

34th Bled eConference  
Digital Support from Crisis to Progressive Change

# AI Regulation: Emerging binding legal instruments

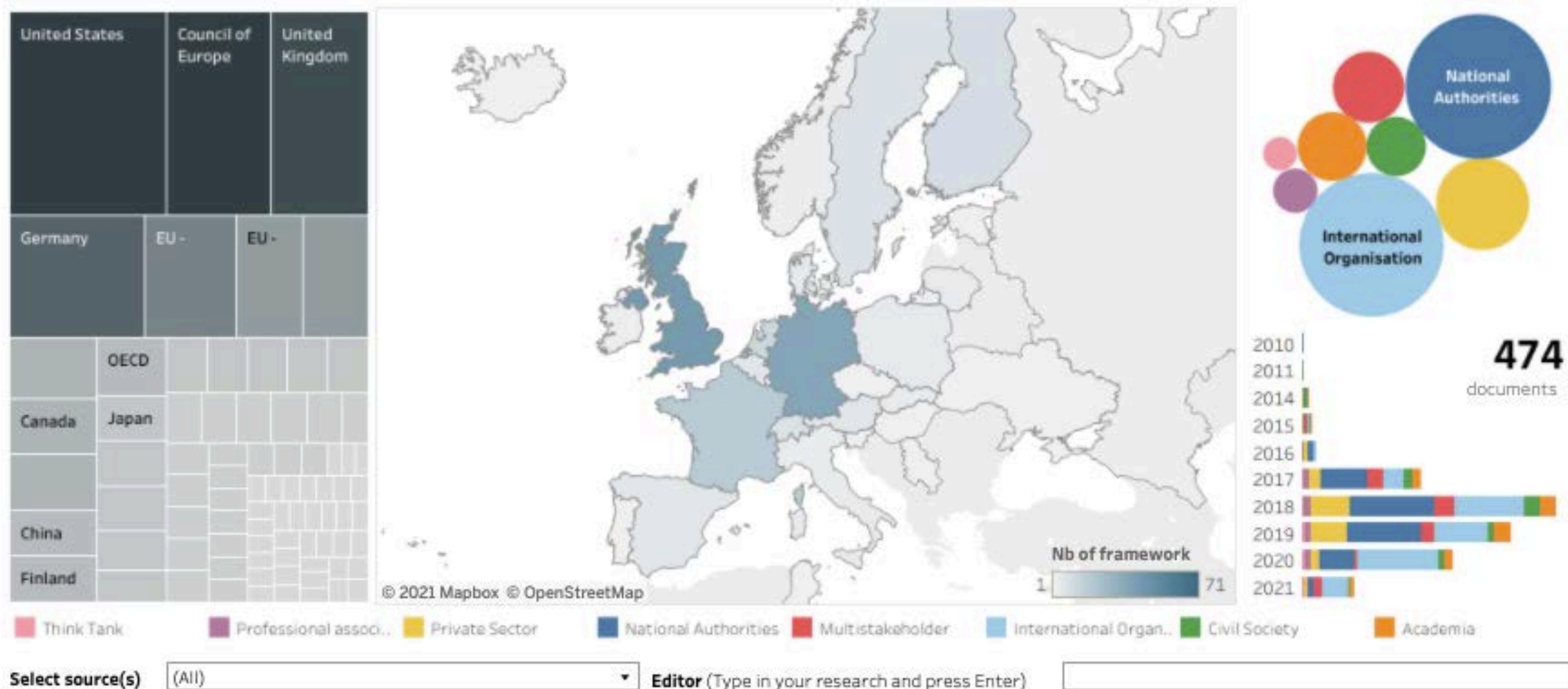
June 28, 2021

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# AI initiatives

## DATAVISUALISATION OF AI INITIATIVES



<https://www.coe.int/en/web/artificial-intelligence/national-initiatives>

OR





# CAHAI - Ad hoc Committee on Artificial Intelligence



[www.coe.int/ai](http://www.coe.int/ai)

Towards an application of AI based on human rights, the rule of law and democracy

[www.coe.int/cahai](http://www.coe.int/cahai)

Ad hoc Committee on AI - CAHAI

 Leaflet

The Committee will examine the feasibility and potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on Council of Europe's standards on **human rights**, **democracy** and the **rule of law**.

