

CDDH(2020)10REV
02/12/2020

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

The Council of Europe's work on Artificial Intelligence

Introduction

1. At the 1361st meeting of the Committee of Ministers (19-21 November 2019) the Deputies adopted the Terms of Reference of CDDH for 2020–2021¹, under which the CDDH is tasked:

“on the basis of developments in the member States, within the Council of Europe and in other fora, [to] prepare, if appropriate, a Handbook on Human Rights and Artificial Intelligence and contribute to possible standard-setting work which would be undertaken within the Organisation.”

2. In preparation of the 93rd meeting of the CDDH (14-16 December 2020) the purpose of this document is to provide an updated overview of the activities of the Council of Europe on artificial intelligence.

Ad hoc Committee on Artificial Intelligence (CAHAI)

3. At their 1353rd meeting (11 September 2019) the Deputies approved the following Terms of Reference for the Ad hoc Committee on Artificial Intelligence (CAHAI):

“complete the feasibility study and produce the potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law.”²

¹ See the Programme and Budget 2020-2021 – Terms of Reference of Intergovernmental Structures - Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168096a7de

² The CAHAI's Terms of Reference is available hereinafter in the Appendix

4. CAHAI held two meetings to date. At the first one (18-20 November 2019) it discussed different mappings that should be included in the feasibility study to identify applicable human rights legal frameworks. At the second one (6-8 July 2020) member States had an exchange of views on the content of the table of contents of the feasibility study.
5. In accordance with its mandate, CAHAI was invited to present a progress report to the Committee of Ministers by 31st May 2020. It finally presented it on 23rd September 2020, due to the COVID-19 pandemic³. The report included the work undertaken to date ; an overview of the discussions on the impact of the pandemic on the Committee's activities; reflections on working methods ; and reflections on the co-ordination with other relevant stakeholders in the field of artificial intelligence.
6. In terms of working methods, CAHAI agreed to create three working groups in charge of respectively (i) policy development ; (ii) legal frameworks ; (iii) consultations and outreach⁴.
7. The report includes a table of contents of the future feasibility study and a roadmap for the fulfilment of the mandate received.
8. The roadmap envisages the consideration, at the 3rd meeting of the CAHAI (15-17 December 2020) of a preliminary draft of the feasibility study including the main elements of a future legal framework. The work on this framework started in mid-November 2020 with a draft feasibility study elaborated within the CAHAI-PDG Working Group⁵. The draft feasibility study noted the following point:

“No international legal instrument specifically tailored to the challenges posed by AI exists, and that there are gaps in the current level of protection provided by existing international and national instruments.

The study has identified the principles, rights and obligations which could become the main elements of a future legal framework for the design, development and application of AI, based on Council of Europe standards, which the CAHAI has been entrusted to develop.

A robust legal framework will likely consist of a combination of binding and non-binding legal instruments, that complement each other. A binding instrument, a convention or framework convention, of horizontal character, could consolidate general common principles – contextualised to apply to the AI environment and using a risk-based approach – and include more granular provisions in line with the rights, principles and obligations identified in this feasibility study.

This instrument could be combined with additional binding or non-binding sectoral Council of Europe instruments to address challenges brought by AI systems in specific sectors.”

9. The CAHAI Working Group on Consultation and Outreach is working with CAHAI-PDG on the determination of the scope, the target groups and the modalities of the multi-stakeholder consultation which will take place in 2021 with a view to starting a reflection on the elements of a legal framework that would be the subject of a broad multi-stakeholder consultation.

³ See [CM\(2020\)90-final](#)

⁴ Terms of reference of the working groups are included in the Annex III of the progress report

⁵ CAHAI-PDG(2020)01rev2, 11 November 2020

Other Council of Europe work on artificial intelligence

10. The Council of Europe's activities on the subject matter have so far focused on developing studies, guidelines and recommendations aimed at assessing the possible impacts of artificial intelligence on human rights, democracy and the rule of law and identifying ways to ensure that artificial intelligence is developed and used in conformity with the standards of the Organisation.

11. At its 33rd meeting (December 2019), the European Commission for the Efficiency of Justice (CEPEJ) established a new Working Group on Cyber-justice and Artificial Intelligence⁶ (CEPEJ-GT-CYBERJUST) with the objective to analyse and develop on issues related to cyber-justice or artificial intelligence in judicial systems.

The Working Group is instructed to work in co-ordination with the work of other Council of Europe bodies, notably the European Committee on Legal Co-operation (CDCJ) and the CAHAI.

It held its first meeting on 27th April 2020 and a second on 24-25 September 2020.

12. On 8 April 2020, the Committee of Ministers adopted the Recommendation [CM/Rec\(2020\)1 of the Committee of Ministers](#) to member States on the human rights impacts of algorithmic systems, including guidelines to address these impacts.

