

European declaration on digital rights and principles

SUMMARY

Digital transformation concerns us all, in every aspect of our lives, from learning, working, communicating, doing business, to interacting with administrations, shopping and enjoying culture. The online environment has become very often our first and sometimes our only space for interaction.

To steer this process so that no one is left behind, the European Commission tabled a draft declaration on digital rights and principles for a human-centred digital transformation. The declaration would serve as an overarching reference framework for the digital transformation, based on the principle that European Union rights and freedoms, as well as European values, should be respected online in exactly the same way as they are offline.

The declaration is built around six themes: 1. people at the centre of digital transformation; 2. solidarity and inclusion; 3. freedom of choice; 4. participation; 5. safety and security; and 6. sustainability), and derives from primary and secondary EU law and EU case law. It does not confer new rights, as fundamental rights already apply online, nor does it replace existing proposals, but rather complements them instead. As such, it is not legally binding; it has primarily an advocacy role aimed at raising public awareness as well as promoting digital rights worldwide.

The three EU institutions, Commission, Council and Parliament, must now agree on a common text and sign it in the form of a solemn declaration.



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Introduction

Digital tools and services increasingly govern our daily life: our work, the way we learn and communicate our administrative procedures; our free time and business transactions. The recent health crisis has accelerated this process, and Russia's war on Ukraine has revealed both our dependency on digital tools and their fragility. While digital transformation concerns everyone, and Europeans are already protected in the online environment, as many as 39% are unaware¹ of their rights online. The Commission therefore tabled a proposed [declaration](#) on digital rights and principles for a human-centred digital transformation on 26 January 2022, aiming at raising awareness and creating an overarching reference framework to govern this process.

The proposal builds on previous work done in this respect: the eGovernment ([Tallinn Declaration](#)), digital society and value-based digital government ([Berlin Declaration](#)), and digital democracy with a purpose ([Lisbon Declaration](#)). However, this new declaration is the first dedicated entirely to the fundamental rights of EU citizens in the digital environment.

The declaration would not be legally binding; it is an instrument to raise understanding of the EU *acquis* in the digital field. It derives from primary and secondary EU law and Court of Justice of the European Union (CJEU) and the European Court of Human Rights case law. The principles of the declaration are based on the [EU Charter of Fundamental Rights](#) and the EU Treaties, adapted to the digital environment. Existing fundamental rights are applied online, so that the exact same safeguards and rights for citizens are applied in the same way as offline.

The draft declaration does not replace other proposals – instead it complements them. It also does not confer new rights; it is a collection of existing rights serving as a reference for public and private entities when dealing with new technologies and digital transformation. It is complementary to existing rights already introduced in the EU Charter on Fundamental Rights, [General Data Protection Regulation](#) (GDPR), and [ePrivacy legislation](#), to name just a few examples. However, it introduces new issues, such as transparency of artificial intelligence (AI) algorithms – dealt with in the proposed AI act – which it compliments in this regard.

The draft declaration does not envisage direct enforcement. It however provides a framework for meeting the EU's digital decade targets and envisages an annual assessment of the digital transition. Its adoption could however enable initiating legislation to transform rights into enforceable legal instruments. As European Commissioner Margrethe Vestager² notes, the principles of the declaration provide 'a blueprint for the digital transition'.

