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European Union

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## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

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**COUNCIL DECISION (EU) 2024/...**

**of ...**

**on the signing, on behalf of the European Union,  
of the Council of Europe Framework Convention on Artificial Intelligence  
and 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) By means of Decision (EU) 2022/2349<sup>1</sup>, the Council authorised the Commission to open negotiations on behalf of the Union for a Council of Europe convention on artificial intelligence and human rights, democracy and the rule of law. On 17 May 2024, the negotiations were successfully concluded with the initialling of the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ('the Convention') and its adoption by the Council of Europe Committee of Ministers.
- (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.

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<sup>1</sup> 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).

- (3) On 13 June 2024, the European Parliament and Council adopted, on the basis of Articles 16 and 114 of the Treaty on the Functioning of the European Union (TFEU), Regulation (EU) 2024/1689 of the European Parliament and the Council<sup>2</sup>, which contains harmonised rules, generally based on full harmonisation, that regulate the placing on the market, the putting into service and the use of AI systems in the Union. Those rules are directly applicable in the Member States, unless that Regulation explicitly provides otherwise. The Convention is to be implemented in the Union exclusively through Regulation (EU) 2024/1689 and other relevant Union *acquis*, where applicable.
- (4) Activities within the lifecycle of AI systems related to the protection of national security interests are excluded from the scope of the Convention. Regulation (EU) 2024/1689, which will be the main Union legal act implementing the Convention, also excludes from its scope of application AI systems placed on the market, put into service, or used with or without modification exclusively for national security purposes, and the output of AI systems used in the Union exclusively for such purposes, regardless of the type of entity carrying out those activities. Furthermore, national security remains the sole responsibility of each Member State, as provided for in Article 4(2) of the Treaty on European Union (TEU). Consequently, the Union position to be expressed in the Conference of the Parties set up by the Convention should respect the boundaries set out above. In particular, the Commission should refrain from discussing or taking any position on activities within the lifecycle of AI systems related to the protection of national security interests in the meetings of the Conference of the Parties.

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<sup>2</sup> Regulation (EU) 2024/1689 of the European Parliament and the Council of 13 June 2024 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 L, 2024/1689, 12.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1689/oj>).

- (5) Considering that the personal and material scope of the Convention and the substantive provisions of the Convention coincide to a large extent with Regulation (EU) 2024/1689, which is complemented by 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) TFEU. Such other relevant Union *acquis* includes legal acts which aim to implement fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, such as Union non-discrimination legislation, including Council Directives 2000/43/EC<sup>3</sup> and 2000/78/EC<sup>4</sup>; the Union *acquis* on the protection of personal data, including Regulations (EU) 2016/679<sup>5</sup> and (EU) 2022/2065<sup>6</sup> of the European Parliament and the Council aiming to ensure 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; Regulation (EU) 2024/900 of the European Parliament and the Council<sup>7</sup>; and product safety legislation and legislation on liability for defective products, including Council Directive 85/374/EEC<sup>8</sup>. The Union therefore enjoys exclusive external competence to sign the Convention. Consequently, only the Union should become a party to the Convention, subject to its conclusion at a later date.

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<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and 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 such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>6</sup> 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).

<sup>7</sup> Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising (OJ L, 2024/900, 20.3.2024, ELI: <http://data.europa.eu/eli/reg/2024/900/oj>).

<sup>8</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

- (6) The Conference of the Parties will play a major role in the effective implementation of the Convention, including through making specific recommendations with regard to its interpretation and application. The Conference of the Parties will also consider possible amendments to the Convention. In accordance with Article 218(9) TFEU, the Council, on a proposal from the Commission, should adopt decisions establishing the positions to be adopted on the Union's behalf in the Conference of the Parties when that body is called upon to adopt acts having legal effects, in particular the Rules of Procedure of the Conference of the Parties. During the negotiation of those Rules of Procedure, which are to be adopted by consensus within 12 months of the entry into force of the Convention, the Union will aim to ensure that it is allocated 27 votes, reflecting the number of its Member States. In the event that the 27 votes are allocated to the Union, the Commission, representing the Union, should ensure enhanced coordination with the Member States in order to express uniform positions before the Conference of the Parties and exercise its right to vote on behalf of the Union. Such enhanced coordination is especially relevant given that all Member States are also members of the Council of Europe and having regard to the rapidly evolving nature of artificial intelligence as well as the need to have a coherent globally applicable framework in the field. To the end of ensuring enhanced coordination, the Council should be involved in the formulation of any position, whatever its nature, including those based on Article 16(1) TEU and Article 218(9) TFEU. Should the Union, despite its best efforts, not be able to obtain an allocation of 27 votes, in order to ensure that the Union has a number of votes reflecting its weight in the Council of Europe and allowing it to appropriately defend its interests, the Commission should propose that the Member States be empowered, under Article 2(1) TFEU and with full respect for the exclusive competence of the Union, to accede to the Convention alongside the Union.

- (7) The Commission will invite each Member State to send one representative to accompany the Commission representation as part of the Union delegation to the meetings of the Conference of the Parties. The principle of sincere cooperation is to be respected.
- (8) As regards any other agreement that may be concluded in the future under the auspices of the Council of Europe or in other international fora, including in the area of artificial intelligence, and as regards any amendment to the Convention, the division of external competences between the Union and the Member States should be assessed in light of the specific features of each such instrument. It is of the utmost importance that the Union and its Member States be able to continue playing their direct and active role in expressing the voice of the Union and defending its interests, in a consistent and coordinated manner, fully in line with the Treaties.
- (9) In accordance with the Treaties, the Commission should ensure the signing of the Convention subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

### *Article 1*

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 Convention') is hereby authorised, subject to the conclusion of the said Convention<sup>9+</sup>.

### *Article 2*

The Commission shall ensure the signing of the Convention, subject to its conclusion.

### *Article 3*

This Decision shall enter into force on the date of its adoption.

Done at ..., ...

*For the Council*

*The President*

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<sup>9</sup> The text of the Convention will be published together with the decision on its conclusion.

<sup>+</sup> Delegations/OJ: see document ST 12516/24.