

THE NEW COUNCIL OF EUROPE FRAMEWORK CONVENTION AND THE FUTURE OF INTELLIGENT ROBOTS IN ADMINISTRATIVE LAW

NOVÁ RÁMCOVÁ ÚMLUVA RADY EVROPY A BUDOUCNOST INTELIGENTNÍCH ROBOTŮ VE SPRÁVNÍM PRÁVU¹

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ABSTRACT

On 5 September 2024, the brand-new Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law was adopted in Vilnius, Lithuania. The Framework Convention complements existing international standards on human rights, democracy, and the rule of law and aims to address legal gaps arising from rapid technological advances. While the Framework Convention's scope of application is vast, this article examines how the Convention contributes to recent efforts to deploy artificial intelligence in administrative decision-making. The Framework Convention was adopted during a period when many new legal frameworks governing the administrative decision-making of intelligent robots were adopted at the national level. This article argues that the recently adopted national-level legal frameworks are far from technologically neutral. On the contrary, the Framework Convention has been designed to stand the test of time. Consequently, it provides a durable legal framework for the future deployment of intelligent robots in administrative law (and beyond).

ABSTRAKT

Dne 5. září 2024 byla v litevském Vilniusu přijata zbrusu nová Rámcová úmluva Rady Evropy o umělé inteligenci a lidských právech, demokracii a právním státu. Rámcová úmluva doplňuje stávající mezinárodní standardy v oblasti lidských práv, demokracie a právního státu a dává si za cíl řešit veškeré právní mezery, které mohou vzniknout v důsledku rychlého technologického pokroku. Ačkoli je oblast působnosti Rámcové úmluvy značně široká, tento článek zkoumá, jak úmluva přispívá k aktuálnímu úsilí o zavedení umělé inteligence ve správním rozhodování. Rámcová úmluva byla přijata v období, kdy je na národní úrovni přijímána celá řada nových předpisů upravujících administrativní rozhodování inteligentních robotů. Tento článek tvrdí, že právní předpisy, které byly v nedávné době přijaty na národní úrovni, mají z hlediska úpravy umělé inteligence daleko k technologicky neutrální legislativě. Naopak, Rámcová úmluva je koncipována tak, aby její ustanovení obstaraly testu času. Lze jí proto považovat za nástroj, který vydláždí cestu budoucímu nasazení inteligentních robotů (nejenom) ve správním právu.

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I. INTRODUCTION⁵

On 5 September 2024, the brand-new Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Framework Convention, or Convention)⁶ was adopted in Vilnius, Lithuania. The Framework Convention was to reflect the “accelerating developments in science and technology and the profound changes brought about through activities within the lifecycle of artificial intelligence systems, which have the potential to promote human prosperity as well as individual and societal wellbeing (...).”⁷ It is the very first binding instrument of international law, adopted to address the challenges posed by artificial intelligence (AI) to legal systems in Europe and beyond.⁸

The scope of application of the newly adopted Framework Convention is rather broad. It covers the activities “within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and the rule of law.”⁹ In this respect, the Framework Convention further specifies that it is to be applied *inter alia* to “the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf.”¹⁰ While the deployment of AI in national security, research and development programs has been excluded¹¹ from the scope of application, the Framework Convention will be capable of covering a myriad of AI uses in administrative law in the future, starting from the collection of data available in various public registries and including issuing of the final decisions. Having said this, the Framework Convention was adopted during a period when national legal frameworks were emerging to address the deployment of AI in administrative decision-making.¹² Recently, such a legal framework has been adopted in the Federal Republic of Germany. Similar laws have been recently proposed in Estonia and the Czech Republic.¹³

The newly adopted Framework Convention has already garnered considerable attention in the international legal scholarship.¹⁴ This article aims to contribute to this ongoing discussion.

⁵ This is a written and much expanded version of our presentation “The new Framework Convention of the Council of Europe and its impact for administrative law”, which was delivered on 3 October 2025 at the 2nd Czech-Slovak Symposium on AI in Administrative Law, entitled “The Robot: Salient Servant - Lord Malevil.”

⁶ Council of Europe Treaty Series - No. 225.

⁷ Framework Convention, Preamble.

