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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

DRAFTING COMMITTEE TO ELABORATE AN INSTRUMENT ON ARTIFICIAL INTELLIGENCE AND CRIMINAL LAW (CDPC-AICL)

Terms of Reference / Working methods

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

DRAFTING COMMITTEE TO ELABORATE AN INSTRUMENT ON ARTIFICIAL INTELLIGENCE AND CRIMINAL LAW

The European Committee on Crime Problems (CDPC),

Having regard to the Strategic Framework of the Council of Europe and notably the “Key strategic priorities of the Council of Europe over the next four years”, point 9: “Artificial intelligence (AI). AI and the broader impact of digital transformation and the use of new technologies on human rights, democracy and the rule of law shall be a focus of the activities of the Council of Europe.”

Having regard to its Terms of Reference, and in particular that the CDPC is instructed to: (i) “steer legal co-operation among the Council of Europe member States in order to assist them to develop modern penal policies. In particular, it shall develop common standards in the fields of criminal law, including both substantive and procedural aspects;” and (ii) “provide an intergovernmental setting for the negotiation and finalisation of draft legal instruments”;

Having regard to Resolution Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, in particular Article 14 thereof;

Having regard to the decision of the CDPC plenary at its 78th meeting to set up a Working Group to draft an instrument on Artificial Intelligence and Criminal Law, of which the form remains to be decided, and to suggest that the scope of the instrument should focus on vehicles and automated driving;

Decides as follows:

To set up a drafting committee consisting of experts appointed by the members of the CDPC tasked to draft an instrument on Artificial Intelligence and Criminal Law related to vehicles and automated driving.

MAIN TASKS

The drafting committee should as a matter of priority and after a preliminary discussion of the points mentioned below report back to the CDPC Plenary on the possible form of the instrument. On this basis the CDPC Plenary will take a decision on the form of the instrument and take steps to adjust the ToR of the drafting committee accordingly. The drafting committee should also take into account the developments made by the CAHAJ in drafting the Council of Europe Framework Convention.

The drafting committee shall ensure that the instrument deals, in particular, with the following issues:

- a) the Purpose and the scope of the instrument;
- b) the Definitions in the instrument;
- c) the Substantive criminal law: criminal liability of operators and providers of AI systems;
- d) the Procedural law and international co-operation;
- e) the Preventive measures;
- f) the Protective measures;
- g) the Monitoring mechanisms;

h) any other issue which it deems to be of consequence for AI and criminal law.

COMPOSITION

Members:

Governments of member States are invited to designate one or more representatives of the highest possible rank with recognised expertise in the field of regulations on driving automation that deal with the use of Artificial Intelligence for specified use, notably vehicles and automated driving, and that address the legal implications of the functioning of these AI and particularly the criminal liability matters relevant to the CDPC mandate.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the state whose representative has been elected Chair).

Each member of the Committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

Participants:

The drafting committee may have recourse to (a) consultant(s) within the limits of the budgetary appropriations for the CDPC.

The following bodies and committees of the Council of Europe are invited to appoint one representative each to participate in the work of the drafting committee at their own expense:

- The Parliamentary Assembly of the Council of Europe;
- The Ad Hoc Committee on Artificial Intelligence (CAHAI);
- The Cybercrime Convention Committee (T-CY);
- other committees or bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives without the right to vote and without defrayal of expenses:

- European Union;
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America.

Observers:

Any other relevant intergovernmental and Supranational Organisations and States may request the observer status to participate in the work of the drafting committee at their own expense as stated in the Resolution Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

WORKING METHODS

The drafting committee should complete its tasks within a maximum total of four meetings of two days each.

The drafting committee shall report on the progress of its work to the Bureau of the CDPC and to the CDPC itself and, as necessary, request and/or receive instructions from the Bureau and the CDPC concerning the fulfilment of its tasks as set out in this decision.

At the end of its work, the drafting committee shall submit a draft instrument to the CDPC for finalisation by that Steering Committee.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.