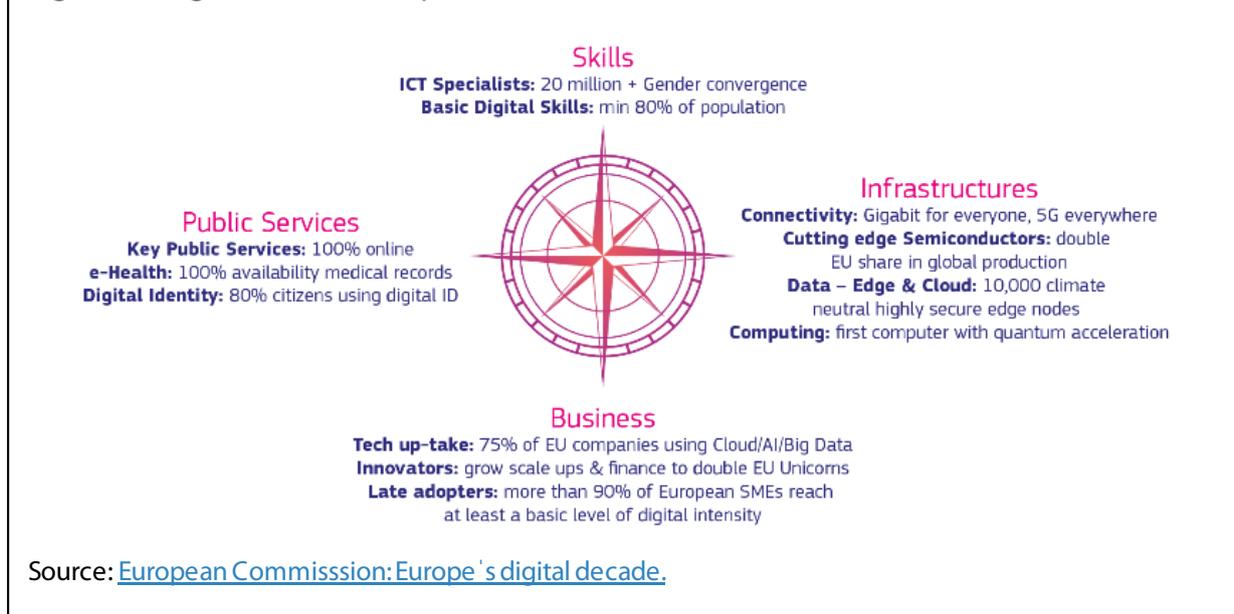
As such, the proposed declaration is above all a political document, combining the policy and constitutional approaches and has primarily an advocacy role aimed at raising public awareness as well as promoting digital rights worldwide.

Preparation of the proposal

The direction for the EU's [digital decade](#) was set with the [Digital Compass](#) (see Figure 1) as the first pillar and further developed in the '[path to the digital decade](#)' policy programme, which provides the framework to lead the EU towards digital sovereignty, as well as to a 'green, sustainable, human-centred and prosperous' digital future. The proposal would set digital targets for 2030, defined along four 'cardinal points' – digital skills, digital infrastructures, digitalisation of businesses and of public services – and a governance framework to achieve them.

The declaration, representing the second pillar of the digital decade initiative, took account of the results of the [public consultation](#) held from 12 May to 6 September 2021 and the results of the [Eurobarometer survey](#) conducted in 27 EU Member States between 15 September and 16 October 2021. It also takes account of an event organised by the Portuguese Presidency in June 2021, where support for a set of digital principles was demonstrated, also in the form of a declaration (digital democracy with a purpose); workshops; targeted consultations and interviews; and desk analysis of existing digital initiatives.

