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CAHAI (2020)12 final

# **AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)**

**2nd Plenary Meeting  
(by videoconference, 6-8 July 2020)**

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**Meeting Report**

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Prepared by the Secretariat

[www.coe.int/cahai](http://www.coe.int/cahai)

## 1. Opening of the meeting

1. The Ad hoc Committee on Artificial Intelligence (CAHAI) held its second meeting online on 6-8 July 2020, in conformity with its terms of reference adopted by the Committee of Ministers on 11 September 2019 and the circular letter sent to the Chairs of steering committees and ad hoc committees by the Secretary General of the Council of Europe and the Chairman of the Committee of Ministers<sup>1</sup>.
2. The meeting was chaired by Gregor Strojín (Slovenia), Chair of the CAHAI, on the first and third day of the meeting, and by Ms Peggy Valcke (Belgium), Vice-Chair of the CAHAI, on the second day.
3. The Chair welcomed Israel, who was granted observer status to the CAHAI by the Committee of Ministers, as well as 12 new observers from civil society, academia and the private sector.
4. Mr Jan Kleijssen, Director, Information Society - Action against Crime, Directorate General of Human Rights and Rule of Law, and Ms Claudia Luciani, Director of Human Dignity, Equality and Governance, Directorate General of Democracy, informed the meeting as follows.
5. Mr Kleijssen underlined the efforts made by the Council of Europe during the pandemic to continue its work as effectively as possible. The work on artificial intelligence (AI) was now of even greater importance, due to its impact on human rights, the rule of law and democracy. Although much of public debate in this regard has centred on proximity tracking applications, showing a lack of trust in new technologies, AI played a significant role in the framework of the COVID-19 pandemic, for example in sharing health information or tracking clusters worldwide in real time. He drew attention to the contribution<sup>2</sup> of the Council of Europe to the European Commission's *White Paper on Artificial Intelligence - A European approach* and stressed the importance of cooperation among international organisations active in the field of AI.
6. Ms Luciani underlined the necessity of ensuring that the CAHAI's approach to AI is ambitious, inclusive and transparent, despite the challenging context in which the CAHAI is operating, and her wish that all member states' delegations and participants fully contribute to the discussion and deliberations, indicating the importance of cooperation and dialogue based on trust. She raised important questions to be addressed, such as which values, rights and common principles can bring together member states and possibly other states ready to join CAHAI's processes in order to steer the international governance of AI towards due respect for human rights, the rule of law and democracy. She also emphasised the importance for the CAHAI to make full use of the expertise of other Council of Europe bodies and committees working on AI .

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<sup>1</sup>The letter encourages the committees including CAHAI " to explore all possibilities to ensure the continuity of the committee's work by adapting working methods to the use of new technologies, videoconferences, participation in meetings via video-link and written procedures in order to pursue the implementation of 2020-2021 terms of reference".(...) To this end, it is of the utmost importance to respect the legal framework established by Resolution CM/Res (2011) 24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods and other relevant documents of the Committee of Ministers. (...) The Secretariat shall ensure that all delegations have access to all meeting documents".

<sup>2</sup> Available at : <https://www.coe.int/en/web/artificial-intelligence/-/contribution-to-the-consultation-of-the-european-commission-on-ai>

## **2. Adoption of the Agenda and Order of Business**

7. The agenda and the order of business were adopted by the CAHAI.<sup>3</sup>

### **3. Information by the Chair**

8. The Chair briefed the participants on updates and relevant information for the CAHAI since the last plenary meeting of 18-20 November. He begun by underlining the exceptional circumstances and the fact that the CAHAI's work has continued to progress, adapting to these challenges while taking into account the difficult context for member states and other participants contributing to CAHAI's work.

9. He went on to highlight the importance of ensuring that CAHAI's work is conducted in a fair, inclusive and transparent manner which includes all member states in the decision-making process while ensuring that CAHAI's work ultimately reflects the outcome of multi-stakeholder consultations.

10. Mr Strojin thanked all delegations who had actively responded and contributed to the written consultations initiated as a result of the preparatory work undertaken by the Bureau - with 2 Bureau meetings being held on 23-24 January 2020 and 27 March 2020 (online) - which led to the approval by the CAHAI of the text of the progress report which was submitted to the Committee of Ministers. He also expressed his appreciation of the work of the secretariat who had reviewed numerous written contributions and liaised with the delegations to finalise these processes. He indicated that both Bureau meeting reports are public for a detailed account of issues discussed.

