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DRAFT REPORT

on artificial intelligence: questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses and of state authority outside the scope of criminal justice
(2020/2013(INI))

Committee on Legal Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on artificial intelligence: questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses and of state authority outside the scope of criminal justice
(2020/2013(INI))**

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 114 TFEU,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to Council Regulation (EU) 2018/1488 of 28 September 2018 establishing the European High Performance Computing Joint Undertaking¹,
- having regard to the proposal for a regulation of the European Parliament and of the Council of 6 June 2018 establishing the Digital Europe programme for the period 2021-2027 (COM(2018)0434),
- having regard to the Commission White Paper of 19 February 2020 on Artificial Intelligence – A European approach to excellence and trust (COM(2020)0065),
- having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 February 2020 on a European Strategy for data (COM(2020)0066),
- having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 February 2020 on Shaping Europe’s digital future (COM(2020)0067),
- having regard to its resolution of 16 February 2017 setting out recommendations to the Commission on civil law rules on robotics²,
- having regard to its resolution of 1 June 2017 on digitising European industry³,
- having regard to its resolution of 12 September 2018 on autonomous weapon systems⁴,
- having regard to its resolution of 11 September 2018 on language equality in the digital

¹ OJ L 252, 8.10.2018, p. 1.

² OJ C 252, 18.7.2018, p. 239.

³ OJ C 307, 30.8.2018, p. 163.

⁴ OJ C 433, 23.12.2019, p. 86.

age⁵,

- having regard to its resolution of 12 February 2019 on a comprehensive European industrial policy on artificial intelligence and robotics⁶,
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the report of 8 April 2019 of the High-Level Expert Group on Artificial Intelligence set up by the Commission in June 2018, entitled ‘Ethics Guidelines for Trustworthy AI’,
- having regard to the report of the Committee on Legal Affairs (A9-0000/2020),

Introduction

- A. whereas AI, robotics and related technologies are liable to have a direct impact on all aspects of people's lives in society;
- B. whereas the Union and its Member States have a particular responsibility to make sure that these technologies contribute to the well-being and general interest of their citizens;
- C. whereas this particular responsibility implies a need to examine questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses of such technologies and questions of state authority vis-à-vis such technologies outside the scope of criminal justice;
- D. whereas the purpose of such an examination is to determine to what extent the rules of international public and private law are geared to dealing with these technologies, and to highlight the challenges which the latter pose for state authority;
- E. whereas a harmonised approach to these problems calls for a common definition of AI and for steps to ensure that the principles of the Charter of Fundamental Rights of the European Union are upheld;

Definition of artificial intelligence

- 1. Considers that artificial intelligence can be defined as a set of methods and procedures that enable technical systems to perceive their environment, deal with what is perceived and solve problems independently, take decisions, act and learn from the consequences of such decisions and actions;

International public law and military uses of artificial intelligence

- 2. Considers that all military uses of AI must be subject to human control, so that, in particular, a human has the opportunity to correct or halt them at any time, and to disable them in the event of unforeseen behaviour;
- 3. Considers that their decision-making process must be traceable, so that the human

⁵ Texts adopted, P8_TA(2018)0332.

⁶ Texts adopted, P8_TA(2019)0081.

decision-maker can be identified and held responsible where necessary;

4. Reiterates that they must always be consistent with international humanitarian law, in particular the Geneva Conventions of 12 August 1949, notably as regards the protection of injured, sick and shipwrecked persons, the treatment of prisoners of war and the protection of civilians;
5. Reiterates that they must always be consistent with the principles referred to in the Rome Convention of 17 July 1998 regarding the prohibition of crimes of genocide, crimes against humanity and war crimes;
6. Insists that they must always be consistent with the principle of proportionality, which makes the legality of a military action conditional on a balance between the objective pursued and the means used, and that the assessment of proportionality must be made, or expressly approved, by a human being;
7. Stresses that the previous paragraphs concern all military uses of AI, whatever they may be, including those involving the processing of information for military purposes, military logistics, ‘collaborative combat’ and real-time support for decision-making, as well as defensive systems and all weapons that use AI, including lethal autonomous weapon systems (LAWS);
8. Recalls that LAWS are weapons capable of identifying a target and deciding to attack it without human intervention, and that the level of threat they pose requires that their use be subject to specific prohibitions and legal safeguards;
9. Considers that LAWS are lawful only if subject to control sufficiently strict to enable a human to take over command at any time, and that systems without any human control (‘human out of the loop’) must be banned;
10. Stresses that LAWS should be used only in clearly defined cases and in accordance with authorisation procedures laid down in detail in advance in documents to which the State concerned — whether or not it forms part of the North Atlantic Treaty Organisation — guarantees access for the public, or at least for its national parliament;
11. Considers that LAWS must comply with the provisions of the Convention of 10 October 1980 on Certain Conventional Weapons, including the prohibition of weapons deemed ‘excessively injurious’;
12. Suggests, in order to prevent their uncontrolled spread, that LAWS be included in the list of weapons subject to the provisions of the Arms Trade Treaty of 2 April 2013, listed under Article 2 of said Treaty;
13. Calls for the anthropomorphisation of LAWS to be prohibited in order to rule out any possibility of confusion between humans and robots;
14. Recalls that the purpose of the European Defence Fund (EDF) is to finance military research projects conducive to innovation, especially those implementing AI, even when they concern LAWS;

