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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Artificial intelligence (AI) offers great opportunities, but certain applications and uses may also cause harm and risks to individuals' fundamental rights and other public interests.

With Regulation (EU) 2024/[....] of the European Parliament and the Council laying down harmonised rules on artificial intelligence ('AI Act'), the Union has adopted the first comprehensive regulation on AI, setting a standard globally. The AI Act was adopted on 12 June 2024 ⁽¹⁾ and will enter into force within 20 days from its publication in the Official Journal. The AI Act fully harmonises the rules for the placing on the market, the putting into service and the use of AI systems in the Member States ⁽²⁾, with the objective to promote innovation and uptake of trustworthy AI, while protecting health, safety and fundamental rights, including democracy, rule of law and the environment.

Various international organisations, including the Council of Europe, have also stepped up their efforts in regulating AI, recognising the cross-border nature of AI and the need for international cooperation to address common challenges posed by these technologies.

Since June 2022, the Council of Europe's Committee on Artificial Intelligence (CAI) ⁽³⁾ has elaborated a legally binding Framework Convention (hereinafter 'the Convention') to address the potential risks that AI poses to human rights, democracy and the rule of law. The Union negotiated the Convention based on Article 216(1) fourth alternative TFEU, according to which the Union may negotiate⁴ and conclude an international agreement, where that '[...] is likely to affect common rules or alter their scope'. The European Commission represented the Union in the negotiations of the Convention, in accordance with Article 218(3) of the Treaty on the Functioning of the European Union ('TFEU') and based on a Council decision authorising the opening of the negotiations on behalf of the European Union ⁽⁵⁾.

The Union has participated actively in the negotiations and pursued the goal of ensuring compatibility of the Convention with Union law, consistency with the AI Act, as well as quality and added value of the Convention as the first international treaty on AI. In that context, the international reach of the Convention has also been an objective of the Union.

After multiple negotiations rounds, the CAI approved the text of the Convention at its 10th Plenary session, which took place from 11 to 14 March 2024. On 17 May 2024, the Council of Europe Committee of Ministers adopted the Convention, agreed to open it for signature in Vilnius (Lithuania) on 5 September 2024, on the occasion of an informal Conference of Ministers of Justice and invited members of the Council of Europe, other third countries

¹ REGULATION (EU) 2024/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ 2024 L

² AI Act, recitals 1 and 8.

³ [Decision concerning the work of the CAI at the 132nd Session of the Committee of Ministers – Follow-up, CM/Inf\(2022\)20, DD\(2022\)245](#)

⁴ Judgment of the Court of 20 November 2018, Joined Cases C-626/15 and C-659/16, Commission v Council (Antarctic MPAs), ECLI:EU:C:2018:925, paragraph 112.

⁵ [Council Decision \(EU\) 2022/2349 of 21 November 2022 authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law, OJ L 311, 2.12.2022, p. 138.](#)

which participated in its drafting and the Union to consider signing it on this occasion, while recalling that the Convention is also open for accession by other non-member States ⁽⁶⁾.

In this context, the purpose of the present proposal is launching the process for the signature by the Union of the Convention with the intention to subsequently ratify by proposing to the Council to adopt a decision to authorise the Union to sign the Convention in accordance with Article 218(5) TFEU. The Convention is fully compatible with Union law in general, and the AI Act in particular, and will promote key concepts from the Union approach to AI regulation globally among other Council of Europe members and key international partners that can become parties to the Convention.

Content of the Convention

The objective of the Convention is to ensure that activities within the lifecycle of AI systems are fully consistent with human rights, democracy and the rule of law.

Parties to the Convention will have to implement it through appropriate legislative, administrative or other measures to give effect to its provisions, following a graduated and differentiated approach, depending on the severity and probability of the adverse impacts. The Convention should be exclusively implemented in the Union through the AI Act, which fully harmonises the rules for the placing on the market, putting into service and use of AI systems, and other relevant Union acquis, where applicable.

The scope of the Convention covers AI systems potentially interfering with human rights, democracy and the rule of law, following a differentiated approach. The principles and the obligations envisaged in the Convention will apply to activities within the lifecycle of AI systems undertaken by public authorities or private actors acting on their behalf. As to the private sector, Parties are obliged to address risks and impacts arising from activities within the lifecycle of AI systems by private actors in a manner conforming with the object and purpose of the Convention but have the choice whether to apply the Convention obligations or take other appropriate measures. Parties will need to make a declaration on the choice they make in that respect upon signing or acceding to the Convention. The Union should issue a declaration upon the conclusion of the Convention that the Union, through the AI Act and other relevant Union acquis, will implement the principles and obligations set forth in Chapters II to VI of the Convention to activities of private actors placing on the market, putting into service, and using AI systems in the Union.

AI activities related to national security are excluded from the scope of the Convention with the understanding that they must be, in any case, conducted in a manner consistent with applicable international human rights law and with respect for democratic institutions and processes. The Convention also excludes research and development activities regarding AI systems not yet made available for use, unless testing or similar activities have the potential to interfere with human rights, democracy and the rule of law. In line with the Statute of the Council of Europe, matters relating to national defence do not fall within the scope of the Convention.

