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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

2nd meeting of the Drafting Committee to elaborate an instrument on Artificial Intelligence and Criminal Law (CDPC-AICL)

1-2 June 2022

Council of Europe Office, Paris, Room 1

Meeting Report

Document prepared by the CDPC Secretariat
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1. Opening of the meeting

Mr Jesper Hjortenber (Denmark), Chair of CDPC-AICL, opened the meeting and extended a warm welcome to all participants. Together with Mr Carlo Chiaromonte, Secretary to the CDPC, they briefly presented the background to CDPC-AICL's work and reminded participants of the outcomes of its 1st meeting, which was held in November 2021.

Mr Kristian Bartholin, Head of the Digital Development Unit of the Council of Europe, introduced CDPC-AICL members to the ongoing working process at the level of the Committee on Artificial Intelligence (CAI), namely the elaboration of a transversal legal instrument to regulate the design, development and use of artificial intelligence systems (AI). He underlined the importance of producing clear and overarching definitions in this evolving field, to be potentially used in other Council of Europe instruments at a later stage. He also provided information on the working schedule of the CAI, which is expected to submit a draft instrument to the Committee of Ministers by the end of 2023.

2. Presentation of the framework document by Prof. Sabine Gless

Prof. Gless presented the framework document, which she drafted with the support of the Chair and the Secretariat following the decision taken by CDPC-AICL members during their 1st meeting. This document, which was prepared based on the work of the previous CDPC Working Group on AI and Criminal Law, original responses and recent updates provided by CDPC members to the 2019 Questionnaire on AI and Criminal Justice, the Feasibility Study as well as the outcomes of the 1st meeting, contains possible provisions to be included in a potential future instrument. Notably concerning substantive law, procedural law and international co-operation, aiming at encouraging states to establish or complement relevant legal frameworks at the national level.

3. Presentations by CDPC-AICL members

This meeting was also partially dedicated to presentations by CDPC-AICL members concerning evolutions of their relevant national legal framework, or on more general issues they have identified.

Ms Kirsi Miettinen (Finland) gave a presentation on “Developing transport automation – Some essential questions”. She highlighted the importance of embracing a human-centric approach to better understand evolving human roles and behaviour in the context of automated driving. She elaborated on issues related to transferring vehicle's dynamic control from the human to automated driving, and vice-versa. Finally, she underlined the increasing role of private companies in this sector, especially in terms of accountability.

Mr Jochen Goerdeler (Germany) gave a presentation on the “Implications of German Legislation on Automated and Autonomous Driving for Criminal and Regulatory Offences Law”. He mentioned that criminal offences of “negligent killing” and “negligent bodily harm” are most relevant when it comes to automated and autonomous driving. In terms of actors involved, he underlined the shift of responsibility between the vehicle driver and the vehicle holder when going from automated to autonomous driving. He also raised the importance of vehicles' data management and security, especially for provability and evidence-related issues.

Dr. Penney Lewis (United Kingdom) gave a presentation on “Automated Vehicles Report 2022: Criminal Law recommendations”, referring to the work done by the Law Commission of England and Wales and the Scottish Law Commission in this field. Such recommendations aim at promoting a “no-blame safety culture” through establishing immunity from dynamic offences for the “user in charge” when an automated driving assistance is running. She also mentioned the potential implication of

“malicious third parties”, which would require amending existing offences to account for automated vehicles, such as tampering or intentionally and wrongfully interfering with a vehicle.

Ms Işıl Selen Denemeç (Türkiye) gave a presentation featuring recommendations and comments on the framework document (referring, among others, to liability issues and potential links to the use of other “smart” devices). She recalled the need to maintain the original scope of CDPC-AICL on automated driving and mentioned the added value of possible additional elements on “AI Principles and Values” in the document to prevent risks of discrimination or misuse of personal data.

4. Discussion on the scope and content of the framework document

Following these presentations, participants discussed extensively on various aspects such as the responsibility of natural vs. legal persons and the potentially increased responsibility of vehicle manufacturers in the future. The importance of maintaining coherence with other instruments currently being prepared, notably by the EU and the CAI, while staying technology neutral, has been raised by several CDPC-AICL members. The international dimension was also mentioned, for instance when it comes to differences across national frameworks in terms of progress made in the field of AI and Criminal Law. Some participants expressed their interest in sharing more information and for being provided with further guidance in this domain. Finally, it was stated that it was important to keep track of technological evolutions and to anticipate new developments in AI and related Criminal Law aspects, to avoid producing an instrument which could rapidly become obsolete. In this regard, the proposal to make CDPC-AICL a permanent CDPC working group, tasked with monitoring evolutions in this domain, was agreed.

When discussing the content of the framework document, Chapter II (“Substantive Criminal Law”) was considered too broad by several members and would, therefore, need to better reflect the specific and restricted scope of CDPC-AICL. Participants also agreed that the inclusion of the future CAI general framework within the document should remain as a simple reference and should not in any case include its obligations. Moreover, they specifically discussed articles 14 to 19 (“Driving-related Offences”) in detail, while acknowledging the added value of the provisions concerned. When it comes to the nature of the potential future instrument and following the reluctance expressed by some states to opt for a Convention, at least as this stage, it was agreed to work towards the drafting of a Recommendation, which would be useful to provide guidance to states which have limited relevant frameworks and/or are not EU members.

5. Way forward and next meeting

Prior to the next meeting of CDPC-AICL, tentatively scheduled for **the end of Autumn 2022 in Paris**, in which experts with more technological background may be involved, it was decided to:

- review the framework document by softening its language and implementing it into a Recommendation format, before redistribution to CDPC-AICL members;
- distribute the compilation of updates to the 2019 Questionnaire;
- submit to the CDPC Plenary the proposition to make CDPC-AICL a permanent CDPC working group meeting on a regular basis (once or twice a year); and
- distribute all presentations used by experts during the meeting, as well as other documents mentioned by several participants (which will be soon available) to CDPC-AICL members.