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## COMPARATIVE ANALYSIS OF THE EU AI ACT AND THE COUNCIL OF EUROPE FRAMEWORK CONVENTION ON AI: IMPLICATIONS FOR HUMAN RIGHTS GOVERNANCE

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### **Kovács A.D. Comparative analysis of the EU AI Act and the Council of Europe Framework Convention on AI: implications for human rights governance.**

The rapid development and deployment of artificial intelligence technologies pose significant challenges for contemporary legal systems, particularly with regard to the protection of fundamental rights and democratic values. Artificial intelligence systems are increasingly used in areas such as employment, public administration, law enforcement, border control and access to essential services, where automated decision-making may directly affect individuals and societies. In response to these developments, Europe has recently adopted two major regulatory instruments: the European Union Artificial Intelligence Act and the Council of Europe Framework Convention on Artificial Intelligence, Human Rights Democracy, and the Rule of Law. Although both of these documents aim to ensure that artificial intelligence systems are developed and used in accordance with fundamental rights principles, they rely on different regulatory architectures and governance mechanisms. These developments reflect the growing importance of establishing coherent regulatory approaches capable of addressing the cross-border implications of artificial intelligence technologies.

This article conducts a comparative examination of these instruments using a doctrinal and analytical-comparative approach. It analyses their regulatory logic, enforcement mechanisms, and safeguards for fundamental rights in the governance of high-risk AI systems. The findings indicate that the EU AI Act establishes a detailed risk-based regulatory framework supported by administrative enforcement and market-based compliance mechanisms, whereas the Council of Europe Convention adopts a principle-based model grounded in international human rights law and state responsibility. Their coexistence therefore reflects the emergence of a pluralistic European governance architecture in which regulatory standardization and human rights-based oversight operate in parallel, shaping the evolving institutional structure of artificial intelligence governance in Europe.

**Key words:** artificial intelligence regulation; EU AI Act; Council of Europe Framework Convention on AI; human rights; high-risk AI systems; international law; AI governance.

### **Ковач А.Д. Порівняльний аналіз Закону ЄС про штучний інтелект та Рамкової конвенції Ради Європи про штучний інтелект: наслідки для управління правами людини.**

Вказується, швидкий розвиток та впровадження технологій штучного інтелекту створюють значні виклики для сучасних правових систем, особливо щодо захисту основних прав та демократичних цінностей. Системи штучного інтелекту все частіше використовуються в таких сферах, як зайнятість, державне управління, правоохоронна діяльність, прикордонний контроль та доступ до основних послуг, де автоматизоване прийняття рішень може безпосередньо впливати на окремих осіб та суспільства. У відповідь на ці події Європа нещодавно прийняла два основні регуляторні документи: Закон Європейського Союзу про штучний інтелект та Рамкову конвенцію Ради Європи про штучний інтелект, права людини, демократію та верховенство права. Хоча обидва ці документи спрямовані на забезпечення того, щоб системи штучного інтелекту розроблялися та використовувалися відповідно до принципів основних прав, вони спираються на різні регуляторні архітектури та механізми управління. Ці події відображають зростаючу важливість встановлення узгоджених регуляторних підходів, здатних вирішити транскордонні наслідки технологій штучного інтелекту.

У цій статті проводиться порівняльний аналіз цих документів, використовуючи доктринальний та аналітико-порівняльний підхід. У ній аналізується їхня регуляторна логіка, механізми забезпечення дотримання та гарантії основоположних прав в управлінні високоризиковими системами штучного інтелекту. Результати дослідження показують, що Закон ЄС про ШІ встановлює детальну регуляторну базу, що базується на ризиках, що підтримується адміністративним правозастосуванням та ринковими механізмами дотримання вимог, тоді як Конвенція Ради Європи приймає принципову

модель, що ґрунтується на міжнародному праві прав людини та відповідальності держави. Таким чином, їх співіснування відображає появу плюралістичної європейської архітектури управління, в якій регуляторна стандартизація та нагляд, що ґрунтується на правах людини, діють паралельно, формуючи інституційну структуру управління штучним інтелектом у Європі, що розвивається.

**Ключові слова:** регулювання штучного інтелекту; Закон ЄС про ШІ; Рамкова конвенція Ради Європи про ШІ; права людини; високоризикові системи ШІ; міжнародне право; управління ШІ.

