EFEE Statement on the 2021 Charter report on fundamental rights in the digital age

Brussels, 24.05.21

The COVID-19 crisis has changed European societies profoundly, creating the need to re-evaluate and re-align the existing pre-pandemic legal framework of the EU Charter of Fundamental rights.

In the light of this, the European Federation of Education Employers (EFEE) welcomes the new Strategy to strengthen the application of the EU Charter of Fundamental Rights as a strong signal of its commitment to strengthen the protection of people's rights in a post-pandemic world. We are especially enthused to see that the Commission, in this regard, decided to dedicate its first report on the evaluation of how well digital rights of individuals are protected in Member States. This report could not be timelier as the acceleration of digitalisation in, for instance the educational context, has not only created new opportunities but also created new and deepened already existing challenges to the values of democratic societies in the EU (Article 2 TEU).

Taking into consideration the thereout resulting substantial role that this report will play with regards to all areas of society, including the education and training sector, EFEE invites the European Commission to take the following points into consideration:

1. **Addressing the digital divide and inclusive digital rights**

   Equal access to qualitative education represents a fundamental human right which is enshrined in Art. 14 in the EU Charter of Fundamental Rights. However, with the shift from on-site to remote learning, the COVID-19 has dismantled in its extremity that the access to digital tools and infrastructure, such as high-speed internet, is still dependent on the socio-economic background, geographical location and level of education of a learner. In order to ensure a more inclusive digital transition in practice, in full accordance with the principle of "leaving no one behind", a sound, sustainable and coherent investment structure represents a crucial basis for every policy initiative. In this regard, we encourage the Commission to build up on existing funding programmes and schemes such as the European Regional Development Fund, the European Social Fund and the European Agricultural Fund for Rural Development. Moreover, to ensure an adequate distribution of these funds on a need-based approach, we enthuse the Commission to conduct a detailed economic mapping of the current state of play with regards to the access to digital tools and infrastructure available to schools across European countries and educational levels. Given the diversity of our membership consisting of educational employers from 26 European countries, we encourage the Commission to include us from the earliest stage of such a mapping procedure.

2. The digital transition of work (concerning workers' rights and social impacts)

An essential prerequisite for the education sector being able to contribute to an inclusive and just digital transition is to ensure adequate and safe working conditions for teachers, leaders and other staff working in education and training institutions at all levels. Given the fact that the acceleration of digitalization has changed and is changing the working landscape rapidly, EFEE has intensified working relations with the European Agency for Safety and Work (EU-OSHA), for instance in the framework of the project *"OSH4Edu - European Sectoral Social Partners in Education Enhancing Risk Assessment in Education Institutions''*. The project adds to the joint efforts made by EFEE and EU-OSHA, between 2018 and 2019, with the objective of developing a free of charge interactive Online Risk Assessment tool (OIRA) designed not only for the primary and secondary education levels but also the higher education sector. In doing so, EFEE and EU-OSHA make a valuable contribution to enhancing the health and safety working conditions of teaching staff in these education sectors across all European countries in the digital age.

Given EFEE's strong commitment, as representatives of education and training providers and social partners in education, in ensuring the maintenance of a healthy and safe working environment of educational staff, we encourage the Commission to continue providing the essential financial means to make such initiatives possible. Further, in the light of our continuously growing expertise in the field of OSH, we enthuse the Commission to involve us with regards to therewith related initiatives whenever needed.

3. A value-driven approach to the digital challenges of online content and content moderation

Digitalization brings about progress. It is bound with the opportunity for European societies to avoid stillstand, come up with new innovative ideas and actions which help to create a more efficient, inclusive and sustainable future. In the education sector, for instance, surveys have shown that the use of digital tools enables a better inclusion of disadvantaged learners such as students with physical disabilities into daily school lessons.

However, with this progress also come about new responsibilities which need to be taken into consideration in order to avoid an erosion of people's fundamental rights. Already before the pandemic, digitalization has made a fast and facilitated access and spread of (educational) content for all learners, including teachers and other education staff, possible. This open and often unfiltered access to information has, however, also opened room for disinformation, cyber-attacks and hacking, threatening democratic values, the rule of law, the rights of teachers and students and the overall civic mission of education. The awareness of this issue has increased in importance especially during the pandemic with virtual teaching and learning becoming an integral part in the daily life of the majority of students and educational staff across all levels of education.