The Convention further provides for a set of general obligations and fundamental principles, including the protection of human dignity and individual autonomy, as well as the promotion of equality and non-discrimination. Additionally, it mandates respect for privacy and personal data protection along with transparency and oversight to ensure accountability and responsibility. A principle is also devoted to safe innovation and experimentation in controlled environments.

⁶ CM/Del/Dec(2024)133/4.

A dedicated chapter on remedies also envisages a set of measures that aim to ensure availability of accessible and effective remedies for violations of human rights resulting from the activities within the lifecycle of AI systems. It also includes effective procedural guarantees and safeguards for persons whose rights have been significantly affected by the use of AI systems. Additionally, individuals should be provided with notice that they are interacting with an AI system and not with a human being.

The Convention also includes a chapter on measures for the assessment and mitigation of risks and adverse impacts to be carried out in an iterative manner, so as to identify actual and potential impacts on human rights, democracy and the rule of law and take appropriate prevention and mitigation measures.

Furthermore, the Convention provides that Parties should assess the need for bans or moratoria on certain applications of AI systems considered incompatible with the respect of human rights, the functioning of democracy, or the rule of law.

The Convention provides a follow-up mechanism within a Conference of the Parties, composed of representatives of the Parties that will consult periodically with a view to facilitating the effective use and implementation of the Convention. It also envisages a mechanism for international cooperation both between Parties to the Convention and in relations with third countries and relevant stakeholders, to achieve the purpose of the Convention.

Each Party should furthermore establish or designate at domestic level one or more effective mechanisms to oversee compliance with the obligations in the Convention, as given effect by the Parties.

- **Consistency with existing policy provisions in the policy area**

The Convention lays down general principles and obligations for the protection of human rights, democracy and rule of law that are fully consistent and aligned with the objectives of the AI Act and the detailed requirements for AI systems and obligations imposed on providers and deployers of such systems.

The definition of AI system in the Convention is fully aligned with the definition in the AI Act, since both are based on the definition of such systems in the Organisation for Economic Cooperation and Development's AI Principles ⁽⁷⁾, thus ensuring a common understanding of which digital technologies constitute AI.

Both the Convention and the AI Act also follow a risk-based approach to the regulation of AI systems and include specific provisions for risk and impact assessments and risk mitigation measures. The AI Act includes, in particular, a number of relevant prohibitions and high-risk use cases for AI systems in all public and private sectors, including in the area of democracy and justice. The AI Act's detailed rules and procedures for the development, placing on the market, and deployment of AI systems in those areas will thus ensure that fundamental rights, democracy and the rule of law are respected throughout the whole AI lifecycle.

The Convention includes principles and obligations already covered by the AI Act, such as measures to protect human rights, safety and reliability, accountability and responsibility, data

⁷ The OECD definition of an 'AI system' was updated on 8 November 2023 [C(2023)151 and C/M(2023)14, Item 218] in order to ensure that it continues to be technically accurate and reflect technological developments, including with respect to generative AI.

governance and data protection, transparency and oversight, equality and non-discrimination, digital skills and literacy.

Transparency is another common element of both legal instruments, including measures with regard to the identification of AI-generated content and the notification of persons interacting with AI systems. Both legal instruments also include relevant provisions on risk and impact assessments and risk management, record-keeping, disclosure (to authorized bodies and authorities and, as appropriate, affected persons), traceability and explainability, safe innovation and experimentation in controlled environments, and a set of measures to enable effective remedies, including a right to request and obtain information and complaint to a competent authority and procedural safeguards.

The oversight system envisaged in the Convention is also fully consistent with the AI Act's comprehensive system of governance and enforcement, which consists of Union and national level enforcement, with procedures for the consistent implementation of the Union rules across the Member States. In particular, the Convention envisages one or more effective oversight mechanisms at domestic level that must exercise their duties independently and impartially and have the necessary powers, expertise and resources to effectively fulfil the tasks of overseeing compliance with the obligations in the Convention, as given effect by the Parties.

While the AI Act will apply to AI systems placed on the market, put into service, or used in the Union, the Convention has a broader geographic reach encompassing Council of Europe members and third states around the world that can become parties to the Convention. The Convention thus represents a unique opportunity to foster trustworthy AI beyond the Union in a first international legally binding treaty grounded in a strong human rights approach to AI regulation.

Both the Convention and the AI Act are integral components of a regulatory approach to AI, with consistent and mutually reinforcing commitments at multiple international levels, and sharing the common objective to ensure trustworthy AI.

- **Consistency with other Union policies**

The Convention also shares common objectives with other Union policies and legislation that aim to implement fundamental rights enshrined in the Charter of Fundamental Rights of the Union ⁽⁸⁾.

In particular, the principle of equality and non-discrimination enshrined in the Convention is fully consistent with Union non-discrimination legislation and will promote integration of equality considerations in the design, development, and use of AI systems and the effective implementation of the prohibition of discrimination, as provided under applicable international and domestic law of the Parties.

The Convention is furthermore consistent with the Union data protection acquis, including the General Data Protection Regulation ⁽⁹⁾ in relation to the fundamental rights to privacy and

⁸ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of

personal data protection with effective guarantees and safeguards that must be in place for individuals, in line with applicable domestic and international legal obligations of the Parties.

