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FROM NATIONAL SOVEREIGNTY TO NEGOTIATION SOVEREIGNTY
"Days of Law Rolando Quadri"

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Aleksandar Mihajlović*

COMPARATIVE ANALYSIS OF THE EU AI ACT AND THE CoE FRAMEWORK CONVENTION ON AI, HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW**

Abstract

Artificial Intelligence (AI) is used in many aspects of everyday life providing a variety of benefits for its users, as well as provoking different risks of violations of human rights. Beside the fact that AI accumulates a big profit for companies and develops economies, it is still a "black box" which effects to societies are not predictable at all. Leaving AI as a global phenomenon unregulated at the market can provoke legal uncertainty, undermine the rule of law, as well as decrease economic growth. In December 2023, the Council of the EU and the EU Parliament reached the political agreement to adopt the Regulation on Artificial Intelligence (EU AI Act) which will be the first horizontal legally binding act in the world in this field. The Council of Europe's Committee of Ministers adopted the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law (Framework Convention) on 17 May 2024. The aim of this investigation is to make a comparative analysis how AI has been regulated by the EU AI Act and the Framework Convention, introducing their similarities and differences. The doctrinal and descriptive methods will be used for achieving this aim.

***Keywords:** Artificial Intelligence, European Union, Council of Europe, EU AI Act, Framework Convention*

*   LLM, Research Assistant at the Institute of Comparative Law, Belgrade, Serbia.

ORCID: *https://orcid.org/0000-0001-8309-7896*

E-mail: *a.mihajlovic@iup.rs*

KOMPARATIVNA ANALIZA EU REGULATIVE O VEŠTAČKOJ INTELIGENCIJI I OKVIRNE KONVENCIJE SAVETA EVROPE O VEŠTAČKOJ INTELIGENCIJI, LJUDSKIM PRAVIMA, DEMOKRATIJI I VLADAVINI PRAVA

Apstrakt

Veštačka inteligencija (VI) se koristi u mnogim aspektima svakodnevnog života, obezbeđujući različite pogodnosti za svoje korisnike, kao i stvarajući različite rizike od kršenja ljudskih prava. Pored činjenice da VI akumulira veliki profit za kompanije i doprinosi razvoju ekonomije, ona je i dalje "crna kutija" čiji efekti na društvo uopšte nisu predvidivi. Ostavljanje VI, kao global-nog fenomena, neregulisanog na tržištu, može izazvati pravnu nesigurnost, narušiti princip vladavine prava, kao i umanjiti ekonomski rast. U decem-bru 2023. godine Savet EU i Evropski parlament postigli su politički dogovor o usvajanju Regulative o veštačkoj inteligenciji (RVI) koja će biti prvi hori-zontalni pravno obavezujući akt u svetu u ovoj oblasti. Komitet ministara Saveta Evrope usvojio je Okvirnu konvenciju Saveta Evrope o veštačkoj inteli-genciji, ljudskim pravima, demokratiji i vladavini prava (Okvirna konvencija) 17. maja 2024. Cilj ovog rada je da se napravi komparativna analiza kako je VI regulisana Uredbom o veštačkoj inteligenciji u okviru EU, kao i Okvirnom konvencijom Saveta Evrope, određujući njihove sličnosti i razlike. Za postiza-nje ovog cilja biće korišćene doktrinarna i deskriptivna metoda.

Ključne reči: *veštačka inteligencija, Evropska unija, Savet Evrope, EU Uredba o veštačkoj inteligenciji, Okvirna konvencija*

1. Introduction

Artificial intelligence (hereinafter: AI), as a term, has been used very often in last several months in the public when this article was written. The end of 2023 and the beginning of 2024 showed an intensive legislative drafting activity by the European Union (hereinafter: EU) and the Council of Europe (hereinafter: CoE) in relation to AI laws, as a form of two legally binding documents. On 9 December 2023, the European Parliament and the Council of the European Union announced that they reached a political consensus to adopt the first ever legally binding document, the Regulation on Artificial Intelligence, the so-called the European Union's Artificial Intelligence Act[1] (hereinafter: EU AI Act). This was seen as an activity which placed the EU ahead of the US, China and the United Kingdom in the race to regulate the application of AI in different spheres of people's everyday life and prevent different forms of potential treats and violations of human rights which can be followed by AI application.[2] On 13 March 2024, the European Parliament gave a final approval to the EU AI Act, which will ensure safety and compliance with human rights, and, at the same time, provide incentives for innovations in this field.[3] The Council of Europe's Committee of Ministers adopted the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law[4] (hereinafter: Framework Convention) on 17 May 2024. The intention of the EU and the CoE to regulate AI on the regional and international level is a clear sign that AI will be more influential to every aspect of people's lives, have a huge impact to economies, and can be dangerous for all of them if it is left unregulated.