11. The Chair informed the participants that Tuesday's session would be chaired by the Vice-Chair, as he would present the progress report adopted by the CAHAI through written procedure to the Committee of Ministers' Rapporteur Group on Legal Co-operation (GR-J) and hold an exchange of views with the Group on CAHAI's work and progress in the preparation of the feasibility study and the elements of a legal framework on AI. The CAHAI took note of the information provided by the Chair on the presentation of the previously adopted progress report to the GR-J and the exchange of views.

### **4. From ethics to law: key principles on the development, design and application of artificial intelligence**

12. Ms Joanna Bryson, Professor of Ethics & Technology at Hertie School of Governance, gave a keynote speech concerning ethical principles on the design, development and application of AI.

13. In the exchange of views which followed, CAHAI members expressed their appreciation of the main findings of her presentation, of which they took full note. They also underlined the need to mitigate the risks arising from AI on human rights and democracy, as well as for the clear accountability of AI operators.

### **Analysis of key questions addressed in the framework of the feasibility study and steps to be taken to ensure progress in the preparation of such study (items 5, 6, 8, 9, 11, 12, 13, 16)**

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<sup>3</sup> The agenda is available at: <https://rm.coe.int/cahai-2020-oj1-e-agenda-rev2-web/16809ee91a>.

14. CAHAI members, participants and observers, discussed, under each different agenda item (from 5 to 16), relevant issues to be dealt with in the CAHAI feasibility study and how they should be further developed in the framework of the study.

**5. Opportunities and risks arising from the design, development and application of AI. “Green” and “red” areas:**

15. The Committee discussed the opportunities and risks arising from the design, development and application of AI, as well as “green” and “red” areas. It is worth recalling that, at its 1<sup>st</sup> Plenary meeting, the Committee had underlined that this issue should be given particular attention in the framework of the feasibility study. An initial input was provided by Ms Catelijne Muller, President of the Alliance for Artificial Intelligence (ALLAI) who presented the key findings of the analysis she has prepared, and in particular, the impact of AI on several rights protected by the European Convention on Human Rights (ECHR) and elements to be considered by the CAHAI in the preparation of the feasibility study.

16. Ms Muller emphasised the need to ask the “Question Zero”: do we really want a particular AI application posing risks to human rights, rule of law and democracy perspective? Red zones could be envisaged with severe restrictions on AI, with Green zones allowing AI to develop. New AI could be developed, or existing AI adapted to take into account human rights.

17. In the following exchange of views, CAHAI members indicated that both risks and opportunities should be considered in order to assess whether a given application of AI should be used. In certain areas such as judicial systems, delegating certain tasks to AI would be risky. Therefore, there is a need for legal certainty, transparency, and embedding ethics in the design, development and application of AI.

18. The representative of the Russian Federation emphasized the need to develop common international technical standards for AI. He also pointed out that AI developers who benefit most of it should bear appropriate responsibility for the proper functioning of AI and its impact at scale on the society.

19. Ms Muller also underlined that although it is true that the current framework of protection of fundamental rights is robust, it is not completely fit for its purpose. Many human rights are affected by AI and certain restrictions need to be set. Indeed, in the wake of AI, new human rights may appear.

20. Ms Jana Novohradska, CAHAI’s Gender Equality Rapporteur (GER) also made a presentation on an egalitarian AI ecosystem, egalitarian data, algorithms and the computing sector. Ms Novohradska underlined that in the growing AI sector only 12% of participants are women and this number is decreasing. The question should be what women can do for AI and not what AI can do for women.

21. She highlighted the need for “Egalitarian Data” and “Egalitarian Algorithms”, a need which is highlighted by cases of discrimination against women and other groups showing how existing bias is being copied into AI systems.

22. Bias and discrimination in real life is difficult to prevent, whether committed by humans or systems, however this can be identified, evaluated and, if necessary, removed in AI. When discrimination has been uncovered in AI this can lead to fear and mistrust.

23. Finally, an “Egalitarian Computing Sector” is necessary. Currently there is a shortage of AI specialists, especially women specialists whose number are on the decline.

24. The representative of the Gender Equality Commission (GEC) thanked Ms Novohradská for bringing the situation of women in the field of AI to the attention of the Committee and complemented her presentation on how AI can be used to promote gender equality. She also drew the attention of the CAHAI to a new document - "Pact for an Artificial Intelligence based on equality between women and men" - issued by a French civil society organization: *Laboratoire de l'Égalité* (Equality Laboratory). The document is available in French and translation into English is underway so that it can also be shared with the CAHAI.

25. As a result of the discussions, the CAHAI:

- took note of the report prepared by Ms Muller and concluded that its elements should be taken into account by the CAHAI-PDG when elaborating the feasibility study;
- thanked Ms Novohradská and recalled that the CAHAI is expected to ensure that the feasibility study takes due account of a gender perspective throughout its chapters and that this task goes beyond the responsibility alone of the GER. It called on the GER and other interested delegations to contribute to the work of the Policy Development Group (PDG).

