CAHAI 3rd Plenary Meeting[1]

15.12.2020, Day 1 notes

Openings

General info on the CAHAI provided by the president of the CAHAI

Secretary-General CoE: The impact of AI is very wide. The influence of AI is expanding. The Draft Feasibility Report ("DFR") of the CAHAI covers that influence very well in terms of the CoE standards called human rights, democracy and the rule of law. On the one side, Covid-19 tracking technologies help combat the disease, but on the other side, this sort of technologies could be used as an unprecedented surveillance tool on society. AI design, deployment and applications could create risks on democracy, rule of law and human rights.

DFR says further action is required because current regulations are not sufficient to address the AI systems-related risks. Interpretation and application of the current legislation pose difficulties concerning AI. Soft laws, such as ethical norms, are also important in that regard. However, they are not binding. This Plenary is crucial to decide the way forwards on AI in terms of a legal framework. We discuss scope, format, and shape of possible future regulation of AI. The CoE has a unique position in that regard with its member states and already established strong standards. When it comes to design, development and application of AI, there are several legal and ethical issues to think about. Technology and also AI change quickly. We have to keep pace with it.

Rik Daems (President of the Parliamentary Assembly):

He stated that we need a legal instrument on AI with binding and non-binding elements. The DFR pointed out that need clearly. Definition of AI is not easy. Big data and AI overlap. What would be the scope of the legal framework? What is the subject that we tackle? AI is part of our daily life and has a positive effect. From scratch, we have to think about human rights, democracy and rule of law regarding AI systems. They prepared seven reports with the same conclusion: We need a legal instrument with binding and non-binding elements. Last remark: "Moral hazards" is one of the important risks in terms of AI. That is a big concern we should have to think. The topic of moral hazards should be on board.

Christian Kastrop - German Presidency: Does AI need to be regulated in order to be safe in CoE's standards in the digital age? The CoE's standards are important to create a framework convention. Deep mind algorithm is used for Covid-19 and it has positive effects. But the same AI also poses risks. The Chinese Covid-19 tracking app is an example of mass surveillance. Move tracking, face recognition devices are a few examples of surveillance technologies. Invisible tracking, seamless tracking: Pokemon Go is a good example. It is more urgent than ever to decide whether we are happy to live in such mass surveillance circumstances or not. A few companies decide our democratic and electoral decisions. Proxy discrimination! Behind AI systems there are

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[1] When reading and evaluating that document, it should be kept in mind that the Draft Feasibility Report ("DFR") is *not a legal document* but simply a feasibility study.

decision-making systems. That is why we discuss the legal framework of AI. As to the DFR: Transparency is crucial! Training data is important[2]. Human supervision and oversight are also important. Remedies are also important. Banning of certain technologies would be another measure to consider. When doing this, we could not hamper the innovation. We must take a human-first approach to AI[3].

Casper Klynge - Microsoft: He highlighted three different points during his speech: Responsibility, multi-stakeholder approach, Covid-19 and AI: Societal changes, the ECHR and the Budapest Convention, collaboration with law enforcement agencies. AI systems are transforming our society and institutions. We must focus on the opportunities presented by AI. Health, transportation, education adds a lot to humanities. The CoE's standards are core elements for developing and deploying AI. There are also ethical rules. Microsoft develops responsible, trustworthy, ethical, and human rights-respecting AI. Microsoft supports the CAHAI's DFR and its approach with the CoE Standards-compatible AI.

After the opening speeches, the German Presidency[4] made a general presentation of the DFR on behalf of the Policy Development Group ("PDG"). Then, delegates shared their opinions on the DFR. The following remarks would be important to mention:

- Right to be informed on AI systems
- Social and economic rights are not mentioned in the draft. We must add and strongly highlight them.
- Liability of AI systems.
- Human oversight
- A horizontal legally binding instrument sounds good.
- Technically neutral AI! We must analyze what that means in terms of an AI regulation.
- The DFR does not reflect the current problems concerning AI and human at all. There is a need to add new human rights and mention the current problems.
- Legal Framework Group ("LFG") should elaborate binding and non-binding elements
- Certification: to determine common criteria, a single authority
- We have to consider democracy and the rule of law too! Green and red lines are important in order to concretize high-risk AI systems.
- Common principles transparency, explainability should be elaborated in order to protect human rights.
- Sector-specific analysis are also important deep dive on AI systems risks

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[2] To that extent we (IT Law Institute at Istanbul Bilgi University) would like to mention that in terms of learning models of algorithms, federated learning (or collaborative machine learning) is one of the important models to analyze in terms of preserving privacy.

