

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

# **CAHAI**

## **Ad hoc Committee on artificial intelligence**

CDCPP, Strasbourg (and virtual) | 12 November 2020



- ▶ Unique paneuropean legal and judicial space
- ▶ 830 millions of people
- ▶ Convention for the Protection of Human Rights and Fundamental Freedoms
- ▶ +200 Conventions
- ▶ Convention 108 and 108+ on data protection ("grandmother of GDPR")
- ▶ Convention on Cybercrime

# What is CAHAI?

- ▶ Intergovernmental Committee setup in Sept. 2019
- ▶ Mandate delivered by the Committee of Ministers until 31 Dec. 2021
- ▶ Plenary meetings: 1 in 2019, 2 in 2020 and 2 in 2021

To examine the **feasibility** and **potential elements** of a **legal framework** for the development, design and application of artificial intelligence, based on Council of Europe's standards on human rights, democracy and the Rule of law.



# What is CAHAI?



## ► Comprehensive mapping exercise

The feasibility study should include, inter alia, a mapping of the **work on AI already carried out within the Council of Europe** and **other international organisations**, a mapping of the **relevant legally binding instruments, soft law instruments** and **other legal frameworks**, as well as a mapping of **risks and opportunities** arising from the development, design and application of artificial intelligence, including the impact of the latter on human rights, rule of law and democracy.

# Members and participants



# Members and participants

- ▶ Representatives designed by the 47 **member States**
- ▶ Representatives designed by the 5 **observer States** (Canada, Holy See, Japan, Mexico, United States)
- ▶ Other bodies and sectors of the Council of Europe
- ▶ Other **regional** and **international organisations** (European Union, OECD, United nations, etc.)
- ▶ **Private sector** (partnership with digital companies)
- ▶ **Civil society** and **academia**



# Elected members



- ▶ Gregor Strojin, **President** of the CAHAJ



- ▶ Peggy Valcke, **Vice-President** of the CAHAJ

- ▶ **Other Bureau members:** Siiri Aulik (Estonia), Marco Bellezza (Italy), Marine Kettani (France), Thomas Schneider (Switzerland) and Wolfgang Teves (Germany)

- ▶ Jana Novohradská (Slovak Republic), **gender equality rapporteur**

# Global AI policy

## Other Council of Europe's bodies and sectors

Vertical and specialised approach

E.g. Justice, Health, Autonomous vehicles, Democracy, Freedom of expression, etc.

All types of legal instruments, based on / feed CAHAI's definitions and principles

## CAHAI


Horizontal and transversal approach

Definitions and core principles

Type of legal instrument to be defined



# Examples of existing AI instruments produced by the Council of Europe


**COUNCIL OF EUROPE**

Artificial Intelligence

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You are here: Artificial intelligence

## Council of Europe and Artificial Intelligence




### Council of Europe strengthens cooperation with internet sector

STRASBOURG | 06/02/2020

Five new companies and business associations today joined the Council of Europe Partnership with...

View all news

**CAHAI COMMITTEE**




#### Interview with Gregor Strojina, P...

Arzt und Psychotherapeut

Digital technology allows global effects at scale and at micro levels of individual users, customers, citizens.

Gregor Strojina, President of the CAHAI, on the first meeting of the Committee




#### Web with regard to the ethics guidance documents

Peggy Valcke, Vice-President of the CAHAI, on the work and aims of the Bureau

**COUNCIL OF EUROPE AND AI**


### Artificial intelligence and human rights




Artificial Intelligence raises important and urgent issues. AI is already with us - changing the information that we receive, the choices that we make, and the ways in which our societies function. In the coming years AI will play an even greater role in the way that governments and public institutions operate, and the way in which citizens interact and participate in the democratic process.

