

Translating human rights, democracy and rule of law to the digital age

Council of Europe's work on artificial intelligence and relevant instruments



Prof. Dr. Peggy Valcke (KU Leuven - Vice-Chair CAHAI)
SOLAIR conference 2020, Prague

Many screenshots contain links to the webpage or document concerned – click to learn more!

Common challenges



HUMAN RIGHTS

Profiling

Manipulation

Breach of privacy

Discriminations



DEMOCRACY

**Governance by
algorithms**

**Loss of autonomy
of decision**



RULE OF LAW

**Weakening the
primacy of law**

and many more...

Council of Europe twofold approach towards AI

Existing Council of Europe's bodies and sectors

Vertical and specialised approach

E.g. Justice, Health, Autonomous vehicles, Democracy, Freedom of expression, etc.

All types of legal instruments (conventions, declarations, recommendations...)

CAHAI

Horizontal and transversal approach

Definitions and core principles (based on / feeding sectoral instruments)

Type of legal instrument to be defined

What is CAHAI?

- ▶ Intergovernmental Committee setup in Sept. 2019
- ▶ Mandate delivered by the Committee of Ministers until 31.12.2021
- ▶ Plenary meetings: 1 in 2019, 2 in 2020 and 2 in 2021



COUNCIL OF EUROPE

Artificial Intelligence

Home What's AI CAHAI Committee Work in progress National initiatives Useful resources

You are here: Artificial Intelligence



Ad Hoc Committee on Artificial Intelligence – CAHAI

On 11 September 2019, the Committee of Ministers of the Council of Europe set up an Ad Hoc Committee on Artificial Intelligence – CAHAI.



www.coe.int/ai

Towards an application of AI based on human rights, the rule of law and democracy

www.coe.int/cahai

Ad hoc Committee on AI - CAHAI

#CoE4AI #CAHAI



<https://www.coe.int/en/web/artificial-intelligence/cahai>

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CENTRE FOR IT & IP LAW

- Representatives 47 member States
- Representatives observer States (CAN, Holy See, ISR, JPN, MEX, USA)
- Other bodies CoE
- Other regional and international organisations (EU, OECD, UN, etc.)
- Private sector
- Civil society and academia

1353rd meeting, 11 September 2019

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

PILLAR/PROGRAMME/SUB-PROGRAMME

Pillar: Rule of Law

Sector: Strengthening the Rule of Law

Programme: Information society and internet

MAIN TASKS

Under the authority of the Committee of Ministers, the CAHAI is instructed to:

- 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.

When fulfilling this task, the Ad hoc Committee shall:

