



CAHAI Multi-stakeholder consultation

THIS QUESTIONNAIRE IS OPEN TO INSTITUTIONAL REPRESENTATIVES ONLY

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I formally consent to the use of my personal data and of any other information I supplied as described above. If I submit personal data or confidential information of another person, I confirm that I have obtained the authorisation to do so from that person.

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For any issues, please contact secretariat.cahai@coe.int

Pre-screening question of the survey

1. Do you answer *

- As representative of an institution
- In your personal capacity

2. Your family name and first name (e.g. SMITH John) *

Marc Rotenberg

3. State (where your institution is based) *

USA - Washington D.C.

4. Institution: Name of the institution/body/company *

Center for AI and Digital Policy

5. Personal capacity: Your socio-professional category *

Three class version of the categories from National Statistics Socio-economic Classification (NS-SEC), United Kingdom

- Higher occupations
- Intermediate occupations
- Lower occupations

6. Your stakeholder group *

- Government & public administration
- Private business sector
- Civil society
- Academic and scientific community
- Internet technical community

Section 1: Definition of AI Systems

7. In view of the elaboration of a legal framework on the design, development and application of AI, based on the standards of the Council of Europe on human rights, democracy and the rule of law, what kind of definition of artificial intelligence (AI) should be considered by the CAHAI *

Select one

- No definition, with a legal instrument focused on the effect of AI systems on human rights, de-mocracy and the rule of law
- A technologically-neutral and simplified definition, such as "a set of sciences, theories and tech-niques whose purpose is to reproduce by a machine the cognitive abilities of a human being" (See the CAHAI feasibility study, §5)
- A definition focusing on machine learning systems
- A definition focusing on automated decision-making
- Other
- No opinion

8. What are the reasons for your preference? *

Do not exceed 500 words

Strict definitions focused on technological aspects of AI systems do not adequately reflect the harms that these systems might cause on an individual/group/society level. This is one of the reasons that in its most recent regulation proposal, EU also has avoided a prescriptive approach on definitions.

We recommend that democratic values and human rights as identified and accepted by majority of nations (Universal Declarations of Human Rights, EU Charter of Fundamental Rights, and such) be the guide for the assessment of these systems.

A strict definition risks the legal framework being outdated with the new use cases not currently foreseen. It would not be able to cover the harms and risks that might emerge due

Section 2.1: Opportunities and Risks arising from AI Systems

9. Please select the areas in which AI systems offer the most promising opportunities for the protection of human rights, democracy and the rule of law

*

Select 3 maximum

- Banking, finance and insurance
- Justice
- Law enforcement
- Customs and border control
- Welfare
- Education
- Healthcare
- Environment and climate
- Election monitoring
- National security and counter-terrorism
- Public administration
- Employment
- Social networks/media, internet intermediaries

- Other
- No opinion

10. If other, which areas and why?

AI systems, possibly coupled with blockchain technology, can be used to create a global repository / mechanism that would give a transparent and broader picture of certain corporations' impact on AI's future. Major technology companies impact the direction and future of AI systems and research not only by the products / services they provide, but also through lobbying, research funding and recruitment of top talent. Academics and corporate talent are usually bound / limited on what they can research and then publish due to funding agreements.

A global database that requires major technology companies to disclose their lobbying expenses, and that requires researchers and/or funders to submit the details of research funding would create unprecedented information and transparency to public.

From a positive side, it would also provide insight to government and other companies on where there are gaps to be filled.

Society needs transparency in corporate, governmental, and academic research funding for evaluating impacts and reach, as well as lobbying activities.

Disclosures on published papers can help disseminate needed information on an individual

11. Please indicate which of the following AI system applications in your view have the greatest potential to enhance/protect human rights, democracy and the rule of law? *

Select 5 maximum

- Facial recognition supporting law enforcement
- Emotional analysis in the workplace to measure employees' level of engagement
- Smart personal assistants (connected devices)
- Scoring of individuals by public and private entities
- Medical applications for faster and more accurate diagnoses
- Automated fraud detection (banking, insurance)
- AI applications to predict the possible evolution of climate change and/or natural disasters

- AI applications for personalised media content (recommender systems)
- Deep fakes and cheap fakes
- Recruiting software/ AI applications used for assessing work performance
- AI applications to prevent the commission of a criminal offence (e.g. anti-money laundry AI applications)
- AI applications aimed at predicting recidivism
- AI applications providing support to the healthcare system (triage, treatment delivery)
- AI applications determining the allocation of educational services
- AI applications determining the allocation of social services
- AI applications in the field of banking and insurance
- AI applications to promote gender equality (e.g. analytical tools)
- AI applications used for analysing the performance of pupils/students in educational institutions such as schools and universities

12. Please briefly explain how such applications would benefit human rights, democracy and the rule of law *

Do not exceed 750 words

Before an AI system is introduced to a domain as a 'solution', we should understand the domain from all perspectives. AI provides us the ability to take a snapshot of our institutions and analyze it in ways that would not have been possible before. Therefore, the first use cases should be geared towards analytics and understanding the gaps, inequalities, and possible harms that these generate. This knowledge can then be used to engage the right stakeholders in the conversation, and if/when necessary, to prioritize resources and funding

13. What other applications might contribute significantly to strengthening human rights, democracy and the rule of law? *

Applications that would create more transparency to public about the AI systems used by the government agencies (for example AI system registries).