It is clear that AI presents both benefits and risks. We need to ensure that AI promotes and protects our standards, I

### How to regulate the development of artificial intelligence?



Artificial intelligence (AI) will have an impact on our societies that we hardly imagine. Algorithms are already said to be able to identify the best candidates for a job, assist doctors to establish medical diagnoses or help lawyers before the courts. All this is not entirely new, since already in the 1980s, expert systems assisted humans with a high level of expertise. What is new today is that computers are increasingly able to perform extremely complex tasks independently, but their designers sometimes no longer



[www.coe.int/ai](http://www.coe.int/ai)

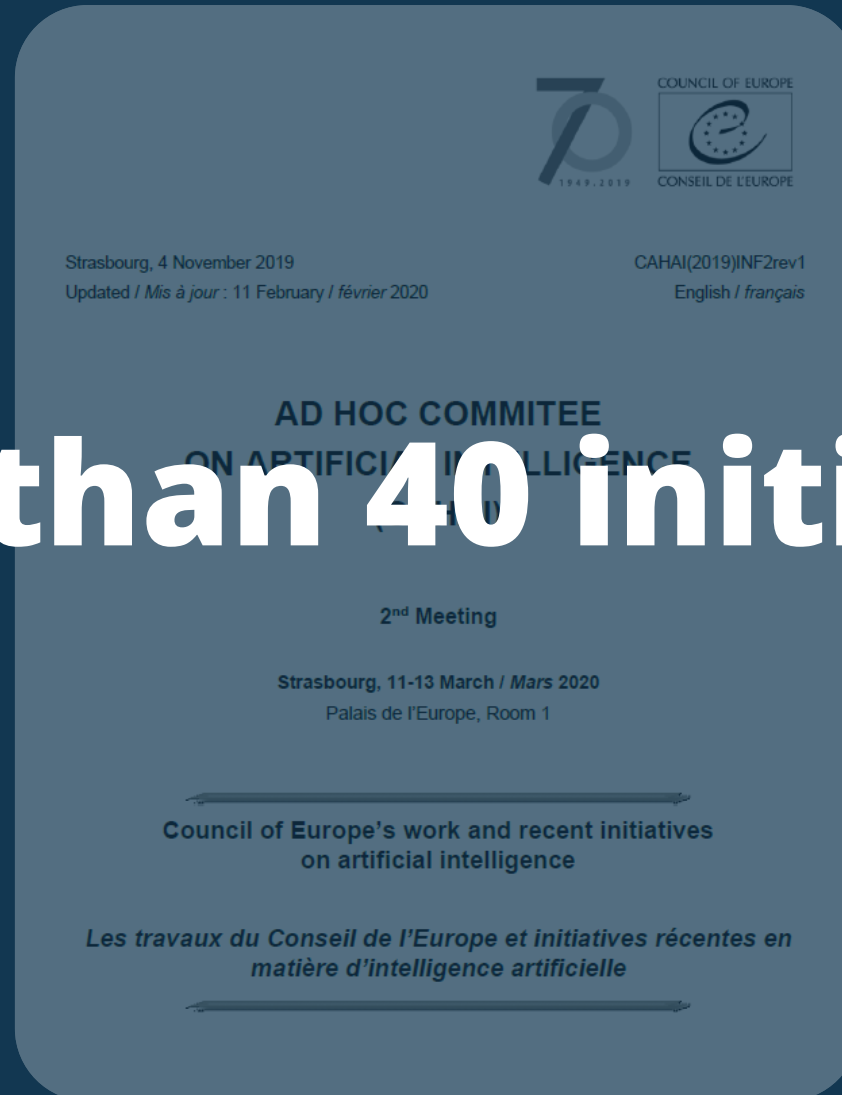
Towards an application of AI based on human rights, the rule of law and democracy

[www.coe.int/cahai](http://www.coe.int/cahai)

Ad hoc Committee on AI - CAHAI

# Examples of existing AI instruments produced by the Council of Europe

# More than 40 initiatives



# 7 PACE reports



Parliamentary Assembly  
Assemblée parlementaire

<http://assembly.coe.int>

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Recommendation 2102 (2017)<sup>1</sup>

## Technological convergence, artificial intelligence and human rights

Parliamentary Assembly

1. The convergence between nanotechnology, biotechnology, information technology and cognitive sciences and the speed at which the applications of new technologies are put on the market have consequences not only for human rights and the way they can be exercised, but also for the fundamental concept of what characterises a human being.

