



Council of the
European Union

Brussels, 22 August 2022
(OR. en)

11818/22
ADD 1

TELECOM 342
JAI 1088
COPEN 291
CYBER 282
DATAPROTECT 234
EJUSTICE 69
COSI 206
IXIM 193
ENFOPOL 418
FREMP 166
RELEX 1102
MI 621
COMPET 654

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	18 August 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 414 final - ANNEX
Subject:	ANNEX to the RECOMMENDATION FOR A COUNCIL DECISION 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

Delegations will find attached document COM(2022) 414 final - ANNEX.

Encl.: COM(2022) 414 final - ANNEX



EUROPEAN
COMMISSION

Brussels, 18.8.2022
COM(2022) 414 final

ANNEX

ANNEX

to the

RECOMMENDATION FOR A COUNCIL DECISION

**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**

ANNEX
**to the Recommendation for a Council Decision 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**

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive and transparent, and based on robust evidence and cooperation in good faith.
- (2) The negotiation process is based on an inclusive consultation process and enables meaningful participation for all relevant stakeholders, including civil society, the private sector, academia, non-governmental organisations, standardisation organisations and other relevant actors with expertise relating to the regulation of the design, development and application of artificial intelligence (AI) systems.
- (3) All inputs received from all negotiating Parties are considered on an equal basis to ensure an inclusive process.
- (4) The negotiation process is based on an effective and realistic work programme for the elaboration of the (framework) convention.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (5) The convention is compatible with EU single market law and other areas of EU law, including its general principles of EU law and the fundamental rights and freedoms as enshrined in the EU Charter of Fundamental Rights and implemented through secondary EU legislation.
- (6) The convention is compatible with the proposed artificial intelligence act (AI act)¹, taking into account future developments in the legislative process.
- (7) The convention serves as an effective and future-proof regulatory framework for AI with a view to ensuring a high level of protection of human rights and preservation of European values, while at the same time fostering innovation, increasing legal certainty and trust; the convention also acknowledges the potential benefits of AI for important public interests, including to protect and facilitate the exercise of human rights in the digital environment, to improve societal and environmental wellbeing and health and to promote technological progress.
- (8) The convention strengthens the international cooperation between the European Union and other European and non-European countries which may accede to the convention.
- (9) The convention is compatible with existing Council of Europe instruments, in particular the European Convention on Human Rights and its Protocols, Council of

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, COM/2021/206 final.

Europe Convention No 108 for the protection of individuals with regard to automatic processing of personal data, as amended by Protocol CETS 223, and other relevant Council of Europe legal instruments; the convention avoids duplication with those instruments and any adverse impact on their application or the further accession of any country to them; the convention addresses the novel risks and challenges posed by the specific features of certain AI systems for compliance with and effective enforcement of existing rights protected under those instruments.

- (10) The convention is compatible with the commitments of the European Union in respect of other international agreements to which it is a party, and avoids any adverse impact on their effective application; in particular, the convention is in line with the Union's international trade commitments and avoids unnecessary or unjustified restrictions on trade.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (11) The provisions of the convention are fully compatible with EU single market law and other areas of EU law, including the general principles of EU law and fundamental rights, as enshrined in the EU Charter of Fundamental Rights and implemented in secondary EU legislation.
- (12) The provisions of the convention are fully compatible with the provisions of the proposed AI act, taking into account future developments in the legislative process.
- (13) The provisions of the convention allow parties to grant a wider protection than stipulated in the Convention and in no way undermine the level of protection of fundamental rights and freedoms and the guarantees provided in Union law, including the principle that authorities supervising fundamental rights need to be independent in so far as this is required under EU Law.
- (14) The convention follows a risk-based approach and lays down proportionate, effective and clear rules applicable to public and private entities across the AI value chain, which are meant to minimise the risks arising from the design, development and application of certain AI systems, while avoiding any unnecessary and disproportionate burdens or restrictions on the activities of those entities or constraints on technological development; in particular, the scope and stringency of any regulatory intervention are balanced, justified and scaled in accordance with the levels of risk posed by the AI systems.
- (15) The provisions of the convention are formulated, to the extent possible, in a future-proof and flexible manner to allow consideration of future technological, market, societal and environmental developments related to AI.
- (16) The convention provides for rules for the design, development and application of AI systems which avoid overlaps and provide meaningful added value compared to other relevant international or regional conventions, in particular in the area of data protection; those rules for AI are compatible with such conventions and with international human rights standards.
- (17) The convention includes provisions for the effective implementation of the rules applicable to the design, development, and application of AI systems, notably with appropriate *ex ante* and *ex post* compliance and control mechanisms, and recognises

the role of standards, certification mechanisms, independent third parties involved in compliance checks and competent supervisory authorities.

- (18) The convention allows for measures in support of innovation, including testing of AI systems and the establishment and operation of regulatory sandboxes to foster AI innovation in a controlled environment under the supervision of competent authorities.
- (19) The convention takes into account the special needs of small and medium-sized enterprises (SMEs), does not disproportionately affect their competitiveness and obliges the Parties to take specific measures to support them.
- (20) The convention takes into account the interest of law enforcement and judicial authorities for the purpose of the prevention, investigation, detection and prosecution of criminal offences, including with regard to the confidentiality and integrity of such investigations.
- (21) The convention provides for effective supervision by competent authorities and cooperation mechanisms that allow for its effective implementation.

Regarding the functioning of the convention, the Union should aim to achieve that:

- (22) The convention includes a disconnection clause that allows the EU Member States, in their mutual relations, to continue to apply EU law in matters covered by the scope of the convention.
- (23) The convention provides for an appropriate mechanism to ensure its implementation and includes final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, denunciation and depositary and languages, modelled where possible and appropriate on provisions of other relevant Council of Europe conventions.
- (24) The convention allows for the European Union to become a party to it.