



Strasbourg, 19 March 2021

CAHAI-PDG(2021)PV2

**AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)
POLICY DEVELOPMENT GROUP
(CAHAI-PDG)**

**4th online meeting
18-19 March 2021**

Abridged Report

Prepared by the Secretariat

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1. Opening of the meeting

1. Mr Jan Kleijssen, Director, Information Society- Action against Crime, Council of Europe opened this 4th meeting of the CAHAI-PDG and welcomed all the participants.
2. He began by updating the Group on the recent developments in the Council of Europe of particular interest to your work.
3. Firstly, on 2 March the Rapporteur Group on Legal Co-operation (GR-J) of the Committee of Ministers examined the Feasibility Study which has now been submitted to the Committee of Ministers for adoption on 31 March 2021. The GR-J expressed its support for the next phase of the CAHAI's work.
4. Moreover, as part of a mapping exercise of AI-related activities being carried out on a vertical level, the Committee of Ministers' Thematic Group on Information Technologies (TC-INF) is holding an information meeting on the Council of Europe's "work in progress on artificial intelligence" on 22 March.
5. Mr Kleijssen stressed the importance of the work of the CAHAI-PDG as regards the mapping of ongoing and planned work on artificial intelligence in the Council of Europe which could provide a firm basis for a future gap analysis, with a view to developing a more strategic vision on AI-related issues for the Council of Europe.
6. In this context, Mr Kleijssen mentioned that on 17 March a declaration, prepared by the European Social Charter, on the importance of protecting human rights, including social rights, from being put at risk by the use of computer-assisted or Artificial Intelligence-enabled decision making by public authorities in the area of social services was adopted by the Committee of Ministers.
7. Mr Gregor Strojín, Chair of the CAHAI, continued by reminding the Group that the work of the CAHAI is now used as a benchmark for other international organisations.
8. He recalled the outcome of the last plenary meeting on 26 February where the need both the CAHAI-PDG and the CAHAI-LFG to focus on the identification and elaboration of the main elements of a legal framework on AI based on Council of Europe standards was highlighted.
9. Mr Strojín congratulated the sub-working groups (sub-working group 1: impact assessment and sub-working group 2: AI in the public sector) for their diligent work resulting in the two draft documents which will be under discussion during this meeting.
10. He finished by informing the Group that the Action Plan for the multi-stakeholder consultation has been finalised and the online consultation should be open by the end of March. Mr Strojín thanked the members of the CAHAI-PDG for their help in the preparation of the questionnaire.

2. Adoption of the agenda

11. The agenda was adopted unanimously without further comment.

3. Draft table of contents and divisions of tasks between CAHAI- PDG and CAHAI-LFG

12. Ms Peggy Valcke, in her role as Co-Chair of the CAHAI-LFG, presented the Table of Contents and initial division of tasks between the CAHAI-PDG and the CAHAI-LFG.

13. She informed the Group that the CAHAI-LFG has created seven sub-groups each covering a specific issue within the remit of the CAHAI-LFG. Five of these groups began their work on 9 March. The work of the remaining two groups has been postponed due to the already heavy workload. Results from all sub-groups are expected at the end of the month and will be presented and discussed at the 2nd meeting of the CAHAI-LFG on 8 and 9 April.

4. Presentation by the Drafting Leaders of the document prepared by Sub-Working Group on Impact Assessment, followed by discussion

14. This item began with a presentation by Mr Emil Lindblad Kernell, Adviser, Danish Institute for Human Rights, on human rights impact assessment of digital activities.

15. The CAHAI-PDG welcomed this presentation and agreed upon its relevance to the work of the CAHAI going forward, not only as regards human rights, but also for the areas of rule of law and democracy.

16. Next lead drafters of Sub-Working Group 1 on Impact Assessment presented their document on Human Rights, Democracy and Rule of Law Impact Assessment of AI systems. The document contains the following sections:

- Methodological considerations for a Human Rights, Democracy and Rule of Law assessment model;
- Towards a model for performing Human Rights, Democracy and Rule of Law Impact Assessment of AI systems;
- Synergies between HRDRA and Compliance Mechanisms.

