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DATAPROTECT 25  
JAI 80  
MI 145  
FREMP 24  
RELEX 114

## 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) - Follow-up of the CAHDATA meeting on 12-14 November 2013 and - preparation of CAHDATA meeting on 28-30 April 2014
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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, 14 February 2014**

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ADD 1**

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**NOTE**

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from: Commission Services

to: Delegations

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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)

- Follow-up of the CAHDATA meeting on 12-14 November 2013 and
- preparation of CAHDATA meeting on 28-30 April 2014

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The delegations will find in the Annex a table following the CAHDATA meeting on 12-14 November 2013 and in view of the CAHDATA meeting on 28-30 April 2014.

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<b>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)</b>	<b>DAPIX meeting 20.02.2014</b> <b>Information by the Commission with a view to the 2<sup>nd</sup> CAHDATA meeting on 28-30 April 2013 (Strasbourg)</b>
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**AD HOC COMMITTEE ON DATA PROTECTION  
(CAHDATA) WORKING DOCUMENT CAHDATA(2013)01**

**Comments on Working Document  
Convention 108 Modernisation proposals CAHDATA(2013)01**

*Note: the present document aims at making visible the modernisation proposals adopted by the Consultative Committee at its 29<sup>th</sup> Plenary meeting (27-30 November 2013) and the preliminary comments thereto.*

<b>CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL</b>	<b>MODERNISATION PROPOSALS</b>	<b>COMMENTS</b>
<b>Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data</b>	<b>Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data</b>	
<b>Preamble</b>	<b>Preamble</b>	
The member States of the Council of Europe, signatory hereto,	unchanged	

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;	unchanged	
Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular frontiers the right to the respect for privacy, taking account of the increasing flow across of personal data undergoing automatic processing;	Considering that it is <b>necessary, given the diversification, intensification and globalisation of data processing and exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person, in particular through the right to control one's personal data and the processing of such data.</b>	<i>Initial support</i>
Reaffirming at the same time their commitment to freedom of information regardless of frontiers;	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;	<i>Initial support</i>
	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 public access to official documents ;	<i>Initial support</i>

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,	Recognising that it is necessary <b>to promote at the global level</b> the fundamental values of respect for privacy <b>and protection of personal data, thereby contributing to</b> the free flow of information between peoples;	<i>Initial support</i>
	Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	<i>Initial support</i>
Have agreed as follows:	unchanged	
<b>Chapter I – General provisions</b>	<b>Chapter I – General provisions</b>	
<b>Article 1 – Object and purpose</b>	<b>Article 1 – Object and purpose</b>	
The purpose of this Convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him (“data protection”).	The purpose of this Convention is to secure for every individual <b>subject to the jurisdiction of the Parties</b> , whatever their nationality or residence, <b>the protection of their personal data when undergoing processing, thus contributing to</b> respect for their rights and fundamental freedoms, and in particular <b>their</b> right to privacy.	<i>Initial support</i>
<b>Article 2 – Definitions</b>	<b>Article 2 – Definitions</b>	
For the purposes of this Convention:	unchanged	
a “personal data” means any information relating to an identified or identifiable individual (“data subject”);	unchanged	
b “automated data file” means any set of data undergoing automatic processing;	Deleted – see 3.1 below	

c “automatic processing” includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination;	c “data processing” means any operation or set of operations which is performed upon personal data, and in particular the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on data;	<i>Initial support</i>
	where no automated processing is used, data processing means the operations carried out within a structured set established according to any criteria which allow to search for personal data ;	<i>Initial support</i>
d “controller of the file” means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.	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.	<i>Initial support</i>
	e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;	<i>Initial support</i>
	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;	<i>Initial support</i>

Article 3 – Scope	Article 3 – Scope	
<p>1 The Parties undertake to apply this Convention to automated personal data files and automatic processing of personal data in the public and private sectors.</p>	<p>1 <b>Each Party</b> undertakes to apply this Convention to <b>data processing subject to its jurisdiction, thereby protecting the right to protection of personal data of any person subject to its jurisdiction.</b></p> <p>1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.</p>	<p><i>Initial support</i></p>
<p>2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:</p>	<p>delete</p>	
<p>a that it will not apply this Convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;</p>	<p>delete</p>	

b that it will also apply this Convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;	delete	
c that it will also apply this Convention to personal data files which are not processed automatically.	delete	
3 Any State which has extended the scope of this Convention by any of the declarations provided for in subparagraph 2.b or c above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.	delete	
4 Any Party which has excluded certain categories of automated personal data files by a declaration provided for in subparagraph 2.a above may not claim the application of this Convention to such categories by a Party which has not excluded them.	delete	
5 Likewise, a Party which has not made one or other of the extensions provided for in subparagraphs 2b and c above may not claim the application of this Convention on these points with respect to a Party which has made such extensions.	delete	