The subject of this article is AI regulated by the EU and the CoE by the two legally binding documents. The aim of this investigation is to make a comparative analysis how the AI has been regulated by the EU AI Act and the Framework Convention, introducing their similarities and differences. First, the article is presenting the overall idea about AI systems and their connection to the law. Then the focus is on the EU AI Act, its structure, risk categories and human rights impact assessment as a precondition for its full implementation. The next part is dedicated to the Framework Convention structure. The last part of the article is a comparison of these two documents.

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[1]   In the time of writing this article, the author used the EU AI Act version *approved by the European Council on 21 May 2024, and based on the version and article numbering approved by the EU Parliament on 14 May 2024,* https://www.euaiact.com/ access: 9 July 2024.

[2]   L. O'Carroll, *EU agrees 'historic' deal with world's first laws to regulate AI*, 9 December 2023, https://www.theguardian.com/world/2023/dec/08/eu-agrees-historic-deal-with-worlds-first-laws-to-regulate-ai access: 9 July 2024.

[3]   *Artificial Intelligence Act: MEPs adopt landmark law*, 13 March 2024, https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law#:~:text=On%20Wednesday%2C%20Parliament%20approved%20the,46%20against%20and%2049%20abstentions. access: 9 July 2024.

[4]   Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CM(2024)52-final, 17 May 2024 https://search.coe.int/cm#{%22CoEIdentifier%22:[%220900001680afb11f%22],%22sort%22:[%22CoEValidationDate%20Descending%22]} access: 9 July 2024.

The methodology framework includes two methods: first, the doctrinal method which will be applied to the analysis of the EU AI Act and the Framework Convention; second, the descriptive method which will be applied to explain the relation between AI and the law in general.

2. The Relation Between Artificial Intelligence Systems and the Law

AI has an enormous potential to boost the global economy, for instance, there are some predictions that it will contribute up to $15.7 trillion to the global economy in 2030.[5] This kind of fact contradicts some historically stereotypical predictions how new technologies will negatively affect labor market, kill jobs, and provoke more damages to the society than improve people's lives.[6] Still as an undiscovered area, we are witnessing that AI can provoke violations of human rights in different forms, for instance, AI can be used for targeting victims during a war[7], and it can cause different forms of fraud via social networks[8], or provoke discriminatory treatment toward different social groups.[9] Legal discussions also encompass other areas of law which can be affected by AI, such as the right to privacy, data protection, non-discrimination, equality, access to justice[10]. All of these examples, to mention just few of many, undermine the rule of law as a basic principle of a legal system. Because of a huge economic potential which AI brings followed by the economic growth, and different risks toward the rule of law, it is necessary to regulate such area in a way to protect fundamental rights and freedoms, and at the same time to support innovation and development of AI industry.

It is not possible to observe and develop the law as an isolated area from the digital revolution which an indivisible part is AI, which influences a lot of aspects of the human

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[5]   A. S. Rao, G. Verweij, *Sizing the prize – PwC's Global Artificial Intelligence Study: Exploiting the AI Revolution – What's the real value of AI for your business and how can you capitalize?*, PwC, 2017, 3. https://www.pwc.com/gx/en/issues/analytics/assets/pwc-ai-analysis-sizing-the-prize-report.pdf access: 9 July 2024

[6]   J. Furman, R. Seamans, "AI and the Economy", *Innovation Policy and the Economy, 19(1)/2019, 162.*

[7]   R. Stewart, G. Hinds, *Algorithms of war: The use of artificial intelligence in decision making in armed conflict*, 24 October 2023, https://blogs.icrc.org/law-and-policy/2023/10/24/algorithms-of-war-use-of-artificial-intelligence-decision-making-armed-conflict/ access: 9 July 2024.

