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DRAFT REPORT

with recommendations to the Commission on Digitalisation and Administrative Law
(2021/2161(INL))

Committee on Legal Affairs

Rapporteur: Karen Melchior
(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with recommendations to the Commission on Digitalisation and Administrative Law
(2021/2161(INL))**

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Article 298 of the Treaty on the Functioning of the European Union,
- having regard to Article 41 of the Charter of Fundamental Rights of the European Union, which provides that the right to good administration is a fundamental right,
- having regard to the joint declaration of the European Parliament, the Council and the Commission on European Declaration on Digital Rights and Principles for the Digital Decade of 15 December 2022,
- having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹,
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents²,
- having regard to the proposal for a regulation of the European Parliament and of the Council on information security in the institutions, bodies, offices and agencies of the Union (2022/0084(COD)),
- having regard to the proposal for a regulation of the European Parliament and of the Council laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union (2022/0085(COD)),
- having regard to the extensive case-law of the Court of Justice of the European Union, which has recognised a set of general principles of administrative law based on the constitutional traditions of the Member States,
- having regard to Commission Communication of 26 January 2022 on Establishing a European Declaration on Digital rights and principles for the Digital Decade COM((2022) 27 final) and its accompanying Commission Staff Working Document containing a report on the stakeholder consultation and engagement activities (SWD(2022) 14 final),

¹ OJ L 295, 21.11.2018, p. 39.

² OJ L 145, 31.5.2001, p. 43.

- having regard to the Commission digital strategy: Next generation digital Commission of 30 June 2022 (C(2022)4388),
- having regard to its resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour³,
- having regard to Commission Decision 2000/633/EC, ECSC, Euratom of 17 October 2000 amending its Rules of Procedure by annexing a Code of Good Administrative behaviour for staff of the European Commission in their relations with the Public⁴,
- having regard to the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public⁵,
- having regard to the Council of Europe's Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, dated 20 June 2007,
- having regard to the 'Public service principles for the EU civil service' published by the European Ombudsman on 19 June 2012,
- having regard to successive Digital Public Administration factsheets concerning Member States, published online by the Commission,
- having regard to the existence in the Member States of both general administrative procedure acts, laying down the basic principles of administrative law, and of domain-specific or sector-specific legislation,
- having regard to the survey commissioned by the Swedish Government from the Swedish Agency for Public Management on the principles of good administration in the Member States of the European Union,
- having regard to the study conducted by the Danish Government from the Danish Digitalisation Agency (digitaliseringsstyrelsen) on the principles of good use of fundamental data in implementation of digitalised public administration services,
- having regard to 2022 report of the European Law Institute on Model Rules on Impact Assessment of Algorithmic Decision-Making Systems Used by Public Administration⁶,

³ OJ C 72 E, 21.3.2002, p. 331.

⁴ OJ L 267, 20.10.2000, p. 63.

⁵ OJ C 189, 5.7.2001, p. 1.

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https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Model_Rules_on_Impact_Assessment_of_ADMSs_Used_by_Public_Administration.pdf.

- having regard to the briefing notes presented at the Conference on EU administrative law organised by the Policy Department of Parliament's Committee on Legal Affairs and the University of León (León, 27-28 April 2011)⁷,
- having regard to the recommendations included in the working document on the state of play and future prospects for EU administrative law presented by the Working Group on EU Administrative Law to the Committee of Legal Affairs on 22 November 2011⁸,
- having regard to the European Added Value Assessment on a Law of Administrative Procedure of the European Union, presented by the European Added Value Unit to the Committee of Legal Affairs on 6 November 2012⁹,
- having regard to public consultation on general rules for an open, independent and efficient European administration and its summary report on July 2018 presented by the European Added Value Unit, European Parliamentary Research Service to the Committee on Legal Affairs on 10 July 2018¹⁰,
- having regard to an impact assessment of possible action at EU level for an open, efficient and independent EU administration concluded in July 2018 by Ex-Ante Impact Assessment Unit of the European Parliamentary Research Service and presented to the Committee on Legal Affairs on 10 July 2018¹¹,
- having regard to the 2022 European Added Value Assessment on Digitalisation and Administrative Law, presented by the European Added Value Unit to the Committee of Legal Affairs on [30 May 2023]¹²,
- having regard to its resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union¹³,
- having regard to its resolution of 9 June 2016 for an open, efficient and independent European Union administration and the proposal for a regulation of the European Parliament and of the Council for an open, efficient and independent European Union administration,¹⁴

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<http://www.europarl.europa.eu/committees/en/juri/studiesdownload.html?languageDocument=EN&file=59983>.

