

HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT

THE ADVENT OF AI:
RESHAPING CRIMINAL PROCEDURE

Luxembourg

7 November 2024

The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

Ambassador Thomas SCHNEIDER

Director of International Relations at Swiss Federal Office of Communications
Chair of the Committee on Artificial Intelligence 04.2022-09.2024



AI is a(nother) disruptive technology

- Industrial revolution of the 19th century:
-> engine-driven machines replace repetitive **physical** labour:
 - Machines to process raw material into goods or food
 - Machines that move beings or goods from one place to another
- Digital revolution of the 21st century:
-> AI-driven machines replace repetitive **cognitive** labour:
 - Process or generate content
 - Analyze data and prepare or take decisions



- Transformation of workplaces, labor environments and skills?
- Transformation of all markets: Scaling effects, new gatekeepers?
- Creation of new powerful global oligopolies across all sectors?
- Dangers to human rights & dignity: discrimination, privacy...?
- Rule of law: liability? Judicial system? Redress mechanisms?
- Personalization/manipulation: risks for functioning of democracy?
- Fears of loss of control: as individual, business & whole society?
- Every new technology creates **winner and losers**: if we want to get all members of our societies to accept and use AI, then (potential) “winners” need to share with “losers” so that they come along!

Regulating AI: Challenges

- What are we talking about: Definition of AI?
- Context-based opportunities & risks:
How to develop regulation appropriate to contexts?
- Fast developing technology:
Not regulate technology but its impact? Yes, but how?
- Cross-border phenomenon vs. national jurisdiction & regulation?
- Horizontal vs. sector-specific regulation?
- Binding laws vs. co- or self-regulation?

Regulating AI: Issues to consider

- What is **really new** with AI? What are the **gaps**?
What is the **delta** that is not covered in existing regulation?
- Dealing with AI: What are precedents/analogies to learn from?
- How we did and do “regulate” engines:
 - There is **no one single** “engine law” !
 - 1000s of technical, legal and sociocultural norms & institutional settings for engines / machines / people / infrastructure, etc. (with different levels of international harmonization)
 - Same for AI: Not one single law or standard, but mix of norms, (with different degrees of international harmonization)

Regulating AI: Issues to consider II

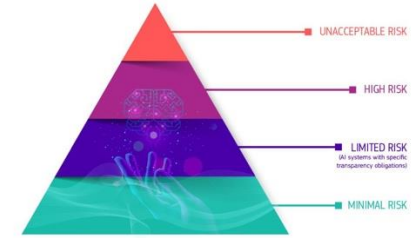
- Despite many parallels:
AI-systems are not engines, data is not oil:
Data & AI are not physical, but **dematerialized**
-> can be copied, moved and used anywhere
-> evolve in nature and functioning
- We need new **agile & differentiated approaches** for governing & regulating new technologies!

Regulating AI: International developments since 2018

- OECD: 2019 Recommendation:
Principles for responsible stewardship of trustworthy AI
- CoE: 2019: Ethical Charter on use of AI in judicial system
2020: Rec. Human Rights impacts of algorithmic systems
- UNESCO 2021: Recommendation on ethics on AI
- Other non-binding norms by other actors:
 - Industry self-regulatory guidelines
 - Guidance from NGOs, think tanks, national strategies, etc.
- Soft Law & self-regulation is necessary - but is it sufficient?