Measures envisaged in the Convention intended to protect Parties' democratic processes in the context of activities within the lifecycle of AI system are fully consistent with the objectives and detailed rules in the Digital Services Act ⁽¹⁰⁾, which regulates the provision of intermediary services in the Union with the aim of ensuring a safe, predictable and trusted online environment where fundamental rights, including the right to freedom of expression and the right to receive and impart information, are respected. They are also consistent with the Regulation on the transparency and targeting of political advertising ⁽¹¹⁾, the Code of Practice on Disinformation ⁽¹²⁾ and the Union's policies in the field of democracy and free, fair and resilient elections ⁽¹³⁾, including the 2020 European democracy action plan ⁽¹⁴⁾, the elections and integrity package ⁽¹⁵⁾ and recently the 2023 Defence of Democracy package ⁽¹⁶⁾.

The Convention is consistent with the Union's overall digital strategy in its contribution to promoting technology that works for people, one of the three main pillars of the policy orientation and objectives announced in the Communication 'Shaping Europe's digital future' ⁽¹⁷⁾. The latter aims to ensure AI is developed in ways that respect human rights and earn people's trust, making Europe fit for the digital age and turning the next years into the Digital Decade ⁽¹⁸⁾.

Moreover, the European Declaration on Digital Rights and Principles for the Digital Decade ⁽¹⁹⁾ contains several digital rights and principles that are aligned with the objectives and the principles of the Convention, with both instruments promoting a strong human rights-based approach to technology.

The Convention is also consistent with the EU Strategy on the rights of the child ⁽²⁰⁾, and the European strategy for a better internet for kids (BIK+) ⁽²¹⁾, which aim to ensure that children are protected, respected, and empowered online, to face challenges of new virtual worlds and AI.

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- such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.
- 10 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) , OJ L 277, 27.10.2022, p. 1–102.
- 11 Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, PE/90/2023/REV/1, OJ L, 2024/900, 20.3.2024.
- 12 <https://disinfocode.eu/introduction-to-the-code/>
- 13 [Protecting democracy - European Commission \(europa.eu\)](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_en)
- 14 [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_en](https://commission.europa.eu/publications/reinforcing-democracy-and-integrity-elections-all-documents_en)
- 15 https://commission.europa.eu/publications/reinforcing-democracy-and-integrity-elections-all-documents_en
- 16 Communication from the Commission on Defence of Democracy, COM/2023/630 final.
- 17 Communication from the Commission, Shaping Europe's Digital Future, COM/2020/67 final.
- 18 Communication from the Commission, [2030 Digital Compass: the European way for the Digital Decade](#), COM/2021/118 final.
- 19 [European Declaration on Digital Rights and Principles for the Digital Decade](#) COM(2022) 28 final.
- 20 Communication from the Commission, EU strategy on the rights of the child, COM/2021/142 final
- 21 Communication from the Commission, A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), COM/2022/212 final.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal for a decision authorising the signature of the Convention on behalf of the Union is submitted to the Council pursuant to Article 218(5) TFEU.

The substantive legal basis for a decision under Article 218(5) TFEU depends primarily on the objective and content of the agreement. According to the case-law, if an examination of a Union measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component.

With regard to the substantive legal basis, the material scope of the Convention coincides with that of the AI Act ⁽²²⁾, including in relation to the exemption from scope regarding research and development, national security and defence activities. The principles and obligations in the Convention coincide with the more detailed requirements for AI systems and the specific obligations of providers and deployers of such systems under the AI Act and other relevant Union legislation. If the Council adopts the proposed decision and the Union signs the Convention, the AI Act will constitute the primary Union legislation to implement the Convention in the Union legal order with fully harmonised rules on the placing on the market, putting into service, and use of AI systems in the Union that are directly applicable in the Member States, unless the AI Act specifically provides otherwise ⁽²³⁾.

Considering that the scope and objectives of the Convention are aligned and fully consistent with those of the AI Act and that the personal and material scope of both legal instruments coincide, the substantive legal basis for the conclusion of the Convention is Article 114 TFEU, which is the primary legal basis of the AI Act.

The nature of the international agreements ('EU Only' or 'mixed') is contingent upon the specific subject matter's compatibility with the Union competences.

Article 3(2) TFEU provides that the Union has exclusive competence "*for the conclusion of an international agreement [...] in so far as its conclusion may affect common rules or alter their scope.*" An international agreement may affect common rules or alter their scope where the area covered by the agreement is to a large extent covered by Union law ⁽²⁴⁾.

The personal scope of the Convention is fully aligned with the AI Act in that both legal instruments cover, in principle, both public and private actors (with the optional application of the principles and the obligations of the Convention to private actors other than those acting on behalf of public authorities), while the material scope of both legal instruments exclude AI activities related to national security, defence and research from the applicable rules.

Considering that the personal and material scope of the Convention coincides with that of the AI Act, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) TFEU. Consequently, the Union should be considered to

²² Adopted by the Council on 21 May 2024 and expected to be published in the Official Journal in July, 2024.

