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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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General Secretariat

Brussels, 6 February 2015
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NOTE

From:	Commission Services
To:	Working Group on Information Exchange and Data Protection
No. prev. doc.:	5145/15 DATAPROTECT 1 JAI 13 MI 13 FREMP 2 RELEX 12
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) - Follow-up to the CAHDATA meeting in Strasbourg 1-3 December 2014

Delegations will find attached two Annexes: the first contains information from the Commission on the Member States' comments on 5145/15; the second document is a document from the Commission services containing the approved text of the modernised Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), as set out in the report from the CAHDATA meeting on 1-3 December 2014 drawn up by the Council of Europe Secretariat.

The text contains footnotes as in the original text made at the meeting on 1- 3 December 2014. These are set out as normal footnotes, however the Commission suggests adding new footnotes to the official ones. The Commission's suggested changes to the footnotes are marked as follows: deletions are marked with strike-through and new text is marked with bold and underlined.

<p>Negotiations on the modernisation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of personal data (Convention 108)</p>	<p>Information by the Commission on EU position on the text approved by CAHDATA at the meeting of 1-3 December 2014</p>
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- I. The delegations will find attached the EU position on the draft revised text of Convention 108 adopted at the CAHDATA meeting on 3rd December 2014. This position will be communicated to T-PD Secretariat so it can prepare the meeting of the Rapporteurs group on Legal Cooperation of 24 March. The Rapporteurs group will take stock of the text adopted by CAHDATA and report to the Committee of Ministers.
- II. Following the JHA Counsellors meeting on 19th January 2015, the Council Secretariat transmitted to the Commission further observations by Germany, the Czech Republic, France, the Netherlands, Belgium, Austria and the United Kingdom. These comments have been subject to in-depth scrutiny by the Commission services which came to the following conclusions:
1. Some Member States suggested explicit mention of Member States in the reservation n° 8 justifying it by the potentially mixed character of the convention and in particular by Member States exclusive competence in the fields of police and intelligence services. Moreover, the aforementioned delegations asked for a clear reference in the reservation to further exceptions to other provisions of the Convention, notably Articles 12 and 12bis (for reasons of national security), which were not covered by the scope of Art. 9 of the Convention.

The Commission services consider that the reservation n° 8 does not prejudice on the legal nature of the Convention and the distribution of powers between the Member States and the Union. Hence it is not necessary to mention Member States in the reservation.

As to the extension of the reservation on Article 9 to include Articles 12 and 12bis, the Commission services consider that such addition is unnecessary, as the current formulation of the EU reservation clearly refers to the scope of Article 9 and leaves it open the final list of possible exceptions.

2. Some Member States asked for an additional reservation on the word "purely" in Art. 3(1bis) on the scope.

This reservation has been made during the meeting and it is presented as square brackets and not in a footnote.

The Commission services will make sure that the cover letter to the Secretariat of the Council of Europe accompanying the EU position will specify that the square brackets are to be understood as a reservation.

3. Some Member States proposed a reservation on Art. 12(1), so as to make sure that Member States will not be obliged to send data to recipients under the jurisdiction of another Party to the Convention without further data protection related conditions are not met.

The Commission services consider that the current formulation of the provision at stake ("*a Party may however do so if bound by harmonised rules of protection shared by States belonging to a regional international organisation*") already secures the possibility to forbid the transfer of personal data by a EU Member State.

4. One Member States proposed further reservations with regard to Art. 5.4(b), claiming that archival reasons may not be understood as comprised in "historical reasons". They also insisted on the need to ensure the possibility to derogate to Art. 5.4(e) in case of data collected for archival reasons.

The Commission services note that the paragraph 50 of the revised Explanatory Memorandum already clarifies that "public archives" are included in the notion of "historical reasons". The second point is covered by the reservation on the scope of Article 9.

5. One Member State suggested adding a reservation on the scope of transparency requirements in Art. 5.4 and Art. 7bis.1, as these requirements would go beyond the obligations under the EU law.

The Commission services note that Article 9 already covers the possibility of exceptions or restrictions to transparency requirements.

6. One Member State suggested adding a reservation on the provision of Art. 12.6, providing for a possibility for a data protection supervisor to block international transfers of data, and to Art. 12bis.2bis, as the powers of the supervisory authorities conferred by these provisions would go beyond the obligations under the draft Regulation and the Police Directive.