[8]   L. O'Carroll, *AI fuelling dating and social media fraud, EU police agency says*, 9 January 2024, https://www.theguardian.com/technology/2024/jan/09/ai-wars-dating-social-media-fraud-eu-crime-artificial-intelligence-europol access: 9 July 2024.

[9]   M. Fürstenau, *Germany highlights discrimination risks of AI*, 30 August 2023, https://www.dw.com/en/ai-germany-discrimination/a-66670854 access: 9 July 2024.

In the field of labor market, it is very important that companies in the recruitment process apply accountable algorithms for selection of candidates which will prevent possible forms of discrimination (Z. Chen, "Ethics and discrimination in artificial intelligence enabled recruitment practices", *Humanities and Social Sciences Communications*, 10(567)/2023, 2. https://doi.org/10.1057/s41599-023-02079-x).

[10]   R. Rodrigues, "Legal and human rights issues of AI: Gaps, challenges and vulnerabilities", *Journal of Responsible Technology*, 4/2020, 6. https://doi.org/10.1016/j.jrt.2020.100005.

life.[11] The development of technology must be followed by an adequate legal system, and it is necessary to be left enough time for their adherence.[12] For legislators it is easier to predict the necessity for changing legislation in a concrete field than predict technologies which can cause the legislative intervention, which is obvious case with the development of AI.[13] All the benefits which are coming from new technologies cannot be a justification for the erosion of fundamental rights, democracy, and the rule of law in general.[14]

Although we can wrongly understand that AI systems are intelligent, similar to the human intelligence, they are not at all this kind of machines, and we can say that they produce "..., intelligent results without intelligence".[15] Fear from using AI can be based on fiction, but in reality the fear is coming from the nature how AI has been developed.[16] There are three waves of AI until the moment how machines are trained to learn and produce concrete outputs: firstly, this is called the "*Handcrafted Knowledge*" type of AI which is working in the framework of well-established and accurate data, and with a clear set of rules. This AI is not train to solve complex problems or conduct some complex analytical tasks. For instance, this is a case when we use automated customer services to collect money in a bank or to order food; secondly, this is "*Statistical Learning*" or "*Machine Learning*", and this type of AI is trained to solve some complex tasks. It works in a concrete set of rules with a big amount of data, but its outputs are not very accurate. For instance, a program can be trained to recognize fruits and vegetables, but it is not very "intelligent" to make a distinction when a picture of a fruit or a vegetable is distorted; thirdly, this wave of AI is called "*Deep learning*". It is very accurate in making decisions or delivering outputs, and it is less dependent on human instructions in comparison to two previous AI waves. For instance, this kind of AI can recognize a concrete animal and provide some kind of explanation about this animal species.[17] In general, AI systems are not biases free, because they are created and trained by people and in that context, AI can preserve existing biases, and even more, introduce new forms.[18] A dataset which is used to train a machine learning

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[11]   A. Miasato, F. Silva Reis, "Artificial Intelligence as an Instrument of Discrimination in Workforce Recruitment", *Acta Universitatis Sapientiae, Legal Studies*, 8(2)/2019, 193.

[12]   M. Fornasier Oliveira de, "Artificial Intelligence and Democratic Rule of Law", *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)*, 13(3)/2021, 354.

[13]   *Ibid.*

[14]   P. Nemitz, "Democracy through law The Transatlantic Reflection Group and its manifesto in defence of democracy and the rule of law in the age of "artificial intelligence"", *European Law Journal*, 29(1-2)/2021, 240.

[15]   H. Surden, "Artificial Intelligence and Law: An Overview", *Georgia State University Law Review*, 35(4)/2019, 1308.

[16]   P. Burgess, "The Rule of Law, Science Fiction and Fears of Artificial Intelligence", *Law, Technology and Humans*, 4(2)/2022, 130.

[17]   D. Rejeski, L. Reynolds, S. Wright, *When Software Rules: Rule of Law in the Age of Artificial Intelligence*, Environmental Law Institute, Washington, D.C. 2018, 6-7. https://www.eli.org/sites/default/files/eli-pubs/when-software-rules-web.pdf access: 9 July 2024.