⁸ See ZILLER, J. The Council of Europe Framework Convention on Artificial Intelligence vs. The EU Regulation: Two Quite Different Legal Instruments. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 4, 2024, p. 202.

⁹ Framework Convention, Art. 3.1.

¹⁰ Ibid.

¹¹ Framework Convention, Art. 3.2. and 3.3. (the Framework Convention is not applicable to research and development activities regarding artificial intelligence systems not yet made available for use, unless testing or similar activities are undertaken in such a way that they have the potential to interfere with human rights, democracy and the rule of law).

¹² See SEVER, T. Trends of Automated Decision-Making in the Public Sector. In: URS, N., ŠPAČEK, D., NOMMIK, S. (eds), Digital Transformation in European Public Services. Complexities, Challenges, and Good Practices. Cham: Palgrave Macmillan, 2025, pp. 25-53.

¹³ See HANDRLICA, J. The dawn of automation in administrative procedural law in the Czech Republic. In: Bratislavské právnické fórum 2025 - Využívanie umelej inteligencie pri rozhodovaní vo verejnej správe. Bratislava: Univerzita Komenského, Právnická fakulta, 2025, s. 5-12.

¹⁴ See Aura y Larios de Medrano, A. La regulación de la inteligencia artificial en el ámbito internacional: la Recomendación de la UNESCO, el Convenio del Consejo de Europa y el Reglamento de la UE. In: ESPERANZA, F., ROSA, P. (eds), Nuevas fronteras : el derecho y las humanidades ante la revolución tecnológica digital. Valencia: Tirant lo Blanch, 2025, pp. 21-54, DUMORTIER, T. L'intelligence artificielle et les droits humains : les insuffisances du cadre européen. In: Enjeux numériques - Pour un IA responsable et éthique, vol. 29, no. 1, 2025, pp. 65-69, MENECEUR, Y. Droit et intelligence artificielle : interactions et transformations. In: Réalités industrielles, no. 2, 2025, pp. 34-38, CAMBIEN, N., NEWTON, D. La régulation de l'intelligence artificielle: approches internationales et britannique. In: Confluence de droits – La Revue, no. 12, 2024, pp. 1-19, Corlăcean, T. Artificial Intelligence and the Need for Standards and Accountability for Protecting Human Rights, Democracy and the Rule of Law. In: Jurnalul Libertății de Conștiință, vol. 12, no. 1, 2024, pp. 201-221, HUESO, L. The Council of Europe's Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 3, 2024, pp. 53-87; MIHAJLOVIĆ, A. Comparative analysis of the EU AI Act and the CoE framework convention on AI, human rights,

It argues that while the recently adopted national legislation is, in principle, far from being technologically neutral¹⁵ and durable, the Framework Convention has the potential to stand the test of time and serve as a facilitator for the future deployment of AI in administrative law.

This argument will be elaborated in the following way:

First, the newly adopted Framework Convention will be briefly presented (Chapter II). Here, attention will be paid to both the obligations arising from the Framework Convention and the Convention's institutional arrangements. Additionally, a brief comparison with the recently adopted EU AI Act will be provided.

Secondly, the authors will elaborate on their argument that the Framework Convention has the potential to stand the test of time. In Chapter III, several recently adopted or proposed national laws in the field of research will be outlined. In this respect, it will be argued that these national laws have been designed as a mere reaction to the emergence of AI. Thus, these laws aim to govern the technology of the present, not the technology of the future. On the contrary, the Framework Convention was designed as being technologically neutral from the outset. Consequently, arguments will be presented to support the authors' belief that the Framework Convention can establish a durable framework for AI deployment in future administrative law. Having said this, the authors aim not only to contribute to the recent discussion of the gradual shift from an anthropocentric to an "automated" state.¹⁶ The aim of this article is also to contribute to a much broader debate¹⁷ about the future of administrative law and the administrative law of the future.

