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COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAI)

2nd Plenary Meeting

Strasbourg, 21 – 23 September 2022

Hybrid meeting

MEETING REPORT

Prepared by the Secretariat

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I. Introduction

1. The Council of Europe's Committee on Artificial Intelligence (hereinafter referred to as "the CAI" or "the Committee") held its 2nd Plenary meeting in Strasbourg, in hybrid format, from 21 to 23 September 2022, in conformity with its terms of reference adopted by the Committee of Ministers.
2. The Chair, Ambassador Thomas Schneider (Switzerland), opened the meeting and welcomed the participants. He underlined that the work of the Committee is attracting attention not only in Europe, but globally. He warmly welcomed colleagues from other international organisations and the many civil society and industry representatives. He further underlined that many member States are showing great interest in the work of the CAI and that it is time to make the project with its global potential work.

II. List of items discussed at the meeting and decisions taken by the CAI

Agenda item 1. Opening of the meeting

3. Ms Claudia Luciani, Director, Directorate of Human Dignity, Equality and Governance, and Mr Jan Kleijssen, Director, Information Society and Action against Crime, Council of Europe, addressed their opening words to the Committee.
4. Director Jan Kleijssen congratulated the CAI for its valuable work and noted that member States as well as non-member States are attending the meeting – some with large Delegations. There was now a rare "window of opportunity" for establishing the necessary human rights and rule of law standards on AI with a potential global reach and also the danger that global benchmark standards could instead be developed under the aegis of States which do not adhere to democracy and do not respect human rights and the rule of law. He underlined that the Council of Europe was a genuine multilateral forum for treaty making, uniquely placed to carry out this difficult task also with a long-standing practice of inclusiveness and participation. Participation on an equal footing of all Council of Europe member States, as well as the possibility of attracting relevant non-member States to actively participate in and support the development of potentially global legal standards in the Council of Europe framework has always been a hallmark of our work in international standard setting. The Council of Europe has already produced pioneering global legally binding standards on complex technical and technological issues, such as the Budapest Convention on Cybercrime and its 2nd Additional Protocol.

5. Director Claudia Luciani joined the previous points and also noted that the participants had all received the Chair's "Zero Draft" for the Convention and the draft explanatory report. The first round of discussions about both drafts could now be had. She added that in addition to the mentioned drafts at this meeting the Committee would be presented with an outline of a HUDERIA methodology which may either become part of the new Convention or be a stand-alone, non-legally binding, instrument. The methodology could either way be used as a blueprint in designing risk and impact assessment tools in the sphere of human rights, democracy and the rule of law targeted to the legal context of individual States and Parties. Director Claudia Luciani wished the Committee the best of luck with its important task.
6. The Chair thanked the speakers for their opening remarks and for their words of appreciation for the work of the CAI.

Agenda item 2. Adoption of the Agenda and Order of Business

7. The agenda and order of business were adopted without any modifications.
8. The Committee decided to address agenda item 8 after item 9.

Agenda item 3. Information by the Secretariat

9. The Committee took note of the information provided by the Secretariat regarding the activities of the Secretariat AI Coordination Group since the 1st Plenary meeting. The presentation included detailed information on transversal cooperation and coordination regarding AI developments in various areas where the Council of Europe was active, such as education, children's rights, the rule of law, healthcare and bioethics, criminal and administrative law etc.
10. It also took note of the information provided by the Secretariat that one of the Bureau Members, Ms Gaëlane Pelen (France), had stepped down and that, as a consequence, elections for the Bureau had to be held.
11. The Committee also took note of the request of the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) to appoint a representative of the CAI in the CDBIO. The Finnish Delegation expressed interest in this connection.
12. Having heard a short presentation of the biography of the candidate who had a long and distinguished background in social affairs, healthcare and e-care by the Finnish

Delegation, the Committee decided to appoint Mr Joni Komulainen (Finland) as representative of the CAI in the CDBIO.

Agenda item 4. Exchange of information

13. The Committee took note of the presentation by Minister of the Environment David ERAY, Congress Spokesperson on Digitalisation and Artificial Intelligence.
14. Minister David Eray spoke about the activities of the Congress of Local and Regional Authorities in the area of digital transformation and AI and also his professional experience working on the use of AI in projects regarding smart cities, smart regions in Switzerland. He underlined the importance of data protection and cybersecurity considerations in bringing these changes about and warmly welcomed the work of the CAI in this connection. Minister David Eray considered that the Chair's Zero draft could serve as an excellent basis for the beginning of the work on substance.
15. The Chair thanked Minister David Eray for his intervention.
16. The Committee further took note of the information provided by the representatives of the OSCE, UNESCO and the EU regarding their respective work on topics of relevance to the Committee. Ms Deniz Wagner of the OSCE described their activities in the field of AI, noting in particular the publication of a policy manual on AI and Freedom of Expression earlier this year. Mr Thierry Boulangé of the EU Commission presented the state of play regarding the draft EU AI Act and the related on-going negotiations at the EU level. Ms Dooa Abu-Elyuones of the UNESCO took the floor and spoke about the continuing work on building blocks for inclusive AI policies and the planned Global Forum on the Ethics of AI in Prague at the end of the year.
17. The Chair warmly thanked the representatives of international organisations for their presentations.

