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### *Liberal Professions and the Digital*

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#### **Preamble**

The recent COVID 19 pandemic, which hit Europe particularly hard, has highlighted the importance of new strategic business areas, including the digital industry. Indeed, during lock down, we have seen intermediation platforms and digital applications structure social life and enter closely into individuals' lives without being, however, able to measure exactly all their implications (risk of a substitution effect on social relationships, etc.). In fact, they will probably have a decisive impact on tomorrow's social and political organization. Covid-19 shows how fundamental digital infrastructure is for Europe's resilience to crises. A key aspect here is functional e-government access, digitally transformed official procedures as elements for creating powerful European IT infrastructures and IT technologies.

Moreover, the progress observed in China and Asian countries in their treatment of the pandemic, supported by a data policy that pays little attention to privacy (*tracking*), may require a structural reorganization of relationships and obligations between States, digital players (including platforms) and citizens.

It is impossible to ignore this context when developing and defining a European Digital Agenda or strategy.

The protection of privacy, defended by the Council of Europe and enshrined in the Charter of Fundamental Rights, must be the subject of a renewed approach.

The liberal profession business area will inevitably be affected by the reshaping of the productive apparatus subsequent to structural and industrial choices that will be made in the wake of today's health crisis (relocation of certain industries, strategic choices of industries, challenging *just-in-time* management, refocusing of the welfare state, etc.). This is precisely why the liberal professions must play a role upstream and have their voices heard; they are, through their expertise and codes of conduct, the guarantors of a societal model predicated on the protection of basic rights and respect of individual freedoms.

## Liberal Professions and Online Platforms

Online platforms have revolutionized the liberal professional business markets. The latter have seen business conducted by new economic players, who have not gone through the same training channels and who have successfully developed new ways of providing professional services. They have not only changed relations with patients/clients, but also the production chains (prioritization of resources and new combinations of resources) in liberal professional businesses and inter-liberal professional relationships.

Those liberal professions, whose environment remains more or less regulated, have had to deal with a business ecosystem whose rules are based on open innovation and whose integrated approach to the dynamics of innovation did not incorporate the codes of conduct, ethics and the unique relationship that ordinarily bolsters these professional services.

In this new context, those professions whose business was the subject of few regulations have had to reorganize themselves in order to survive by developing processes aimed at rapid renewal of skills to meet the changing environment. The liberal professional also had to acquire the ability to integrate, build and reconfigure internal and external skill sets, implement training to respond to changes and implement an open innovation process.

Professions whose activity was regulated also had to adapt. Networking and cross-profession cooperation promoted in the interests of their clients, moreover often at their request, were changes strongly encouraged by the European Commission. The sector has renewed itself with, on the one hand, the departure of businesses that have not been able to change their production methods and, on the other hand, the arrival on the market of young liberal professionals with new ways of working (group practices, concentration of medical biology laboratories, a trend towards outsourcing in law firms, etc.).

However, the meaning and substance of liberal professional businesses have not fundamentally changed, far from it, and continue to be the preservation of the physical and moral integrity of human beings and their property. In the provision of online services, the rules of professional ethics, which serve this best interest, must be equally and rigorously respected.

While the use of intermediation services of online platforms and digitally enabled applications can increase their productivity and diversify their market, the professions want to spotlight abuses that may also occur. Rampant destabilization of their mode of production can *ultimately* be detrimental to their clients/patients and by way of ricochet to society as a whole.

Given the specific characteristics of the digital players' environment, it is at the European level where it undoubtedly appears to be the most relevant for a regulatory framework focused on the operation of these platforms. In addition to the existing legislative arsenal<sup>1</sup>, the liberal professions are calling for draft European legislation on the regulation of platforms in order to implement, on the one hand,

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<sup>1</sup> E-commerce Directive of 2000, General Data Protection Regulation (2018), European Platforms to Business Regulation (2019).

an environment that respects competition law, favours fairness for all market players and is capable of guaranteeing the quality of services and compliance with the rules of professional ethics, and on the other hand, an environment that preserves "privacy", consistent with the obligation of professional secrecy that is specific to them.

Generally speaking, the platforms must integrate the objectives of sustainable development defined by the United Nations for the year 2030 and must stop feeding a system of precarious employment, including liberal professionals.

