



Strasbourg, 11 December 2023

CAI(2023)30

COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAI)

8th Plenary Meeting

Strasbourg

5 - 8 December 2023

MEETING REPORT

Prepared by the Secretariat

I. Introduction

1. The Council of Europe's Committee on Artificial Intelligence (hereinafter referred to as "the CAI" or "the Committee") held its 8th Plenary meeting in Strasbourg, from 5 to 8 December 2023, in conformity with its terms of reference adopted by the Committee of Ministers.

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

Agenda item 1. Opening of the meeting

2. The Chair, Ambassador Thomas SCHNEIDER (Switzerland), opened the meeting and welcomed the Members, Participants and Observers.
3. The Chair mentioned that during the previous two days, the Drafting Group had re-examined Chapters I to VIII in light of the written comments and suggestions submitted by Members, Participants and Observers. The resulting updated text of the revised Chapters I to VIII was distributed to the Committee the day before the Plenary session. The Committee's task for the next two days would be to re-examine and discuss this text in order to finalise the second reading of the draft Framework Convention.
4. Ms Claudia LUCIANI, Director, Human Dignity, Equality and Governance, addressed her opening words to the Committee and mentioned that the negotiations in the CAI are the priority of the Council of Europe. She also underlined that the Committee needs to complete its negotiations of the draft Framework Convention at its 10th Plenary meeting (12-14 March 2024) for its subsequent adoption at a meeting of the Committee of Ministers devoted to the celebration of the 75th Anniversary of the Council of Europe in the first week of May 2024.
5. Ms Hanne JUNCHER, Director, Information Society and Action against Crime, thanked the many civil society and industry representatives who are contributing to the elaboration the Council of Europe's Framework Convention on Artificial Intelligence. She underlined that, in order to create best possible conditions for the voice of the Delegations which are not represented in the Drafting Group to be heard, at this Plenary meeting the Drafting Group Session preceded the Plenary Session itself so that the draft text prepared by the Drafting Group and subsequently sent to all Delegations could be discussed and negotiated during the 2-day Plenary meeting.

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

6. The Committee decided to adopt, without any modifications, the agenda and order of business.

Agenda item 3. Information by the Secretariat

7. The Secretariat provided information to the Committee regarding its activities since the 7th Plenary meeting, notably the organisation of the 7th AI Coordination Group meeting of the Secretariat on 20 November, and outlining the next steps in the negotiations. The aim of the current Plenary meeting was to have a draft of the Framework Convention prepared by the Committee, rather than by the Chair and Secretariat, to serve as the basis for the 3rd reading commencing in January and ending on 14 March 2024.
8. The Secretariat reminded the Committee that there would be two formal Plenary meetings in January and March 2024, respectively and a number of informal Drafting Group meetings in between the formal Plenary meetings.
9. The Secretariat also explained that it has received an application for observer status with the Committee from Australia, and that pending decision of the Committee of Ministers on the granting of said status, Australia is by decision of the Members of the Committee participating in the meeting, passively online.

Agenda item 4. Exchange of information

10. The Committee further took note of the information provided by the representatives of UNESCO (the United Nations Educational, Scientific and Cultural Organization), the OECD (the Organisation for Economic Co-operation and Development) and the FRA (the European Union Agency for Fundamental Rights) regarding their respective work on topics of relevance to the Committee.
11. Mr Prateek SIBAL of the UNESCO described their activities in the field of AI, noting in particular the on-going work on the recommendations regarding the use of AI in the judiciary. Ms Karine PERSET of the OECD presented the recently finalised updated definition of “an AI system” adopted by the OECD Council in early December 2023 as well as the explanatory report to accompany the updated definition to the Committee. Mr David REICHEL of the FRA took the floor and spoke about the continuing work of the Agency on the projects “Assessing High-Risk AI” and “Remote biometric identification for law enforcement purposes”, as well as providing information concerning the Agency’s further plans for 2024 and 2025.

12. The Chair warmly thanked the representatives of the aforesaid intergovernmental and supranational organisations for their presentations.

Agenda item 5. Examination of Chapters V to VIII of the Consolidated Working Draft (Drafting Group Session)

13. The Drafting Group re-examined Chapters I to VIII in the light of the proposals made by the Plenary, as well as written comments and suggestions submitted by Members, Participants and Observers. It instructed the Secretariat to distribute the revised Chapters I to VIII to the Committee for examination and discussion during the Plenary Session.