15. Suggests that the EDF remind the companies whose projects it finances and the States concerned that its funding does not absolve them of the responsibility to pay scrupulous attention to ensuring that any future military uses of the AI involved in these projects comply with the principles set out in paragraphs 2 to 13 of this report;

State authority: examples from the areas of health and justice

16. Stresses that Member States must ensure that the possession of highly sophisticated AI technologies by powerful private groups does result in the authority of the state being challenged, let alone usurped, by a private authority;
17. Considers it essential, where an AI system is used to interact with people in public services, especially in the fields of justice and health care, that users are informed that they may ask to deal with a professional and that the request will be granted without delay;
18. Takes the view that persons who have been the subject of a decision taken by a public authority based solely or largely on the output from an AI system should be informed thereof and should receive the information referred to in the preceding paragraph without delay;
19. Notes that artificial intelligence is playing an increasingly fundamental role in public health care, in particular through algorithms to assist diagnosis, robot-assisted surgery, smart prostheses, personalised treatments based on the three-dimensional modelling of an individual patient's body, social robots to help elderly people, digital therapies designed to improve the independence of some mentally ill people, predictive medicine and epidemic response software;
20. Insists, nevertheless, that all uses of AI in the area of public health must guarantee the protection of patients' personal data and prevent the uncontrolled dissemination of those data;
21. Urges that all uses of AI in the area of public health uphold the principle of the equal treatment of patients as regards the accessibility of and access to treatment, preserve the patient-doctor relationship and be consistent with the Hippocratic Oath at all times;
22. Notes that AI is increasingly being used in the field of justice, to enable judges to take decisions which are more rational and more in keeping with the law in force and to do so more quickly;
23. Calls, therefore, for the public to be informed of all such uses of AI in the field of justice and for those uses not to lead to discrimination resulting from programming and to uphold the right of every individual to have access to a judge, as well as the right of every judge to depart from the solution suggested by AI where he or she considers it necessary in light of the particulars of a case;

International private law

24. Notes that, given that an increasing number of disputes under international private law are arising from the internationalisation of human activities, be it on-line or in the real world, AI can help the parties and judges to resolve them by creating models to identify the competent jurisdiction and applicable law for each case, and also to identify the most sensitive conflicts of laws and propose ways of resolving them;
25. Considers, however, that the public must be properly informed about the uses of AI in international private law and that these uses must not lead to discrimination through programming, which would result in one nation's laws being systematically favoured over another's;
26. Stresses that the circulation of autonomous vehicles in the European area, which is liable to give rise to a particularly high number of disputes under international private law, must be the subject of specific European rules stipulating the legal regime applicable in the event of transboundary damage;

Guiding principle

27. Recalls that AI is a scientific advance which must not undermine the law, but must on the contrary always be governed by it — in the European Union by the law emanating from its institutions and its Member States — and that under no circumstances must the power of algorithms lead to democracy and the rule of law being flouted, a principle which has guided the drafting of this report;
28. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The impressive advances in artificial intelligence (AI) pose a challenge for international law, both public and private, and more broadly for the authority of states. As the framing of legal provisions to govern AI has become one of the EU's priorities, the European Parliament cannot ignore this issue. This report seeks to address the main aspects concerned.

International public law: military uses of AI

In keeping with the working document of 29 April 2020, a significant portion of the report is devoted to the military uses of AI, the development of which for their armed forces is regarded as a priority by all the main global powers. The values on which the EU is founded justify its desire to address the need to establish a legal framework, with due regard for the powers of the Member States and the United Nations.

The report approaches the issue from three different angles. First of all, it reiterates the principles which should govern all military uses of AI, whatever form they may take: processing of information for military purposes, military logistics, 'collaborative combat' and real-time support for decision-making, defensive systems, all weapons using AI including lethal autonomous weapons systems (LAWS).

Secondly, specific principles are set out for LAWS, given the threat level they pose as highlighted by the European Parliament in its resolution of 12 September 2018.

Finally, the report addresses the role of the European Defence Fund, which already finances military research projects implementing AI, evidence that the EU is already directly involved in the military use of AI.

State authority

AI also has implications for the authority of states in non-military matters. Following the debate in the JURI Committee on 16 June 2020, during which a number of members considered that they should also be discussed, it was decided to address these implications in two particularly sensitive areas — health and justice.

International private law

During that same debate, some members also called for the impact of the use of AI on international private law to be considered. It is in response to this that the final part of the report seeks to address this issue, albeit briefly in the light of Parliament's constraints regarding the length of this type of report.

Guiding principle

Beyond the diversity of the issues it deals with, what shapes the report is the realisation that AI can pose a threat to democratic principles and the rule of law, and a clear-sighted approach must be taken to addressing this threat. For as Martin Heidegger warned when speaking of technology, 'we are delivered over to it in the worst possible way when we regard it as something neutral'.