The liberal professions are convinced of the effectiveness/efficiency of increasing the players' empowerment and support as such in a rapidly changing context, of the drafting of a European digital charter appealing to platform loyalty.

In order to build an environment in which professional businesses and platforms can interact with each other in the interest of consumers/customers/patients and society in general, a European Charter would specifically aim to reinforce the following:

- 1. Data protection (personal and sensitive data as well as industrial data) and professional confidentiality** (is there a need to revise professional confidentiality/secrecy?). On this matter, the liberal professions, guarantors of professional secrecy, commend the progress made by GDPR (2018), which notably sets out the principles of minimizing the collection and processing of personal data, controlling the access of platforms to collected data and the processing which result from them. This is both from individual interest (patient/client) and general interest, which is the cornerstone of trust in the liberal professions. Moreover, the transition from the control by digital players of personal data to the control of industrial data is just as important for liberal professionals, who will be impacted in their modes of production and performance, by the choice of the data processing model that will be made.
- 2. The obligation of platform transparency for their user customers (individuals and professionals).** The purpose is to enable professionals to understand the conditions of use for online platforms and to inform them on how to interact with them. The P2B Regulation (2019) already implements this obligation in practice: precise description of the mechanisms for deciding, suspending or revising the services provided by the platform, description of differentiated processing, description of access or lack of access to personal or sensitive data, etc., implementation of a dispute management system, development of codes of good conduct, etc. The liberal professions would like the conditions for achieving platform transparency to be institutionally negotiated in a body (to be created) in which all players are represented: stakeholders, end customers and consumers, including patients.
- 3. Professional independence in the delivery of professional liberal services.** Mandatory for preserving the relationship of trust between the professional and his/her client, service performance independence needs to be checked over the professional's entire business process so that the latter maintains full control of his/her service process (to avoid that he/she becomes only a sub-contractor of the platform), his/her compensation, and the portability of data provided the online platform. Caution should be exercised

whenever there is potential for intermediation platforms to develop or maintain monopolies, particularly in the healthcare field, as is currently observed during the corona-virus crisis<sup>2</sup>.

4. **Fair competition between professionals.** It needs to be checked specifically for platform listings, its explanations of the liberal professional business and services provided, advertising (which must abide by ethical guidelines, which presupposes that qualifications, titles, professional codes of practice and conditions of practice are subject to responsible review by the platform and that there is accessible to the public clear information guaranteeing the client/patient's free and informed choice), and platform responsiveness to problems reported by the professional.
5. **A secure digital space.** This last point is not the least important, as it is clear that a high level of security determines the reliability of the systems and *ultimately* confidence among its users. In Europe, the Cybersecurity Regulation established on (9 April 2019) developed in addition to the EU Cybersecurity Agency, a European-wide certification framework for ICT products, services and processes. This will enable consumers to make informed choices and industry to market smart products more easily. On this matter specifically, there is a **need to strengthen stakeholder involvement in the development of standards**. The liberal professions, like other economic players, share the concern for appropriate responses to the challenge of cybersecurity (cf. Revision of the RIS Directive). While the GDPR (cf. point 1) has ruled on the protection of personal data (which requires to guarantee by appropriate technical and organizational measures **a level of security adapted to the risk**, art. 32), innovations in the field of cybercrime, especially in times of crisis, require that the professional liberal business and its partners **continuously** rethink their digital security not only in terms of **their data, which are subject to professional and medical confidentiality**, but also their hardware and software installations, their exchanges with third parties, their work materials and also their value chains. For example, the 5G roll out is bound to lead to new security approaches and the reinforcement of existing measures.
6. **Professions, Data and Artificial Intelligence (AI)** At a time when the European Commission has developed its strategy for Europe's digital future<sup>3</sup>, the liberal professions, united together at the European level within the CEPLIS, seek to support such an initiative aimed at creating a single market for data, in particular industrial and business area data, which are essential to feed and train AI applications, to facilitate their circulation and sharing, and to anticipate the broad outlines of a regulatory framework for AI so that ethical principles inherent to an individual's protection continue to be fully guaranteed by European law.

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<sup>2</sup> For example, Doctolib, a French e-health platform that already dominates online appointment scheduling for healthcare professionals, offered free teleconsultation (during March and April 2020) via video conferencing during the COVID 19 crisis. The service could also be extended to Germany, where the company is already present. Apart from small, lightweight start-ups, Doctolib is virtually the only player in France since the takeover of its competitor Mondocteur in July 2018.