Agenda item 5. Working methods

18. The Committee heard a short presentation regarding various questions relating to working methods by the Chair, who insisted on an inclusive approach, underlined the need to remain open to different points of view, and invited the Delegations to hold an exchange of views in this regard.
19. A number of Delegations pointed at the connection between the need to remain open as the negotiations progressed and their format. Some Delegations expressed their

preference to set up a dedicated smaller format “drafting group” and to make some description of the draft under discussion public only after its main elements have been agreed upon. Some participants discussed the time frame of the process and the issue of the duration of Plenary sessions.

20. Some Delegations expressed their preference for multiple working groups which could advance on various questions raised by the Zero Draft in parallel. Some Delegations supported it, whilst others remained sceptical, as such parallel processes are very difficult to coordinate.
21. As regards the organisation of the process of negotiations on the substance of the future Convention, having held an exchange of views in this connection, the Committee decided:
 - a) to establish a Drafting Group to prepare the draft [framework] Convention;
 - b) that the Drafting Group shall be composed of potential Parties to the [framework] Convention;
 - c) that the Drafting Group shall report to the Plenary.

Agenda item 6. Presentation of the Chair’s Communication and Outreach Plan

22. The Chair presented his Communication and Outreach Plan. He pointed out in particular to the need to inform the public as well as the domestic authorities, international organisations and other relevant stakeholders, both domestically and internationally, about the progress of the Committee’s work.
23. The Committee held an exchange of views in this connection. Various Delegations took the floor and underlined the need to involve representatives of the SMEs and the national regulators as a source of expertise and the ultimate beneficiaries of the on-going process. Some Delegations underlined the need to be active in promoting the work of the Committee at different international fora.
24. The Committee endorsed the Chair’s strategy.
25. Another issue that the Delegations discussed at length was the importance to maintain public trust and build confidence through maintaining transparency regarding the progress of the proceedings in the CAI, which is why they considered that making a

brief description of the draft under discussion available to the public could be a reasonable measure in this connection.

26. After an exchange of views, the Committee decided to resend to Delegations the “Outline of the elements of an appropriate legal instrument” (a document which has been taken note of by the Committee at its 1st Plenary meeting) which the Delegations may decide to share as a public document.

Agenda item 7. Hearing of candidates for observer status with the CAI (in camera; for Heads of Delegations of member States only)

27. The representatives for Fair Trials and 5Rights Foundation made presentations in relation to their candidacies for observer status with the CAI, of which the Committee took note.

28. The Committee decided to grant observer status with the CAI to both organisations.

Agenda item 8. Election of a member of the Bureau

29. Following the decision of Bureau member Ms Gaëlane Pelen (France) to step down (see paragraph 10 above), the Committee decided to elect for the remainder of the vacant one-year mandate, i.e until April 2023, Ms Işıl Selen Denemeç (Türkiye) as member of the Bureau.

Agenda item 9. Presentation of the Zero Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

30. The Chair and the Secretariat made a presentation of the Zero Draft of the [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. They explained that the draft followed up on most of the ideas formulated in the CAHAI's Elements document putting them in an appropriate format and structure. The draft was organised in five chapters (General provisions, Fundamental principles, Risk and impact assessment and related measures, Follow-up mechanism and cooperation and Final provisions), preceded by a preamble.

31. The chapter on general provisions defines the purpose and object of the Convention, whilst also providing some key definitions for such terms as “artificial intelligence system”, “lifecycle”, “artificial intelligence provider”, “artificial intelligence user” and “artificial intelligence subject”, elaborated with due regard to similar definitions used in other supranational and international instruments on artificial intelligence systems,

notably under the development in the EU. It is to be noted that the scope of the future Convention reflects the limitations imposed by the mandate of the Council of Europe in that military matters, such as those relating to national defence in accordance with Article 1 (d) of the Statute of the Council of Europe, are falling outside of it. However, this limitation does not create any prejudice or is not detrimental to the already existing level of human rights protection under current international law.

