

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 19 September 2023

**EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE  
(CDDG)**

**Comments of the CDDG on the consolidated working draft for the  
framework convention on artificial intelligence, prepared by the  
Committee on Artificial Intelligence (CAI)**

**Approved by written procedure**

Secretariat Memorandum  
prepared by the  
Directorate General of Democracy and Human Dignity  
Democratic Governance Division

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1. These comments of the CDDG are based on the latest version of the draft framework convention on AI dated 7 July 2023 ("Consolidated Working Draft", doc. CAI(2023)18), also [available on-line](#). The CDDG hopes that these comments will assist CAI in its work. The comments are focussed on questions of democracy, reflecting the CDDG's responsibilities in this field.

#### **Article 4**

2. The CDDG welcomes the approach taken for the scope in Article 4, which appears to both regulate the discharge of public functions, whether by public authorities or private sector actors, and to set a framework for the regulation of private sector activities by the convention's contracting parties.

3. The delivery of public functions should serve the people and deliver well-being for all. As such, both public authorities and private sector actors undertaking public functions are under obligations in relation to democracy and human rights. The design, development, use and decommissioning of AI systems by public authorities or by private sector actors acting to deliver a public function should thus be subject to effective oversight, robust accountability, and transparency requirements reflecting those obligations. The Draft Convention should **clearly define a public authority**.

4. Democracy is based on two cornerstone assumptions, i.e. that citizens have both agency (capacity to form an opinion and act on it) and influence (capacity to affect decisions made on their behalf). Depending on how AI systems are designed and utilised and by whom, AI systems have the potential to strengthen or undermine agency and influence, and therefore ultimately also democratic processes and institutions. The Draft Convention should make it clear that **there is a recognition that technological innovation has the capacity to strengthen and make more effective the functioning of democracy, but equally it should provide that under no circumstances should it harm the functioning of democracy**.

5. In Article 4(1), the CDDG would suggest that it might be appropriate to widen the link between AI and human rights, democracy, and the rule of law to go beyond "interfering". The use of the word "interfere" prima facie appears to narrow the purpose set out in Article 1(1). Article 4 should be clearer why it is targeting certain uses of AI so that it is clearer what the framework convention is targeting. **Accordingly, we would suggest that the scope should be where it has the potential to "interfere with, or impact human rights and fundamental freedoms, the functioning of democracy or the observance of the rule of law"**.

#### **Article 6**

6. As currently drafted, Article 6 deals both with democratic processes and respect for the rule of law. While interconnected, they are different concepts. At the recent Heads of State and Government summit in Reykjavik, member states of the Council of Europe have recognised the importance of democracy, recalling that **democracy is the only means to ensure "that everyone can live in a peaceful, prosperous and free society"**.

The Heads of State and Government reaffirmed the need to protect it from autocratic tendencies and other threats that could undermine its core values and adopted the [Reykjavik Principles for Democracy](#). And on 6 September, the Committee of Ministers adopted Recommendation CM/Rec(2023)5 to member states on the principles of good democratic governance, as the first international legal instrument in this field ([link to the Rec](#); [link to the explanatory memorandum](#)). Accordingly, the CDDG considers that the framework convention should explicitly protect and safeguard the spirit/concepts enshrined in these principles which **collectively form a cohesive whole that extends**

**beyond the sum of its individual parts.** CDDG therefore suggests a separate Article on democracy and a separate Article on the rule of law.

7. The characteristics of any democratic system, regardless of national differences and specificities, recognised in the Reykjavik Principles, include:

- The separation of the three branches of power (executive, legislative, judiciary);
- An effective system of checks and balances between the branches of power, including parliamentary oversight of the executive;
- A balanced distribution of powers between different levels of government;
- Political pluralism (freedom of expression, freedom of association and freedom of assembly; and existence of a range of political parties representing different interests and views);
- Free and fair elections, and a plurality of forms of civil and political participation;
- The rule of the political majority with respect to the rights of the political minority;
- The rule of law, with nobody being above the law;
- respect for human rights and individual freedoms.