II. THE NEW COUNCIL OF EUROPE FRAMEWORK CONVENTION

1. The Framework Convention is briefly introduced

The text of the Framework Convention is based on preparatory work undertaken by the ad hoc Committee on Artificial Intelligence (CAHAI), which was later succeeded by the Committee on Artificial Intelligence (CAI). Having taken note of the CAHAI's final paper on the "Possible elements of a legal framework on artificial intelligence, based on Council of Europe's standards on human rights, democracy and the rule of law" adopted in December 2021, the Committee of Ministers of the Council of Europe instructed the CAI to elaborate a Framework Convention on the activities within the lifecycle of artificial intelligence systems, "based on the Council of Europe's standards on human rights, democracy and the rule of law, and conducive to innovation, which can be composed of a binding legal instrument of a transversal character, including notably general common principles".¹⁸ The Committee of Ministers also decided to allow the European Union and interested non-European states – namely Argentina, Australia, Canada, Costa Rica, the Holy See, Israel, Japan, Mexico, Peru, the United States of America and Uruguay, sharing the values and aims of the Council of Europe to participate in the negotiations. These countries joined the CAI negotiations and participated

democracy and the rule of law. In: Days of Law Rolando Quadri. Rome: Institute of Comparative Law, University "Niccolò Cusano", 2024, pp. 331-347, ZILLER, J. op. cit. etc.

¹⁵ For an outstanding outline of the concept of "technological neutrality" in law, see OJANEN, A. Technology Neutrality as a Way to Future-Proof Regulation: The Case of the Artificial Intelligence Act. In: European Journal of Risk Regulation, First View, <https://doi.org/10.1017/err.2025.10024>.

¹⁶ See ENGSTRON, D. The Automated State: A Realist View. In: George Washington Law Review, vol. 92, no. 6, 2024, pp. 1437–1472. Also see BUTLER, O. Algorithmic Decision-Making, Delegation and the Modern Machinery of Government. In: Oxford Journal of Legal Studies, vol. 45, no. 3, 2025, pp. 727–752.

¹⁷ See COGLIANESE, C. Administrative Law in the Automated State. In: Daedalus, vol. 150, no. 3, 2021, pp. 104–120. Also see ALMADA, M. Automated Uncertainty: A Research Agenda for Artificial Intelligence in Administrative Decisions. In: Review of European Administrative Law, vol. 16, no. 3, 2023, pp. 137-158.

¹⁸ Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, sub I.2.

in the drafting of the Framework Convention.¹⁹ Subsequently, the text of the Framework Convention was adopted by 17 signatory states²⁰ in Vilnius on 5 September 2024, in both English and French versions, both of which are equal.²¹

The Framework Convention is introduced by a quite extensive Preamble that outlines the intentions of the signatory states in comprehensive terms. The Explanatory Report reveals that the text of the Framework Convention has been influenced by the efforts to balance two somewhat contradictory factors.²² On one hand, the signatory states to the Framework Convention wished to emphasise that artificial intelligence systems offer unprecedented opportunities to protect and promote human rights, democracy and the rule of law. At the same time, the signatory states to the Framework Convention wished to acknowledge that there are serious risks and perils arising from certain activities within the lifecycle of AI.²³ In this respect, the Preamble states that the Framework Convention addresses concerns that certain activities throughout the lifecycle of AI systems may compromise human dignity and individual autonomy, human rights, democracy, and the rule of law.²⁴ Further, the Preamble also highlights the concerns about the risks of discrimination in digital contexts, particularly those involving AI systems, and their potential effect of creating or aggravating inequalities, including those experienced by women and individuals in vulnerable situations, regarding the enjoyment of their human rights and their full, equal and effective participation in economic, social, cultural and political affairs.²⁵ Furthermore, the signatory states have addressed the risk of misuse of AI systems in the Preamble, stating their intention to avoid any use of such systems for repressive purposes that violate international human rights law, including through arbitrary or unlawful surveillance and censorship practices that erode privacy and individual autonomy.²⁶ Consequently, the Preamble sets the scene for a variety of legally binding obligations contained in the Framework Convention that aim to ensure that the activities within the lifecycle of AI systems that have the potential to interfere with the respect for human rights, the functioning of democracy, or the observance of rule of law in both the public and private sectors are in full compliance with this Framework Convention.²⁷

The Framework Convention represents the very first binding instrument of international law, addressing the challenges and risks associated with the emergence of AI. The Convention is open for signature by the member states of the Council of Europe, non-member states that have participated in its elaboration, and the European Union.²⁸ 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 signatory states, including at least three member states of the Council of Europe, have expressed their consent to be bound by this Convention.²⁹

¹⁹ Explanatory Report, sub I.3.

