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Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the Council of Europe  
Framework Convention on Artificial Intelligence and Human Rights, Democracy and  
the Rule of Law**

## **EXPLANATORY MEMORANDUM**

### **(1) CONTEXT OF THE PROPOSAL**

- Reasons for and objectives of the proposal**

With Regulation (EU) 2024/ 1689 of the European Parliament and the Council laying down harmonised rules on artificial intelligence ('AI Act')<sup>1</sup>, the Union has adopted the first comprehensive regulation on artificial intelligence ('AI'), setting a standard globally. The AI Act, which entered into force on 1 August 2024, fully harmonises the rules for the placing on the market the putting into service and the use of AI systems in the Member States<sup>2</sup>, with the objective to promote innovation and uptake of trustworthy AI, while protecting health, safety and fundamental rights, including democracy, rule of law and the environment.

Various international organisations, including the Council of Europe, have also stepped up their efforts in regulating AI, recognising the cross-border nature of AI and the need for international cooperation to address common challenges posed by these technologies.

Between June 2022 and March 2024, the Council of Europe's Committee on Artificial Intelligence (CAI)<sup>3</sup> elaborated a legally binding Framework Convention (hereinafter 'the Convention') to address the potential risks that AI poses to human rights, democracy and the rule of law.

On 17 May 2024, the Council of Europe Committee of Ministers adopted the text of the Convention<sup>4</sup>, agreed to open the Convention for signature in Vilnius (Lithuania) on 5 September 2024, and invited members of the Council of Europe, other third countries which participated in its drafting, and the Union to consider signing it on this occasion, while recalling that the Convention is also open for accession by other non-member States<sup>5</sup>.

The Union signed the Convention on 5 September 2024, following the adoption of Council Decision (EU) 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law<sup>6</sup>. The Convention was also signed at that occasion by Andorra, Georgia, Iceland, Israel, Montenegro, Norway, Republic of Moldova, San Marino, the United Kingdom and the United States of America. It is open for signature by other members of the Council of Europe members and non-member States which have participated in its elaboration at any time. After its entry into force, the Committee of Ministers of the Council of Europe may, subject to the procedure set out in Article 31 of the Convention, invite any non-member State of the Council of Europe which has not participated in the elaboration of this Convention to accede to it.

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<sup>1</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)

<sup>2</sup> AI Act, recitals 1 and 8.

<sup>3</sup> [Decision concerning the work of the CAI at the 132nd Session of the Committee of Ministers – Follow-up, CM/Inf\(2022\)20, DD\(2022\)245.](#)

<sup>4</sup> Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law Vilnius, 5.IX.2024, CETS 225

<sup>5</sup> CM/Del/Dec(2024)133/4.

<sup>6</sup> Council Decision (EU) 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, ST/12385/2024/INIT, OJ L, 2024/2218.

In this context, the purpose of the present proposal for a Council decision is to launch the process for the conclusion of the Convention on behalf of the Union under the terms set out in Council Decision 2024/2218 authorising its signature. The conclusion of the first international agreement on AI presents a valuable opportunity for the Union to foster a common approach to regulating AI on an international level and provide a framework for cooperation with Council of Europe members and third countries who become Parties to the Convention.

- **Content of the Convention**

The objective of the Convention is to ensure that activities within the lifecycle of AI systems are fully consistent with human rights, democracy and the rule of law.

Parties to the Convention will have to implement it through appropriate legislative, administrative or other measures to give effect to its provisions, following a graduated and differentiated approach, depending on the severity and probability of the adverse impacts. The Convention should be exclusively implemented in the Union through the AI Act, which fully harmonises the rules for the placing on the market, putting into service and use of AI systems, and other relevant Union acquis, where applicable.

