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Convergence or Divergence? Balancing Regulatory Approaches in the Council of Europe AI Convention and the EU AI Act

1. Introduction

As stated in Article 31(1) of the Vienna Convention on the Law of Treaties (hereinafter referred to as the “VCLT”): “A treaty shall be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.² This rule is provided for in the VCLT, which primarily pertains to treaties between sovereign states, including any treaty adopted within an international organisation, without prejudice to any pertinent rules of such an organisation.³ According to the case law of the Court of Justice of the European Union (hereinafter referred to as the “CJEU”): “(...) although the VCLT binds neither the European Union nor all its Member States, it reflects the rules of customary international law which are, as such, binding upon the EU institutions. They form part of the legal order of the European Union”.⁴ In any case, the CJEU predominantly uses the grammatical, systematic, and teleological interpretation methods,⁵ which are comparable to the general rule of interpretation outlined in Article 31(1) of the VCLT. It can be concluded that: “The interpretation of «secondary law»

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2 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, and entered into force on 27 January 1980 – United Nations, Treaty Series, vol. 1155.

3 The VCLT, Articles 1 and 5.

4 See for example the judgment of 25 February 2010, *Brita* (C-386/08, EU: C:2010:91, paragraphs 42 and 43 and the case law cited); see also the judgment of 21 December 2016, *Council v. Front Polisario* (C-104/16 P, EU: C:2016:973, paragraph 86).

5 *Max Planck Encyclopedia of European Private Law*, https://max-eup2012.mpipriv.de/index.php/Interpretation_of_EU_Law (10.06.2025).

created by international organizations on the basis of the constituent treaty, by and large, follows the methodology applying to treaties”.⁶

Nevertheless, owing to the nature of European Union (hereinafter referred to as the “EU”) law, certain specific characteristics concerning its interpretation may also be identified: “(1) reliance in the interpretation of this law mainly on the principles of law, causing the need to refer to the «spirit» of the normative act; (2) a strong teleological orientation; (3) less linguistic precision, involving, among other things, the absence of legal definitions, which are, after all, the most powerful means of legislative influence on the linguistic interpretation of the law; and (4) the presence of normative contradictions and structural gaps in this law”.⁷

The primary objective of this study was to compare the object and purpose of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law⁸ (hereinafter referred to as the “AI Convention”) with the object and purpose of Regulation (EU) 2024/1689 of the European Parliament and of the Council signed on 13 June 2024, laying down harmonised rules on artificial intelligence in the EU⁹ (hereinafter referred to as the “AI Act”), as well as to identify the divergence and convergence between them. The initial phase of the study entailed identifying the objects of both the AI Convention and the AI Act. If it is determined that the objects of these acts differ or concur, an assessment shall then be conducted to ascertain whether both acts still serve shared purposes. The research problem concerns the extent to which the AI Convention and the AI Act diverge or converge in terms of their objects and purposes, and the implications this has for legal coherence within the domain of European and international artificial intelligence (hereinafter referred to as “AI”) regulation and governance. The following research hypothesis was adopted: the AI Convention and the AI Act, although both aim to regulate AI, diverge significantly in their objects and purposes due to differences in regulatory philosophy, legal scope, and institutional design.

The research method employed in this study was a formal, dogmatic approach aimed at identifying the object and purpose of the AI Convention and the AI Act. The primary focus of the analysis was the linguistic-logical

6 M. Herdegen, *Interpretation in International Law*, in: *The Max Planck Encyclopedia of Public International Law*, vol. 6, R. Wolfrum (ed.), Oxford 2012, p. 268.

7 L. Leszczyński, *Legal Interpretation in the EU Perspective: General Model and the Context of Penal Law*, “*Studia Iuridica Lublinensia*” 2024, vol. 33, no. 5, p. 185.

8 Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. Opened for signature on 5 September 2024. Council of Europe Treaty Series – No. 225.

9 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), PE/24/2024/REV/1.

directive. Based on this research, it was also possible to address the question regarding the impact of the aforementioned acts on the development of global (universal) standards within the domain of the AI governance.

The research findings are summarised in the chapter entitled “Conclusion”.