The Commission services note that, as explained at CAHDATA meeting in December 2014, the parties to the Convention can establish special supervisory authorities for certain specific areas notably national security. Both under the existing *acquis* and under the draft Regulation and the draft Police Directive (see on the latter European Parliament's position, Amendment 109, Article 46 (1) (h)) supervisory authorities have the power to suspend data flows to a recipient in a third country or to an international organisation.

7. One Member State suggested lifting reservations n°2, 4, 5, 9, as the provisions of the Convention at stake would be less stringent than those of EU law.

The Commission services note that the above reservations have already been explained and discussed at DAPIX meeting in November last year and in several coordination meetings with Member States during the last CAHDATA meeting. Those reservations are aimed at ensuring consistency with the EU reform.

Convention for the Protection of Individuals with Regard to the Processing of Personal Data

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is necessary to secure human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on their right to control of their personal data and the processing of such data;

Recalling that the right to protection of personal data is to be considered in respect of its role in society and that it has to be reconciled with other human rights and fundamental freedoms, including freedom of expression;

Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of access to official documents;

Recognising that it is necessary to promote at the global level the fundamental values of respect for privacy and protection of personal data, thereby contributing to the free flow of information between peoples;

Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention,

Have agreed as follows:

Chapter I - General provisions

Article 1 - Object and purpose

The purpose of this Convention is to protect every individual, whatever their nationality or residence, with regard to the processing of their personal data, thereby contributing to respect for their human rights and fundamental freedoms, and in particular their right to privacy.

Article 2 - Definitions

For the purposes of this Convention:

- a. "personal data" means any information relating to an identified or identifiable individual ("data subject");
- b. "data processing" means any operation or set of operations which is performed upon personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data;
- c. Where automated processing is not used, data processing means an operation or set of operations performed upon personal data within a structured set of such data which are accessible or retrievable according to specific criteria;
- d. "controller" means the natural or legal person, public authority, service, agency or any other body which alone or jointly with others has the decision-making power with respect to data processing;
- e. "recipient" means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;
- f. "processor" means a natural or legal person, public authority, service, agency or any other body which processes personal data on behalf of the controller.

Article 3 - Scope

1. Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby securing every individual's right to protection of their personal data.

1bis. This Convention shall not apply to data processing carried out by an individual in the course of [purely] personal or household activities.

Chapter II - Basic principles for the protection of personal data

Article 4 - Duties of the Parties

1. Each Party shall take the necessary measures in its law to give effect to the provisions of this Convention and secure their effective application.

2. These measures shall be taken by each Party and shall have come into force by the time of ratification or accession to this Convention.

3. Each Party undertakes:

- (a) to allow the Convention Committee provided for in Chapter V to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of this Convention and
- (b) to contribute actively to this evaluation process.

Article 5 - Legitimacy of data processing and quality of data

1. Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.

2. Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous¹ consent of the data subject or of some other legitimate basis laid down by law.

¹ Reservation of ~~the EU Commission~~ in order to ensure consistency with EU reform **which still has to decide if the qualification of consent should be "unambiguous" or "explicit"**.

3. Personal data undergoing processing shall be processed lawfully.
4. Personal data undergoing processing shall be:
 - a. processed fairly and in a transparent manner;
 - b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes; further processing for historical, statistical and scientific purposes is, subject to appropriate safeguards, compatible with those purposes;
 - c. adequate, relevant and not excessive² in relation to the purposes for which they are processed;
 - d. accurate and, where necessary, kept up to date;
 - e. preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed.

Article 6 - Special categories of data

1. The processing of:
 - genetic data,
 - personal data relating to offences, criminal proceedings and convictions, and related security measures,
 - biometric data uniquely identifying a person,
 - personal data for the information they reveal relating to racial origin, political opinions, trade - union membership, religious or other beliefs, health or sexual life,
 shall only be allowed where specific and additional appropriate safeguards are enshrined in law, complementing those of this Convention³.
2. Such safeguards shall guard against the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.

² The Explanatory Report will clarify that "not excessive" refers both to the quantity and quality of the data concerned.

³ Reservation of ~~the~~ EU Commission in order to ensure consistency with EU reform.

Article 7 - Data security

1. Each Party shall provide that the controller, and, where applicable the processor, takes appropriate security measures against risks such as accidental or unauthorised access to, destruction, loss, use, modification or disclosure of personal data.
2. Each Party shall provide that the controller shall notify, without delay, at least the competent supervisory authority within the meaning of Article 12bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.