Moreover, the recently adopted [CM/Rec \(2023\)5 of the Committee of Ministers to member States on the principles of good democratic governance](#) lists **a series of principles which could apply to, and be translated into various specific provisions for the democratic governance of AI:** democratic participation, human rights, rule of law, of course, but also:

- public ethics
- accountability
- openness and transparency
- efficient, effective and sound administration
- leadership, capability and capacity
- responsiveness
- sound financial and economic management
- sustainability and long-term orientation
- openness to change and innovation.

[An Explanatory Memorandum](#) to CM/Rec (2023)5 provides further important details.

8. As regards the rule of law, AI systems are increasingly being used in public administration to automate tasks and support decision-making. While AI systems might improve efficiency, their design, development and use raises concerns about accountability, transparency and the level of delegation of decision-making authority to algorithms or AI systems, among others.

**9. The consolidated draft should neither suggest that AI systems could make or take final decisions nor that AI systems could replace humans in decision making of final decisions of no further appeal.** In all cases, effective mechanisms for appealing decisions made or supplemented by the use of AI systems and seeking redress for any damage suffered as a result of those decisions, as well as oversight and auditing, need to be in place.

10. The consolidated draft should make clear that the defence of a decision should never rest solely on its having been made by an AI system. **The consolidated draft should set out the principles which should underpin the use of AI in decision making, especially that there should always be a system of oversight by the decision maker and a route to appeal to a human for anyone affected by the decision making.**

11. The CDDG suggests that separate articles on democracy and on the rule of law are inserted – example of wording:

## **Article 6: Safeguarding the functioning of democracy**

1. *Each Party shall take the necessary measures to ensure that artificial intelligence systems are not used to undermine the integrity, independence and effectiveness of democratic institutions and processes, including the preparation and conduct of regular, free and fair elections in accordance with international standards, the separation of powers, judicial independence, and transparency and accountability obligations.*
2. *Each Party shall take the necessary measures to protect the freedom of anyone to hold opinions without interference (or manipulation) through the design, development, and use of artificial intelligence systems, including the freedom to seek, receive and impart information of all kinds.*
3. *Each Party shall take the necessary measures to protect the ability of anyone to participate in democratic processes and have equal and fair access to public debate without interference (or manipulation) through the design, development, and use of artificial intelligence systems, and to protect the freedoms of assembly, association and expression.*
4. *Nothing in this Article should be read to prevent the use of artificial intelligence systems being used to enhance the functioning of democracy.*

## **Article [7]: Safeguarding the Rule of Law**

1. *Each Party shall take the necessary measures to ensure that the use or incorporation of artificial intelligence systems in the discharge of public functions in no way undermines the exercise of those powers in good faith, fairly, for the purposes for which the powers were conferred, without exceeding the limits of those powers and not in an unreasonable way.*
2. *Each Party shall take the necessary measures to ensure that, notwithstanding the use of artificial intelligence systems, public officials or duly elected or appointed public representatives charged with the exercise of discretionary or decision-making powers in the discharge of public functions shall remain accountable for the exercise of those powers.*
3. *Each Party shall take the necessary measures to ensure that public officials or duly elected or appointed public representatives charged with the exercise of such powers cannot found a defence of decisions or actions taken by them or on their behalf solely on the results obtained from the use of artificial intelligence systems.*
- [4. *Each Party shall take the necessary measures to ensure an effective right of appeal to an independent and impartial tribunal capable of affording sufficient redress against any decisions taken in the exercise of a public function by or with the assistance of artificial intelligence systems and to anyone affected by the design, development, use, or decommissioning of artificial intelligence systems used in the discharge of public functions. (\*)*
5. *Each Party shall take the necessary measures to ensure that any judicial review of a decision taken in the exercise of a public function is not wholly dependent on the use of artificial intelligence. (\*)]*

(\*) Note: the principle of a judicial review is obviously an important subject in relation to the rule of law. As necessary, and in order to ensure consistency with the chapter on "remedies", these two sub-paras could be moved to the developments on "remedies".

12. General remark: in line with the requirements of inclusive language at the Council of Europe, it would be more appropriate in French to refer as much as possible to "droits humains" rather than "droits de l'homme".