[3] In support of Kastrop's opinion, please see: Paul Nemitz / Matthias Pfeffer, PRINZIP MENSCH Macht, Freiheit und Demokratie im Zeitalter der Künstlichen Intelligenz, July 2020, http://dietz-verlag.de/isbn/9783801205652/Prinzip-Mensch-Macht-Freiheit-und-Demokratie-im-Zeitalter-der-Kuenstlichen-Intelligenz-Paul-Nemitz-Matthias-Pfeffer.

[4] During the meeting, both speakers (Wolgang Teves/Christian Kastrop) have used the same connection. Therefore, on the screen both their names popped up throughout the meeting, in a manner not allowing us to identify which speaker made which statement, in the absence of the speakers' visual presentation. When the CAHAI publishes its abridged report or final report, we will clarify this point.

- What type of instrument would be preferred? Overlapping concerns of the participants on a binding or non-binding instrument.
- Legal gaps must be elaborated.
- Procedural aspects should be elaborated.
- The EU will prepare a binding legal instrument on AI in the first quarter of 2021.

Christian Kastrop/Wolfgang Teves:

Technologically neutral: We do not aim to regulate the technology itself. On the contrary, we aim to regulate its impacts on the CoE's standards!

Gap analysis: Transparency obligations, what kind of oversight mechanisms, what kind of redress mechanisms (Chapter 5) should we envisage?

Liability: The DFR concentrated on high-level principles of liability.

Sector-specific analysis: The DFR focused on the main, overarching, general issues. We could do a sectoral analysis and determine specific elements.

After general considerations of the participants, the CAHAI Chair, Mr. Gregor Strojin started to introduce the DFR's Chapters 1-3 which are General Introduction, Scope of a CoE legal framework on AI and Opportunities and risks arising from the design, development and application of AI on CoE standards.

1st Day Afternoon Session:

Different delegates and participants took the floor in order to share their opinions & comments on the relevant chapters of the DFR. Following remarks would be important to mention:

- One participant talked about the definition of AI, referring to the OECD's ongoing work on that
- Canada recommended that the new legal instrument should be based on a very detailed analysis of legal gaps found in the existing instruments
- Dual-use of AI systems
- AI governance: Risk-based approach: We need to identify the risks, in specific sectors and specific risks. Self-regulation and co-governance would be another option in responding to the risks. For certain AI applications, we could think to regulate them. We must avoid excessive regulations. We must take "Human centricity" into account
- There is consensus on having more harmonized principles
- Youth participation in AI applications
- Cybercrime (Budapest) Convention is fully applicable to AI applications

Then, the **Venice Commission** delivered a speech on their work titled EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) PRINCIPLES FOR A FUNDAMENTAL RIGHTS-COMPLIANT USE OF DIGITAL TECHNOLOGIES IN ELECTORAL PROCESSES, Approved by the Council of Democratic Elections at its 70th online meeting (10 December 2020) and adopted by the Venice Commission

at its 125th online Plenary Session (11-12 December 2020)[5]. The Commission developed seven principles in that regard.

One speaker from **the European Committee on Democracy and Governance (CDDG)** mentioned that the CDDG's study focuses on democracy and good governance. It will be made public shortly[6].

Concerning Chapter 5 of the DFR, titled "Mapping of legal instruments applicable to AI", the participants discussed binding and non-binding instruments, soft laws (ethical guidelines) and self-regulation. Some argued that mandatory governance would be preferable! Some others said that soft laws are not very effective.

Then, on behalf of the **European Union Agency for Fundamental Rights (FRA)** one participant summarized the FRA's latest Report called "Getting the future right – Artificial intelligence and fundamental rights- Artificial intelligence and Big data, Data protection, privacy and new technologies"[7]. The FRA report highlights the importance of:

- ✓ Effective impact assessment
- ✓ Accountability regime
- ✓ Human rights oversight by public institutions

One delegate offered to add the term "responsibility" into the document alongside the term "accountability".

The last topic of the first day was discussions around Chapter 6 of the DFR. The participants talked about the key findings of the multi-stakeholder consultations.

CAHAI 3rd Plenary Meeting[8]

16.12.2020, Day 2 notes

The second day started with objections and comments concerning Chapters 3.5-10 of the DFR. The Secretariat explained the flow of the work they did on the feasibility study, as well as how they combined and merged each different comment into the study based on the first day discussions.

We talked about the **CoE 108 Guidelines on Children's Data Protection in Education Setting**[9] and Chapter 6 on multi-stakeholder consultations, and Chapter 7, which is the most substantive section of the report: Main elements of a legal framework. The CAHAI adopted a risk-based approach! They prepared that section based on expert studies. We could formulate key principles, key rights and obligations that should be incorporated into a legal instrument.