#### **6. Mapping of international binding and non-binding instruments, as well as of ethical guidelines, relevant to the design, development and application of AI in the field of human rights, democracy and the rule of law**

26. The Committee discussed the mapping of international binding and non-binding instruments, as well as of ethical guidelines, relevant to the design, development and application of AI in the field of human rights, democracy and the rule of law. It is worth recalling that, at its 1<sup>st</sup> Plenary meeting, the Committee had underlined the key importance of addressing these issues in the framework of the feasibility study. An initial input has been provided by Mr Alessandro Mantelero, Associate Professor at Politecnico di Torino, who gave a presentation on the key findings of its analysis on the mapping of international binding and non-binding instruments.

27. Mr Mantelero began by underlining that AI is partially reshaping our society and the development of AI requires clear and uniformed rules. He also stressed the importance of contextualizing the guiding principles extracted from legally binding and non-binding international instruments on human rights, democracy and the rule of law to address the challenges arising from the use of AI. While the existing international legal instruments provide an appropriate and common context, a more specific binding instrument to regulate AI in line with the principles and values enshrined in such instruments was to be recommended.

28. Moreover, given the evolving nature of AI, a co-regulatory approach is desirable. A binding instrument establishing the legal framework for AI, including both general common principles and granular provisions addressing specific issues, could therefore be combined with detailed rules set out in additional non-binding sectoral instruments. This model would provide both a clear regulatory framework and the flexibility required to address technological development.

29. Mr Marcello Ienca and Ms Effy Vayena, senior researchers at the Health Ethics & Policy Lab, Department of Health Sciences and Technology at ETH Zurich presented the key findings of their study on the mapping of ethical guidelines.

30. Their findings indicate that ethical guidelines in the field of AI have developed considerably since 2016 and that many guidelines converge on ethical principles such as transparency, justice, non-maleficence, responsibility and privacy. There is however some disagreement on the interpretation of these principles.

31. Moreover, certain ethical considerations are under-represented in the current corpus. Human rights considerations are only mentioned in just over half the soft law documents reviewed. However, the principles of privacy, justice and fairness showed the highest degree of cross-geographical and cross-cultural stability.

32. They concluded that soft law instruments are useful tools exerting a practical influence on AI development by promoting best practices and underlined that soft law approaches can inform the development of binding regulations.

33. Finally, as many soft law instruments have no reference to violations of human rights, this is an important area where a hard law and a rights-based approach could meet.

34. In the following exchange, CAHAI participants stressed that AI should be compatible with respect for human rights, and that an avenue to explore could be the strengthening of existing legal frameworks through additional protocols. Education and awareness raising in the field are important, and also the development of a culture aimed to prevent possible risks to human rights, particularly through the accountability of AI operators.

35. The representative of the Russian Federation made critical remarks that some regulations considered AI as a subject of law without sufficient grounds. He also pointed out the lack of appropriate risk assessment when some new technologies are introduced. He underlined that ethical and legal decisions cannot be taken by AI without due human control.

36. The representative of the European Committee on Democracy and Governance (CDDG) highlighted the 12 principles of good governance, and stressed that they would like to see clear references to ensure that AI strengthens the implementation of these principles.

37. The CAHAI took note of the reports prepared by the three experts and concluded that their elements should be taken into consideration by the CAHAI-PDG. Positions expressed by CAHAI delegations should guide the work of the CAHAI-PDG when elaborating the feasibility study.

## **7. Hearing of Applicant Observers**

38. The Committee held a hearing of three organisations having requested the status of observer to the CAHAI. These organisations are Article 19, the European Broadcasting Union and Women at the Table. A fourth organization (Together against crime – TAC) experienced connection problems and will be heard later by the Committee.

39. After the hearing of each applicant observer, the secretariat of the CAHAI organised an online procedure to determine whether the matter could be referred to the Committee of Ministers in line with applicable provisions of Resolution CM/Res(2011)24<sup>4</sup>. The results of the procedure were communicated by the Secretariat to all member delegations.<sup>5</sup>

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<sup>4</sup> III. Composition, C. Observers. 8. Observers from states and organisations other than those referred to in paragraph 7.b above. They shall be admitted to steering committees, ad hoc committees and any subordinate body answerable to them in the following manner:

a. as a general rule, upon their request to the Secretary General, observers are admitted, to steering and ad hoc committees or any subordinate body answerable to them, on the basis of a unanimous decision by that steering or ad hoc committee; in the event where unanimity is not reached, the matter may be referred to the Committee of Ministers at the request of two-thirds of the members of the committee concerned. The Committee of Ministers shall decide on the matter by a two-thirds majority of all the representatives entitled to sit on it.

