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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	AOB Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law - Information from the Commission

Delegations will find in annex an information note prepared by the Commission on the above mentioned subject for consideration under "Any other business" at the meeting of the Council (Transport, Telecommunications and Energy) on 21 May 2024.

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23 April 2024

Information note from the European Commission to the European Parliament and the Council on the finalisation of the negotiations of the Council of Europe Convention on artificial intelligence, human rights, democracy and the rule of law

The purpose of this note is to inform the European Parliament and the Council on the finalisation of the negotiations of a Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law ('AI Convention'), after the 10th and final plenary meeting of the Council of Europe Committee on Artificial Intelligence (CAI) on 11 - 14 March 2024 where an agreement on the AI Convention was found.

I. Introduction and context

Since September 2022, the Committee on AI (CAI) established by the Council of Europe (CoE) has been working on the elaboration of a legally binding instrument (a framework convention) aiming at addressing risks posed by AI to human rights, democracy and the rule of law.

In view of the significant overlap with existing and upcoming Union law (including notably the AI Act), the Commission has been negotiating the AI Convention on behalf of the Union pursuant to Article 218(3) TFEU and in accordance with Council Decision (EU) 2022/2349.[1] The Union positions for the negotiations have been guided by the negotiating directives adopted by the Council (in an annex to the above-mentioned Council Decision) as well as consultations with the Special Committee designated by the Council (the Council Working Party on Telecommunications and Information Society).

Throughout the negotiations, the Union has pursued the goal of ensuring compatibility of the AI Convention with Union law, consistency with the upcoming AI Act, as well as quality and added value of the AI Convention as a first international treaty aiming to address risks posed by AI to human rights, democracy and the rule of law.

In that context, the international reach of the AI convention has also been a key objective of the Union in the negotiations. Whereas the AI Act will allow to address risks posed by AI systems to safety and fundamental rights in the Union, the AI Convention represents a unique opportunity to foster trustworthy AI beyond the Union and to set out, in consensus with like-minded partners, key principles and obligations in an international legally binding instrument that would be open for accession to countries around the world.

In addition to other CoE members, several non-CoE States, including notably the United States of America, Canada, Japan, Israel, Australia, Argentina, Peru, Uruguay and Costa Rica, participated in these negotiations as observers.

After intense negotiations a compromise was eventually found within the CAI at the plenary meeting on 14 March.

[1] 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. 138–141).

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II. Main outcome from the negotiations

The AI Convention will be the **first legally binding international treaty addressing the risks posed by AI**. Its purpose is to ensure that activities within the lifecycle of AI systems are consistent with human rights, democracy and the rule of law.

Parties to this AI Convention will have to implement it through appropriate legislative, administrative or other measures in order to give effect to its provisions.

The AI Convention is **fully compatible with Union law (including the AI Act)** and will also **promote key concepts from the AI Act** to be adopted and shared with other Council of Europe members and key international partners that can accede to the AI Convention. This includes a **focus on human-centric AI** consistent with human rights, democracy and rule of law (Chapter II), a **risk-based approach** (Article 1(2)), as well as **key principles for trustworthy AI** (Chapter III).

Moreover, the AI Convention requires ensuring:

- **transparency for AI-generated content** (see Article 8) **and in interactions with AI systems** (Article 15(2)),
- **accountability** (Article 9) and **remedies** (Article 14),
- support to **safe innovation** through regulatory sandboxes (Article 13),
- **risk management** obligations (Article 16),
- **documentation** obligations (Articles 14(2) and 16(2)f),
- and **oversight mechanisms** for the supervision of AI activities at domestic level (Article 26).

The AI Convention covers activities within the lifecycle of AI systems that have the potential to interfere with human rights, democracy and rule of law in both the public and private sectors following a differentiated approach. The principles and the obligations of the AI Convention will apply to activities within the lifecycle of AI systems undertaken by public authorities, or private actors acting on their behalf. As to the private sector, Parties are obliged to address risks and impacts arising from activities within the lifecycle of AI systems by private actors in a manner conforming with the object and purpose of the AI Convention, but have the choice whether to apply the AI Convention obligations or take other Measures. Parties will need to make a declaration on the choice they make in that respect upon signing or acceding to the AI Convention (Article 3(1)). Furthermore, the cooperation framework between Parties will include **reporting obligations** for each Party on the implementation of the AI Convention in both the public and the private sectors (Article 24). This compromise was reached after intense negotiations with some other negotiating Parties that have strongly opposed to the AI Convention applying in full to the private sector, building thus convergence and avoiding the clearly opposing opt-in v. opt-out approach discussed before. The compromise offers a good balance preserving the global reach of the AI convention in a consensus with like-minded international partners and ensuring its relevance with an obligation for all Parties to address risks in the private sector, to share relevant information and to cooperate at international level.

The AI Convention includes an exemption for **national security** with the understanding that national security activities have in any case to be conducted in a manner consistent with applicable international human rights law and with respect for democratic institutions and processes (Article 3(2)). It also includes an exemption for **research and development** activities regarding AI systems

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not yet made available for use unless testing or similar activities are undertaken in such a way that they have the potential to interfere with human rights, democracy and the rule of law (Article 3(3)). Aligned with the Statute of the Council of Europe, matters relating to **national defence** do not fall within the scope of the AI Convention (Article 3(4)).

The AI Convention provides for a follow-up mechanism within a **Conference of the Parties** (Article 23), which will be composed of representatives of the Parties to the AI Convention. The Conference of the Parties will consult periodically with a view to facilitating the effective use and implementation of the Convention.

The AI Convention envisages **international cooperation** both between Parties to the AI Convention and in relations with third countries and relevant stakeholders, to achieve the purpose of the Convention (Article 25).

For further details, attached to this progress report are the full text of the AI Convention and the accompanying explanatory report, as agreed between the negotiating Parties within the CAI in a consensus.

III. Next steps

The draft of the AI Convention agreed on 14 March 2024 was formally transmitted to the Committee of Ministers on 15 March and then discussed at a meeting of the Ministers' Rapporteur Group on Legal co-operation (GR-J) on 19 March. At that occasion it was agreed to transmit the draft to the Parliamentary Assembly (PACE) for an opinion which was issued on 18 April 2024[2].

The Committee of Ministers of the Council of Europe has also made the text of the AI Convention[3] and the explanatory report[4] public.

The AI Convention is expected to be adopted by the Committee of Ministers of the Council of Europe on 17 May 2024. A decision on the date and place for the opening for signatures should also be taken at that occasion. The opening for signatures will allow all negotiating parties, including the EU and countries that are not members of the Council of Europe, to sign and ratify the AI Convention.

The adoption of the AI Convention by the Committee of Ministers will amount to the initialling of the text, which would constitute the final stage of the negotiations authorised by the Council Decision (EU) 2022/2349. On 8 May 2014, a last Union position for the adoption of the Convention will be defined and consulted with Member States through the Special Committee (the Council Working Party on Telecommunications and Information Society).

The Commission will afterwards adopt proposals for Council Decisions on signature and conclusion of the AI Convention that will be considered by the Council. The consent of the European Parliament will be required for the decision concluding the agreement.

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[2] PACE Opinion 303 (2024)

[3] CM(2024)52-prov1

[4] CM(2024)52-addprov