

CAIDP Update 2.42 (Dec. 2, 2021) – Council of Europe Experts Finalize AI Recommendation

This week the Ad Hoc Committee on Artificial Intelligence (the “[CAHAI](#)”) finalized recommendations for a legal framework for AI. The Recommendation follows two years of work by the Committee, which was established by the Council of Europe in 2019. The [proposal](#) was adopted unanimously and will be sent next to the Council of Ministers for consideration.

The CAHAI explained that the legal framework should “focus on preventing and mitigating risks” from the use of AI systems and should establish “basic principles and norms governing the development, design and application of AI systems.” The experts note that the Council of Europe standards for human rights, democracy and the rule of law are “sufficiently universal” that the legal instrument could become a global standard. Indeed, Council of Europe Convention are open for signature by Member and non-Member states.

Key elements of the proposal concern purpose and scope. According to the CAHAI, the purpose is to establish “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.” This framework will cover both public and private actors. The CAHAI also stated the framework should include “provisions on ensuring that gender equality and rights related to vulnerable groups and people in vulnerable situations, including children, are upheld throughout the lifecycle of artificial intelligence systems.”

The CAHAI emphasized that “transparency, explainability and accountability” are of “paramount importance” for the protection of individual rights. For the public sector, CAHAI focused on law enforcement, the administration of justice, and public administration applications, and underscored the need for effective remedies and human review. The CAHAI proposal sets out several safeguards to protect fundamental rights and recommends compliance mechanisms as well as impact assessments. However, the CAHAI stopped short of endorsing red lines for certain AI practices, such as “social scoring,” which have already been established by UNESCO and are set out in the proposed EU AI Act.

In 2020, the Committee of Ministers said that the Council of Europe has a crucial role “to ensure that AI applications are in line with human rights protections.” The Ministers asked the CAHAI to draft a feasibility study on a legal instrument. The Ministers also proposed that the CAHAI examine “human rights impact assessments” and “certification of algorithms and AI systems.” The Parliamentary Assembly underscored urgency of CAHAI’s mandate. The Assembly [called for](#) “strong and swift action” by the Council of Europe and warned that “soft-law instruments and self-regulation have proven so far not sufficient in addressing these challenges and in protecting human rights, democracy and rule of law.”([CAIDP Update 1.17](#), [CAIDP Update 1.25](#))

The Council of Europe is a leader in the realm of international human rights law. All member states have endorsed the European Convention on Human Rights, a treaty designed to protect human dignity, fundamental rights, democracy and the rule of law. The Center for AI and Digital Policy participated in the work of the CAHAI as an Observer and [contributed](#) to the final Recommendation.