Figure 1– Digital decade compass



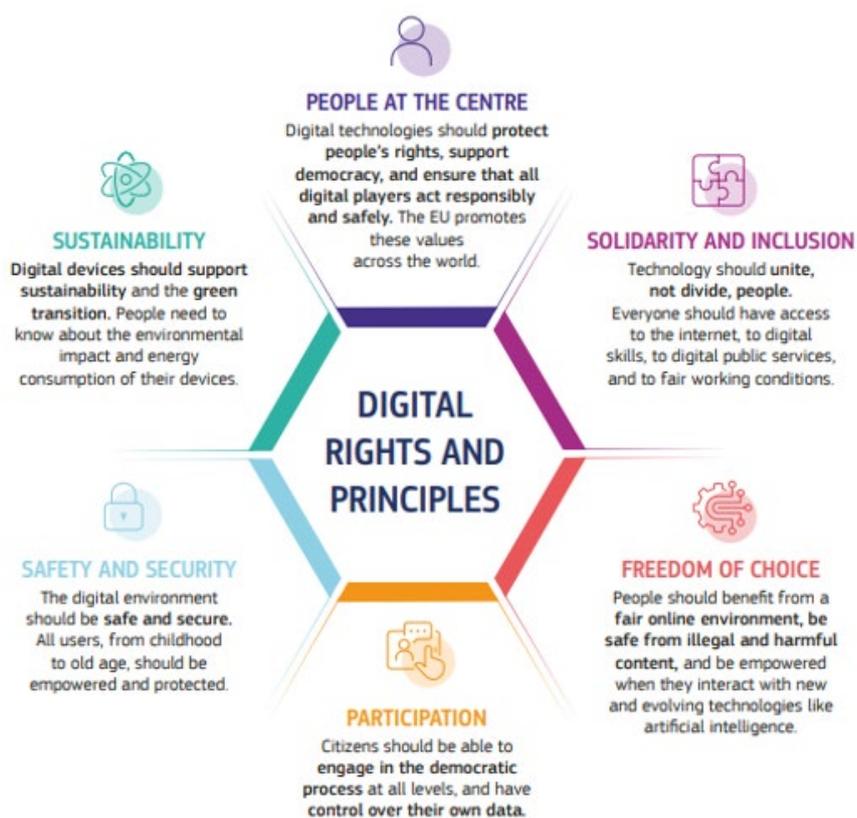
The [public consultation](#), intended to test support for such a set of rights and principles, gather feedback and finally feed the proposal, triggered 609 replies. Respondents largely showed support for the declaration as such and for all areas of principles listed in the consultation. A great majority of respondents indicated the importance of access to affordable high-quality internet for everyone and that everyone should have access to high-quality inclusive digital education and skills, so that no one is left behind. A large majority of respondents also supported the importance of digital literacy for children and young people, to enable their safe and responsible navigation of the online environment. Secure access to personal electronic health records, digital public services and a European digital identity were also highly rated. At the same time, the importance of privacy and data protection to preserve the confidentiality of electronic communications and a secure and trusted online environment were also indicated as issues of great importance; as well as the low environmental impact of online services and human-centric algorithms, although with slightly less support.

A [Special Eurobarometer survey](#) on digital rights and principles was undertaken, as an additional tool to help to design the proposal. It measured EU citizens' perception of the role the internet and digital tools will play in their lives, their awareness of their rights online, and their perception of a common European vision of digital rights and principles. The survey results revealed that as many as 81 % respondents felt that the internet would be important in their lives by 2030, and 41 % believed that it would bring them more advantages than disadvantages. However, cyber-attacks and cyber-crime, child safety in the online environment and protection of personal data were issues of concern. The survey further revealed that as many as 39 % respondents were not aware that the rights that apply offline should also apply online, and more than three quarters indicated they would find it useful to learn more about their rights online. A large majority of respondents supported a common European vision of digital rights and principles.

Proposed principles

As illustrated in Figure 2 (see below), the [declaration of digital rights and principles](#) is structured around six chapters.

Figure 2– Digital rights and principles



Source: [European Commission: Digital Rights and Principles Factsheet](#).

The **first chapter**, "Putting people at the centre of digital transformation", underlines digital humanism,³ as opposed to the market-focused approach. The overall principle is that EU rights and freedoms, as well as European values, should be respected online, in the same way as they are offline. The proposed declaration would also promote the European approach to digital transformation internationally.

The **second chapter** aims at promoting social **solidarity and inclusiveness**. No one should be left behind, digital transformation should work to the benefit of all Europeans. All market actors (including platforms) must assume their social responsibility in contributing to the cost of public goods, services and infrastructures. When it comes to connectivity, the declaration mentions access for everyone to affordable and high-speed connectivity (rather than just internet access), which was a clear outcome of the public consultation. Moreover, Commission targets for 2030 include 100 % gigabit and 5G cover. This chapter furthermore underlines the importance of ensuring net neutrality and of fostering digital education and skills, where the Commission's target was set at [80% of the population](#) by 2030.

The declaration also touches upon working conditions, by listing the right to disconnect and to ensure a healthy work-life balance. The European Parliament has already requested the Commission adopt a Union directive laying down minimum requirements to enable those who work digitally to disconnect outside their working hours, in a resolution [adopted](#) in January 2021. The importance of digital access to public services is also an important part of Chapter 2. Access is enabled through digital identity and accessible government information, which can be re-used, and is complementary to the [eIDAS regulation proposal](#). It also applies to health and care services across the Union.