Applications that make it easier to monitor and analyze disinformation and/or political pressure.

Applications that make it easier for individuals & groups to understand high-risk decisions

Section 2.2: Impact on human rights, democracy and the rule of law

14. Please select the areas in which the deployment of AI systems poses the highest risk of violating human rights, democracy and the rule of law *

Select 3 maximum

- Banking, finance and insurance
- Justice
- Law enforcement
- Customs and border control
- Welfare
- Education
- Healthcare
- Environment and climate
- Election monitoring
- National security and counter-terrorism
- Public administration
- Employment
- Social networks/media, internet intermediaries
- No opinion
- Other

15. Please briefly explain how such applications might violate human rights, democracy and the rule of law *

Do not exceed 750 words

AI systems whether using predictions / classifications, are based on historical data that is by its very nature have biases. They also are based on a definition of a norm/normal/ideal /worth that are not universal, do not consider individual circumstances or context. When used in the context of law enforcement (predictive policing, mass surveillance, facial analysis), they risk amplification of these biases and put extra burdens and harms on already disadvantaged and marginalized communities.

When used in customs and border control (asylum/refugee applications, biometric identification, lie detectors etc), they are forced upon populations that do not have any power to object or ask for alternative methods. Often the implementation of these systems also introduces biases due to the operators' inability to question the system or override any decisions.

When used in welfare systems (eligibility for benefits, continuation of benefits, etc), the systems are used more for fraud detection/prevention than enhancing the welfare of those that are most in need.

In none of these settings do the subjects have any right to regular due process. The decisions

16. Please indicate the types of AI systems that represent the greatest risk to human rights, democracy and the rule of law *

5 maximum

- Facial recognition supporting law enforcement
- Emotional analysis in the workplace to measure employees' level of engagement
- Smart personal assistants (connected devices)
- Scoring / scoring of individuals by public entities
- Medical applications for faster and more accurate diagnoses
- Automated fraud detection (banking, insurance)
- AI applications to predict the possible evolution of climate change and/or natural disasters;
- AI applications for personalised media content (recommender systems)
- Deep fakes and cheap fakes
- Recruiting software/ AI applications used for assessing work performance
- AI applications to prevent the commission of a criminal offence
- AI applications aimed at predicting recidivism

- AI applications providing support to the healthcare system (triage, treatment delivery)
- AI applications determining the allocation of educational services
- AI applications determining the allocation of social services
- AI applications in the field of banking and insurance
- AI applications to promote gender equality (e.g. analytical tools)
- AI applications used for analysing the performance of pupils/students in educational institutions such as schools and universities

17. Please briefly explain how such applications might violate human rights, democracy and the rule of law *

Do not exceed 750 words

Facial recognition used by law enforcement often requires mass surveillance of populations that is by its very definition against the rights of expression, assembly & association, protection of personal data and privacy. These systems are scientifically proven to be biased against people belonging to marginalized groups due to their lower inaccuracy in recognizing people with darker skin, women, LGBT-Q, those with disabilities. They perform even worse for those in the intersection of these groups. Also in implementation reality, facial recognition can cause law enforcement to jump to conclusions and wrongfully arrest a person rather than going through regular investigation mechanisms (as evidenced by 3 wrongful arrests in US).

Although EU's proposed regulation bans 'real-time' remote biometric identification systems in public spaces for law enforcement systems, the exceptions provided can de facto lead to an authorization of facial recognition systems or a greenlight to invest in these infrastructures just in case.

The regulation also allows for predictive policing (by way of classifying it as high risk) through AI systems used for profiling natural persons and AI systems predicting the occurrence or reoccurrence of "potential" criminal offence based on profiling. This application goes strictly against the presumption of innocence.