[CAHAI FACTSHEET](#)

<https://www.coe.int/en/web/artificial-intelligence/cahai>

OR





# CAHAI - MANDATE

Under the authority of the Committee of Ministers, the [CAHAI](#) is instructed to:

- *examine the **feasibility** and **potential elements** on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law.*

When fulfilling this task, the Ad hoc Committee shall:

- *take into account the standards of the Council of Europe relevant to the design, development and application of digital technologies, in the fields of human rights, democracy and the rule of law, in particular on the basis of existing legal instruments;*
- *take into account relevant existing universal and regional international legal instruments, work undertaken by other Council of Europe bodies as well as ongoing work in other international and regional organisations;*
- *take due account of a gender perspective, building cohesive societies and promoting and protecting rights of persons with disabilities in the performance of its tasks.*

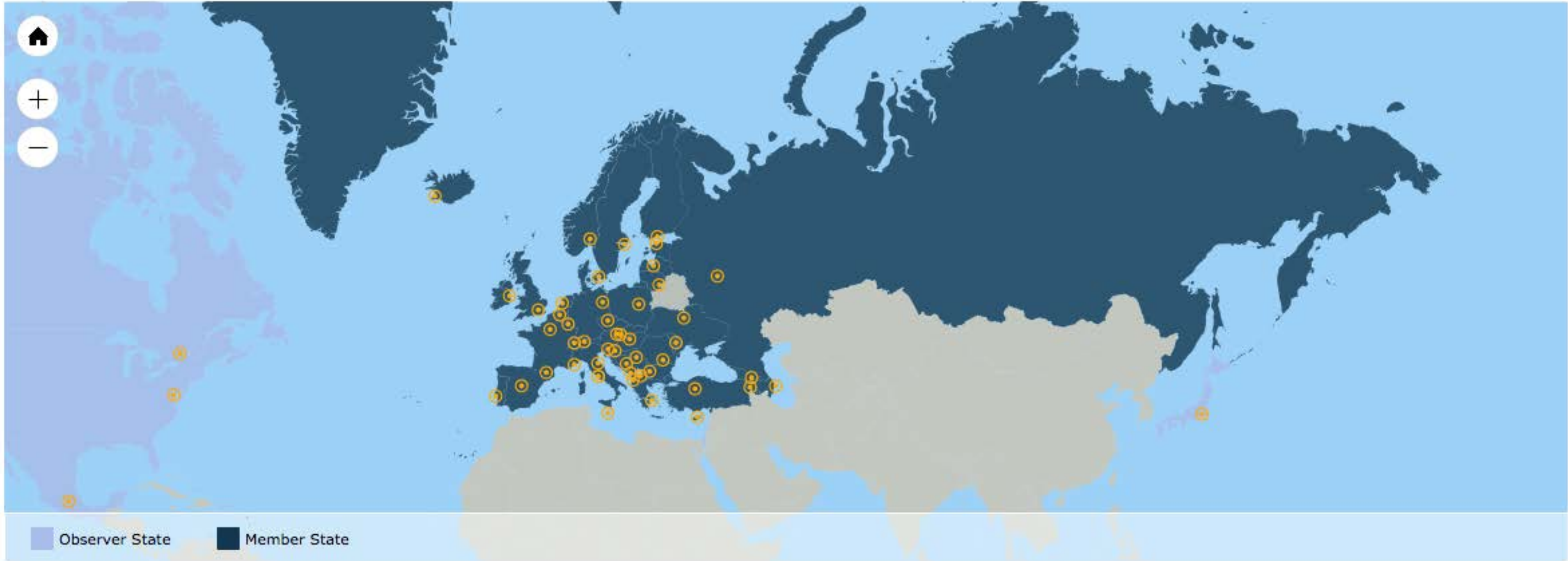
<https://www.coe.int/en/web/artificial-intelligence/cahai>

