

CAHAI - Ad hoc Committee on Artificial Intelligence



www.coe.int/ai

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

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Ad hoc Committee on AI -
CAHAI

 Leaflet

The Committee will examine the feasibility and potential elements on the basis of broad multi-stakeholder consultations, 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**.

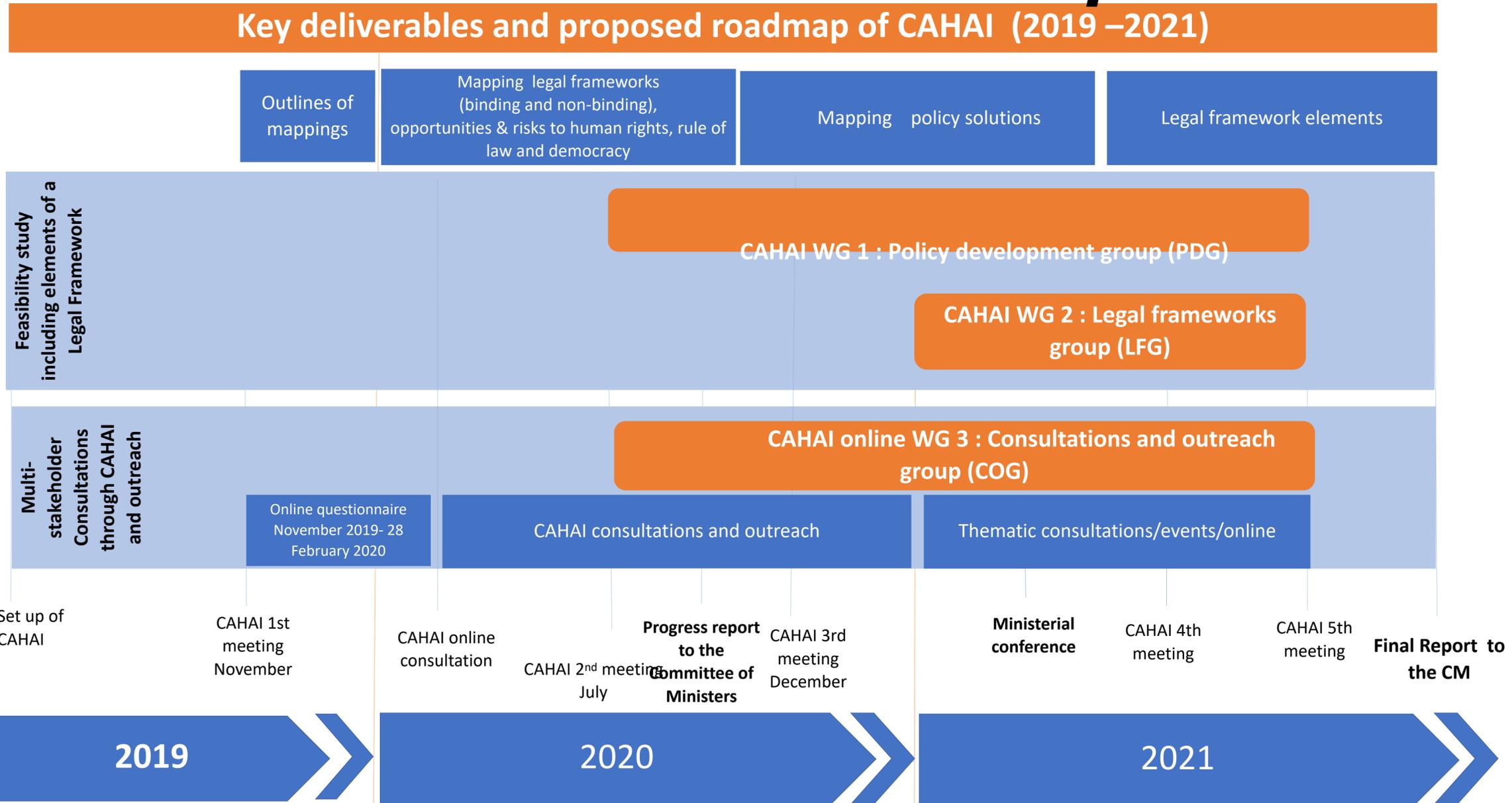
CAHAI FACTSHEET

[https://www.coe.int/en/web/artificial-intelligence/
cahai](https://www.coe.int/en/web/artificial-intelligence/cahai)