17. The CAHAI-PDG welcomed the document as a good basis for further discussion.

18. During the discussions that followed there was some debate about addressing the positive impact of AI as well as the negative impact. Although the importance of highlighting the positive impact of AI was raised in the discussions, many delegates were of the opinion that the role of impact assessment is primarily to identify and mitigate risks for human rights, democracy and the rule of law. It was nonetheless agreed that positive aspects and examples of AI applications should be addressed in the CAHAI-PDG work, notably in the document on the AI and the public sector being prepared by sub-working group 2.

19. It was also agreed that, while the document aims to provide practical guidance to private actors designing and developing AI systems, it is relevant for national authorities wishing to deploy AI applications in the public sector; and that the document should include a practical model of human rights impact assessment. The use of proxies for rule of law and democracy, as proposed in the document, deserves to be further analysed in this respect.
20. It was also recalled that links should be made between this document and the feasibility study in particular as regards Chapter 9 on compliance mechanisms, which should be subject of a specific development in the revised document to be produced after the meeting.
21. The Group agreed that the lead drafters should incorporate the comments made during this session into a revised version of the document and send it to the consultant and the secretariat for fine-tuning by 23 April.

5. Presentation by the Drafting Leaders of the document prepared by Sub-Working Group on AI in the public sector, followed by discussion

22. The lead drafters of Sub-Working Group 2 on AI in the public sector presented their document which focussed on:
 - Giving policy guidance on the use of AI in the public sector;
 - Strengthening the knowledge of civil servants and citizens to defining adequate oversight policies about AI systems;
 - Providing meaningful information to citizens on the use of AI systems in the public sector;All the while taking into account the gender equality dimension and the impact of AI on democracy and democratic infrastructures.
23. The Group agreed that both risks and opportunities of AI systems should be taken into account, giving examples of both positive and negative impact. To this end, the secretariat will invite CAHAI-PDG members to provide concrete examples of applications being used in the public sector.
24. For the document on AI and the public sector, the Group agreed that it would be important to explain why there is need for greater caution there, and what are the risks of AI specifically in the public sector for human rights, rule of law and democracy. Special attention should be put on how these risks should be addressed, with concrete recommendations / best practices in terms of public policies to be formulated (including as regards the public procurement of AI systems)
25. It was underlined that the document should contain more references to the work of the CoE and relevant Council of Europe's standards.
26. The Group agreed that also this document should be made more operational providing concrete guidance for member States, including as regards procurement procedures.

27. The Group agreed that the lead drafters should incorporate the comments made during this session into a revised version of the document and send it to the consultant and the secretariat for fine-tuning by 23 April.

6. Finalisation of the deliverables expected by both Sub-Groups in view of the CAHAI Plenary of 5-7 July

28. The CAHAI-PDG examined a document containing a table of contents which had been prepared by the Consultant, Ms Nathalie Smuha and the Secretariat, and was based on the earlier discussions, outlining the way forward with the two draft documents. This table of contents appears as Appendix III.

29. The Sub-Working Groups were invited to update accordingly their documents **by 23 April**.

7. Presentation of the document on the mapping of Council of Europe's ongoing intergovernmental initiatives in the field of AI in 2021 and of those tentatively planned for 2022-23, followed by a discussion

30. The Secretariat presented the results of the mapping exercise carried out of the CoE's intergovernmental activities in the field of AI.

31. This mapping underlined the variety and depth of work going on at a vertical level in many sectors of the CoE. It was also mentioned that reflections are ongoing within the Organisation as regards activities to be implemented in 2022-2026 and as regards the development of a Council of Europe digital strategy. The Group agreed on the importance and complementarity of the activities being carried at the horizontal and vertical level. It took note of the document prepared by the secretariat and of the ongoing reflections within the Organisation.

8. Further elements of policy guidance to be provided by the CAHAI-PDG and coordination with the CAHAI-LFG

32. The CAHAI-PDG underlined that the role of compliance mechanisms is very important and that the mechanisms included in chapter 9 of the feasibility study should be further examined in the framework of the work on human rights impact assessment. It was considered important to go into greater details for each mechanism as to inherent features and requirements from a regulatory perspective, and how it complement/link with the HRIA.

9. Information point: CAHAI multi-stakeholder consultation

33. The CAHAI-PDG was informed that following the adoption of the Action Plan for the Multi-Stakeholder Consultation by the CAHAI at its 4th plenary meeting on 26 February, work is underway as regards the launching of the consultation, which should be opened at the end of March for one month.

