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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in cooperation with

**THE MINISTRY OF DIGITAL TRANSITION AND ADMINISTRATIVE
REFORM OF THE KINGDOM OF MOROCCO**

Regional seminar for senior civil servants

17th UniDem Med

**" DIGITAL TRANSFORMATION AND ARTIFICIAL
INTELLIGENCE: RULES AND APPLICATIONS "**

hybrid format (online and in Rabat, Morocco)

21-22 November 2023

**PROPORTIONALITY AND TRANSPARENCY OF MEASURES TAKEN BY PUBLIC
ADMINISTRATION IN THE CONTEXT OF DIGITAL TRANSFORMATION AND
CITIZENS' RIGHT TO APPEAL**

by Mr Patrick PENNINGCKX

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Europe)**

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"Protecting human rights, the rule of law and democracy through shared standards in the Southern Mediterranean"
(South Programme V)

**HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW**

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**DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT**

Rabat, Morocco
and on-line

Regional seminar for senior civil servants

Digital Transformation and AI Rules and Applications

Presentation
22 November 2023

Patrick Penninckx
Head of Information Society Department



Europe's largest intergovernmental organisation

- **46 member States** and 5 observer States (Canada, Holy See, Japan, Mexico and the USA)
- It has successfully developed a rights protection system, the best known mechanism of which is **the European Court of Human Rights**. The Court was established under the European Convention on Human Rights which has been ratified by all the member states of the Council of Europe.
- Have produced pioneering **global legally binding standards** involving complex technological issues, such as **protection of personal data, bioethics, cybercrime**, reconciling innovation and human rights protection

Marija Pejčinović Burić
Secretary General of the Council of Europe

Global character of the Framework Convention

- The CoE Framework Convention shall be **open to non-member States**
- In addition to the EU, ALL Observer States (**Canada, Japan, the Holy See, Mexico and the United States of America**) and a number of important non-member States (**Argentina, Costa Rica, Israel, Peru and Uruguay**), have **actively and constructively engaged** in the negotiations in the CAI
- At present, there is a “**window of opportunity**” for establishing human rights, rule of law, and democracy standards relating to the **design, development and application of AI systems** with a potential global reach.



Achieving impact through intergovernmental co-operation
on artificial intelligence

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EUROPEAN UNION AGENCY
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European Union Agency for
Fundamental Rights

IDB
Inter-American
Development Bank

Inter-American
Development Bank

OECD

OECD and OECD.AI

UNITED NATIONS

United Nations

UNESCO

UNESCO

WORLD BANK
GROUP

World Bank Group



General points

- The CoE Framework Convention in accordance with the terms of reference of the CAI formulates fundamental principles and rules which not only **safeguard human rights, democracy and the rule of law** but at the same time are **conducive to progress and technological innovations**.
- The CoE Framework Convention is complementary with **the already existing international human rights, democracy and rule of law standards** and aims at filling-in any legal gaps that may have formed as a result of rapid technological advances primarily in the sphere of **human rights law**.

General points

- The CoE Framework Convention takes due account of relevant initiatives of other international, supranational and regional fora, in order to provide a much-needed level playing field for artificial intelligence actors in **like-minded countries** not just in Europe but **globally**.
- The CoE Framework Convention, given the high level at which it is operating and in order to remain future proof, does not regulate technology and is essentially **technology neutral**.

Fundamental principles

- The CoE Framework Convention reaffirms the principles of **human dignity and individual autonomy, equality** (including gender equality and rights related to those who are subject to discrimination and/or persons in vulnerable situations) as well as **protection of privacy** and **personal data protection**.
- In addition, it contains principles related to **accountability, safe innovation, responsibility for violations of human rights** resulting from application of artificial intelligence systems, and the need for appropriate **safety, security, data protection, cybersecurity, robustness** requirements.

Procedural rights and safeguards

- In the light of interactions with the existing human rights obligations of the Parties, the CoE Framework Convention addresses the question of **new rights and obligations** and the related and equally important questions of the exact **scope of such rights, their formulation and the circumstances in which they could be applicable**.
- These are not in fact new rights, but rather **rights enabling continued enjoyment** of the existing universally recognised and well-established rights. Many of them deal with the issue of **information asymmetry** between the AI subject and the AI provider/AI user which results, among other things, from the **practical reality of how AI systems operate** as well as their **considerable complexity**.

Procedural rights and safeguards

- These rights/obligations are the following:
 - 1) The **obligation to record and store** the usage of artificial intelligence systems and **access** to relevant records by affected persons,
 - 2) The **obligation to ensure availability of accessible and effective remedies for violations of human rights and fundamental freedoms resulting from the use of AI**,
 - 3) The **obligation to provide effective procedural guarantees** in connection with the application of an artificial intelligence system where an artificial intelligence system substantially informs or takes decision(s) affecting human rights and fundamental freedoms.
 - 4) The **provision of notice** that one is interacting with an artificial intelligence system.
- The specific modalities of the exercise of these rights should be governed by the domestic law of the Parties.

Risk and Impact Management Requirements

- In addition to the procedural rights and safeguards, the CoE Framework Convention contains a chapter addressing the **crucial question** of essential requirements for **proper supervision of AI systems** regarding risk to and impacts on human rights, democracy and the rule of law.
- The CoE Framework Convention introduces an obligation to provide **effective guidance** to relevant AI providers and users on **how to identify, assess, prevent and mitigate risks and adverse impacts** on human rights, democracy and the rule of law.
- The relevant risk and impact management requirements should be **proportionate** and **targeted at specific sensitive contexts** where AI systems may be used.



Risk and Impact Management Requirements

- The relevant **assessments** should be carried **iteratively**.
- The relevant AI providers and users are under obligation to apply **sufficient preventive and mitigation measures** resulting from the application of the above risk and impact management requirements.
- The CoE Framework Convention also provides for the possibility for the authorities to **introduce bans or moratoria on certain application of AI systems** (so-called red lines) with the power to make relevant decisions belonging to the competent domestic authority.

Risk and Impact Management Requirements

- The CoE Framework Convention **does not mention** any specific **red lines by name**, but it refers to the kind of assessment that the competent domestic authority needs to carry out if wants to conclude that certain applications of AI systems should be banned or suspended:
 - It is essentially compliance with the human rights law/protection of democracy and rule of law obligations;
 - The need for proper assessment and mitigation of any risks in this connection.
- The Secretariat of the CAI is currently working on **Human Rights, Democracy and the Rule of Law Risk and Impact Assessment (HUDERIA)**, a stand-alone and non-binding instrument supporting the CoE Framework Convention which will contain detailed guidance to future Parties regarding risk and impact management issues.



Democracy and Rule of Law Components

- It is very clear from different known characteristics of AI systems (especially their **scalability**) that their use depending on the context and manner of their use may have **serious adverse implications** on the integrity of democratic institutions and independence of the judiciary.



Democracy and Rule of Law Components

- The CoE Framework Convention contains provisions dealing with these matters by pointing at and addressing these issues **with value-based guidance, indication of potentially dangerous effects of AI and the need for Parties to take measures** in this connection.

Democracy and Rule of Law Components

- In addition to the high-level principles and requirements contained in the Convention, the above mentioned **HUDERIA** will contain detailed guidance regarding risk and impact management in these matters.



Thanks for your
attention !



further resources:

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