2. The pervasiveness of new technologies and their applications is blurring the boundaries between human and machine, between online and offline activities, between the physical and the virtual world, between the natural and the artificial, and between reality and virtuality. Humankind is increasing its abilities by boosting them with the help of machines, robots and software. Today it is possible to create functional brain-computer interfaces. A shift has been made from the "treated" human being to the "repaired" human being, and what is now looming on the horizon is the "augmented" human being.

3. The Parliamentary Assembly notes with concern that it is increasingly difficult for lawmakers to adapt to the speed at which science and technologies evolve and to draw up the required regulations and standards; it strongly believes that safeguarding human dignity in the 21st century implies developing new forms of governance, new forms of open, informed and adversarial public debate, new legislative mechanisms and above all the establishment of international co-operation making it possible to address these new challenges most effectively.

4. The Assembly recalls the principle enshrined in Article 2 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention") which affirms the primacy of the human being by stating that "[t]he interests and welfare of the human being shall prevail over the sole interest of society or science".

5. In this regard, the Assembly welcomes the initiative of the Council of Europe Committee on Bioethics to organise, in October 2017 on the occasion of the 20th anniversary of the Council of Europe Convention on Human Rights and Biomedicine, an international conference to discuss the prospect of the emergence of these new technologies and their consequences for human rights, with a view to drawing up a strategic action plan during the next biennium 2018-19.

6. In addition, the Assembly considers that it is necessary to implement genuine world internet governance that is not dependent on private interest groups or just a handful of States.

7. The Assembly calls on the Committee of Ministers to:

7.1. finalise without further delay the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) in order to have new provisions making it possible to put rapidly in place more appropriate protection;

1. Assembly debate on 28 April 2017 (18th Sitting) (see Doc. 14288, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Jean-Yves Le Déaut, and Doc. 14303, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Boriss Cilevičs). Text adopted by the Assembly on 28 April 2017 (18th Sitting).





# 7 PACE reports

- > Strict regulatory measures to ensure that AI is applied.
- > Resolutions taken on the basis of these reports

For example :

« The draft resolution welcomes the setting up of an Ad hoc Committee on Artificial Intelligence (CAHAI) and calls on member States to work together towards a legally binding instrument aimed at ensuring democratic governance of AI and, where necessary, complement it by sectoral legal instruments »

# Recommendation from the Committee of Ministers

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



DÉLÉGUÉS DES MINISTRES

Recommandations

CM/Rec(2020)1

8 avril 2020

## Recommandation CM/Rec(2020)1 du Comité des Ministres aux États membres sur les impacts des systèmes algorithmiques sur les droits de l'homme

*(adoptée par le Comité des Ministres le 8 avril 2020,  
lors de la 1373<sup>e</sup> réunion des Délégués des Ministres)*

### Préambule

Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,

Considérant que les États membres du Conseil de l'Europe se sont engagés à garantir les droits et libertés inscrits dans la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (STE n° 5, « la Convention ») à toute personne relevant de leur juridiction, et que cet engagement transparait tout au long des processus continus de progrès technologique et de transformation numérique auxquels les sociétés européennes sont confrontées ;

Réaffirmant qu'en conséquence les États membres doivent veiller à ce que toute conception, tout développement et tout déploiement en cours des systèmes algorithmiques s'effectuent dans le respect des droits de l'homme et des libertés fondamentales, qui sont universels, indivisibles, interdépendants et intimement liés, en vue d'amplifier les effets positifs et de prévenir ou de réduire les éventuels effets négatifs ;

Reconnaissant l'ampleur sans précédent prise par le recours aux applications numériques en tant qu'outils essentiels de la vie quotidienne, notamment dans les domaines de la communication, de l'éducation, de la santé, des activités économiques et des transports, leur rôle croissant dans les structures de gouvernance ainsi que dans la gestion et la répartition des ressources, et reconnaissant le fait que les technologies transversales utilisant des systèmes algorithmiques, assorties d'incitations appropriées, sont susceptibles de relever d'importants défis, notamment les changements climatiques et le développement durable ;