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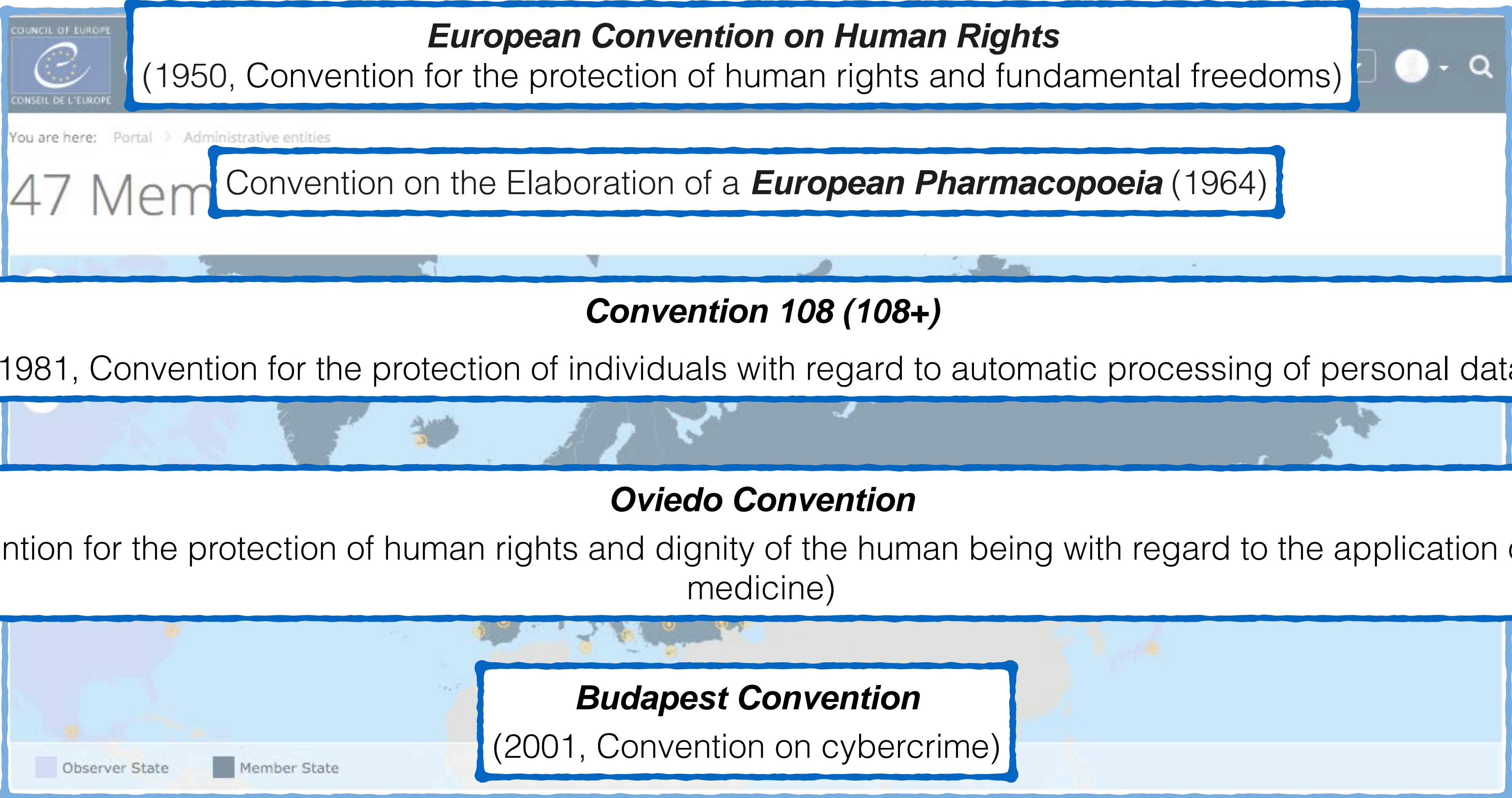


You are here: Portal > Administrative entities

# 47 Member States



= 830+ million people



**European Convention on Human Rights**  
(1950, Convention for the protection of human rights and fundamental freedoms)

Convention on the Elaboration of a **European Pharmacopoeia** (1964)