The **third chapter** lays the foundations for principles related to artificial intelligence (AI). **Freedom of choice** entails empowering people to benefit from the advantages of evolving technologies, such as AI, by making informed decisions and being protected against risks. The underlying condition is

the transparency of algorithms, to ensure that technologies are not used to pre-determine people's choices and create discrimination based on data selection. Freedom of choice also refers to the use of services in a safe, secure and fair online environment, so that people are protected from illegal and harmful content. Transparency of AI is already dealt with in the proposed AI act⁴ and platforms and gatekeepers' responsibilities are covered under the proposed [digital services act](#) (DSA) and [digital markets act](#) (DMA).

Participation in the public digital space is the theme of the **fourth chapter**. Participation can be ensured by enabling access to a diverse, trustworthy, multilingual online environment, so that public debate is open to everyone and everyone can participate in democracy. Freedom of expression is an important component of public debate and should therefore be safeguarded against censorship. Informed participation also entails knowledge of ownership of services, where very large online platforms play an important role in steering public debate and should step-up efforts to limit the effect of disinformation and harmful content. Any kind of illegal content should be addressed, considering the respect of the right of freedom of expression, but without any general monitoring obligations. To a great extent, this chapter echoes the proposed DSA and the forthcoming [media freedom act](#).

An important component of digital rights is a **safe, protected and secure online environment and user empowerment**, outlined in the **fifth chapter** of the draft declaration. People should be protected from cyber-attacks and data breaches and they should have control over their personal data online, which should be protected from unlawful surveillance. Decisions about digital legacies should be free, and the portability of personal data ensured in a user-friendly way. Special attention should be paid to children and young people, who should be empowered to make safe and informed choices online. This includes an age-appropriate digital environment and protection against harmful and illegal content. These issues have begun to be addressed under the GDPR and cybersecurity legislation, the European strategy for a better internet for kids, and the portability of personal data in the draft data act.

The declaration concludes with **chapter six** on **sustainability**, calling for environmentally and socially responsible design of digital services and products, with minimum social and environmental impact. Furthermore, it stipulates clear and easily accessible information on environmental impact and energy consumption, which would allow people to make informed choices and contribute positively to the climate. New technologies should foster the circular economy and more efficient resource management. Digital devices should be devised to minimise their environmental impact. This aspect is already outlined in [green deal initiatives](#), which the declaration complements in this respect.

Monitoring

The draft declaration proposes principles to serve all citizens, businesses and administrations equally. To play this role, everyone needs to be aware of its existence, significance, and commit to his or her share of responsibility. Effective monitoring will therefore be important for the declaration's successful implementation. Hence, the proposed ['path to the digital decade'](#) programme, which provides a monitoring mechanism – sharing of information between the Member States and the Commission – as well an annual report on 'the state of the digital decade' covering progress with measures pursuing the principles enshrined in the declaration. The Commission⁵ would follow up on this by submitting a strategic assessment on digital transformation to the Council and the Parliament and providing recommended actions and measures to Member States, if deemed necessary. In addition to the annual report, the Commission would conduct an annual Eurobarometer survey on citizens' perception of how the digital principles are put into practice in Member States.

Academic perspective

The emergence of new technologies influences the policy landscape, with tech companies becoming dominant actors⁶ and raises the question whether existing legislation protects citizens sufficiently. Research stresses that digital constitutionalism should not be limited to concrete legal instruments, but rather to a set of values and ideas that guide and feed these instruments,⁷ as reflected in the draft declaration. Another consideration to take into account is that existing rights are pre-digital, so lawmakers have to examine closely whether they still reflect current norms and values.⁸

Another important issue that should be mentioned in relation with digital transformation is the von der Leyen Commission's⁹ shift from a market- to a value-based approach. This digital constitutionalism¹⁰ is driven by the simultaneous evolution of the information society, with many new opportunities and challenges for fundamental rights. The rise in power of large online platforms has raised concerns for the protection of fundamental rights and for democratic values in the digital sphere, which incited the European Commission to issue legislative proposals to limit the discretion of online platforms, and increase transparency and accountability in content moderation. The turning point was the adoption of the GDPR and the enhanced activity of the CJEU that followed.¹¹ In this respect, the European approach offers solutions that do not limit individual freedoms, but instead protect fundamental rights and democratic values and are extended beyond the borders of the EU.