Conscient, de ce fait, des conséquences évolutives, qui peuvent être positives ou négatives, que l'utilisation de systèmes algorithmiques assortis de capacités de collecte automatisée de données, d'analyse, de décision, d'optimisation ou d'apprentissage automatique peut avoir sur l'exercice, la jouissance et la protection de l'ensemble des droits de l'homme et des libertés fondamentales, et des défis importants, également pour les sociétés démocratiques et l'État de droit, posés par le recours croissant aux systèmes algorithmiques dans la vie de tous les jours ;

Soulignant la nécessité de veiller à ce que les inégalités raciales, de genre et autres disparités au sein de la société et au sein de la population active, qui n'ont pas encore été éliminées de nos sociétés, ne soient pas délibérément ou accidentellement perpétuées par le biais de systèmes algorithmiques, ainsi que l'opportunité de remédier à ces inégalités en recourant aux technologies appropriées ;

Gardant à l'esprit le potentiel important d'innovation socialement bénéfique et de croissance économique que recèlent les technologies numériques, et rappelant que la réalisation de ces objectifs doit être ancrée dans les valeurs communes des sociétés démocratiques et soumis à une participation pleine et à une surveillance démocratique effective ;

Réaffirmant ainsi que les normes de primauté du droit qui régissent les relations publiques et privées, comme la légalité, la transparence, la prévisibilité, la responsabilité et la surveillance, doivent également être préservées dans le contexte des systèmes algorithmiques ;

# **Recommendation from the Committee of Ministers**

- 1 - Recommendation and guidelines on the impact of algorithmic systems on human rights
- 2 - Ensures that private sector actors comply with applicable laws and fulfil their human rights responsibilities,
- 3 - Supervision by national authorities
- 4 - Regular multi-stakeholder consultations
- 5 - Training and education programme
- 6 - Taking into account the environmental impact



# Declaration of the Committee of Ministers

Algorithmic processes risk being used to manipulate social and political behaviours

STRASBOURG | 13/02/2019



The Council of Europe has called on its 47 member states to tackle the risk that individuals may not be able to form their opinions and take decisions independently of automated systems, and that they may even be subjected to manipulation due to the use of advanced digital technologies, in particular micro-targeting techniques.

Machine learning tools have the growing capacity not only to predict choices but also to influence emotions and thoughts, sometimes subliminally. In a [Declaration](#) adopted today, the [Committee of Ministers](#) - the organisation's decision-making body - warns about the risks for democratic societies resulting from the possibility to employ such tools to manipulate and control not only economic choices, but also social and political behaviours.

> [Read full Press release - Council of Europe warns about the risk of algorithmic processes being used to manipulate social and political behaviours](#)

# Declaration of the Committee of Ministers

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# Recommendation of the Commissioner for Human Rights

Unboxing Artificial Intelligence:  
10 steps to protect Human Rights



Recommendation



COMMISSIONER  
FOR HUMAN RIGHTS  
COMMISSAIRE AUX  
DROITS DE L'HOMME





# **Recommendation of the Commissioner for Human Rights**

## **10 STEPS**

- 1 - Human rights impact assessment
- 2 - Public consultations
- 3 - Obligation of member states to facilitate the implementation of human rights standards in the private sector
- 4 - Information and transparency
- 5 - Independent oversight
- 6 - Non-discrimination and equality
- 7 - Data protection and privacy
- 8 - Freedom of expression, freedom of assembly and association, and the right to work
- 9 - Remedies
- 10 - Promotion of “AI literacy”

# Ethical charter on the use of AI in judicial systems **CEPEJ**

Council of Europe adopts first European Ethical Charter on the use of artificial intelligence in judicial systems

STRASBOURG | 04/12/2018



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The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has adopted the first European text setting out ethical principles relating to the use of artificial intelligence (AI) in judicial systems.