6 The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the Convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.	delete	
<b>Chapter II – Basic principles for data protection</b>	<b>Chapter II – Basic principles for the protection of personal data</b>	
<b>Article 4 – Duties of the Parties</b>	<b>Article 4 – Duties of the Parties</b>	
1 Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.	1 Each Party shall take the necessary measures in its domestic law to give effect to the provisions set out in <b>this Convention and ensure their effective application.</b>	<i>Initial support</i>
2 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.	2 These measures shall be taken <b>by each Party prior to ratification or accession to this Convention.</b>	<i>Initial support</i>
	3 Each Party undertakes to allow the Convention Committee provided for in Chapter V to evaluate the observance of its engagements and to contribute actively to this evaluation, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.	<i>Initial support</i>

Article 5 – Quality of data	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.	<i>Initial support</i>
	2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and <u>[explicit, unambiguous]</u> consent of the data subject or of some legitimate basis laid down by law.	<i>Reservation – issue open pending EU internal negotiations</i>
Personal data undergoing automatic processing shall be:	3 Personal data undergoing processing shall be :	<i>Initial support</i>
a obtained and processed fairly and lawfully;	a. processed lawfully and fairly.	<i>Initial support</i>
b stored for specified and legitimate purposes and not used in a way incompatible with those purposes;	b. <b>collected</b> for <b>explicit</b> , specified and legitimate purposes and not <b>processed</b> in a way incompatible with those purposes;	<i>Initial support</i>
c adequate, relevant and not excessive in relation to the purposes for which they are stored;	c. adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are <b>processed</b> ;	<i>Initial support</i>
d accurate and, where necessary, kept up to date;	unchanged	
e preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.	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 <b>processed</b> .	<i>Initial support</i>

<b>Article 6 – Special categories of data</b>	<b>Article 6 – Processing of sensitive data</b>	
Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.	<p>1 The processing of genetic data, <u>of personal data concerning offences, criminal convictions and related security measures, the processing of biometric data uniquely identifying a person</u>, as well as the processing of 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 the applicable law provides appropriate safeguards, complementing those of the present Convention.</p> <p>2. Appropriate safeguards shall prevent 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.</p>	<i>Reservation– articulation with current EU acquis</i>
<b>Article 7 – Data security</b>	<b>Article 7 – Data security</b>	
Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.	<p>1 <b>Every Party shall provide that the controller, and, where applicable the processor, takes the appropriate security measures against accidental or unauthorised access, destruction, loss modification or dissemination of personal data.</b></p>	<i>Initial support</i>

	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>	<p><i>Initial support</i></p>
	<p><b>Article 7bis – Transparency of processing</b></p>	
	<p>1 Each Party shall see to it that the controller ensures the transparency of data processing by informing the data subjects, unless they have already been informed, of at least the identity and habitual residence or establishment of the controller, the purposes of the processing carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.</p>	<p><i>Initial support</i></p>
	<p>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.</p>	<p><i>Initial support</i></p>

Article 8 – Additional safeguards for the data subject	Article 8 – Rights of the data subject	
Any person shall be enabled:	Any person shall be <b>entitled</b> :	
a to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;	a not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having their views taken into consideration;	<i>Initial support</i>
	b to object at any time to the processing of personal data concerning him/her unless the controller demonstrates compelling legitimate grounds for the processing which override their interests or rights and fundamental freedoms ;	<i>Initial support</i>
b to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;	c to obtain, on request, at reasonable intervals and without excessive delay <u>or expense</u> confirmation of the processing of personal data relating to him/her, the communication in an intelligible form of the data processed, <b>all available information on their origin, on the preservation period as well as any other information that the controller is required to provide to ensure the transparency of processing in accordance with Article 7bis paragraph 1;</b>  d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;	<i>Reservation– issue open pending EU internal negotiations</i>

c to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;	e to obtain, <b>upon request</b> , as the case may be, rectification or erasure of such data if these have been processed contrary to the law giving effect to the <b>provisions</b> of this Convention;	<i>Initial support</i>
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d to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.	See f below	
	f to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;	<i>Initial support</i>
	g to benefit, whatever their residence, from the assistance of a supervisory authority within the meaning of Article 12 bis, in exercising the rights provided by this Convention.	<i>Initial support</i>