2. Object and Purpose of a Legal Act – General Remarks

The French doctrine indicates that “an object” of a treaty appears to refer to the substantive content of the treaty, namely, the rights and obligations established thereby.¹⁰ It is also worth noting that in German and English doctrines, “object and purpose” are somewhat synonymous or conjoint.¹¹ The VCLT does not contain any specific directive regarding how the object and purpose of a treaty are to be elucidated.¹² Some authors suggest that intuition and common sense can provide useful indicators for identifying the object and purpose of a treaty.¹³ The object of a treaty can be ascertained through an examination of its title or preamble, as well as by the general clauses embedded within its provisions (typically the initial ones). For example, Article 1 of the Convention on International Civil Aviation reads as follows: “The contracting States recognise that every State has complete and exclusive sovereignty over the airspace above its territory”.¹⁴ Considering the title of the Convention as previously mentioned, and its Article 1, it can be inferred that the object of this Convention is to regulate the exercise of sovereign authority by a state within its airspace concerning civil flights.

In the context of internal regulations, including the “secondary law” of the EU, the object of a legal act may be understood as a domain of particular social or economic relations that the act aims to regulate. For instance, regulations can be distinguished in terms of administrative law and the relationship between administrative authorities and individuals across various domains, including social welfare law, construction law, and environmental law. Such regulations are characterised by a specific form of “authority” exercised by administrative bodies, which generally define the rights and obligations of individuals within designated domains. Undoubtedly, a crucial consideration is the impact of a given act.

10 I. Buffard, K. Zemanek, *The “Object and Purpose” of a Treaty: An Enigma?*, “Austrian Review of International & European Law” 1998, vol. 3, p. 326.

11 *Ibidem*, p. 322.

12 *Ibidem*.

13 *Vienna Convention on the Law of Treaties. A Commentary*, O. Dörr, K. Schmalenbach (eds.), Berlin-Heidelberg 2012, p. 546; D.S. Jonas, T.N. Saunders, *The Object and Purpose of a Treaty: Three Interpretive Methods*, “Vanderbilt Journal of Transnational Law” 2010, vol. 43, no. 3, p. 608.

14 Convention on International Civil Aviation, done at Chicago on 7 December 1944 – United Nations, Treaty Series, vol. 15.

Regarding the “purpose” of a treaty, it generally pertains to the outcome that the parties intend to achieve through the treaty.¹⁵ Regarding treaties, the intentions of the parties involved often play a crucial role in determining the treaty’s purpose. The preamble to the aforementioned Convention on International Civil Aviation delineates the purpose of this Convention by stating that: “(...) the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established based on equality of opportunity and operated soundly and economically; Have accordingly concluded this Convention to that end (...)”.¹⁶

Within the framework of the EU’s “secondary law”, primarily comprising directives and regulations, a significant criterion for interpreting the purpose of these acts is the legal foundation for their enactment, which is typically delineated within the EU Treaties. At the same time, regulations typically serve to implement the so-called common EU policies, whereas directives generally pertain to the EU’s internal market.¹⁷

3. The Object of the AI Convention

As an introductory remark to this section of the study, it is noteworthy that universal human rights are distinctive in that they “(...) rather than being of a reciprocal inter-state character, they apply to the relationship between individuals and the state while being a common global concern”.¹⁸ This constitutes a fundamental aspect of human rights treaties: they are based on a negative obligation, which mandates that states abstain from detrimental actions (the duty to respect human rights, a vertical application).¹⁹ However, human rights may exert influences not only on relationships between individuals and states but also on relationships among individuals themselves.²⁰

15 I. Buffard, K. Zemanek, *The “Object and Purpose”...*, p. 326.

16 Convention on International Civil Aviation...

17 C. Barnard, S. Peers, *European Union Law*, Oxford 2020, p. 104.

18 G. Ulfstein, *Law-making by human rights treaty bodies in: International Law-making*, eds. R. Liivoja, J. Petman, Abingdon 2014, p. 249.

19 *Artificial Intelligence and Human Rights*, A. Quintavalla, J. Temperman (eds.), Oxford 2023, p. 69; M. Kaczmarczyk, *O systemach sztucznej inteligencji w kontekście praw człowieka w orzecznictwie Europejskiego Trybunału Praw Człowieka [On artificial intelligence systems in the context of human rights in the case law of the European Court of Human Rights]*, “*Studia Prawa Publicznego*” 2025, vol. 50, no. 2, p. 9 et seq.