**Convention 108 (108+)**  
(1981, Convention for the protection of individuals with regard to automatic processing of personal data)

**Oviedo Convention**  
(1997, Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine)

**Budapest Convention**  
(2001, Convention on cybercrime)



# Council of Europe's Work in progress

Updated on 07/05/2021

## Policy, recommendations, declarations, guidelines and other legal instruments issued by Council of Europe bodies or committees on artificial intelligence

- ▶ [Guidelines of the Committee of Ministers of the Council of Europe on upholding equality and protecting against discrimination and hate during the Covid-19 pandemic and similar crises in the future - CM\(2021\)37-add1rev](#)
- ▶ [Declaration by the Committee of Ministers on the risks of computer-assisted or artificial-intelligence-enabled decision making in the field of the social safety net - Decl\(17/03/2021\)2](#)
- ▶ [Guidelines on Facial Recognition - T-PD\(2020\)03](#)
- ▶ [Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems - CM/Rec\(2020\)1](#)
- ▶ [Recommendation on developing and promoting digital citizenship education - CM/Rec\(2019\)17](#)
- ▶ [Unboxing AI: 10 steps to protect human rights - Recommendation of the Commissioner for Human Rights, May 2019](#)
- ▶ [Recommendation of the Committee of Ministers to member States on preventing and combating sexism - CM/Rec\(2019\)1](#)
- ▶ [Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes - Decl\(13/02/2019\)1](#)
- ▶ [Guidelines on Artificial Intelligence and Data Protection - T-PD\(2019\)01](#)
- ▶ [Strategic Action Plan on technologies and human rights in the field of biomedicine 2020-2025 \(with AI-specific parts\) - DH-BIO\(2018\)22](#)
- ▶ [European Ethical Charter on the use of artificial intelligence \(AI\) in judicial systems and their environment - CEPEJ\(2018\)14](#)
- ▶ [Recommendation of the Committee of Ministers to member States on guidelines to respect, protect and fulfil the rights of the child in the digital environment - CM/Rec\(2018\)7](#)
- ▶ [Recommendation of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries - CM/Rec\(2018\)2](#)
- ▶ [Recommendation of the Parliamentary Assembly of the Council of Europe about Technological convergence, artificial intelligence and human rights - Recommendation 2102\(2017\)](#)
- ▶ [Guidelines on the protection of individuals with regard to the processing of data in a world of Big Data - T-PD\(2017\)1](#)
- ▶ [Recommendation of the Committee of Minister to member States on Human rights and business - CM/Rec\(2016\)3](#)
- ▶ [Internet Governance Strategy 2016-2019](#)
- ▶ [Recommendation of the Parliamentary Assembly of the Council of Europe about Mass Surveillance - Recommendation 2067\(2015\)](#)
- ▶ [Recommendation CM/Rec\(2010\)13 adopted by the Committee of Ministers of the Council of Europe on The protection of individuals with regard to automatic processing of personal data in the context of profiling \(and explanatory memorandum\)](#)

<https://www.coe.int/en/web/artificial-intelligence/work-in-progress>

OR





## EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

European ethical Charter  
on the use of Artificial Intelligence in  
judicial systems and their environment



Adopted at the 31st plenary meeting  
of the CEPEJ (Strasbourg, 3-4 December 2018)



### The five principles of the Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment

- 1** **Principle of respect for fundamental rights:** ensure that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights.
- 2** **Principle of non-discrimination:** specifically prevent the development or intensification of any discrimination between individuals or groups of individuals.
- 3** **Principle of quality and security:** with regard to the processing of judicial decisions and data, use certified sources and intangible data with models elaborated in a multi-disciplinary manner, in a secure technological environment.
- 4** **Principle of transparency, impartiality and fairness:** make data processing methods accessible and understandable, authorise external audits.
- 5** **Principle "under user control":** preclude a prescriptive approach and ensure that users are informed actors and in control of the choices made.