Scoring of individuals by public entities & recruiting software that uses pseudo / flawed science to assess and score individuals (facial analysis, emotional analysis, voice tone/pitch

18. What other applications might represent a significant risk to human rights, democracy and the rule of law? *

Any system that does not have a scientific validity to support its use, and systems that are used to classify people into political and historical constructs of race, gender or good character, IQ etc... These systems not only take away from the human agency and freedom to self-identify, but they also erase the lives and experiences of those who do not neatly fit into

19. In your opinion, should the development, deployment and use of AI systems that have been proven to violate human rights or undermine democracy or the rule of law be *

Banned

Not banned

No opinion

Other

20. In your opinion, should the development, deployment and use of AI systems that pose high risks* with high probability** to human rights, democracy and the rule of law be *

* *High negative impact on human rights, democracy and rule of law*

** *High probability of occurrence of these risks*

Banned

Subject to moratorium

Regulated (binding law)

Self-regulated (ethics guidelines, voluntary certification)

None of the above

No opinion

21. In your opinion, should the development, deployment and use of AI systems that pose low risks* with high probability** to human rights, democracy and the rule of law be *

* *Low negative impact on human rights, democracy and rule of law*

** *High probability of occurrence of these risks*

- Banned
- Subject to moratorium
- Regulated (binding law)
- Self-regulated (ethics guidelines, voluntary certification)
- None of the above
- No opinion

22. In your opinion, should the development, deployment and use of AI systems that pose high risks* with low probability** to human rights, democracy and the rule of law be *

* *High negative impact on human rights, democracy and rule of law*

** *Low probability of occurrence of these risks*

- Banned
- Subject to moratorium
- Regulated (binding law)
- Self-regulated (ethics guidelines, voluntary certification)
- None of the above
- No opinion

23. What are the most important legal principles, rights and interests that need to be addressed and therefore justify regulating the development, deployment and use of AI systems? *

Select 5 maximum

- Respect for human dignity
- Political pluralism

- Equality
- Social security
- Freedom of expression, assembly and association
- Non-discrimination
- Privacy and data protection
- Personal integrity
- Legal certainty
- Transparency
- Explainability
- Possibility to challenge a decision made by an AI system and access to an effective remedy

24. In your opinion, in what sectors/areas is a binding legal instrument needed to protect human rights, democracy and the rule of law? *

Select 3 maximum

- Banking, finance and insurance
- Justice
- Law enforcement
- Customs and border control
- Welfare
- Education
- Healthcare
- Social networks/media, internet intermediaries
- Environment and climate
- Election monitoring

Public administration

No opinion

Other

Section 3: Potential Gaps in Existing Binding Legal Instruments Applicable to AI

In the following section, please indicate to what extent you agree or disagree with the following statements or if you have no opinion on a given issue.

25. Self-regulation by companies is more efficient than government regulation to prevent and mitigate the risk of violations of human rights, democracy and the rule of law *

1=I completely disagree; 2=I rather disagree; 3=Indifferent/no opinion; 4=I rather agree; 5=I fully agree;

I completely disagree 1 2 3 4 5 I fully agree

26. Self-regulation by companies is sufficient to prevent and mitigate the risk of violations of human rights, democracy and the rule of law *

1=I completely disagree; 2=I rather disagree; 3=Indifferent/no opinion; 4=I rather agree; 5=I fully agree;

I completely disagree 1 2 3 4 5 I fully agree

27. Which of the following instruments of self-regulation do you consider to be the most efficient? *

Ethics guidelines

Voluntary certification

No opinion

Other

28. Existing international, regional and/or national binding and/or non-binding legal instruments are sufficient to regulate AI systems in order to ensure the protection of human rights, democracy and the rule of law *

1=I completely disagree; 2=I rather disagree; 3=Indifferent/no opinion; 4=I rather agree; 5=I fully agree;

I completely disagree 1 2 3 4 5 I fully agree

29. If you responded disagree/completely disagree to previous question, please indicate why existing international, regional and/or national (binding and/or non-binding) legal instruments are not sufficient to regulate AI systems

Select all you agree with

- There are too many and they are difficult to interpret and apply in the context of AI
- They provide a basis but fail to provide an effective substantive protection of human rights, democracy and the rule of law against the risks posed by AI systems
- They lack specific principles for the design, development and application of AI systems
- They do not provide enough guidance to the designers, developers and deployers of AI systems
- They do not provide for specific rights (e.g. transparency requirements, redress mechanisms) for persons affected by AI
- They create barriers to the design, development and application of AI systems

30. Please provide examples of existing international, regional and/or national (binding and/or non-binding) instruments that in your view are effective in guiding and regulating the design, development and use of AI systems to ensure compatibility with the standards for human rights, democracy and the rule of law *

Do not exceed 750 words

There are no existing instruments that effectively regulate design/development/use of AI systems.

31. Please indicate other specific legal gaps that in your view need to be addressed at the level of the Council of Europe

Do not exceed 750 words

The legislation on product liability, anti-discrimination (civil & employer liability), deceptive practices at minimum need to be updated to cover AI systems and possible harms. The cross-border nature of AI/data systems need to be dealt with in an international manner. Some countries that are trying to attract corporate investment cannot act as havens to the companies that are shielding themselves from certain jurisdictional duties (in other words, avoid what is currently happening with tax avoidance). Proposed EU regulation on AI systems does not provide details on mechanisms for individual recourse and redress against harmful AI systems. There is no environmental impact assessment requirement that these systems should go through.