²⁰ Andorra, Canada, European Union, Georgia, Iceland, Israel, Japan, Liechtenstein, Montenegro, Norway, Republic of Moldova, San Marino, Switzerland, Ukraine, United Kingdom, United States of America and Uruguay.

²¹ Framework Convention, Art. 36 in fine.

²² Explanatory Report, sub 10.

²³ *ibid.*

²⁴ Framework Convention, Preamble.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Explanatory Report, sub 11.

²⁸ Framework Convention, Art. 30.1.

²⁹ *ibid.*, Art. 30.3.

2. A new framework for intelligent robots in administrative law

The scope of application of the newly adopted Framework Convention has been delimited as follows: it applies to activities throughout the lifecycle of AI systems.³⁰ However, only those AI systems are covered that “have the potential to interfere with human rights, democracy, and the rule of law.”³¹ In this respect, the Framework Convention primarily applies to the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf.³² Consistent with earlier recommendations, as issued³³ by the Council of Europe, the Explanatory Report interprets the term “public authority” as “any entity of public law of any kind or any level (including supranational, State, regional, provincial, municipal, and independent public entity).”³⁴ Thus, any use of AI systems in administrative decision-making by public authorities vis-à-vis individuals will fall within the scope of the newly adopted Framework Convention. Having said this, the Framework Convention goes even further, extending its application to cases in which AI systems used by private actors may interfere with human rights, democracy, and the rule of law.³⁵ However, while any deployment of AI systems in administrative decision-making undertaken by public authorities vis-à-vis individuals is governed by the regime established by the Framework Convention, the regime governing the use of AI by private actors is far more lenient.³⁶ Thus, one may argue that the focus of the Framework Convention is primarily on the relationship between the public authorities and individuals.

Having said this, the Framework Convention will represent a primary instrument governing recent efforts to deploy AI in administrative decision-making. The expected benefits of introducing AI into administrative decision-making are to speed up, simplify, reduce the cost, and streamline administrative processes.³⁷ At the same time, the deployment of AI in administrative decision-making aims to reduce the administrative burden on both public administration and citizens. This is to be achieved by linking automated systems to public records and databases, which should enable these systems to have immediate access to the information and documents needed for decision-making (without the need to request these documents from the persons concerned or to have them obtained by officials in the course of their official duties).³⁸ However, the potential benefits of automated management should not be limited to speeding up, simplifying, reducing costs, and streamlining administrative processes. The implementation of automation in administrative management should also ensure uniform application practices by eliminating arbitrariness and other individual errors.³⁹ In this respect, the Framework Convention provides for umbrella rules, as applicable for any future deployment

³⁰ *ibid*, Art. 2 (“AI system” means 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).

³¹ *ibid*, Art. 3.1.

³² *ibid*, Art. 3.1.a.

³³ See Recommendation No. R (84) 15 of the Committee of Ministers to member States Relating to Public Liability of 18 September 1984.

³⁴ Explanatory Report, sub 28.

³⁵ Framework Convention, Art. 3.1.b.

³⁶ *ibid* (to ensure legal certainty and transparency, each state party is obliged to set out in a declaration how it intends to meet the obligation set out in this paragraph, either by applying the principles and obligations set forth in Chapters II to VI of the Framework Convention to activities of private actors or by taking other appropriate measures to fulfil the obligation set out in this paragraph. For state parties that have chosen not to apply the principles and the commitments of the Framework Convention in relation to activities of other private actors, the Convention expects the approaches of those state parties to develop over time as their approaches to regulate the private sector evolve).

³⁷ See ROEHL, U. Understanding Automated Decision-Making in the Public Sector: A Classification of Automated, Administrative Decision-Making. In: JUELL-SKIELSE, G., ÅKESSON, M., LINDGREN, I. (eds), Service Automation in the Public Sector. Concepts, Empirical Examples and Challenges. London: Springer, 2022, pp. 35-63.

³⁸ *ibid*.