OR



CAHAI - the roadmap



<https://www.coe.int/en/web/artificial-intelligence/work-in-progress>

1. Binding and non-binding legal instruments (standards)

1. Transversal

- ▶ [Ongoing] A transversal legal instrument to regulate the design, development and use of artificial intelligence systems - CAI
- ▶ [Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems](#) - CM/Rec(2020)1
- ▶ [Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes](#) - Decl(13/02/2019)1
- ▶ [Unboxing AI: 10 steps to protect human rights](#) - Recommendation of the Commissioner for Human Rights, May 2019
- ▶ [Recommendation of the Parliamentary Assembly of the Council of Europe about Technological convergence, artificial intelligence and human rights](#) - Recommendation 2102(2017)

2. Privacy and Data Protection

- ▶ [New] [Recommendation of the Committee of Ministers on the protection of individuals with regard to automatic processing of personal data in the context of profiling](#) - CM/Rec(2021)8
- ▶ [Guidelines on Facial Recognition](#) - T-PD(2020)03
- ▶ [Guidelines on Artificial Intelligence and Data Protection](#) - T-PD(2019)01
- ▶ [Guidelines on the protection of individuals with regard to the processing of data in a world of Big Data](#) - T-PD(2017)1

3. Justice and public administration

- ▶ [New] [Ongoing] (Until end of 2022) Review of The Administration and You handbook in the light of the use of artificial intelligence (AI) and non-AI algorithmic systems (based on comparative study in member States) – CDCJ
- ▶ [New] [Guidelines on electronic court filing \(e-filing\) and digitalisation of courts](#) - CEPEJ(2021)15 (requirements regarding transparency and accountability regarding the court e-filing and decision-supporting systems, and regarding introduction of machine learning based predictive analytics), 9 December 2021
- ▶ [Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings](#) - CM(2021)36add4-final (transparency and accountability guidance for the use of AI systems)
- ▶ [European Ethical Charter on the use of artificial intelligence \(AI\) in judicial systems and their environment](#) - CEPEJ(2018)14



Feasibility study

1. GENERAL **INTRODUCTION**
2. **SCOPE OF APPLICATION** OF A COUNCIL OF EUROPE LEGAL FRAMEWORK ON ARTIFICIAL INTELLIGENCE
3. **OPPORTUNITIES AND RISKS** ARISING FROM THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE ON HUMAN RIGHTS, THE RULE OF LAW AND DEMOCRACY
4. THE COUNCIL OF EUROPE'S **WORK IN THE FIELD OF ARTIFICIAL INTELLIGENCE TO DATE**
5. **MAPPING OF INSTRUMENTS** APPLICABLE TO ARTIFICIAL INTELLIGENCE
6. MAIN CONCLUSIONS OF THE **MULTI-STAKEHOLDER CONSULTATIONS**
7. **MAIN ELEMENTS OF A LEGAL FRAMEWORK** FOR THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE
8. **POSSIBLE OPTIONS** FOR A COUNCIL OF EUROPE **LEGAL FRAMEWORK** FOR THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE BASED ON HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW
9. POSSIBLE PRACTICAL AND FOLLOW-UP **MECHANISMS TO ENSURE COMPLIANCE AND EFFECTIVENESS** OF THE LEGAL FRAMEWORK
10. **FINAL CONSIDERATIONS**

<https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>

OR



ARTIFICIAL INTELLIGENCE, HUMAN RIGHTS, DEMOCRACY, AND THE RULE OF LAW

A PRIMER

PREPARED TO SUPPORT THE FEASIBILITY STUDY
PUBLISHED BY THE COUNCIL OF EUROPE'S AD
HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE

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With a foreword by
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The
Alan Turing
Institute

<https://rm.coe.int/cahai-feasibility-study-primer-final/1680a1eac8>

OR



No legal vacuum, but ...