10. Any other business

34. The CAHAI-PDG decided that it would hold its next meeting on 27 May 2021. This meeting will be dedicated to examining the revised documents prepared by the two Sub-Working Groups.

APPENDIX I – AGENDA

Thursday, 18 March 2021		
2.30 pm		1. Opening of the meeting <ul style="list-style-type: none"> • Mr Gregor Strojín, Chair of CAHAI; • Mr Jan Kleijssen, Director, Information Society- Action against Crime, Council of Europe;
2.45 pm		2. Adoption of the agenda
2.50 pm	CAHAI(2021)03 Draft table of contents	3. Draft table of contents and divisions of tasks between CAHAI-PDG and CAHAI-LFG <ul style="list-style-type: none"> • Joint presentation of Co-Chairs of CAHAI-PDG and of CAHAI-LFG;
3.10 pm	CAHAI-PDG(2021)02	4. Presentation by the Drafting Leaders of the document prepared by Sub-Working Group on Impact Assessment, followed by discussion: <ul style="list-style-type: none"> • Defining a methodology to carry out impact assessments of AI applications, from the perspective of human rights, democracy and the rule of law; • Developing an impact assessment model; • Examining the complementarity of such an assessment with other compliance mechanisms set forth in Chapter 9 of the feasibility study;
4.10 pm	CAHAI-PDG(2021)03	5. Presentation by the Drafting Leaders of the document prepared by Sub-Working Group on AI in the public sector, followed by discussion: <ul style="list-style-type: none"> • Giving policy guidance on the use of AI in the public sector: <ul style="list-style-type: none"> ○ Strengthening the knowledge of civil servants and citizens to defining adequate oversight policies about AI systems; ○ Providing meaningful information to citizens on the use of AI systems in the public sector; <p>All the while taking into account the gender equality dimension and the impact of AI on democracy and democratic infrastructures</p>
5 pm		End of the first day

Friday, 19 March 2021

9.30 am		6. Finalisation of the deliverables expected by both Sub-Groups in view of the CAHAI Plenary of 5-7 July
10.30 am	CAHAI(2021)04	7. Presentation of the document on the mapping of Council of Europe's ongoing intergovernmental initiatives in the field of AI in 2021 and of those tentatively planned for 2022-23, followed by a discussion
11.15 am	Topics identified during the 1st CAHAI-PDG meeting	8. Further elements of policy guidance to be provided by the CAHAI-PDG and coordination with the CAHAI-LFG
11.45 am	CAHAI(2021)02	9. Information point: CAHAI multi-stakeholder consultation
11.55 am		10. Any other business
12 pm		End of the meeting

APPENDIX II – LIST OF PARTICIPANTS

MEMBERS OF THE POLICY DEVELOPMENT GROUP / MEMBRES DU GROUPE D'ELABORATION DES POLITIQUES

BELGIUM/BELGIQUE

Ms Peggy VALCKE – Vice-Chair of the CAHAI / Vice-présidente du CAHAI

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

Mr Dag DZUMRUKCIC - Minister counsellor, Department for International Legal Affairs, Ministry of Foreign Affairs / Ministre conseiller, Département des affaires juridiques internationales, Ministère des affaires étrangères

BULGARIA / BULGARIE

Ms Totka CHERNAEVA - Head of European Programs and Projects Unit Information Technology Directorate / Chef de l'unité "Programmes et projets européens" Direction des technologies de l'information

ESTONIA / ESTONIE

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

GERMANY / ALLEMAGNE

Mr Wolfgang TEVES – Chair / Président

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 Lena Kristina HOCKE - LL.M. Senior Lecturer, Unit Digital Strategy, Fundamental Issues of the Information Society / LL.M. maître de conférences, unité stratégie numérique, questions fondamentales de la société de l'information

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

GREECE / GRECE

Mr Konstantinos SFIKAS - Executive, Department of Open Governance and Transparency / Exécutif, Service de la gouvernance ouverte et de la transparence

HUNGARY / HONGRIE

Mr Zoltán TURBÉK – Co-Chair / Co-Président

Director, Department of International Organisations, Ministry of Foreign Affairs and Trade / Directeur, Département des organisations internationales, Ministère des affaires étrangères et du commerce

IRELAND / IRLANDE

Ms Eimear FARRELL - Assistant Principal, National AI Strategy & EU industrial policy, Department of Business, Enterprise & Innovation / Directeur adjoint, Stratégie nationale d'IA et politique industrielle de l'UE, Département des affaires, des entreprises et de l'innovation