32. The chapter on fundamental principles reaffirms the principles relevant in the context of AI, which are the principle of equality (including gender equality and rights related to those who are subject to discrimination and/or persons in vulnerable situations) as well as protection of privacy. In addition, it contains principles related to accountability, responsibility and legal liability for any unlawful harm caused by application of artificial intelligence systems, and the need for appropriate safety, security, data protection, cybersecurity and robustness requirements. Furthermore, it also addresses such important issues as sustainability, solidarity, and the protection of the environment. Finally, it contains a set of additional requirements for the use of AI in the public sector.
33. In the light of interactions with, in particular, the existing human rights obligations of the Parties, that chapter also addressed the question of new rights and obligations and the related and equally important questions of the exact scope of such rights, their formulation and the circumstances in which they could be applicable: the obligation to record and store the usage of artificial intelligence systems, the right to access relevant records, the right to be informed about the application of an artificial intelligence system where an artificial intelligence system substantially informs or takes decision(s) affecting human rights and fundamental freedoms, legal rights and significant legal interests, the right to know that one is interacting with an artificial intelligence system, and the right to human review of such decisions. It is underlined specifically that the modalities of the exercise of such rights are to be governed by the domestic law of the Parties.
34. The chapter on risk and impact assessment and related measures makes sure that the Convention focuses only on such artificial intelligence systems that pose a risk from the point of view of safeguarding and protecting human rights, preserving and fostering democracy and observing the rule of law. In particular, it suggests the adoption of a methodology providing clear, concrete and objective criteria for identifying those artificial intelligence systems, or combined technologies based on such systems, that pose significant levels of risk to the enjoyment of human rights, the functioning of democracy and the observance of the rule of law. The relevant risk and impact

assessment, risk mitigation and risk management requirements in respect of such artificial intelligence systems would have to take account of certain general requirements which should be set out in the Convention and ensure the compliance with the Council of Europe's appropriate standards of human rights, democracy and the rule of law.

35. Having in mind the context- and risk-based approach requiring the authorities of Parties to examine the relevant circumstances and the context in which such systems are planned to be designed, developed and applied on a case-by-case basis and, more generally, the need to recognise and respect the Parties' margin of appreciation in tackling the sensitive question of 'red lines', the Convention suggests definitions of certain potentially prohibited artificial intelligence practices, such as certain emotion recognition and social scoring techniques, but in order to make this approach future proof also provides for the possibility of imposing a full or partial moratorium or ban in respect of other such systems that are deemed to present an unacceptable level of risk of interfering with the enjoyment of human rights, the functioning of democracy, and the observance of the rule of law.
36. Lastly, the draft Convention also provides for the establishment of specific mechanisms both at the domestic and international levels with a view to ensuring a proper follow-up and cooperation by the Parties regarding the implementation of the legal instrument.
37. The Committee took note of the general presentation by the Chair and the Secretariat of the Zero Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law.

Agenda item 10. First reading of the Zero Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

38. The Committee carried out a preliminary first detailed reading of the Zero Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law which covered Preamble and Chapters I to IV. The Chair read through the Draft chapter by chapter, each time inviting Delegations to ask questions, preferably of a general character.

General discussion on the “zero draft”

39. The Delegations had an exchange of views with regards to the presentation and made some general comments regarding the draft. They voiced their support for the work of the Committee and also specifically expressed support and welcomed the efforts of the Chair and the Secretariat on the preparation of the Zero Draft and the explanatory report.
40. Furthermore, some Delegations put a variety of questions and expressed their respective positions regarding:
- a. the possible need to refer to more international law instruments and adjust the language regarding balancing of rights and interests in the Preamble;
 - b. the purpose and exact scope (in particular regarding ‘research’, ‘lifecycle’, definitions of ‘AI system’, ‘AI subject’ and ‘military matters’/‘national defence’) of the draft in Chapter I;
 - c. the meaning of different principles and their relationship to each other, the meaning of the requirements regarding public sector, the modalities of exercise of different procedural rights, the meaning of articles on relationship with other legal instruments and wider protection in Chapter II;
 - d. the issue of “red lines”, and the distinction between significant and unacceptable levels of risk in Chapter III;
 - e. the meaning and scope of obligations regarding national supervisory authorities in Chapter IV.
41. The Delegation of the European Union expressed its strong support to the work of the CAI and reiterated its commitment to contribute to the elaboration of a legally binding instrument of the Council of Europe with a potential global reach. The European Union referred to the challenge regarding the timing of the CAI negotiations with those on the EU “AI Act”, including the EU internal discussions and pending decisions on an authorisation for the EU and its member states to participate in the CAI’s work and negotiate the convention. The EU made it clear that – until the decision on the negotiation mandate had been taken, , neither the European Commission nor any of the Member States of the European Union were in a position to express any official positions on provisions contained in the Zero Draft. However, participating in the discussions on the “zero draft” through asking questions was considered to be feasible.