<sup>5</sup> See CAHAI(2020)19 (restricted)

40. In the absence of two-thirds of the members of the CAHAI being in favour of such a communication, the Committee concluded the procedure and invited the secretariat to notify the organisations of the outcome of the process.

## **8. Overview of national instruments, policies and strategies related to artificial intelligence**

41. The Committee received a brief update from the Secretariat on the working document CAHAI(2020)09-REV1 (restricted) which presented the analysis of responses from CAHAI members and representatives of bodies, committees, observer organisations or partner companies as a result of the online consultation, collected up to 28 February 2020.

42. The Committee heard several interventions from member states (Turkey, Germany, the Netherlands, Romania), one observer state (Japan) and one participant (Congress of Local and Regional authorities) on domestic policies and strategies and related application challenges, with useful indications as to how this topic could be further developed in the feasibility study.

43. Questions and expressions of interest from observer organisations, including newly admitted observers, were raised orally and via the participants' online forum on receiving the electronic version of the documents and sending further contributions to the questionnaire. The Vice-Chair drew the attention of the Committee to the fact that additional questions were included in the updated questionnaire set out in the appendix of the document in order to cover the elements of the feasibility study. Two questions referred to relevant examples on the concrete use of AI to fight COVID-19 and any other aspects and lessons learnt regarding the use of AI in times of crisis.

44. The Committee agreed that member states, participants and observers wishing to contribute on a voluntary basis (in full or in part) or update their responses should be invited to do so no later than 31 August 2020. The Vice-Chair concluded by inviting the secretariat to circulate the questionnaire and in due course update the existing analysis considering new contributions.

## **9. Advantages, disadvantages and limitations of existing international and national instruments and ethical guidelines on artificial intelligence**

45. The CAHAI heard with great interest the keynote intervention of Ms Akiko Ejima (Professor at the Faculty of Law, Meiji University, Tokyo). Ms Ejima presented the experience of Japan on artificial intelligence, focusing on the social principles of human-centric AI and related advantages and disadvantages and underlining that the use AI must not infringe upon the fundamental human rights guaranteed by the Constitution and international standards. She also presented the new contact-tracing application (COCOA) developed in the context of the COVID-19 crisis and indicated that the uses of AI for contact tracing must be carried in a human centric way, choosing a model of solidarity rather than surveillance. She concluded on the need of a co-existence of different approaches, mirrored by a diversity and flexibility in legal frameworks, recommending a bottom-up approach and the need for sharing information and experience sharing.

46. Her intervention was complemented by the independent experts (Ms Cateljine Muller, Mr Alessandro Mantelero, Mr Marcello Lenca and Ms Effy Vayena) who suggested to take account of different approaches to AI (bottom-up and top-down), to consider both the advantages and limits of current soft law instruments, including their blind spots and different interpretations given, and not underestimate the impact of AI on human rights, democracy and the rule of law.

47. The representative of Germany referred to the fact that existing rules in the field of AI did not specifically address certain areas of AI application. One observer state (United States) underlined the great benefits AI can bring to the enjoyment of life in general, and while the respect of human rights should remain at the centre of innovation, there is a need to avoid stifling this innovation. The representative of IEEE (Institute of Electrical and Electronics Engineers) underlined that in moving from principles to practice, the certification of mechanisms must go hand in hand with regulation. The representative of the European Digital SME Alliance stated the AI can be both an opportunity and a threat to small and medium companies and any regulation should be lawful, ethical and technically robust.

48. The representative of the Russian Federation pointed out that the main objective of international regulation on AI is to build trust. The first step in this way can be norms and principles of responsible development and application of AI.

49. The Vice-Chair thanked the keynote speaker, experts and representatives for their useful insights during the exchange. The CAHAI took note of the elements and interventions, which are directly relevant for the upcoming work of CAHAI's Policy Development Group (PDG) when elaborating further this section of the feasibility study.

## **10. Overview of the Council of Europe's typology of legal instruments**

50. The CAHAI heard a presentation by Jorg Polakiewicz, Director of Legal Advice and Public International Law, on the Council of Europe's typology of legal instruments which could be developed, including with respect to processes for their development, strengths and limitations.

51. In his opening remarks, he underlined the readiness and support of the Directorate to the work of CAHAI, both with respect to procedural matters and most importantly on substantive matters related to the preparation of a legal instrument. In his presentation of the range of legal instruments already prepared by the Council of Europe, he cited, as a possible source of inspiration for CAHAI, Convention CETS 108 on data protection or the work of the Group of States against Corruption, whose mandate combines both soft law instruments and binding international conventions. He also presented useful practices of possible follow-up mechanisms, whether in the context of application of conventions or soft law instruments such as recommendations.