- 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

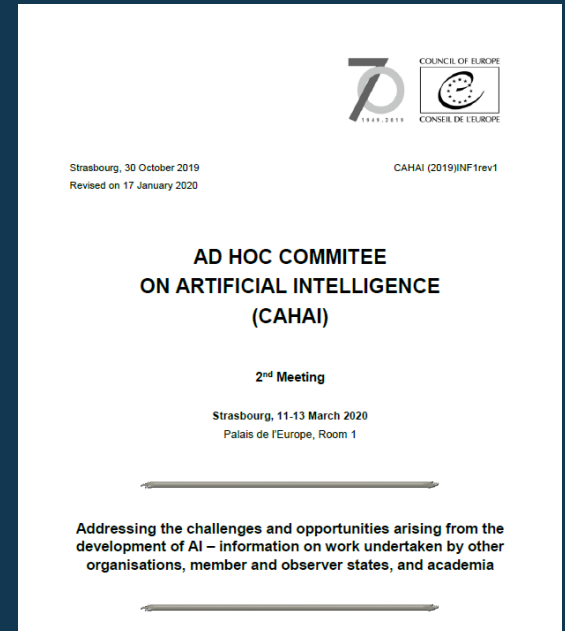
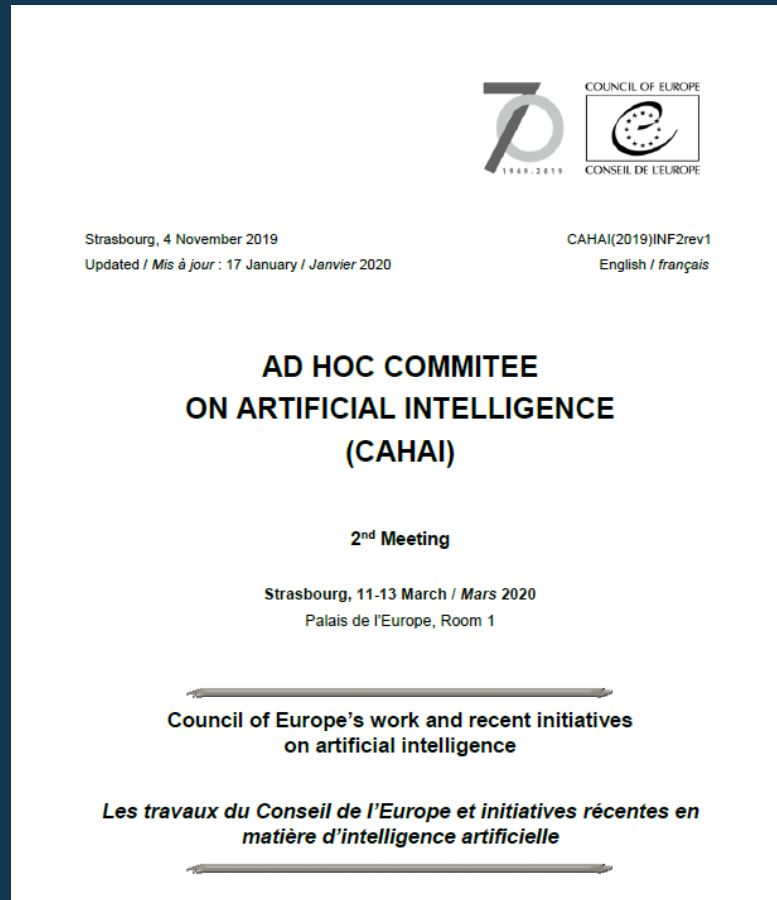
Complete the feasibility study and produce the potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law.

A progress report including specific proposals for further action and if need be its working methods should be presented by 31 May 2020.

What will CAHAI do?

Document CAHAI(2019)INF2

42 documents and initiatives listed



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Updated regularly - check website of CAHAI; meeting agenda

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Examples of existing AI instruments produced by the Council of Europe

COUNCIL OF EUROPE Artificial Intelligence

Home What's AI CAHAI Committee Work in progress National Initiatives Useful resources

You are here: Artificial Intelligence

Council of Europe and Artificial Intelligence

Council of Europe strengthens cooperation with internet sector

STRASBOURG, 1/06/2020

Five new companies and business associations today joined the Council of Europe Partnership with...

[View all news](#)

CAHAI COMMITTEE

Interview with Gregor Strojín, P...

Gregor Strojín, *President of the CAHAI*, on the first meeting of the Committee

Peggy Valcke, Vice-President of the CAHAI, on the work and aims of the Bureau

COUNCIL OF EUROPE AND AI

Artificial intelligence and human rights

Artificial Intelligence raises important and urgent issues. AI is already with us – changing the information that we receive, the choices that we make, and the ways in which our societies function. In the coming years AI will play an even greater role in the way that governments and public institutions operate, and the way in which citizens interact and participate in the democratic process.

It is clear that AI presents both benefits and risks. We need to ensure that AI promotes and protects our standards, I

How to regulate the development of artificial intelligence?

Artificial intelligence (AI) will have an impact on our societies that we hardly imagine. Algorithms are already said to be able to identify the best candidates for a job, assist doctors to establish medical diagnoses or help lawyers before the courts. All this is not entirely new, since already in the 1980s, expert systems assisted humans with a high level of expertise. What is new today is that computers are increasingly able to perform extremely complex tasks independently, but their designers sometimes no longer

www.coe.int/ai

Towards an application of AI based on human rights, the rule of law and democracy

www.coe.int/cahai

Ad hoc Committee on AI - CAHAI

Recommendation of the PACE – 2102(2017)



1. The convergence between nanotechnology, biotechnology, information technology and cognitive sciences and the speed at which the applications of new technologies are put on the market have consequences not only for human rights and the way they can be exercised, but also for the fundamental concept of what characterises a human being.