OR



<https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>



# TOWARDS REGULATION OF AI SYSTEMS

Global perspectives on the development of a legal framework  
on Artificial Intelligence (AI) systems  
based on the Council of Europe's standards  
on human rights, democracy and the rule of law



<https://rm.coe.int/prems-107320-gbr-2018-compli-cahai-couv-texte-a4-bat-web/1680a0c17a>

OR





Strasbourg, 17 December 2020

CAHAI(2020)23

**AD HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE (CAHAI)**

**Feasibility Study**

<https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>

OR





# ARTIFICIAL INTELLIGENCE, HUMAN RIGHTS, DEMOCRACY, AND THE RULE OF LAW

A PRIMER

PREPARED TO SUPPORT THE FEASIBILITY STUDY  
PUBLISHED BY THE COUNCIL OF EUROPE'S AD  
HOC COMMITTEE ON ARTIFICIAL INTELLIGENCE

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MHAIRI AITKEN, JOSH COWLS,  
MIKE KATELL, & MORGAN BRIGGS

With a foreword by  
LORD TIM CLEMENT-JONES



The  
Alan Turing  
Institute

<https://rm.coe.int/cahai-feasibility-study-primer-final/1680a1eac8>

OR





# *No legal vacuum, but ...*

*(see chapters 3 & 5)*

- Substantive and procedural gaps
- Uneven protection levels
- Uncertainties affect development and implementation
- Soft law approach has major limitations

<https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>

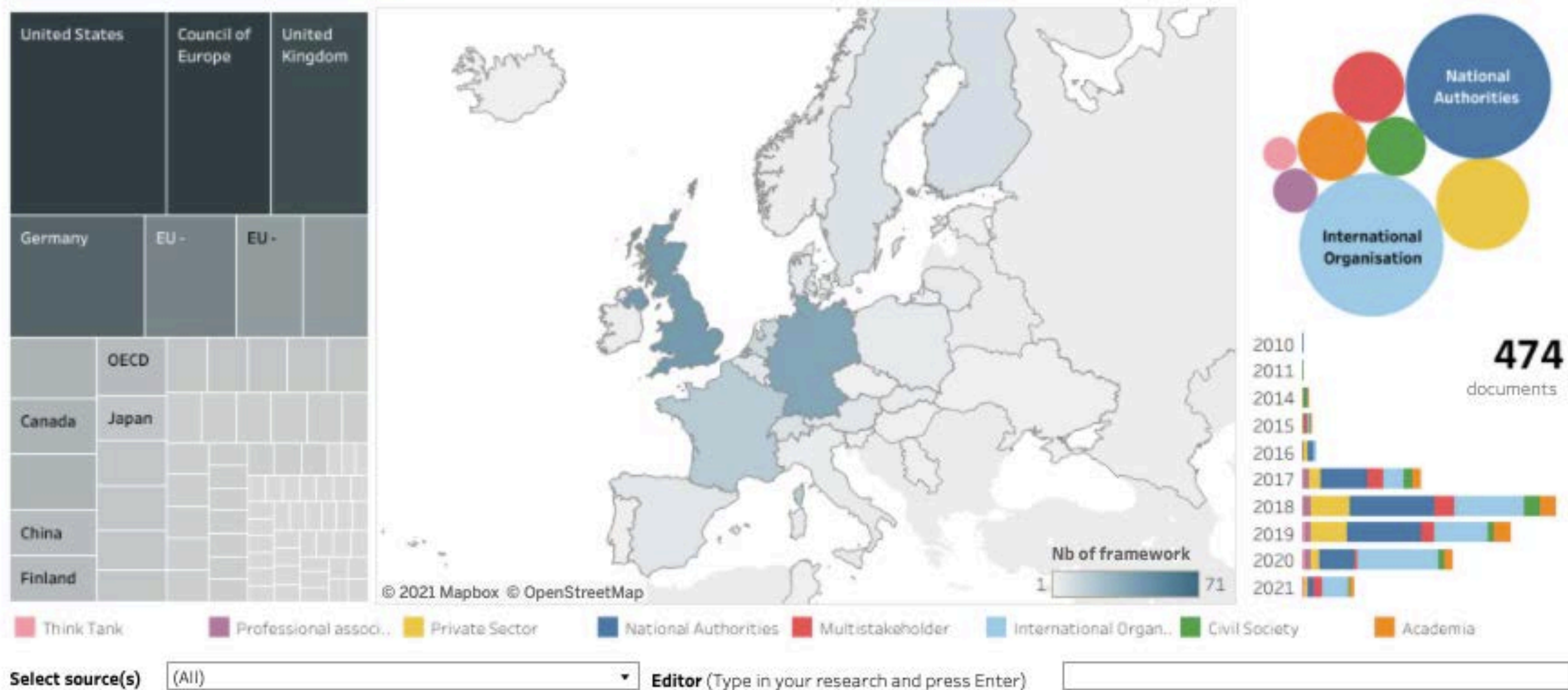
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# AI initiatives

