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NOTE

From: Presidency
To: Delegations

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Subject: Proposal for a COUNCIL DECISION authorising Member States to ratify, 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)
- Outcome of the DAPIX meeting on 15 June 2018

Delegations will find attached the draft text of the Decision authorising the ratification of the amending protocol, as modified at the meeting of DAPIX on 15 June 2018.

This text is aligned to the Decision on the authorisation of the Member States to sign the amending protocol (doc. 10255/18).

After revision by the lawyer-linguists, this text will be forwarded to Coreper/Council in order to request the consent of the European Parliament to the authorisation of Member States to ratify the amending protocol in the interest of the Union.

In this text changes to the Commission proposal are marked in **bold/ underlined**. Where text of the Commission text has been deleted this is indicated by ~~**bold and strike-through**~~.

COUNCIL DECISION

authorising Member States to ratify, 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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(6)(a)(v), in conjunction with Article 16 thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On ~~31 May~~ **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 (EST 108) ("Convention 108") and the conditions and modalities of accession of the Union to the modernised Convention.
 - (2) The Protocol amending Convention 108 ("the amending Protocol") was adopted by the Council of Europe Committee of Ministers on 18 May 2018, ~~and will be open for signature as of 25 June 2018.~~
 - (3) The amending Protocol aims to widen the scope, increase the level and improve the effectiveness of data protection afforded under Convention 108.
- (3a) The provisions of the amended Convention 108 cover both activities falling within the scope of the Union law and activities outside its scope, such as in national security and defence.**

- (4) The provisions of the amended Convention 108, to the extent they apply to processing of personal data in the context of activities falling within the scope of the Union law, may affect common rules or alter their scope within the meaning of Article 3(2) TFEU, as these provisions coincide with the obligations contained **are based on the same principles as** in 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.
- (5) Given that the modernised Convention 108 would contain largely similar safeguards **based on the same principles** as Regulation (EU) 2016/679 and Directive (EU) 2016/680, entry into force will contribute to the promotion of EU data protection standards at global level, facilitate data flows between the EU and the non-EU Parties to the Convention, ensure compliance of EU Member States with their international obligations under the Convention and enable future accession of the EU to the Convention.
- (6) The Union cannot sign or ratify the amending Protocol, as under the current Convention 108 only States are Parties.
- (7) Member States should therefore be authorised to ratify 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:

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 2008/799/JHA, (OJ L 119, 4.5.2016, p. 89).

Article 1

Member States are hereby authorised to ratify, 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. **competence**.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President