2. The pervasiveness of new technologies and their applications is blurring the boundaries between human and machine, between online and offline activities, between the physical and the virtual world, between the natural and the artificial, and between reality and virtuality. Humankind is increasing its abilities by boosting them with the help of machines, robots and software. Today it is possible to create functional brain-computer interfaces. A shift has been made from the “treated” human being to the “repaired” human being, and what is now looming on the horizon is the “augmented” human being.

3. The Parliamentary Assembly notes with concern that it is increasingly difficult for lawmakers to adapt to the speed at which science and technologies evolve and to draw up the required regulations and standards; it strongly believes that safeguarding human dignity in the 21st century implies developing new forms of governance, new forms of open, informed and adversarial public debate, new legislative mechanisms and above all the establishment of international co-operation making it possible to address these new challenges most effectively.

4. The Assembly recalls the principle enshrined in Article 2 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, “Oviedo Convention”) which affirms the primacy of the human being by stating that “[t]he interests and welfare of the human being shall prevail over the sole interest of society or science”.

Click [here](#) to learn more about the Oviedo Convention

New human rights?

1. Respect for human rights is essential to an ethical digital society.
- First of all, we must update existing rights and freedoms. After all, what does the right to ownership mean in the 21st century? Does it mean that your home can't simply be designated as a Pokémon gym without your say? And what does the right to privacy mean when you and your devices are constantly being tracked?
- Second, we must think hard about 'new' rights and freedoms. The Rathenau Instituut has proposed introducing the 'right to meaningful contact' and the 'right not to be manipulated, coached or tracked'.

By Melanie Peters, Director of the Rathenau Instituut

Rathenau Instituut

Human rights in the robot age

Challenges arising from the use of robotics, artificial intelligence, and virtual and augmented reality



Parliamentary Assembly
Assemblée parlementaire

<http://assembly.coe.int>

Recommendation 2102 (2017)¹

Technological convergence, artificial intelligence and human rights

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

<https://www.rathenau.nl/en/digitale-samenleving/human-rights-robot-age>
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23726&lang=en>

Report



9.1.5. the design and use of persuasion software and of information and communication technology (ICT) or artificial intelligence algorithms, that must fully respect the dignity and human rights of all users, especially the most vulnerable, such as elderly people and people with disabilities;

9.4. the recognition of new rights in terms of respect for private and family life, the ability to refuse to be subjected to profiling, to have one's location tracked, to be manipulated or influenced by a "coach" and the right to have the opportunity, in the context of care and assistance provided to elderly people and people with disabilities, to choose to have contact with a human being rather than a robot.

Declaration of the Committee of Ministers Decl(13/02/2019)1 on the manipulative capabilities of algorithmic processes

Algorithmic processes risk being used to manipulate social and political behaviours

STRASBOURG | 13/02/2019



The Council of Europe has called on its 47 member states to tackle the risk that individuals may not be able to form their opinions and take decisions independently of automated systems, and that they may even be subjected to manipulation due to the use of advanced digital technologies, in particular micro-targeting techniques.

Machine learning tools have the growing capacity not only to predict sometimes subliminally. In a Declaration adopted today, the Committee of Ministers - warns about the risks for democratic societies resulting from the use of algorithmic processes, which can control not only economic choices, but also social and political behaviours.

> [Read full Press release - Council of Europe warns about the risk of manipulation due to the use of advanced digital technologies, in particular micro-targeting techniques](#)

Declaration of the Committee of Ministers Decl(13/02/2019)1

The Council of Europe has called on its 47 member states to **tackle the risk that individuals may not be able to form their opinions and take decisions independently of automated systems**, and that they may even be **subjected to manipulation** due to the use of advanced digital technologies, in particular micro-targeting techniques.

Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (13.02.2019)

8. Contemporary machine learning tools have the growing capacity not only to predict choices but also to influence emotions and thoughts and alter an anticipated course of action, sometimes subliminally. The dangers for democratic societies that emanate from the possibility to employ such capacity to manipulate and control not only economic choices but also social and political behaviours, have only recently become apparent. In this context, particular attention should be paid to the significant power that technological advancement confers to those – be they public entities or private actors – who may use such algorithmic tools without adequate democratic oversight or control.

