



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 March 2013

**6655/13
EXT 1**

**JAI 126
DATAPROTECT 19
MI 120
FREMP 14
RELEX 152**

PARTIAL DECLASSIFICATION

of document:	6655/13 RESTREINT UE/EU RESTRICTED
dated:	20 February 2013
new status:	Public

Subject:	EDPS comments on the recommendation for a Council decision authorising the opening of negotiations on the modernisation of Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (EST 108) and the conditions and modalities of accession of the European Union to the modernised Convention
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Delegations will find attached the partially declassified version of the above-mentioned document.



ANNEX

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 February 2013

**6655/13
EXT 1 (18.03.2013)**

**JAI 126
DATAPROTECT 19
MI 120
FREMP 14
RELEX 152**

NOTE

from : General Secretariat
to : Delegations

No. prev. doc. : 6176/13 JAI 84 DATAPROTECT 11 MI 99 FREMP 9 RELEX 112

Subject : EDPS comments on the recommendation for a Council decision authorising the opening of negotiations on the modernisation of Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (EST 108) and the conditions and modalities of accession of the European Union to the modernised Convention

Delegations find in Annex the European Data Protection Supervisor's comments on the recommendation for a Council decision authorising the opening of negotiations on the modernisation of Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (EST 108) and the conditions and modalities of accession of the European Union to the modernised Convention.

I. Introduction

I.1. Consultation of the EDPS

On 19 November 2012 the Commission adopted a draft Recommendation for a Council decision authorising the opening of negotiations on the modernisation of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (EST 108) and the conditions and modalities of accession of the European Union to the modernised Convention (hereinafter: "the recommendation"). The EDPS received the draft on 8 February 2013 in accordance with the Administrative Arrangement between the European Commission (DG HR) and the European Data Protection Supervisor (EDPS) on access by the EDPS to European Union classified information¹.

The EDPS regrets the fact that he was not consulted in advance on the recommendation, contrary to Article 28(2) of Regulation (EC) No. 45/2001² and the Note of the Secretary Generals of the Commission of 8 December 2006 to Director-Generals and Heads of Service on Consultation of the European Data Protection Supervisor, and in particular paragraph 3 thereof³.

I.2. Aim of the recommendation and of the EDPS comments

The aims of the recommendation are to authorise the Commission to negotiate the modernisation of Convention 108 and to propose that the Union become a full contracting party of the modernised Convention 108 (hereinafter: "the Convention") that will emerge.

¹ See the letter from Ms Souka to Mr Docksey of 5 March 2012 on DG HR/EDPS Arrangements for the exchange of EUCI (HR/IS hr.ds.dir(2012)234206).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

³ SEC(2006)1771; DPO/PR/gj D(2006) 11716.

The recommendation contains:

- an explanatory memorandum explaining the background of the modernisation of Convention 108, the legal elements of the recommendation and its budgetary implications, as well as the proposed negotiation objectives for the EU;
- the text of the recommendation itself, authorising the Commission to negotiate the modernisation of Convention 108 on behalf of the Union and the modalities of the accession of the EU to the Convention;
- an annex with the Directives for the negotiation of the modernisation of [Council of] Europe Convention for the protection of individuals with regards to automatic processing of personal data (EST 108) and the conditions and modalities of accession of the European Union to the modernised Convention (hereinafter: "the directives").

The present comments will focus on the proposed negotiation objectives for the EU and the negotiation directives.

II. Comments on the negotiation objectives

The EDPS welcomes the approach proposed by the Commission in favour of coherence and consistency and a high level of protection of the rights to privacy and data protection.

The EDPS would therefore encourage the Council to follow the Commission recommendation that the Union become a full contracting party of the Convention. In this respect, the EDPS would recall his position on the need to address EU institutions and bodies in the review of the EU data protection legal framework¹. The EDPS would recommend that EU institutions and bodies be subject to the same rules as the Member States, which are all Parties to the Convention. This would limit the risk of discrepancies, especially as regards the exchange of personal data between EU institutions and bodies and the Member States' public and private organisations.

¹ See para. 89 of the EDPS Opinion on the data protection reform package of 7 March 2012, available on http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2012/12-03-07_EDPS_Reform_package_EN.pdf.

III. Comments on the negotiation directives

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