³⁹ *ibid*.

of AI in decision-making “undertaken by public authorities, or private actors acting on their behalf.”⁴⁰

In this respect, the Framework Convention sets out principles and obligations that state parties must implement when deploying AI systems in administrative decision-making. Two general obligations are provided. Firstly, the obligation of the state parties to protect human rights, as enshrined in applicable international law and in their domestic law, is provided.⁴¹ Secondly, the Framework Convention imposes an obligation on state parties to maintain measures to ensure that artificial intelligence systems are not used to undermine the integrity, independence, and effectiveness of democratic institutions and processes, including the principle of the separation of powers, respect for judicial independence, and access to justice.⁴² In parallel to these general obligations, the Framework Convention also establishes general common principles that each state party shall implement regarding artificial intelligence systems, in a manner appropriate to its domestic legal system. These principles are as follows:

- **human dignity and individual autonomy:** each state party shall adopt or maintain measures to respect human dignity and personal independence in relation to activities within the lifecycle of AI systems;⁴³
- **transparency and oversight:** each state party shall adopt or maintain measures to ensure that adequate transparency and oversight requirements tailored to the specific contexts and risks are in place in respect of activities within the lifecycle of AI systems;⁴⁴
- **accountability and responsibility:** each state party shall adopt or maintain measures to ensure accountability and responsibility for adverse impacts on human rights, democracy and the rule of law resulting from activities within the lifecycle of AI systems;⁴⁵
- **equality and non-discrimination:** each state party shall adopt or maintain measures with a view to ensuring that activities within the lifecycle of AI systems respect equality, including gender equality, and the prohibition of discrimination, as provided under applicable international and domestic law;⁴⁶
- **privacy and personal data protection:** each state party shall adopt or maintain measures to ensure that, with regard to activities within the lifecycle of AI systems, privacy rights of individuals and their personal data are protected, including through applicable domestic and international laws, standards and frameworks and adequate guarantees and safeguards have been put in place for individuals;⁴⁷
- **reliability:** each state party shall take, as appropriate, measures to promote the reliability of AI systems and trust in their outputs, which could include requirements related to adequate quality and security throughout the lifecycle of AI systems.⁴⁸

Lastly, the Framework Convention also provides for a general principle of safe innovation.⁴⁹ In this respect, the Convention imposes an obligation on state parties to establish controlled environments for the development, experimentation, and testing of AI systems under the supervision of their competent authorities. Thus, the Framework Convention explicitly obliges the state parties to foster prospective innovations in this field and to contribute to the innovation by establishing an appropriate administrative environment.⁵⁰ One approach to achieve these

⁴⁰ Framework Convention, Art. 3.1.a.

⁴¹ ibid, Art. 4.

⁴² ibid, Art. 5.

⁴³ ibid, Art. 7.

⁴⁴ ibid, Art. 8.

⁴⁵ ibid, Art. 9.

⁴⁶ ibid, Art. 10.

⁴⁷ ibid, Art. 11.

⁴⁸ ibid, Art. 12.

⁴⁹ ibid, Art. 13.

⁵⁰ Explanatory Report, sub 92.

goals is, for instance, regulatory sandboxes that aim to foster innovation, provide legal certainty and enable regulatory learning. Other approaches include exceptional regulatory guidance or no-action letters to clarify how regulators will approach the design, development, or use of artificial intelligence systems in novel contexts.

3. The Framework Convention and the EU AI Act

As is well known, the Framework Convention is not the only instrument designed to regulate artificial intelligence. In 2024, the EU Regulation on Artificial Intelligence (AI Act) was adopted. To provide a comprehensive understanding of the Framework Convention, it is beneficial to compare these two, at first glance, very similar instruments. Let us begin with the similarities. Both instruments are grounded in a shared concern – ensuring that the use of artificial intelligence systems complies with the protection of fundamental rights, democratic principles, and the rule of law. From the very beginning, an intensive exchange of views and consultations among the institutions involved was reflected in the final form of both documents. Therefore, it can be said that the same overarching purpose and objectives guide them.⁵¹

Despite certain similarities, there are also considerable differences between the two instruments. The first fundamental difference between the AI Act and the Framework Convention lies in the institution adopting the instrument. The AI Act is a legal act of the European Union, whereas the Convention is an initiative of the Council of Europe. Even at this level, it becomes apparent that the competences and scope of authority of the two institutions are defined differently. The competences of the Council of Europe are derived from its Statute, which provides that the organisation's objective is "to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and to facilitating their economic and social progress."⁵² This provision establishes a broad and flexible mandate, enabling the Council of Europe to engage in a wide range of activities and address emerging challenges across various domains. This flexibility in competences is directly reflected in the drafting of the Framework Convention. Its provisions are intentionally general, focusing on principles and values rather than prescriptive rules, thereby granting member states significant discretion in interpreting and implementing them. In practice, this approach allows the Convention to adapt to diverse national contexts and evolving societal challenges, ensuring that its guiding principles remain relevant and practical across the broad spectrum of issues related to artificial intelligence and beyond.⁵³