9. Fine grained, sub-conscious and personalised levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions. These effects remain underexplored but cannot be underestimated. Not only may they weaken the exercise and enjoyment of individual human rights, but they may lead to the corrosion of the very foundation of the Council of Europe. Its central pillars of human rights, democracy and the rule of law are grounded on the fundamental belief in the equality and dignity of all humans as independent moral agents.

*“encourages member States to assume their responsibility to address this threat by [...] initiating, within appropriate institutional frameworks, open-ended, informed and inclusive public debates with a view to providing guidance on **where to draw the line between forms of permissible persuasion and unacceptable manipulation.** The latter may take the form of influence that is subliminal, exploits existing vulnerabilities or cognitive biases, and/or encroaches on the independence and authenticity of individual decision-making;...”*

Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems (prepared by MSI-AUT)

MINISTERS' DEPUTIES Recommendations CM/Rec(2020)1 8 April 2020

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems

(Adopted by the Committee of Ministers on 8 April 2020 at the 1373rd meeting of the Ministers' Deputies)

Recommends that the governments of member States:

- 1. review their legislative frameworks and policies as well as their own practices with respect to the procurement, design, development and ongoing deployment of algorithmic systems to ensure that they are in line with the guidelines set out in the appendix to this recommendation; promote their implementation in all relevant areas and evaluate the effectiveness of the measures taken at regular intervals, with the participation of all relevant stakeholders;*

MINISTERS' DEPUTIES Recommendations CM/Rec(2020)1 8 April 2020

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

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Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems

(Adopted by the Committee of Ministers on 8 April 2020 at the 1373rd meeting of the Ministers' Deputies)

Recommendation from the **Commissioner for Human Rights** Unboxing AI: 10 steps to protect human rights

May 2019

Unboxing Artificial Intelligence:
10 steps to protect Human Rights



Recommendation

- ▶ **Human rights impact assessment**
- ▶ **Public consultations**
- ▶ **Obligations of member States to facilitate implementation of human rights standards in the private sector**
- ▶ **Information and transparency**
- ▶ **Independent oversight**
- ▶ **Non-discrimination and equality**
- ▶ **Data protection and privacy**
- ▶ **Freedom of expression, freedom of assembly and association, and the right to work**
- ▶ **Remedies**
- ▶ **Promotion of "AI Literacy"**

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Guidelines and report **Convention 108+**



Strasbourg, 25 January 2019:

- Guidelines [T-PD\(2019\)01](#)
- Report [T-PD\(2018\)09Rev](#)

Guidelines and report **Convention 108+** on artificial intelligence and data protection

The guidelines aim to assist policy makers, artificial intelligence (AI) developers, manufacturers and service providers in ensuring that AI applications do not undermine the right to data protection.

The **report** mentioned that “Personal data have increasingly become both the source and the target of AI applications”. Furthermore, the latter are “largely unregulated and often not grounded on fundamental rights”. The adoption of a legal framework by the Council of Europe aims thus “to favour the development of technology grounded on these rights” and which are “not merely driven by market forces or high-tech companies”.

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Ethical charter **CEPEJ**

Council of Europe adopts first European Ethical Charter on the use of artificial intelligence in judicial systems

