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## DECLASSIFICATION

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Subject: 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) - Information with a view to the CAHDATA - meeting on 12-14 November 2013 (Strasbourg)

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**NOTE**

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from: Commission Services

to: Delegations

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The delegations will find in the annex information in view of the CAHDATA meeting on 12-14 November 2013 (Strasbourg).

**Non-Paper for DAPIX meeting 8/11: information in view of the CAHDATA meeting on 12-14 November 2013 (Strasbourg)**

**I. State of Play**

In June 2013, the Council of the European Union has adopted a decision authorising the European Commission to participate on behalf of the European Union in the negotiations on the modernisation of Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data ("Convention 108") and the conditions and modalities of accession of the European Union to the modernised Convention.

The Council Working Party on Information and Data Protection (DAPIX) has been appointed as the special committee by the Council in accordance with Article 218 (4) Treaty on the Functioning of the European Union. In this context, the European Commission has been asked, on 7 November, by the said Council Working Party to provide additional information in writing ahead of the first meeting of the Ad Hoc Committee on data protection ("CAHDATA") on 12-14 November 2013 in Strasbourg.

The **state of play** on the modernisation of CoE Convention 108 until now:

- The Council of Europe Consultative Committee on Convention 108 ("T-PD") adopted, at its 29th plenary meeting on 27-30 November 2012, proposals for the modernisation of the Convention 108.
  - Representatives of the Member States and the Commission participated in the preparation and discussion of these proposals and expressed broad agreement to their adoption.
- The CAHDATA has been tasked to examine, decide and submit to the Committee of Ministers proposals for the modernisation of the Convention 108 and its additional Protocol on the basis of the draft modernisation proposals.
- Preliminary schedule for 2013-2014 CAHDATA meetings:
  - 12-14 November 2013;
  - 17-19 February 2014;
  - 14-16 May 2014.

**II. Objective and approach**

*At the beginning of the CAHDATA meeting of 12-14 November, the Commission will welcome the on-going modernisation of Convention 108 and express its general support to the modernisation proposals as adopted by the Consultative Committee on Convention 108 ("T-PD") at its 29th plenary meeting on 30 November 2012 (reference document T-PD\_2012\_04\_rev4\_E). The Commission will also indicate that, at this stage and pending further developments in the negotiation of the EU data protection reform, it is not in a position to take definitive positions on the proposals submitted to CAHDATA.*

The **objective** of the European Union in these negotiations, as enshrined in the decision authorising the European Commission to participate on behalf of the European Union in the negotiations, is two-fold:

- First, the modernised Convention 108 is to ensure a high level of protection of fundamental rights and freedoms with respect to the processing of personal data.
- Second, the consistency of Convention 108 with the EU data protection *acquis* has to be guaranteed, duly taking into account the on-going reform of the EU data protection legislation, since all twenty-eight EU Member States are Parties to the Convention 108.

The suggested **approach** in view of the negotiations is the following:

- First, the Union should in principle support the draft modernised text of Convention 108, which aims at setting high data protection standards in an instrument open to ratification for third countries while at the same time ensuring consistency with the EU data protection *acquis*.
- Second, it is important not to compromise the high level of protection, while keeping the comprehensive and general nature of this international Convention: this corresponds to the global vocation of Convention 108, which seeks to accommodate different legal systems from both within and outside Europe. Avoiding too detailed rules in Convention 108 would both be compatible with the nature of the instrument and facilitate ensuring consistency with the EU data protection *acquis*.
- Third, in view of the discussions on the Data Protection Reform that are taking place in parallel, several provisions of the draft text should be left open or a reservation should be maintained until an agreement is being reached in Brussels.
  - To this end, the European Commission has provided the Council Working Group with document 15765/13 (LIMITE) that identifies the above-mentioned provisions. For ease of reference, the document 15765/13 (LIMITE) contains, on the one hand, the identified articles of the draft modernised Convention 108 and, on the other hand, the text of the "equivalent" articles of the current

directive, the General Data Protection Regulation as proposed by COM, the current Council text and the voted EP text.

- Since the questions raised by these articles are currently dealt with by the EU Legislator, the European Union cannot, for the time being, take a position that would pre-empt the outcome of the internal negotiation process.

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