The second fundamental distinction between the AI Act and the Framework Convention concerns the scope of their respective addressees and the degree of their legal binding force. As a regulation, the AI Act is directly applicable and legally binding upon all EU member states as well as on entities operating within the Union's internal market. However, its effects are not limited to the EU. Its regulatory reach extends extraterritorially since the AI Act also applies to entities outside the EU if they place AI systems on the EU market or use them to provide services to EU citizens.⁵⁴ The regulation further emphasises the protection of affected persons in the Union, reinforcing the principles of accountability and transparency in the use of AI systems.⁵⁵ The AI Act thus establishes a comprehensive framework that integrates manufacturers, providers, distributors, and end-users to ensure the safe and ethically responsible deployment of AI technologies. In contrast, the Framework Convention adopts an

⁵¹ ZILLER, J., Op. cit, p. 202.

⁵² Statute of the Council of Europe, Art. 1.

⁵³ See ROTENBERG, M. Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. In: International Legal Materials, vol. 64, no. 3, 2025, p. 859.

⁵⁴ AI Act, Art. 2.

⁵⁵ *ibid*

open and universal approach. It is open for signature not only by the member states of the Council of Europe, but also by other countries, regardless of their participation in the drafting process. The Framework Convention aims to become a global normative instrument, ensuring that the life cycle of AI systems is consistent with the principles of human rights, democracy, and the rule of law, regardless of territorial boundaries. This openness reflects its ambition to promote a cooperative, principle-based governance framework.

The third, and arguably one of the most significant, distinction between the AI Act and the Framework Convention concerns the legal nature of the instruments and their respective modalities of application.⁵⁶ The AI Act, as a regulation of the European Union, is directly binding upon all Member States without the need for transposition into national law.⁵⁷ It imposes specific legal obligations on both providers and users of artificial intelligence systems. It establishes mechanisms for oversight, accountability, and procedural control, with the objective of harmonising rules and ensuring the uniform functioning of the EU internal market. In contrast, the Framework Convention is an international treaty that only acquires binding force upon ratification by individual states.⁵⁸ Although it was adopted by the European Union and signed upon adoption, rendering it theoretically applicable to all member states, its practical effectiveness depends on each state's ratification process and domestic legal framework.

III. INTELLIGENT ROBOTS NEED A TECHNOLOGICALLY NEUTRAL LAW

The Framework Convention was adopted during a period when the deployment of AI into administrative decision-making was reflected in a myriad of national legal frameworks. The Framework Convention aims to address the spontaneous emergence of national AI legislation and to establish common fundamental principles. The fact is, however, that there has been a grave difference between the concept of the newly adopted national laws and that of the Framework Convention. This difference can be demonstrated in the following examples.

Since 2017, fully automated administrative acts have been regulated in the Federal Republic of Germany. Here, the Federal Administrative Procedure Act provides the following provision, governing the deployment of AI in administrative decision-making:

§ 35a - Fully automated issuance of an administrative act

An administrative act may be issued entirely by automatic means, provided that this is permitted by law and there is no discretion or scope for assessment.

This provision encompasses both positive and negative aspects of AI deployment in German administrative proceedings. In this respect, AI can only be deployed when a special act enables it. Secondly, fully automated issuance of an administrative act is not allowed when administrative discretion is required. In this respect, the wording of the provision refers to two types of administrative discretion, which have been traditionally distinguished in German administrative law scholarship – discretion (Ermessen) and scope of assessment (Beurteilungsspielraum).⁵⁹ The reason for excluding AI in cases where discretion or assessment is applied lies in the current nature of AI. In other words, as of today, the AI is not considered an appropriate or reliable tool for addressing cases of administrative decision-making where a choice among several options needs to be made.