²³ See article 1 and recital 1 of the AI Act.

²⁴ E.g. Case C-114/12 Commission v Council (Neighbouring Rights of Broadcasting Organisations) ECLI:EU:C:2014:2151, paragraphs 68-69; Opinion 1/13 Accession of third States to the Hague Convention, EU:C:2014:2303, para. 71-74; Case C-66/13 Green Network EU:C:2014:2399, paragraphs 27-33; Opinion 3/15 Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled, ECLI:EU:C:2017:114, paragraphs 105-108.

enjoy exclusive external competence to conclude the Convention and the Convention should be signed on behalf of the Union as an ‘EU only’ agreement, subject to its conclusion at a later date.

- **Proportionality**

The Convention does not go beyond what is necessary to achieve the policy objectives developing a coherent approach to AI regulation at international level.

The Convention sets a high-level legal framework for AI that allows flexibility, enabling Parties to concretely design the implementation frameworks. The risk-based approach also ensures proportionality of the rules and enables differentiation of the implementation measures in a manner proportionate to the risks, in a similar fashion to the AI Act.

- **Choice of the instrument**

The chosen instrument is a proposal for a Council decision pursuant to Article 218(5) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The European Commission has not carried out specific stakeholder consultation on this proposal.

The elaboration of the Convention was a collaborative effort of the Council of Europe Committee on Artificial Intelligence, involving all 46 member states of the Council of Europe, as well as observer states including Canada, Japan, Mexico, the Holy See, the United States of America, and the European Union. Additionally, several other non-member states participated, including Australia, Argentina, Costa Rica, Israel, Peru and Uruguay.

In accordance with the Council of Europe's commitment to engaging with diverse stakeholders, the development of the Convention also involved input from 68 international representatives from civil society, academia, industry and other international organizations, ensuring a comprehensive and inclusive approach. The development of the Convention also involved collaboration with various other international organizations, including the Organisation for Security and Co-operation in Europe (OSCE), the Organisation for Economic Co-operation and Development (OECD), and the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Additionally, relevant bodies and committees within the Council of Europe contributed to the process. The Union's participation was led by the European Commission. Representatives from the European Union Agency for Fundamental Rights and the European Data Protection Supervisor were also present as observers.

- **Collection and use of expertise**

The Union's negotiation positions for the Convention have been prepared in consultations with a special committee designated by the Council (the Council Working Party on Telecommunications and Information Society).

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The Convention aims to address potential risks and harms to human rights by ensuring that activities within the lifecycle of AI systems align with the principles of respect for human rights, democracy and the rule of law, while also recognising the potential of AI to protect and facilitate the exercise of those rights in the digital environment and to improve societal and environmental well-being and technological progress.

The concrete principles and obligations envisaged in the Convention are intended to protect and respect human rights, enshrined in multiple international and regional instruments ⁽²⁵⁾, as applicable to the Parties, including the Charter of Fundamental Rights of the Union and international instruments on human rights which the Union has concluded.

The Convention thus sets a common minimum standard for application of human rights protection in the context of AI, while safeguarding existing human rights protections and allowing the Parties to provide a wider protection with more stringent safeguards.

4. BUDGETARY IMPLICATIONS

The Convention envisages financial contributions of non-member States to the activities of the Conference of the Parties. While all members of the Council of Europe will contribute through the ordinary budget of the Council of Europe in accordance with the Statute of the Council of Europe, Parties that are not members will make extrabudgetary contributions. The contribution of a non-member of the Council of Europe shall be established jointly by the Committee of Ministers and that non-member.

The Convention does not interfere with the domestic laws and regulations of Parties governing budgetary competencies and procedures for budgetary appropriations. It also allows non-member States to make their contributions within the approved budget limits set by their legislative branch, without prejudice to any prior agreements.

²⁵ Such as the 1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1961 European Social Charter (ETS No. 35), as well as their respective protocols, and the 1996 European Social Charter (Revised) (ETS No. 163), the 1989 United Nations Convention on the Rights of the Child and the 2006 United Nations Convention on the Rights of Persons with Disabilities.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Conference of the Parties composed of the representatives of the Parties will monitor that the Convention's objectives are effectively met and its provisions implemented by the Parties.

Each Party will need to submit a report to the Conference of the Parties due within the first two years of joining and at regular intervals thereafter, detailing the measures taken to implement the Convention.

Parties are further encouraged to cooperate in fulfilling the aims of the Convention. This international cooperation may include the sharing of relevant information regarding AI and its potential to adversely or positively impact human rights, democracy and the rule of law.

