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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON CDPC WORK

The case of automated driving

Thematic session on Artificial Intelligence and Criminal Law

28 November 2018

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1.

Artificial intelligence is a complex and contested term. Automated driving is one example of how artificial intelligence could both address and create risks of physical harm in the public sphere.

Automated driving is a diverse field, there is not just one single “technology.” Different levels of automation may raise different criminal liability issues.

2.

The employment of AI affects criminal justice systems in Council of Europe (CoE) member states and has an impact on CDPC fields of activity. In substantive criminal law, the question of allocating “guilt” arises for instance if during automated driving a lethal accident occurs; in criminal proceedings the involvement of AI requires new ways to establish facts relying on digital evidence; and mutual legal assistance faces new challenges if some countries embrace the use of robots and others do not while at the same time AI is not bound by territoriality, but by an IT infrastructure provided by private companies.

3.

a) Where the use of AI is allowed, e.g. if an automated driving system is legally engaged, a human user cannot be held criminally responsible for offences which arise solely out of the dynamic driving task in principle, e.g. dangerous driving, speeding and manslaughter.

b) Legal instruments to address AI impact on criminal law are in principle already available. It is important to understand how these instruments will apply as a descriptive matter and to consider how they should apply as a normative matter.

c) Criminal negligence implicates ambiguous concepts like conduct, reasonableness, and foreseeability. Artificial intelligence could change or complicate these concepts, especially when it attenuates the link between a machine and its human designers.

d) Legal tools other than criminal law—including tort, contract, insurance, and administrative law—are also important for facilitating and regulating automated driving. They must be considered in connection to criminal liability.

e) Existing liability models may be inadequate to address the future role of AI in criminal activities. This may undermine the certainty of the law. It may leave specific gaps given the nature of AI that is based on machine learning and gives space to a machine actor whose action we do not entirely understand.

e) New concepts may help to address possibly punishable conduct of producers, providers etc. Civil and criminal law should focus on the trustworthiness of the companies developing and deploying automated vehicles. Designing reasonably safe products is only one aspect of trustworthiness. Other aspects, including transparency and truthfulness, may be earlier and more effective indicators of safety.

f) *Can we accept certain risks without imposing criminal liabilities, if everyone wants the benefit of self-driving cars (as we do accept certain risks of human drivers today)?*

4.

The lack of a harmonised notion on AI and its impact on criminal law and the recourse to digital evidence will expand existing problems in criminal procedure and cause new in problems in MLA.

5.

The CoE is in a prime position to elaborate whether the use of AI can be addressed by existing tool or whether AI requires new rules of liability or novel subjects of liability who would be subject to sanctions if a fault occurs, or if existing rules suffice to address the new challenges of AI for criminal justice. The CoE is also the guardian of defense rights of individual prosecuted for alleged crimes and the standard-setter for MLA, including evidence needed to prove “cybercrime”.

As a first step, member States could consider the possibility of setting up a group of experts “mapping the ground”.