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 / LUXEMBOURG

NETHERLANDS / PAYS-BAS

Mr Floris KREIKEN - Policy Advisor, Ministry of the Interior and Kingdom Relations / Conseiller politique principal, Ministère de l'intérieur et des relations au sein du Royaume

Ms Monika MILANOVIC - Legal Advisor, Ministry of the Interior and Kingdom Relations / Conseillère juridique, Ministère de l'intérieur et des relations au sein du Royaume

Mr Sander MUL - Senior Policy Adviser, Ministry of Justice and Security / *Conseiller politique principal, Ministère de la justice et de la sécurité*

Mr Michael VOS - Senior Policy Advisor, AI Policy Team, Ministry of Justice and Security / Conseiller politique principal, équipe chargée de la politique d'AI, Ministère de la justice et de la sécurité

POLAND / POLOGNE

Mr Robert KROPLEWSKI - Plenipotentiary of the Minister of Digitization for the Information Society, Ministry of Digitization / Plénipotentiaire du ministre de la numérisation pour la société de l'information, Ministère de la numérisation

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Andrey KULESHOV - Advisor on International Cooperation and Coordination at the Centre for AI Science and Technology, Moscow Institute of Physics and Technology / Conseiller en matière de coopération et de coordination internationales au Centre pour la science et la technologie de l'IA, Institut de physique et de technologie de Moscou

SLOVAKIA / SLOVAQUIE

Ms Barbora ŠIKUTOVA - Legal expert, International Law Section, Department of European Affairs and Foreign Relations, Ministry of Justice / Juriste expert, Section du droit international, Service des affaires européennes et des relations extérieures, Ministère de la justice

SLOVENIA / SLOVÉNIE

Mr Marko GROBELNIK - Expert researcher in the field of Artificial Intelligence (AI), Department for Artificial Intelligence, Jozef Stefan Institute, Slovenia / *Chercheur expert dans le domaine de l'intelligence artificielle (IA), Département de l'intelligence artificielle, Institut Jozef Stefan, Slovénie*

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

SPAIN / ESPAGNE

Mr Ricardo SANZ - Professor of Systems and Autonomous Engineering in the Technical University of Madrid, Researcher of the joint centre CSIC-UPM on Autonomous Systems and Robotics / Professeur d'ingénierie des systèmes et d'ingénierie autonome à l'Université technique de Madrid, chercheur du centre commun CSIC-UPM sur les systèmes autonomes et la robotique

SWEDEN / SUEDE

Mr Magnus NORDSTRÖM - Deputy director, Europe Division, Department for European Security Policy, Ministry for Foreign Affairs / Directeur adjoint, Division Europe, Service de la politique européenne de sécurité, Ministère des affaires étrangères

SWITZERLAND / SUISSE

TURKEY / TURQUIE

Ms G. Benan AKBAS - EU Expert, Directorate General for EU and Foreign Affairs, Ministry of Science and Technology / Expert de l'UE, Direction générale des affaires européennes et étrangères, Ministère de la science et de la technologie

Ms Leyla KESER BERBER, Prof., Dr., University of Bilgi / *Université de Bilgi*

Ms Zümrüt MÜFTÜOĞLU - Expert, Presidency of the Republic of Turkey – Digital Transformation Office / Expert, Présidence de la République de Turquie – Bureau de la transformation numérique

Ms Sumeyye SABANCI, Ministry of Science and Technology / Ministère des sciences et de la technologie

UNITED KINGDOM / ROYAUME-UNI

Dr Andrew HARDING - Senior Policy and Technology Advisor, Centre for Data Ethics and Innovation / Conseiller principal en politique et technologie, Centre pour l'éthique des données et l'innovation

PARTICIPANTS

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

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES / CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX

Mr Roman CHLAPAK - Secretary, Governance Committee / Secrétaire, Comité de gouvernance

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

Mr Didier SCHRETTER - Representative of the Conference of INGOS, Chair of the European Association for Audiovisual Media Education (EAAME) / Représentant de la Conférence des OING, Président de l'Association Européenne pour l'Éducation aux Médias Audiovisuels (AEEMA)

ADVISORY COUNCIL ON YOUTH (CCJ) / CONSEIL CONSULTATIF SUR LA JEUNESSE (CCJ)

