



Strasbourg, 28 November 2022

CAI(2022)12

COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAI)

**Proposal regarding the examination
of issues relating to risk and impact assessment**

Document of the Chair

In line with the recommendations of the CAHAI, the Secretariat has developed a draft methodology (the Human Rights, Democracy and the Rule of Law Risk and Impact Assessment, HUDERIA) the role of which is to assist domestic authorities in implementing the requirements set out in the future [framework] Convention.

The methodology is intended to set out clear, concrete and objective criteria for identifying sensitive contexts in which the deployment of AI systems or combinations of such systems would likely pose significant levels of risk to the enjoyment of human rights, the functioning of democracy, and the observance of the rule of law. It also lays down procedural mechanisms ensuring that adequate risk analysis, impact assessment, impact mitigation, access to remedy and system monitoring protocols are put in place by those responsible for their deployment.

This methodology is not prescribing a particular concrete model for such an assessment, it rather sets out the elements that are required for such an assessment in order to guarantee a uniform approach across countries, but at the same time leaves room to each State to set-up its own model based on the specific national circumstances.

Insofar as the issues relating to risk and impact assessment were concerned, the initial proposal contained in the Zero Draft of the [framework] Convention was two-fold:

- (a) requiring the Parties “[to] undertake to adopt a methodology applicable to design, development and application of artificial intelligence systems, for identifying, analysing and evaluating risk and assessing impact of the application of artificial intelligence systems in relation to the enjoyment of human rights, the functioning of democracy and the observance of rule of law” (Paragraph 1 of Article 11 of the Zero Draft);
- (b) make the HUDERIA model part of the future [framework] Convention and place it in the Appendix to it (see Paragraph 2 of Article 11). The choice of putting it in the Appendix was motivated by the need to facilitate the revision of the methodology in the future with a view to rendering it responsive to the development of novel AI innovations and use-cases.

On 4 November 2022, the Bureau of the CAI held its second meeting, during which it examined the draft methodology. The Bureau members held an extensive discussion about the HUDERIA itself and the way it would work in practice, its connection with the [framework] Convention and the timing of the HUDERIA’s examination by the Committee.

As a result of these exchanges, the Chair, with the support of the Bureau, proposes that:

- (a) the methodology shall be examined by the Committee as a stand-alone non-legally binding instrument, separate from (but supporting) the [framework] Convention;
- (b) given the complexity and importance of the issues contained in both instruments, their negotiation should be carried out in two separate tracks – one focussing on the [framework] Convention and the other on the HUDERIA. While negotiations on the first should be concluded by 15 November 2023, work on the second should be terminated by the end of 2024. A multi-stakeholder consultation should be conducted on the draft methodology to inform the negotiations thereof;
- (c) the most practical/sensible way to proceed would be to adopt a 3-tiered approach to issues relating to risk and impact assessment of AI systems, with (1) a general obligation to conduct an assessment containing a number of defined elements/steps, to be enshrined in the [framework] Convention, (2) the stand-alone, non-legally binding methodology to be adopted by the Committee to serve as guidance for the Parties,

and (3) an operationally feasible non-legally binding concrete model facilitating the implementation of the methodology.

As regards the examination of the HUDERIA methodology as a stand-alone instrument accompanying the draft Convention, the Chair would like to propose to the Committee two possibilities for how to proceed:

The first option would be to proceed with it as a “recommendation to member States on matters for which the Committee of Ministers has agreed ‘a common policy’” within the meaning of Article 15.b of the Statute of the Council of Europe. In that case, it would have to be examined and adopted by the Committee of Ministers. A recommendation would be binding politically, rather than legally, with effects strictly limited to member States of the Council of Europe. Such a solution would be relatively inflexible as future revisions of the methodology would require its repeated update to be adopted by the Committee of Ministers.

The second option would be the adoption of the HUDERIA methodology by the Committee itself. Whilst not enjoying the same legal or political effects as a recommendation, this option would facilitate any future revisions of the document, even though its adoption would ultimately still require an agreement of all member States.

The CAI is invited to consider the Chair’s proposal as set out above and decide thereon at the occasion of the 3rd Plenary meeting of the Committee.