(see chapters 3 & 5)

Substantive and procedural **gaps**

Uneven protection levels

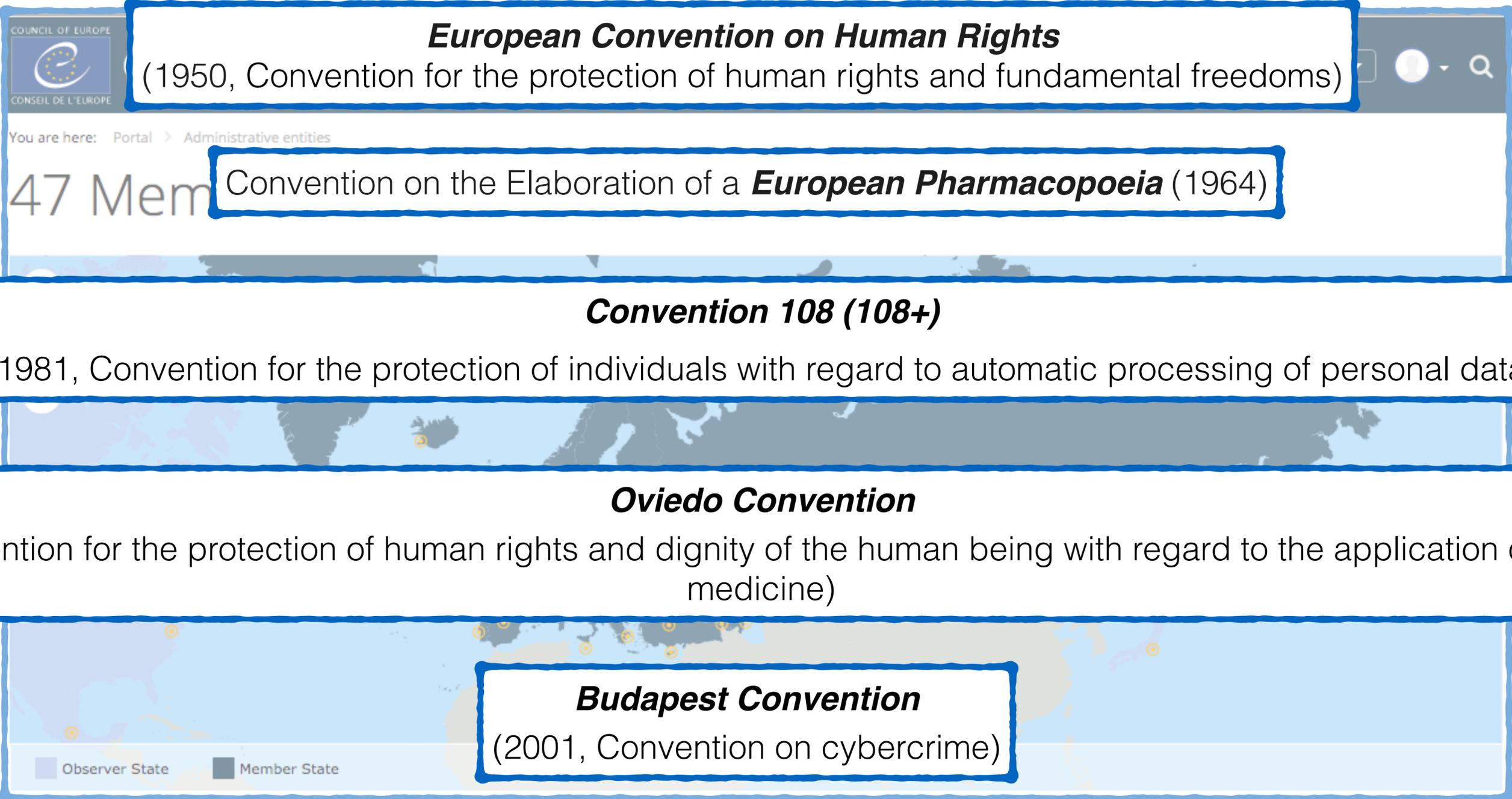
Uncertainties affect development and implementation