20 E. Bjorge, *Human Rights, Treaties, Third-Party Effect*, in: *The Max Planck Encyclopedia of Public International Law*, vol. 5, R. Wolfrum (ed.), Oxford 2012, p. 1; M. Florczak-Wątor, *Obowiązek zapewnienia przez państwo poszanowania prywatności w stosunkach horyzontalnych w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka [The State’s obligation to ensure respect for privacy in horizontal relations in the light of the case law of the European Court of Human Rights]*, in: *Horyzontalne Oddziaływanie Konstytucji*

The duty to protect, unlike the duty to respect human rights, means that in certain situations, the state should intervene to uphold human rights standards horizontally.²¹ The horizontal effect of human rights treaties has been acknowledged by courts, notably the European Court of Human Rights and the Inter-American Court of Human Rights, which have established that human rights apply horizontally to both political and social rights.²² This also frequently happens through the development of the concept of the so-called positive obligations of states in the case law of these courts. The issue of human rights effectiveness is often highlighted.²³

The AI Convention was opened for signature on 5 September 2024. As outlined in the Explanatory Report to the AI Convention (hereinafter referred to as the “Explanatory Report”): “This Framework Convention focuses on the protection and furtherance of human rights, democracy and the rule of law, and does not expressly regulate the economic and market aspects of artificial intelligence systems. Taken as a whole, it provides a common legal framework at the global level in order to apply the existing international and domestic legal obligations that apply to each Party in the sphere of human rights, democracy, and the rule of law of each Party and aims to ensure that the activities within the lifecycle of artificial intelligence systems by both public and private actors comply with these obligations, standards and commitments.”²⁴

In the context of the preceding statements, it is notable that the AI Convention primarily emphasises the protection and furtherance of human rights; it is not designed to regulate the economic and market aspects of AI. It does not create any new human rights, but it “(...) provides a common legal framework at the global level in order to apply the existing international and domestic legal obligations that are applicable to each Party in the sphere of human rights (...)”²⁵

The phrase “protection and furtherance” may imply that the AI Convention intends to implement a horizontal application of human rights,

Rzeczypospolitej Polskiej oraz Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności [The Horizontal Effect of the Constitution of the Republic of Poland and the Convention for the Protection of Human Rights and Fundamental Freedoms], A. Młynarska-Sobaczewska, P. Radziejewicz (eds.), Warszawa 2015, p. 187 et seq.

21 *Artificial Intelligence...*, p. 69; K. Strzępek, *Status prawny i interpretacja Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności [The Legal Status and Interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms]*, Warszawa 2023, p. 97 et seq.

22 E. Bjorge, *Human Rights, Treaties...*, p. 4.

23 *Ibidem*.

24 Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, <https://rm.coe.int/1680afae67> (10.06.2025).

25 *Ibidem*; A. Wiśniewski, *Sztuczna inteligencja i prawa człowieka w kontekście prawa międzynarodowego [Artificial Intelligence and Human Rights in the Context of International Law]*, “Prawo i Wiąż” 2024, vol. 47, no. 4, p. 29 et seq.

understood as existing international and domestic legal obligations, within the context of AI systems.

The forementioned statement is substantiated by the wording of Article 1(2), sentence 1, of the AI Convention, which addresses the issue of the effectiveness of human rights. Article 1(2) of the AI Convention reads as follows: “Each Party shall adopt or maintain appropriate legislative, administrative or other measures to give effect to the provisions set out in this Convention (...)”²⁶ Therefore, the AI Convention explicitly affirms the horizontal application of human rights. Moreover, as stated in the Explanatory Report, each Party must ensure that its domestic law conforms to its applicable international human rights obligations. The Explanatory Report delineates a catalogue of principal international human rights instruments and treaties, both global and regional, to which the states involved in negotiating the AI Convention may be signatories. This includes approximately twenty-five legal instruments (international conventions).²⁷ This implies that this horizontal effect of human rights would apply not only to the AI Convention but also to other legal instruments.

