Committee of experts on human rights dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

MSI-AUT(2018)03
27 March 2018

1st meeting, 6-7 March 2018, 9:30-17:30
(Strasbourg, Agora, Room 04)

Meeting Report

1. Silvia Grundmann, Head of the Media and Internet Division welcomed members and participants and provided information on the Council of Europe's Steering Committee on Media and Information Society (CDMSI), to which the MSI-AUT is a sub-ordinate body, as well as on its activities and priorities. She underlined the high importance attached to human rights impacts of automated data processing and decision-making techniques as well as other forms of artificial intelligence within the Directorate of Information Society and Action Against Crime, and pointed out that several entities of the Council of Europe are engaged in exploring both positive and negative effects. Charlotte Altenhöner-Dion, Secretary to the MSI-AUT, introduced the working methods and processes of expert committees and provided background to the MSI-AUT's terms of reference and expected deliverables. The members of the MSI-AUT introduced themselves and presented their initial views on the most important challenges for human rights stemming from automated data processing and different forms of artificial intelligence.

2. With only one candidate proposed for each of the functions, the MSI-AUT unanimously elected Mr Luukas Ilves (Estonia) as its Chair and Mr Wolfgang Schulz as its Vice-chair. In line with Article 12 d. of Resolution CM/Res(2011)24, the term of office of the Chair and Vice-Chair are one year, renewable once. Ms Tanja Krševan-Smokvina (Slovenia) was appointed Gender Equality Rapporteur.

3. The agenda (Appendix 1) was adopted without change. The list of participants appears in Appendix 2. Of the 30 participants, there were 10 women (33.3 %) and 20 men (66.6%).

4. The MSI-AUT took note of its Terms of Reference and of Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. It discussed form and scope of the deliverables it is expected to finalise by the end of its mandate in December 2019.

Conclusions and decisions

5. With regard to the first expected result, namely to provide <u>follow up with a view to the preparation of a possible standard-setting instrument on the basis of the study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications</u>, the MSI-AUT considered the proposal to engage in two exercises. Firstly, a document (possibly a declaration) addressing the power of algorithmic processes to manipulate the formation of opinions, media environments and democratic processes, with a focus not only on Article 10 but also on Article 9 and challenges to cognitive sovereignty. Secondly, the preparation of a <u>draft *Committee of Ministers recommendation on human rights impacts of the use of algorithms,*</u> with guidelines for member states on how to curb negative impacts and promote benefits for society both in the public and private sector. The MSI-AUT considered it important to emphasise throughout its work that innovation and human rights are not mutually exclusive concepts, but that human rights must be "operationalised" to promote human rights compliance of new technologies.

6. In reviewing the conclusions from the MSI-NET's Study on the human rights dimensions of algorithms, the group further discussed issues related to imbalances of power between private and public actors when it comes to design, programming, ownership and operation of algorithms, the effectiveness of remedies to address possible harm, as well as the concepts of responsibility, transparency and accountability in legal and ethical terms. The group agreed to appoint Mr Pierluigi Perri as Rapporteur for this recommendation.

7. The MSI-AUT also had a first exchange on the scope and most important questions to be addressed in the <u>study on the development and use of new digital technologies and services, including different forms of artificial intelligence, as they may impact peoples' enjoyment of human rights and fundamental freedoms in the digital age – with a view to give guidance for future standard setting in this field.</u> The group decided to refrain from attempting to define artificial intelligence but limit itself to the discussion of its main properties, including interactivity/reactivity, autonomy, and learning. Based on an outline produced by Ms Karen Yeung, the group considered the proposal to prepare a study of the concept of responsibility for AI decision-making systems within a human rights framework. This study would map the implications of AI decision-making for 'responsibility', in relation to other concepts, including authority, power and accountability, liability, fault and blame, and agency and legal personhood. The MSI-AUT agreed to appoint Ms Karen Yeung as Rapporteur for this study. Other members of the group will contribute, in particular as regards specific AI implications for media and freedom expression.

8. As regards the <u>Study on a possible standard-setting instrument on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states</u>, the group took note of the background and main purpose of this deliverable as provided by the Secretariat and agreed to task an external expert with the preparation of the study. Relying on findings from previous studies, this study should examine the impacts of libel tourism in member states, particularly those emanating from proceedings under civil and administrative law related to alleged defamation online, and the risks that it carries to the freedom of expression, with a view to exploring the possibilities of minimising or removing these risks.

9. Both rapporteurs will provide preliminary outlines and seek input from all other members before commencing their work. The MSI-AUT agreed to commence its work on all expected results in parallel, in line with the draft roadmap (Appendix 3).

10. During the meeting, Clementina Barbaro from the Council of Europe Justice Reform Cooperation Unit briefed the group about on-going work with respect to the efficiency and

equality of justice in Council of Europe member states, and the plan to adopt guidelines by the end of 2018 on challenges of the use of artificial intelligence algorithms in judicial systems, discussing their impacts in particular in terms of embedded bias and discrimination.