<sup>3</sup> Commission Communication "A European Data Strategy" and White Paper "Artificial Intelligence: A European approach based on excellence and trust", published on 19 February 2019.

Mindful that Europe has fallen behind in the field of personal data and cannot afford, (except to become a "digital colony" of the Chinese or American giants), to miss out on the opportunities of AI, the European Commission is developing a human-centred strategy as it places ethical concerns at the heart of its reflection. The liberal professions welcome this, confident that adoption and wide spread implementation of high data protection standards, as provided for in the GDPR, are assets, not barriers, in the global race for AI. Indeed, the European AI strategy must capitalise on an ever more appropriate level of protection of the individual as applications are developed. It will be able to draw on the great sensitivity and intense creativity of a growing number of players on the ethical consequences of AI. The liberal professions wish to make their contribution in this development; since their performance is intimately built on the ongoing ethics debate inherent in their activities.

At the outset, it is important to make it clear that it would be simplistic to focus solely on personal data protection. All data, and not only personal data, must be protected, since AI relies on the large-scale processing of industrial data from the Internet of things and its corresponding applications may have an impact on certain population groups and, consequently, on individuals themselves.

**AI technologies**, whose applications are particularly promising in health, transport, defence/security and ecology, must be at the **service of the individual and society as a whole**. They must benefit everyone, otherwise they will defeat their purpose.

The liberal professions are convinced that, far from harming them, AI, provided that it is properly harnessed, can be used to activate our fundamental rights, activate social ties and strengthen solidarity.

They wish to stress, therefore, the importance of avoiding gender bias and discriminatory bias that repeats and amplifies existing discrimination. These biases would be the best way to destroy public confidence in AI techniques.

**Maintaining collective control over the use of our data, avoiding any form of algorithmic governmentality or generalized surveillance, guarding against the proliferation of predictive analysis** with particularly dangerous consequences for our individual and collective rights (in terms of health, justice, specifically!), preserving decision-making processes and proper governance are **fundamental human, ethical and democratic issues**.

These issues present major scientific challenges that will have to be overcome: **reducing the opacity of the algorithms**, ensuring, as far as possible, their "**explainability**" and the **traceability of their rationale**.

In their various business areas, many liberal professions have integrated AI techniques into their daily practices in order to automate the simplest or simply common acts, but also to provide a more precise, more adapted and less invasive response to their patients (for healthcare professionals). While they free up more time for professionals so that they can concentrate on high value-added tasks, on the complexity of each individual case or file, these technologies also cover fields where the risks for individual rights are particularly high (health, law, in particular).

**Trustworthy A.I. is based first and foremost on adequate protection of privacy and data provided, as well as control over one's personal data**. This issue, which requires constant monitoring, keenly resonates among liberal professions who, with few exceptions, are bound by professional secrecy

and are aware of the value of this ethical obligation. Personal data is nowadays multiplied by the use of different applications or connected objects and can be used for commercial purposes without people having the slightest idea of it. Connected objects force us to re-examine the principles and rules of individual consent. The relevant provisions of GDPR will certainly need to be further developed. Furthermore, professional businesses are particularly committed to the construction at a European level of an open, free, stable and secure digital space where human rights and fundamental freedoms and the rule of law fully apply. The development and implementation of standards related to data security, even if already binding, need to be further strengthened as cybercrime originating from persons or entities increases.

The professions stress the need for ethical considerations of privacy to inform the development of AI algorithms by design (**ethics "by design"**). **A bridge needs to be built with those who design AI programs so that ethical issues are present in and influence the design of AI programs.** Ethics must be integrated into the education of engineers themselves, so that they may ask the right questions with regard to the protection of fundamental rights.

In general, the liberal professions stress the importance of focusing on, as the European Commission wishes to do, the **citizens' skills and education in AI issues.** They draw attention to the need for awareness-raising and educational actions to ensure that **citizens are fully aware of their rights to obtain explanations regarding the processing of their data, whether personal or not.**

**A trustworthy A.I. is also an A.I. subject to human control, which preserves human autonomy.** This is the major proposal for the European Commission in the eyes of the liberal professions, whose entire performance only takes on meaning in so far as it is based on the fundamental value of independence, understood primarily in the intellectual meaning of the term. It is on this condition alone that AI will be liberating, not alienating. **The challenge is to achieve complementarity - and not substitution - between man and machine;** man must always have the last word.