The fact is, however, that the exclusion of AI in discretionary decision-making has not been a speciality of the German legislation. Such reservations are also to be found in other recently

⁵⁶ See ELENA, C. The legal regulation of Artificial intelligence (AI) in Europe: two decisive (but insufficient) steps of the Council of Europe and the European Union. In: Cuadernos de Derecho Transnacional, vol. 17, no. 1, 2025, p. 372.

⁵⁷ Consolidated Version of the Treaty on the Functioning of the European Union, Art. 288.

⁵⁸ Framework Convention, Art. 30.

⁵⁹ See Schneider, J., Enderlein, F. Automated Decision-Making Systems in German Administrative Law. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, p. 98.

discussed pieces of national legislation. In 2022, a similar provision was proposed in Estonia, providing for the following:

Section 7 - Automated administrative proceedings

(1) Provided that it does not interfere with the rights or freedoms of individuals, an administrative authority may conduct automated electronic administrative proceedings, issue an automated administrative act or other document, or perform any other automated operations through an information system without the direct involvement of an official or employee acting on behalf of the administrative authority in cases specified by law.

(2) In the case referred to in paragraph 1 of this section, the administrative authority shall ensure that:

1) Automation is in the interest of both the person and the public, as it reduces time and facilitates the administration of affairs.

2) the legal provision on which the decision is based does not provide for the use of administrative discretion (...).

Additionally, this provision excludes AI use in such cases, requiring public authorities to exercise their discretionary powers, i.e., to choose among several solutions.⁶⁰

Lastly, the proposal for a new provision on the use of AI in administrative decision-making can be demonstrated, as it was⁶¹ a matter of discussion in the Parliament of the Czech Republic in 2025:

§ 15a – Automatic management of administrative proceedings

(1) If the nature of the matter under consideration, the protection of the rights of the persons concerned or the protection of the public interest does not require that an official perform an act in the proceedings, the act may be performed automatically without the participation of an official. The act may not be performed in this manner if it requires the use of administrative discretion or concerns a decision on an appeal.

All pieces of national legislation, as demonstrated above, share one characteristic: they constitute ad hoc responses to the emergence of AI. These ad hoc laws don't follow a more general approach to AI in administrative law; they merely respond to AI's current stage of development. Therefore, they exclude any deployment of AI in the field of administrative discretion, as allowing the AI to decide in this field seems too risky as of today.⁶² While this approach may seem rational today, it does not reflect the current dynamics of AI development. Very probably, AI will serve as an effective tool for administrative discretion in the coming years, contributing to the efficiency and transparency of administration.⁶³ However, from this viewpoint, the national legislation outlined above will represent an obstacle rather than a platform for the prospective deployment of AI.

The newly adopted Framework Convention follows a somewhat different approach. In stark contrast to the pieces of national legislation mentioned above, the Framework Convention was designed to be technologically neutral from its outset. In this respect, the Explanatory Report

⁶⁰ See PILVING, I. Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 68-70.

⁶¹ See SHARP, V., NEŠPOR, J., KLIMENTOVÁ, E. Automation of administrative proceedings in the Czech Republic: critical reflections on the draft “ADM amendment” to the Administrative Procedure Code. In: Studia iuridica cassoviensia, vol. 13, special issue, 2025, pp. 170-188.

⁶² See COVILLA, J. Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, vol. 16, special issue 1, 2025, pp. 36-50.

⁶³ See HAIM, A. Administrative Discretion in the Age of Algorithms. Conceptual and Empirical Inquiries. Dissertation submitted to the School of Law, Stanford University, 2024, p. 164. Also see MITROU, L., JANSSEN, M., LOUKIS, E. Human Control and Discretion in AI-driven Decision-making in Government. In: LOUKIS, E., MACADAR, M. (eds) ICEGOV '21: Proceedings of the 14th International Conference on Theory and Practice of Electronic Governance. New York: Association for Computing Machinery, 2022, pp. 10-16.

highlights that the Framework Convention “reflects a broad understanding of what AI systems are, specifically as opposed to other types of simpler traditional software systems based on the rules defined solely by natural persons to execute operations automatically. It is meant to ensure legal precision and certainty, while also remaining sufficiently abstract and flexible to stay valid despite future technological developments.”⁶⁴ As the signatory states of the Framework Convention sought to establish a universal and flexible framework capable of addressing future technological developments, they have also made no reservations regarding the deployment of AI within their administrative discretion. Thus, in contrast to several recent national laws governing AI use in administrative decision-making, the Framework Convention, in principle, allows the deployment of AI when administrative discretion is granted. Consequently, both general obligations and basic common principles, as provided by the Framework Convention, will also be applicable in these cases.