[18]   P. T. Kim, M. T. Bodie, "Artificial Intelligence and the Challenges of Workplace Discrimination and Privacy", *ABA Journal of Labor & Employment Law*, 35(2)/2021, 294.

system, as a form of AI, may reflect deeply rooted biases, which will affect a discriminatory treatment toward different social groups.[19] This is a way how the basic principle of equality before the law will be violated.

The main problem when observing the relation between AI and the law is unpredictability of AI systems, which kind of effects they will provoke to the society. In general, data which are used for development of an AI system are biased and their implementation can provoke negative consequences. This problem is known as "*garbage in, garbage out*".[20] The AI system design is conducted by humans, who are also biased; they can consciously or unconsciously create variables which can provoke both positive and negative impacts to human rights and the rule of law in general.[21] The most complicated is a complex interaction between an AI system and the environment, when it can produce some outcomes which might not have been foreseen.[22] This is the reason why AI implications are described as a "*black box*". Beside the complexity of interaction, unpredictability of an AI system comes also as a consequence of a lack of transparency how an algorithm was created (*Bias in Algorithms – Artificial Intelligence and Discrimination (Report)*.[23] Depending on the level of unpredictability of AI systems, there are two kinds of black boxes: "*Strong Black Boxes*" and "*Weak Black Boxes*". An AI system which is characterized as a strong black box is seen as totally "*opaque to humans*", because it is not possible to discover how AI makes a decision or prediction, then which kind of information are determinative to AI outcomes, and the last obstacle is the lack of information of the ranking importance of variables which are processed by the AI system.[24] Weak black boxes can also provoke negative implications to society, but, in comparison to strong black boxes, in their case, engineers can predict imprecisely how an AI model will make its decisions.[25] That is the reason why the EU AI Act adopted a "*risk based approach*", making a distinction between unacceptable, high, limited and minimal risk.[26] The higher risk, the stricter rules will be applied to an AI system.

This part of the article analyzed the relation between AI and the law in general, describing the complexity of AI and its implications to the legal system. The AI

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[19] N. Schmidt, B. Stephens, "An Introduction to Artificial Intelligence and Solutions to the Problem of Algorithmic Discrimination", *Conference on Consumer Finance Law (CCFL) Quarterly Report*, 73(2)/2019, 137.

[20] F. A. Raso, *et. al.*, *Artificial Intelligence & Human Rights: Opportunities & Risks*, Berkman Klein Center for Internet & Society Research Publication, Cambridge, Massachusetts, 6/2018, 15.

[21] *Ibid*.

[22] *Ibid*.

[23] *Bias in Algorithms – Artificial Intelligence and Discrimination (Report)*, European Union Agency for Fundamental Rights, Vienna, 2022, 25. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-bias-in-algorithms_en.pdf access: 9 July 2024.

[24] Y. Bathaee, "The Artificial Intelligence Black Box and the Failure of Intent and Causation", *Harvard Journal of Law & Technology*, 31(2)/2018, 906.

[25] *Ibid*.

[26] E. Binchy, *Advancement or Impediment? AI and the Rule of Law*, The Institute of International and European Affairs, Dublin, 2022, 4. https://www.iiea.com/images/uploads/resources/Advancement-or-Impediment-AI-and-the-Rule-of-Law.pdf access: 9 July 2024.

development is not happening in isolation, it makes a global concern with consequences to the human population in general. The EU and the CoE have created two legally binding frameworks of the AI application, and have applied the human-centric approach. Their aim is to enjoy all the benefits AI can provide, and also to protect people from different forms of human rights violations that AI can cause.

3. The Regulation on Artificial Intelligence (EU AI Act) – An Overview

3.1. Definition of AI, Purpose and Scope of the EU AI Act

The EU AI Act defines *an AI system* as a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. In other words, AI represents a machine learning process which can have different levels of autonomy, and it interacts with the environment, it is trained to process inputs, and produce outputs which can affect different subjects in physical or virtual environments.

The Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on Artificial Intelligence for Europe from 2018 defines AI in a less precise way as systems that display intelligent behavior by analyzing their environment and taking actions – with some degree of autonomy – to achieve specific goals, and they can be purely software-based, acting in the virtual world or AI can be embedded in hardware devices.[27]

Based on Article 1 of the EU AI Act, its main purpose is to improve the functioning of the internal market and promote the uptake of human-centric and trustworthy AI, while ensuring a high level of protection of health, safety, fundamental rights enshrined in the Charter (of Fundamental Rights of the European Union), including democracy, the rule of law and environmental protection, against harmful effects of AI systems in the EU and supporting innovation.