42. Some Delegations, particularly from non-European States, suggested that, before going through the “zero draft” in detail, it would be useful to first focus on the overall direction of the process as a pre-condition for a more detailed discussion. They underlined that we should not only look at the future Convention from a European point of view, but rather from a broader perspective, as a potentially global instrument. This would mean that the Convention should set out the common understanding of principles including also the perspective of the participating non-European States.
43. Some Delegations recalled that the various requirements and rules contained in the future convention should not be too burdensome for innovation. They suggested taking a cautious stance on the binding nature of the individual provisions. In addition, we should think more carefully about what exactly the scope of the convention should be. Some argued that we should consider focusing principally on public sector and actions of public authorities. It was also stressed that we should avoid duplications and overlaps with the existing human rights law. Another point where more clarity was considered necessary was whether, and if so how, the Convention would cover research activities. Finally, some Delegations proposed to critically review the hierarchy of principles applicable to AI, as some of such principles may be more important than others.
44. Representatives of the Conference of International NGOs, the International Commission of Jurists, the Istanbul Bar Association expressed support for the work of the CAI and made various general comments regards the text of the Zero Draft. The Committee took note of the presentation, the various comments and the responses provided by the Chair and the Secretariat.
45. At the end of the exchange about the “zero draft”, the Chair and the secretariat thanked the Committee for the valuable feedback and emphasized that the views expressed and questions raised would be feeding into the future work on an official “first draft” of the future convention.

Presentation and discussion of the HUDERIA proposal

46. The Secretariat and its consultant, Professor David Leslie from the Alan Turing Institute, made a presentation of the outline of the draft methodology for a human rights, democracy and rule of law risk and impact assessment of artificial intelligence systems (HUDERIA) currently under development. They explained the origin of the work on a risk and impact assessment model in the CAHAI process and the assumptions and requirements under which the team has been operating at present, in particular the fact

that HUDERIA was a general methodology/model rather than a specific tool and that its main purpose was to guide and assist national authorities in mapping out the risks to human rights, democracy and the rule of law when it comes to the use of AI.

47. The model is based on the assumption that the domestic authorities are usually better placed to make their specific regulatory choices, taking into account the domestic political, economic, social, technological and other types of contexts, and that they should enjoy a certain margin of appreciation in this regard. The proposed HUDERIA methodology is designed to be as “algorithm neutral” and practice-based as possible so that it can remain maximally future proof and inclusive of different AI applications. The model remains responsive to the development of novel AI innovations and use-cases and should be seen as dynamic and in need of regular review and re-evaluation.
48. Another equally important aspect of the HUDERIA methodology is to ensure seamless compatibility of our approach with the existing compliance practices followed by the industry, to be achieved through, inter alia, consultations with the relevant stakeholders representing both large and small and medium sized enterprises (which will be launched towards the end of 2022/beginning of 2023). The methodology may thus become part of the future Convention/framework Convention on AI, human rights, democracy and the rule of law, or it may be a stand-alone non-legally binding instrument.
49. Regarding the substance, the methodology represents an integrated process and consists of five interrelated steps/processes: 1. context-based risk analysis, 2. stakeholder engagement process, 3. the actual human rights, democracy and the rule of law impact assessment, 4. impact mitigation stage and 5. iterative requirements. The methodology would contain the essential requirements regarding each of the five steps with the first step (context-based risk analysis) comprises four essential ingredients necessary to map out human rights, democracy and the rule of law risks: (a) criterion based on proximity to decision-making; (b) indicative list of human rights; (c) indicative list of sensitive sectors/domains and (d) indicative list containing high-level descriptions of risk factors.
50. The Delegations held the first exchange of views about the outline of the methodology, welcoming the efforts in this area. Delegations asked various questions in this connection, notably about the date at which it would be circulated in the committee, who would be using it, how would the authorities organise and supervise the

compliance with it as well as the compatibility of the methodology with other relevant international standards.

51. The Secretariat and Professor David Leslie responded to these questions.

52. The Committee took note of the presentation and the above responses, and the Chair thanked the Secretariat and Professor David Leslie for their important work.

Agenda item 11. Date and place of the next meeting

53. A number of Delegations expressed a wish to have the next Plenary meeting, scheduled for 23 - 25 November 2022, postponed by a few weeks. They referred, in particular, to various problems, such as conflicts with other important events in their respective schedules both international and domestic and the need of many delegations to internally coordinate their positions regarding the substance of the negotiations. The Delegation of European Union and its member states assured that they would clarify their internal procedural positions as soon as possible

54. Having had an exchange of views, the Committee decided to hold the 3rd Plenary meeting in Strasbourg on 11 - 13 January 2023.

Agenda item 12. Any other business

55. The Committee took note that there were no issues raised under item 12.

Agenda item 13. Adoption of the List of Items Discussed and Decisions Taken, and close of the meeting

56. The Committee decided to adopt the List of Items Discussed and Decisions Taken.

End of the meeting