**Statement of the problem.** Artificial intelligence is playing an increasingly significant role in decision-making processes that are closely tied to fundamental rights, such as employment, access to essential services, border management, law enforcement, and public administration [1, Recitals 12-14; Annex III]. In these areas, the use of AI systems can heighten familiar legal issues like algorithmic discrimination, transparency concerns and accountability gaps in automated decision-making. As governments and international organizations tackle these challenges, we have seen a rapid expansion of regulatory efforts focused on artificial intelligence. However, these initiatives have emerged at different paces across various jurisdictions, making it tough to establish a consistent framework for governing AI on international scale [2, Arts. 1-2].

In 2024, Europe rolled out two significant regulatory frameworks aimed at tackling the challenges posed by technologies that use artificial intelligence: the European Union's Artificial Intelligence Act (hereinafter AI Act) and the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law ((hereinafter AI Convention). Both of these frameworks highlight the importance of safeguarding fundamental rights and the necessity for a governance approach that is sensitive to the risks associated with AI systems. However, they take different legal paths and regulatory strategies. The AI Act is built around a compliance framework that integrates market principles, laying out specific obligations for those who provide and deploy AI systems, all backed by administrative oversight and enforcement measures. On the other hand, the Convention takes a treaty-based route, rooted on broad human rights principles and responsibility of states to ensure that AI systems align with democratic values and the rule of law.

This development brings up a crucial question for both international and European legal scholars. While both instruments aim to tackle the risks associated with artificial intelligence systems, their role within the European regulatory framework is still a bit murky. It is essential to explore whether these instruments work together as part of a unified governance strategy or if they represent separate regulatory paths for AI governance.

**The purpose** of this article aims to provide a comparative analysis of the AI Act and the AI Convention. It delves into the structural differences between these two frameworks, highlighting their regulatory strategies, enforcement methods and the protections they offer for fundamental rights in managing high-risk AI systems. Additionally, it evaluates whether their coexistence helps to unify the European AI governance or if it instead signals the rise of a diverse regulatory landscape within international law.

**State of research on the issue.** The issue of legal regulation of artificial intelligence and its implications for the protection of fundamental rights has received growing attention in the contemporary legal scholarship. Researchers increasingly examines how artificial intelligence technologies should be regulated in order to balance technological innovation with the protection of fundamental rights [12]. Researchers note that AI systems influence key areas of social life, including employment, public administration, law enforcement and access to essential services, which raises concerns regarding discrimination, transparency and accountability in automated decision-making processes [4]. As a result, considerable academic attention has been devoted to developing governance frameworks capable of addressing these risks while maintaining the benefits of innovation in AI technologies [5]. Some scholars further emphasise that effective AI regulation requires governance frameworks that integrate legal regulation with ethical principles and technical standards in order to address the broader societal impacts of artificial intelligence systems [14].

A significant portion of recent research has focused on the development of the European Union's regulatory framework for artificial intelligence, particularly the AI Act. Scholars frequently describe the Act as the comprehensive attempt to regulate AI through a risk-based approach that categorizes systems according to their potential impact on fundamental rights and societal interests [10]. Recent research also highlights that the European regulatory model seeks to address potential harms associated with AI technologies while maintaining conditions for technological innovation [16]. This regulatory model introduces differentiated obligations for providers and users of AI systems, especially in relation to high-risk applications [13]. Researchers also underline that the Act aims to harmonize the internal market by establishing uniform standards for the development and deployment of AI technologies across the EU [3].

At the same time, several authors critically assess the regulatory philosophy underlying the AI Act. Some scholars argue that the legislation relies heavily on regulatory techniques derived from product safety law and market harmonization rather than from a comprehensive human rights framework [4]. In this regard, critics suggest that the procedural compliance mechanisms embedded in the Act may risk reducing fundamental rights protection to a set of administrative and technical requirements. Other studies emphasize that the strong reliance on conformity assessment and technical standards could potentially overlook broader societal risks associated with the widespread deployment of artificial intelligence systems [5].

Parallel scholarly attention has also been directed toward the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law, which is widely described as the first international treaty specifically addressing AI governance [6]. Scholars emphasize that the Convention is grounded in the human rights tradition of the Council of Europe and seeks to ensure that the design, development, and deployment of AI systems remain consistent with the principles of human dignity, democracy and the rule of law [2]. Unlike the AI Act, the Convention adopts a principle-based regulatory approach and places primary responsibility on states to implement safeguards within their domestic legal systems [8].

