

Strasbourg, 1 June 2021

CAHAI-LFG(2021)PV3

AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)

Legal Frameworks Group (CAHAI-LFG)

3rd meeting

Strasbourg, 31 May – 1 June 2021

Online meeting – KUDO Platform

Meeting Report

Prepared by the CAHAI Secretariat

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1. Opening of the meeting

1. The CAHAI-LFG took note of the opening remarks by the Chair of the CAHAI, Mr Gregor STROJIN (Slovenia) who underlined the full and comprehensive agenda before the Group, who will be examining the outcomes of the work done by Sub-Working Groups 6 and 7 and discussing a document prepared by the Secretariat on the basis of the work done by Sub-Working Groups 1 – 5. Examining the possible architecture of a legally binding or non-binding instrument contained in this document will inform the decision on the elements to be included in a possible future legal framework and be an important step forward in ensuring that the CAHAI can provide the Committee of Ministers with the second deliverable foreseen in the CAHAI's terms of reference.
2. Mr Strojcin also mentioned the 131st Ministerial Session of the Committee of Ministers which took place in Hamburg on 21 May where the Ministers of Foreign Affairs reaffirmed that the Council of Europe may engage in elaborating a transversal legally-binding instrument, setting out the broad principles for regulating AI in relation to human rights, democracy, and rule of law, and complemented, as necessary, by other sectoral, legally-binding or non-binding instruments.
3. Mr Strojcin remarked that the European Union has now presented its proposal for a regulation on AI. He underlined that preliminary analyses indicate that there will be ample room for both Organisations to develop legally compatible and mutually consistent legal frameworks in the spirit of the 2007 Memorandum of Understanding between the Council of Europe and the European Union.
4. The CAHAI-LFG also took note of the opening remarks by Ms Claudia LUCIANI, Director, Directorate of Human Dignity, Equality and Governance, who underlined that the model provisions before the Group at this meeting were a "mock-up" of an international instrument. It must be remembered that the CAHAI is not yet at the stage of negotiating an international instrument, and the mock-up was solely designed to facilitate deliberations on which elements to include in possible future instruments, hence they were called "model provisions".
5. Mr Jan KLEIJSSSEN, Director, Information Society - Action against Crime, also reminded the CAHAI-LFG that it is not yet negotiating a legal instrument, but only looking at possible elements to be included in such a future instrument and using the model provisions as a basis for discussions.
6. Concerning the ongoing work at EU level, Mr Kleijssen stressed that the EU proposal for regulation is taking a different approach from that of the CAHAI, being very much market orientated, and therefore complementary to the work of the CoE. It would be important that in the future both the CoE and the EU make reference to each other's work, as appropriate.

2. Adoption of the agenda

7. The CAHAI-LFG adopted the agenda.

3. Introduction by the Co-Chairs and the Secretariat

8. The CAHAI-LFG took note of the update provided by its Co-Chairs, Ms Peggy VALCKE (Belgium) and Mr Riccardo VILLA (Italy), on the current state of play. All seven Sub-Working Groups have now submitted their inputs. The inputs from Sub-Working Groups 1-5 form the main basis of the model provisions.
9. The Co-Chairs underlined that these model provisions can be used as a check-list to be certain that all elements considered important are covered. The document is a mock-up for delegations to see what provisions could look like and is intended for assistance and not to be negotiated.
10. They also informed the Group that a progress report will be prepared by the Co-Chairs, the expert consultant and the Secretariat, outlining the work of the CAHAI-LFG so far, to be presented to the CAHAI plenary at its next meeting in July.
11. The documents under discussion during this meeting will be revised according to the comments and discussions that take place and then be re-examined at the next CAHAI-LFG meeting in September.

