



Opinion 303 (2024)¹

Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

Parliamentary Assembly

1. The Parliamentary Assembly considers that artificial intelligence (AI) brings both opportunities and challenges. The position of the Assembly in this field has always highlighted the importance of striking the right balance between mitigating the risks and making full use of the advantages that AI can offer in promoting a better life for all.

2. The Assembly recalls its previous work on AI. In 2020, it adopted a set of resolutions and recommendations examining the opportunities and risks of AI for democracy, human rights and the rule of law. These included [Resolutions 2341 \(2020\)](#) “Need for democratic governance of artificial intelligence”, [2342 \(2020\)](#) “Justice by algorithm – The role of artificial intelligence in policing and criminal justice systems”, [2343 \(2020\)](#) “Preventing discrimination caused by the use of artificial intelligence”, [2344 \(2020\)](#) “The brain-computer interface: new rights or new threats to fundamental freedoms?”, [2345 \(2020\)](#) “Artificial intelligence and labour markets: friend or foe?”, [2346 \(2020\)](#) “Legal aspects of ‘autonomous’ vehicles” and its related recommendations, as well as [Recommendation 2185 \(2020\)](#) “Artificial intelligence in health care: medical, legal and ethical challenges ahead”. The Assembly endorsed a set of key ethical principles that should be respected when developing and implementing AI applications. These principles, which were further elaborated in a common appendix to all these reports, are:

- 2.1. transparency, including accessibility and explicability;
- 2.2. justice and fairness, including non-discrimination;
- 2.3. human responsibility for decisions, including liability and the availability of remedies;
- 2.4. safety and security;
- 2.5. privacy and data protection.

3. The Assembly strongly believes that legal regulation is necessary in order to avoid or mitigate the potential risks to democracy, human rights and the rule of law arising from the use of AI. In this context, the Council of Europe, as a leading international standard-setting organisation in the field of democracy, human rights and the rule of law, should play a pioneering role. While supporting the work of the Council of Europe Ad hoc Committee on Artificial Intelligence (CAHAI) at the time, the Assembly called on the Committee of Ministers to decide upon the preparation of a legally binding instrument governing artificial intelligence, possibly in the form of a convention open also to non-member States, which should be based on a comprehensive approach, deal with the whole lifecycle of AI-based systems, be addressed to all stakeholders and include mechanisms to ensure its implementation. The Assembly therefore warmly welcomes the finalisation of the draft framework convention on artificial intelligence, human rights, democracy and the rule of law by the Council of Europe Committee on Artificial Intelligence (CAI).

1. *Assembly debate* on 18 April 2024 (13th sitting) (see [Doc. 15971](#), report of Committee on Legal Affairs and Human Rights, rapporteur: Ms Þórhildur Sunna Ævarsdóttir). *Text adopted by the Assembly* on 18 April 2024 (13th sitting).



4. The Assembly has always considered that private actors should fall within the scope of such a legally binding instrument. In its [Resolution 2341 \(2020\)](#), it expressed the view that the instrument should contain provisions to limit the risks of the use of AI-based technologies by State and private actors to exercise control over people, and that the activity of private actors should be subject to democratic oversight.

5. The framework convention, once adopted, will become the first ever international treaty on AI. It is based on the Council of Europe's standards on human rights, democracy and the rule of law, which are also shared by the non-member States that participated in the negotiations. This is an example of the Council of Europe's leadership in developing standards in emerging areas, including the digital sphere, in line with the Reykjavik Declaration adopted by the Heads of State and Government in May 2023. The framework convention's added value will partly lie in its global reach, since it will bring together States from all over the world wishing to address the global challenges posed by AI using a human rights-based approach. The Assembly therefore understands that the drafting process has had to accommodate diverse legal and political traditions and systems, with the result that the draft text often contains very general and abstract provisions, allowing for a certain level of flexibility in its implementation. Its "framework" nature also means that it will need to be supplemented by other binding or non-binding instruments concerning the use of AI in specific sectors or further developing certain provisions of the convention. The Assembly is ready to contribute to the preparation of such instruments.