STRASSBOURG | 04/12/2018



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment



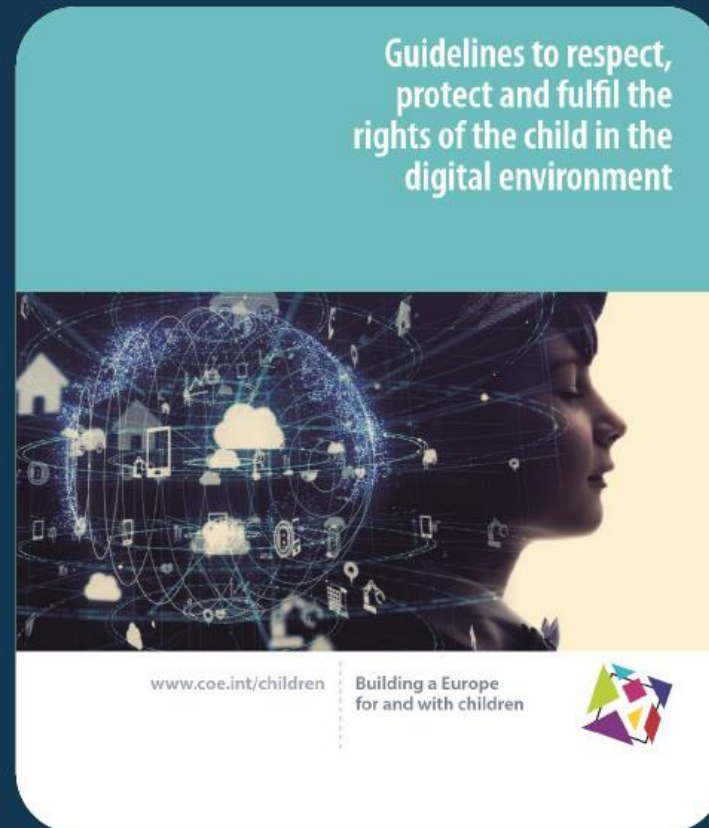
Adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018)

5 principles

- ▶ Principle of respect of fundamental rights
- ▶ Principle of non-discrimination
- ▶ Principle of quality and security
- ▶ Principle of transparency, impartiality and fairness
- ▶ Principle "under user control"

Recommendation

of the Committee of Ministers on Guidelines to respect, protect and fulfil the rights of the child in the digital environment CM/Rec(2018)7



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Studies, reports and conclusions of key events

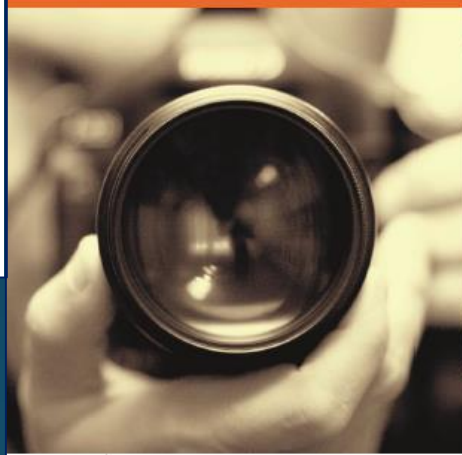
ALGORITHMS AND HUMAN RIGHTS

Study on the human rights dimensions of automated data processing techniques and possible regulatory implications

In the terms of reference for the Steering Committee on Media and Information Society (CDMSI) for the biennium 2016 – 2017, the Committee of Ministers asked the CDMSI to “undertake work to study the human rights dimensions of automated data processing techniques (in particular algorithms) and their possible regulatory implications” and approved the committee of experts on internet intermediaries (MSI-NET) as a subordinate structure to facilitate the work of the CDMSI. In its first meeting on 17-18 March 2016, the expert committee decided to appoint Benjamin Wagner as rapporteur for the study, while other members of the MSI-NET expressed the wish to support the rapporteur in a small working group.

COMPOSITION OF THE MSI-NET

Wolfgang SCHULZ – Professor, Faculty of Law, University of Hamburg / Hans-Bredow-Institut (Chair)
Karmen TURK – Partner at Trinity Tallinn – Estonia (Vice-Chair)



Council of Europe study
DGI(2017)12

Prepared by the committee of experts
on internet intermediaries (MSI-NET)

9. The Council of Europe as the continent’s leading human rights organisation is the appropriate venue to further explore the impacts on the effective exercise of human rights of the increasing use of automated data processing and decision-making systems (in particular algorithms) in public and private spheres. It should continue its endeavours in this regard with a view to developing appropriate standards-setting instruments for guidance to member states.



Instruments of MSI-AUT

MSI-AUT Committee of experts on Human Rights
Dimensions of automated data processing and different
forms of artificial intelligence



Under the supervision of the CDMSI, drawing upon the existing Council of Europe standards and the relevant jurisprudence of the European Court of Human Rights, the MSI-AUT will prepare follow up with a view to the preparation of a possible standard setting instrument on the basis of the study on the human rights dimensions of automated data processing techniques (in particular algorithms and possible regulatory implications).