4. Presentation of the outcome of the work done by Sub-Working Group 6 – Red lines, followed by a discussion

12. The lead co-ordinators of Sub-Working Group 6, Ms Leyla KESER BERBER (Turkey) and Mr Mario HERNÁNDEZ RAMOS (Spain) presented the outcome of their work on red lines.
13. They underlined the four main questions to be borne in mind when considering the topic:
 - Should a distinction be made as to the AI applications to be subjected to a ban and a moratorium?
 - Should "high risk" AI applications be dealt with under red lines?
 - How should AI systems that pose unknown risks be regulated? (i.e. under ban or moratorium)
 - Should the criteria for banning certain AI applications be cumulative or alternative?
14. The question of military use of AI applications was evoked by several delegations. In reply to questions asked by the Group, the Secretariat underlined that whereas questions of national defence are not covered by the statute of the CoE, issues such as surveillance and work by security services do not necessarily fall outside the CoE's scope depending on the context.
15. While some delegations felt that in cases of unacceptable risk, prohibition/bans or moratorium should always be considered, others felt that mitigation measures could be used even in cases of extreme risk.
16. The issue of social scoring was also mentioned as a use of AI applications that should be banned/use moratoria, however some delegations argued that social scoring may have benefits and a risk assessment should be carried out to find where the benefit outweighs the risk.

17. The CAHAI-LFG agreed that there are several ways of dealing with this issue of “red lines”. Either general criteria could be set out for member states to take into account and translate into their national law, or, one list of problematic applications where there is convergence across member states could be established. Or a combination of the two could be envisaged.
18. The Group agreed that legal certainty is important. The threshold above which AI applications are deemed to be high risk should be clear. Also, any exceptions to the bans/moratoria should be clearly indicated.
19. Moreover, in general, any output/results produced by the CAHAI-LFG should be future proof.
20. The Secretariat reminded the Group that this work is still being carried out at expert level, not member state level, and all possibilities should be explored.

5. Presentation of the outcome of the work done by Sub-Working Group 7 – Compliance, co-operation and follow-up, followed by a discussion

21. The lead co-ordinators of Sub-Working Group 7, Mr Konstantin KOSORUKOV (Russian Federation) and Ms Melissa COUTIHNO (United Kingdom) presented the outcome of their work on compliance, co-operation and follow up.
22. It was noted that in this document there is much convergence on many issues however input on procedural matters is still lacking. Moreover, the document should be aligned with the inputs of the other sub-working groups.
23. It was agreed that the practical feasibility of enforcement should be addressed, and some delegations wondered whether the use of multiple enforcement agencies could be a practical solution. The importance of putting in place standards/procedures to demonstrate enforcement was underlined, while models based on mutual trust could be created.
24. Regarding supervisory authorities it was argued that it might not be feasible to have multiple supervisory authorities in terms of resources and the necessary skill set being available. Certain delegations proposed that in some cases existing bodies could be designated for this purpose. Other delegations felt that the proposals were premature, and would be burdensome and costly. Instead the solution could be to share good and bad practices.
25. It was agreed that financial sustainability was important in this process. There was an argument from certain delegations for more flexibility as regards the supervisory authority.
26. The Group agreed that when AI is used by the public sector, any supervisory authority should be independent from the aforesaid public sector in order to ensure a proper system of checks and balances.
27. The question of criminal responsibility was raised and whether it should be on the table for example as a basis for extradition. This issue evidently requires further examination.
28. In conclusion of these presentations, it was agreed that both Sub-Working Groups 6 and 7 would be given more time to fine-tune their documents. The revised documents or any

comments pertaining to the documents should be sent to the Secretariat **by 15 June 2021, at the latest.**

6. Presentation of the Preliminary draft model Provisions concerning the Design, Development and Application of Artificial Intelligence Systems by the Co-Chairs of the CAHAI-LFG and the Secretariat, followed by a discussion

