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COUNCIL OF EUROPE



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## Council of Europe Standing Conference of Ministers of Education

### REGULATING ARTIFICIAL INTELLIGENCE IN EDUCATION

#### 1. Why regulate Artificial Intelligence in Education?

Artificial Intelligence (AI) is a rapidly evolving and complex technology that is increasingly impacting various aspects of daily life, including education. While AI might present opportunities for enhancing teaching and learning, it also poses potential risks and challenges related to its implications on human behavior, child development, and the overall socio-economic conditions of those involved. Thus, regulating AI in educational contexts is crucial ..

It has been argued that, when deployed in educational settings, AI-enabled technologies have the potential to support diverse learners, including children and lifelong learners, as well as those who have special needs. Data analytics might also offer insights into the learning process, while voice assistants and adaptive tutoring might have the potential to foster more inclusive education.

However, it is essential to acknowledge also the potential negative impacts of AI-enabled technologies on education. Poor pedagogic practices might be automated, and existing biases and discriminatory approaches could be perpetuated and disseminated, along with disinformation and misinformation. This could result in disempowering both teachers and students and could undermine human rights, in particular the right to quality education. Moreover, there is a risk of devaluing certain important aspects of education, in particular the role and the tasks of teachers as educators, incrementing the mistrust in their capacity to teach in a digital and AI learning environment. Additionally, an overemphasis on easily measurable skills rather than promoting humanistic values such as collaboration, critical thinking, ethics, and democratic ideals that are harder to assess also poses a threat to quality education. The scarcity of independent evidence for the efficacy, impact, or safety of AI-enabled technologies in educational settings necessitates proper investigation through common standards and an international review system of such technologies.

Over the past decade, significant strides have been made in digital transformation within European education systems. The Digital Citizenship Education (DCE) program, based on the 20 Competences for Democratic Culture, has provided valuable policy guidance and practical tools to member States. The Recommendation CM/Rec(2019)10 on developing and promoting

digital citizenship education sets out guiding principles for member States to promote digital citizenship education and encourages them to take action.

Nonetheless, there are still shortcomings, which were further exacerbated by recent crises, especially in terms of the heightened demand for online education and the challenges of ensuring access to quality education for all. Additionally, the emergence of generative AI systems, like ChatGPT, has raised additional concerns over its use and application by learners and teachers regarding ethics and integrity in education, of plagiarism, over reliance, its rapid spread through adoption (eg Khanmigo and OpenAI) into pre-existing edTech, and for the assessment and awarding of qualifications; over its sourcing of training data for individuals and the education publishing industry; and over the impacts on society from the potential for increased manipulation and mistrust through the creation of, and replication of disinformation online.

This concern constitutes an education challenge to rethink teaching and learning using AI tools.

In light of these factors, it is crucial for education systems to address these shortcomings and provide support to all education stakeholders in leveraging the potential of AI-enabled systems and other emerging technologies. Ensuring transparency, accountability/responsibility, high-quality pedagogy, and adherence to the core values of the Council of Europe should be at the forefront of regulating the use of AI in education. By doing so, we can fully harness the benefits of AI while safeguarding the rights and well-being of all individuals involved in the educational process.

## **2. What are the existing regulatory frameworks?**

According to UNESCO, while ChatGPT reached 100 million monthly active users in January 2023, only one country has released regulation on generative AI. In the meantime recent legislative developments in some of the Council of Europe member States and in other countries beyond the European continent (Australia, USA) as well as at UNESCO level, emphasize the need for a human-rights-centered approach to ensure responsible and ethical use of AI in education.

Education is 'both a human right in itself and an indispensable means of realizing other human rights'. It is therefore fundamental to ensuring the realisation of individual potential, the full enjoyment of other human rights, and the active engagement of citizens in a democratic society. In some countries lawmakers (ex. Australia) are suggesting that 'the understanding of the right to education should be broadened to include digital competencies and access to the Internet as a means of supporting the right to education, the right to information and cultural rights'.

As emphasised by the Convention on the Rights of the Child (CRC) and its General Comment no.25, the best interests of the child should be a primary consideration in the digital environment, without falling into the trap of developing overly protectionist agendas that could be detrimental to the development of their personality.

Regarding data protection, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and Convention 108+help preserve human dignity and provides an enabling and secure framework to free flow of data in on an international level going beyond the CoE member states. However, to date, only very few,

non-binding frameworks such as the Montreal Declaration<sup>1</sup> address ensuring AI Technologies do not harm quality of life or the reputation or psychological integrity of their users. Within the European Union, the General Data Protection Regulation (GDPR)<sup>2</sup> is a significant regulation concerning data protection and privacy for all individuals. It applies to the processing of personal data, including data collected and used by AI systems.