However, several scholars also point to potential limitations of the Convention. In particular, scholars note that its provisions are formulated at a high level of abstraction, which may lead to divergent interpretation and implementation practices among participating states [7]. Other analyses highlight that the Convention relies primarily on monitoring mechanisms and political cooperation rather than strong enforcement tools, which raises questions about the effectiveness and consistency of its implementation [9].

Despite the growing body of research devoted to both instruments, many existing studies examine the AI Act and the AI Convention separately. As a result, limited scholarly attention has been paid to the interaction between these regulatory frameworks and to the implications of their simultaneous emergence for European and international AI governance. A comparative examination of these instruments is therefore necessary to assess whether their coexistence contributes to regulatory harmonization or reflect the emergence of a pluralistic model of AI governance within contemporary international law.

**Presentation of the material.** A comparative analysis of the EU' AI Act and the Council of Europe Framework Convention requires examining several structural dimensions of AI governance. These include the regulatory logic underlying each instrument, the institutional mechanisms used to ensure compliance, and the implications of these approaches for the protection of fundamental rights in the context of high-risk AI systems. This analytical framework clarifies how the two instruments interact within the emerging European system of AI regulation. Although both instruments seek to address risks associated with artificial intelligence, their regulatory architectures reflect fundamentally different approaches to technological governance.

The adoption of the Union's AI Act and the Framework Convention within a relatively short period might suggest the emergence of a coherent European model of AI governance [1, Recital 1]. However, a closer structural analysis reveals not consolidation but bifurcation. Although both instruments identify the protection of fundamental rights as a central objective, they institutionalize distinct regulatory rationalities that operate through different legal techniques, institutional frameworks and compliance mechanisms.

The AI Act is anchored in the internal market competence of the European Union and embedded within the Union's New Legislative Framework for product regulation [1, Recitals 3-7, Art. 1]. Its architecture translates fundamental rights concerns into a system of risk classification, conformity assessments, documentation requirements and ex ante compliance obligations imposed primarily on providers and deployers of AI systems. High-risk systems must satisfy technical robustness standards, transparency obligations and procedural safeguards before being placed on the market [1, Arts. 13-15]. In this model, the protection of the fundamental rights is operationalized through administrative compliance mechanisms. Rather than constitutionalizing rights directly, the AI Act renders them enforceable by transforming abstract values into measurable compliance criteria. This approach reflects a market-integrated regulatory logic in which legal harmonization and fundamental rights safeguards are pursued simultaneously through regulatory standardization [3].

The Council of Europe Framework Convention adopts a fundamentally different regulatory approach. Grounded in the human rights tradition of the Council of Europe, it frames AI governance primarily as a matter of protecting human dignity, democracy, and the rule of law [2, Art. 1]. Its provisions are intentionally formulated at a high level of generality and avoid detailed technical prescriptions [2, Explanatory Report, para. 25]. Rather than imposing direct regulatory obligations on private actors, the Convention places responsibility on states to ensure that AI systems are developed and deployed in

a manner compatible with fundamental rights standards [2, Arts. 4-7]. In contrast to the compliance-oriented architecture of the AI Act, the Convention relies on a principle-based framework that allows states to implement appropriate safeguards within their domestic legal systems [15].

The divergence between these instruments becomes even clearer when examining their enforcement design. The AI Act relies on centralized administrative supervision supported by significant financial sanctions [1, Arts. 99-101]. National supervisory authorities are empowered to investigate infringements, order corrective measures and impose fines that may reach a substantial percentage of a company's global annual turnover [1, Art. 101 (1)(d)]. Compliance is secured primarily through deterrence, economic pressure and the potential exclusion of non-compliant systems from the European market [1, Art. 102]. The regulatory addressee is the private operator whose behaviour is disciplined through *ex ante* conformity requirements and *ex post* administrative oversight [1, Arts. 16-43]. Through this structure, uniformity is pursued by means of harmonized enforcement powers and legally binding sanctions.

The Convention adopts a markedly different compliance model. As a framework treaty, it binds states rather than private actors and establishes a monitoring mechanism centred on a Conference of the Parties [2, Arts. 88-90]. This body facilitates dialogue, reviews national implementation, and issues recommendations that are not legally binding [2, Art. 88(2)(d-e)]. The Convention does not establish a dedicated judicial body for dispute settlement, nor does it provide for direct individual complaints, similar to those available under the European human rights instruments. Instead, disputes are to be resolved through negotiation or other peaceful means chosen by the parties. The enforcement logic therefore rests not on coercive sanctioning but on normative internalization, peer review and progressive domestic adaptation [2, Explanatory Reports, paras. 200-210]. Whereas the AI Act seeks compliance through administrative deterrence, the Convention assumes convergence through the gradual integration of its principles into national legal systems.

