CAHAI/Council of Europe

Proposed recommendation for a Legal framework for the development, design and application of AI (Dec 2021)

5 Key Points

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Significance of CAHAI/CoE

• Ad hoc Committee on Artificial Intelligence (CAHAI)
  • 129 representatives: 47 Council of Europe’s members, 6 observer states, 24 Council of Europe bodies, 9 international organisations, 26 internet companies and 17 human rights, civil society, and academic organisations
  • Mandated to examine feasibility and potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of AI, based on CoE’s standards on human rights, democracy and the rule of law

• The Council of Europe (CoE)
  • Europe’s leading human rights organisation
  • Includes 47 countries, 28 of which are members of the European Union
  • All member states have signed the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law
  • Committee of Ministers (next sept)
**Thematic Issues**

- "[A] common legal framework containing certain minimum standards for AI development, design, and application in relation to human rights, democracy and the rule of law"
- Considering existing universal and regional international legal instruments (e.g. Convention 108+)
- Covers both public and private actors
- Key values
  - Human dignity, Freedom and Autonomy
  - Non-Discrimination, Gender Equality, Fairness and Diversity (vulnerable groups/situations)
  - Transparency and Explainability of AI systems
  - Accountability and responsibility (liability)
    - Compliance mechanisms (assurers, developers, operators and users of systems)
    - Impact Assessments
- Operationalization
  - Modernising existing binding legal instruments
  - Adoption of a new binding legal instrument (potentially signed by non CoE members → global standard)

**Assessment**

- Text establishes a (potentially global) “common legal framework” that contains “universal” “minimum standards” regarding AI design, development, and application “in relation to human rights, democracy, and the rule of law”
- **Risk-based approach** (like EU AI Act)
- It does not establish redlines for certain AI uses (unlike EU AI Act)
  - *e.g.*, biometric recognition systems (face, voice, gait)
Relevance to CAIDP’s Work

• Recommends that CoE’s standards on human rights, democracy, and the rule of law are “effectively anchored” in a global, human-centered, trustworthy legal framework
• Regional framework with the potential to be global
• Adopting countries might be required to comply with the framework
• Advocates for “broad multi-stakeholder consultations” as CoE plans to develop an AI legal framework, aimed at filling legal gaps
• Impact on AIDV report

CAIDP References

• COE Parliamentarians Call for Democratic Governance of Artificial Intelligence CAIDP Update 1.17 (Nov. 2, 2020)
• CAHAI Approves Feasibility Study for AI Legal Standards CAIDP Update 1.25 (Dec. 21, 2020)
• CAIDP Response to the CAHAI Survey (May 6, 2021)
• CAIDP Statement to CAHAI on Legal Standards for AI (Nov. 23, 3021)
• Council of Europe Experts Finalize AI Recommendation CAIDP Update 2.42 (Dec. 2, 2021)
• AIDV 2021