Article 7bis - Transparency of processing

1. Each Party shall provide that the controller informs the data subjects of:
 - (a) the controller's identity and habitual residence or establishment,
 - (b) the legal basis and the purposes of the intended processing,
 - (c) the categories of personal data processed,
 - (d) if any, the recipients or categories of recipients of the personal data, and
 - (e) the means of exercising the rights set out in Article 8,as well as any necessary additional information in order to ensure fair and transparent processing of the personal data.
- 1bis. Paragraph 1 shall not apply where the data subject already has the relevant information.
2. Where the personal data are not collected from the data subjects, the controller shall nonetheless not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.

Article 8 - Rights of the data subject

Every individual shall have a right:

- a. not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having their views taken into consideration;

- b. to obtain, on request, at reasonable intervals and without excessive delay or expense⁴, confirmation of the processing of personal data relating to him or her, the communication in an intelligible form of the data processed, all available information on their origin, on the preservation period as well as any other information that the controller is required to provide in order to ensure the transparency of processing in accordance with Article 7bis paragraph 1;
- c. to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her;
- d. to object at any time to the processing of personal data concerning him or her unless the controller demonstrates legitimate grounds for the processing which override their interests or rights and fundamental freedoms⁵.
- e. to obtain, on request, free of charge and without excessive delay, rectification or erasure, as the case may be, of such data if these are being or have been processed contrary to the provisions of this Convention;
- f. to have a remedy under Article 10 where his or her rights under this Convention have been violated;
- g. to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 12bis, in exercising their rights under this Convention.

Article 8bis - Additional obligations

1. Each Party shall provide that controllers and, where applicable, processors take all appropriate measure to comply with the obligations of this Convention and be able to demonstrate, in particular to the competent supervisory authority provided for in Article 12bis, that the data processing under their control is in compliance with the provisions of this Convention.

⁴ **Reservation of the EU which prefers the wording "free of charge". The phrase should therefore read "to obtain, on request, at reasonable intervals, free of charge and without excessive delay...."**

⁵ **Reservation of the EU in order to ensure consistency with EU reform.**

2. Each Party shall provide that controllers and, where applicable, processors, examine the likely impact of intended data processing on the rights and fundamental freedoms of data subjects prior to the commencement of such processing, and shall design the data processing in such a manner as to prevent or minimise the risk of interference with those rights and fundamental freedoms⁶.
3. Each Party shall provide that controllers, and, where applicable, processors, implement technical and organisational measures which take into account the implications of the right to the protection of personal data at all stages of the data processing.
4. Each Party may, having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, adapt application of the provisions of paragraphs 1, 2 and 3 in the law giving effect to the provisions of this Convention, according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor.

Article 9 - Exceptions and restrictions

1. No exception to the provisions set out in this Chapter shall be allowed, except to the provisions of Articles 5.4, 7.2, 7bis paragraph 1 and Article 8 when such exception is provided for by law and constitutes a necessary and proportionate measure in a democratic society for⁷
 - a. the protection of national security, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences;
 - b. the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.
2. Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for historical, statistical and scientific purposes when there is no recognisable risk of infringement of the rights and fundamental freedoms of data subjects⁸.

⁶ ~~Reservation of the EU in order to ensure consistency with EU reform.~~

⁷ Reservation of the EU Commission in respect of the scope of Article 9, and as regards in conjunction with Article 5.3. and Article 5.4.a. (notably whether the requirement of "fair processing" should figure in Article 5.3 or in 5.4)

⁸ Reservation of the EU in order to ensure consistency with EU reform.

Article 10 - Sanctions and remedies

Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of the provisions of this Convention.

Article 11 - Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this Convention.

Chapter III - Transborder flows of personal data

Article 12 - Transborder flows of personal data

1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of such data to a recipient who is subject to the jurisdiction of another Party to the Convention. Such a Party may however do so if bound by harmonised rules of protection shared by States belonging to a regional international organisation⁹.
2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to this Convention, the transfer of personal data may only take place where an appropriate level of protection based on the provisions of this Convention is secured.
3. An appropriate level of protection can be secured by:
 - a. the law of that State or international organisation, including the applicable international treaties or agreements, or
 - b. ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.
4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of personal data may take place if:
 - a. the data subject has given explicit, specific and free consent, after being informed of risks arising in the absence of appropriate safeguards, or

⁹ Reservation by the Russian Federation.