These distinct enforcement architectures reflect deeper theoretical differences regarding how rights protection should be secured in technologically complex regulatory environments. A sanction-based model may generate immediate compliance incentives and stronger short-term uniformity, yet it risks reducing rights protection to formalized conformity assessments if oversight becomes overly technocratic [5]. Conversely, a monitoring-based treaty model may foster deeper integration of human rights principles within domestic constitutional frameworks, but at the cost of divergent interpretations and uneven implementation across jurisdictions. The coexistence of these approaches illustrates that European AI governance does not rely on a single compliance theory but instead operates through parallel mechanisms of regulatory discipline and normative persuasion.

The implications of this bifurcated regulatory architecture extend beyond the European legal order. The AI Act is frequently associated with the so-called "Brussels Effect" according to which the regulatory power of the European Union projects standards globally through market mechanisms [11]. By conditioning access to the Union market on compliance with its requirements, the Act may incentivise multinational companies to adopt its regulatory standards beyond Europe for reasons of efficiency and legal certainty [1, Arts. 2, 7]. At the same time, several scholars question whether AI systems are sufficiently divisible to allow differentiated regulatory versions across jurisdictions, thereby limiting the automatic diffusion of European rules. The Convention follows a different path of international influence. Open to non-EU states, it promotes the diffusion of governance standards through multilateral treaty engagement and shared human rights commitments rather than market leverage. While this flexibility may facilitate broader participation, it also increases the likelihood of heterogeneous domestic implementation [2, Explanatory Report, paras. 45-50].

Taken together, the interaction of these instruments reframes European AI regulation as an instance of regulatory pluralism. Rather than forming a hierarchical or fully harmonized system, the AI Act and the Convention institutionalize parallel yet interacting governance models. One grounded in technical risk management and market integration, the other in constitutional principles and treaty-based cooperation. Convergence between them is therefore neither automatic nor guaranteed. It depends on the extent to which administrative compliance mechanisms and constitutional obligations mutually reinforce one another in practice. European AI governance thus emerges not as a unified regulatory system but as a layered and dynamic structure in which harmonization remains contingent, negotiated and politically mediated.

**Conclusions.** The comparative analysis of the EU AI Act and the Council of Europe Framework Convention on AI demonstrates that both instruments pursue a common aim; ensuring that AI development and deployment remain compatible with fundamental rights and democratic values. Nevertheless, they pursue this goal through distinct legal structures and regulatory techniques. The AI Act relies on a detailed risk-based regulatory framework grounded in internal market harmonization

and administrative enforcement, whereas the Convention adopts a treaty-based model centred on human rights principles and state responsibility.

The analysis also reveals that these instruments reflect two distinct governance logics. The EU AI Act operationalizes fundamental rights protection through technical compliance mechanisms, conformity assessments and centralized supervisory oversight directed primarily at private actors. In contrast, the Council of Europe Convention embeds AI governance within the broader constitutional framework of human rights protection and requires states to ensure that AI systems are developed and used in accordance with principles such as human dignity, democracy, and the rule of law. Consequently, the Convention prioritizes normative obligations and domestic implementation rather than detailed regulatory prescriptions.

These differences suggest that European AI governance does not operate as a single unified regulatory system. Instead, the coexistence of these instruments indicates the emergence of a pluralistic governance architecture in which multiple regulatory approaches interact. The AI Act projects regulatory influence through market mechanisms and administrative enforcement, while the Convention promotes international cooperation and normative alignment through treaty commitments. Their interaction illustrates a layered model of governance in which convergence depends on how effectively compliance-based regulatory tools and human rights-based obligations reinforce one another in practice.

The future development of international AI governance will therefore depend on the ability of states and institutions to coordinate these complementary yet distinct regulatory frameworks. Attention should be given as well to the practical implementation of both instruments, especially in relation to high-risk AI systems and cross-border regulatory cooperation. Understanding how these governance models operate together will be essential for ensuring that technological innovation develops in a manner consistent with the protection of fundamental rights and democratic principles.

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