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http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/juri_wdadministrativelaw_/juri_wdadministrativelaw_en.pdf.

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http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/eav_lawofadminprocedure_/EAV_LawofAdminprocedure_EN.pdf.

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[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621841/EPRS_STU\(2018\)621841_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621841/EPRS_STU(2018)621841_EN.pdf)

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[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621841/EPRS_STU\(2018\)621841_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621841/EPRS_STU(2018)621841_EN.pdf)

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[https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2022\)730350](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2022)730350)

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OJ C 440, 30.12.2015, p. 17.

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<https://www.europarl.europa.eu/cmsdata/150700/consultation-eu-law-summary-report.pdf>

- having regard to its resolution of 26 October 2017 on monitoring the application of EU law 2015 (2017/2011(INI)),
 - having regard to its resolution of 7 July 2022 on Better regulation: Joining forces to make better laws (2021/2166(INI)),
 - having regard to its resolution of 20 May 2021 on shaping the digital future of Europe: removing barriers to the functioning of the digital single market and improving the use of AI for European consumers (2020/2216(INI)),
 - having regard to the Commission follow-up to the European Parliament resolution with recommendations to the Commission on a Law of Administrative Procedure of the European Union, adopted by the Commission on 24 April 2013,
 - having regard to the Commission follow-up to the European Parliament resolution for an open, efficient and independent European Union administration, adopted by the Commission on 4 October 2016,
 - having regard to the Commission follow-up to the European Parliament resolution on Better regulation: Joining forces to make better laws, adopted by the Commission on 22 October 2022,
 - having regard to Rules 47 and 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A9-xxxx/xxxx),
- A. whereas the entry into force of the Treaty of Lisbon has provided the Union with an appropriate legal basis for the adoption of a European law on administrative procedure;
 - B. whereas the fundamental right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union has become legally binding as primary law;
 - C. whereas in a Union under the rule of law it is necessary to ensure that procedural rights and obligations are always adequately defined, developed and complied with; whereas citizens are entitled to expect a high level of transparency, efficiency, responsiveness and swift execution from the Union’s institutions, bodies, offices and agencies, and they are also entitled to information on the options that exist for them to take further action in the matter concerned;
 - D. whereas an efficient Union administration is essential for the public interest and an excess as well as a lack of rules and procedures can lead to maladministration, which may also result from the existence of contradictory, inconsistent or unclear rules and procedures; whereas properly structured and consistent administrative procedures support both an efficient administration and a proper enforcement of the fundamental right to good administration and have the added value of promoting transparency and accountability, thereby enhancing the Union’s legitimacy and increasing the confidence of citizens in the Union’s administration;
 - E. whereas the lack of confidence on the part of citizens has for the last several years been

a pressing problem faced by the Union, which can affect its legitimacy; whereas the Union needs to provide swift, clear and visible answers to Union citizens in order to respond to their concerns;

- F. whereas the Union's existing rules and principles on good administration are scattered across a wide variety of sources: primary law, case-law of the Court of Justice of the European Union, secondary legislation, soft law and unilateral commitments by the Union's institutions;
- G. whereas the existing internal codes of conduct of the different institutions have a limited effect, differ from one another and are not legally binding;
- H. whereas, taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the Union's administration would be a positive signal in the fight against corruption in public administrations;
- I. whereas since 2001 the Parliament has consistently requested, in its resolutions and annexes thereto, legislative action from the Commission in that area; whereas in 2013 Parliament called for a Law of Administrative Procedure of the European Union, and in 2016 it called in particular for a proposal for a regulation of the European Parliament and of the Council for an open, efficient and independent European Union administration; whereas, in essence, Parliament's calls repeatedly aim to have a regulation on European Union administrative procedure adopted that would lay down general procedural rules governing the administrative activities of the Union's administration, that is the Union's institutions, bodies, offices and agencies (European law on administrative procedure);
- J. whereas that call is based on detailed impact assessments *inter alia* quantifying the cost of administrative procedures; whereas the 2018 impact assessment found that fragmentation in administrative procedures across EU institutions and bodies negatively impacts EU openness, efficiency and independence and concluded that negative impacts are likely to worsen with the transition towards digitalised administration; whereas when presenting the proposal the Commission should also present an impact assessment;
- K. whereas Parliament engaged in public consultation with regard to the need to establish the European law on administrative procedure, whereby 76% of respondents supported taking additional measures at Union level to enhance and simplify Union administrative procedures, noted improving efficiency and transparency among the top reasons for EU intervention and identified operational incoherence and the administrative burden costs among the most problematic issues; whereas the Commission should further launch adequate public consultation in 2023 with all relevant actors, and should in particular make use of the special knowledge and expertise of the European Ombudsman, since it is to the European Ombudsman that public complaints about abuses within the bodies and institutions of the Union are made;
- L. whereas consultations with academia, practitioners and the legal community were undertaken by the Parliament in preparation of its 2016 resolution for an open, efficient and independent European Union administration; whereas, in its follow-up adopted on

