

Conference of INGOs

Recommendations to PACE prior to drafting its Opinion in the Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

1. No blanket exemption for national security:

Regarding the scope of the Framework Convention, the current final draft version at **Article 3, para 2**, establishes a blanket exemption by default for AI activities related to national security interests:

“A Party shall not be required to apply this Convention to the activities within the lifecycle of artificial intelligence systems related to the protection of its national security interests, with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes.”

We strongly object to consider “national security” as a blanket exemption rather than a legitimate ground for restrictions to the application of the Framework Convention based on legality, necessity and proportionality.

Proposed Revision:

- We strongly recommend adopting the following option previously considered by the Drafters was the following:

“[Nothing in this Convention shall be construed as limiting] / [This Convention shall not limit] the ability of a Party to take the measures that it determines are necessary to protect its national security interests, consistent with its applicable obligations under international law, including international human rights law.”

We do note that the current formulation adopted at the CoE Committee on AI (CAI) still requires that activities should be conducted in a manner consistent with applicable international law, including human rights law. However, this caveat also equally applies to all other AI-related activities that are covered by the scope of the draft Framework Convention. The Framework Convention does not create new rights, but it tailors them and adapts them to the new digital era and technologies. Therefore, **the loophole of this Framework Convention for national security alone cannot be justified under this pretence.**

Either we argue that in order to ensure the protection of human rights, rule of law and democracy in the AI sector it is sufficient to rely on the already existing international human rights law/obligations (such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights) – but if that is the case, then we do not even need the adoption of an *ad hoc* Framework Convention on AI – or we do acknowledge that we need a new legal instrument and then the principles and obligations of this new instrument should apply to **all the areas** that are within the mandate and competence of the

Council of Europe. **The Framework Convention should apply horizontally to all AI activities, with restrictions – not blanket exemptions – only possible when fulfilling the three-part test established by international human rights law (legality, based on legitimate grounds and necessary and proportionate in a democratic society.)**

2. Health and Environment to be reintroduced in List of Principles and/or Criteria for Risk and Impact Assessment:

In a previous version, **Chapter III** of the draft Framework Convention (**Principles related to activities within the lifecycle of artificial intelligence systems**) included the following additional Principle:

“Preservation of Health and the Environment:

Each Party shall adopt or maintain measures to preserve health and the environment in the context of activities within the lifecycle of artificial intelligence systems.”

However, this Principle has been removed from the final draft.

We are not going to mince words here and we find it simply **appalling that “general common principles” (not even “rights”, as introduced by Article 6) related to AI activities/lifecycle do not specifically acknowledge and address the need to preserve health and environment. This goes blatantly against, the CoE commitment on the environment expressed in the Reykjavik Declaration (Appendix V): “Together we commit to: i. strengthening our work at the Council of Europe on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 “The human right to a clean, healthy and sustainable environment”, and by pursuing the implementation of Committee of Ministers Recommendation CM/Rec(2022)20 on human rights and the protection of the environment.”**

Proposed Revision:

- Reintroduce “Preservation of Health and the Environment” as one of the Principles that have to inform the actions of Member States in the context of activities within the lifecycle of artificial intelligence system.

Or alternatively:

- Amend Article 16 (Risk and impact management framework) to ensure it explicitly includes “Preservation of Health and the Environment” in the list of criteria for conducting risk and impact assessment.

We respectfully remind that even the EU AI Act provisions establishing mandatory fundamental rights impact assessments, while not explicitly singling out the protection of health and the environment, refer to the Charter of Fundamental Rights of the EU, which includes Environmental Protection (Article 37: **“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”**). Furthermore, Article 11 TFEU establishes that **“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.”**

3. Overall imprecise language throughout the text leading to legal uncertainty and unenforceability

The provisions of the draft Framework Convention include carefully diluted language that nullifies in practice the possibility for a relevant stakeholder to hold the State Parties accountable for potential lack of compliance with this legal instrument. This raises **serious questions and concerns about the enforceability and effectiveness of the (few) obligations outlined in the draft Convention.**

See, for example, the recurrent use of expressions such as “seek to ensure” in key provisions such as **Article 5, para 1 (Integrity of democratic processes and respect for rule of law):**

“Each Party shall adopt or maintain measures that seek to ensure that artificial intelligence systems are not used to undermine the integrity, independence and effectiveness of democratic institutions and processes, including the principle of separation of powers, respect for judicial independence, and access to justice.”

The obligation to ensure that AI systems “are not used to undermine” democracy and the rule of law is way too crucial for a Party to simply request that Parties “seek to” ensure it. If despite the Parties’ efforts, these AI systems are used to undermine the democratic processes and the rule of law, the Parties could simply argue that they still complied with what is ultimately only a generic commitment to do their best, without any further safeguards (e.g., obligation to impose harsh sanctions on the users). **We cannot compromise on this particular obligation affecting AI systems that impact the core of the Parties’ democratic essence and existence.**

And another example, in Article 15, para 2 (Procedural Safeguards):

“Each Party shall seek to ensure that, as appropriate for the context, persons interacting with artificial intelligence systems are notified that they are interacting with such systems rather than with a human.”

In this case, the possibility of not notifying the person is already included in “as appropriate for the context”. Therefore, if it is not appropriate, the Party will not notify; but **if it is appropriate, it should always notify, not just “seek to”.**

Proposed Revision:

- Replace “seek to ensure” in all relevant provisions with “ensure”.

As also clarified in the draft Explanatory Report (para 38), this Convention establishes “an obligation of result and not an obligation of means”. For this very reason, “Each Party has an obligation to ensure that its domestic law is in conformity with its applicable international human rights obligations”. **The obligation of result is to “ensure” – not just “seek” – that this is achieved.**