

September 18, 2024

New Council of Europe framework convention on Artificial Intelligence and human rights, democracy and the rule of law

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The Council of Europe – an international organization based in Strasbourg comprising 46 European countries (including 27 that are members of the European Union) and which was set up in 1949 to promote democracy, human rights and the rule of law – has contributed to the ever-developing regulation of Artificial Intelligence with the opening for signature early this month of its “*Framework Convention on Artificial Intelligence and Human rights, Democracy and the Rule of Law*” (the “**Convention**”).

This follows hot on the heels of the coming into force last month of the European Union’s Regulation relating to AI (commonly referred to as “the AI Act”).

Whilst the AI Act’s focus is on the commercial parties that are developing and using AI, specifying rules that are intended to regulate their conduct, the Convention provides rather for obligations on *states* that sign up to it.

As such, it is the first-ever international legally binding treaty between states that is aimed at ensuring that AI systems throughout their entire life cycle will respect, and be consistent with human rights, democracy and the rule of law.

Thus far, the Convention has been signed by Andorra, Georgia, Iceland, Norway, The Republic of Moldova, San Marino, the UK, Israel, the United States of America and the European Union.

There is the potential for many more countries to sign up to it and it has the potential to enter into force in the not-too-distant future (as to which see below).

Object and purpose of the Convention

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

The Convention requires that parties to it maintain or adopt appropriate legislative, administrative or other measures to give effect to the provisions in the Convention, it being recognized that these measures will 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 AI systems.

Scope

Article 3 provides that each party to the Convention is to apply it to the activities within the lifecycle of AI systems undertaken by public authorities or private actors acting on their behalf.

At the same time, however, parties are to address risks and impacts arising from activities within the lifecycle of AI systems by *private* actors that do not fall within the general scope of the Convention in a manner that conforms with the “object and purpose of the Convention”.

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There are certain carve-outs, so for example parties do not have to apply the Convention to AI systems related to the protection of national security interests, or in connection with research and development activities of AI systems not yet available for use unless their testing or similar activities have the potential to impact on human rights, democracy and the rule of law. Matters relating to national defense are also carved out from the scope of the Convention.

General Obligations

Chapter 2 of the Convention is concerned with general obligations requiring that each party adopts or maintains measure to:

- i. ensure that activities within the lifecycle of AI systems are consistent with obligations to protect human rights as enshrined in international law and domestic law;
- ii. ensure that AI 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 tradition, independence and access to justice; and
- iii. protect its democratic processes in the context of activities within the lifecycle of AI systems, including individuals' access to and participation in public debate, as well as their ability to freely form opinions.

General common principles

Chapter 3 then goes on to provide for “general common principles” that each party shall implement in respect of AI systems having regard to what is appropriate to its domestic legal system and the other obligations of the Convention.

These include principles such as:

- i. respect for human dignity and individual autonomy;
- ii. that there be adequate transparency and oversight requirements in respect of AI systems, including disclosure when content is AI generated;
- iii. that there be accountability and responsibly for adverse impacts on human rights, democracy and the rule of law arising from AI systems;
- iv. that AI systems should respect equality, including gender equality, and that discrimination be prohibited;
- v. that the privacy of individuals be respected and their personal data protected;
- vi. that AI systems be trustworthy and reliable; and
- vii. that controlled environments be established to allow for developing, experimenting and testing AI systems under the supervision of competent authorities.

Remedies

Chapter 4 is concerned with remedies.

It provides that

- i. parties must have in place measures providing for the availability of accessible and effective remedies for violations of human rights resulting from the activities of AI systems;
- ii. parties must have in place measures to ensure that details about systems that have the potential to significantly affect human rights are documented, provided to bodies authorized to access that information and, where appropriate, made available or communicated to affected persons;
- iii. parties must ensure that enough of the information at ii. is made available to allow persons to contest the decisions of AI systems; and
- iv. that measures must be put in place to allow for complaints about AI systems to be made to competent authorities.

Parties must also ensure that there are effective procedural guarantees, safeguards and rights in place to protect persons whose human rights may be affected by AI systems.

Further, parties must ensure that persons are informed when they are interacting with AI systems.

Risk assessment and mitigation

Chapter 5 requires parties to adopt or maintain measures that are aimed at identifying, assessing, preventing and moderating risks posed by AI systems, having regard to their potential and actual impact on human rights, democracy and the rule of law.

Other requirements

There are then further obligations in Chapter 6, for example, requiring parties to ensure that important questions about AI are raised and considered through public discussion and multi-stakeholder consultation, and to 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 risk posed by AI systems.

Chapter 7 provides for the establishment of a “Conference” of Parties, being composed of representatives of the parties to the Convention. This is to meet and consult periodically with a view to ensuring the Convention is being applied and implemented properly and to consider its supplementation or amendment.

There are obligations on parties to report to the Conference about how they are progressing with their implementation efforts. There are also requirements on parties to establish or designate effective mechanisms to oversee compliance with their obligations under the Convention.

Article 29 provides for disputes between the parties about the Convention being resolved if possible through negotiation or by the Conference of the parties.

When in force?

Article 30 provides that the Convention will come 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 the Convention in accordance with the ratification, acceptance or approval methods provided for at Article 30 (2).

Comment

The European Union's recent introduction of its AI Regulation, which came into effect last month, is an extremely significant step towards the regulation of AI. Its aim is primarily to provide for the regulation of commercial parties involved in the development and usage of AI systems and it has the potential to impact parties outside of the EU (and who may otherwise have not been subject to any concrete regulation of their AI activities) depending on what they are doing.

This Convention, however, is aimed at imposing obligations on *states* that are party to it. Primarily, its aim is to require action at state level to ensure effective regulation of AI within each state.

There is the potential for a very large number of States to take steps to be bound by it (by taking steps to ratify, accept or approve it) – including the 46 member states of the Council of Europe (including the EU's 27 member states), and the countries that took part in its production including Argentina, Australia, Canada, Israel, Japan, Mexico, Peru, Uruguay and the United States of America.

As states adopt it, this will lead to an ever-greater introduction of law and other regulation at national level around the world in respect of AI systems. It can be expected that the EU's AI Regulation will provide appropriate direction for this as countries look to meet their Convention obligations without having to re-invent the wheel in terms of how AI systems should be appropriately regulated.

The Convention as such is another step towards the rapid international regulation of AI systems.

We will continue to monitor developments and report appropriately.