The Charter provides a framework of principles that can guide policy makers, legislators and justice professionals when they grapple with the rapid development of AI in national judicial processes.

The CEPEJ's view as set out in the Charter is that the application of AI in the field of justice can contribute to improve the efficiency and quality and must be implemented in a responsible manner which complies with the fundamental rights guaranteed in particular in the European Convention on Human Rights (ECHR) and the Council of Europe Convention on the Protection of Personal Data. For the CEPEJ, it is essential to ensure that AI remains a tool in the service of the general interest and that its use respects individual rights.

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# Ethical charter **CEPEJ**

## 5 principles

- ▶ Principle of respect of fundamental rights
- ▶ Principle of non-discrimination
- ▶ Principle of quality and security
- ▶ Principle of transparency, impartiality and fairness
- ▶ Principle **“under user control”**

# Guidelines and report **Convention 108+**

## New Guidelines on Artificial Intelligence and Data Protection

STRASBOURG | 30/01/2019



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On the occasion of [Data Protection Day](#) on 28 January, the Consultative Committee of the Convention for the Protection of Individuals with regard to the Processing of Personal Data (Convention 108) has published [Guidelines on Artificial Intelligence and Data Protection](#).

The guidelines aim to assist policy makers, artificial intelligence (AI) developers, manufacturers and service providers in ensuring that AI applications do not undermine the right to data protection.

They address the new challenges induced by the development of AI that need to be faced. As the Convention's Committee stated in a [report](#) prepared by Alessandro Mantelero, "personal data have increasingly become both the source and the target of AI applications". Furthermore, the latter are "largely unregulated and often not grounded on fundamental rights". The adoption of a legal framework by the Council of Europe aims thus "to favour the development of technology grounded in these rights" and which are "not merely driven by market forces or high-tech companies".

# Guidelines and report **Convention 108+**

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# Instruments of MSI-AUT

MSI-AUT Committee of experts on Human Rights  
Dimensions of automated data processing and different  
forms of artificial intelligence



Under the supervision of the CDMSI, drawing upon the existing Council of Europe standards and the relevant jurisprudence of the European Court of Human Rights, the MSI-AUT will prepare follow up with a view to the preparation of a possible standard setting Instrument on the basis of the study on the human rights dimensions of automated data processing techniques (in particular algorithms and possible regulatory implications).

MSI-AUT will also study the development and use of new digital technologies and services, including different forms of artificial intelligence, as they may impact peoples' enjoyment of fundamental rights and freedoms in the digital age – with a view to give guidance for future standard-setting in this field. Furthermore, MSI-AUT will study the impact of civil and administrative defamation laws and their relation to the criminal provisions on defamation, as well as jurisdictional challenges in the application of those laws in the international digital environment.