29. The Secretariat reminded the Group that the model provisions are simply a mock-up of what future provisions could look like, they are not a draft recommendation or convention and are being presented to the Group with the sole purpose of facilitating discussions, not to initiate a drafting exercise. The Group should consider the elements that the provisions should address and whether something is missing and/or needs to be added or removed.
30. Furthermore, the document builds upon the outcome of the April meeting of the CAHAI-LFG and the Group is now tasked to streamline the elements in the model provisions and envisage a coherent picture to allow for continuation of discussions. Different possible alternatives/options could also be included in the final document.
31. Some delegations wondered whether it was necessary to attempt to put all elements relating to AI in one document, when there may not be agreement on all aspects, or whether the future legal instrument(s) could allow for additions further down the line.
32. Based on the outcomes from the Sub-Working Groups 1 – 5, the Secretariat has opted to leave a margin of appreciation to member states regarding the classification of certain AI applications as “high risk”. If this suggestion is agreed, It would be up to member states to carry out assessments based on criteria laid down in their national laws. The Group should consider whether this is the best solution or whether the text should set out which AI applications should be deemed as high risk.
33. The Group examined and provided comments on the document on “model provisions” chapter-by -chapter. Despite some criticism of the options chosen by the Secretariat for some “model provisions”, the majority of delegations were satisfied. Overall, the document adequately reflected the work already produced by Sub-Working Groups 1 – 5 and contained the main elements of a possible legal framework on AI in the areas of human rights, democracy and the rule of law. The Secretariat took note of the remarks aimed at clarifying and improving the wording of certain “model provisions”.
34. One of the questions raised on the initiative of the Secretariat concerned liability for providers and users of AI systems. The Group agreed that while issues of civil liability should be covered, criminal liability should not.
35. To conclude, the Co-Chairs again informed the Group that they will be preparing a progress report outlining the work of the CAHAI-LFG and the steps taken so far.
36. The “model provisions” will be updated by the Secretariat following the meeting and a revised version will be distributed ahead of the next meeting of the CAHAI-LFG for further examination and discussion by member states. Inputs received from Sub-Working Groups 6 and 7 would also be taken into account when drafting the updated “model provisions” document.

37. The Co-Chairs invited the CAHAI-LFG to provide any written comments they wished to make to the “model provisions” document to the Secretariat **by 25 June 2021, at the latest.**

7. Information on the ongoing work within the CAHAI-COG, in particular the latest information on the multi-stakeholder consultation

38. The multi-stakeholder consultation was open from 31 March to 9 May 2021 and received 260 replies to the questionnaire from the following sectors:

- 73 from the public domain
- 50 from the private sector
- 80 from civil society
- 53 from academia
- 4 from the internet technical community

The majority of replies came from Europe, with a good geographical spread throughout the continent.

39. A compilation of the replies and a report are currently under preparation and will be presented to the CAHAI-COG at its next meeting on 22-23 June before going to the plenary meeting of the CAHAI in July.

40. This work will feed the work of the CAHAI-LFG and be on the agenda of its next meeting in September.

8. Information concerning the state-of-play of the work of CAHAI-PDG

41. The CAHAI-PDG set up two Sub-Working Groups: Sub-Working Group 1 on Human Rights, Democracy and Sub-Working Group 2 on Rule of Law Impact Assessment of AI systems and on AI in the public sector. The documents prepared by both groups were presented at the last meeting of the CAHAI-PDG on 27 May.

42. Sub-Working Group 1 has been working on a methodology for a human rights, democracy and rule of law impact assessment for AI systems. The use of proxies and benchmarks to see if human rights, democracy and the rule of law are being respected have been examined. The CAHAI-PDG is now aiming to develop a model for AI impact assessment in this regard.

43. Sub-Working Group 2 has been working on developing policy guidance for the use of AI in the public sector. It has looked at the benefits and the risks with the aim of helping member states foster AI in the public sector and reduce any possible risks.

44. The CAHAI-PDG will present a progress report to the next plenary meeting of the CAHAI and continue its work on the two current topics in order to present updated documents at its next meeting in October 2021.

9. Next CAHAI-LFG meeting

45. It was agreed that the next meeting of the CAHAI-LFG will take place on 20-21 September 2021.

10. Any other business

46. No issues were raised under this agenda item.

APPENDIX I - AGENDA

Monday, 31 May 2021		
9.30 am		1. Opening of the meeting. <ul style="list-style-type: none"> • Mr Gregor Strojín, Chair of CAHAI • Ms Claudia Luciani, Director, Directorate of Human Dignity, Equality and Governance, Council of Europe • Mr Jan Kleijssen, Director, Information Society- Action against Crime, Council of Europe
9.50 am		2. Adoption of the agenda
10.00 am	<u>Document common to all items:</u> Feasibility Study CAHAI(2020)23	3. Introduction by the Co-chairs and the Secretariat
10.30 am	CAHAI-LFG(2021)07 <u>Confidential</u>	4. Presentation of the outcome of the work done by Sub-Working Group 6 – Red lines, followed by a discussion
12.00 pm		<i>Lunch break</i>
2.30 pm		[Continued: 4. Presentation of the outcome of the work done by Sub-Working Group 6 – Red lines, followed by a discussion]
3.00 pm	CAHAI-LFG(2021)08 <u>Confidential</u>	5. Presentation of the outcome of the work done by Sub-Working Group 7 – Compliance, co-operation and follow-up, followed by a discussion
5.00 pm		<i>Close of the 1st day</i>
Tuesday, 1 June 2021		
9.30 am	CAHAI-LFG(2021)09 <u>Confidential</u>	6. Presentation of the Preliminary draft model Provisions concerning the Design, Development and Application of Artificial Intelligence Systems by the Co-Chairs of the CAHAI-LFG and the Secretariat, followed by a discussion
12.00 pm		<i>Lunch break</i>
2.30 pm		7. Information on the ongoing work within the CAHAI-COG, in particular the latest information on the multi-stakeholder consultation
3.30 pm	CAHAI-PDG(2021)PV2	8. Information concerning the state-of-play of the work of CAHAI-PDG