There are also several concepts included in the proposed regulation that is not clearly defined and which will provide a screen for providers of AI systems to hide behind. A few

Section 4: Elements of a Legal Framework on AI Systems

In relation to some AI systems, we can reasonably foresee a significant risk to human rights, democracy and the rule of law. Bearing this in mind, in the following section, please indicate to what extent you agree or disagree with the following statements or if you have no opinion on a given issue.

32. Please indicate to what extent you agree or disagree with the following statements or if your have no opinion on a given issue *

I completely disagree I rather disagree Indifferent/no opinion I rather agree I fully agree

Individuals should always be informed when they interact with an AI system in any circumstances



Individuals should always be informed when a decision which affects them personally is made by an AI system

Individuals should always be informed when an AI system is used in a decision-making process which affects them personally

Individuals should have a right to a meaningful explanation of algorithmic based decisions, in particular how the algorithm reached its output

Individuals should always have the right that any decision taken by an AI system in the framework of judicial proceedings are reviewed by a "human" judge

Individuals should have a right to demand the review of an algorithmic based decision by a human being

There should always be a person responsible for reviewing algorithmic based decisions in the public sector and private companies

Public institutions should not use AI systems to promote or discredit a particular way of life or opinion (e.g. "social scoring")

States should be obliged to design, develop and apply sustainable AI systems that respect applicable environmental protection standards

The code behind AI systems used in the public and private sectors should always be accessible to the competent public authorities for the purposes of external audit

There should be higher transparency standards for public entities using AI than for private entities

There should be higher standards for access to an effective remedy for individuals in relation to decisions informed and made by an AI system in the field of justice than in the field of consumer protection

Member States should establish public oversight mechanisms for AI systems that may breach legally binding norms in the sphere of human rights, democracy and the rule of law

Errors and flaws discovered in AI systems which have led or could lead to the violation of human rights, democracy and the rule of law must be reported to the competent authorities

The use of facial recognition in public spaces should be prohibited

The information obtained through the use of facial recognition systems should always be reviewed by a human being before being used for purposes that have an impact on individual freedom, such as in relation to a person boarding an airplane, upon police arrest or in the framework of judicial proceedings

The use of AI systems in democratic processes (e.g. elections) should be strictly regulated

33. Should a future legal framework at Council of Europe level include a specific liability regime in relation to AI applications? *

- Yes
- No
- No opinion

34. If yes, what aspects should be covered?

Do not exceed 500 words

Product liability, anti-discrimination (civil & employer liability), and deceptive practices

Section 5: Policies and Measures for Development

35. In your opinion, how useful would the following compliance mechanisms be in preventing and mitigating the risks to human rights, democracy and the rule of law arising from the design, development and application of AI? *

* *Intersectional audits consider intersection of multiple sensitive attributes (race, gender, etc) jointly instead of attributes alone - for an example of such audits with machine learning, see for instance: Morina, Giulio & Oliinyk, Viktoriia & Waton, Julian & Marusic, Ines & Georgatzis, Konstantinos. (2019). Auditing and Achieving Intersectional Fairness in Classification Problems*

	Not useful	Rather not useful	Indifferent/no opinion	Rather useful	Highly useful
Human rights, democracy and rule of law impact assessments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Certification and quality labelling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Audits and intersectional audits*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Regulatory sandboxes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Continuous automated monitoring	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

36. Please indicate what combination of mechanisms should be preferred to efficiently protect human rights, democracy and the rule of law *

Select 3 maximum

- Human rights, democracy and rule of law impact assessments
- Certification and quality labelling
- Audits and intersectional audits
- Regulatory sandboxes
- Continuous automated monitoring

Other

37. Please select which mechanism(s) should be part of either a binding instrument or a non-binding instrument to best protect human rights, democracy and the rule of law *

	Binding instrument	Non-binding instrument	No opinion
Human rights, democracy and rule of law impact assessments	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certification and quality labelling	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Audits and intersectional audits*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory sandboxes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Continuous automated monitoring	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

38. If any other mechanism(s) should be considered, please list them and mention if they should be part of either a binding or non binding instrument

Do not exceed 500 words

39. In your opinion, how useful would the following follow-up activities be if implemented by the Council of Europe? *

	Not useful	Rather not useful	Indifferent/no opinion	Rather useful	Highly useful
Monitoring of AI legislation and policies in member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capacity building on Council of Europe instruments, including assistance to facilitate ratification and implementation of relevant Council of Europe instruments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
AI Observatory for sharing good practices and exchanging information on legal, policy and	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>