The EU AI Act is applied to a broad scope of subjects, including: 1. providers placing on the market or putting into service AI systems or placing on the market general-purpose AI models in the EU, irrespective of whether those providers are established or located within the EU or in a third country; 2. deployers of AI systems that have their place of establishment or who are located within the EU; 3. providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the system is used in the EU; 4. importers and distributors of AI

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[27] The Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on Artificial Intelligence for Europe, Brussels, 25.4.2018 COM(2018) 237 final, p. 1. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0237 access: 12 July 2024.

systems; 5. product manufacturers placing on the market or putting into service an AI system together with their product and under their own name or trademark; 6. authorized representatives of providers, which are not established in the EU; 7. affected persons that are located in the EU.

3.2. Risk-Based Approach and AI Systems

As we explained in the previous part of the article, the application of AI can provoke different risks to the society in general. Sometimes a risk can be predictable, and in some cases it is not possible to foreseen its effects. The EU AI Act shifted from a two-structured risk system from the Commission's White Paper on AI[28] to the four-structured system which includes four-risk categories: *unacceptable risks* that lead to prohibited practices; *high risks* that involve a set of rules which must be implemented before an AI system is released to be used; *limited risks* with associated transparency obligations; and, *minimal risks*.

The EU AI Act stipulates in Article 5 a detailed list of prohibited AI practices which application can provoke unacceptable risks. The special attention is paid to the biometric data which technology of collection, storing and reading is very well established, and which are very stable over time, and can be collected from anyone who possesses this kind of document.[29] The use of "real-time" remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement is prohibited, unless and in as far as such use is strictly necessary for one of the following objectives: 1. the targeted search for specific victims of abduction, trafficking in human beings or sexual exploitation of human beings as well as the search for missing persons; 2. the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons or a genuine and present or genuine and foreseeable threat of a terrorist attack; 3. the localization or identification of a person suspected of having committed a criminal offence, for the purposes of conducting a criminal investigation or prosecution or executing a criminal penalty for offences, referred to in Annex II of the EU AI Act and punishable in the member state concerned by a custodial sentence or a detention order for a maximum period of at least four years. This is without prejudice to the provisions in Article 9 of the GDPR for the processing of biometric data for purposes other than law enforcement.

An AI system shall be considered high-risk where both of the following conditions are fulfilled: 1. the AI system is intended to be used as a safety component of a product, or the AI system is itself a product, covered by the EU harmonization legislation listed in Annex I; 2. the product whose safety component pursuant to the first condition is the AI system, or the AI system itself as a product, is required to undergo a third-party

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[28] The White Paper On Artificial Intelligence - A European approach to excellence and trust, Brussels, 19. 02. 2020 COM(2020) 65 final, recognized a two-fold system risk of AI, a low-risk and high-risk framework in relation to the AI application. https://commission.europa.eu/document/download/d2ec4039-c5be-423a-81ef-b9e44e79825b_en?filename=commission-white-paper-artificial-intelligence-feb2020_en.pdf access: 12 July 2024.

[29] A. Lang, "Of Biometric Documents, Databases and Free Movement of Persons in the EU", *EU and Comparative Law Issues and Challenges Series*, 7(Special Issue)/2023, 125.

conformity assessment, with a view to the placing on the market or the putting into service of that product pursuant to the EU harmonization legislation listed in Annex I. Beside the cases when concrete conditions are fulfilled, there is also Annex III which contains a list of the high-risk AI systems which are divided into eight areas and which can be supplemented if the application of some new forms of AI shows that they can be classified as high-risk systems.

AI systems which are not encompassed by the criteria for high-risk systems, including Annex III, will not be considered in this classification if they do not pose a significant risk of harm, to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making. This shall be the case if one or more of the following criteria are fulfilled: 1. the AI system is intended to perform a narrow procedural task; 2. the AI system is intended to improve the result of a previously completed human activity; 3. the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review; or, 4. the AI system is intended to perform a preparatory task to an assessment relevant for the purpose of the use cases listed in Annex III.