It should nevertheless be underlined, that in the views of some academics,¹² the 'Brussels effect' is only possible if the EU establishes a transatlantic digital accord with the United States of America, and improves use of the proportionality principle – finding the right balance between the protection of fundamental rights and promoting the economy.

Stakeholder views¹³

The European Confederation of Independent Trade Unions (CESI) supports the draft declaration and [underlines](#) the social aspects of digital transformation – the importance of protection of personal data at work – and strongly opposes surveillance at work. Furthermore, it stresses the need for the right to disconnect and the importance of seamless and accessible digital public services, which should however also remain accessible in-person.

COFACE – Families in Europe [draws attention to](#) the magnitude of digital disparities in Europe and the reality of digital deprivation. They underline the risks of the digital environment for children and propose that initiatives to support children should include measures to mitigate any risks these initiatives may bring. They propose the use of the DigiGen project data (research into the impact of technological transformations on the digital generation), to implement the digital principles.

European Digital Rights (EDRI) [questions](#) the follow-up to the declaration. It is not yet clear, in their view, whether this is just another in the series of declarations, or if it will become more substantial, as for instance, the EU digital pillar. EDRI links the evolution of the draft declaration into a substantial EU legal instrument with European Parliament involvement. Without Parliament's lead, this chance, in their view, is very slim.

The European Consumer Organisation BEUC [supports](#) the initiative, but underlines that principles need to be implemented either through existing legal instruments or new initiatives, rather than remaining empty rhetoric. To become enforceable and effectively be enforced with the aim of protecting consumers and citizens in the digital environment, the principles would need a strong(er) commitment. BEUC proposes to add access to justice in the online environment to the list of principles, to address redress mechanisms regardless of the location of the service provider. They also made a number of other comments, for example: that digital health services should remain a choice not an obligation; that participation in digital society should be free of commercial surveillance, discrimination and manipulation; and that children in particular should be protected from commercial surveillance and digital marketing. Moreover, they think that the notion of

protection of consumers against obsolescence should be mentioned and a possibility to contest and obtain human oversight of a decision taken by an algorithmic system should be a norm.

The [Open Future Foundation](#) supports the chapter on participation in the digital public space in particular, which is in their view the first step towards shaping a truly European online ecosystem as a digital public space and not just as a market. However, they are quite critical of the proposal and claim that the declaration is not ambitious enough in bringing about a true digital transformation and misses a society-centric vision.

Transatlantic perspective

Digital transformation is not an isolated EU affair, as the digital environment is global in nature and even more so, as the biggest platforms and service providers are located outside European borders. Setting the digital rights has however become a European affair, seeking to protect the European humanist vision of digital transformation against other approaches supporting corporate entities or states' interests. The EU has decided to take the global lead in this respect and address digitalisation of society and regulate the internet giants, setting EU internet governance as a global standard, hoping to achieve the '[Brussels effect](#)', where others will follow suit.

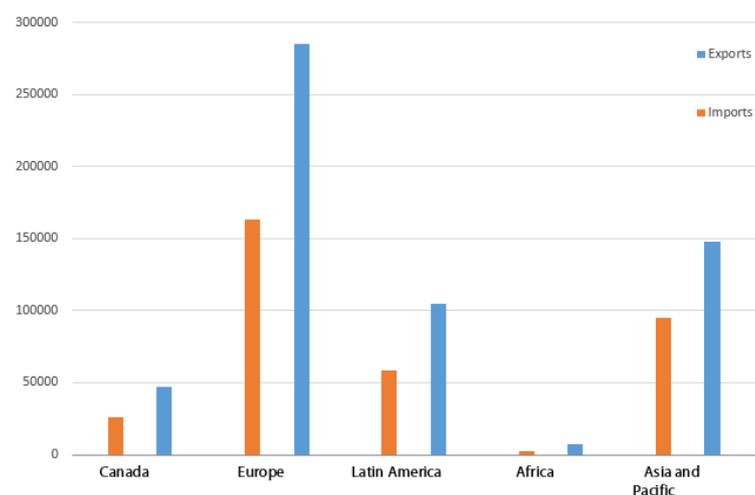
We have seen this already with the GDPR, where a [transatlantic data transfers agreement](#) was recently reached after a long negotiation process, and could serve as a starting ground for transatlantic policy-making. We also see awareness that some level of convergence is needed when it comes to AI regulation, and even more so with the proposed DSA and DMA, both dealing with very large platforms – EU regulation thereby of direct concern to big US tech companies. The draft declaration is consistent with this approach. By setting a high bar for consumer protection and fundamental rights in the digital sphere, it challenges the tech giants' current business model and sends a signal that the EU chooses values over commercial use of data.

