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Item 17 of the agenda: Any other business

(b) Proposal submitted by the Czech Republic on artificial intelligence

(prepared by the Secretariat)

<i>Summary</i>	<i>Proposal submitted by the Czech Republic to consider future work on artificial intelligence</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the proposal</i>
<i>Related documents</i>	/

1. In December 2017, the Czech Republic sent to the UNIDROIT Secretariat a proposal in relation to Artificial Intelligence prepared by the Ministry of Industry and Trade, Department of European and international law, asking that it be submitted among the Member States for consideration by the General Assembly in view of introducing it in the future UNIDROIT Work Programme.

2. Even though the formal discussion on the Work Programme for the triennium period 2020-2022 will take place in 2019, the Secretariat agreed to submit the document to the Governing Council for consideration at its 97th session.

3. *The Governing Council is invited to take note of the proposal.*

ANNEX**Proposal submitted by the Czech Republic on Artificial Intelligence**

The Czech Republic would like to bring to the attention of the member States of the International Institute for the Unification of Private Law (UNIDROIT) the possibility to consider studying the field of Artificial Intelligence with the aim of possible introduction of international legal framework that would benefit further development in this field. We consider UNIDROIT to be the right place to start the discussion as any intended work would include broad range of issues, especially liability issues, where the international solution would be the most suitable and appropriate for the industry. There is a proven track of excellence within UNIDROIT in providing international solutions in a variety of fields and in this respect we would like to invite you to consider future UNIDROIT's engagement in this sector.

Artificial Intelligence

The phenomenon of artificial intelligence (AI) has been discussed in law and legal science already since 1960s. Since 2010 the interest of lawyers in AI has increased rapidly. The most probable reason for this shift lies not only in growing use of AI in everyday life but especially in specific legal challenges posed by the technology.

There is a number of definitions of an AI. None of them, however, has been universally accepted. Generally speaking, AI is a science of developing systems capable of solving problems and performing tasks by means of simulating intellectual processes. AI can be taught to solve a problem but it can also study the problem and learn how to solve it by itself without human intervention. Different systems can reach different levels of autonomy and can act independently. Moreover, their functioning and its outcomes are unpredictable as those systems act as "black boxes".

Nowadays, AI plays an important role in the current trend of automation, in the EU called Industry 4.0. AI is presumed to change economic functioning of companies and have a huge impact on the society. Recent public debates have especially focused on the necessity to regulate the very field of AI and to set boundaries in order to prevent development of so called artificial general intelligence, i.e. an intelligent system comparable to or even exceeding human intellectual capacity. Moreover, the debates point out a necessity to teach AI systems ethics and incorporate in them values that are recognized in the society.

These debates are justified and should be reflected. However, they are a part of a bigger problem which is an insufficiently complex approach to artificial intelligence by the society. This includes non-uniform understanding of what AI is and how it should be used for our benefit. Moreover, current laws have not yet recognized the specificities of AI that, in fact, significantly influence dynamics of legal relationships, such as business contracts, liability disputes and investments.

Proposed field of work

In the area of private law, there are several problems, all of which become even more complicated when related to different jurisdictions. The first and obvious problem relates to contracts based on which services or systems with AI are provided. Contracting parties for instance need to deal with uncertainty about the scale of due diligence with regard to designing algorithms or possible liability for malfunction of the system while being unable to predict future behavior and having no control over its future use and data input that might importantly affect the AI system. From a technical point of view, it is impossible to justify a cause for a particular decision of AI. Therefore, in case of damages, parties are in an evidentiary vacuum and might be unable to determine liability.

Stipulating strict liability combined with insurance seem like the most suitable tools for this problem. However, different jurisdictions may have different rules regarding contractual stipulation of liability. Moreover, insurance would usually not be applicable in cases when a party claims that damages were caused intentionally. Again, the evidentiary vacuum problem arises. The law needs to set up clear rules and balance obligations in order to protect both parties to a contract as well as third parties who, when suffered damages, cannot prove whether they are accusing the right party.

Given the fact that AI technology and services based on it are often provided from different states, parties need to be provided with efficient means for protecting their interests. Without international approach, some countries might intentionally avoid adopting specific rules in order for companies to use their unfit laws for escaping liability. Given the capabilities of AI systems for instance in data analysis as well as widespread use of adhesion contracts, this might negatively impact interests of various stakeholders.

Apart from predictive analytics, trend analysis, data mining, or automation, AI is used also for assistance in everyday tasks and can arrange various transactions for its users. Legal acts of AI systems are also questionable. A current consensus is that AI systems are considered as electronic means by which parties enter into legal transactions and are bound by them. However, some companies may try to test the legal system by creating AI applications that act on their own behalf and have own goals and purposes while the originating company conceals authorship. Even more complicated situation arises when some AI gets created by another AI system and interacts with people. So far, there is no satisfactory legal solution.

The same is true for harmful acts. As mentioned above, determining liability is extremely hard due to the lack of evidence as well as due to involvement of a number of persons whose joint liability is hard to assess. Moreover, insurance cannot solve all the situations in which damage occurs.

According to recent research the business community is concerned about future legal developments in this field. Lack of rules and guidelines prevents companies from designing AI systems that would be accepted and trusted by the society and their business partners. Therefore, companies are reluctant to invest in their development. Solutions on the international level are the only means how to guarantee safe and responsible development of AI while safeguarding both interests of the humanity as well as individual companies.

The international community should focus on all the mentioned issues as soon as possible before the problems related to artificial intelligence and its application domains including robotics become to produce partial and non-systematic solutions on national levels. Such partial solutions would prevent collaboration among companies or international provision of services due to increased demands on compliance with various legal standards, increased rate of trade disputes, as well as increased uncertainty about return on investments. Therefore, especially liability issues, due diligence, contracts on AI systems as well as status of AI and its legal acts should be analyzed and addressed. Without systematic and international solutions, the society would get divided by different approaches to the global problem as well as prevented from seizing the global opportunity provided by the AI. Traditional methods of regulation are not fully applicable, therefore, new approach should be found by the whole international community. Consequently, we are of the opinion that UNIDROIT should deliberate introducing the topic of artificial intelligence into its considerations and eventually its working program.

International conference on artificial intelligence and law

The Institute of State and Law of the Czech Academy of Sciences started intensive public discussion of artificial intelligence, autonomous systems as well as self-driving cars in 2017. They intend to deepen societal understanding of these topics by organizing an international conference on artificial intelligence and law in 2018 in Prague. The Czech Republic considers this as a convenient opportunity for elaboration on the subject and possible involvement of the UNIDROIT. Therefore we would like to invite the member states of UNIDROIT and their experts in this field as well as other persons interested in this subject to participate in the conference. Should it be of the interest to UNIDROIT we invite you to consider its endorsement at an appropriate time for the future work.