To ensure effective monitoring and implementation, each Party will need to designate one or more effective oversight mechanisms at domestic level.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 November 2022, the Council authorised the European Commission to open negotiations on behalf of the Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law ('the Convention'). The European Commission has negotiated the Convention on behalf of the Union. On 17 May 2024, the negotiations were successfully concluded by the initialling of the Convention and its adoption by the Council of Europe Committee of Ministers ⁽²⁶⁾.
- (2) The Convention lays down general principles and obligations that parties to the Convention should observe to ensure the protection of human rights, democracy and the rule of law in relation to the activities within the lifecycle of Artificial Intelligence (AI) systems.
- (3) On 12 June 2024, the Union adopted Regulation (EU) 2024/... ('the AI Act')⁽²⁷⁾, primarily on the basis of Article 114 TFEU, which provides fully harmonised rules regulating the placing on the market, the putting into service, and the use of AI systems in the Union that are directly applicable in the Member States, unless the AI Act explicitly provides otherwise. The Convention is to be implemented in the Union exclusively through the AI Act and other relevant Union acquis, where applicable.
- (4) Considering that the personal and material scope of the Convention coincides with the Artificial Intelligence Act and other relevant Union acquis, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union. Consequently, the Union enjoys exclusive external competence to sign the Convention and, therefore, only the Union should become a party to the Convention, subject to its conclusion at a later date.

²⁶ COUNCIL DECISION (EU) 2022/2349 of 21 November 2022 authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law, OJ L 311, 2.12.2022, p. 138.

²⁷ Regulation (EU) 2024/... of the European Parliament and the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (the Artificial Intelligence Act), OJ 2024 L.....

- (5) In accordance with the Treaties, it is for the European Commission to ensure the signing of the Convention subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law ('the Convention') is hereby approved on behalf of the Union, subject to the conclusion of the said Convention.

The text of the Convention to be signed is attached to this Decision.

Article 2

This Decision shall enter into force on .

Done at Brussels,

*For the Council
The President*



EUROPEAN
COMMISSION

Brussels, 26.6.2024
COM(2024) 264 final

ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

**on the signing, on behalf of the European Union, of the Council of Europe Framework
Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law**

Text of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

Preamble

The member States of the Council of Europe and the other signatories hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on the respect for human rights, democracy and the rule of law;

Recognising the value of fostering co-operation between the Parties to this Convention and of extending such co-operation to other States that share the same values;

Conscious of the accelerating developments in science and technology and the profound changes brought about through activities within the lifecycle of artificial intelligence systems, which have the potential to promote human prosperity as well as individual and societal well-being, sustainable development, gender equality and the empowerment of all women and girls, as well as other important goals and interests, by enhancing progress and innovation;

Recognising that activities within the lifecycle of artificial intelligence systems may offer unprecedented opportunities to protect and promote human rights, democracy and the rule of law;

Concerned that certain activities within the lifecycle of artificial intelligence systems may undermine human dignity and individual autonomy, human rights, democracy and the rule of law;

Concerned about the risks of discrimination in digital contexts, particularly those involving artificial intelligence systems, and their potential effect of creating or aggravating inequalities, including those experienced by women and individuals in vulnerable situations, regarding the enjoyment of their human rights and their full, equal and effective participation in economic, social, cultural and political affairs;

Concerned by the misuse of artificial intelligence systems and opposing the use of such systems for repressive purposes in violation of international human rights law, including through arbitrary or unlawful surveillance and censorship practices that erode privacy and individual autonomy;

Conscious of the fact that human rights, democracy and the rule of law are inherently interwoven;

Convinced of the need to establish, as a matter of priority, a globally applicable legal framework setting out common general principles and rules governing the activities within the lifecycle of artificial intelligence systems that effectively preserves shared values and harnesses the benefits of artificial intelligence for the promotion of these values in a manner conducive to responsible innovation;

Recognising the need to promote digital literacy, knowledge about, and trust in the design, development, use and decommissioning of artificial intelligence systems;

Recognising the framework character of this Convention, which may be supplemented by further instruments to address specific issues relating to the activities within the lifecycle of artificial intelligence systems;

Underlining that this Convention is intended to address specific challenges which arise throughout the lifecycle of artificial intelligence systems and encourage the consideration of

the wider risks and impacts related to these technologies including, but not limited to, human health and the environment, and socio-economic aspects, such as employment and labour;

Noting relevant efforts to advance international understanding and co-operation on artificial intelligence by other international and supranational organisations and fora;

Mindful of applicable international human rights instruments, such as the 1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1961 European Social Charter (ETS No. 35), as well as their respective protocols, and the 1996 European Social Charter (Revised) (ETS No. 163);

Mindful also of the 1989 United Nations Convention on the Rights of the Child and the 2006 United Nations Convention on the Rights of Persons with Disabilities;

Mindful also of the privacy rights of individuals and the protection of personal data, as applicable and conferred, for example, by the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its protocols;

Affirming the commitment of the Parties to protecting human rights, democracy and the rule of law, and fostering trustworthiness of artificial intelligence systems through this Convention,

Have agreed as follows:

Chapter I – General provisions

Article 1 – Object and purpose

- (1) The provisions of this Convention aim to ensure that activities within the lifecycle of artificial intelligence systems are fully consistent with human rights, democracy and the rule of law.
- (2) Each Party shall adopt or maintain appropriate legislative, administrative or other measures to give effect to the provisions set out in this Convention. These measures shall be graduated and differentiated as may be necessary in view of the severity and probability of the occurrence of adverse impacts on human rights, democracy and the rule of law throughout the lifecycle of artificial intelligence systems. This may include specific or horizontal measures that apply irrespective of the type of technology used.
- (3) In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a follow-up mechanism and provides for international co-operation.