The scope of the Convention covers AI systems potentially interfering with human rights, democracy and the rule of law, following a differentiated approach. The principles and the obligations envisaged in the Convention will apply to activities within the lifecycle of AI systems undertaken by public authorities or private actors acting on their behalf. As to the private sector, Parties are obliged to address risks and impacts arising from activities within the lifecycle of AI systems by private actors in a manner conforming with the object and purpose of the Convention, but they have the choice whether to apply the Convention obligations or take other appropriate measures. A draft declaration committing the Union, through the AI Act and other relevant Union acquis, to implement the principles and obligations set forth in Chapters II to VI of the Convention to activities of private actors placing on the market, putting into service, and using AI systems in the Union, is annexed to the present proposal for the Council decision.

AI activities related to national security are excluded from the scope of the Convention with the understanding that they must be, in any case, conducted in a manner consistent with applicable international human rights law and with respect for democratic institutions and processes. The Convention also excludes research and development activities regarding AI systems not yet made available for use, unless testing or similar activities have the potential to interfere with human rights, democracy and the rule of law. In line with the Statute of the Council of Europe, matters relating to national defence do not fall within the scope of the Convention.

The Convention further provides for a set of general obligations and fundamental principles, including the protection of human dignity and individual autonomy, as well as the promotion of equality and non-discrimination. Additionally, it mandates respect for privacy and personal data protection along with transparency and oversight to ensure accountability and responsibility. A principle is also devoted to safe innovation and experimentation in controlled environments.

A dedicated chapter on remedies also envisages a set of measures that aim to ensure availability of accessible and effective remedies for violations of human rights resulting from the activities within the lifecycle of AI systems. It also includes effective procedural guarantees and safeguards for persons whose rights have been significantly affected by the

use of AI systems. Additionally, individuals should be provided with notice that they are interacting with an AI system and not with a human being.

The Convention also includes a chapter on measures for the assessment and mitigation of risks and adverse impacts to be carried out in an iterative manner, so as to identify actual and potential impacts on human rights, democracy and the rule of law and take appropriate prevention and mitigation measures.

Furthermore, the Convention provides that Parties should assess the need for bans or moratoria on certain applications of AI systems considered incompatible with the respect of human rights, the functioning of democracy, or the rule of law.

The Convention provides for a follow-up mechanism within a Conference of the Parties, composed of representatives of the Parties, that will consult periodically with a view to facilitating the effective use and implementation of the Convention.

The Convention also envisages a mechanism for international cooperation both between Parties to the Convention and in relations with third countries and relevant stakeholders, to achieve the purpose of the Convention.

Each Party should furthermore establish or designate at domestic level one or more effective mechanisms to oversee compliance with the obligations in the Convention, as given effect by the Parties.

- **Consistency with existing policy provisions in the policy area**

The Convention lays down general principles and obligations for the protection of human rights, democracy and rule of law that are fully consistent and aligned with the objectives of the AI Act and the detailed requirements for AI systems and obligations imposed on providers and deployers of such systems.

The definition of AI system in the Convention is fully aligned with the definition in the AI Act, since both are based on the definition of such systems in the Organisation for Economic Cooperation and Development's AI Principles<sup>7</sup>, thus ensuring a common understanding of which digital technologies constitute AI.

Both the Convention and the AI Act also follow a risk-based approach to the regulation of AI systems and include specific provisions for risk and impact assessments and risk mitigation measures. The AI Act includes, in particular, a number of relevant prohibitions and high-risk use cases for AI systems in all public and private sectors, including in the area of democracy and justice. The AI Act's detailed rules and procedures for the development, placing on the market, and deployment of AI systems in those areas will thus ensure that fundamental rights, democracy and the rule of law are respected throughout the whole AI lifecycle.

The Convention includes principles and obligations already covered by the AI Act, such as measures to protect human rights, safety and reliability, accountability and responsibility, data governance and data protection, transparency and oversight, equality and non-discrimination, digital skills and literacy.

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<sup>7</sup> The OECD definition of an 'AI system' was updated on 8 November 2023 [C(2023)151 and C/M(2023)14, Item 218] in order to ensure that it continues to be technically accurate and reflect technological developments, including with respect to generative AI.