When it comes to ethical concerns, the UNESCO Recommendation on the Ethical use of AI and the report on Generative AI in Education or the Ethics Guidelines for Trustworthy AI<sup>3</sup> of the European Commission provide a framework for the development and use of AI that respects fundamental rights, principles, and values. They focus on ensuring AI systems are human-centric, transparent, and accountable/responsible.

The AI Act of the European Commission with its risk-based approach aims to make sure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory and environmentally friendly.

In a similar approach the Council of Europe's Committee on Artificial Intelligence (CAI) is working on a new Framework Convention on the development, design, and use of Artificial Intelligence systems based on the Council of Europe's standards on human rights, democracy, and the rule of law.

Both regulatory frameworks will define the general obligations and principles, but are not designed to address the specific needs of each public policy sector, especially when it comes to the risks involved. In particular, neither framework addresses the specific concerns raised when AI-enabled technologies are used in educational settings.

Furthermore, the Feasibility study on a legal framework on AI design, development and application based on CoE standards (2020) undertaken by the Council of Europe Ad-hoc Committee on Artificial Intelligence (CAHAI) (2019-2021) also concludes that:

*“This instrument (the Framework Convention on AI) could be combined with additional binding or non-binding sectoral Council of Europe instruments to address challenges brought by AI systems in **specific sectors**. This combination would also allow legal certainty for AI stakeholders to be enhanced, and provide the required legal guidance to private actors wishing to undertake self-regulatory initiatives. Moreover, by establishing common norms at an international level, transboundary trust in AI products and services would be ensured, thereby guaranteeing that the benefits generated by AI systems can travel across national borders. It is important that any legal framework includes practical mechanisms to mitigate risks arising from AI systems, as well as appropriate follow-up mechanisms and processes and measures for international co-operation.”*

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<sup>1</sup> <https://declarationmontreal-iaresponsable.com/>

<sup>2</sup> <https://gdpr-info.eu/>

<sup>3</sup> <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>

### **3. What will be the added value of a dedicated legally-binding instrument on the use of AI in education?**

The critical reflections presented in the recent Council of Europe report on Artificial Intelligence and Education: A critical view through the lens of human rights, democracy and the rule of law<sup>4</sup> (2022) identify some of the gaps in the legal arena and draw attention to the urgent need for education-specific legislation. This is also supported by a recent Council of Europe survey on The State of Artificial Intelligence and Education Across Europe: the results of A a Survey of Council of Europe Member States ( 2022 which found that only 4 out of the 23 member states who responded reported that they had policies and regulations in place for the use of AI systems in education.

The details of the proposed legally-binding instrument will be developed and agreed by Member States if the enabling Resolution 3 is agreed at the Standing Conference of Ministers of Education, on 28 and 29 September 2023.

However, it is likely that the aim of the proposed instrument will be to ensure a human rights-based approach when Artificial Intelligence systems are used in education. The new instrument will follow and complement the (CoE Draft) Framework Convention on Artificial Intelligence. Such a dedicated legally-binding instrument on the use of Artificial Intelligence in education should build on existing work in Member States, which will allow it to provide a focus for multilateral actions. An example provision might be to establish a common structure for the review of AI-enabled technologies before they are deployed in educational settings. This might involve a one-time accreditation of an AI-enabled technology by one Member State that enables other Member States to use the same technology without further assessment or review, thus simplifying inter-Member State cooperation.

A convention establishes a higher level of commitment and co-operation among Member States, which helps them align their policies and practices. As digital technologies, specifically Artificial Intelligence, evolve very rapidly, it is critical that the new instrument is comprehensive, up-to-date, and sufficiently flexible to cover the use of other emerging technologies that might be used in the education sector. It should also consider the private sector as a key actor in this process and involve them in the discussions from the very beginning. The proposed instrument would also provide an opportunity to set and develop standards and guidance across Europe, and to encourage further and more in-depth research into the longer-term impact of the use of Artificial Intelligence in education, contributing to evidence-based policy making.

Monitoring is also likely to be a key requirement of the proposed convention, as it could provide an incentive and encouragement for Member States to implement their commitments, provides them with support and expert assistance, and helps to address gaps in implementation. Monitoring should be positive and supportive rather than blaming the process.

### **4. Roadmap for development**

In order to ensure a participatory, step-by-step approach, it is suggested that the proposed instrument builds on a preparatory study currently in preparation (to be finalised for publication

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<sup>4</sup> <https://www.coe.int/en/web/education/-/new-isbn-publication-artificial-intelligence-and-education>

by the end of 2023), followed by the establishment of a small drafting group, a sub-committee specialised on AI and education, under the Steering Committee for Education (CDEDU).

Drafts will be developed by this sub-committee, which will convene at least 4 times (2 in-person and 2 online) a year. The CDEDU will be consulted on each successive draft. The deadline for completion of the Convention by the CDEDU and the Secretariat is 2025, as set out in the Programme and Budget and the CDEDU Terms of Reference.