4.00 pm		9. Next CAHAI-LFG meeting
4.15 pm		10. Any other business
4.45 pm		11. Closing remarks by Mr Patrick Penninckx, Head of Information Society Department, Council of Europe
5 pm		<i>End of the meeting</i>

APPENDIX II – LIST OF PARTICIPANTS

MEMBERS OF THE LEGAL FRAMEWORKS GROUP / MEMBRES DU GROUPE SUR LES CADRES JURIDIQUES

BELGIUM / BELGIQUE

Ms Peggy VALCKE – Co-Chair of the CAHAI-LFG / Co-Présidente du CAHAI-LFG
Researcher and Professor in ICT and Media at the Faculty of Law at the KU Leuven / chercheuse et professeur en ICT et médias à la faculté de droit à la KU Leuven

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

BULGARIA / BULGARIE

Ms Svetlana LYUBENOVA STILIYANOVA – Chief expert, Legal Department, Ministry of Transport, Information Technology and Communications / Expert en chef, Service juridique, Ministère des transports, des technologies de l'information et des communications

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Ms Monika HANYCH - Senior Ministerial Counsellor, Office of the Government Agent before the European Court of Human Rights, Ministry of Justice of the Czech Republic / Conseiller ministériel principal, Bureau de l'agent du gouvernement devant la Cour européenne des droits de l'homme, Ministère de la justice de la République tchèque

ESTONIA / ESTONIE

Ms Siiri AULIK - Adviser, Public Law Division, Estonian Ministry of Justice / Conseillère, division du droit public, ministère estonien de la justice

FINLAND / FINLANDE

Ms Mia SPOLANDER - Legal Officer, Legal Service, Unit for Human Rights Courts and Conventions, Ministry of Foreign Affairs / Juriste, Service juridique, Unité des tribunaux et conventions des droits de l'homme, Ministère des affaires étrangères

FRANCE

Mme Gaëlane PELEN - Magistrate - Policy Officer to the Head of the SEM / Magistrate – Chargée de mission auprès de la Cheffe du SEM

GERMANY / ALLEMAGNE

Ms Lena HOCKE - Federal Ministry of Justice and Consumer Protection / Ministère fédéral de la justice et de la protection des consommateurs (Bundesministerium der Justiz und für Verbraucherschutz - BMJV)

Mr Wolfgang TEVES – Chair of the CAHAI-PDG/ Président du CAHAI PDG

Head of Division for Digital Strategy; Key Policy Issues of the Information Society, Federal Ministry of Justice and Consumer Protection / Chef de la Division de la stratégie numérique, questions politiques clés de la société de l'information, ministère fédéral de la justice et de la protection des consommateurs

Ms Isabella FLORES OVIEDO - Ministry of Justice and Consumer Protection / Ministère fédéral de la justice et de la protection des consommateurs

GREECE / GRECE

Ms Stamatina LEKKA - Executive, Department of Open Governance and Transparency / Executive, Département de la gouvernance ouverte et de la transparence

HUNGARY / HONGRIE

ITALY / ITALIE

Mr Riccardo VILLA – Co-Chair of the CAHAI-LFG / Co-Président du CAHAI-LFG

Counsellor, Deputy Head of Cyber Department, Directorate General Political and Security Affairs, Ministry of Foreign Affairs and International Co-operation, Rome / Conseiller, Chef adjoint du département Cyber, Direction générale des affaires politiques et de sécurité, Ministère des affaires étrangères et de la coopération internationale, Rome