In the USA, the Obama Administration already proposed a '[Consumer Privacy Bill of Rights](#)' to protect consumers online in 2012, which aimed at limiting the collection of personal data by private companies. The bill served as a basis for the '[Internet Bill of Rights](#)', which was proposed in Congress in 2018, and put consumers' data rights and universal web access at its core. At the end of 2021, the current Biden Administration announced a '[Bill of rights for an AI-powered world](#)', to 'clarify the rights and freedoms we expect data-driven technologies to respect'.

The Alliance for the Future of the Internet to create a coalition of democratic countries, proponents of a free internet (as opposed to China and Russia's undemocratic control of the web), materialised on 28 April 2022, when 60 countries signed the [Declaration on the Future of Internet](#), initiated by the USA. This declaration is anchored in the proposed EU declaration on digital rights and principles, and in line with the EU approach. Both declarations are built on protection of human and fundamental rights, inclusive and affordable access to the internet and a safe, secure and sustainable digital ecosystem. Leading the process, the USA has nevertheless indicated it wishes to position itself as spearheading online rights.

The EU and US approaches may be different, the first being fundamentally social and the latter corporate- and security-oriented, but they both share common democratic values. Marcut elaborates¹⁴ that issues such as AI, trade and geopolitics encourage cooperation between the EU and the USA when dealing with digital innovation. Space for cooperation could be seen in cybersecurity and the security of 5G networks. The increased power of big tech companies has also accelerated efforts to regulate the digital space on both sides of the Atlantic. We can see shared principles, but so far, no clear alignment on digital policy, as the gap in the regulatory approach is too wide. This is understandable if we consider that the EU strives for digital sovereignty and active regulation, while the USA focuses on technological leadership with minimum intervention.

Figure 3 – US Trade in ICT and potentially ICT-enabled services, by country or affiliation, 2020 (US\$ millions)



Source: [US Bureau of Economic Analysis](#), release date: July 2, 2021, data accessed 12 May 2022

Despite these fundamental differences, the [EU-US trade flows](#) in information and communications technology (ICT) and ICT-enabled services continue to grow and account for the largest flow worldwide (see Figure 3). Partners on both sides of the Atlantic are determined to go ahead and forge a global leadership, take a common approach when it comes to curbing tech giants' increasing power, and setting rules and standards for the future.

The forum to achieve this is the [EU-US Trade and Technology Council](#), which met for the first time in Pittsburgh in September 2021, and which is trying to rebuild the volatile transatlantic trade relations to counter China's increasing influence. During the [second meeting](#),

which took place in May 2022, both parties condemned Russia's aggression against Ukraine, unanimously supporting the latter, as well as internet freedom, expressed in the Declaration on the Future of the Internet.

Many countries recognise the need to protect their citizens' rights online. Brazil adopted the Brazilian Internet Bill of Rights in 2014. Italy adopted its Declaration of Internet Rights in 2015, and France passed its Digital Republic Bill in 2016. Canada adopted a Digital Charter in 2019, and Spain its Digital Rights Charter in 2021. The list could be complemented with international efforts to regulate the digital sphere, such as the Organisation for Economic Co-operation and Development Recommendation on Digital Government Strategy or the G7 Internet Safety Principles and G20 Digital Government Principles, to name the most prominent.