*"Everyone has the right to freedom of expression"*

Art. 10 European Convention on Human Rights

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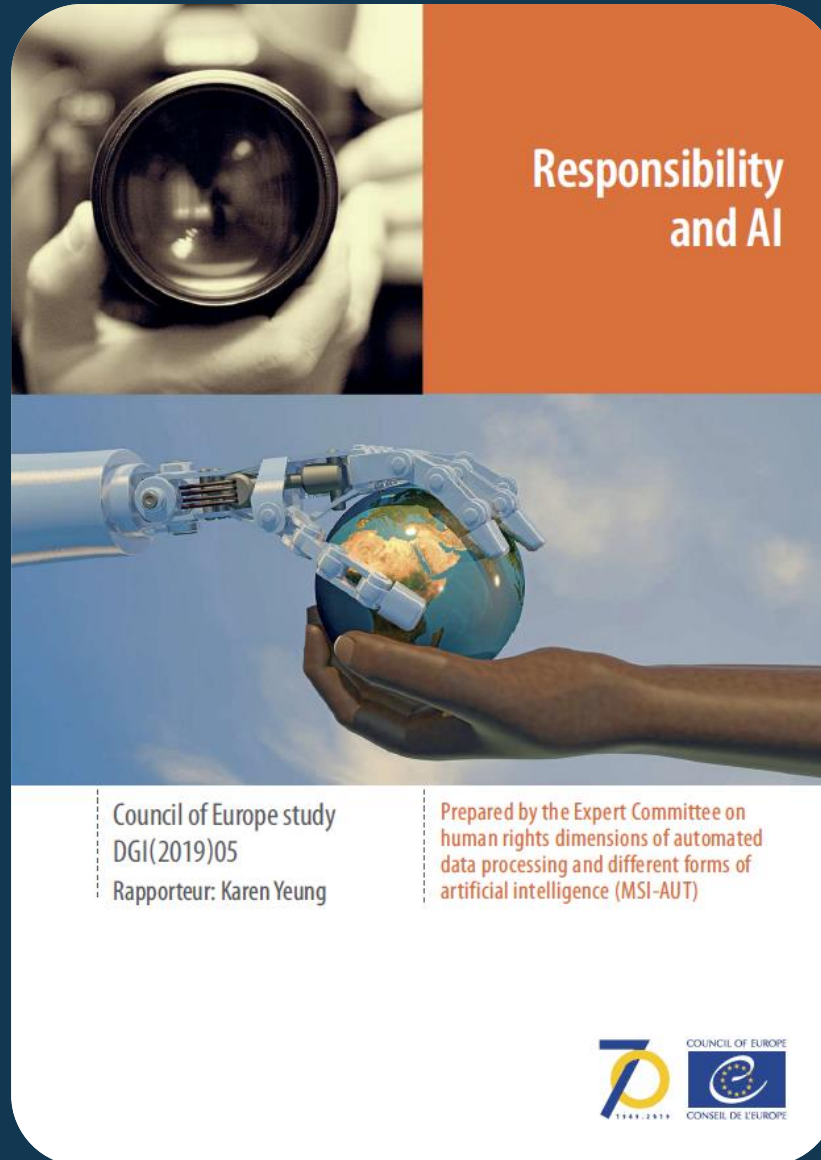
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# Instruments of MSI-AUT



# Study of ECRI

## Discrimination, Artificial Intelligence and Algorithmic Decision-Making

STRASBOURG | 07/02/2019



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Artificial intelligence (AI) has a huge impact on our personal lives and also on our democratic society as a whole. While AI offers vast opportunities for the benefit of people, its potential to embed and perpetuate bias and discrimination remains one of the most pressing challenges deriving from its increasing use. This [new study](#), entitled "Discrimination, Artificial Intelligence and Algorithmic Decision-Making", which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence (AI).

Discrimination and other types of artificial intelligence (AI) are a major concern for the Council of Europe. The study, entitled "Discrimination, Artificial Intelligence and Algorithmic Decision-Making", which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence (AI). This new study, entitled "Discrimination, Artificial Intelligence and Algorithmic Decision-Making", which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence (AI). This new study, entitled "Discrimination, Artificial Intelligence and Algorithmic Decision-Making", which was prepared by Prof. Frederik Zuiderveen Borgesius for the Anti-discrimination Department of the Council of Europe, elaborates on the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence (AI).

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# Study of ECRI

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# Helsinki conference, 26-27/02/2019

## « **Governing the Game Changer** »





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# Helsinki conference, 26-27/02/2019

## « Governing the Game Changer »

Organised around the three main pillars that constitute the Council of Europe core values, human rights, democracy, and the rule of law, panel discussions addressed the **challenges and opportunities of AI development for individuals, for societies, and for the viability of our legal and institutional frameworks**, and explored options for ensuring that effective mechanisms of democratic oversight are in place.



# Next steps?





# STEPS

01

Consult

02

Regulate

01

## Broad multistakeholder consultation

Member States, Observer States, other international and regional organisations, private sector, civil society, academia, etc.

02

## Feasibility study

Identify possible gaps in applicability and enforceability of existing frameworks, proposing different types of legal instruments



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