ARTIFICIAL INTELLIGENCE

Parliamentary Assembly calls for ensuring respect for democracy, human rights and the rule of law

What does this mean for the Council of Europe?

"The Council of Europe as the guardian of human rights should develop a dedicated legal instrument on AI"

▬ In September 2019, the Council of Europe established the Ad hoc Committee on Artificial Intelligence (CAHAI) *"to examine, on the basis of broad multi-stakeholder consultations, the feasibility and potential elements of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law".*

▬ The Parliamentary Assembly strongly supports the work of the CAHAI. It notes that the application of AI in certain areas has a *"particularly serious potential impact on human rights"*, which should be taken into account when assessing the necessity and feasibility of a European legal framework.

▬ The Parliamentary Assembly therefore calls on the Committee of Ministers to elaborate a *"legally binding instrument governing artificial intelligence [that is] based on a comprehensive approach, deals with the whole life cycle of AI-based systems, is addressed to all stakeholders, and includes mechanisms to ensure the implementation of this instrument"*.

▬ The Parliamentary Assembly also supports other Council of Europe bodies' work on AI, including:

- ► the Committee of Ministers' Recommendation Rec/CM(2020)1 on the human rights impact of algorithmic systems
- ► the Commissioner for Human Rights' recommendations entitled "Unboxing Artificial Intelligence: 10 steps to protect Human Rights"
- ► the Committee on Bioethics' (DH-BIO) work on AI in healthcare and on neurotechnology
- ► the European Committee on Crime Problem's (CDPC) work on autonomous vehicles, AI and criminal law responsibility

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. The Parliamentary Assembly, consisting of representatives from the 47 national parliaments, provides a forum for debate and proposals on Europe's social and political issues. Many Council of Europe conventions originate from the Assembly, including the European Convention on Human Rights.

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How does the Parliamentary Assembly describe AI?

"Computer-based systems that can perceive and derive data from their environment, and then use statistical algorithms to process that data in order to produce results intended to achieve pre-determined goals. The algorithms consist of rules that may be established by human input, or set by the computer itself, which "trains" the algorithm by analysing massive datasets and continues to refine the rules as new data is received"

The work of the Parliamentary Assembly on AI

In October 2020, the Parliamentary Assembly adopted a set of resolutions and recommendations, examining the opportunities and risks of AI for democracy, human rights and the rule of law.

These were:

► The need for democratic governance of artificial intelligence *Resolution 2341 (2020) and Recommendation 2181 (2020)*

► Preventing discrimination caused by the use of artificial intelligence *Resolution 2343 (2020) and Recommendation 2183 (2020)*

► Justice by algorithm – the role of artificial intelligence in policing and criminal justice systems *Resolution 2342 (2020) and Recommendation 2182 (2020)*

► Artificial intelligence in health care: medical, legal and ethical challenges ahead *Recommendation 2185 (2020)*

► Artificial intelligence and labour markets: friend or foe? *Resolution 2345 (2020) and Recommendation 2186 (2020)*

► Legal aspects of 'autonomous' vehicles *Resolution 2346 (2020) and Recommendation 2187 (2020)*

► The brain-computer interface: new rights or new threats to fundamental freedoms? *Resolution 2344 (2020) and Recommendation 2184 (2020)*

The Parliamentary Assembly will continue working on AI through follow-up to these resolutions and recommendations, further reports, its Sub-committee on Artificial Intelligence and Human Rights and its observer status with the Ad hoc Committee on Artificial Intelligence (CAHAI).

The position of the Parliamentary Assembly

"AI applications can now be found in many spheres of human activity… They are increasingly powerful and influential, and the public is often unaware of when, where and how they are being used"

The Assembly acknowledges that AI can bring great benefits, whilst also recognising the accompanying risks, especially in certain sectors.

*"On the positive side, AI can be used to improve **government accountability** and **transparency**, help fight corruption and produce many benefits for democratic action, participation and pluralism… However, AI can be – and reportedly is – used to disrupt democracy… Moreover, the broad use by States and private actors of AI-based technologies to control individuals … may lead to … the emergence of digital authoritarianism… Concentration of data, information, power and influence in the hands of a few big private actors, and growing dependence of individuals, institutions and society as a whole on these services, are also a cause for concern."*

*"The **criminal justice system** represents one of the key areas of the State's responsibilities, ensuring public order and preventing violations of various fundamental rights… It gives the authorities significant intrusive and coercive powers… The introduction of non-human elements into decision-making within the criminal justice system may thus create particular risks."*

*"Like many technological innovations, AI harbours major potential to improve both individual and public **health**, but also presents risks to individual rights and to public health. … [For example,] the Covid-19 outbreak has focused attention on the role AI can play through real-time surveillance, assessment and management of disease data. [However,] the existing digital divide and inequalities … coupled with the spread of AI might … worsen health-care inequalities and outcomes."*

*"While AI can assist and facilitate **human work** and render it more efficient, it can also have the effect of manipulating human decisions or decisions affecting humans, violating human dignity, breaching equal opportunities and perpetuating bias in the context of employment and access thereto."*

*"The introduction of **autonomous vehicles** means putting AI-controlled robots in charge of fast-moving projectiles in a situation of proven, serious potential risk to their passengers and other road users. The expectation is that autonomous vehicles will have the potential to be significantly safer that those driven by humans."*

The risk of perpetuating hidden **discrimination** by using training datasets that are tainted by historical bias is a common concern. *"The use of AI has been found to cause or exacerbate discrimination, leading to denials of access to rights that disproportionately affect certain groups – often women, minorities, and those who are already the most vulnerable and marginalised."*

What does the Parliamentary Assembly call for?

"The Assembly strongly believes that there is a need to create a cross-cutting regulatory framework for AI, with specific principles based on the protection of human rights, democracy and rule of law"

The Parliamentary Assembly has endorsed a set of basic **ethical principles** that should be respected when developing and implementing AI applications. These principles, which are further elaborated in a common appendix to the reports, are:

► *transparency, including accessibility and explicability*

► *justice and fairness, including non-discrimination*

► *human responsibility for decisions, including liability and the availability of remedies*

► *safety and security*

► *privacy and data protection*

However:

"The Assembly considers that self-regulatory ethical principles and policies voluntarily introduced by private actors are not adequate and sufficient tools to regulate AI"

In each of the situations examined in its reports, the Assembly concludes that **legal regulation** will be necessary in order to avoid or minimise the potential risks to democracy, human rights and the rule of law. The various resolutions propose sets of focused measures that national authorities should implement in order to achieve this goal.

What does this mean for the member States and the national parliaments?

The Parliamentary Assembly's resolutions contain practical proposals to national parliaments and other authorities. These are intended to ensure that AI is used in a way that respects Council of Europe's common standards on democracy, human rights and the rule of law. They include:

► adopting national legislation, policies, guidance and strategies on the use of AI

► ensuring that there is a legal basis for the use of AI applications by public authorities

► consulting the public on the introduction of AI applications in certain sectors

► conducting human rights impact assessments prior to the introduction of AI applications

► establishing national registers of AI applications being used by public authorities

The Parliamentary Assembly calls on the national parliaments in particular to:

► make the use of AI-based technologies a part of regular parliamentary debates

► require the government to notify the parliament before such technology is deployed