High-risk AI systems must go through the necessary assessment before it is confirmed that they can be released. For this purpose, the EU AI Act stipulates a risk management system which shall be established, implemented, documented and maintained in relation to this kind of AI systems. These systems which make use of techniques involving the training of AI models with data shall be developed on the basis of training, validation and testing data sets that meet the quality criteria referred to Article 10 paragraphs 2 to 5 whenever such datasets are used. Concurrently, the concrete technical documentation must be prepared and kept up-to date when such system is ready to be released. Article 14 introduces the rule of *the human oversight*, which means that high-risk AI systems shall be designed and developed in such a way, including with appropriate human-machine interface tools, that they can be effectively overseen by natural persons during the period in which they are in use. Providers of high-risk AI systems shall ensure that their systems undergo the relevant conformity assessment procedure, prior to their placing on the market or putting into service, while deployers are obliged to conduct a fundamental rights impact assessment. Based on Article 28 paragraph 1 of the EU AI Act, each member state shall designate or establish at least one notifying authority responsible for setting up and carrying out the necessary procedures for the assessment, designation and notification of conformity assessment bodies and for their monitoring. These procedures shall be developed in cooperation between the notifying authorities of all member states. For the purposes of implementing and enforcing the EU AI Act, the European Commission established the European Artificial Intelligence Office (further in the text: AI Office).[30]

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[30]   Commission decision of establishing the European Artificial Intelligence Office, Brussels, 24. 01. 2024 C(2024) 390 final. https://digital-strategy.ec.europa.eu/en/library/commission-decision-establishing-european-ai-office access: 12 July 2024.

A special part of the EU AI Act is dedicated to measures in support of innovation which stipulates that member states shall ensure that their competent authorities establish at least one AI regulatory sandbox at national level, which shall be operational by ... 24 months from the date of entry into force of the Regulation. This sandbox may also be established jointly with one or several other member states' competent authorities. The Commission may provide technical support, advice and tools for the establishment and operation of AI regulatory sandboxes. When an AI system is released on the market, it is under the monitoring process which aims to collect all necessary data related to the effects of an AI life cycle.

The EU AI Act stipulates concrete enforcement measures in relation to compliance with the rules. In that context, member states shall lay down the rules on penalties and other enforcement measures, which may also include warnings and non-monetary measures, applicable to infringements of the EU AI Act by operators, and shall take all measures necessary to ensure that they are properly and effectively implemented, thereby taking into account the guidelines issued by the Commission pursuant to Article 96.[31] The penalties provided for shall be effective, proportionate, and dissuasive.[32] They shall take into account the interests of small and medium-sized enterprises including start-ups and their economic viability.[33]

4. The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law – An Overview

The Council of Europe's Committee of Ministers adopted the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law (hereinafter: Framework Convention) on 17 May 2024.

The Framework Convention in Article 1 defines an AI system[34] as a machine-based system that for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that may influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

The Framework Convention's provisions aim to ensure that activities within the lifecycle of AI systems are fully consistent with human rights, democracy and the rule of law, and each party shall adopt or maintain appropriate legislative, administrative or other measures to give effect to these provisions. The complexity of measures which will be implemented will depend on the impact assessment of AI toward human rights,

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[31] Article 99 paragraph 1 EU AI Act.

[32] *Ibid.*

[33] *Ibid.*

[34] The Framework Convention contains the same definition of an AI system which is adopted as an updated version of the OECD's definition, which is available on the following link: S. Russell, K. Perset, M. Grobelnik, *Updates to the OECD's definition of an AI system explained*, 29 November 2023 https://oecd.ai/en/wonk/ai-system-definition-update access: 12 July 2024.

democracy and the rule of law through the AI lifecycle. Each party of the Framework Convention has general obligations to adopt or maintain measures to ensure protection of human rights and integrity of democratic processes and respect for the rule of law. Concurrently, there are seven principles related to activities within the lifecycle of AI systems: Human dignity and individual autonomy; Transparency and oversight; Accountability and responsibility; Equality and non-discrimination; Privacy and personal data protection; Reliability; and, Safe innovation.