Ms Emilija GAGRCIN - Advisory Council on Youth / Conseil consultatif sur la jeunesse

CONSULTATIVE COMMITTEE – DATA PROTECTION / COMITE CONSULTATIF- PROTECTION DES DONNEES (T-PD)

Mr Alessandro MANTELERO - Associate Professor at Politecnico di Torino - Tongji University /
Professeur associé au Politecnico di Torino – Université Tongji

Ms Julie-Sarah PAUGET, Traniee / Stagiaire

EUROPEAN AUDIOVISUAL OBSERVATORY / OBSERVATOIRE EUROPEEN DE L'AUDIOVISUEL

EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE (CDDG) / COMITE EUROPEEN SUR LA DEMOCRATIE ET LA GOUVERNANCE (CDDG)

Mr Peter ANDRE - Senior Expert for legal affairs, Federal Ministry of Interior, Austria, CDDG Rapporteur on Democracy and Technology / Expert principal pour les affaires juridiques, Ministère fédéral de l'intérieur d'Autriche, Rapporteur du CDDG sur la démocratie et la technologie

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

GENDER EQUALITY COMMISSION / COMMISSION POUR L'EGALITE DE GENRE

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

Mme Cécile GREBOVAL - Programme Manager Gender Mainstreaming et Gender Equality Advisor, / Responsable de programme, Gender Mainstreaming, Conseillère en matière d'égalité entre les femmes et les hommes

VENICE COMMISSION / COMMISSION DE VENISE

Mr Michael JANSSEN - Legal Adviser, Elections and Political Parties, Secretariat of the Venice Commission / Conseiller juridique, Elections et partis politiques, Secrétariat de la Commission de Venise

European Union and Observers from International Organisations / Union européenne et Observateurs des Organisations Internationales

EUROPEAN UNION / UNION EUROPEENNE

Mr Eike GRAEF - Policy officer, Directorate-General for Justice and Consumers, Directorate C : Fundamental Rights and Rule of Law, Unit C.2: Fundamental rights policy, European Commission / Responsable des politiques, Direction générale de la justice et des consommateurs, Direction C : Droits fondamentaux et de l'état de droit, Unité C.2: Politique des droits fondamentaux, Commission européenne

EUROPEAN DATA PROTECTION SUPERVISOR (EDPS) / CONTROLEUR EUROPEEN DE LA PROTECTION DES DONNEES (CEPD)

Mr Xabier LAREO - Technology and security officer, Technology and Privacy unit / Agent de la technologie et de la sécurité, unité Technologie et vie privée

Mr Stefan LEUCCI - Technology and legal officer, Technology and Privacy Unit / Agent de la technologie et du droit, Unité Technologie et Vie privée

Ms Maria-Alexandra ENESCU – Trainee, Technology and Privacy Unit / Stagiaire, Unité Technologie et Vie privée

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA) / AGENCE DE L'UNION EUROPEENNE POUR LES DROITS FONDAMENTAUX (FRA)

Ms Jana GAJDOSOVA - Programme Manager - Just, Digital and Secure Societies, Research & Data Unit, / Gestionnaire de programme - Sociétés justes et sécurisées, Unité de recherche et de données

Mr David REICHEL - Project manager / *Chef de projet*

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) / ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES (OCDE)

Ms Karine PERSET - Administrator – Artificial Intelligence Policy Observatory, Digital Economy Policy Division; Science, Technology and Innovation Directorate / *Administrateur - Observatoire des politiques d'intelligence artificielle, Division de la politique de l'économie numérique, Direction de la science, de la technologie et de l'innovation*

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) / ORGANISATION POUR LA SECURITE ET LA COOPERATION EN EUROPE (OSCE)

OBSERVERS/ OBSERVATEURS

EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS / RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME (ENNHRI)

Mr Emil Lindblad KERNELL, Adviser, Human Rights & Business, Danish Institute for Human Rights / Conseiller, Droits de l'homme et entreprises, Institut danois des droits de l'homme

Observer States to the CAHAI / Etats observateurs au CAHAI

CANADA

Ms Lesia STANGRET - Legal Officer, Global Affairs Canada, Government of Canada / Juriste, Affaires Mondiales Canada, Gouvernement du Canada

