to the Charter, which will be based inter alia on the operationalisation of the principles of the Charter".

Since June 2019, with regard to the operationalisation of the principles of the Charter (point a above) a team of experts has been working on operational criteria concerning the applications of legal research and predictive justice, which are amongst the most widespread at the European level according to the study on the use of AI in judicial systems appended to the Charter. The reports have identified for these target applications (a) the specific questions that should be answered in order to assess whether or not the application is in compliance with the CEPEJ principles and (b) the specific empirical evidence that would make it possible to arrive at answers to the questions. These types of reports, once completed, would provide policymakers and private actors such as legaltechs with building blocks which in turn could lead to practically implementable certifications.

2. Description of the feasibility study

In parallel with the on-going work to operationalise the Charter's principles, it is proposed that the CEPEJ-GT-QUAL starts to explore the work that would have to be undertaken as regards b) the possible establishment of a mechanism to certify AI solutions by the CEPEJ (point (b) above).

The function of such a mechanism would be to assess the extent to which AI solutions comply with the CEPEJ Charter and with the operational standards described above. To this end, it is agreed to carry out a feasibility study concerning the possible establishment of such a mechanism. It is suggested that a consultant be engaged to carry out this study.

The consultant shall:

- advise on the feasibility of a CEPEJ certification mechanism, with regard in particular to the following issues:
 - a. *the objectives and features of a certification by the CEPEJ, based on the Charter and its operational principles; this should include a detailed description as to how the certification mechanism is meant to function, as well as its governance structure (including the appointment of representatives to this mechanism)*
 - b. *the possible added value of a certification by the CEPEJ, including in terms of opportunities and risks (including as regards CEPEJ possible liability) ;*
 - c. *the resources and the competences which would be needed for the mechanism to be up and running;*
 - d. *the applicable procedures which would need to be established in connection with the establishment of such mechanism.*
 - e. *the timeframe that could be envisaged for setting up such a mechanism.*
- advise on the likelihood of achieving the desired outcome of the activity, namely the CEPEJ becoming a certifying authority, based on the Charter and its operational principles;
- advise on possible alternatives or initiatives which could be undertaken by the CEPEJ with a view to ensuring the integration of the Charter and its operational principles in AI solutions.
- The feasibility study shall be structured as follows:
 - introduction;
 - sources of information on which the study is based, including reference to other certification mechanisms and lessons learnt from them;
 - a general and comprehensive assessment of the points listed above (a-e), as well as any other relevant issues to be considered in connection with the setting up of a certification mechanism by the CEPEJ;
 - conclusions and, if appropriate, proposals for future actions which should be undertaken by the CEPEJ.

The work to be undertaken, in English or French, by the Consultant, shall be presented to CEPEJ-GT-QUAL in 2020. During its elaboration, the consultant will be in regular contact with the Secretariat of the CEPEJ, which will thus be able to follow the progress of the work. The Consultant will then update the report according to the indications provided by the Secretariat, in consultation with the CEPEJ-GT-QUAL. A preliminary draft feasibility study must be submitted to the secretariat by the consultant one month before the meeting concerned, in order to allow its translation into the other official language.

If need be, the Consultant may be asked to attend part of the CEPEJ-GT-QUAL meetings, CEPEJ Bureau meeting and/or the CEPEJ plenary meeting in order to present the study, its preparation and findings.

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3. Consultant profile

The consultant in charge of carrying out the feasibility study should have the following profile:

- specialised on legal, economy or social science:
 - Academic, researcher, legal professional,
 - University degree in law or in political sciences, social sciences or other related fields
- at least 10 years of professional experience
- proven experience in the field of standardisation and certification
- good knowledge of the work and the functioning of the CEPEJ;
- excellent research, analytical and drafting skills; good communication skills
- very good knowledge of French or English.