Transparency is another common element of both legal instruments, including measures with regard to the identification of AI-generated content and the notification of persons interacting with AI systems. Both legal instruments also include relevant provisions on risk and impact assessments and risk management, record-keeping, disclosure (to authorized bodies and authorities and, as appropriate, affected persons), traceability and explainability, safe innovation and experimentation in controlled environments, and a set of measures to enable effective remedies, including a right to request and obtain information and complaint to a competent authority and procedural safeguards.

The oversight system envisaged in the Convention is also fully consistent with the AI Act's comprehensive system of governance and enforcement, which consists of Union and national level enforcement, with procedures for the consistent implementation of the Union rules across the Member States. In particular, the Convention envisages one or more effective oversight mechanisms at domestic level that must exercise their duties independently and impartially and have the necessary powers, expertise and resources to effectively fulfil the tasks of overseeing compliance with the obligations in the Convention, as given effect by the Parties.

While the AI Act will apply to AI systems placed on the market, put into service, or used in the Union, the Convention has a broader geographic reach encompassing Council of Europe members and third states around the world that can become parties to the Convention. The Convention thus represents a unique opportunity to foster trustworthy AI beyond the Union in a first international legally binding treaty grounded in a strong human rights approach to AI regulation.

Both the Convention and the AI Act are integral components of a regulatory approach to AI, with consistent and mutually reinforcing commitments at multiple international levels and sharing the common objective to ensure trustworthy AI.

- **Consistency with other Union policies**

The Convention also shares common objectives with other Union policies and legislation that aim to implement fundamental rights enshrined in the Charter of Fundamental Rights of the Union<sup>8</sup>.

In particular, the principle of equality and non-discrimination enshrined in the Convention is fully consistent with Union non-discrimination legislation and will promote integration of equality considerations in the design, development, and use of AI systems and the effective implementation of the prohibition of discrimination, as provided under applicable international and domestic law of the Parties.

The Convention is furthermore consistent with the Union data protection acquis, including the General Data Protection Regulation<sup>9</sup> in relation to the fundamental rights to privacy and personal data protection with effective guarantees and safeguards that must be in place for individuals, in line with applicable domestic and international legal obligations of the Parties.

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<sup>8</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

<sup>9</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

Measures envisaged in the Convention intended to protect Parties' democratic processes in the context of activities within the lifecycle of AI system are fully consistent with the objectives and detailed rules in the Digital Services Act<sup>10</sup> (and the Code of Conduct on Disinformation<sup>11</sup>), which regulates the provision of intermediary services in the Union with the aim of ensuring a safe, predictable and trusted online environment where fundamental rights, including the right to freedom of expression and the right to receive and impart information, are respected. They are also consistent with the Regulation on the transparency and targeting of political advertising<sup>12</sup> which contains a specific transparency requirement when AI systems are used to disseminate political advertisements. The measures are also consistent with, the Union's policies in the field of democracy and free, fair and resilient elections<sup>13</sup>, including the 2020 European democracy action plan<sup>14</sup>, the reinforcing democracy and integrity of elections package<sup>15</sup> and recently the 2023 Defence of Democracy package<sup>16</sup>.

The Convention is consistent with the Union's overall digital strategy in its contribution to promoting technology that works for people, one of the three main pillars of the policy orientation and objectives announced in the Communication 'Shaping Europe's digital future'<sup>17</sup>. The latter aims to ensure AI is developed in ways that respect human rights and earn people's trust, making Europe fit for the digital age and turning the next years into the Digital Decade<sup>18</sup>.

Moreover, the European Declaration on Digital Rights and Principles for the Digital Decade<sup>19</sup> contains several digital rights and principles that are aligned with the objectives and the principles of the Convention, with both instruments promoting a strong human rights-based approach to technology.

The Convention is also consistent with the EU Strategy on the rights of the child<sup>20</sup>, and the European strategy for a better internet for kids (BIK+)<sup>21</sup>, which aim to ensure that children are protected, respected, and empowered online, to face challenges of new virtual worlds and AI.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The proposal for a decision authorising the conclusion of the Convention on behalf of the Union is submitted to the Council pursuant to Article 218(6)(a)(v) TFEU.

<sup>10</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102.

