



Strasbourg, 1 February 2023

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COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAI)

3rd Plenary Meeting

Strasbourg, 11 - 13 January 2023

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 3rd Plenary meeting in Strasbourg, in hybrid format, from 11 to 13 January 2023, 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 Members, Participants and Observers. The Chair encouraged everybody to continue to participate in the CAI process constructively and with readiness to listen to each other and willingness to make compromises, if necessary.

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 Claudia Luciani noted with satisfaction that member States as well as non-member States were attending the meeting and that the work of the Committee is attracting attention globally.
5. She also reminded the Committee that negotiations were still scheduled to end by September 2023.
6. Both Directors further underlined that openness and transparency were important for an organisation such as the Council of Europe. Director Jan Kleijssen also underlined the importance of the upcoming Council of Europe summit in Reykjavik and the need to reflect the work of the CAI in its agenda.
7. The Chair thanked the speakers for their opening remarks and for their words of appreciation for the work of the CAI. He, in particular, thanked Director Jan Kleijssen, who is retiring at the end of January 2023, for his many efforts to promote the work of the Council of Europe on artificial intelligence, not least his key role in the Organisation taking up this important work, and wishing him good luck for the future.

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

8. The agenda and order of business were adopted without any modifications.
9. The Committee decided to adopt, as amended, the report of the 2nd Plenary meeting of the Committee.

Agenda item 3. Information by the Secretariat

10. The Committee took note of the information provided by the Secretariat regarding the activities of the Secretariat and the Chair since the 2nd Plenary meeting, notably their participation in the OECD Digital Economy Ministerial Meeting, 13 – 15 December 2022, Gran Canaria, Spain, and in the IGF, 28 November to 2 December 2022, Addis Ababa, Ethiopia, as well as the meeting held on 18 October 2022 in the AI Coordination Group of the Secretariat.
11. The meetings in Gran Canaria and Addis Ababa provided occasions for promoting of the work of the CAI and the Council of Europe globally. As a result, the Chair and the Secretariat had very useful exchanges with delegates from States outside of the European region, especially South America, Africa and Asia, as well as with representatives of other international organisations.

Agenda item 4. Exchange of information

12. The Committee took note of the presentation by Ms Thórhildur Sunna Ævarsdóttir (Iceland), Chair of the Parliamentary Assembly's Sub-Committee on Artificial Intelligence and Human Rights and thanked her for her intervention.
13. The Committee took note of the information provided by the representatives of the UNESCO on their ongoing and planned work on topics of interest to the Committee, by representatives of the European Union about the Council decision to authorise the European Commission to negotiate the Convention in the CAI on behalf of the European Union as regards matters falling within the exclusive competence of the Union, as well as the recent report on "Bias in algorithms – Artificial intelligence and discrimination" by the European Agency for Fundamental Rights (FRA).
14. The Chair warmly thanked the representatives of international organisations for their presentations.

Agenda item 5. Working methods

15. The Committee heard a short presentation regarding various questions relating to working methods by the Chair and held an exchange of views in this regard.

Proposal to revise the decision to establish the Drafting Group taken by the Committee at its 2nd Plenary meeting

16. The Chair explained that Algorithm Watch, CINGO, Homo Digitalis, Centre for AI and Digital Policy, Fair Trials, Homo Digitalis, and the Istanbul Bar Association had written him a letter, which had been shared with the Committee, criticising the composition of the Drafting Group as agreed by the CAI at its previous Plenary meeting in September 2022. In particular, these Observers complained of “having been excluded” from the drafting process and requested that the Committee reconsider its earlier decision with a view to including them in the Drafting Group or, as a minimum, let them observe the drafting process during the Drafting Group meetings.

17. During the meeting representatives of these Observers took the floor and reiterated this request, asking the Plenary to reconsider its previous decision and allow for the passive participation of Observers in the meetings of the Drafting Group. In this regard, the representative of CINGO underlined their special status with the Council of Europe.

18. During the ensuing discussion, four delegations of member States expressed their support for the idea of closer observation of the drafting process by non-State actors.

19. In response to these remarks, the Chair made the following explanations and clarifications to the Committee:

20. As regards the procedure, the Committee had already taken its decision on the working methods at the 2nd Plenary meeting. At this occasion, 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; and (c) that the Drafting Group shall report to the Plenary. The Members of the Committee with a right to vote were therefore invited to consider whether they would revise that decision.

21. Turning to the substance of the requests, the Chair expressed appreciation of the interest expressed by these Observers in participating in all steps of the work of the CAI. He underlined that openness and transparency were important for the Council of Europe. However, whereas multi-stakeholder involvement in the process of negotiating

of Council of Europe treaties was indeed part of the Council of Europe's practice, it did not mean that every single step and discussion in a committee was systematically open for all to participate in.