Article 2 – Definition of artificial intelligence systems

For the purposes of this Convention, “artificial intelligence system” means a machine-based system that for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment.

Article 3 – Scope

- (1) The scope of this Convention covers the activities within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and the rule of law as follows:
 - (a) Each Party shall apply this Convention to the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf.
 - (b) Each Party shall address risks and impacts arising from activities within the lifecycle of artificial intelligence systems by private actors to the extent not covered in subparagraph a in a manner conforming with the object and purpose of this Convention.

Each Party shall specify in a declaration submitted to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, how it intends to implement this obligation, either by applying the principles and obligations set forth in Chapters II to VI of this Convention to activities of private actors or by taking other appropriate measures to fulfil the obligation set out in this subparagraph. Parties may, at any time and in the same manner, amend their declarations.

When implementing the obligation under this subparagraph, a Party may not derogate from or limit the application of its international obligations undertaken to protect human rights, democracy and the rule of law.

- (2) A Party shall not be required to apply this Convention to activities within the lifecycle of artificial intelligence systems related to the protection of its national security interests, with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes.
- (3) Without prejudice to Article 13 and Article 25, paragraph 2, this Convention shall not apply to research and development activities regarding artificial intelligence systems not yet made available for use, unless testing or similar activities are undertaken in such a way that they have the potential to interfere with human rights, democracy and the rule of law.
- (4) Matters relating to national defence do not fall within the scope of this Convention.

Chapter II – General obligations

Article 4 – Protection of human rights

Each Party shall adopt or maintain measures to ensure that the activities within the lifecycle of artificial intelligence systems are consistent with obligations to protect human rights, as enshrined in applicable international law and in its domestic law.

Article 5 – Integrity of democratic processes and respect for the rule of law

- (1) Each Party shall adopt or maintain measures that seek to ensure that artificial intelligence systems are not used to undermine the integrity, independence and effectiveness of democratic institutions and processes, including the principle of the separation of powers, respect for judicial independence and access to justice.

- (2) Each Party shall adopt or maintain measures that seek to protect its democratic processes in the context of activities within the lifecycle of artificial intelligence systems, including individuals' fair access to and participation in public debate, as well as their ability to freely form opinions.

Chapter III – Principles related to activities within the lifecycle of artificial intelligence systems

Article 6 – General approach

This chapter sets forth general common principles that each Party shall implement in regard to artificial intelligence systems in a manner appropriate to its domestic legal system and the other obligations of this Convention.

Article 7 – Human dignity and individual autonomy

Each Party shall adopt or maintain measures to respect human dignity and individual autonomy in relation to activities within the lifecycle of artificial intelligence systems.

Article 8 – Transparency and oversight

Each Party shall adopt or maintain measures to ensure that adequate transparency and oversight requirements tailored to the specific contexts and risks are in place in respect of activities within the lifecycle of artificial intelligence systems, including with regard to the identification of content generated by artificial intelligence systems.

Article 9 – Accountability and responsibility

Each Party shall adopt or maintain measures to ensure accountability and responsibility for adverse impacts on human rights, democracy and the rule of law resulting from activities within the lifecycle of artificial intelligence systems.

Article 10 – Equality and non-discrimination

- (1) Each Party shall adopt or maintain measures with a view to ensuring that activities within the lifecycle of artificial intelligence systems respect equality, including gender equality, and the prohibition of discrimination, as provided under applicable international and domestic law.
- (2) Each Party undertakes to adopt or maintain measures aimed at overcoming inequalities to achieve fair, just and equitable outcomes, in line with its applicable domestic and international human rights obligations, in relation to activities within the lifecycle of artificial intelligence systems.

Article 11 – Privacy and personal data protection

Each Party shall adopt or maintain measures to ensure that, with regard to activities within the lifecycle of artificial intelligence systems:

- (a) privacy rights of individuals and their personal data are protected, including through applicable domestic and international laws, standards and frameworks; and

- (b) effective guarantees and safeguards have been put in place for individuals, in accordance with applicable domestic and international legal obligations.

Article 12 – Reliability

Each Party shall take, as appropriate, measures to promote the reliability of artificial intelligence systems and trust in their outputs, which could include requirements related to adequate quality and security throughout the lifecycle of artificial intelligence systems.

Article 13 – Safe innovation

With a view to fostering innovation while avoiding adverse impacts on human rights, democracy and the rule of law, each Party is called upon to enable, as appropriate, the establishment of controlled environments for developing, experimenting and testing artificial intelligence systems under the supervision of its competent authorities.

Chapter IV – Remedies

Article 14 – Remedies

- (1) Each Party shall, to the extent remedies are required by its international obligations and consistent with its domestic legal system, adopt or maintain measures to ensure the availability of accessible and effective remedies for violations of human rights resulting from the activities within the lifecycle of artificial intelligence systems.
- (2) With the aim of supporting paragraph 1 above, each Party shall adopt or maintain measures including:
 - (a) measures to ensure that relevant information regarding artificial intelligence systems which have the potential to significantly affect human rights and their relevant usage is documented, provided to bodies authorised to access that information and, where appropriate and applicable, made available or communicated to affected persons;
 - (b) measures to ensure that the information referred to in subparagraph a is sufficient for the affected persons to contest the decision(s) made or substantially informed by the use of the system, and, where relevant and appropriate, the use of the system itself; and
 - (c) an effective possibility for persons concerned to lodge a complaint to competent authorities.