As a technologically neutral instrument, the Framework Convention neither imposes an obligation nor prohibits the deployment of AI in administrative discretion. Thus, any prospective deployment of AI in administrative discretion will be in line with the regime of the Framework Convention. However, any such deployment will need to respect the general common principles, as provided by the Framework Convention. With respect to the transparency principle⁶⁵, any such deployment must be based on written law, and the use of AI in discretion must be disclosed to the addressee of administrative proceedings in advance. Having said this, the Framework Convention is generally open to the deployment of AI in all cases where administrative discretion is anticipated. However, one may expect that at the same time, AI will be deployed only in easier cases of administrative discretion in the first stages. Decision-making about the routine penalties in road traffic may represent a salient example. At the same time, the oversight principle will be applicable, as each use of AI in administrative proceedings will require human control, particularly in the form of judicial review. The application of the oversight principle in this field must take into consideration that while the deployment of AI in cases of administrative discretion may contribute to higher efficiency in public administration, such application must also be free of any discrimination and biases. Lastly, a robust system of accountability⁶⁶ must accompany each case, where AI will be deployed in administrative decision-making with discretion in the future.

Having said this, one also needs to bear in mind that there have already been legal frameworks that allow the deployment of AI in administrative discretion today. Currently, this is the case of the Spanish legislation.⁶⁷ Here, Act No. 40/2015 (Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público), which provides the following:

Article 41. Automated administrative action.

1. *Automated administrative action is understood to be any decision or action carried out entirely by electronic means by a public administration within the framework of an administrative procedure, and in which a public employee has not been directly involved.*
2. *In the case of automated administrative action, the competent body or bodies –as appropriate–shall be established in advance for the definition of the specifications, programming, maintenance, supervision and quality control and, where applicable, auditing of the information system and its source code. It shall also indicate the body to be held responsible for the appeal.*

⁶⁴ Explanatory Report, sub 24.

⁶⁵ Framework Convention, Art. 8.

⁶⁶ *ibid.*, Art. 9.

⁶⁷ See GAMERO CASADO, E. Automated Decision-Making Systems in Spanish Administrative Law. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 26-38.

This example of Spanish legislation may serve as a paradigm for prospective legal frameworks in other European jurisdictions. While it allows the deployment of AI in administrative discretion, it also provides for limits on such deployment.

At this place, the authors would like to highlight that the technologically neutral stance of the Framework Convention represents a significant contribution of this newly adopted instrument of international law to the prospective deployment of AI in administrative law. While the national laws, adopted very recently across various jurisdictions, will need to be amended and updated as technological developments evolve, the text of the Framework Convention has the potential to become a stable and reliable source of law in the future.

IV. CONCLUSIONS

Administrative law has entered the era of AI. New legal frameworks have emerged at the national level, attempting to govern prospective deployment of AI in administrative decision-making. The fact is, however, that these newly adopted or recently proposed pieces of legislation constitute ad hoc law. While they respond to the emergence of AI, they, in principle, fail to establish a durable legal framework for its further development. Such an approach starkly contrasts with the prospective benefits AI may bring to transparency and the efficiency of administrative decision-making.

Having said this, the newly adopted Framework Convention follows an opposite approach. From its inception, the Framework Convention has taken a technologically neutral stance, being flexible enough to respond to future developments in AI. Thus, unlike the recently adopted national laws, the Framework Convention has been designed to stand the test of time. The provisions of the newly adopted Framework Convention are flexible enough to cover prospective technological developments in the dynamic field of AI.

Intelligent robots that will be prospectively deployed in public administration need a technologically neutral legislation – that is, legislation capable of responding to the very dynamic developments. The Framework Convention has the potential to become such legislation in the future and to establish a transparent and predictable framework for the responsible deployment of AI in administrative law.

KEY WORDS

Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law; technology neutrality

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Rámcová úmluva Rady Evropy o umělé inteligenci a lidských právech, demokracii a právním státu; technologická neutralita

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