Soft law approach has major **limitations**

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OR





European Convention on Human Rights
(1950, Convention for the protection of human rights and fundamental freedoms)

Convention on the Elaboration of a **European Pharmacopoeia** (1964)

Convention 108 (108+)
(1981, Convention for the protection of individuals with regard to automatic processing of personal data)

Oviedo Convention
(1997, Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine)

Budapest Convention
(2001, Convention on cybercrime)

Need for a comprehensive governance framework

Use of technology (risk-based approach)

Need for clear rules - **predictability**

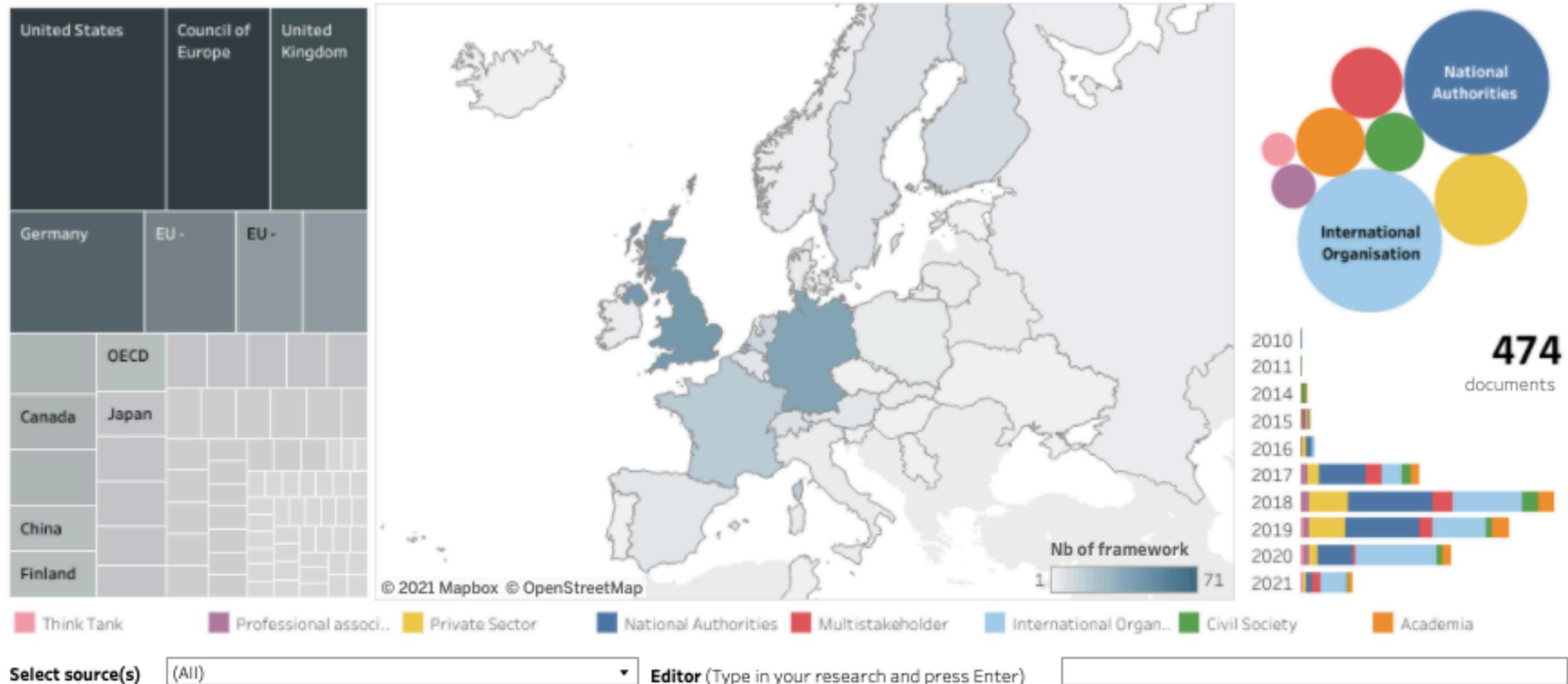
Regulation and **innovation**

Transboundary nature of impact

Cross-border **trade**

AI initiatives

DATAVISUALISATION OF AI INITIATIVES



<https://www.coe.int/en/web/artificial-intelligence/national-initiatives>

OR



Key values, rights and principles *(chapter 7)*

- Human **dignity**
- **Prevention of harm** to human rights, democracy and the rule of law
- Human **freedom** and Human **autonomy**
- **Non-Discrimination, Gender equality, Fairness** and **Diversity**
- **Transparency** and **Explainability** of AI systems
- **Data protection** and the right to **privacy**
- **Accountability** and **responsibility**
- **Democracy**
- **Rule of Law**

Appropriate legal framework

A **combination of binding and non-binding** legal instruments that complement each other.

A binding instrument, a convention or framework convention, of horizontal character, could **consolidate general common principles** – contextualised to apply to the AI environment and using a risk-based approach – and include more granular provisions in line with the rights, principles and obligations identified in this feasibility study.

Any binding document, whatever its shape, should not be overly prescriptive so as to secure its **future-proof** nature. Moreover, it should ensure that **socially beneficial AI innovation can flourish**, all the while **adequately tackling the specific risks** posed by the design, development and application of AI systems.

Possible elements

General

legally binding transversal instrument (+ others at sectoral levels)
risk-based & proportionate
focus on preventing/mitigating risks + promote socially beneficial AI applications
dual use & national security - further consideration needed!
not technical parameters - basic principles&norms for all types of organisations
(public&private)

Purpose, scope and definitions

facilitate cooperation and compatibility; sufficient level of abstraction