Article 15 – Procedural safeguards

- (1) Each Party shall ensure that, where an artificial intelligence system significantly impacts upon the enjoyment of human rights, effective procedural guarantees, safeguards and rights, in accordance with the applicable international and domestic law, are available to persons affected thereby.
- (2) Each Party shall seek to ensure that, as appropriate for the context, persons interacting with artificial intelligence systems are notified that they are interacting with such systems rather than with a human.

Chapter V – Assessment and mitigation of risks and adverse impacts

Article 16 – Risk and impact management framework

- (1) Each Party shall, taking into account the principles set forth in Chapter III, adopt or maintain measures for the identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems by considering actual and potential impacts to human rights, democracy and the rule of law.
- (2) Such measures shall be graduated and differentiated, as appropriate, and:
 - (a) take due account of the context and intended use of artificial intelligence systems, in particular as concerns risks to human rights, democracy, and the rule of law;
 - (b) take due account of the severity and probability of potential impacts;
 - (c) consider, where appropriate, the perspectives of relevant stakeholders, in particular persons whose rights may be impacted;
 - (d) apply iteratively throughout the activities within the lifecycle of the artificial intelligence system;
 - (e) include monitoring for risks and adverse impacts to human rights, democracy, and the rule of law;
 - (f) include documentation of risks, actual and potential impacts, and the risk management approach; and
 - (g) require, where appropriate, testing of artificial intelligence systems before making them available for first use and when they are significantly modified;
- (3) Each Party shall adopt or maintain measures that seek to ensure that adverse impacts of artificial intelligence systems to human rights, democracy, and the rule of law are adequately addressed. Such adverse impacts and measures to address them should be documented and inform the relevant risk management measures described in paragraph 2.
- (4) Each Party shall assess the need for a moratorium or ban or other appropriate measures in respect of certain uses of artificial intelligence systems where it considers such uses incompatible with the respect for human rights, the functioning of democracy or the rule of law.

Chapter VI – Implementation of the Convention

Article 17 – Non-discrimination

The implementation of the provisions of this Convention by the Parties shall be secured without discrimination on any ground, in accordance with their international human rights obligations.

Article 18 – Rights of persons with disabilities and of children

Each Party shall, in accordance with its domestic law and applicable international obligations, take due account of any specific needs and vulnerabilities in relation to respect for the rights of persons with disabilities and of children.

Article 19 – Public consultation

Each Party shall seek to ensure that important questions raised in relation to artificial intelligence systems are, as appropriate, duly considered through public discussion and multistakeholder consultation in the light of social, economic, legal, ethical, environmental and other relevant implications.

Article 20 – Digital literacy and skills

Each Party shall encourage and promote adequate digital literacy and digital skills for all segments of the population, including specific expert skills for those responsible for the identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems.

Article 21 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting, derogating from or otherwise affecting the human rights or other related legal rights and obligations which may be guaranteed under the relevant laws of a Party or any other relevant international agreement to which it is party.

Article 22 – Wider protection

None of the provisions of this Convention shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant a wider measure of protection than is stipulated in this Convention.

Chapter VII – Follow-up mechanism and co-operation

Article 23 – Conference of the Parties

- (1) The Conference of the Parties shall be composed of representatives of the Parties to this Convention.
- (2) The Parties shall consult periodically with a view to:
 - a. facilitating the effective application and implementation of this Convention, including the identification of any problems and the effects of any reservation made in pursuance of Article 34, paragraph 1, or any declaration made under this Convention;
 - b. considering the possible supplementation to or amendment of this Convention;
 - c. considering matters and making specific recommendations concerning the interpretation and application of this Convention;
 - d. facilitating the exchange of information on significant legal, policy or technological developments of relevance, including in pursuit of the objectives defined in Article 25, for the implementation of this Convention;
 - e. facilitating, where necessary, the friendly settlement of disputes related to the application of this Convention; and
 - f. facilitating co-operation with relevant stakeholders concerning pertinent aspects of the implementation of this Convention, including through public hearings where appropriate.

- (3) The Conference of the Parties shall be convened by the Secretary General of the Council of Europe whenever necessary and, in any case, when a majority of the Parties or the Committee of Ministers requests its convocation.
- (4) The Conference of the Parties shall adopt its own rules of procedure by consensus within twelve months of the entry into force of this Convention.
- (5) The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this article.
- (6) The Conference of the Parties may propose to the Committee of Ministers appropriate ways to engage relevant expertise in support of the effective implementation of this Convention.
- (7) Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Conference of the Parties. The contribution of a non-member of the Council of Europe shall be established jointly by the Committee of Ministers and that non-member.
- (8) The Conference of the Parties may decide to restrict the participation in its work of a Party that has ceased to be a member of the Council of Europe under Article 8 of the Statute of the Council of Europe (ETS No. 1) for a serious violation of Article 3 of the Statute. Similarly, measures can be taken in respect of any Party that is not a member State of the Council of Europe by a decision of the Committee of Ministers to cease its relations with that State on grounds similar to those mentioned in Article 3 of the Statute.