22. The Chair noted that the work of the CAHAI from 2019 till 2021 saw extensive involvement of civil society, academia and industry representatives in the preparation of the Feasibility Study and the Possible Elements of a Legal Framework on Artificial Intelligence, respectively. The deliberations of the CAHAI constituted the first stage of this entire process which the CAI continues. The insights gained from the CAHAI process were included in the Zero Draft [Framework] Convention and the Revised Zero Draft [Framework] Convention in addition reflected comments expressed by all Delegations, including Observers, in advance of and during the 2nd Plenary meeting of the Committee.
23. He then stated that, even though non-State actors are not represented in the Drafting Group itself, the current working methods of the CAI process provided for continuous involvement of Observers in the drafting process. The Chair explained how he and the Secretariat proposed to implement the decision on the working methods, as adopted by the CAI at the 2nd Plenary meeting: Every meeting of the Drafting group should be preceded and followed by a meeting of the Plenary. All participants could make comments and provide concrete text proposals to the meeting of the Drafting group that immediately follows the Plenary. Within a few days after the Drafting group meeting, all participants of the Plenary would receive not only the proposed draft texts from the Drafting Group, but also a rationale for proposed changes. On this, all participants of the Plenary could make comments and text proposals again until and at the next Plenary meeting. This would ensure that the drafting process remained inclusive and drew on the important contributions of non-State actors.
24. Thus, the working methods which had been agreed to by the Committee ensured a process in the CAI which was both inclusive and transparent for all Members, Participants and Observers, while respecting long-established practices of intergovernmental cooperation.
25. The Committee, while taking note of the concerns raised, decided to uphold the aforesaid decision taken by the 2nd Plenary. The Committee underlined the need to ensure an inclusive and transparent negotiation process involving all Members, Participants and Observers and endorsed the Chair's proposal for working methods in this regard.

Use of the Revised “Zero Draft” of [Framework] Convention as the basis for the work of the Committee, as of the 4th Plenary meeting onwards

26. The Chair made a short presentation of the Revised “Zero Draft” [Framework] Convention, expressing his regret that it was not possible to disseminate it to the Committee well in advance of the 3rd Plenary meeting, as the drafting had only been finalised the previous week. He underlined that Delegations were not required to submit any comments on substance of the text at this stage, but were invited to consider whether the text, in particular its logic of order of the chapters of the draft, could be used as the basis for the work of the Committee starting from the 4th Plenary meeting onwards and if so in which order Delegations would like to examine its various chapters.
27. Having held an exchange of views, the Committee agreed with the Chair’s proposal to use the Revised “Zero Draft” to serve as the basis for the work of the Committee on the drafting of the [Framework] Convention as of the 4th Plenary meeting onwards without prejudice to their position on substance of the changes proposed in the revised “Zero Draft” as well as the provisions proposed in the initial “Zero Draft”.
28. The Committee also set out the order of, and the provisional schedule for, the examination of various chapters of the Revised “Zero Draft” [Framework] Convention deciding to dedicate the Drafting Group session of the 4th Plenary meeting to working on the Preamble and Chapter VII. The agreed sequence of the Chapters was also reflected in the Roadmap of the negotiations.
29. The Committee also requested the Secretariat to provide all working documents well in advance of future Plenary meetings.

Hybrid format of the meetings of the Drafting Group

30. In response to concerns raised by some Delegations regarding the need for all meetings of the Committee to be held in hybrid format, the Committee tasked the Secretariat to look into the possible options to ensure some form of remote participation for drafting sessions and report back to the Committee thereon.

Agenda item 6. Hearing of candidates for observer status with the CAI

31. The Committee took note of the presentations by the representatives for the European Consumer Organisation (BEUC), Digitale Gesellschaft Switzerland, Equinet and World

Federalist Movement / Institute of Global Policy in relation to their candidacies for observer status with the CAI.

32. The Committee decided to grant observer status with the CAI to all four organisations.

Agenda item 7. Presentation of the Draft Methodology for the Risk and Impact Assessment of AI Systems

33. The Committee heard the presentation of HUDERIA by Professor David LESLIE (Alan Turing Institute) and the Secretariat.

34. Professor David Leslie and the Secretariat explained that the development of the draft Methodology was part of the recommendations made by the CAHAI in the document on “Possible elements of legal framework on Artificial Intelligence, based on the Council of Europe’s standards on human rights, democracy and the rule of law”.