In collaboration with the European Trade Union Committee for Education (ETUCE), EFEE has increased awareness of this issue, for instance, in the framework of the project "*e-Speed – European Social Partners in Education Embracing Digitalisation: Challenges and opportunities for European education trade unions and employer organisations in the digital era*". The project has elaborated on the challenges and opportunities the education sector faces with regards to the use of digital tools in their daily learning life. In the light of this, EFEE has aimed at contributing to building of an innovative, inclusive digital future in education where the wellbeing and safety of both learners, teaching staff and school heads is further guaranteed.

In dialogue with national and local educational representatives such as ministries of education, teaching and non-teaching staff as well as learners from diverse educational levels, it has become clear that a solid legislative framework on both national and EU level is required to take precedence against the above-mentioned digital challenges. In this regard, we warmly welcome new initiatives such as the Digital Services Action Package, the review of the Code of Practice on disinformation as well as the report on the General Data Protection Regulation, adopted in June 2020.

Given the great likelihood that the digital landscape is continue to change rapidly in the future, we encourage the Commission to continue adapting this built legislative framework in a flexible and timely way in order to be able to continue ensuring the health of democratic systems and the therewith bound fundamental rights of every individual. Against this backdrop, we consider the further strengthening of the dialogue amongst different stakeholders, including institutions, social partners, education employers and those of the school ecosystem of crucial importance. In the light of this, we once more would like to acknowledge the Commission's continuous efforts to strengthen the involvement of education social partners. We, further, encourage the Commission to build up on these joint efforts and continue involving our broad expertise, such as in the field of digital education and values, for instance, in the framework on achieving the European Education Area by 2025 and therewith bound working groups.

4. **Fundamental rights, Artificial intelligence and the supervision of digital surveillance (the surveillance of the surveillance)**

Artificial intelligence (AI) technologies already play a considerable role in almost all societal sectors, including education. As a main driver for the arise of new technology, AI is used by learning tools and online platforms such as Duolingo, Third Space Learning and Carnegie Learning. The idea of such tools is to tailor education to the individual needs of leaners and, consequentially, optimize learning experiences and performances.

In the light of the prominence of such tools, AI has received wide attention in public discussions. The majority of these discussions, focus on the potential of AI with regards to supporting economic growth rather than on potential challenges for fundamental rights, resulting out of the growing use of big data and algorithms. Especially on

national level, the discussion of such challenges, with regards to privacy, data protection and equality.

Studies have shown that the absence of these discussions could lead back to the lack of a wide range of empirical evidence available, indicating the potential harm of AI for fundamental rights.

In the light of this we welcome, for instance, the initiative for a Regulation on A European Approach For Artificial Intelligence, the creation of high-level expert group on AI. We enthuse the Commission to foster top-down and bottom-up communication of thereout gained results, such as checklists and self-evaluation tools. In addition, we deem an impact assessment of AI implications for fundamental rights in a transparent manner. This assessment should be conducted in cooperation with stakeholders on European, national, regional and local ground, such as social partners, companies, civil society and public administration institutions. Building on this assessment, targeted actions, such as "funding, guidelines, training or awareness raising", should be developed in order to ensure compliance with fundamental rights when "developing, using or planning AI systems".

One of these actions should entail the supervision of the digital surveillance of AI learning platforms as well as qualitative content of education AI tools.
As the voice of European education employers, we welcome AI driven learning tools as an added value to formal education in the sense that they enable learners to bridge knowledge gaps in a need-tailored approach. However, the content provided as well as the outcomes achieved cannot be seen as equivalent replacements to the ones of courses and certificates supplied by formal education providers.
As a social partner in education, in this regard, we emphasize the importance of a closer cross-collaboration between stakeholders of educational institutions, ICT support organizations, and social partners. This collaboration is of crucial importance in order to ensure synergies of interests to secure the civil value of education. Despite its importance, in the framework of this collaboration it is crucial that the education sector remains its academic and institutional autonomy.