24 April 2013 to the Parliament's resolution of 15 January 2013, the Commission stated that it would launch a detailed stocktaking of the existing body of EU administrative law and of possible shortcomings across all of the institutions, that it would assess the approaches taken to these issues in the Member States and would consult academia, practitioners and the legal community in order to carry out an in-depth analysis of all aspects of the issue; whereas ten years later, the Commission has yet to inform the Parliament about the results of the announced stocktaking and in-depth analysis;

- M. whereas, in the same 2013 follow-up, the Commission stated also that any future initiative would have to take account of the existing framework of administrative rules and the complex relationship between horizontal and sector-specific rules; the multiple causes of possible maladministration and the many possible ways in which this can be addressed; and the limits to the use of Article 298 TFEU; whereas no such assessment has been presented by the Commission to date;
- N. whereas in 2022 the Commission presented, acting for the first time on the basis of Article 298 TFEU, two proposals regarding, on the one hand, information security and, on the other hand, cybersecurity in the Union's administration, that is its institutions, bodies, offices and agencies, to address the lack of a common approach in those areas and the fact that each of them either has its own rules in those areas, based on rules of procedure or founding acts, or has no rules at all;
- O. whereas the existence of horizontal and sector-specific rules cannot constitute an excuse not to lay down a European law on administrative procedure, or an obstacle to laying down such a law, which would constitute a basic and general reference framework of law on administrative procedure that should be applied by any Union administration irrespective of its sector of operations; whereas such general enacting terms exist in many Member States of the Union irrespective of their structure, domain or sector and in parallel with sector-specific rules;
- P. whereas the fragmentation of the relevant legal frameworks between the Union's administration leads to significant duplication of efforts as regards establishing and maintaining internal rules as well as non-interoperable administrative practices; whereas, for Union citizens, the diversity of these rules increases the risks of misunderstanding, misinterpreting and non-compliance; whereas establishing a basic and general reference framework of European law on administrative procedure for the Union's administration would create an administrative environment with uniform principles, standardised rules and implemented best practices, whereas that does not preclude the existence of sector-specific rules as it is also known at national level; whereas, moreover, laying down European law on administrative procedure is consistent with the requirement to act with due respect for the autonomy or competences of each Union institution and body, which will remain fully in place;
- Q. whereas with the advance of technology and the digitalisation efforts required on the part of the Member States, including with regard to their public administration and services, similar digitalisation efforts have been undertaken by Union's administration; whereas the Union's administration increasingly does not operate as a separate entity but interconnects with national public administrations in order to

serve citizens;