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	Article 8bis – Additional obligations	
	<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law .</p> <p>2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.</p> <p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- Each Party can take the measures needed to adapt the application of the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p><i>Initial support</i></p> <p><i>Initial support</i></p>

Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	
1 No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this article.	1 No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by law and constitutes a necessary measure in a democratic society for:	<i>Initial support</i>
2 Derogation from the provisions of Articles 5, 6 and 8 of this Convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:	delete	
a protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;	<i>Initial support</i>
b protecting the data subject or the rights and freedoms of others.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.	<i>Initial support</i>
	2 Restrictions on the exercise of the provisions specified in Article 12 may also admitted where they are provided by law and constitute a necessary measure in a democratic society for the freedom of expression.	<i>Initial support</i>

3 Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.	3 Restrictions on the exercise of the provisions specified in Articles <b>7bis and 8</b> may be provided by law with respect to data <b>processing for statistical purposes or for the purposes</b> of scientific research, when there is obviously no risk of infringement <b>of the rights and fundamental freedoms</b> of data subjects.	<i>Initial support</i>
<b>Article 10 – Sanctions and remedies</b>	<b>Article 10 – Sanctions and remedies</b>	
Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.	Each Party undertakes to establish appropriate <b>judicial and non-judicial</b> sanctions and remedies for violations of domestic law giving effect to the <b>provisions of this Convention.</b>	<i>Initial support</i>
<b>Article 11 – Extended protection</b>	<b>Article 11 Extended protection</b>	
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.	unchanged	
<b>Chapter III – Transborder data flows</b>	<b>Chapter III – Transborder flows of personal data</b>	
<b>Article 12 – Transborder flows of personal data and domestic law</b>	<b>Article 12 - Transborder flows of personal data</b>	
1 The following provisions shall apply to the transfer across national borders, by whatever medium, of personal data undergoing automatic processing or collected with a view to their being automatically processed.	Delete	

<p>2 A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.</p>	<p>1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph is regulated by binding harmonised rules of protection shared by States belonging to a regional international organisation and the transfer of data is not governed by measures provided for in paragraph 3.b.</p>	<p><i>Initial support – a reformulation, as discussed during the 1<sup>st</sup> CAHDATA meeting, can only be accepted to the extent that it does not change the underlying principle (MS may further restrict data flows to other Parties of Convention 108 in accordance with the rules of the EU acquis)</i></p>
<p>3 Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:</p>	<p>2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the transfer of data can only occur where an appropriate level of personal data protection based on the principles of the Convention is guaranteed.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>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</p>	<p><i>Initial support</i></p>

<p>a insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided by law and constitute a necessary measure in a democratic society.</p>	<p><i>Initial support</i></p>
	<p>5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be informed of the modalities regulating the transfers of data provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrate the quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers of data.] .</p>	<p><i>Initial support</i></p>
<p>b when the transfer is made from its territory to the territory of a non Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.</p>	<p>Delete</p>	

<i>Article 2 – Transborder flows of personal data to a recipient which is not subject to the jurisdiction of a Party to the Convention (Additional Protocol)</i>	<i>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</i>	
1 Each Party shall provide for the transfer of personal data to a recipient that is subject to the jurisdiction of a State or organisation that is not Party to the Convention only if that State or organisation ensures an adequate level of protection for the intended data transfer	Delete	
2 By way of derogation from paragraph 1 of Article 2 of this Protocol, each Party may allow for the transfer of personal data:	Delete	
a if domestic law provides for it because of:	Delete	
– specific interests of the data subject, or	Delete	
– legitimate prevailing interests, especially important public interests, or	Delete	
b if safeguards, which can in particular result from contractual clauses, are provided by the controller responsible for the transfer and are found adequate by the competent authorities according to domestic law.	Delete	
<b>Additional Protocol</b>	<b>Chapter III bis Supervisory authorities</b>	
<b>Article 1</b>	<b>Article 12bis Supervisory authorities</b>	
1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles stated in Chapters II and III of the Convention and in this Protocol.	1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles <b>of this Convention</b> .	<i>Initial support</i>

<p>2 a To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;</p> <p><b>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</b></p> <p><b>c. shall have the power to issue decisions with respect to domestic law giving effect to the provisions of this Convention and may in particular sanction administrative offences;</b></p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;</p> <p><b>e. shall be responsible for raising awareness of and providing information on data protection;</b></p>	<p><i>Initial support</i></p>
<p>b. Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.</p>	<p>3 Each supervisory authority <b>can be requested</b> by any person to investigate a claim concerning the protection of his/her rights and fundamental freedoms with regard to the data processing within its competence <b>and shall inform the data subject of the follow-up given to such a claim.</b></p>	<p><i>Initial support</i></p>

