



PRESS STATEMENT

EDPS/2024/06
Brussels, 11 March 2024

EDPS statement in view of the 10th and last Plenary Meeting of the Committee on Artificial Intelligence (CAI) of the Council of Europe drafting the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

Background

From the very beginning, the European Data Protection Supervisor (EDPS) has supported the objective of elaborating the first legally binding international instrument on artificial intelligence (AI) on the basis of the Council of Europe's standards on human rights, democracy and the rule of law. The EDPS has consistently contributed in a constructive manner to the work of the Committee on Artificial Intelligence (CAI) as part of the European Union delegation in that Committee, together with the European Commission and the Fundamental Rights Agency¹.

In view of the 10th and last Plenary Meeting of CAI on 11-14 March 2024, which aims to finalise the work on the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, the EDPS considers it important to share his assessment.

EDPS assessment

Despite the commendable efforts of the Members, Participants and Observers in CAI, the draft Framework Convention, as it stands now, could prove to be a **missed opportunity** to lay down a strong and effective legal framework for the development and uptake of trustworthy AI. The EDPS considers that such framework should not only be consistent with European values and the protection of individuals' fundamental rights and freedoms, but also provide for clear and strong safeguards for the persons affected by the use of AI systems.

The EDPS understands that the draft Framework Convention will not be directly applicable (self-executing) in States party to the Convention. The EDPS also understands that there is a need for certain flexibility to accommodate the specificities of national legal systems. Notwithstanding this, the EDPS is concerned that the very high level of generality of the legal provisions of the draft Framework Convention, together with their **largely declarative nature**, would inevitably lead to divergent application of the Convention, thus undermining legal certainty, and more generally its added value. In this regard, the EDPS recalls that one of the key objectives of the future binding legal instrument should be to ensure a common legal framework and a level playing field for AI actors in Europe and beyond.

The EDPS furthermore recalls that the Committee of Ministers of the Council of Europe has explicitly instructed CAI, in the terms of reference, to develop a "binding legal instrument of a *transversal* character". Any **limitation of the scope** of the future Framework Convention only to the activities undertaken by

¹ The EDPS has issued in October 2022 a formal Opinion supporting the opening of negotiations on behalf of the European Union on the Convention, as well as two sets of written comments, in April and August 2023, addressing the key aspects of the future legal instrument.

public authorities or entities acting on their behalf would contradict the overall policy objective of the Framework Convention, as defined by the Committee of Ministers.

Lastly, while AI systems may offer unprecedented opportunities, certain AI uses and activities may also pose very serious risks that could severely undermine human dignity and individual autonomy, human rights, democracy and the rule of law. The EDPS is deeply concerned by the **absence of ‘red lines’** in the draft Framework Convention, which from the outset prohibit AI applications posing unacceptable levels of risk. Moreover, the latest drafts of the Framework Convention and its Explanatory Report offer neither clear and unambiguous criteria, nor any specific examples of prohibited uses of AI that might guide the Member States when implementing the future Convention. The EDPS is convinced that the inclusion in the Convention of the ‘red lines’, which received very broad support in the ad hoc Committee on Artificial Intelligence (CAHAI), would send a strong political message and would also ensure the necessary legal certainty and foreseeability for the developers, providers and users of AI applications².

Background information

The rules for data protection in the [EU institutions, bodies, offices and agencies](#), as well as the duties of the European Data Protection Supervisor (EDPS), are set out in [Regulation \(EU\) 2018/1725](#).

Wojciech Wiewiórowski (EDPS) was appointed by a joint decision of the European Parliament and the Council to serve a five-year term, beginning on 6 December 2019.

The European Data Protection Supervisor (EDPS) is the independent supervisory authority for the protection of personal data and privacy and promoting good practice in the EU institutions and bodies.

He does so by:

- monitoring the EU administration’s processing of personal data;
- monitoring and advising technological developments on policies and legislation that affect privacy and personal data protection;
- carrying out investigations, including in the form of data protection audits/inspections;
- cooperating with other supervisory authorities to ensure consistency in the protection of personal

EDPS - The EU’s Independent Data Protection Authority

Questions can be directed to press@edps.europa.eu.

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² In this regard, the future Convention on AI could follow the example of the Council of Europe Convention on Human Rights and Biomedicine (Oviedo Convention) and its Additional Protocol on the Prohibition of Cloning Human Beings.