<sup>11</sup> [The Code of Conduct on Disinformation | Shaping Europe's digital future](#)

<sup>12</sup> Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, PE/90/2023/REV/1, OJ L, 2024/900, 20.3.2024.

<sup>13</sup> [Protecting democracy - European Commission \(europa.eu\)](#)

<sup>14</sup> [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_en)

<sup>15</sup> [https://commission.europa.eu/publications/reinforcing-democracy-and-integrity-elections-all-documents\\_en](https://commission.europa.eu/publications/reinforcing-democracy-and-integrity-elections-all-documents_en)

<sup>16</sup> Communication from the Commission on Defence of Democracy, COM/2023/630 final.

<sup>17</sup> Communication from the Commission, Shaping Europe's Digital Future, COM/2020/67 final.

<sup>18</sup> Communication from the Commission, [2030 Digital Compass: the European way for the Digital Decade](#), COM/2021/118 final.

<sup>19</sup> [European Declaration on Digital Rights and Principles for the Digital Decade](#) COM(2022) 28 final.

<sup>20</sup> Communication from the Commission, EU strategy on the rights of the child, COM/2021/142 final

<sup>21</sup> Communication from the Commission, A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), COM/2022/212 final.

The procedural legal basis for the Council Decision - Article 218(6)(a)(v) TFEU - provides for a Council decision on the conclusion of the agreement, on a proposal of the Commission as the negotiator; in the case of an agreement covering a field to which the ordinary legislative procedure applies, following the European Parliament's consent. The first subparagraph of Article 218(8) TFEU provides for qualified majority voting for the adoption of the Council decision.

The substantive legal basis for a decision under Article 218(6)(a)(v) TFEU depends primarily on the objective and content of the Agreement. According to the case-law, if an examination of an EU measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component. Exceptionally, if it is established, on the other hand, that the measure simultaneously pursues a number of objectives, or has several components, which are inextricably linked without one being incidental to the other, so that various provisions of the Treaty are applicable, the measure must be founded on the various corresponding legal bases.

With regard to the substantive legal basis, the material scope of the Convention is covered by the scope of the AI Act, including in relation to the exemption from scope regarding AI systems used exclusively for research and development, national security and military activities. The analysis above has also demonstrated that the principles and obligations in the Convention are to a large extent covered and overlap with the more detailed requirements for AI systems and the specific obligations of providers and deployers of such systems under the AI Act. If the Council adopts the proposed decision and the Union concludes the Convention, the AI Act will constitute the primary EU legislation to implement the Convention in the EU legal order with fully harmonised rules on the placing on the market, putting into service, and use of AI systems in the Union that are directly applicable in all Member States, unless the AI Act specifically provides otherwise<sup>22</sup>.

Considering that the scope and the objectives of the Convention are aligned and fully consistent with those of the AI Act and there is a significant overlap between both legal instruments, the substantive legal basis for the conclusion of the Convention is Article 114 TFEU, which is the primary legal basis of the AI Act.

The nature of the international agreements ("EU Only" or "mixed") is contingent upon the specific subject matter's compatibility with the EU's exclusive or shared competences.

Article 3(2) TFEU provides that the Union has exclusive competence "*for the conclusion of an international agreement... in so far as its conclusion may affect common rules or alter their scope.*" An international agreement may affect common rules or alter their scope where the area covered by the agreement overlaps with or is covered to a large extent by Union law<sup>23</sup>.

The personal scope of the Convention is fully aligned to the AI Act in that both legal instruments cover, in principle, both public and private actors (with the optional application of the principles and the obligations of the Convention to private actors other than those acting

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<sup>22</sup> See article 1 and recital 1 of the AI Act.

<sup>23</sup> E.g. Case C-114/12 Commission v Council (Neighbouring Rights of Broadcasting Organisations) ECLI:EU:C:2014:2151, paragraphs 68-69; Opinion 1/13 Accession of third States to the Hague Convention, EU:C:2014:2303, para. 71-74; Case C-66/13 Green Network EU:C:2014:2399, paragraphs 27-33; Opinion 3/15 Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled, ECLI:EU:C:2017:114, paragraphs 105-108

on behalf of public authorities), while the material scope of both legal instruments exclude AI activities exclusively related to national security, military and research from the applicable rules.