MSI-AUT will also study the development and use of new digital technologies and services, including different forms of artificial intelligence, as they may impact peoples' enjoyment of fundamental rights and freedoms in the digital age – with a view to give guidance for future standard-setting in this field. Furthermore, MSI-AUT will study the impact of civil and administrative defamation laws and their relation to the criminal provisions on defamation, as well as jurisdictional challenges in the application of those laws in the international digital environment.



Responsibility
and AI



Council of Europe study
DGI(2019)05
Rapporteur: Karen Yeung

Prepared by the Expert Committee on
human rights dimensions of automated
data processing and different forms of
artificial intelligence (MSI-AUT)

Study of ECRI

Discrimination, Artificial Intelligence and Algorithmic Decision-Making

STRASBOURG | 07/02/2019



This study, entitled “Discrimination, Artificial Intelligence and Algorithmic Decision-Making” which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence.



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Artificial intelligence (AI) has a huge impact on our personal lives and also on our democratic society as a whole. While AI offers vast opportunities for the benefit of people, its potential to embed and perpetuate bias and discrimination remains one of the most pressing challenges deriving from its increasing use. This [new study](#), entitled “Discrimination, Artificial Intelligence and Algorithmic Decision-Making”, which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence (AI).

Next steps?



Key findings for feasibility study

Discussed at CAHAI
2nd plenary meeting
(6-8 July 2020,
videoconference)



CAHAI(2020)06-fin

AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)

The Impact of Artificial Intelligence on Human Rights, Democracy and the Rule of Law

Report by Catelijne Muller, LL.M.

The Impact of Artificial Intelligence on
Human Rights, Democracy and the Rule of Law

AD HOC COMMITTEE
ON ARTIFICIAL INTELLIGENCE
(CAHAI)



CAHAI(2020)07-fin

AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)

AI Ethics Guidelines: European and Global Perspectives

Provisional report by Marcello Ienca* and Effy Vayena*

*Chair of Bioethics, Health Ethics and Policy Lab, Department of Health Sciences and Technology, ETH Zurich.

AI Ethics Guidelines: European and Global Perspectives

AD HOC COMMITTEE
ON ARTIFICIAL INTELLIGENCE
(CAHAI)



CAHAI(2020)08-fin

AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)

Elaboration of the feasibility study

Analysis of the international legally binding instruments
Final report

Paper prepared by Alessandro Mantelero*

Working Groups set up by the CAHAI

▶ The Policy Development Group (CAHAI- PDG)

Mandated to: prepare the CAHAI feasibility study, in particular options in terms of regulatory instruments