52. In response to questions asked, he provided examples of instruments already adopted which had stood the test of time and are technology-neutral, as well as of instruments suitable for horizontal relations. He clarified that recommendations are only addressed to Council of Europe member states, whereas conventions are open for accession to both member and non-member states and could also associate private and public entities.

53. The Chair thanked Mr Polakiewicz for his presentation and concluded that the CAHAI shall take note of the range of options presented when preparing Chapter 8 of the feasibility study on possible options for a Council of Europe legal framework.

## **11. Defining the scope of a Council of Europe legal framework on artificial intelligence**

54. The CAHAI discussed the scope of a Council of Europe legal framework on AI, including the opportunity to provide a definition of AI.

55. The representative of Japan invited the CAHAI to take into account the need for an inclusive human-centric AI and draw lessons from the impact of the COVID-19 pandemic on AI. He stressed that any governmental framework should be flexible and that binding rules



should be avoided to prevent the risk of falling behind global advancement in case they would result in a hostile market environment.

56. The representative of the Russian Federation considered that a convention should target specific and responsible behavior of all actors involved in designing, implementing and using AI systems, complemented by additional rules (such as codes of practice adopted by companies). He underlined that legal frameworks should protect the interests of people and the society, while at the same time not impeding innovation. A convention should be supportive to governments in its scope.

57. The representative of Germany indicated the importance that any legal framework covers all applications of AI, as well as the need to find common definitions. Maintaining legal certainty while being flexible for further technical development is essential.

58. The representative of Belgium stated that there is growing evidence that a binding legal framework harmonizing the different aspects of the use of AI systems could have a real added value, given that existing legal instruments only cover specific aspects of AI. Such a framework, based on precise rules and elements of governance, would serve to guide the various subjects involved in the chain of development of AI systems on what is permitted and what is not in terms of results. An agreement should be reached on general and transversal principles, the rules applicable or specific operations of AI systems, sectoral or fields of activities with a list of results, mandatory organizational and technical measures (such as impact analysis, risk analysis, human rights impact assessments, as well as ex ante controls necessary to evaluate the implementation of these rules) as well as ex post controls through a national authority, including certification systems. She also indicated that a strict definition of AI or of specific technologies would not be necessary.

59. Ms Catelijne Muller agreed that regulation should not stifle innovation, however she also argued that regulation should stifle irresponsible innovation and innovation should not harm our ethical values.

60. The CAHAI discussed the scope of a Council of Europe legal framework on AI and concluded that this aspect should be further explored by the Policy Development Group (PDG), possibly through additional contributions, as this topic was not included in the scope of the first electronic consultation.

## **12. Perspectives of private actors and civil society on a possible international legal instrument on AI based on Council of Europe's standards**

61. CAHAI observers from partner internet companies of the Council of Europe and CAHAI observers from civil society presented their expectations as regards the content and the format of a possible international legal instrument on AI based on Council of Europe's standards.

62. Speakers highlighted their readiness to contribute to the CAHAI's work and consultations, by bringing their expertise and the strength of their respective networks to the CAHAI.

63. The need to involve civil society in the development of a legal instrument was underlined by the representative of European Digital SME Alliance, while the representative of ENNHRI (European Network of Human Rights Institutions) advocated their contribution as a platform for civil society and their role in monitoring the respect for human rights, including in the context of AI.

64. The representative of IBA (International Bar Association) stressed the possible use of existing expertise in the field of business behaviour and human resources diligence in this

context. The representative of IEEE underlined that operators are not sufficiently considered in the context of AI and stressed the absence of standards for operators to safely operate AI. Additional considerations put forward involved the need to separate the risks from the benefits of AI and those arising from the development of an AI definition different from the one used by the private sector.

65. The Council of Europe's added value in this work, and its strength with respect to human rights enforcement, was also mentioned by the representative of Access Now, who suggested that this work should not be limited to the public sector issues and that the CAHAI should pay due attention to the need for "red lines".

66. These interventions were then complemented by interventions of CAHAI member states (Slovenia, Poland) referring to work undertaken by other fora (e.g. OECD, UNESCO) to develop technical and legal definitions and inviting the CAHAI to take into account this work and the existing definitions of AI systems as a baseline, while considering whether to develop them as necessary. The representative of Poland also reflected on the scope of the legal framework, including the need to carefully define and consider in this context concepts such as human dignity or well-being. He raised the possible consideration of co-regulation and stressed the need to consider how to engage the private sector.

