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European Union

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## DECLASSIFICATION

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Subject: Draft 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 declassified version of the above document.

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



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THE EUROPEAN UNION**

**Brussels, 10 April 2013**

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**NOTE**

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from : Presidency  
to : Delegations

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Subject : Draft 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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In the light of the discussion at the JHA Counselors meeting on 22 March 2013, the Presidency has revised the text of the above draft Council decision.

The revised draft text is set out in the annex.

[...]DRAFT 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16 and<sup>1</sup> 218 (3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

The Parties, including the Member States of the European Union, to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data are currently negotiating the modernisation of the said Convention,

The Union should participate 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,

The Member States should continue to participate 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 insofar their competence are concerned (for example defence and national security).

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<sup>1</sup> COM, LU and UK entered a scrutiny reservation on the mentioning of Article 16.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, the modernisation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereafter called "Convention 108") as well as the conditions and modalities of the accession of the European Union to the modernised Convention 108.

*Article 2*

The Commission shall conduct those negotiations on behalf of the Union, as regards matters which, in accordance with the Treaties, fall within the competence of the Union [to the extent that the Union has exercised its competence].

*Article 3*

The Commission shall conduct the negotiations on the basis of the negotiating directives (...) set out in the Annex.

*Article 4*

The Commission shall conduct the negotiations following consultation and coordination of the Union's position before each round of negotiations with the Working Party on Information Exchange and Data Protection (DAPIX) (...) of the Council as the special committee appointed by the Council, in accordance with Article 218(4) of the Treaty on the Functioning of the European Union.

To that effect, the Commission shall report after each round to the special committee, [where possible] in writing, on the progress of negotiations.

Article 5

The Council may at any time review the content of the negotiating directives set out in the Annex.

Article 6

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*

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DECLASSIFIED

**Directives for the negotiation of the Modernisation of Europe Convention for the protection of individuals with regard to automatic processing of personal data (EST 108) and of the conditions and modalities of accession of the European Union to the modernised Convention**

**SECTION I: REVISION OF CONVENTION 108**

1. The modernised Convention 108 shall ensure a high level of protection of fundamental rights and freedoms with respect to the processing of personal data.
2. The Convention 108 shall remain comprehensive and wide in scope and general in nature.
3. The essential nature of the system of Convention 108, including its rules on exceptions and restrictions, shall not be altered. The rules shall when necessary, be updated while maintaining (...) the general nature and the technological neutrality of the Convention. This should include provisions addressing quality and legitimacy of data processing, proportionality, special categories of data and supervisory authorities.
4. The consistency of Convention 108 with the EU data protection acquis shall be ensured taking duly into account the ongoing reform of the data-protection legislation. [The positions of the Union and Member States to their respective competences should be coordinated. Therefore] (...) the Commission shall conduct negotiations in accordance with relevant Union legislation or agreed positions of the Union established specifically for the purpose of those negotiations (...)
5. In particular, the Commission shall seek consistency between the EU data protection acquis and Convention 108 rules governing trans-border data flows (...) in order to ensure the effective application of EU rules on transborder data flows, including the rules on adequacy.

SECTION II: ACCESSION BY THE EU TO THE MODERNISED CONVENTION 108

1. The Union should be granted a full contracting party status on equal footing with States and with equal rights.
2. As to voting rights, the Union should vote on matters falling within the competence of the Union as referred to in Article 2 of this Decision. In such cases the Union should have a number of votes equivalent to the number of Member States.
3. The Union shall not make any financial contribution to the Council of Europe budget regarding its participation to the Convention 108 in addition to that of the Member States. In case this did not prove possible to achieve, or would compromise acceptance of Union full membership by current members of Convention 108, the Union could accept as a fall-back position making available a sum compensating for the administrative and other expenses arising out of its membership in Convention 108.
4. For the purposes of the accession by the Union to the Convention 108 and respecting the EU specific legal system, the Convention 108, where necessary, should clarify:
  - the possibility for the European Union to accompany the accession by declarations and reservations in a way similar to other contracting parties.
  - that the terms used in the Convention relating to the fact that the European Union is neither a State, nor a party of the Council of Europe, but is an international organisation with its own specific legal system are clarified. Terms such as national law, national laws, national authority shall be understood as relating also, *mutatis mutandis*, to the European Union or its Member States as the case may be.