

Brussels, 15 March 2024

Equinet considers it important to share the following critical observations, following the conclusion of the 10th and last Plenary Meeting of CAI on 11-14 March 2024.

Equinet represents 48 national independent equality and non-discrimination authorities from 38 European states, legally mandated, under national, European Union and international law, to work with private and public sectors to protect and promote equality. Equality Bodies have already started work on ensuring that the development and deployment of AI systems are equality-compliant and are well placed to support the implementation of the Framework Convention.

In Europe, there already is an adopted legally binding instrument, directly applicable and with strict sanctions, that regulates AI products with high risks for fundamental rights. Before CAI's last Plenary Meeting, what Europe still did not have was a comprehensive, dedicated legal framework of accountability for the impact of AI systems on human rights, democracy, and the rule of law. Through its ongoing important work, the CAI has been consistently contributing to fill in this gap. We appreciate the complexity of this task and welcome the commitment to advance its realization.

Equality, as reflected in its position in two chapters of the Framework Convention, is a cornerstone of this framework since it is a prerequisite for meaningful democratic participation, the exercise of other human rights and the protection of the rule of law. Starting at CAHAI and in our subsequent contributions, Equinet repeatedly emphasized the importance of securing comprehensive scope, independent oversight, and clear and strong safeguards for those affected to claim their rights effectively.

Equinet remains convinced about the important added value of a binding legal framework for the development, design and application of artificial intelligence systems based on the Council of Europe's standards on human rights, democracy and the rule of law. However, we regret that critical elements, already agreed upon in CAHAI and approved by the Committee of Ministers, are not present in the final text. In particular, we are concerned that the following omissions risk calling into question the added value of the Framework Convention:

- Ensuring **private sector activities** within the lifecycle of artificial intelligence systems are fully consistent with human rights, democracy and the rule of law, thus aligning the Framework Convention with binding non-discrimination obligations for private sector actors under national law and European Union law.

- **Not allowing national security-based derogations** except when provided by the law, when they respect the essence of the fundamental rights and freedoms and when they constitute a necessary and proportionate measure in a democratic society. In that regard, the Framework Convention should have adopted the approach of Convention 108+, thereby also ensuring consistency with the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).
- Ensure **clear and strong safeguards on bans**, including through establishing unambiguous criteria for “red lines” to avoid gaps in protection against especially grave and pervasive violations of human rights and breaches of democracy and the rule of law.
- Ensure regular opportunities for **meaningful involvement of those affected and civil society** as an integral part of implementing the Framework Convention.
- Ensure effective possibility for those **affected by AI systems to contest** the outcomes and use of AI systems.
- **Independent and robust oversight at the European and national levels** to ensure the effectiveness of the legal framework.

We appreciate the commitment of the Drafting Group to consider these critical safeguards in developing the Framework Convention. Furthermore, we are mindful of the practical limitations of ensuring the above essential elements at the last advanced stages in the negotiations. However, we believe it is important to clearly acknowledge the need for improvement of certain aspects of the Framework Convention. This is important for transparency and accountability to all those interacting with or otherwise affected by AI systems in Europe and beyond. This is also important with a view to the implementation of the Framework Convention in order to identify possible solutions for overcoming these limitations.

We, therefore, kindly request that the report from the Plenary Meeting explicitly mentions that Equinet submitted the present observations expressing our concern.