## DATAVISUALISATION OF AI INITIATIVES



<https://www.coe.int/en/web/artificial-intelligence/national-initiatives>

OR



# *KEY VALUES, RIGHTS AND PRINCIPLES*

## *(chapter 7)*

- Human **dignity**
- **Prevention of harm** to human rights, democracy and the rule of law
- Human **freedom** and Human **autonomy**
- **Non-Discrimination, Gender equality, Fairness** and **Diversity**
- **Transparency** and **Explainability** of AI systems
- **Data protection** and the right to **privacy**
- **Accountability** and **responsibility**
- **Democracy**
- **Rule of Law**



# 7.1.1. *Human Dignity* (example)

## Key substantive rights:

- The right to **human dignity**, the right to **life** (Art. 2 ECHR), and the right to **physical and mental integrity**.
- The **right to be informed** of the fact that one is interacting with an AI system rather than with a human being, in particular when the risk of confusion arises and can affect human dignity.
- The **right to refuse interaction** with an AI system whenever this can adversely impact human dignity.

## Key obligations:

- Member States should ensure that, **where tasks risk violating human dignity** if carried out by machines rather than human beings, these **tasks are reserved for humans**.
- Member States should require AI deployers to **inform human beings** of the fact that they are interacting with an AI system rather than with a human being whenever confusion may arise

# *APPROPRIATE LEGAL FRAMEWORK*

## *(1/2)*

An **appropriate legal framework** will likely consist of a **combination of binding and non-binding** legal instruments, that complement each other.

**A binding instrument**, a convention or framework convention, of horizontal character, could **consolidate general common principles** – contextualised to apply to the AI environment and using a risk-based approach – and include more granular provisions in line with the rights, principles and obligations identified in this feasibility study.

Any binding document, whatever its shape, should not be overly prescriptive so as to secure its **future-proof** nature. Moreover, it should ensure that **socially beneficial AI innovation can flourish**, all the while **adequately tackling the specific risks** posed by the design, development and application of AI systems.



# *APPROPRIATE LEGAL FRAMEWORK*

## *(2/2)*

This instrument could be combined with additional binding or non-binding **sectoral Council of Europe instruments** to address challenges brought by AI systems in specific sectors.