6. The Assembly is satisfied that most of the key ethical principles endorsed in its 2020 reports are reflected in different provisions of the draft framework convention, although some of these principles could have been formulated as positive individual rights rather than general principles (for instance, privacy, equality and non-discrimination). Furthermore, it could have been made even clearer that each individual government should be obliged to inform its citizens of the use of AI systems in administrative procedures leading to binding legal decisions. Another significant added value of this draft framework convention is that it is intended to protect not only human rights but also democratic processes and the rule of law in the context of AI. AI technologies have the potential to disrupt the functioning of democratic institutions and processes, for instance through interference in electoral processes, disinformation and manipulation of public opinion. They can also have an impact on the functioning of the rule of law, including the independence and impartiality of the judiciary and access to justice. In this regard, the Assembly considers that the interpretation of "democratic institutions and processes" and "the rule of law" within the meaning of the draft framework convention should be guided by the relevant standards developed over the years by Council of Europe bodies such as the European Court of Human Rights and the European Commission for Democracy through Law (Venice Commission), as well as by the Reykjavik Principles for Democracy. However, the drafters missed the opportunity to cover more specifically the positive uses of AI for democratic processes, for instance improving government accountability and facilitating democratic action and participation.

7. The Assembly regrets that the draft framework convention does not cover public and private actors to an equal extent. Rather, it introduces a system whereby each party will be able to determine in a declaration how it intends to address the risks and impacts arising from the use of AI by private actors. This is far from ideal for legal certainty and the predictability of the obligations imposed by the framework convention, and is not in line with the positions previously expressed by the Assembly, the Council of Europe Commissioner for Human Rights and the CAHAJ. It also goes against the principle that States have positive obligations to protect individuals against human rights abuses by private actors, in accordance with the case law of the European Court of Human Rights, the United Nations Guiding Principles on Business and Human Rights and relevant recommendations of the Committee of Ministers of the Council of Europe. Many AI systems are developed and deployed by private entities, and introducing a differentiated approach for the private sector creates a significant loophole.

8. The Assembly therefore strongly calls on all member States of the Council of Europe, when ratifying the framework convention and submitting their declarations under Article 3.1.b, to recognise the full applicability of the principles and obligations set forth therein (Chapters II to VI) to activities of private actors, and to report accordingly to the future Conference of the Parties under Article 24. It further invites the Conference of the Parties to fully use its powers and conduct a proper review of how all parties comply with Article 3.1.b. The Assembly believes that a dynamic interpretation of this provision by the follow-up mechanism set up by the framework convention will foster progress over time, through reporting requirements and peer pressure, including with respect to non-member States which may choose not to apply the framework convention obligations to private actors.

9. Having considered some of the proposals by different stakeholders, and taking due account of the overall structure and the transversal character of the agreed text, the Assembly proposes the following amendments to the draft framework convention:

9.1. replace Article 3.2 with the following text: “Each Party may restrict the application of the provisions of this Convention if activities within the lifecycle of artificial intelligence systems are necessary to protect its national security or national defence interests and if 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.”;

9.2. delete Article 3.4;

9.3. in Article 5.1, after “effectiveness of democratic institutions and processes, including”, add the following words: “free and fair elections.”;

9.4. in Chapter III, add the following article: “Every Party shall adopt or maintain measures to preserve health and the environment in the context of activities within the lifecycle of artificial intelligence systems, in line with applicable international and domestic law.”;

9.5. in Article 14.2.c or in the explanatory report, add a reference to “judicial authorities” or “judicial review”;

9.6. in Article 15.1, add a reference to “human review”;

9.7. in Articles 16.1, 16.2.a and e and 16.3, after the words “the rule of law”, add the following words: “and the preservation of the environment”;

9.8. replace Article 16.4 with the following text: “Each Party shall take such legislative or other measures as may be required to put in place mechanisms for a moratorium, a ban or limitations in respect of certain uses of artificial intelligence systems where such uses are considered incompatible with the respect for human rights, the functioning of democracy or the rule of law.”;

9.9. in Chapter VI, add the following article: “Each Party shall take appropriate measures to ensure protection of whistle-blowers in relation to the activities within the lifecycle of artificial intelligence systems which could adversely impact human rights, democracy and the rule of law.”;

9.10. at the end of Article 26.2, add the following sentence: “The functions and powers of such mechanisms shall include investigative powers, the power to act upon complaints, periodic reporting, promotion, public awareness and consultation on the effective implementation of this Convention.”;

9.11. in Chapter VII, after Article 26, add the following article: “Parliamentary involvement”: “1. National parliaments shall be invited to participate in the follow-up and review of the measures taken for the implementation of this Convention. 2. The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.”

10. The Assembly wishes to participate in the future Conference of the Parties set up by the framework convention and engage in the co-operation and exchange of information envisaged under Article 25.

11. The Assembly invites its Sub-Committee on Artificial Intelligence and Human Rights to raise awareness of the framework convention, once adopted, including by promoting its ratification or accession by member States, observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly.

12. Finally, the Assembly will continue to work on AI-related issues, through new reports on emerging topics and by following closely and contributing where necessary to the standard-setting activities of the CAI and other relevant Council of Europe intergovernmental bodies.