Abstract

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How to govern uncertainties?

The French statesman Emile Girardin (1802-1881) declared in the 19th Century : «to govern means to predict». An increasing numbers of States as well as private companies use machine Learning algorithms to make predictions and take decisions.

However, these predictions are not based on logic but on probabilities. Therefore, they are sometimes very uncertains and can result in wrong outcomes. Therefore, the question must be asked of how to govern or manage uncertainties in an algorithmic society?

Digital economy has increased the need for a trusted ecosystem, including reinforced regulations and additional constraints for all actors dealing with artificial intelligence. As a result, public actors have initiated a process in the EU and in the Council of Europe, to promote a balanced approach beneficial for all innovation, society and individuals. They aim at building a new legally binding AI Governance framework. They consider that this framework will contribute to manage the risks related of this ecosystem more effectively than soft law mechanisms only.

Within the framework of their sovereignty of positive responsibility and protection, States are responsible for the implementation of these non-binding principles or guidelines on Artificial Intelligence at a national level. However, soft law guidelines and principles depend of the good will of the States to be implemented and on effective peer review mechanisms.

The disruptive nature of artificial intelligence requires a cohesive and sustainable AI governance framework, to manage both the opportunities and the risks derived from AI technology, in a proportionate manner.

We propose a legal framework with a distinction between the governance of AI and the governance via AI.

The governance of AI mitigate the risks resulting from AI negative externalities (data misuse, lack of safety, biais, unethical behaviors...). In this paper, we present a pilot framework to audit AI systems, products and services.

The governance via AI considers on the contrary, that AI is part of the solution. For exemple, AI can monitor in real time the rate of spread of a disease at global level. AI can also contribute to augment Human intelligence in providing an in-depth analysis of several scenarios quicker than any human mind. This ability can be decisie in effectively assisting decisions-makers in complex negotiations. It can therefore facilitate peace-keeping at global scale. However, for both kinds of governance, ex-ante and ex-post requirements are unavoidable to entrust both AI-systems and institutions.

We believe that a meaningful AI Governance framework must take into account long term interests of future generations and promote an effective human-centred AI governance. Our paper proposes a sustainable and balanced legal framework based on data free flow and accountability. Enforcement will be made via an agile and cooperative network of

independant regulatory authorities (like already planed in the Convention 108+ of the Council of Europe) at global scale, based on a legally binding framework, inspired by the GDPR. Public and Private Enforcement mechanisms are foreseen to conciliate the interests of all stakeholders.