- R. whereas the 2022 European value added assessment study stressed, as did the 2018 impact assessment study, the fact that with digitalisation, the need for centralisation and harmonisation is greater and that the ongoing digitalisation raises new issues and challenges;
- S. whereas the case law of the Court of Justice has developed well-established procedural principles which apply to Member States' procedures in Union matters and which should *a fortiori* apply to direct administration by the Union; whereas it can be expected that the case law of the Court of Justice will soon develop further to cover phenomena related to the development of digitalisation in administrative procedures, such as automated decision-making;
- T. whereas, the European Declaration on Digital Rights and Principles for the Digital Decade proclaims digital principles for the purpose of serving all Europeans;
- U. whereas, in the 2030 Digital Compass, the Commission set for the Union a vision for a digitally transformed Europe of 2030 in line with European values; whereas the “Path to the Digital Decade” is aimed at further reinforcing digital leadership and empowering citizens and businesses, thus making the digital transformation the engine of sustainable economic growth, and social well-being in Europe, which should be achieved, inter alia, by building up digital skills and competences for the workforce to enable them to fully participate in the digital economy and by digitalising public services, and by making them more efficient and easy to use to the benefit of everyone in our society;
- V. whereas the 2022 Commission digital strategy: ‘Next generation digital Commission’ outlines objectives to enable the Commission administration’s support for the delivery of the EU’s strategic priorities and lead by example, and it advances, among others, the following elements: empowering its staff, enabling digital-ready policymaking through guidelines and support across the entire Union policy cycle and harnessing the benefits of data and innovative technologies to redesign its administrative processes; while the strategy shows the intention of how digitalisation of administrative processes and the Union’s administration interaction with citizens will evolve in the years to come; whereas this evolution should be accompanied by a set of rules governing administrative procedures and should be harmonised across the Union’s administration;
- W. whereas the development of new technologies, such as artificial intelligence and automated decision making systems (ADMSs), can play an important role in the modernisation and improvement of the functioning of public administration provided that the technologies used have a high degree of reliability and of trustworthiness; whereas the possibility of recourse to such new technologies by public administration, including the Union’s administration, should, however, be limited by the principle of legality and the need to ensure the respect for citizens’ rights; whereas use of new technologies, such as AI and ADMSs may pose specific problems for the principle of good administration and right to legal review and therefore requires particular analysis with regard to elements such as transparency, accountability, compliance and non-discrimination, by addressing the risk of algorithmic bias;
- X. whereas the risks of using artificial intelligence and machine learning, in particular in

the context of the Union's administration where a significant power gap can exist between citizens and the administration, should be acknowledged; whereas therefore the use of machine learning by the Union's administration should be limited to the collection, organisation, structuring, conversion, combination and adaptation of data, such as optical character recognition, object recognition or speech-to-text;

- Y. whereas in 2022 the European Law Institute presented a report with Model Rules on Impact Assessment of Algorithmic Decision-Making Systems Used by Public Administration, where the model rules are proposed when such algorithmic decision making systems make a decision or support human decision-making - that is a determination by a public authority (including at Union level) to take or not to take action - that is likely to have significant impacts on the public¹⁵;
- Z. whereas in the past, software developed for the purposes of public administration has often been closed-source, meaning that despite paying for it, citizens cannot audit or reuse the code; whereas it is worth recognising that the Union's administration develops, publishes and uses open-source code for software, which contributes to the fulfilment of the 'public money - public code' principle; whereas this principle promotes reuse and improvement of existing code to bring down the costs of developing software and hence the cost of digitalisation; whereas therefore the use of open-source software by the Union's administration should be continuously encouraged¹⁶;
- AA. whereas access to digital administration services for Union citizens is affected by factors such as age, confidence or willingness to embrace technological solutions; whereas therefore the Union's administration should take this into consideration when developing digital solutions for services it provides in order not to lose citizens' trust and to allow citizens to adjust to the existence of the digital service;
- AB. whereas the following principles for digital public services and administration have already been identified: (i) human-centric and accessible digital public services at all levels, (ii) the possibility for every person to engage in the creation and improvement of digital public services that are tailored to their needs and preferences, (iii) the 'once only' principle, namely that every person should submit their data or information only once when they are digitally interacting with public administrations across the Union, (iv) interoperability of digital services offered by the public sector such as digital identity solutions with data portability allowed across the Union, (v) wide-ranging engagement of and with people enabled by digital technologies and solutions and stimulation of the development of participatory initiatives at all levels, (vi) contribution of digital technologies and solutions to better levels of public security and safety;
1. Considers that after 70 years of constant development of the Union's public administration and 13 years since the entry into force of the Lisbon Treaty, which lays

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https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Model_Rules_on_Impact_Assessment_of_ADMSs_Used_by_Public_Administration.pdf

¹⁶ https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/informatics/open-source-software-strategy_en#opensourcestrategy

down the legal basis of Article 298 TFEU, there is no justification not to enshrine the principles of good administration in binding legislation;