In a territorial context, the AI Convention pertains to occurrences that take place within the jurisdiction of a Contracting State. When complaints are based on events occurring in a territory outside the Contracting State, and there is no sufficient link between those events and any authority within the Contracting State, these complaints shall be considered inadmissible as incompatible *ratione loci*.²⁸ In general, the application of the AI Convention may be extended to territories for whose international relations the parties are responsible or on whose behalf they are authorised to act.²⁹ It is significant that the AI Convention has been opened for signature to all member states of the Council of Europe, non-member states that participated in its development (and, upon invitation by the Council of Europe, also any non-member state of the Council of Europe that did not participate in the development of the AI Convention), as well as the EU.

4. The Purpose of the AI Convention

The purpose of the AI Convention is explicitly articulated in Article 1(1), which states: “The provisions of this Convention aim to ensure that activities within the lifecycle of artificial intelligence are fully consistent with human rights, democracy, and the rule of law”³⁰

²⁶ The AI Convention, Article 1(2).

²⁷ Explanatory Report...

²⁸ K. Reid, *A practitioner's guide to the European Convention on Human Rights*, London 2012, p. 41.

²⁹ Explanatory Report...

³⁰ The AI Convention, Article 1(1).

It follows from the foregoing that actions undertaken at each phase of the AI lifecycle, including AI itself,³¹ must align with human rights, democratic principles, and the rule of law. Should the entities accountable for executing specific stages of the AI lifecycle be primarily private entities, the object of the AI Convention remains consistent with its intended purpose. In other words, the purpose is achieved by adopting a specific object of regulation.³²

Article 3(1) of the AI Convention reads as follows: “The scope of this Convention 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 (...)”³³

The AI Convention “(...) has a broad scope to encompass the activities within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and rule of law”³⁴ The AI Convention obliges all signatories to: 1) ensure that the activities conducted within the lifecycle of AI systems adhere to the provisions of the AI Convention, whether undertaken by public authorities or private actors acting on their behalf; 2) address risks and impacts to human rights;³⁵ 3) outline in a declaration submitted to the Secretary General of the Council of Europe the manner in which they intend to fulfil the obligations stipulated in Article 3 of the AI Convention (above-mentioned).³⁶ The AI Convention shall not apply to activities within the lifecycle of AI systems related to the protection of national security interests, nor to research and development activities concerning AI systems that have not yet been released for operational use.³⁷

31 A. Boch, R. Max, A. Kriebitz, C. Lütge, *The Playful Path to Progress: Uncovering the Bright Future of Social Robots*, in: *Proceedings of the 58th Hawaii International Conference on System Sciences*, T.X. Bui (ed.), Honolulu 2025, p. 1779; J. Niczyporuk, *Podmiotowość prawna sztucznej inteligencji [Legal personality of artificial intelligence]*, Warszawa 2021, p. 5 et seq.

32 In the Explanatory Report, one can read: “To ensure legal certainty and transparency, each 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 outlined 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 Parties that have chosen not to apply the principles and the obligations of the Framework Convention about activities of other private actors, the Drafters expect the approaches of those Parties to develop over time as their approaches to regulate the private sector evolve”.

33 The AI Convention, Article 3(1).

34 Explanatory Report...

35 Z. Więckowski, M. Świerczyński, *Analiza ryzyka dokonywana na podstawie konwencji ramowej Rady Europy o sztucznej inteligencji na przykładzie zastosowań w sektorze prawnym [Risk Assessment on the Basis of the Council of Europe Framework Convention on AI: the Example of Uses in the Field of Law]*, “Prawo i Więź” 2025, vol. 54, no. 1, p. 409 et seq.

36 Explanatory Report...

37 H. Szabó, *Redefining Security in the Digital Age: Navigating the Evolving Landscape of AI-Induced Risks*, in: *Law Enforcement, Psychology and Security in Focus*, I. Dobák, J. Farkas, S. Mátyás (eds.), Budapest 2025, p. 59 et seq.