Fundamental principles

a combination of positive rights of individuals and obligations upon Parties

Risk classification of AI systems and prohibited applications

establishment of methodology for risk classification
prohibited applications (+ review procedures)

Possible elements

Elements for development, design and application - general & public sector

applicable provisions

regulatory sandboxes

promote evidence-based public deliberations

prevention of unlawful harm, equal treatment and non-discrimination, gender equality, vulnerable groups, data governance

robustness, safety, cybersecurity, **transparency, explainability**, auditability, **accountability, sustainability**
human oversight

[throughout lifecycles!]

Public sector

access to **effective remedy**

mandatory right to **human review of decisions**

adequate **human review for processes**

adequate and effective guarantees against arbitrary and abusive practices

Democracy and democratic governance

risk of unlawful or undue interference in democratic processes

need for respecting the right to **freedom of expression**, including the **freedom to form and hold opinions** and to **receive and impart political information and ideas**, and the right to freedom of **assembly** and **association**

Possible elements

Safeguards

informing decisions impacting the legal rights and other significant interests of individuals and legal persons
right to an effective remedy before a national authority (including judicial authorities) against such decisions;

right to be informed about the application of an AI system in the decision-making process; **right to choose interaction with a human** in addition to or instead of an AI system; **right to know that one is interacting with an AI** system rather than with a human.

protection of whistle-blowers

Civil liability

Supervisory authorities, compliance, and cooperation

ensure effective compliance with the instrument

establishment of compliance mechanisms and standards

national supervisory authorities

cooperation between Parties and mutual legal and other assistance

“committee of the parties” to support implementation

Possible elements

Additional instruments:

HUDERIA (Human rights, democracy, and rule of law impact assessment)

Complementary elements relating to AI in the public sector



OR

<http://globalpolicy.ai/en/>



Perspective

2020 ... **need** for regulation of AI was established.

2021 ... **key elements** of regulation were elaborated.

2022 ... **commitments** put to the test.

2023 ... **finalisation** of instruments.