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European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION authorising Member States to sign, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

COUNCIL DECISION (EU) 2018/...

of ...

**authorising Member States to sign,
in the interest of the European Union,
the Protocol amending the Council of Europe Convention
for the Protection of Individuals with regard to
Automatic Processing of Personal Data**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16,
in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 6 June 2013, the Council authorised the Commission to participate on behalf of the Union in the negotiations on the modernisation of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108) ('Convention 108') and the conditions and modalities for the accession of the Union to the modernised Convention.
- (2) The Protocol amending Convention 108 ('the amending Protocol') was adopted by the Committee of Ministers of the Council of Europe on 18 May 2018.
- (3) The amending Protocol aims to widen the scope, increase the level and improve the effectiveness of data protection afforded under Convention 108.
- (4) The provisions of the amended Convention 108 cover both activities falling within the scope of Union law and activities outside its scope, such as in national security and defence.

- (5) The provisions of the amended Convention 108, to the extent that they apply to processing of personal data in the context of activities falling within the scope of Union law, may affect common rules or alter their scope within the meaning of Article 3(2) of the Treaty, as those provisions are based on the same principles as Regulation (EU) 2016/679 of the European Parliament and of the Council¹ and Directive (EU) 2016/680 of the European Parliament and of the Council².
- (6) Given that the amended Convention 108 would contain safeguards based on the same principles as Regulation (EU) 2016/679 and Directive (EU) 2016/680, its entry into force will contribute to the promotion of Union data protection standards at global level, facilitate data flows between the Union and the non-Union Parties to the Convention, ensure the compliance by Member States with their international obligations under the Convention and enable future accession of the Union to the Convention.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

- (7) The Union cannot sign or ratify the amending Protocol because Convention 108 provides that only States are Parties thereto.
- (8) Member States should therefore be authorised to sign the amending Protocol, acting jointly in the interests of the Union, insofar as its provisions fall within the exclusive competence of the Union,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to sign, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), insofar as its provisions fall within the exclusive competence of the Union.

Article 2

Member States are encouraged to sign the amending Protocol in Strasbourg, during the signing ceremony or at the earliest possible time thereafter.

Article 3

This Decision shall enter into force on the date of its adoption.

Article 4

This Decision is addressed to the Member States.

Done at ...,

For the Council

The President