According to Article 15(1) of the AI Convention, each Party shall ensure that, where an AI system significantly impacts the enjoyment of human rights, effective procedural guarantees, safeguards, and rights, in accordance with applicable international and domestic law, are accessible to the individuals affected thereby.³⁸

In summary, this section of the study indicates that the AI Convention does not constitute a conventional human rights treaty, as it does not establish any new human rights or freedoms. Consequently, the pertinent inquiry is: What is the substantive content of the AI Convention, specifically, what rights and obligations does it generate?³⁹ It can be presumed that it constitutes an effort to implement or facilitate the horizontal application of human rights and to determine the conditions under which such implementation remains effective. In Article 1(2) of the AI Convention, the following provision can be observed: “These measures shall be graduated and differentiated as may be necessary in view of the severity and probability of the occurrence of adverse impacts on human rights, democracy, and the rule of law throughout the lifecycle of artificial intelligence systems. This may include specific or horizontal measures that apply irrespective of the type of technology used”⁴⁰

In conclusion, the principal purpose of the AI Convention is to ensure the protection of existing human rights, uphold democratic principles, and fortify the rule of law.

When analysing the entire AI lifecycle and the private entities involved in developing its various stages, the idea of a horizontal application of the AI Convention becomes more understandable.

5. The Object of the AI Act

In general, the term “scope” appears 48 times within the AI Act, including 32 instances solely in the preamble. In Article 2(1) of the AI Act, it is explicitly stated that this regulation applies to providers (including authorised representatives of providers not established within the EU), deployers, importers, distributors, and manufacturers of specific types of AI systems, as well as to individuals affected by these AI systems. Furthermore, it is specified that the AI Act does not extend to areas beyond the jurisdiction of EU law.⁴¹

38 The AI Convention, Article 15(1).

39 I. Buffard, K. Zemanek, *The “Object and Purpose”...*, p. 326.

40 The AI Convention, Article 1(2).

41 The AI Act, Article 2(3). An additional significant exclusion specifies that the AI Act does not pertain to AI systems that are placed on the market, put into service, or utilised with or without modification solely for military, defense, or national security purposes, regardless of the type of entity carrying out those activities. See the AI Act, Article 2(3).

The AI Act delineates the rights and obligations of the aforementioned actors concerning specific categories of AI systems. The obligations principally pertain to abstaining from prohibited practices.

It is challenging to avoid the impression that the object of the AI Act has been to identify stakeholders, including private entities, and their activities related to specific categories of AI systems, as well as to delineate the rights and obligations of the aforementioned actors.

The AI Act requires providers and deployers to implement measures ensuring that their personnel and individuals interacting with AI systems possess adequate skills, knowledge, and understanding. It is crucial for enabling providers, deployers, and affected parties – considering their respective rights and obligations under the AI Act – to make informed decisions regarding the deployment of AI systems. Additionally, it is essential to raise awareness about the opportunities, risks, and potential harms associated with AI (AI literacy).⁴² Article 5 of the AI Act prohibits various AI practices, “(...) reflecting a view that they pose an unacceptable risk”.⁴³ They encompass the following: a) harmful manipulation and deception; b) harmful exploitation of vulnerabilities;⁴⁴ c) social scoring systems; d) assessment and prediction of individual criminal offense risks; e) untargeted data scraping for facial recognition database development; f) emotion recognition technologies; g) biometric categorisation; and h) real-time remote biometric identification (“RBI”).⁴⁵

The prohibited practices pertain to the placement on the market, the putting into service, or the use of specific AI systems.⁴⁶ The term “placing

42 *EU AI Act Handbook*, <https://www.whitecase.com/sites/default/files/2025-06/wc-eu-ai-act-handbook-finalprint.pdf> (20.06.2025).

43 N.A. Smuha, K. Yeung, *The European Union's Act*, in: *The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence*, N.A. Smuha (ed.), Cambridge 2025, p. 236.