ISRAEL / ISRAEL

Mr Cedric Yehuda SABBAH - Director, International Cybersecurity & IT Law, Office of the Deputy Attorney General (International Law), Ministry of Justice, Israel / Directeur, Cybersécurité internationale et droit des technologies de l'information, Bureau du procureur général adjoint (droit international), Ministère de la Justice, Israël

MEXICO

Dr. Jorge Arturo CORDO HERRAN – Professor, Autonomous Technological Institute of Mexico (ITAM) / Professeur, Institut Technologique Autonome de Mexique (ITAM)

OBSERVERS ADMITTED TO THE CAHAI / OBSERVATEURS ADMIS AU CAHAI

Council of Europe partner Internet companies / Entreprises internet partenaires du Conseil de l'Europe

ELEMENT AI

FACEBOOK

INTERNATIONAL COMMUNICATIONS CONSULTANCY ORGANISATION (ICCO)

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)

TELEFONICA

Mr Gonzalo LOPEZ BARAJAS - Manager, Public Policy & Internet / Gestionnaire, Politique publique et Internet

Mr Pablo BARRIONUEVO - Manager, Public Policy & Internet / Gestionnaire, Politique publique et Internet

Ms Paloma VILLA MATEOS - Manager, Public Policy & 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

ACCESS NOW

Mr Daniel LEUFER - Europe Policy Analyst / Analyste des politiques europeennes

AI TRANSPARENCY INSTITUTE

ALGORITHMWATCH PLATFORM

Mr Matthias SPIELKAMP - Co-founder of the AlgorithmWatch platform / Co-fondateur de la plateforme AlgorithmWatch

EUROPEAN ASSOCIATION OF DATA PROTECTION PROFESSIONALS (EADPP)

Mr Constantinos TSIOURTOS, Advisor to the Chair / *Conseiller de la présidence*

EEEI

HOMODIGITALIS

Mr Eleftherios CHELIOUDAKIS - Co-founder and Secretary of the Board of Directors / Co-fondateur et secrétaire du conseil d'administration

INTERNATIONAL BAR ASSOCIATION (IBA)

Mr Martijn SCHELTEMA - Prof., Partner at Pels Rijcken and Member of the Advisory Panel Business Human Rights Committee, IBA / Partenaire chez Pels Rijcken et Membre du Comité consultatif Comité des droits de l'homme des entreprises, IBA

MEDIALAWS

Ms Flavia BAVETTA - Fellow at MediaLaws.eu and Bocconi University / Boursier à MediaLaws.eu et l'Université Bocconi

Mr Marco BASSINI – Apologised / Excusé

Postdoctoral Researcher and Professor of IT Law, Bocconi University - Vice Editor-in-Chief, MediaLaws / Chercheur postdoctoral et professeur de droit des technologies de l'information, Université Bocconi - Vice-rédacteur en chef, MediaLaws

INDEPENDENT EXPERTS / EXPERTS INDEPENDANTS

Ms Nathalie SMUHA - Researcher - Department of International & European Law, KU Leuven, Member of the OECD Network of Experts on AI (ONE AI), Former Coordinator of the EC High-Level Expert Group on AI, Belgium / Chercheur - Département de droit international et européen, KU Leuven, membre du réseau d'experts de l'OCDE sur l'IA (ONE AI), ancien coordinateur du groupe d'experts de haut niveau de la CE sur l'IA, Belgique

Mr Peter PARYCEK, Prof, Mag. - Head - Department for E-Governance and Administration, Donau-Universität Krems / Chef du département de la gouvernance électronique et de l'administration, Donau-Universität Krems

SECRETARIAT GENERAL OF THE COUNCIL OF EUROPE

EUROPEAN COURT OF HUMAN RIGHTS (ECHR) / COUR EUROPEENNE DES DROITS DE L'HOMME (CEDH)

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW / DIRECTION
GÉNÉRALE DES DROITS DE L'HOMME ET DE L'ÉTAT DE DROIT (DG I)**

Mr Jan KLEIJSEN - Director, Information Society – Action against Crime, Council of Europe / Directeur,
Société de l'Information – Lutte contre la Criminalité, Conseil de l'Europe

Mr Patrick PENNINGKX - Head of Department, Information Society Department / Chef du Service, Service
de la société de l'information

**DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION GÉNÉRALE DE LA
DÉMOCRATIE (DG II)**

Ms Claudia LUCIANI – Director, Directorate of Human Dignity, Equality and Governance / Directrice,
Direction de la dignité humaine, de l'égalité et de la gouvernance