67. The CAHAI took note of the above-mentioned elements and concluded by inviting civil society and private actors' representatives to contribute through written contributions to the Secretariat by 31 August 2020 on this topic.

### **13. Main elements of a legal framework for the design, development and application of Artificial Intelligence**

68. The CAHAI held an exchange of views on possible main elements of a legal framework for the design, development and application of AI. The following aspects were raised in this context:

- the importance of risk assessment in a legal framework, and that AI deployment should involve technical and ethical risk assessments, while caution should be exercised with respect to deployment on global scale (representative of Russian Federation);
- the need for adequate protection through standards, the need for legal certainty for AI development, by taking a risk-based regulatory approach and developing guiding principles for the whole life cycle of AI (representative of Germany);
- caution to be exercised to avoid any over regulation or over standardization, while the quality of data should be ensured with the possible development of agencies where various specialists could collaborate (representative of European Digital SME Alliance);
- the need to reach consensus on the issue of liability, considering existing legislation on liability for damages (representative of the Netherlands, and Poland);
- the CAHAI should link its work in the light of commitments set under the Agenda 2030 and UN sustainable development goals, and take into account the different interpretations of existing standards, as well as the possible need for new standards in this area as any regulation must create trust, and without trust, there is no innovation (representative of Switzerland);

- the importance of an intersectional and cross-sectorial perspective and the need to consider implications and impact of AI on different groups of the society (representative of Youth Advisory Council - CCJ).

69. The CAHAI took note of the above-mentioned elements and concluded that this aspect should be further explored by the Policy Development Group (PDG), possibly through additional contributions, as this topic was not included in the scope of the first electronic consultations.

#### **14. Information point: Updates provided by CAHAI members, observers and participants**

70. The CAHAI took note of the main developments at the domestic and international level as regards instruments and policies on AI.

71. The Committee welcomed that under the German Chairmanship of the Council of Europe's Committee of Ministers, a high-level conference on AI and regulation is planned to be held in Berlin in January 2021 (COVID-19 situation permitting).

72. The representative of FRA informed the CAHAI that they are currently preparing a report on the concrete use of AI in the EU from a fundamental rights perspective, which should be published later this year.

73. The representative of Element AI underlined their expertise having participated in consultations at OECD and EU level and recently carrying out a human rights impact assessment of the proposed Sidewalk Labs smart city development AI initiative in the city of Toronto.

74. The Chair took note of the updates and invited delegations to notify the secretariat of any further developments.

#### **15. Update on the communication of the CAHAI progress report to the Committee of Ministers**

75. The CAHAI was informed that following the GR-J meeting held on 7 July 2020 by the Group of Rapporteurs on Legal Cooperation (GR-J) of the Committee of Ministers, the examination of the progress report of the CAHAI will be rescheduled for the next meeting of the GR-J on 15 September 2020.

#### **16. Possible practical mechanisms to ensure compliance and effectiveness of the legal framework**

76. The CAHAI held an exchange of views on possible practical mechanisms to ensure compliance and effectiveness of the legal framework. Among the main issues raised were:

- The need for an international governance structure of AI; a legal cooperative framework for all member states (representative of Germany);
- The representative of the Netherlands stressed that alignment with existing international standards should be pursued. In determining obligations and accountability of AI, careful consideration to the whole lifecycle of AI – design, development and application – should be paid, as obligations of AI developers can vary accordingly. It was also considered important to enhance existing supervisory mechanisms as opposed to creating separate ones;

- The representative of IEEE stressed the need for instruments to be understandable for experts and non-experts and that sound evidence basis is needed; instruments should be dynamic and applicable to future innovation by being technology- neutral;
- The representative of EEEI (European Expertise and Expert Institute) indicated that certification and risk assessment exist already for AI tools and services. They apply to products and services but not to the management of processes. Ethics by design would allow strengthening the trust of the users, and in this regard, it is essential to target the full chain of responsibility in the framework of development of AI tools and services (i.e. through reference frameworks, labels, charters, risk evaluation mechanisms);
- The representative of the Conference of INGOs stated that the emphasis should be on impact assessment based on human rights, which should be extended to all applications, not concentrating of applications which prima facie would look riskier than others, and apply to their whole lifecycle. It is important to provide guidance on what it is “high risk” but only after assessing the impact on human rights. Transparency and accountability of AI in the public sector would be extremely important, therefore she called for a public registry of public authorities using AI-run applications;
- The Gender Equality Rapporteur supported the stance of Germany and the establishment of ex-ante and oversight for high risks applications, considering that self-assessment would be not sufficient for high-risk applications;
- The representative of Slovenia underlined the importance to bridge the gap between legal and technical specialists, and the need for flexibility to adapt to future developments. The work of the CAHAI on a legal framework can be of guidance in the development of a certification mechanism, but work on these issues should also be aligned with other international initiatives on AI and views of the business community and take into account existing scientific studies, including those of the AI OECD Observatory. He stressed that AI is very dynamic, and that the CAHAI’s final outputs should stand the test of time;
- The representative of Access Now considered that self-assessment cannot serve as a mechanism if the objective is to ensure fundamental rights compliance, and that human rights impact assessments should be undertaken throughout the life cycle of AI, along with the establishment of clear oversight bodies.