44 See for example A. Fatima, A. Haider, A. Batool, *The Human Rights Implications of Scientific Progress: A Case Study on Gene Editing and Disability Rights*, “Journal of Engineering, Science and Technological Trends (JESTT)” 2025, vol. 2, no. 1, p. 4; M. Wilbrandt-Gotowicz, *Problemy wdrożenia regulacji AI Act dotyczących nadzoru rynku z perspektywy polskiego postępowania administracyjnego [Problems with implementing the AI Act regulations on market surveillance from the perspective of Polish administrative proceedings]*, in: *Wpływ Aktu w sprawie sztucznej inteligencji na funkcjonowanie Administracji publicznej [The Impact of the Artificial Intelligence Act on the Functioning of Public Administration]*, G. Sibiga (ed.), Warszawa 2025, p. 237 et seq. C. Lombana-Diaz, *AI Ethics*, in: *Human Centered AI: An Illustrated Scientific Quest*, P. Germanakos, M. Juhasz, A. Kongot, D. Marathe, D. Sacharidis (eds.), Cham 2025, p. 439 et seq. A.M. Horzyk, *Implications of European By-Design Laws on Data-Driven System Design*, “International Joint Conference on Neutral Networks (IJCNN)” 73/2024, p 1 et seq.

45 Annex to the Communication to the Commission: Approval of the content of the draft Communication from the Commission – Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act), <https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-prohibited-artificial-intelligence-ai-practices-defined-ai-act> (20.06.2025).

46 *Ibidem*.

on the market” refers to the initial act of making an AI system or a general-purpose AI model available on the EU market. This includes the supply of such an AI system or a general-purpose AI model for distribution or use on the Union market during a commercial activity, irrespective of whether it is provided in exchange for payment or free of charge. The term “putting into service” refers to the supply of an AI system for initial utilisation, either directly to the deployer or for personal use within the EU, for its designated purpose. The “intended purpose” refers to the way the AI system is designed to be used by the provider, including the specific context and conditions of use outlined in the provider’s instructions for use, promotional or sales materials, statements, and technical documents. The term “use (...) should be understood in a broad manner to cover the use or deployment of the system at any moment of its lifecycle after having been placed on the market or put into service”.⁴⁷

In the territorial context, the AI Act relates to the functioning of the EU’s internal market (European Economic Area). Consequently, its scope encompasses entities (as detailed in the AI Act), AI systems, and related incidents (“risk-based” regulatory approach and its associated obligations) within the territory of any EU Member State. Therefore, it is the internal market of the EU that governs the territorial application of the AI Act.

Nonetheless, the EU’s internal market, owing to its substantial potential and size, attracts companies from outside the EU seeking to benefit either directly or indirectly from the economic activities within the Union. The AI Act establishes regulations that permit such companies to operate within the EU internal market. We are discussing the so-called *de facto* Brussels effect;⁴⁸ “(...) *de facto* Brussels Effect refers to multinational corporations choosing voluntarily to adopt rules of EU law to its operations in non-EU jurisdictions. Thus, EU rules are voluntarily applied extraterritorially”.⁴⁹ The regulation of AI systems within the EU implies, practically speaking, that non-EU corporations seeking to introduce products containing or powered by AI systems – as detailed in the AI Act – into the EU’s internal market are obliged to modify such products to comply with the stipulations of the AI Act. A *de facto* Brussels effect arises when a non-EU company decides to standardise its product manufacturing process in accordance with the obligations outlined in EU regulations.⁵⁰ The *de facto* Brussels effect, interpreted in this manner, whereby non-EU companies incorporate EU regulations, also signifies the EU’s influence on production standards in other countries globally.

47 *Ibidem*.

48 The so-called *de jure* Brussels effect occurs when the EU regulatory regime is reflected in the regulations of other states.

49 S. D’Arcy Shepherd, *The global race to regulate Artificial Intelligence: Can the EU once again be a global standard setter?*, https://jean-monnet-saar.eu/wp-content/uploads/2024/11/Saar-Blueprint_Sara-DArcy-Shepherd.pdf (20.06.2025).

50 *Ibidem*.

The foregoing analysis suggests that the primary object of the AI Act is to identify stakeholders, including private entities, and their activities related to specific categories of AI systems, as well as to define rights and obligations of these stakeholders.