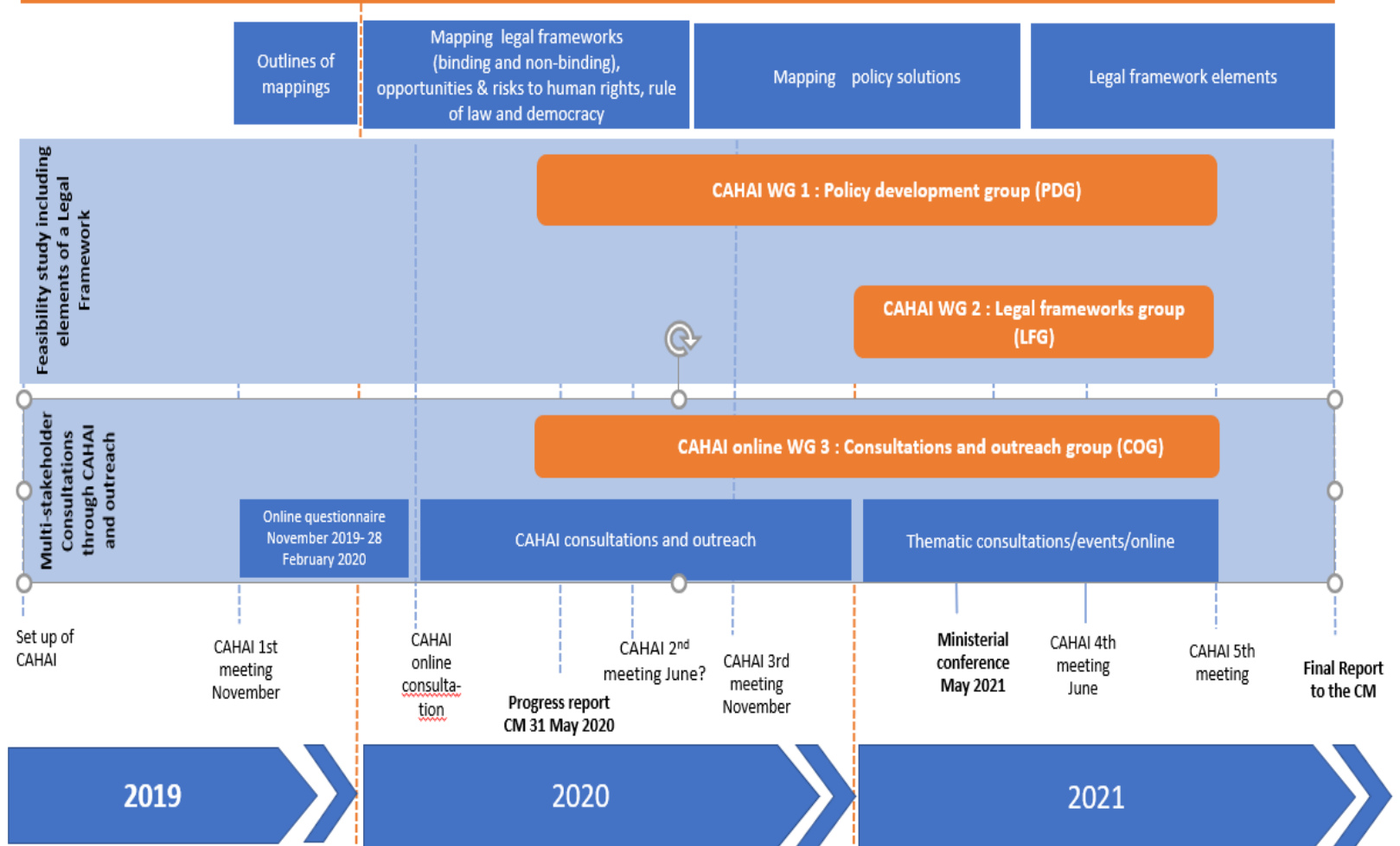
▶ The Consultations and Outreach Group (CAHAI-COG)

Mandated to: consult and reach out to civil society, the private sector and academia on the feasibility study and the main elements of a legal framework

▶ Legal Frameworks Group (CAHAI- LFG) (as of Jan. 2021)

Mandated to: draw up the main elements of a future legal framework on AI

Key deliverables and proposed roadmap of CAHAI (2019 –2021)



- ▶ **CDCJ:** Draft guidelines for online dispute resolution (“ODR”) mechanisms, including possible AI applications in such systems
- ▶ **CDPC:** Artificial intelligence and criminal law responsibility in Council of Europe member states – the case of automated vehicles
- ▶ **CEPEJ:** Project for the certification of AI products
- ▶ **Democratic governance department:** Possible influence of AI on the electoral cycles
- ▶ **Education:** Digital citizenship education project
- ▶ **Eurimages:** Impact of predictive technologies and AI on audiovisual sector
- ▶ ...

New committee will explore the impacts of digital technologies and AI on freedom of expression

STRASBOURG | 30 JANUARY 2020



"Everyone has the right to freedom of expression"

Art. 10 European Convention on Human Rights

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The Council of Europe is pleased to announce the full composition of its new [Expert Committee on Freedom of Expression and Digital Technologies \(MSI-DIG\)](#). This inter-disciplinary group of leading specialists will explore the impacts of digital technologies and AI on freedom of expression. Over the next two years, they will prepare guidance for member States on how best to harness opportunities and address challenges that are vital to our democracies.

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Thank you for your attention

**Follow the latest
developments**

 **<http://www.coe.int/ai>**

 **<http://www.coe.int/cahai>**

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 **[www.fb.com/coe4ai](https://www.facebook.com/coe4ai)**