LUXEMBOURG

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

NORWAY / NORVEGE

Ms Heather BROOMFIELD - Senior Advisor, Norwegian Digitalisation Agency / Conseiller principal, Agence norvégienne de numérisation

POLAND / POLOGNE

PORTUGAL

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Konstantin KOSORUKOV - Head of the Division of General Legal Issues, Legal Department, Ministry of Foreign Affairs / Chef de la Division des questions juridiques générales, Département juridique, Ministère des affaires étrangères

SLOVAKIA / SLOVAQUIE

SLOVENIA / SLOVENIE

Mr Gregor STROJIN – Chair of the CAHAI / Président du CAHAI
Advisor to the President, Supreme Court of the Republic of Slovenia / Conseiller du Président, Cour suprême de la République de Slovénie

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Mr Mario HERNÁNDEZ RAMOS - Associate Professor of Constitutional Law, University of Salamanca; Senior Legal Advisor Ministry of Justice, Government of Spain / Professeur agrégé de droit constitutionnel, Université de Salamanque; Conseiller juridique principal Ministère de la Justice, Gouvernement espagnol

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Mr Jürg LINDENMANN - Advisor, Federal Department of Foreign Affairs, Directorate of International Law / Conseiller, Département fédéral des affaires étrangères, Direction du droit international public

Mr Thomas SCHNEIDER - Ambassador, Federal Department of the Environment, Transport, Energy and Communications, Deputy Director, Federal Office of Communications, Director of International Relations / Ambassadeur, Département fédéral de l'environnement, des transports, de l'énergie et de la communication, Vice-Directeur, Office fédéral de la communication, Directeur Relations internationales

TURKEY / TURQUIE

Ms Leyla KESER BERBER, Prof. Dr. - Associate Professor & Dr., Information Technology Law Institute, Istanbul Bilgi University Law Faculty / Professeur associé et Dr., Institut de droit des technologies de l'information, Faculté de droit de l'Université Bilgi d'Istanbul

Ms Selen Av. Işıl Selen DENEMEÇ - Digital Transformation Office of the Presidency of the Republic of Turkey / Bureau de la transformation numérique de la présidence de la République de Turquie

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LATVIA / LETTONIE

Mr Jānis KĀRKLIŅŠ - Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Latvia to the Council of Europe / Ambassadeur extraordinaire et plénipotentiaire, Représentant permanent de la Lettonie auprès du Conseil de l'Europe

PARTICIPANTS

Council of Europe bodies and institutions / Organes et institutions du Conseil de l'Europe

CONFERENCE OF INGOS / CONFÉRENCE DES OING

Ms Francesca FANUCCI - Senior legal advisor at European Center for Not-for-Profit Law, Netherlands / Conseiller juridique principal au Centre européen pour le droit des associations à but non lucrative, Pays-Bas

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Ms Judith ORLAND - Program Manager Democracy and AI, Democratic Governance Division, CDDG Secretariat / Chef de programme Démocratie et IA, Division de la gouvernance démocratique, Secrétariat du CDDG

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Ms Käthlin SANDER - Head of Gender Equality Policy, Equality Policies Department, Ministry of Social Affairs, Estonia / Responsable de la politique d'égalité entre les sexes, département des politiques d'égalité, ministère des affaires sociales, Estonie

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VENICE COMMISSION / COMMISSION DE VENISE)

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INTERNATIONAL COMMUNICATIONS CONSULTANCY ORGANISATION (ICCO)

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Ms Paloma VILLA MATEOS - Manager, Public Policy and Internet / Gestionnaire, Politique publique et Internet

Civil Society Organisations, other private sector and academic actors relevant to the work of the CAHAI / Organisations de la Societe civile, autres acteurs du secteur prive et academique, concernes par les travaux du CAHAI

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Lord Tim CLEMENT-JONES **CBE** Apologised / Excusé

House of Lords Liberal Democrat Spokesperson (Digital), United Kingdom / Porte-parole libéral-démocrate de la Chambre des Lords (Digital), Royaume-Uni

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SECRETARIAT GENERAL OF THE COUNCIL OF EUROPE

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Mr Rafael ISMAYILOV – Trainee / *Stagiaire*

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