It is also notable that, regarding the timeline, the AI Act incorporates provisions delineating the implementation schedule for its various legal components. The majority of these provisions will become operative only two years after their enactment. Consequently, it is properly highlighted that “(...) we will not be in a position to acquire evidence of its effectiveness until the end of 2026”.⁵¹

6. The Purpose of the AI Act

According to the documents issued by the European Commission of the EU, the purpose of the AI Act is “(...) to promote innovation in and the uptake of AI, while ensuring a high level of protection of health, safety, and fundamental rights in the Union, including democracy and the rule of law”.⁵² On the official website of the European Commission of the EU, one can read that the AI Act “(...) ensures that Europeans can trust what AI has to offer. While most AI systems pose limited to no risk and can contribute to solving many societal challenges, certain AI systems create risks that we must address to avoid undesirable outcomes”.⁵³ Referring to the legal foundation in the EU treaties helps to clarify the purpose of the AI Act.

The primary purpose of the AI Act is to ensure and maintain the proper functioning of the internal market, as outlined in the relevant provisions of the EU Treaties. This purpose is articulated in Article 26 of the Treaty on the Functioning of the European Union⁵⁴ (hereinafter referred to as the “TFEU”),

51 N.A. Smuha, K. Yeung, *The European...*, p. 257.

52 See for example Communication to the Commission: Approval of the content of the draft Communication from the Commission – Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act), <https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-prohibited-artificial-intelligence-ai-practices-defined-ai-act> (10.06.2025); K. Strzępek, *Human Rights as a Factor in the AI Alignment*, “GIS Odyssey Journal” 2024, vol. 4, no. 1, p. 66 et seq.; P. Konieczny, *Standard Ochrony Praw Człowieka w projekcie Aktu w sprawie sztucznej inteligencji* [*The Standard of Protection of Human Rights in the Draft Act on Artificial Intelligence*], in: *Prawo przyszłości i przyszłość prawa* [*The law of the future and the future of law*], A. Fortuna, M. Czapska (eds.), Łódź 2023, p. 149 et seq.; J. Kostrubiec, *Sztuczna inteligencja a prawa i wolności człowieka* [*Artificial intelligence and human rights and freedoms*], Warszawa 2021, p. 5 et seq.

53 European Commission, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> (10.06.2025).

54 Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/49.

to which Article 114 of the TFEU also refers (positive harmonisation).⁵⁵ Article 114 of the TFEU served as the legal basis for the adoption of the AI Act.⁵⁶ It is also noteworthy that the scope of application of Article 114 of the TFEU does not encompass fiscal harmonisation (addressed by Article 113 of the TFEU), the free movement of persons, or provisions on the rights and interests of employed individuals.⁵⁷ It should be pointed out that, despite the internal market being predominantly harmonised through directives,⁵⁸ the AI Act, enacted pursuant to Article 114 TFEU, takes the form of a regulation.

As it is indicated, one of the purposes of the AI Act is also to “(...) benefit from a first mover advantage (...) to establish itself as a leading global standard-setter for AI regulation”.⁵⁹

7. Conclusion

This study demonstrated that, although a comparison between the object of the AI Convention and that of the AI Act may suggest differences, the core similarities remain. The differences, which are initially visible, result primarily from the specific nature of the international organisations within which both acts were adopted. The object of the AI Convention has been approached from an “axiological” perspective. Generally, it is to facilitate the horizontal application of human rights within the context of AI systems. The object of the AI Act has been approached from a “technical” perspective. Generally, it is to identify stakeholders, including private entities, and their activities related to specific categories of AI systems, as well as to delineate rights and obligations of these stakeholders. In this manner, the objects of both acts become complementary, thereby ensuring the coherence of the European legal order both in terms of “axiological” and “technical” regulations.

55 Article 26 of the TFEU reads as follows: “1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties. 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured in accordance with the provisions of the Treaties. 3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned”.

56 Along with Article 16 of the TFEU which reads as follows: “1. Everyone has the right to the protection of personal data concerning them. 2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices, and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities”.

