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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Working Group of Experts on Artificial Intelligence and Criminal Law

WORKING PAPER for the meeting of 27 March 2019

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A. Background

In the 21st century technology is rapidly evolving and in recent years has been noticeably driven by the use of Artificial Intelligence (hereafter AI). Long-term technological trends in this domain suggest that AI entities will become more and more involved in modern civilian life by operating and engaging in co-operation with humans. The increased presence of AI in everyday life and in various parts of the criminal justice system presents challenging questions to the Council of Europe as a pan-European organisation (see Council of Europe general activities on AI on <https://www.coe.int/en/web/artificial-intelligence/home>) and to all its member States. Domestic legislation has not always addressed the issue in a systematic way. However, more recently, some countries have adopted specific regulations and certain member States have made substantial progress in their national legislation on driving automation and some have even adopted statutes explicitly governing liability for correct use to the intended purpose.

The Council of Europe committee on criminal problems (CDPC) (<https://www.coe.int/en/web/cdpc/home>) organised a Thematic Session on AI and criminal law responsibility that focused on the importance of a meaningful approach in legal systems across Europe to deal with the challenging questions posed by the increased presence of artificial intelligence in civilian life. The one-day session took place on 28 November 2018 in Strasbourg. Its main objectives were to:

- i. Examine and ascertain the current existing scope and substance of relevant national criminal legislation and international law, using automated driving as an example for AI deployment, as well as determine where and how regulatory powers are established within the competent national public authorities.*
- ii. Determine where certain conduct has been or should be prohibited and criminalised in relation to the delegation, division or assignment of tasks, functions and behaviours to automated technologies, and the possible cross-border-relevance.*
- iii. Illustrate the findings under ii (see supra) using the case of automated driving: should new principles and norms of attribution and accountability for natural or legal persons be established to uphold Council of Europe Conventions' goals if automated driving (or other Artificial Intelligence deployment) operates across borders.*
- iv. Examine the scope and substance of an international legal instrument to provide common standards for the criminal law aspects of automated technologies, in particular automated vehicles.*

The CDPC welcomed the successful organisation of the Thematic Session on AI and criminal law, recognised the importance of this topic and decided to set up a restricted working group of maximum 15 representatives of member States supported by some scientific experts. This working group was tasked with: a) taking stock of existing regulations; b) identifying future

challenges related to the development of AI to be addressed in the criminal law field, with a particular focus on criminal liability and license conditions for the marketing and use of items equipped with AI; c) making proposals for possible action and standard setting activities in this field, taking into account the Concept Paper and summing up of the Thematic Session. In order to discuss how best to fulfill these tasks, the working group will hold its first meeting in Paris on 27 March 2019.

Working documents

- Draft agenda of the 1st meeting of the working group
- Concept paper on project “Artificial Intelligence and Criminal Law Responsibility in Council of Europe member states - The case of automated vehicles” of 16 Oct 2018, document [CDPC(2018)14] (the Concept Paper)
- Final remarks by Professor Sabine Gless, Special Rapporteur, after the Thematic Session on Artificial Intelligence and Criminal Law that took place on 28 November 2018 document [CDPC(2018) 22]
- Work plan of the working group

B. Plan

I. Overall Project Goal and Particular Steps

The Concept Paper foresees as the overall goal of this project the establishment of an international instrument addressing issues of criminal liability in context of using AI, and in particular automated vehicles. This instrument would be built upon the assessment of the existing international legal framework and national criminal laws of the CoE member States. The project is structured along four main outputs:

- 1. Research project on national criminal law and international legal framework applicable to automated vehicles (or other AI deployment)**
- 2. International Conference on common criminal law standards relating to harm caused by automated vehicles (or other AI deployment)**
- 3. Expert drafting group for an instrument establishing common criminal law standards relating to harm caused by automated vehicles (or other AI deployment)**
- 4. International Conference on the occasion of the adoption of the new international instrument on harm caused by automated vehicles (or other AI deployment).**

The meeting on 27 March 2019 shall prepare the first output as foreseen in the Concept Paper:

II. Research project on national criminal law and international legal framework applicable to automated vehicles (or other AI deployment)

Activity: A questionnaire followed by a compilation of responses and analysis.

Reasons: In order to survey the current regulatory framework for Artificial Intelligence, automated machines and in particular automated vehicles, key national-level information should be extracted from the member States.

Working methods: A comprehensive but concise questionnaire is to be developed and distributed to the relevant ministries (or other entities, as appropriate). The results of this questionnaire will be compiled and analysed by an expert or panel of experts.

Expected Output: The final document produced will provide an exhaustive census of relevant national and international legal approaches and instruments, in order to deliver a comprehensive analysis.