Considering that the personal and material scope of the Convention and the AI Act overlap, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) TFEU. Consequently, the Union should be considered to enjoy exclusive external competence to conclude the Convention, and the Convention should be concluded on behalf of the Union as an ‘EU only’ agreement, as it was signed pursuant to the authorisation provided by Council Decision (EU) 2024/2218.

- **Proportionality**

The Convention does not go beyond what is necessary to achieve the policy objectives developing a coherent approach to AI regulation at international level.

The Convention sets a high-level legal framework for AI that allows flexibility, enabling Parties to concretely design the implementation frameworks. The risk-based approach also ensures proportionality of the rules and enables differentiation of the implementation measures in a manner proportionate to the risks, in a similar fashion to the AI Act.

- **Choice of the instrument**

The chosen instrument is a proposal for a Council decision pursuant to Article 218(6)(a)(v) TFEU.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Fundamental rights**

The Convention aims to address potential risks and harms to human rights by ensuring that activities within the lifecycle of AI systems align with the principles of respect for human rights, democracy and the rule of law, while also recognising the potential of AI to protect and facilitate the exercise of those rights in the digital environment and to improve societal and environmental well-being and technological progress.

The concrete principles and obligations envisaged in the Convention are intended to protect and respect human rights, enshrined in multiple international and regional instruments<sup>24</sup>, as applicable to the Parties, including the Charter of Fundamental Rights of the Union and international instruments on human rights which the Union has concluded.

The Convention thus sets a common minimum standard for application of human rights protection in the context of AI, while safeguarding existing human rights protections and allowing the Parties to provide a wider protection with more stringent safeguards.

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<sup>24</sup> Such as the 1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1961 European Social Charter (ETS No. 35), as well as their respective protocols, and the 1996 European Social Charter (Revised) (ETS No. 163), the 1989 United Nations Convention on the Rights of the Child and the 2006 United Nations Convention on the Rights of Persons with Disabilities.



#### 4. BUDGETARY IMPLICATIONS

The Convention envisages financial contributions of non-member States to the activities of the Conference of the Parties. While all members of the Council of Europe will contribute through the ordinary budget of the Council of Europe in accordance with the Statute of the Council of Europe, Parties that are not members will make extrabudgetary contributions. The contribution of a non-member of the Council of Europe shall be established jointly by the Committee of Ministers and that non-member.

The Convention does not interfere with the domestic laws and regulations of Parties governing budgetary competencies and procedures for budgetary appropriations. The Framework Convention does not stipulate the form in which the contributions, including the amounts and modalities, of Parties which are not members of the Council of Europe shall be established. The legal basis for the contribution of such Parties will be the Framework Convention itself and the act(s) establishing that contribution<sup>25</sup>.

#### 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Conference of the Parties composed of the representatives of the Parties will monitor effective implementation of the Convention by the Parties and make specific recommendations to that end. The Conference of the Parties will also consider possible amendments to the Convention.

Each Party will need to submit a report to the Conference of the Parties due within the first two years of joining and at regular intervals thereafter, detailing the measures taken to implement the Convention. Parties are further encouraged to cooperate in fulfilling the aims of the Convention. This international cooperation may include the sharing of relevant information regarding AI and its potential to adversely or positively impact human rights, democracy and the rule of law.

To ensure monitoring and implementation of the Convention, each Party will need to designate one or more effective oversight mechanisms at domestic level. At the Union level, the Commission will ensure monitoring and implementation of the Convention, in accordance with the Treaties.