11. The MSI-AUT agreed to continue to invite other partners and stakeholders to its meetings in line with its terms of reference.

Any other business

12. The MSI-AUT agreed to hold its next meeting in Strasbourg on the week of 24 September 2018.

13. The Secretariat will prepare a draft meeting report to be sent to the Chair and Vice-Chair for consideration. Thereafter, the Secretariat will send the draft report to the MSI-AUT, allowing for comments within five full working days. In the absence of comments the report will be deemed finalised and will be transmitted to the CDMSI for information. The progress of work of the MSI-AUT will be reflected in its draft documents and the reports of its meetings. Therefore, it is not considered necessary to produce abridged reports of meetings.

Appendix 1

Annotated agenda

MSI-AUT 1ST MEETING
6-7 March 2018 (9:30-17:30)
Strasbourg, AGORA Building (Room G04)

ANNOTATED AGENDA

1.   Opening of the meeting

Ms Silvia Grundmann, Head of Media and Internet Division will open the meeting

2.   Adoption of the agenda

3.   Information by the Secretariat

Introduction to the working methods and procedures of intergovernmental committees and subordinate bodies (Resolution CM/Res(2011)24). Information on relevant standard-setting work of the Council of Europe with regard to the internet and evolving technologies, notably the 2017 Study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications.

4.   Election of Chairperson and Vice-chair person and appointment of a Gender Equality Rapporteur

Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, with particular reference to Article 12.

5.   Discussion of deliverables under the MSI-AUT Terms of Reference

The MSI-AUT will discuss the main issues of concern that should be addressed in the texts that it is expected to deliver during its mandate, notably a recommendation on the basis of the 2017 study on the human rights dimensions of automated data processing techniques, a study on the development and use of new digital technologies and services, including different forms of artificial intelligence, as they may impact peoples' enjoyment of human rights and fundamental freedoms in the digital age, and a study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states.

MSI-AUT Terms of Reference

6.   Discussion of the road map for the MSI-AUT in 2018 and 2019

7.   Other business

Appendix 2

List of participants

COMMITTEE MEMBERS	MEMBRES DU COMITE
Abraham BERNSTEIN, Professor of Informatics – University of Zurich. Head, Dynamic and Distributed Information Systems Group	**Abraham BERNSTEIN**, Professeur d'informatique - Université de Zurich. Chef, Groupe des systèmes d'information dynamiques et distribués
Jorge CANCIO, International Relations Specialist, Federal Office of Communications (OFCOM) - Switzerland	**Jorge CANCIO**, Spécialiste en relations internationales, Office fédéral de la communication (OFCOM) - Suisse
Luciano FLORIDI, Professor of Philosophy and Ethics of Information – Oxford University. Director of the Digital Ethics Lab of the Oxford Internet Institute	**Luciano FLORIDI**, Professeur de philosophie et d'éthique de l'information - Université d'Oxford. Directeur du Laboratoire d'éthique numérique (Oxford Internet Institute)
Seda GÜRSES, Post-doctoral Fellow at the Centre for Computer Security and Industrial Cryptography COSIC/ESAT, Department of Electrical Engineering – Catholic University of Leuven (apologised)	Seda GÜRSES, Chercheuse postdoctorale au Centre de sécurité informatique et de cryptographie industrielle COSIC/ESAT, Département de génie électrique, Université catholique de Louvain (excusée)
Gabrielle GUILLEMIN, Senior Legal Officer – ARTICLE 19 (apologised)	Gabrielle GUILLEMIN, Juriste principal - ARTICLE 19 (excusée)
Natali HELBERGER, Professor of Information Law, University of Amsterdam – The Netherlands	**Natali HELBERGER**, Professeur de droit de l'information, Université d'Amsterdam - Pays-Bas
Luukas ILVES, Deputy Director and Senior Fellow – Lisbon Council – Estonia	**Luukas ILVES**, Directeur adjoint et maître de recherche - Conseil de Lisbonne– Estonie
Tanja KERŠEVAN SMOKVINA, Visiting Lecturer, Faculty of Electrical Engineering and Computer Science, University of Maribor. Senior Consultant at the Media Governance Institute – Slovenia	**Tanja KERŠEVAN SMOKVINA**, Conférencier invité, Faculté de génie électrique et informatique, Université de Maribor. Consultant senior à l'Institut de gouvernance des médias - Slovénie
Joe MCNAMEE, Executive Director of European Digital Rights (EDRi) – Ireland	**Joe MCNAMEE**, Directeur exécutif de Droits numériques européens (EDRi) - Irlande

Evgenios NASTOS, Head of Unit for Information, Ministry of Digital Policy, Telecoms & Media – Greece

Pierluigi PERRI, Professor of Computer Law at the University of Milan – Italy

Wolfgang SCHULZ, Professor of Law – University of Hamburg, Director of the Hans-Bredow Institute for Media Research