- b. the specific interests of the data subject require it in the particular case, or
- c. prevailing legitimate interests, in particular important public interests, are provided for by law and such transfer constitutes a necessary and proportionate measure in a democratic society.

5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12bis of this Convention is provided with all relevant information concerning the transfers of data referred to in paragraph 3.b and, upon request, paragraphs 4.b and 4.c.

6. Each Party shall also provide that the supervisory authority be entitled to request that the person who transfers data demonstrates the effectiveness of the safeguards or the existence of prevailing legitimate interests and that the supervisory authority may, in order to protect the rights and fundamental freedoms of data subjects, prohibit, suspend or subject to condition such transfers.

7. Exceptions to the provisions of this Article are allowed insofar as they constitute a necessary and proportionate measure in a democratic society for the freedom of expression¹⁰.

Chapter III bis - Supervisory authorities

Article 12bis - Supervisory authorities

- 1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this Convention.
- 2 To this end, such authorities:
 - a. shall have powers of investigation and intervention;
 - b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;
 - c. shall have powers to issue decisions with respect to violations of the provisions of this Convention and may, in particular, impose administrative sanctions;

¹⁰ **Reservation of the EU in order to ensure consistency of the text and with EU reform. The present text of paragraph 7 is unclear and prejudicial to legal certainty, as it is too broad. Moreover, it is not clear what provisions of this Article may be subject to exceptions, given that para 1 and 2 cover 2 different situations. Also, para 2 sets a principle, while para 4 constitutes an exception to this principle.**

- d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of the provisions of this Convention;
- e. shall promote:
 - (i) public awareness of their functions and powers as well as their activities;
 - (ii) public awareness of the rights of data subjects and the exercise of such rights,
 - (iii) awareness of controllers and processors of their responsibilities under this Convention;

specific attention shall be given to the data protection rights of children and other vulnerable individuals;

2bis. The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.

3. Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their data protection rights and shall keep data subjects informed of progress.

4. The supervisory authorities shall act with complete independence and impartiality in performing their duties and exercising their powers and in doing so shall neither seek nor accept instructions.

5. Each Party shall ensure that the supervisory authorities are provided with the resources necessary for the effective performance of their functions and exercise of their powers.

5bis. Each supervisory authority shall prepare and publish a periodical report outlining its activities.

5ter. Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties and exercise of their powers.

6. Decisions of the supervisory authorities may be appealed against through the courts.

7. In accordance with the provisions of Chapter IV, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in particular by:

- a. providing mutual assistance by exchanging relevant and useful information and cooperating with each other under the condition that, as regards the protection of personal data, all the rules and safeguards of this Convention are complied with;

- b. coordinating their investigations or interventions, or conducting joint actions;
- c. providing information and documentation on their law and administrative practice relating to data protection.

7bis. The information referred to in paragraph 7a shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given explicit, specific, free and informed consent to its provision.

8. In order to organise their co-operation and to perform the duties set out in the preceding paragraph, the supervisory authorities of the Parties shall form a network.

9. The supervisory authorities shall not be competent with respect to processing carried out by bodies when acting in their judicial capacity.

Chapter IV - Mutual assistance

Article 13 - Co-operation between Parties

- 1. The Parties agree to render each other mutual assistance in order to implement this Convention.
- 2. For that purpose:
 - a. each Party shall designate one or more supervisory authorities within the meaning of Article 12bis of this Convention, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;
 - b. each Party which has designated more than one supervisory authority shall specify in its communication referred to in the previous sub-paragraph the competence of each.

Article 14 - Assistance to data subjects

- 1. Each Party shall assist any data subject, whatever their nationality or residence, to exercise his or her rights under Article 8 of this Convention.

2. Where a data subject resides in the territory of another Party, he or she shall be given the option of submitting the request through the intermediary of the supervisory authority designated by that Party.
3. The request for assistance shall contain all the necessary particulars, relating inter alia to:
 - a. the name, address and any other relevant particulars identifying the data subject making the request;
 - b. the processing to which the request pertains, or its controller;
 - c. the purpose of the request.

Article 15 - Safeguards concerning assistance rendered by designated supervisory authorities

1. A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2. In no case may a designated supervisory authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the explicit consent¹¹ of the data subject concerned.