Agenda items 6 and 7. Re-examination of Chapters I to IV and examination of Chapters V to VIII of the Consolidated Working Draft (Plenary Session)

14. The Chair and the Secretariat presented the text of Chapters I to VIII of the Consolidated Working Draft to the Committee. In addition to the comments submitted in writing before the meeting, Delegations also expressed their respective positions regarding the provisions under the discussion. In particular, they posed questions and made proposals regarding the following issues:

- Whether it was appropriate to add a definition of the “lifecycle of AI” in the text of the draft Framework Convention or whether the term “activities within the lifecycle of AI systems” currently used throughout the text was sufficiently detailed and provided the necessary flexibility in the light of future technological developments and the on-going work of standard bodies aimed at codifying and describing this term;
- Possible improvements to the definition of “artificial intelligence systems” in Article 3, which could take into account the risk of diminished human agency and human control and the need not to make current formulation excessively anthropomorphic;
- Whether the explanation for the term “democratic institutions and processes” in Article 6 should mention specifically “the rule of law” and “the proper administration of justice” in addition to “the principle of separation of powers, respect for judicial independence, and access to justice”;
- Whether there was a need to introduce a possible “opt-out” provision as one of the options in Article 4 regarding the issue of scope (public/private);

- Whether the obligation “to adopt or maintain measures that seek to ensure” in Article 6 as well as some other provisions of the draft Framework Convention was sufficient for the purposes of this Framework Convention or whether there was a need to reformulate the relevant provisions as obligations of result rather than those of means;
- Whether the formulation “in a manner appropriate to its domestic legal system” in the Chapeau provision in Chapter III was not giving too much leeway to States regarding the choice of means of implementation of the draft Framework Convention and not to lead to fragmentation of legal protection between future Parties;
- Possible introduction of an additional provision setting up the legal obligation to terminate AI systems “if human control was no longer possible” as paragraph 2 in Article 6 and the related issue whether the current text of Article 15 paragraph 3 regarding ban and moratoria was sufficient to address the need to define “red lines” with respect to potentially unacceptable AI activities and practices;
- Whether there was a need to introduce the term “algorithmic transparency” in Article 7 and/or the relevant part of the Explanatory Report;
- Possible introduction of an additional provision in the text of the Framework Convention devoted to the protection of whistleblowers in relation to the activities within the lifecycle of AI, for example in the provision on transparency or in the Chapter on the implementation of the Convention;
- Whether there was a need to refer to “democracy and the rule of law” in Article 8 dealing with issues of accountability and responsibility for “violations of human rights”;
- Possible introduction of a specific reference to “the right to personal data protection” in paragraph 1 of Article 10;
- Whether it was necessary to add references to specific types of human rights, such as “women’s rights”, “workers’ rights”, “children’s rights” etc. in Chapter III or whether it was preferable to keep a general reference to “obligations to protect human rights, as enshrined in applicable international law, and its domestic law”, which would include both general and specific human rights protection regimes and

- explain the functioning of these regimes and their coverage in more detail in the Explanatory Report;
- Whether the current wording of Article 11, which includes a long list of technical terms describing various qualitative characteristics of AI systems, was sufficiently future proof and not too granular;
 - Whether Article 14 setting out obligations with respect to remedies and procedural safeguards should contain provisions giving a role to the national human rights institutions such as by giving them access to relevant information on the functioning of AI systems;
 - Proposal to refer to the UN's Sustainable Development Goals in the text of the draft Framework Convention, for instance in its Preamble;
 - Proposals to improve the wording of Article 19 by mentioning "emerging" questions which arise prior to the activities within the lifecycle of AI and by introducing a stronger obligation for the Parties to duly consider the outcomes of such public consultations in their relevant policy making activities;
 - Proposals to introduce an additional paragraph in Article 23 setting out specific rules regarding the composition of the Conference of the Parties;
 - Different suggestions and improvements to the formulation of the functions of the Conference of the Parties, including the mentioning of "specific recommendations" in paragraph 1 (c) and the need to link paragraph 1 (d) with the activities falling under the international cooperation in Article 24;
 - Different suggestions and improvements to the formulation of Article 24 regarding international cooperation by adding the references and encouragements to involve relevant stakeholders in such activities;
 - Proposals to introduce an additional paragraph in Article 25 which would oblige or encourage Parties to involve experts in the activities of the oversight mechanisms provided for in this provision.
15. The Committee heard a presentation by Director of Anti-discrimination Mr Jeroen SCHOKKENBROECK, who commented on Articles 9 (Equality and non-discrimination) and 17 (Non-discrimination) from the point of view of the international human rights law

and the Council of Europe's standard-setting in the area of equality and non-discrimination and assisted the Committee in negotiating these provisions.

16. The Committee decided to re-examine and discuss Chapters I to IV as revised by the Drafting Group, examine and discuss Chapters V to VIII as revised by the Drafting Group, and finalise the 2nd reading of the draft Framework Convention.
17. It further instructed the Secretariat to prepare a new draft of the Framework Convention on the basis of the negotiations during this meeting and submit it to all Delegations in view of the 3rd and final reading commencing in January 2024.

Agenda item 8. Date and place of the next meeting

18. The Committee decided to hold its next Plenary meeting in Strasbourg on 23 to 26 January 2024 with a revised calendar of future meetings to be distributed after the 8th Plenary meeting.

Agenda item 9. Any other business

19. No points were raised under this agenda item.

Agenda item 10. Adoption of the List of Decisions, and close of the meeting

20. The Committee decided to adopt the List of Decisions.

End of the meeting