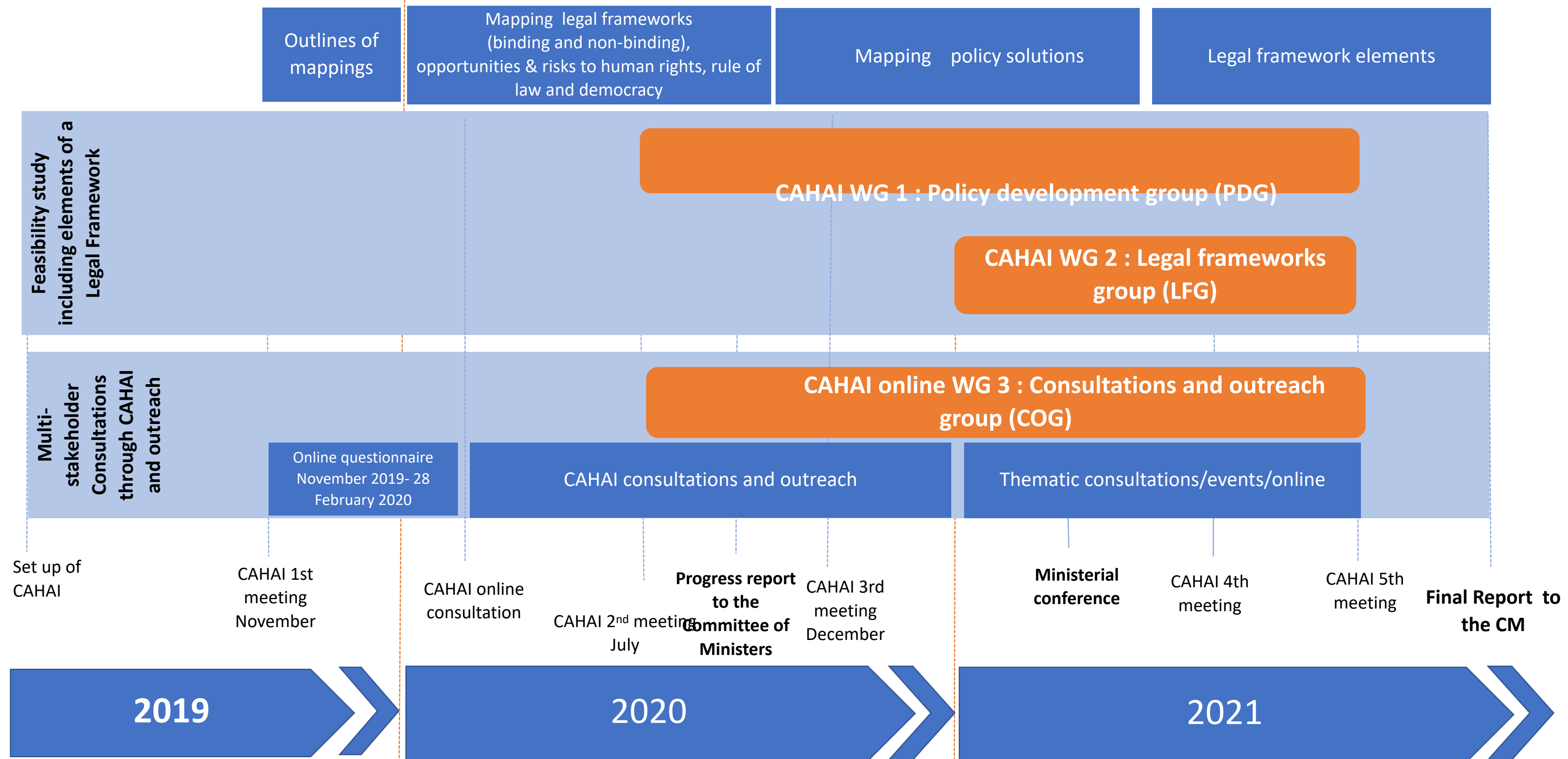
This **combination** would also allow **legal certainty** for AI stakeholders to be enhanced, and provide the required legal **guidance to private actors** wishing to undertake **self-regulatory** initiatives.

Moreover, by establishing **common norms at an international level, transboundary trust** in AI products and services would be ensured, thereby guaranteeing that the benefits generated by AI systems can travel across national borders.

It is important that any legal framework includes **practical mechanisms to mitigate risks** arising from AI systems, as well as appropriate **follow-up mechanisms** and processes and measures for international co-operation.

# CAHAI - ROADMAP

## Key deliverables and proposed roadmap of CAHAI (2019 –2021)





# *LFG and PDG in 2021*

## ***Draft Table of Contents and initial division of tasks between LFG and PDG (status 12.02.2021)***

1. Introduction
2. Potential elements for a **horizontal** binding legal instrument **(LFG)**
  - A. Scope & Purpose of the legal instrument (AI Definition, guiding Principles)
  - B. Substantive elements (drawing e.g. on Chapter 7: potentially relevant rights and obligations, as well as potential red lines)
  - C. Procedural elements
    - Potential compliance mechanisms for the legal framework (Incl. a Human Rights, Democracy & Rule of Law Impact Assessment) **(taking into account PDG Sub-group 1 ongoing work)**
    - Potential follow-up mechanisms
3. Potential elements for a sectoral approach
  - A. Council of Europe mapping work on Verticals **(PDG)**
  - B. Recommendations on further sectoral instruments that may be needed **(LFG + PDG)**
4. Further policy guidance
  - E.g. on AI in the public sector **(PDG Sub-group 2)**
5. Conclusions