77. At the end of the exchange, the Chair concluded that the abridged report will take note of the variety of opinions among the participants regarding possible mechanisms and that the CAHAI PDG would be expected to explore this issue further and reach consensus. He noted that the EEEI would provide a written contribution.

## **17. Cooperation with other international organisations**

78. The representative of FRA presented its ongoing work on artificial intelligence, which includes field research in some EU member states covering public administration and private companies and which will be published at the end of 2020. The FRA also referred to the mapping of policy initiatives related to AI (from member states, business, civil society) and its previously published papers on discrimination and AI, data quality, fundamental rights issues caused by AI, and facial recognition technologies.

79. The representative of the European Commission presented its *White Paper on Artificial Intelligence - A European approach*. A broad process of consultation on the White Paper has been launched by the European Commission after its publication, and a review of the different contributions- including the Council of Europe's- is ongoing with a view to finetuning policy and legislative options which will be undertaken by the Commission in the future. The work of the Commission in the next months will be focused on identifying high-risk applications, based on the criteria provided by the White Paper, as well as defining obligations of compliance of AI operators. The Commission is attentive to the work of the CAHAI and of the Council of Europe on AI.

80. The representative of the OECD presented its ongoing work on AI. Principles for responsible stewardship of trustworthy AI have been developed, focusing on inclusive growth, sustainable development and well-being, human-centered values and fairness, transparency and explainability, robustness, security and safety, and accountability. Support is also being provided to national policies and international cooperation for trustworthy AI, especially as regards investing in AI research and development, fostering a digital ecosystem for AI, providing an enabling policy environment for AI, building human capacity and preparing for labor transition. Continued cooperation on policies being developed at the level of Council of Europe member states would be particularly useful.

81. The representatives of the United Nations presented their ongoing work on artificial intelligence and possible synergies with the work of the CAHAI. The representative of the United Nations High Level Panel on Digital Cooperation recalled that the UN Secretary General announced the establishment of a Global Advisory Body on AI, aimed to create a diverse, inclusive, and informed platform to highlight and support ongoing work, as well as help connect the dots for global cooperation on AI that is trustworthy, human rights-based, safe, sustainable, and promotes peace. This non-normative advisory body strives to build, connect, exchange and share expertise and make it available to those who need it most. He identified two points of alignment with the CAHAI, namely connecting to the work of other regional actors in this network and learning from the good practices highlighted by different stakeholders to ensure global alignment and cooperation on the development, use, and governance of AI, so that they may be preserved beyond Europe's borders. He invited the CAHAI to join this work.

82. The representative of UNESCO referred to their ongoing work of preparation of the first global standard-setting instrument on ethics of artificial intelligence, following the decision of UNESCO's General Conference at its 40th session in November 2019. This inclusive and multidisciplinary process is expected to include consultations with a wide range of stakeholders, including the scientific community, people of different cultural backgrounds and ethical perspectives, minority groups, civil society, government and the private sector. Following online discussions, the first version of the draft text of the recommendation has now been published online and it is now open for consultation. Inclusiveness, trustworthiness, the protection of environment and privacy are amongst the principles included in this Recommendation.

83. The representative of UNESCO underlined the importance of working in synergy, and to seek complementarity and not competition, as each organisation has a specific added value in the regulation of AI.

84. The CAHAI took note of the exchanges with the above-mentioned organisations and underlined the importance of ensuring continued coordination and complementarity with the initiatives undertaken.

## **18. CAHAI working methods**

85. The secretariat recalled the main elements of the circular letter sent to the CAHAI and other steering committees of the Council of Europe by the Secretary General of the Council of Europe and the Chair of the Greek Chairmanship of the Committee of Ministers, including the fact that all committees were invited to make use of the flexibility in working methods in line with the CM/Res(2011)24, and use the electronic means available to hold their meetings, either as hybrid meetings or solely by videoconference. When because of the circumstances a committee proposes to depart from the existing framework, the Committee of Ministers should be duly informed.