2. Recalls that, in its resolution of 15 January 2013 and in its resolution of 9 June 2016, Parliament called, pursuant to Article 225 TFEU, for the adoption of a regulation on an open, efficient and independent European Union administration under Article 298 TFEU; recalls that, in its resolution of 9 June 2016, the Parliament in particular called on the Commission to come forward with a legislative proposal to be included in its work programme for the year 2017; regrets that the Parliament's requests have not been followed up by a Commission proposal thus far;
3. Notes that the Commission has not provided any substantiated or convincing arguments for its inaction and regrets that to date the Commission has not presented any in-depth analysis or studies concerning the topic;
4. Requests the Commission to urgently come forward with a legislative proposal, on the basis of Article 298 TFEU, for a regulation on an open, efficient and independent European Union administration to be included in its work programme for the year 2024 so that the co-legislators can start their work on it immediately at the start of new legislative term; requests that the proposal follow the recommendations set out in the Annex hereto and invites the Commission to consider the proposal for a regulation annexed to its resolution of 9 June 2016 as a point of departure basis for the preparation of the requested proposal and to take into account the advancement of digitalisation and its impact on the Union's administration and administrative procedure;
5. Considers that the requested proposal does not have financial implications;
6. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

Recommendation 1 (on the basis for a Commission proposal on a regulation on an open, efficient and independent European Union administration):

The European Parliament considers that the Commission proposal should take the form of a regulation laying down general act relating to administrative procedure, as outlined in the Annex to the Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration.

Recommendation 2 (on the principles guiding digitalisation of the Union's administrative procedures)

The European Parliament considers that the advancements in digitalisation and its impact on the administrative procedures of the Union's administration should be taken into account by the Commission when presenting the proposal requested under this resolution. In particular, the following should be considered:

1. With regard to general aspects:
 - (i) the 'once only principle', namely that every person should submit their data or information only once when they are digitally interacting with the Union's administration, drawing in that respect also from the establishment of the European Digital Identity Wallet;
 - (ii) interoperability of digital services offered by the Union's administration;
 - (iii) contribution of digital technologies and solutions to higher levels of public security and safety;
 - (iv) establishment of procedures and clarification of the use of digital technologies in the external communication of the Union's administration, with the objectives of taking counter-measures to deal with existing gaps, increasing legal certainty, ensuring that the number of cases of administrative injustice that are addressed increases and breaking the cycle of mistrust;
2. With regard to accessible, inclusive digital public services:
 - (i) digital public services should be human-centric and accessible at all levels;
 - (ii) every person should have the possibility of engaging in the creation and improvement of digital public services that are tailored to their needs and preferences;
 - (iii) analogue alternatives to digital services should always be provided, and a human contact point should be available to help address any issues that may arise in the use of digital services by Union citizens;
 - (iv) digital public services should be accessible for persons with disabilities;
 - (v) digital public services should also be accessible through a wide range of devices;
3. With regard to security, accountability and data protection

- (i) the ‘public money - public code’ principle, namely that the source code of any software developed using public money should be made available to the public for study and reuse purposes;
- (ii) the privacy and security of users of digital public services should be protected;
- (iii) the right to err and the right to rectification;
- (iv) the right to an explanation understood as the right to be given an explanation for an output of the algorithm and of the decision reached after algorithmic assessment;
- (v) the principle of transparency regarding the criteria on the basis of which automated decisions are taken, where those decisions affect citizens.

Recommendation 3 (on the principles for the development and deployment of digital solutions)

The need to develop new digital solutions in order to meet the needs of the Union’s administration in the digitalisation process should be recognised. In order to ensure that such solutions best serve Union citizens and Union staff, the following principles should be considered:

- (i) Union staff should be at the heart of the development process, as they have the best understanding of administrative procedures and edge-cases, namely problems or situations that only happen at the highest or lowest end of a range of possible values or in extreme situations;
- (ii) the development of in-house digital solutions that are essential for the deployment of the public service concerned should be considered;
- (iii) when outsourcing, rather than having calls for proposals for monolithic mega-projects that only a few large companies are able to bid for, and that run a higher risk of being delayed and running over budget, public procurement procedures for the digitalisation of projects and processes should be subdivided into calls for proposals for smaller projects, in order to make digitalisation contracts more accessible to SMEs;
- (iv) digitalisation should not be seen solely as a cost-cutting process: it is important to remember that effective digitalisation also requires investment both in technology and staff;
- (v) digitalisation should be carried out in a manner that results in staff having more time to do tasks related to their expertise, by automating repetitive tasks and assisting staff with ensuring the Union’s administration meets the principles and aims referred to in Recommendation 2;
- (vi) digitalisation should not lead to specialist tasks being offloaded onto staff with non-specialist competences, who are not given the training and resources necessary to complete such tasks.