The recitals of the present proposal for the conclusion of the Convention confirm that, in accordance with Article 218(9) TFEU, the Council, on a proposal from the Commission, should adopt decisions establishing the positions to be adopted on the Union's behalf in the Conference of the Parties when that body is called upon to adopt acts having legal effects, in particular the Rules of Procedure of the Conference of the Parties. During the negotiation of those Rules of Procedure, which are to be adopted by consensus within 12 months of the entry into force of the Convention<sup>26</sup>, the Union will aim to ensure that it is allocated 27 votes, reflecting the number of its Member States. In the event that the 27 votes are allocated to the

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<sup>25</sup> See paragraph 134 of the Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

<sup>26</sup> As per article 30(3) of the Convention, it will *enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by this Convention.*

Union, the Commission, representing the Union, will strive to ensure enhanced coordination with the Member States in order to express uniform positions before the Conference of the Parties and exercise its right to vote on behalf of the Union. Such enhanced coordination is especially relevant given that all Member States are also members of the Council of Europe and having regard to the rapidly evolving nature of artificial intelligence as well as the need to have a coherent globally applicable framework in the field. To the end of ensuring enhanced coordination, the Council should be involved in the formulation of any position, whatever its nature, including those based on Article 16(1) TEU and Article 218(9) TFEU. Should the Union, despite its best efforts, not be able to obtain an allocation of 27 votes, in order to ensure that the Union has a number of votes reflecting its weight in the Council of Europe and allowing it to appropriately defend its interests, the Commission will propose that the Member States be empowered, under Article 2(1) TFEU and with full respect for the exclusive competence of the Union, to accede to the Convention alongside the Union.

The Commission will invite each Member State to send one representative to accompany the Commission representation as part of the Union delegation to the meetings of the Conference of the Parties. The principle of sincere cooperation is to be respected.

Proposal for a

## **COUNCIL DECISION**

### **on the conclusion, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision (EU) 2024/2218<sup>27</sup>, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ('the Convention') was signed on 5 September 2024 on behalf of the European Union, subject to its conclusion at a later date.
- (2) The Convention lays down general principles and obligations that parties to the Convention should observe to ensure the protection of human rights, democracy, and the rule of law in relation to the activities within the lifecycle of artificial intelligence ('AI') systems.
- (3) On 13 June 2024, the European Parliament and Council adopted, on the basis of Articles 16 and 114 of the Treaty on the Functioning of the European Union (TFEU), Regulation (EU) 2024/1689 of the European Parliament and the Council<sup>28</sup>, which contains harmonised rules, generally based on full harmonisation, that regulate the placing on the market, the putting into service and the use of AI systems in the Union. Those rules are directly applicable in the Member States, unless that Regulation explicitly provides otherwise. The Convention is to be implemented in the Union exclusively through Regulation (EU) 2024/1689 of the Parliament and the Council and other relevant Union acquis, where applicable.
- (4) Activities within the lifecycle of AI systems related to the protection of national security interests are excluded from the scope of the Convention. Regulation (EU) 2024/1689 of the Parliament and the Council, which will be the main Union legal act implementing the Convention, also excludes from its scope of application AI systems placed on the market, put into service, or used with or without modification

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<sup>27</sup> Council Decision (EU) 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, ST/12385/2024/INIT, OJ L, 2024/2218, 4.9.2024.

<sup>28</sup> Regulation (EU) 2024/1689 of the European Parliament and the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) ([OJ L, 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj](http://data.europa.eu/eli/reg/2024/1689/oj)).

exclusively for national security purposes, and the output of AI systems used in the Union exclusively for such purposes, regardless of the type of entity carrying out those activities. Furthermore, national security remains the sole responsibility of each Member State, as provided for in Article 4(2) of the Treaty on European Union (TEU). Consequently, the Union position to be expressed in the Conference of the Parties set up by the Convention should respect the boundaries set out above. In particular, the Commission should refrain from discussing or taking any position on activities within the lifecycle of AI systems related to the protection of national security interests in the meetings of the Conference of the Parties.

