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 - the roadmap

## Key deliverables and proposed roadmap of CAHAI (2019 –2021)

<table>
<thead>
<tr>
<th>Year</th>
<th>CAHAI 1st meeting</th>
<th>CAHAI online consultation</th>
<th>Progress report to the Committee of Ministers</th>
<th>CAHAI 3rd meeting</th>
<th>CAHAI 4th meeting</th>
<th>CAHAI 5th meeting</th>
<th>Final Report to the CM</th>
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<td>2019</td>
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## Outlines of mappings
- Mapping legal frameworks (binding and non-binding), opportunities & risks to human rights, rule of law and democracy

## Mapping policy solutions

## Legal framework elements

### CAHAI WG 1 : Policy development group (PDG)
- Online questionnaire
- November 2019 - 28 February 2020

### CAHAI WG 2 : Legal frameworks group (LFG)
- CAHAI online WG 3 : Consultations and outreach group (COG)
- CAHAI consultations and outreach
- Thematic consultations/events/online

## CAHAI online consultation
- November 2019 - 28 February 2020

## Set up of CAHAI
- CAHAI 1st meeting
- November

## Multi-stakeholder consultations through CAHAI and outreach
- Ministerial conference
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 - CA
- Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems - CM/Rec(2020)31
- Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes - Dec(13/02/2019)
- 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 e-Discovery - 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 a comparative study in member States) - CIC
- [New] Guidelines on electronic court filing (e-filing) and digitalisation of courts - CEP(2021)15 (requirements regarding transparency and accountability regarding the court e-filing and decision-supporting systems, and regarding introduction of machine learning based predictive analysis), 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)39 add1-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 - CEP(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
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

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

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
http://globalpolicy.ai/en/
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.