Article 24 – Reporting obligation

- (1) Each Party shall provide a report to the Conference of the Parties within the first two years after becoming a Party, and then periodically thereafter with details of the activities undertaken to give effect to Article 3, paragraph 1, sub-paragraphs a and b.
- (2) The Conference of the Parties shall determine the format and the process for the report in accordance with its rules of procedure.

Article 25 – International co-operation

- (1) The Parties shall co-operate in the realisation of the purpose of this Convention. Parties are further encouraged, as appropriate, to assist States that are not Parties to this Convention in acting consistently with the terms of this Convention and becoming a Party to it.
- (2) The Parties shall, as appropriate, exchange relevant and useful information between themselves concerning aspects related to artificial intelligence which may have significant positive or negative effects on the enjoyment of human rights, the functioning of democracy and the observance of the rule of law, including risks and effects that have arisen in research contexts and in relation to the private sector. Parties are encouraged to involve, as appropriate, relevant stakeholders and States that are not Parties to this Convention in such exchanges of information.
- (3) The Parties are encouraged to strengthen co-operation, including with relevant stakeholders where appropriate, to prevent and mitigate risks and adverse impacts on human rights, democracy and the rule of law in the context of activities within the lifecycle of artificial intelligence systems.

Article 26 – Effective oversight mechanisms

- (1) Each Party shall establish or designate one or more effective mechanisms to oversee compliance with the obligations in this Convention.
- (2) Each Party shall ensure that such mechanisms exercise their duties independently and impartially and that they have the necessary powers, expertise and resources to effectively fulfil their tasks of overseeing compliance with the obligations in this Convention, as given effect by the Parties.
- (3) In case a Party has provided for more than one such mechanism, it shall take measures, where practicable, to facilitate effective cooperation among them.
- (4) In case a Party has provided for mechanisms different from existing human rights structures, it shall take measures, where practicable, to promote effective cooperation between the mechanisms referred to in paragraph 1 and those existing domestic human rights structures.

Chapter VIII – Final clauses

Article 27 – Effects of the Convention

- (1) If two or more Parties have already concluded an agreement or treaty on the matters dealt with in this Convention, or have otherwise established relations on such matters, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly, so long as they do so in a manner which is not inconsistent with the object and purpose of this Convention.
- (2) Parties which are members of the European Union shall, in their mutual relations, apply European Union rules governing the matters within the scope of this Convention without prejudice to the object and purpose of this Convention and without prejudice to its full application with other Parties. The same applies to other Parties to the extent that they are bound by such rules.

Article 28 – Amendments

- (1) Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe or the Conference of the Parties.
- (2) Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties.
- (3) Any amendment proposed by a Party, or the Committee of Ministers, shall be communicated to the Conference of the Parties, which shall submit to the Committee of Ministers its opinion on the proposed amendment.
- (4) The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the Conference of the Parties and may approve the amendment.
- (5) The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 shall be forwarded to the Parties for acceptance.
- (6) Any amendment approved in accordance with paragraph 4 shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 29 – Dispute settlement

In the event of a dispute between Parties as to the interpretation or application of this Convention, these Parties shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including through the Conference of the Parties, as provided for in Article 23, paragraph 2, sub-paragraph e.

Article 30 – Signature and entry into force

- (1) This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its drafting and the European Union.
- (2) This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- (3) This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by this Convention in accordance with paragraph 2.
- (4) In respect of any signatory which subsequently expresses its consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 31 – Accession

- (1) After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe which has not participated in the elaboration of this Convention to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.
- (2) In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 32 – Territorial application

- (1) Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- (2) Any Party may, at a later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

- (3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in said declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 33 – Federal clause

- (1) A federal State may reserve the right to assume obligations under this Convention consistent with its fundamental principles governing the relationship between its central government and constituent states or other similar territorial entities, provided that this Convention shall apply to the central government of the federal State.
- (2) With regard to the provisions of this Convention, the application of, which come under the jurisdiction of constituent states or other similar territorial entities that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such states of the said provisions with its favourable opinion, and encourage them to take appropriate action to give them effect.

Article 34 – Reservations

- (1) By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation provided for in Article 33, paragraph 1.
- (2) No other reservation may be made in respect of this Convention.

Article 35 – Denunciation

- (1) Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- (2) Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 36 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the drafting of this Convention, the European Union, any signatory, any contracting State, any Party and any other State which has been invited to accede to this Convention, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Convention, in accordance with Article 30, paragraphs 3 and 4, and Article 31, paragraph 2;
- (d) any amendment adopted in accordance with Article 28 and the date on which such an amendment enters into force;
- (e) any declaration made in pursuance of Article 3, paragraph 1, sub-paragraph b;

- (f) any reservation and withdrawal of a reservation made in pursuance of Article 34;
- (g) any denunciation made in pursuance of Article 35;
- (h) any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in [place], this ... day of [month] 202[4], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the drafting of this Convention, to the European Union and to any State invited to accede to this Convention