- (5) Considering that the personal and material scope of the Convention and the substantive provisions of the Convention coincide to a large extent with Regulation (EU) 2024/1689 of the Parliament and the Council, which is complemented by other relevant Union acquis, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) TFEU. Such other relevant Union acquis includes legal acts which aim to implement fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, such as Union non-discrimination legislation, including Council Directives 2000/43/EC<sup>29</sup> and 2000/78/EC<sup>30</sup>; the Union acquis on the protection of personal data, including Regulations (EU) 2016/679<sup>31</sup> and (EU) 2022/2065<sup>32</sup> of the European Parliament and the Council aiming to ensure a safe, predictable and trusted online environment where fundamental rights, including the right to freedom of expression and the right to receive and impart information, are respected; Regulation (EU) 2024/900 of the European Parliament and the Council on political advertising<sup>33</sup>; and product safety legislation and legislation on liability for defective products, including Council Directive 85/374/EEC<sup>34</sup>. The Union therefore enjoys exclusive external competence to conclude the Convention. Consequently, only the Union should become a party to the Convention.
- (6) The Conference of the Parties will play a major role in the effective implementation of the Convention, including through making specific recommendations with regard to its interpretation and application. The Conference of the Parties will also consider possible amendments to the Convention. In accordance with Article 218(9) TFEU, the Council, on a proposal from the Commission, should adopt decisions establishing the positions to be adopted on the Union's behalf in the Conference of the Parties when that body is called upon to adopt acts having legal effects, in particular the Rules of Procedure of the Conference of the Parties. During the negotiation of those Rules of Procedure, which are to be adopted by consensus within 12 months of the

<sup>29</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ([OJ L 180, 19.7.2000, p. 22](#)).

<sup>30</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([OJ L 303, 2.12.2000, p. 16](#)).

<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1](#)).

<sup>32</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) ([OJ L 277, 27.10.2022, p. 1](#)).

<sup>33</sup> Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising ([OJ L, 2024/900, 20.3.2024, ELI: <http://data.europa.eu/eli/reg/2024/900/oj>](#)).

<sup>34</sup> Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC, PE/7/2024/REV/1, OJ L, 2024/2853, 18.11.2024.

entry into force of the Convention, the Union will aim to ensure that it is allocated 27 votes, reflecting the number of its Member States. In the event that the 27 votes are allocated to the Union, the Commission, representing the Union, should ensure enhanced coordination with the Member States in order to express uniform positions within the Conference of the Parties and exercise its right to vote on behalf of the Union. Such enhanced coordination is especially relevant given that all Member States are also members of the Council of Europe and having regard to the rapidly evolving nature of AI as well as the need to have a coherent globally applicable framework in the field of AI. To the end of ensuring enhanced coordination, the Council should be involved in the formulation of any position, whatever its nature, including those based on Article 16(1) TEU and Article 218(9) TFEU. Should the Union, despite its best efforts, not be able to obtain an allocation of 27 votes, in order to ensure that the Union has a number of votes reflecting its weight in the Council of Europe and allowing it to appropriately defend its interests, the Commission should propose that the Member States be empowered, under Article 2(1) TFEU and with full respect for the exclusive competence of the Union, to accede to the Convention alongside the Union.

- (7) The Commission will invite each Member State to send one representative to accompany the Commission representation as part of the Union delegation to the meetings of the Conference of the Parties. The principle of sincere cooperation is to be respected.
- (8) As regards any other agreement that may be concluded in the future under the auspices of the Council of Europe or in other international fora, including in the area of AI, and as regards any amendment to the Convention, the division of external competences between the Union and the Member States should be assessed in light of the specific features of each such instrument. It is of the utmost importance that the Union and its Member States be able to continue playing their direct and active role in expressing the voice of the Union and defending its interests, in a consistent and coordinated manner, fully in line with the Treaties.
- (9) The Convention should be approved on behalf of the Union.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The conclusion of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (the ‘Convention’) is hereby approved on behalf of the Union.

The text of the Convention to be concluded is attached to this Decision as Annex I.

#### *Article 2*

The Declarations to be submitted to the Secretary General of the Council of Europe, attached to this Decision in Annex II, are hereby approved on behalf of the Union.

#### *Article 3*

The Convention shall be implemented in the Union exclusively through Regulation (EU) 2024/1689 of the European Parliament and the Council laying down harmonised rules on artificial intelligence and other relevant Union acquis, where applicable.

*Article 4*

This Decision shall enter into force on [...].

Done at Brussels,

*For the Council*

*The President*