Source: [Establishing a European Declaration on Digital rights and principles for the Digital Decade](#), SWD(2022) 14 final, Annex III

Prospects

In the European Parliament, nine committees have discussed and proposed amendments to the text of the declaration. The text revised by Parliament's committees includes a notably greater emphasis on workers' rights, gender mainstreaming, and small and medium-sized enterprises. It also elaborates, to a much greater extent than the Commission proposal, on regulating artificial intelligence and defining a fair online environment, which should include redress mechanisms, according to the committees. Furthermore, the committees explicitly address media freedom, censorship, and a prohibition on mass surveillance, along with enhancing personal

control of personal data and the sustainability principle.

The revised version of the proposed declaration, including Parliament's amendments will now be subject to negotiation with the Council and the Commission. Once agreed, the final text is expected to be signed by the Parliament, Council and the Commission in the form of a solemn declaration, later in 2022.

EP SUPPORTING ANALYSIS

Negreiro M., [The EU digital decade: A new set of digital targets for 2030](#), EPRS, European Parliament, September 2021.

Negreiro M., [Path to the digital decade](#), EPRS, European Parliament, June 2022.

OTHER SOURCES

Custers, B., ['New digital rights: Imagining additional fundamental rights for the digital era'](#), *Computer Law & Security Review*, Volume 44, April 2022.

Di Gregorio, G., ['The rise of digital constitutionalism in the European Union'](#), *International Journal of Constitutional Law*, Volume 19, Issue 1, January 2021, pp. 41–70.

Marcut, M., ['A Global Digital Rulebook? Assessing the Potential for a Strategic Partnership between the US and the EU in Digital Policy'](#), the New Transatlantic Relations and the Perspectives of the Global Order. Proceedings of the First Edition of the International Conference on 'The European Union's External Relations and the Global Order', Cluj-Napoca, 15 April 2021.

ENDNOTES

- ¹ See results of the Special Eurobarometer 518: Digital Rights and Principle, 2021, p. 19.
- ² See Vestager M., ['Declaring Our Digital Rights'](#), Project Syndicate, February 2022.
- ³ See Celeste, E. and De Gregorio, G., ['Digital Humanism: The Constitutional Message of the GDPR'](#), *Global Privacy Law Review* 4, Vol. 3(1), 2022.
- ⁴ Nemitz, P. F., in ['Constitutional Democracy and Technology in the age of Artificial Intelligence'](#), *Royal Society Philosophical Transactions A*, 18 August 2018, already highlighted the need to take account of fundamental rights and democracy when developing AI.
- ⁵ See Establishing a European Declaration on Digital rights and principles for the Digital Decade, SWD(2022) 14 final, p. 6-7: Monitoring and review.
- ⁶ See Celeste E., ['Digital constitutionalism: a new systematic theorisation'](#), *International Review of Law Computers & Technology*, Vol. 33(2), pp.1-24. Celeste claims that the concept of constitutionalism should be broadened to include private actors. He explores different normative counteractions that are emerging to face the challenges of digital technology.
- ⁷ Idem.
- ⁸ Custers (Custers, 2022) establishes however, that existing fundamental rights, even though drafted in a pre-digital era, were phrased in such a broad way as to provide room for interpretation and can easily be applied to very different situations in very different contexts. He stresses however, that the values on which these rights are based have changed over time.
- ⁹ See Tarkowski A. and Keller P., ['Digital Public Space – A Missing Policy Frame for Shaping Europe's Digital Future'](#), Alexander Baratsits (ed.), *European Public Spheres, Digitisation and Public Welfare Orientation*, Forthcoming, 3 December 2021.
- ¹⁰ See Di Gregorio G., ['The rise of digital constitutionalism in the European Union'](#), *International Journal of Constitutional Law*, Vol. 19(1), January 2021, pp. 41–70.
- ¹¹ Di Gregorio (Di Gregorio, 2021) calls this process 'judicial activism'.
- ¹² See Czarnocki, J., ['Saving EU digital constitutionalism through the proportionality principle and a transatlantic digital accord'](#), *European View*, Vol. 20(2), pp. 150-156.
- ¹³ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal.
- ¹⁴ See Marcut M., ['A Global Digital Rulebook? Assessing the Potential for a Strategic Partnership between the US and the EU in Digital Policy'](#), The New Transatlantic Relations and the Perspectives of the Global Order. Proceedings of the First Edition of the International Conference on 'The European Union's External Relations and the Global Order', Cluj-Napoca, 15 April 2021.

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