Article 16 - Refusal of requests for assistance

A designated supervisory authority to which a request for assistance is addressed under Article 13 of this Convention may not refuse to comply with it unless:

- a. the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;
- b. the request does not comply with the provisions of this Convention;

¹¹ **Reservation of the EU in order to ensure consistency of the text: prevents confusion with the notion of "explicit consent" as a legitimate ground for the processing of personal data. EU proposes replacing it with "express approval".**

- c. compliance with the request would be incompatible with the sovereignty, national security or public order of the Party by which it was designated, or with the rights and fundamental freedoms of individuals under the jurisdiction of that Party.

Article 17 - Costs and procedures of assistance

1. Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects under Articles 8 and 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the supervisory authority making the request for assistance.
2. The data subject may not be charged costs or fees in connection with the steps taken on his or her behalf in the territory of another Party other than those lawfully payable by residents of that Party.
3. Other details concerning the assistance, relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.

Chapter V - Convention Committee

Article 18 - Composition of the committee

1. A Convention Committee shall be set up after the entry into force of this Convention.
2. Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the Convention shall have the right to be represented on the committee by an observer.
3. The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties, invite an observer to be represented at its meetings.
4. Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party.

Article 19 - Functions of the committee

The Convention Committee:

- a. may make recommendations with a view to facilitating or improving the application of the Convention;
- b. may make proposals for amendment of this Convention in accordance with Article 21;
- c. shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 21, paragraph 3;
- d. may express an opinion on any question concerning the interpretation or application of this Convention;
- e. shall prepare, before any new accession to the Convention, an opinion for the Committee of Ministers relating to the level of personal data protection of the candidate for accession and where necessary recommend measures to take to reach compliance with the provisions of this Convention;
- f. may, at the request of a State or an international organisation, evaluate whether the level of personal data protection the former provides is in compliance with the provisions of this Convention and where necessary recommend measures to take to reach such compliance;
- g. may develop or approve models of standardised safeguards referred to in Article 12;
- h. shall review the implementation of this Convention by the Parties and recommend measures to take where a Party is not in compliance with this Convention;
- i. shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.

Article 20 - Procedure

1. The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.

2. A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.
3. Each Party has a right to vote and shall have one vote. On questions within its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote¹².
4. After each of its meetings, the Convention Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of this Convention.
5. The Convention Committee shall draw up its own Rules of Procedure and establish, in particular, the procedures for evaluation referred to in Article 4.3 and for examination of the level of protection referred to in Article 19, on the basis of objective criteria.

Chapter VI - Amendments

Article 21 - Amendments

1. Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.
2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties to this Convention, to the other member States of the Council of Europe, to the European Union and to every non-member State or international organisation which has been invited to accede to this Convention in accordance with the provisions of Article 23.
3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Convention Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
4. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.

¹² Reservations by the Russian Federation and by the European Commission Union. The EU proposes to replace the phrase at stake with "(...)casts a number of votes equal to the number of its member States that have transferred competencies to the European Union in the field concerned. (...) " which would allow for the lifting of the reservation.

5. The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 of this article shall be forwarded to the Parties for acceptance.
6. Any amendment approved in accordance with paragraph 4 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.
7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.
8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by this Convention without at the same time accepting the amendment.

Chapter VII - Final clauses

Article 22 - Entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and by the European Union. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
3. In respect of any Party which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

Article 23 - Accession by non-member States and international organisations

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any State or international organisation acceding to this Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24 - Territorial clause

1. Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State, the European Union or other international organisation may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 25 - Reservations

No reservation may be made in respect of the provisions of this Convention.

Article 26 - Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 27 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;
- d. any other act, notification or communication relating to this Convention.

Article ... of the Protocol: signature and entry into force

1. This protocol shall be open for signature by the Parties to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which all Parties to the Convention have expressed their consent to be bound by the protocol in accordance with the provisions of paragraph 1 of this Article.
3. However, this protocol shall enter into force following the expiry of a period of [two] years after the date on which it has been opened to signature, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those states which were Parties to the Convention at the date of opening for signature of this protocol.

4. Should such an objection be notified, the protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which the Party to the Convention which has notified the objection has deposited its instrument of ratification, acceptance or approval with the Secretary General of the Council of Europe.

5. From the entry into force of this protocol, with respect to a Party having entered one or more declarations in pursuance of Article 2 of the un-amended Convention, such declaration(s) will lapse.

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