SECRETARIAT OF THE CAHAI / SecrÉTARIAT DU CAHAI

Ms Clementina BARBARO
Co-Secretary of CAHAI / *Co-Secrétaire du
CAHAI*

Mr Kristian BARTHOLIN
Co-Secretary of CAHAI / *Co-Secrétaire du
CAHAI*

Mr Yannick MENECEUR - Policy Adviser /
Conseiller en politiques

Ms Lucy ANCELIN - Assistant to the CAHAI /
Assistante du CAHAI

Ms Claire ROBINS - Secretariat, Counter-
terrorism division / *Secrétariat, Division Anti-
terrorisme*

Ms Laetitia DIMANCHE - Project Assistant,
Information Society Department / *Assistante de
projet, Service de la société de l'information*

Mr Rafael ISMAYILOV - Trainee / *Stagiaire*

* * *

INTERPRETERS / INTERPRÈTES

Mme Lucie DE BURLET

M. Nicolas GUITTONNEAU

M. Jean-Jacques PEDUSSAUD

APPENDIX III: INPUT TO THE WORK OF THE SUB-WORKING GROUPS

1) Doc 1: A model for a Human Rights, Democracy and Rule of Law Impact Assessment (HRDRIA) for Artificial Intelligence (AI)

Draft Table of contents:

1. Introduction and Scope
 - *Purpose of the document*
 - *Applicable to private sector and public sector use of AI (if additional points need to be mentioned for public sector specifically, this could go to Doc 2)*
2. Methodological considerations
 - *Overview of existing general human rights impact assessment (HRIA) frameworks & limitations*
 - *Overview of existing AI-specific HRIA frameworks and limitations*
 - *Main criteria to take into account in context of the to be developed impact assessment (existing content to be further developed, clarified here and there, and complemented with additional points e.g. inspired by OECD & other work)*
 - *Main criteria to take into account to also capture the elements of democracy & rule of law (i.e. list the proxies and explain how they operate as a proxy – see also the HR that we refer to under “democracy” and “rule of law” in the FS)*
3. Model for a HRDRIA for AI
 - *Concrete and operationalizable Impact Assessment model, i.e. with questions/issues/guidance that can help to conduct the assessment (drawing on chapter 2)*
 - *(This could also become the final section instead of the third one since that is the part that will not be merely explanatory but operational.)*
4. Synergies with other compliance mechanisms
 - *This should concretely refer to the mechanisms mentioned in Chapter 9.*
 - *Ideally, each of the mechanisms of chapter 9 would be elaborated further (incl. features and requirements from a regulatory perspective) + the link/synergy with the impact assessment should be explained.*

2) Doc2: Recommendations for the use of AI in the public sector

Draft Table of contents:

1. Introduction and Scope

- *This section could set out the purpose of the document, and justify why specific recommendations for the development, procurement and use of AI in the public sector (as opposed to private sector) could be needed – i.e. greater caution, direct applicability of Human Rights obligations, specific challenges etc.*
- *Some info on AI uptake by public sector (text already there) could be brought here, but should go beyond EU*

2. An overview of AI use cases in the public sector (already used or being piloted)

- *The uses cases could be categorized in (at least) two ways, to be decided by the group (ideally with concrete examples from countries, used or piloted)*
 - *Based on AI technique*
 - *The document already lists AI-techniques like computer vision, NLP etc. so for each technique it could provide one/more concrete examples*
 - *Based on the public sector domain:*
 - *E.g. use of AI to detect tax fraud, use of AI to allocate welfare benefits/detect welfare fraud, use of AI in law enforcement etc.*
 - *Important to also include examples not only of where AI can have a negative impact on human rights, democracy and rule of law, but also where it can explicitly protect and enhance it*

3. Specific risks & opportunities for human rights, democracy and rule of law for AI in public sector

- *Analysis of risks & opportunities of the applications mentioned under Chapter 2.*
- *This analysis would be specifically focused on the public-sector*

4. Concrete guidance points for governments to ensure they fulfil their obligations in terms of human rights, democracy and the rule of law

- *For instance*
 - *When developing AI*
 - *When procuring AI (guidance for procurement processes)*
 - *When deploying AI*
- *To be seen how we could/should also link this guidance with Doc 1*

5. Conclusions