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[5] *default.aspx (coe.int)
[6] https://www.coe.int/en/web/good-governance/cddg.
[7] Published 14 December, 2020: https://fra.europa.eu/en/publication/2020/artificial-intelligence-and-fundamental-rights.
[8] When reading and evaluating that document, it should be kept in mind that the Draft Feasibility Report ("DFR") is *not a legal document* but simply a feasibility study.
[9] Published 20 November, 2020: https://rm.coe.int/t-pd-2019-6bisrev5-eng-guidelines-education-setting-plenary-clean-2790/1680a07f2b.

At the afternoon session of the Plenary Meeting, the Chair mentioned the Committee of Ministers' instructions to the CAHAI focusing on the legal framework.

Regarding the Chapter 9, Wolfgang Teves acknowledged the following bullet points: the role of compliance mechanisms and types of the mechanisms which would be helpful for oversight, ex-ante and continuous assessment for the life cycle of AI applications, the role of the actors: independent actors to provide oversight bodies with intervening powers, certifications, establishing public registries for AI applications like in the Netherlands, Audits, Automatic monitoring. To that extent, out-of-court online dispute resolution mechanisms concerning AI systems would be preferable.

As to Chapter 10 of the report: There are a lot of non-binding instruments around to be taken into consideration. CAHAI combined all binding and non-binding instruments very successfully.

Afterwards, four international organizations present in the meeting as candidates for observer status applied to contribute to the CAHAI's work: International Chamber of Commerce, UNESCO's International Research Center on AI, ALLAI and Together Against Cybercrime International - againstcybercrime.org.

3rd Day

CAHAI 3rd Plenary Meeting[10]

17.12.2020, Day 3 notes

The third day started with the proposed amendments to Chapters 7-9. To that extent, it would be useful to mention the following insertions to the DFR:

- The risk of confusion
- E-Public procurement
- Non-personal data
- The use of AI

Afterwards, there were information points covering the following themes:

1. On behalf of the **UNESCO,** one representative explained their work on AI. The UNESCO updated their work on AI. They are about to finalize their Ethics Recommendations on AI. The draft is available on the UNESCO's webpage[11]. AI, education and human rights are also in their loop. They train judicial operators on AI-related predictive justices, human rights, etc.
2. **The EU Commission**'s representative explained the Commission's work on AI, particularly the White Paper on AI. The Commission is about to publish a legislative

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[10]When reading and evaluating that document, it should be kept in mind that the Draft Feasibility Report ("DFR") is *not a legal document* but simply a feasibility study.
[11] https://unesdoc.unesco.org/ark:/48223/pf0000373434.

proposal and aims to publish it in the first quarter of 2021. Risk-based and also high & low-risk approach, ethical and trustworthy AI are a few prominent characters of the Paper.

3. **FRA** joined the session and explained the report they published. FRA's opinions are in line with the CoE's standards. The Report contains opinions on the definition of AI, automated decision making and its impact on society and human rights, the full scope of human rights such as data protection, non-discrimination and access to justice (right to complain, and other legal remedies), good administration principle, mandatory impact assessment, oversight bodies etc.

4. **OECD** explained "OECD Principles on AI". In June 2019, the G20 adopted human-centred AI Principles that draw from the OECD AI Principles for G20 countries. OECD Principles on AI identifies five complementary values-based principles for the responsible stewardship of trustworthy AI:

✓ AI should benefit people and the planet by driving inclusive growth, sustainable development, and well-being.

✓ AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards – for example, enabling human intervention where necessary – to ensure a fair and just society.

✓ There should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.

✓ AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.

✓ Organizations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.

Afterwards, the discussion continued with the amendments to the DFR Chapter 10. After the discussions, the DFR of CAHAI and the abridged report were adopted.

We had information points. Wolfgang Teves from the German Presidency declared that they organize a Conference on "Europe as an international standard setter for the regulation of AI: https://www.coe.int/en/web/presidency/german-events".

We heard Co-chair of Consultation and Outreach Group (CoG) presentation, and I suggested that aiandinclusion.org and networkofcenters would be a good one-stop shop consultation point with the academia as a stakeholder.

We were informed about the next steps and the dates of meetings and publication dates of the abridged report and final report. Then we had information about the CAHAI Bureau, CAHAI working groups, working methods, tasks and vision.

The election of the chair and vice-chair of the CAHAI for 2021 term: Gregor Strojin (Chair) and Peggy Walcke (Vice-Chair) were re-elected for the CAHAI Bureau.