Approaches in different countries

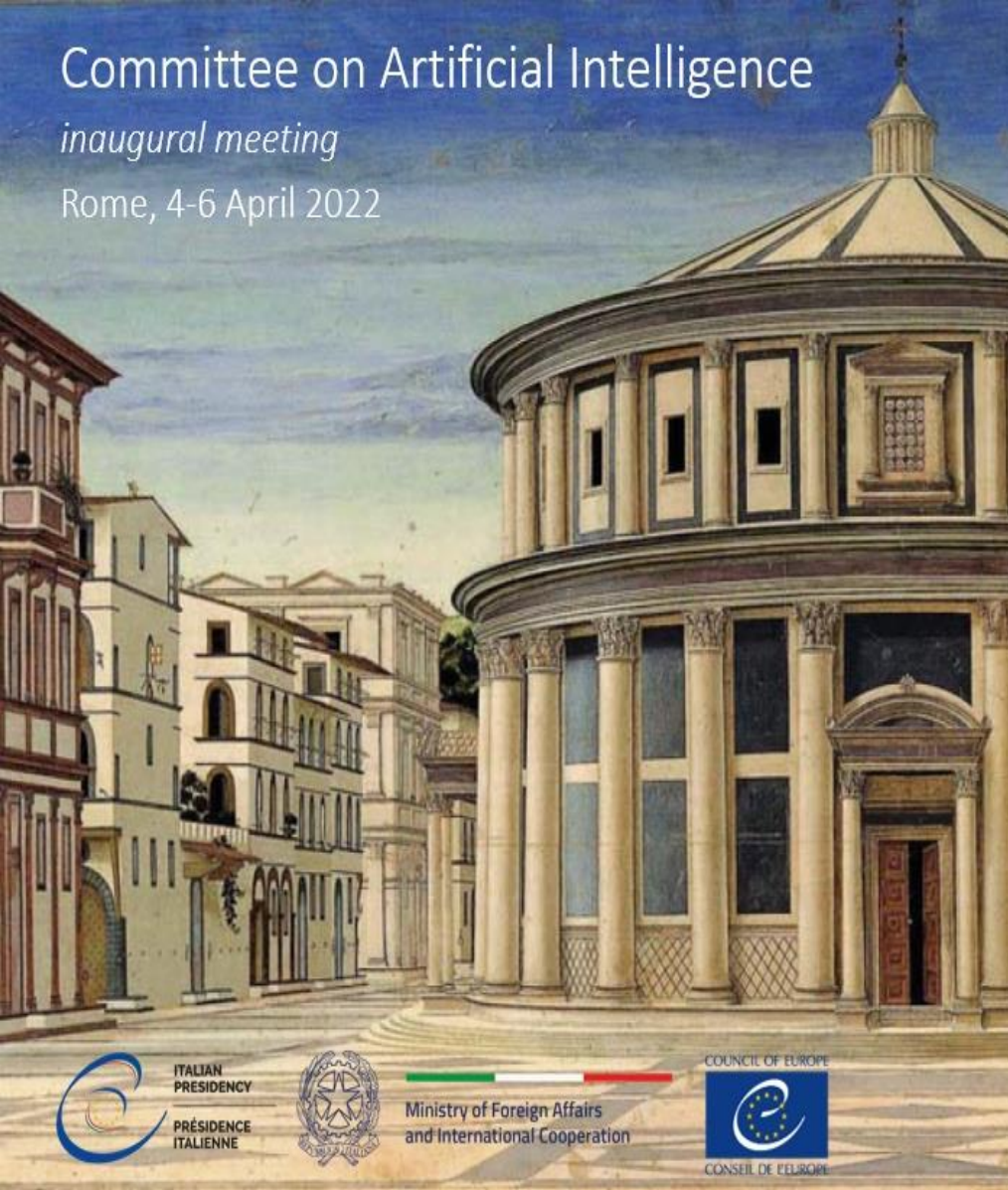
- EU: AI Act (& other digital Acts)
risk-based approach
- US: Voluntary Commitments & Executive Order:
set of policy goals based on a mix of measures
- UK: White paper, AI safety institute, empowerment and
coordination of regulators
- JP, CH and others...
- Approaches in individual countries:
 - **similar objectives**: protection of Human Rights, Democracy
and Rule of Law while fostering innovation
 - **different approaches** shaped by their political and
institutional cultures and settings
 - > what harmonisation / interoperability is needed?