Karen YEUNG, Interdisciplinary Professorial Fellow in Law, Ethics and Informatics, Birmingham Law School & School of Computer Science

COUNCIL OF EUROPE MEMBER STATES

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Henna KOSONEN, Deputy Permanent Representative

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Francesca PELLICANÒ, Italian Communications Authority Audiovisual Content Directorate – Digital Rights Unit, Rome

REPUBLIC OF MOLDOVA
Iulian ROŞCA, member of the Audiovisual Coordination Council
Eduard RĂDUCAN, Head of National Center for Personal Data Protection
Zoia COJOCARI, Interim Head of Directorate for External Relations and European Integration

SWITZERLAND
Roxana RADU, DiploFoundation and Geneva Internet Platform

Evgenios NASTOS, Chef de l'Unité de l'information, Ministère de la politique numérique, des télécommunications et des médias - Grèce

Pierluigi PERRI, Professeur de droit de l'informatique à l'Université de Milan - Italie

Wolfgang SCHULZ, Professeur de droit - Université de Hambourg, Directeur de l'Institut Hans-Bredow pour la recherche sur les médias

Karen YEUNG, Professeur agrégé interdisciplinaire en droit, éthique et informatique, Faculté de droit de Birmingham et Ecole de science informatique

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Eduard RĂDUCAN, Directeur du Centre national de protection des données personnelles
Zoia COJOCARI, Chef intérimaire de la direction des relations extérieures et de l'intégration européenne

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Nurullah ÖZTÜRK, Member of Radio and Television Supreme Council (RTÜK), Ankara
Mehmet Bora SÖNMEZ, expert in the International Relations Department of the Radio and Television Supreme Council (RTÜK), Ankara

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Michael ROTERT, EuroISPA Honorary Spokesman

DEUTSCHE TELEKOM AG
Jakob GREINER, Senior Manager European Affairs

SECRETARIAT

Jan KLEIJSSEN, Director, Directorate of Information Society and Action against Crime (apologized)

Patrick PENNINCKX, Head of Information Society Department (apologized)

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Appendix 3

Roadmap - MSI-AUT

2018

6 - 7 March	**1st MSI-AUT meeting**

Constitution of the Committee of Experts, election of the Chair and Vice-chair, Appointment of Rapporteurs
Introduction to working methods and processes
Discussion of scope and main issues to be covered in deliverables

12 April   **13th CDMSI Bureau meeting**

Report on the 1st MSI-AUT meeting

19 – 22 June   **14th CDMSI Plenary meeting**

Report on MSI-AUT work progress, CDMSI orientation on deliverables and timetable

25 - 26 September (tbd) **2nd MSI-AUT meeting**

Discussion of a first draft of the recommendation on human rights impacts of algorithms
Discussion of a first draft of the study on human rights dimensions of AI
Discussion of a first draft of the study on forms of liability and jurisdictional issues in the application of anti-defamation laws

16 - 17 October   **14th CDMSI Bureau meeting**

Report on the 2nd MSI-AUT meeting and overall work progress. Invitation to CDMSI members to provide feedback on the draft deliverables at the plenary meeting

27 - 30 November   **15th CDMSI Plenary meeting**

Report on MSI-AUT work progress and CDMSI feedback on and input into the draft deliverables

2019

March

3rd MSI-AUT meeting

Discussion of the revised draft Committee of Ministers recommendation to member states on the human rights impacts of algorithms; agreement to consult with relevant steering and conventional committees and to conduct open consultations with other stakeholders;
Discussion and possible finalisation of the study on the human rights dimensions of AI, taking into account comments from the CDMSI. Discussion and possible finalisation of the study on forms of liability and jurisdictional issues in the application of anti-defamation laws

April/May

15th CDMSI Bureau meeting

Report on the 3rd MSI-AUT meeting and overall work progress. Discussion of the draft Committee of Ministers recommendation to member states on the human rights impacts of algorithms. Discussion of the two draft studies with a view to their possible finalisation by the CDMSI in June.

June

16th CDMSI Plenary meeting

Report on work progress and discussion of the draft Committee of Ministers recommendation to member states on the human rights impacts of algorithms, with a view to conduct open consultations over the summer. Discussion and possible finalisation of the study of the human rights dimensions of AI. Discussion and possible finalisation of the study on forms of liability and jurisdictional issues in the application of anti-defamation laws

September

4th MSI-AUT meeting

Discussion and finalisation of the draft Committee of Ministers recommendation to member states on the human rights impacts of algorithms; Discussion and finalisation of the outstanding draft studies

October

16th CDMSI Bureau meeting

Discussion of the draft Committee of Ministers recommendation on the human rights impacts of algorithms and agreement on submitting the draft for approval to the CDMSI Plenary.

Nov/Dec

17th CDMSI Plenary meeting

Possible approval of the draft Committee of Ministers recommendation on the human rights impacts of algorithms.