Each party shall take necessary measures to assess all possible risks connected with an AI system which will be applied. The Framework Convention introduces a risk-based approach which includes following steps which aim to: 1. take due account of the context and intended use of AI systems, in particular as concerns risks to human rights, democracy, and the rule of law; 2. take due account of the severity and probability of potential impacts; 3. consider, where appropriate, the perspectives of relevant stakeholders, in particular persons whose rights may be impacted; 4. apply iteratively throughout the activities within the lifecycle of the AI system; 5. include monitoring for risks and adverse impacts to human rights, democracy, and the rule of law; 6. include documentation of risks, actual and potential impacts, and the risk management approach; 7. require, where appropriate, testing of AI systems before making them available for first use and when they are significantly modified. The Article 16 also stipulates that each state party shall adopt or maintain measures that seek to ensure that adverse impacts of AI systems to human rights, democracy, and the rule of law are adequately addressed, as well as shall assess the need for a moratorium or ban or other appropriate measures in respect of certain uses of AI systems where it considers such uses incompatible with the respect for human rights, the functioning of democracy or the rule of law.

Regarding the mechanism for monitoring the implementation of the Framework Convention, it is stipulated that the Conference of the parties will be established and it will be composed of representatives of the parties to the Framework Convention. The Conference will gather parties to consult periodically to: 1. facilitate effective application and implementation of the Framework Convention, including the identification of any problems and the effects of any reservation or any declaration made in accordance with the relevant rules; 2. consider the possible supplementation or amendment of the Framework Convention; 3. consider matters and making specific recommendations concerning the interpretation and application of the Framework Convention; 4. facilitate the exchange of information on significant legal, policy or technological developments of relevance, including in pursuit of the objectives defined in Article 25, for the implementation of the Framework Convention; 5. facilitate, where necessary, the friendly settlement of disputes related to the application of the Framework Convention; 6. facilitate cooperation with relevant stakeholders concerning pertinent aspects of the implementation of the Framework Convention, including through public hearings where appropriate. Parties shall co-operate among each other in the process of the Framework Convention implementation. Each party shall establish or designate one or more effective mechanisms to oversee compliance with the obligations from the Framework Convention.

The Framework Convention shall be opened for signature by the member states of the CoE, the non-member states which have participated in its drafting and the EU. It shall 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 CoE, have expressed their consent to be bound by this Convention. After the entry into force of the Framework Convention, the Committee of Ministers of the CoE may, after consulting the parties to the Framework Convention and obtaining their unanimous consent, invite any non-member state of the CoE which has not participated in the elaboration of the Convention to accede to it. By a written notification addressed to the Secretary General of the CoE, any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation related to the federal clause in accordance with Article 33, paragraph 1. No other reservation may be made in respect of this Convention Any party may, at any time, denounce the Framework Convention by means of a notification addressed to the Secretary General of the CoE.

5. The Comparison Between the EU AI Act and the Framework Convention

The EU AI Act and the Framework Convention represent a huge step to the regulation of AI on the European (regional) and global level by legally binding instruments. Although they have the same aim, the legal nature of two organizations, which have led the process of their adoption, the EU and the CoE, reflects their characteristics which will shape the future of AI regulation. After the two previous parts of the article where we summarized basic elements of these two documents, this part aims to explain similarities and differences between the EU AI Act and the Framework Convention.

The EU AI Act is *a regulation* under the legal framework of the EU. It is a secondary law of the EU which is mandatory for all the EU member states. When the EU AI Act enters into force, it will be applied *directly and uniformly* to all member states, without any necessity to be transported into national states legal systems. The European Commission may adopt implementing acts to specify the technical elements of machine learning approaches and logic and knowledge based approaches, taking into account market and technological developments. On the other side, the Framework Convention represents *an international treaty* which will be opened to ratification to all states in the world. Every state which becomes a party to the Framework Convention *shall incorporate* this legal instrument as a part of its national law. This is the reason why the name is *the Framework* Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. This term "*framework*" implies the necessity for further elaboration and implementation of this act within each domestic legal framework of state parties. The Framework Convention shall 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 CoE, have expressed their consent to be bound by this document. After entering into force, the Committee of Ministers of the CoE may, after consulting the parties to the Framework Convention and obtaining their unanimous consent, invite any non-member state of the CoE which has not participated in the elaboration of the Framework Convention to become its member. The EU can also become a member of the Framework Convention independently from its member states.

