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Strasbourg, 27 March 2019

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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Working Group of Experts on Artificial Intelligence and Criminal Law

REPORT 1st meeting, Paris, 27 March 2019

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

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The 1st meeting of the working group of experts on artificial intelligence and criminal law was held in Paris on 27 March 2019. The list of participants and the agenda appear in Appendices I and II respectively. Its objective was to prepare a questionnaire that would map criminal law and criminal procedure in member States.

The meeting was opened by Mr Carlo Chiaromonte, Head of the Criminal law and Counter-terrorism Divisions. He gave some brief background information about the work of the Council of Europe and the reasons for setting up this working group. Mr Chiaromonte mentioned the work of the European Committee on Crime Problems (CDCP), in particular the thematic session on artificial intelligence that was held in Strasbourg on 28 November 2018 and which focused on the case of automated vehicles.

He stated that the questionnaire to be produced by this group will be sent to member States of the CoE and, based on the information received, a decision on future work (drafting of a legal instrument such as a convention) will be taken.

Following Mr Chiaromonte's introduction, there was a 'tour de table' which revealed a high-level of expertise in the room with experts coming from various backgrounds, ranging from academic to legal professionals.

The group then proceeded to elect Prof. Sabine Gless, general rapporteur, as the chairperson of the group.

Prof. Gless began by giving a well-received presentation on automated driving. This presentation gave an explanation of the Society of Automotive Engineers (SAE) automation levels which range from 1 (no automation) to 5 (full automation). The group would most likely be concentrating on levels 2-4, however certain delegations were of the opinion that level 5 should be covered as well, as the group should look to the future and take a pioneering approach.

Prof. Gless' presentation also provided 4 possible areas of interest: substantive criminal law looking at the question of responsibility and the possible responsibility gap; criminal procedure including machine evidence and defence rights; mutual legal assistance where information to be used as evidence could be found in several places including in cloud storage; and finally penitentiary law, policing, profiling / risk assessment, which are other areas that the group could potentially look at.

The work plan for the group was presented. This would entail further meetings to begin working on the international legal instrument. The possibility of holding an international conference in 2020 on common criminal law standards relating to harm caused by automated vehicles was evoked.

Mr Yannick Meneceur, Policy Adviser on digital transformation and artificial intelligence, CoE, informed the group of the work of the European Commission for the efficiency of justice (CEPEJ). Current work on AI includes the examination of the practice of predictive policing used to prevent the commission of criminal acts or prosecute them more effectively.

The group then proceeded to examine the draft questionnaire. The CoE Secretariat underlined that the questionnaire should be concise and precise, and favour 'closed' questions making the questionnaire easier for member States to respond to.

Certain delegations raised questions on the aim of the questionnaire and whether it should be limited to automated cars only.

Prof. Gless explained that one of the reasons for concentrating on automated driving is that current criminal law falls short in this respect.

Moreover it was mentioned that some States are wary about having a legal framework in areas where there have not as yet been any concrete cases. For automated driving there have already been cases where a criminal law response has been necessary.

The group decided to continue to concentrate on the example of automated driving and give an example of a specific case at the beginning of the questionnaire. This would help the member States in answering the questions. They should however also bear in mind the AI is developing rapidly and in the near future there will be other examples such as robotics in the health field. This is just a starting point and does not preclude the work on the topic stretching to other issues in the future.

It was also decided that each question should show a link to automated driving using examples for clarification and the title of the questionnaire would specify this link. Moreover the possibility of having case law in the field would be introduced to certain questions.

At the beginning of the questionnaire it was decided ask States not only about existing legislation, but also about planned legislation.

The group agreed that the questions relating to the cybercrime convention should be removed in order to avoid any overlapping in their work.

The group decided to add a new question to the questionnaire on the notion of strict liability and also to add the idea of causality when considering the question of negligence.

There was much debate on the idea of socially permissible risk and its links with criminal responsibility. It was decided to add an example of socially permissible risk such as the use of airbags to the question in order to clarify the question. Also the possibility of the manufacturer being liable to criminal responsibility would be evoked.

Ethical aspects of machine evidence were discussed including the possibility of a manufacturer refusing to share data. It was agreed that although the questions of ethics and transparency could be included in the final instrument it was currently too early to ask these questions.

The group agreed that the final questionnaire would also be addressed to Council of Europe observer countries.

The Secretariat also agreed to distribute the paper on the liability of legal persons that was prepared by Mr Zimin (Russian Federation) in 2014 in the framework of the PC-OC committee.

Prof. Gless agreed to update the questionnaire taking into account the day's discussions, to be sent out to the group in early April.

It was announced that the 2nd meeting of the group will take place in late September / early October in Paris.



Strasbourg, 27 March 2019

LP Final

EUROPEAN COMMITTEE ON CRIME PROBLEMS COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS (CDPC)

**1st meeting of the Working Group of Experts on
Artificial Intelligence and Criminal Law**

**1^e réunion du groupe de travail des experts sur
l'Intelligence Artificielle et le Droit Pénal**

27 March / 27 mars 2019

**Council of Europe / Conseil de l'Europe
55, avenue Kléber, 75016 Paris
Room 1 / Salle 1**

List of participants / liste des participants

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RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

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Mr Carlo CHIAROMONTE

Head of Criminal Law Division / **Secretary to the CDPC**
Chef de la Division du droit pénal / **Secrétaire du CDPC**

Mr Yannick MENECEUR

Policy Advisor on digital transformation and artificial intelligence /
Conseiller en politiques de transformation numérique et
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Ms Marjaliisa JÄÄSKELÄINEN

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Strasbourg, 5 February 2019

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Working Group of Experts on Artificial Intelligence and Criminal Law

DRAFT AGENDA

1st Meeting

Wednesday, 27 March 2019
55, Avenue Kléber, Room 1
Paris (France)

Opening at 9:30
Closing at 17:00

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27 March 2019	
9:30	Welcome and opening of the meeting by Mr Carlo Chiaromonte, Head of the Criminal Law and Counter-Terrorism Divisions – Council of Europe
10:00	<i>Tour de table</i> by the participants
10:15	Election of Chairperson
10:20	Introductory remarks/presentation by Prof Sabine Gless followed by discussion
11:00	Coffee break
11:15	General discussion on the main elements and contents of the subjects upon which the group should focus its work
12:15	Lunch
13:45	Preparation of a questionnaire to be sent to all member states – Part I
15:15	Coffee Break
15:30	Preparation of a questionnaire to be sent to all member states – Part II
17:00	Concluding remarks, further planning and close of the meeting