13. In September 2020, the Parliamentary Assembly published a number of reports on artificial intelligence:

- [“Legal aspects of autonomous vehicles”](#) ;
- [“Need for democratic governance of artificial intelligence”](#). This text advocated for a legally binding instrument on artificial intelligence and included a draft recommendation inviting the Committee of Ministers to express support for such instrument.
- [“The Brain-computer Interface: new rights or new threats to fundamental freedoms?”](#)
- [“Prevention of discrimination caused by the use of artificial intelligence”](#).

14. On 1st October 2020, the Parliamentary Assembly published two reports:

- [“Role of artificial intelligence in policing and criminal justice systems”](#)
- [“Artificial intelligence in health care: medical, legal and ethical challenges ahead”](#).

15. Last, on 5 October 2020, the Parliamentary Assembly released a report on [“Artificial intelligence and labour markets: friend or foe ?”](#).

16. Furthermore, artificial intelligence is a cross-cutting theme in various fields of work of the Organisation such as:

- personal data protection
- judiciary
- criminal law

⁶ Terms of reference are available at: <https://rm.coe.int/terms-of-reference-2020-2021-cyberjust/16809995e4>

- bioethics
- elections
- anti-discrimination
- gender equality
- education
- youth
- children
- culture
- *Eurimages*.

17. More detailed information on the relevant activities is available on the website:
<https://www.coe.int/AI>.

Appendix

Ad hoc Committee on Artificial Intelligence (CAHAI) Terms of Reference

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Type of committee: Ad hoc Committee

Terms of reference valid from: **date of adoption until 31 December 2021**

PILLAR/PROGRAMME/SUB-PROGRAMME
<p>Pillar: Rule of Law Sector: Strengthening the Rule of Law Programme: Information society and internet governance</p>
MAIN TASKS
<p>Under the authority of the Committee of Ministers, the CAHAI is instructed to:</p> <ul style="list-style-type: none"> - examine the feasibility and potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law. <p>When fulfilling this task, the Ad hoc Committee shall:</p> <ul style="list-style-type: none"> - take into account the standards of the Council of Europe relevant to the design, development and application of digital technologies, in the fields of human rights, democracy and the rule of law, in particular on the basis of existing legal instruments; - take into account relevant existing universal and regional international legal instruments, work undertaken by other Council of Europe bodies as well as ongoing work in other international and regional organisations; - take due account of a gender perspective, building cohesive societies and promoting and protecting rights of persons with disabilities in the performance of its tasks.
SPECIFIC TASKS
<p>Complete the feasibility study and produce the potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law.</p> <p>A progress report including specific proposals for further action and if need be to its working methods should be presented by 31 May 2020.</p>

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 digital governance and the legal implications of the functioning of different forms of AI relevant to the Council of Europe 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). Member States may send other representatives without defrayal of expenses.

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 following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- Committees and other Council of Europe bodies engaged in related work as appropriate;
- Eurimages, European Audiovisual Observatory

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

- European Union (including, as appropriate, the Fundamental Rights Agency);
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- other international organisations including: Organisation for Security and Co-operation in Europe (OSCE), Organisation for Economic Co-operation and Development (OECD), World Health Organisation (WHO), United Nations Educational, Scientific and Cultural Organisation (UNESCO) and other UN agencies and international organisations

Observers:

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

- the European Network of National Human Rights Institutions;
- Council of Europe partner internet companies;
- civil society organisations, other private sector and academic actors, relevant to the work of the Ad hoc Committee, as appropriate and in accordance with paragraph 8 of Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

WORKING METHODS

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.

The Committee will appoint a Rapporteur on Gender Equality from amongst its members.

The Committee shall co-ordinate and consult with other intergovernmental committees working on the subject.

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

Plenary meetings

48 members, 1 meeting in 2019, 3 days

48 members, 2 meetings in 2020, 3 days

48 members, 2 meetings in 2021, 3 days

Bureau

7 members, 2 meetings in 2020, 2 days

7 members, 2 meetings in 2021, 2 days

BUDGETARY INFORMATION*

	Meetings per year	Number of days	Members	Plenary €	Bureau €	Subordinate structures / Working groups	Secretariat (A, B)
2019	1	3	48	40 000			1A; 0.5B
2020	2	3	48	80 000	19 000	14 600	1A; 0.5B
2021	2	3	48	80 000	19 000	14 600	1A; 0.5B

* The costs are indicative and take into consideration the per diem/ travel for staff and member States' representatives, interpretation, translation and document printing. Costs calculated on the basis of the per diem and recharged services costs at their 2019 level and will be adjusted for 2020-2021.