Committee on Artificial Intelligence

inaugural meeting

Rome, 4-6 April 2022



Ad-Hoc Committee on Artificial Intelligence (2019-21)

- **feasibility study** for and **potential elements** of a legal framework for the development, design and application of AI systems, based on CoE's standards on HR, Dem & RoL

Committee on Artificial Intelligence (2022-24)

- elaborate an **appropriate legal framework** (convention) on the development, design and application of AI
 - based on CoE standards on HR, Dem & RoL
 - conducive to innovation
 - global instrument, not just CoE member states
 - complementary to existing and future standards
 - involvement of all stakeholders
- Develop a methodology for a **HUDERIA**

CAI: Purpose and process

- Purpose:
nor create new substantive rights, nor weaken /undermine existing rights and protections in any country.
But: **make sure that the existing protection levels** of HR, Dem & RL would **also apply to** the development and use of **AI**
- importance of treaty becoming a **global instrument**: CoE plus ARG, AUS, CAN, CRC, ISR, JAP, MEX, PER, URU, USA & HS
- **Inclusive process**: other CoE bodies & IGOs (OECD, OSCE, UNESCO, etc.) & >70 reps from civil society, business, technical and academic community
-> active participation, comments, text proposals to the draft until the very last day of negotiations

Challenges:

- European vs. Global approach?
- Scope of application:
 - Application to Public vs. Private actors?
 - National security?
- Principle of non-discrimination: what grounds?
- Logic and nature of risk and impact assessment?
- Remedies: what requirements for AI actors?

General points

- formulates **fundamental principles and rules**
 - safeguard human rights, democracy and the rule of law
 - conducive to progress and technological innovations.
- **complementary** to the already existing international HR, Dem & RoL standards and aims at filling-in any **legal gaps** that may have formed as a result of rapid technological advances
- remain **future-proof**: operating at high level, does not regulate technology and is essentially **technology neutral**
- uses a **risk-based** and **graduated and differentiated approach** based on severity and probability of adverse impacts
- **Broad scope** of application: address risks by **public and private** actors – but in different ways and with a lot of **flexibility**

Principles related to AI

- Human dignity and individual autonomy
- Transparency and oversight
- Accountability and responsibility
- Equality and non-discrimination
- Privacy and personal data protection
- Reliability and trust
- Safe innovation

Remedies and Procedural safeguards

- obligation **to document** relevant **information** and to make it **available**
- information should be **sufficient to contest AI based decision(s)**
- **Effective possibility** to lodge a complaint to competent authorities

Assessment and Mitigation of Risks and Adverse Impacts

FC timeline of milestones

- 4 April 2022: 1st CAI meeting in Rome
- 30 June 2022: distribution of first «zero draft»
- 1 Jan 2023: beginning of negotiations in the CAI
- 14 March 2024: framework convention adopted by the CAI
- 17 May 2024: FC adopted by the CoE Committee of Ministers
- 5 September 2024: Signing Ceremony in Vilnius:
FC opened for signature. 36 countries signed on the first day
(AD, GE, IS, NO, MO, SM, UK, IL, US & 27 EU MS)
- Entry into force: 3 months after ratification of 5 countries
(of which at least 3 are CoE member states)

Outlook and food for thought...

- CoE framework convention is one important step, but not the last...
- We will need to continue to develop technical, legal and socio-cultural norms – on local, regional and global levels.
- We need to develop international dialogue and cooperation, with a view to develop a globally shared vision about how to use AI for good (and not for bad)
- We need to work on interoperability of norms
- We need to develop new and more agile forms of governance and policy making fit for the technologies of the 21st century (we are currently working with the governance framework built during the 1st industrial revolution in the 19th century)



Thank you for
your attention !



further resources:

www.coe.int/freedomofexpression

www.coe.int/internetgovernance

www.coe.int/dataprotection

www.coe.int/cybercrime

www.coe.int/AI

Facebook Page

CoE Digital Governance