Based on the first articles of the both legal instruments, we can make a conclusion that the EU AI Act is focusing on the EU internal market and the relation with human centric and trustworthy AI, while ensuring a high level of protection of health, safety, fundamental rights enshrined in the Charter of Fundamental Rights of the EU, including democracy, rule of law and environmental protection, and on the other side, the Framework Convention is stipulating the relation between an AI lifecycle and human rights and fundamental freedoms, democracy and the rule of law. The subject matter of both documents is the same, with an addition that the EU AI Act emphasizes the importance of the EU internal market.

The Framework Convention adopts the same definition of AI as the OECD's updated definition. This is followed by the fact the Framework Convention represents an international legal instrument. The EU AI Act defines AI in a broader way and encompasses all stages and forms of an AI lifecycle.

Both documents adopt *the risk based approach* regarding the application of AI systems with some differences. The EU AI Act stipulates *four categories* of risk-systems. It contains a list of prohibited AI practices and a detailed classification of high-risk AI systems. This approach is followed by concrete rules and procedures which must be fulfilled before a high-risk AI system is released. Annex III of the EU AI Act contains a list of eight different areas of high-risk systems. These lists can be amended if some AI systems show high risks during their implementation. On the other side, the Framework Convention does not contain any kind of risk classifications or classes, and its presumption is that *every kind of AI system* can be *a potential threat* to human rights, democracy and the rule of law. It provides obligations and a framework for risk assessment which will be applied by every state party through their legislation.

Regarding *penalties*, the Framework Convention does not stipulate any kind of penalties or fines for individuals or firms. It is up to every party to introduce legal mechanisms of monitoring and compliance within national legal frameworks. The EU AI Act provides concrete penalties in cases of breach the rules, and every party can introduce concrete warnings and non-monetary measures. The European Commission established the AI Office which will have a key role in the process of implementation of the EU AI Act. Every EU member state shall establish public authorities which will monitor the implementation of the EU AI Act.

Although there are some differences in the legal nature of these documents and their structure, the EU AI Act and the Framework Convention represent revolutionary steps to AI lifecycles regulation and prevention of possible breaches of human rights, democracy and the rule of law. The EU is mostly a political and economic union, while

the CoE is is focused on human rights, democracy and the rule of law. All the EU member states are also members of the CoE, and they ratified some of the most important the CoE conventions, including the European Convention on Human Rights. Beside its member states, the EU itself has the legal capacity to ratify the Framework Convention. The EU AI Act and the Framework Convention are not contradictory, and they follow the same values, and can just complement each other in their implementation.

6. Conclusions

The implementation of AI in different areas of everyday life has demonstrated a lot of advantages, as well as different risks which can undermine human rights, democracy and the rule of law. These are the key elements of modern democratic states which have an obligation to protect them from any kind of treat. The risk from AI comes as a consequence of unpredictability how an AI model will interact with external subjects, including other AI systems. Depending on their complexity, in some cases, it is very easy to make predictions, while in others, this is almost impossible. The AI systems have also a big impact toward economies, which means that the process of innovations and developments is not possible to be stopped. Leaving such area unregulated can provoke more damages and treats to the rule of law, and the EU has introduced a legally binding instrument for its member states, the EU AI Act. This Act is seen as an instrument where the applied risk based approach toward the AI lifecycle should be in a balance between regulation which protect fundamental freedoms and the EU internal market, as well as be an incentive for further innovations of AI trustworthy systems.[35] Beside the EU, the CoE's Committee of Ministers adopted the Framework Convention as the first international convention which subject is dedicated to AI. The both documents give promises and hope for safer AI systems on national and international level, and it is to be seen how these instruments will be implemented in practice, and how parties to these instruments will cooperate with each other. A lot of effort has been put into the process of drafting the both acts and reaching the necessary agreement among countries, and it is time to see how these documents will regulate the AI "..., (which) is not a substitute for human intelligence; (but) it is a tool to amplify human creativity and ingenuity".[36]

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[35]   P. Živković, R. Ducato, "Algorithmic Discrimination: A Blueprint for Legal Analysis", *EU and Comparative Law Issues and Challenges Series*, 7(Special Issue)/2023, 208.

[36]   M. Pogla, *Most Significant & Famous Artificial Intelligence Quotes*, 5 February 2024, https://autogpt.net/most-significant-famous-artificial-intelligence-quotes/ access: 9 July 2024

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