### **18.1 Proposal of the Russian Federation to revise the CAHAI terms of reference**

86. The representative of the Russian Federation presented its proposal, as appended to the document CAHAI (2020) 17, aimed at revising the terms of reference in order to increase the number of bureau members. He underlined that this would allow all interested countries to contribute to the work of the Committee in a more active and representative manner and would help the CAHAI to develop a truly common and qualitative approach of the Council of Europe to AI. The Chair reminded that any revision of its terms of reference as regards the size of the Bureau would fall within the sole competence of the Committee of Ministers and opened the floor for an exchange of views.

87. Several delegations voiced their support in favor of the proposal noting the added value of a wider geographical representation, the broad scope of work and expertise required for the Committee's work, and the need for representation of different legal systems within the Bureau (Germany, Spain, Armenia, Azerbaijan). The representative of Andorra expressed a principled position that the expenses of all Bureau members should be covered by the Council of Europe budget. The representative of the Czech Republic expressed support for the current size of the Bureau and the view that input from member states should take place in the framework of the working groups.

### **18.2 Update on CAHAI working groups (nominations, calendar, tasks)**

88. The Secretariat presented updated information on the working groups, as set out in the updated version of the document CAHAI(2020) 10 ADD REV1, which was amended to take into account the comments and feedback received in the framework of the consultations held in April and May 2020.

89. The Secretariat provided further oral clarifications to questions raised online and through the chat, including on the numbers of expressions of interest received from member states wishing to contribute to the working groups. A call for nominations for the working groups would be launched shortly after the meeting, including with a call for expressions of interest for the position of Chair and Vice-Chair. The proposed calendar of working groups' meetings, which are expected to be held online for the time being, was also presented.

90. The CAHAI adopted the document CAHAI(2020) 10 ADD REV1 without further changes. Given that the adopted progress report communicated to the Committee of Ministers shall be re-examined in September, the CAHAI agreed to update it with respect to the decisions taken at this plenary, including with respect to the updated calendar and timelines agreed upon, and communicate it in its revised form to the Committee of Ministers, so as to fully reflect the latest developments.

### **18.3 Update on CAHAI multi stakeholder consultation**

91. The Secretariat provided an update on this subject, based on the document CAHAI [\(2020\) 03 REV1](#) prov, as recently updated in the framework of the consultation on the progress report. The CAHAI took note of the request of Azerbaijan to update the annex of the document as regards their willingness to undertake national consultations. The CAHAI adopted this document as revised and decided to communicate it to the CAHAI-COG.

### **19. Information on forthcoming Council of Europe events and key developments for the CAHAI**

92. The CAHAI took note of the Council of Europe's key events presented by the Secretariat, in particular the Conference of Ministers responsible for Media and Information Society on "Artificial Intelligence, Intelligent Politics", which is scheduled to take place in Nicosia, Cyprus on 10 – 11 June 2021. The conference will focus on the required action to address the radical changes brought by the new wave of technologies, including AI, that have affected the media and the internet environment, as well as the exercise of freedom of expression. It took note of the planned event in 2021 in the framework of the German chairmanship of the Committee of Ministers.

93. The CAHAI equally took note of the adoption on 8 April 2020 of the Recommendation [CM/Rec \(2020\) 1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems](#) .

### **20. Dates and place of the next meetings**

94. The CAHAI took note of the date of its next Plenary meeting (15-17 December 2020) and that it would be held in Strasbourg if the COVID-19 situation would allow it.

### **21. Any other business**

95. The representative of the Russian Federation asked if the plenary could agree on the nomination of additional member states to be given the possibility to participate in the next Bureau meeting, according to the practice established at the first plenary meeting. The secretariat recalled that in January 2020, the Committee of Ministers' Group of Rapporteurs on Legal Co-operation requested that the secretariat informs the CAHAI of the concerns expressed by a few member states about this working method. The representative of the Czech Republic disagreed, stating that the CAHAI should wait for the Committee of Ministers to take a decision on the proposal of the Russian Federation to enlarge the Bureau. The Secretariat recalled the legal rule requiring consensus among CAHAI members on this issue. As a result of the objection expressed by the representative of the Czech Republic, the CAHAI could not agree by consensus to invite other member states to participate in the next meeting of the Bureau.

96. The GER also requested on this occasion that the gender perspective be fully integrated into the work of the Bureau, including through the participation of the GER in future Bureau meetings.

### **22. Adoption of the abridged report and close of the meeting**

97. The CAHAI agreed with the Chair's proposal that this meeting report shall be considered as adopted, subject to any factual changes communicated by delegations to the Secretariat within one week of its transmission in both working languages (English and French).