57 C. Dado, N. Quénié, *European Union Law*, Saltford 2020, p. 210.

58 C. Barnard, S. Peers, *European Union...*, p. 104.

59 N.A. Smuha, K. Yeung, *The European...*, p. 228.

This distinction between the axiological perspective and the technical perspective becomes more evident when examining the purposes of both acts. The primary purpose of the AI Convention is to guarantee the respect for existing human rights, democratic principles, and the rule of law. In comparison, the primary purpose of the AI Act is to ensure the proper functioning of the internal market of the EU, as outlined in the relevant provisions of the EU treaties. It is notable that both acts demonstrate an aspiration to achieve their respective purposes beyond the confines of the international organisations within which they were enacted. The AI Convention aims to achieve its purpose by enabling all countries worldwide to become signatories. The AI Act aims to achieve its purpose by enforcing EU regulations on non-EU entities that intend to operate within the EU, either directly or indirectly. Therefore, both acts complement each other at the level of global impact – the AI Convention as an international treaty, and the AI Act as a legal regulation for non-EU entities that intend to operate within the EU, either directly or indirectly.⁶⁰

Considering the research hypothesis outlined in the introduction, it can be asserted that it has not been entirely validated. The distinctions in the object and purpose of the AI Convention and the AI Act, although seemingly substantial, primarily stem from the differing regulatory philosophies embraced by the Council of Europe (axiological) and the EU (technical). In essence, both acts contribute to ensuring the coherence of the European legal order and complement each other in terms of global impact.

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⁶⁰ The main theses of the study were presented during a speech at the Scientific Seminar entitled “Challenges and Trends in Regional Policy”, which took place on May 29–30, 2025, in the building of the University of the National Education Commission in Kraków. The author would like to thank the reviewers and language proofreaders.

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Convergence or Divergence? Balancing Regulatory Approaches in the Council of Europe AI Convention and the EU AI Act

Abstract

Both the Council of Europe's Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law, and the European Union's AI Act are designed to regulate the legal domain established by swift technological advancements and innovations. The primary objective of this study was to compare the object and purpose of the Council of Europe Framework Convention on AI with the object and purpose of the EU AI Act, and to identify the divergences and convergences between them. The research method employed in this study was a formal, dogmatic approach aimed at identifying the object and purpose of the discussed acts. The primary focus of the analysis was the linguistic-logical directive. The study demonstrated that the differences in the object and purpose of the Council of Europe Framework Convention on AI and the EU AI Act, although seemingly significant, principally originate from the distinct regulatory philosophies adopted by the Council of Europe (axiological) and the European Union (technical). In essence, both acts contribute to ensuring the coherence of the European legal order and complement each other in terms of global impact.

Keywords: the EU AI Act, the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, object of a treaty, purpose of a treaty, human rights, artificial intelligence, ethical standards in AI, treaty interpretation, secondary law of the EU

Konwergencja czy dywergencja? Równoważenie podejść regulacyjnych w Konwencji Rady Europy dotyczącej sztucznej inteligencji i w Akcie o sztucznej inteligencji UE

Streszczenie

Zarówno Konwencja ramowa Rady Europy w sprawie sztucznej inteligencji oraz praw człowieka, demokracji i praworządności, jak i Akt Unii Europejskiej o sztucznej inteligencji, mają na celu regulowanie domeny prawnej ustanowionej przez szybki postęp technologiczny i innowacje. Głównym celem badania było porównanie przedmiotu i celu

Konwencji ramowej Rady Europy w sprawie sztucznej inteligencji z przedmiotem i celem Aktu UE o sztucznej inteligencji, a także zidentyfikowanie rozbieżności i zbieżności między nimi. Metodą badawczą zastosowaną w tym badaniu było formalne, dogmatyczne podejście mające na celu identyfikację przedmiotu i celu omawianych aktów. Analiza została przeprowadzona przede wszystkim w oparciu o dyrektywę językowo-logicznego rozumowania. Badanie wykazało, że różnice w przedmiocie i celu Konwencji ramowej Rady Europy w sprawie sztucznej inteligencji i Aktu UE o sztucznej inteligencji, choć pozornie znaczące, wynikają głównie z odmiennych filozofii regulacyjnych przyjętych przez Radę Europy (aksjologiczną) i UE (techniczną). W istocie oba akty przyczyniają się do zapewnienia spójności europejskiego porządku prawnego i wzajemnie uzupełniają się pod względem globalnego oddziaływania.

Słowa kluczowe: Akt UE o sztucznej inteligencji, Konwencja ramowa Rady Europy w sprawie sztucznej inteligencji oraz praw człowieka, demokracji i praworządności, przedmiot traktatu, cel traktatu, prawa człowieka, sztuczna inteligencja, standardy etyczne w AI, interpretacja traktatu, prawo wtórne UE