35. Professor Leslie and the Secretariat explained that HUDERIA is a methodology containing essential parameters of a risk and impact management process for AI systems from the point of view of human rights, democracy and the rule of law. As such, the methodology is based on the premise that proper understanding of risks to human rights, democracy and the rule of law regarding AI systems requires understanding and detailed knowledge of the practical and sociotechnical contexts of the design, development, and deployment of AI systems, in addition to proper consideration of various technical factors. The methodology is essentially addressed to States to facilitate their on-going efforts in this sphere.

36. Professor Leslie and the Secretariat expressed their view that the draft Methodology contains certain *sine qua non* elements objectively required to assess and manage human rights, democracy and the rule of law risks regarding AI systems; It could later be supplemented by an operationally feasible non-legally binding concrete model of risk and impact management of AI applications which Parties may decide voluntarily to use, as appropriate, as an example when building their own risk and impact assessment models.

37. The goals of the draft Methodology are (1) to provide an accessible set of AI governance mechanisms for facilitating compliance with a Council of Europe Convention on Artificial intelligence, Human Rights, Democracy and the Rule of Law; (2) to ensure that AI innovation projects are carried out with appropriate levels of public accountability, transparency, and democratic governance in accordance with the democratic priorities

and values of the Council of Europe; and (3) to establish a uniform approach specifying procedural mechanisms required to ensure: adequate and context-based risk identification, analysis, and mitigation; proportionate stakeholder involvement; and impact assessment and mitigation.

38. In addition, the draft Methodology should be future proof, i.e. as “algorithm neutral” and practice-based as possible; it should also integrate the idea of a margin of appreciation, which provides the necessary flexibility to domestic authorities which are better placed to make relevant policy and regulatory choices, taking into account their countries’ specific political, economic, social, cultural and technological contexts; and last but not least it should be compatible with the existing assessment, governance and compliance practices followed by the industry.
39. Professor David Leslie and the Secretariat further explained the key steps of the draft Methodology (context-based risk analysis, stakeholder engagement process, risk and impact assessment, impact mitigation plan and iterative requirements), underlining that it should be seen as a continuous process covering the entire lifecycle of such systems from their design and development to their decommissioning.
40. The Committee heard a presentation by Mr Sebastian Hallensleben (CEN-CENELEC JTC 21) concerning the existing and upcoming technical standards on AI systems and the need for interoperability and complementarity of the work of the relevant standardisation, standard-setting bodies, other intergovernmental organisations and the CAI.

Agenda item 8. Examination of the Draft Methodology for the Risk and Impact Assessment of AI Systems

41. The Chair invited the Committee to exchange their views regarding the methodology, having outlined possible ways to proceed in this connection. He underlined that:
- (a) given the complexity and importance of the issues contained in both instruments (the future [framework] Convention and the draft Methodology), their negotiation should be carried out in two separate tracks – one focussing on the [framework] Convention and the other on the draft Methodology. 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;

- (b) the methodology should be examined by the Committee as a stand-alone non-legally binding instrument, separate from (but supporting) the draft [Framework] Convention;
- (c) as regards the substance of the issues addressed in the draft Methodology, 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.

42. As regards the examination of the draft Methodology as a stand-alone instrument accompanying the draft Convention, the Chair proposed to the Committee two possibilities for how to proceed. The first option was 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, not 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 draft 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 Members of the Committee with a right to vote.

43. Having held an exchange of views on the draft Methodology and the aforesaid proposals by the Chair, the Committee decided to endorse the Chair’s proposal to examine the draft Methodology as a stand-alone non-legally binding instrument, separate from (but supporting) the [Framework] Convention, but without any prejudice to the negotiations of the relevant provisions on risk and impact assessment of AI systems. There was agreement that the precise status of the Methodology (i.e. recommendation, guideline, or other) should be decided by the Committee at a later stage.

44. The Committee also tasked the Secretariat to prepare a revised draft of the Methodology, taking into account comments made by Delegations orally or in writing with a view to presenting this draft to the Committee after the negotiations of the draft [Framework] Convention have been finalised. The Committee also welcomed that the Secretariat to this end intended to explore possible synergies with the work of other relevant international organisations in the area of risk and impact assessment of AI systems.

Agenda item 9. Examination of Chapter V of the “Zero Draft”: Final provisions of the Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law (Drafting Group)

45. The Committee decided to examine Chapter V of the “Zero Draft” (new Chapter VIII of the revised “Zero Draft”): Final provisions of the Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law within the Drafting Group, and instructed the Secretariat to distribute the Draft Chapter with explanatory remarks to the Plenary for examination at its next meeting.

Agenda item 10. Date and place of the next meeting

46. The Committee decided to hold the 4th Plenary meeting in Strasbourg on 1 - 3 February 2023.

Agenda item 11. Any other business

47. The Committee took note that there were no issues raised under item 11.

Agenda item 12. Adoption of the List of Items Discussed and Decisions Taken, and close of the meeting

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

End of the meeting