***Taking into account results from COG***

# *LFG - internal division of work*

## Subgroups LFG

- 1. SG Scope & Basic Principles:**
  - scope, purpose, definitions, basic principles, general criteria for a risk-based approach (identify relevant parameters, e.g. sector, use, ...) *(N.B. this is not about developing a HRIA methodology) (N.B.2 this subgroup could also cover economic and social rights, keeping in mind ongoing work, e.g. CM is preparing a Declaration on AI and social rights).* (FS, Ch.2 – 3.3 – 5)
- 2. SG Human Value Dignity, Autonomy & Freedoms**
  - incl. privacy, self-determination, digital identity) (FS, Ch.7.1.1-2-3)
- 3. SG Non-discrimination, gender equality, fairness, diversity** (Ch.7.1.4)
- 4. SG Impact on democracy and rule of law; right to fair trial** (Ch.7.1.8-9)
- 5. SG Accountability, Responsibility, Transparency**
  - prevention of harm, responsible data governance (Ch.7.1.2-5-6-7)
  - role of MS and private actors, including liability (Ch.7.2-7.3)
- 6. SG “Red lines”**
  - describe in detail particular uses of AI technology – like in relation to profiling, tracking, surveillance – that pose such serious risks that additional measures, incl. a ban or moratorium seems appropriate + determine criteria to distinguish situations for possible ban v. moratorium)
- 7. SG Cooperation; compliance; follow-up** (provisions to be considered in a binding instrument) (Ch.9)





OR

<http://globalpolicy.ai/en/>



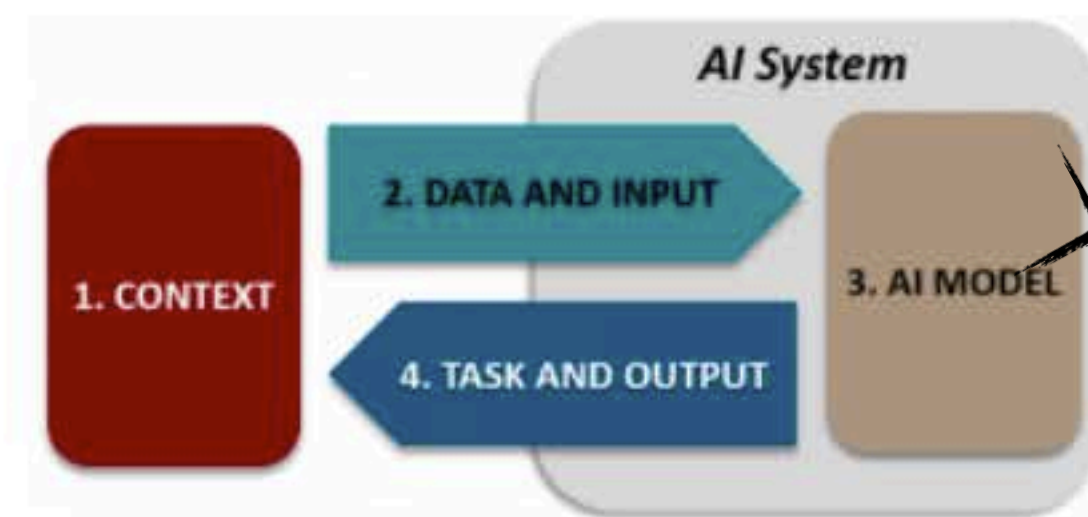


## Public consultation on the OECD Framework for Classifying AI Systems

Help OECD.AI shape its Framework for Classifying AI Systems by testing it on real AI systems & commenting on the report!

*To take part in the consultation, you can :*

- Take a survey about a pre-selected AI system or one of your choice-*
- Leave comments on the draft Framework*



**Deadline: June 30**

OR

<https://oecd.ai/classification>