**The more AI, the more human intervention is necessary.** In health, the AI will never be able to perform without medical knowledge and the professional's experience. The human brain must preserve its supremacy, being the only component able to reason, analyze and experience the capacity for empathy, which is a powerful decision-making aid and represents a definite added value compared to a decision based solely on algorithms. **AI is a tool and is all the more effective when it supports a subjective, emotional judgment. Decision-making belongs to humans. Subsequently, AI can have no responsibility.**

Human intelligence must be there to verify and validate the results produced by intelligent systems. Human intelligence must<sup>4</sup> **be given greater responsibility for controlling and checking the**

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<sup>4</sup> Thus in France, the bill on the revision of bioethics laws, which was to be voted on in the summer of 2020, in particular Article 11, is designed to ensure the possibility of auditing algorithms and the respect of their transparency principles, i.e. human guarantee and traceability, necessary for the development of artificial intelligence. Indeed, when delivery care, the health professional will have to inform the patient when using algorithmic processing of massive data for preventive, diagnostic or therapeutic procedures, when he/she discloses the results of these procedures. He or she should also inform the patient of the "modalities of action" of the data processing. Finally, the article provides for the intervention of the health professional to adapt the parameters of the treatment and thus recalls the importance of human intervention in the functioning of artificial intelligence. In addition, the traceability of the actions of such algorithmic processing and of the data

"**machine**". It is on this condition that the requisite confidence in AI will be preserved as well as, on the matter of liberal professions, the necessary trust between the professional and his/her client or patient.

**A control system must be provided to remedy possible errors in automated decisions, as well as a consumer redress system in such cases.**

**The additional question of responsibility, a value and a cardinal ethical principle for the liberal professions, appears, in our opinion, to be at the core.** New stakes surrounding it are emerging. The European Commission has discussed the challenges in "establishing responsibilities" in the face of "the opacity of decisions, the complexity, the unpredictability and the partially autonomous behaviour of AI"... What meaning can be given to the notion of responsibility arising from decisions taken on the basis of the results produced by self-learning machines? An immense scope of thoughtful discussion is opening up in this area. It would seem necessary to examine the share of the various responsibilities: that of the professional in his/her use of decision-making support, but also that of the algorithm designers on the reliability of the data used and their data processing methods.

**The liberal professions are aware that they must constantly reflect on how to adapt their codes of conduct so as to reassert them in a digital world. More than ever, an ethic on monitoring is needed.** Far from being an *a priori* and immutable standard, it cannot be reduced to a moral code or a doctrine; it must be understood as a principle of action enabling them to respect the values and principles that are theirs. It must evolve and be the subject of constant questioning and renewed adaptations of their deontology.

**AI requires a review of the curricula and training content for liberal professionals.** In general, the digital transformation of their environment and activities is profoundly renewing the challenges of continuing professional development (privacy and data protection aspects, cybercrime, etc.). Professionals must be trained in the use of algorithms. Without aiming to one day become AI experts, liberal professionals will have to be trained in the basics of programming. This can only increase the accountability of AI program designers on the issues facing the liberal professional industry, which should be encouraged. At the same time, the challenge of their initial and continuing education will be to reinforce ethical and proper performance issues. In a world that is becoming more and more technical, where teaching is becoming more and more scientific, empathy and social responsibility must become more and more valuable.

**The liberal professions can therefore only welcome the direction taken in favour of access to AI for SMBs, but would like to point out that efforts must also be directed at smaller businesses, particularly micro-businesses.** SMBs and micro-businesses wishing to use AI technology must be supported in their strategic thinking in order to be able to define their expectations and needs better and identify the players who can satisfy them, bearing in mind that players on a smaller scale than international giants often offer more suitable solutions. The stakes in terms of financial investment but also training and recruitment are particularly high.

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used in the context of this processing will be ensured and the resulting information will be accessible to the health professionals involved.

The strengthening of digital innovation clusters should help in this respect those liberal professional businesses that wish to do so. The future pilot investment fund in the field of AI and the chain of blocks – set at €100 million - should financially support such an objective.

Appendices:

- Summary of the Communication from the Commission: A European Data Strategy ;
- Summary of the White Paper: Artificial intelligence, a European approach based on excellence and trust.