3 The supervisory authorities shall exercise their functions in complete independence.	4 The supervisory authorities shall <b>perform their duties and exercise their powers</b> in complete independence. <b>They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.</b>	<i>Initial support</i>
	<p>5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p><b>5bis The supervisory authorities shall draw up a public report of their activities and shall see to it that transparency on their activities be ensured.</b></p> <p><b>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.</b></p>	<i>Initial support</i>
4 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.	6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.	<i>Initial support</i>

5 In accordance with the provisions of Chapter IV, and without prejudice to the provisions of Article 13 of the Convention, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information.	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, in particular by:	<i>Initial support</i>
	a exchanging all useful information, in particular by taking, under their domestic law and solely for the protection of personal data, all appropriate measures to provide factual information relating to specific processing carried out on its territory, with the exception of personal data undergoing this processing, unless such data is essential for co-operation or that the data subject has previously agreed to in an unambiguous, specific, free and informed manner;	<i>Initial support</i>
	b coordinating their investigations or interventions or conducting joint actions;	<i>Initial support</i>
	c providing information on their law and administrative practice relating to data protection.	<i>Initial support</i>
	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 conference/network.	<i>Initial support</i>
	9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.	<i>Initial support</i>

<b>Chapter IV – Mutual assistance</b>	<b>Chapter IV – Mutual assistance</b>	
<b>Article 13 – Co-operation between Parties</b>	<b>Article 13 – Co-operation between Parties</b>	
1 The Parties agree to render each other mutual assistance in order to implement this Convention.	unchanged	
2 For that purpose:	unchanged	
a each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;	a each Party shall designate one or more <b>supervisory</b> 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;	<i>Initial support</i>
b each Party which has designated more than one authority shall specify in its communication referred to in the previous sub-paragraph the competence of each authority.	b each Party which has designated more than one <b>supervisory</b> authority shall specify in its communication referred to in the previous sub-paragraph the competence of each.	<i>Initial support</i>
3 An authority designated by a Party shall at the request of an authority designated by another Party:	Incorporated into Article 12bis	
3 An authority designated by a Party shall at the request of an authority designated by another Party:	Delete	
b take, in conformity with its domestic law and for the sole purpose of protection of privacy, all appropriate measures for furnishing factual information relating to specific automatic processing carried out in its territory, with the exception however of the personal data being processed.	Delete	

<b>Article 14 – Assistance to data subjects resident abroad</b>	<b>Article 14 – Assistance to data subjects resident abroad</b>	
1 Each Party shall assist any person resident abroad to exercise the rights conferred by its domestic law giving effect to the principles set out in Article 8 of this Convention.	delete	
2 When such a person resides in the territory of another Party he shall be given the option of submitting his request through the intermediary of the authority designated by that Party.	delete	
3 The request for assistance shall contain all the necessary particulars, relating inter alia to:	delete	
a the name, address and any other relevant particulars identifying the person making the request;	delete	
b the automated personal data file to which the request pertains, or its controller;	delete	
c the purpose of the request.	delete	
<b>Article 15 – Safeguards concerning assistance rendered by designated authorities.</b>	<b>Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities</b>	
1 An authority designated by a Party which has received information from an 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.	1 A <b>supervisory</b> authority designated by a Party which has received information from an 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.	<i>Initial support</i>

2 Each Party shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.	Delete	
3 In no case may a designated authority be allowed to make under Article 14, paragraph 2, a request for assistance on behalf of a data subject resident abroad, of its own accord and without the express consent of the person concerned.	2 In no case may a designated <b>supervisory</b> authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the express consent of the person concerned.	<i>Initial support</i>
<b>Article 16 – Refusal of requests for assistance</b>	<b>Article 16 – Refusal of requests for assistance</b>	
A designated authority to which a request for assistance is addressed under Articles 13 or 14 of this Convention may not refuse to comply with it unless:	A designated <b>supervisory</b> authority to which a request for assistance is addressed under Article 13 of this Convention may not refuse to comply with it unless:	<i>Initial support</i>
a the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;	unchanged	
b the request does not comply with the provisions of this Convention;	unchanged	
c compliance with the request would be incompatible with the sovereignty, security or public policy (ordre public) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.	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 persons under the jurisdiction of that Party.	<i>Initial support</i>

<b>Article 17 – Costs and procedures of assistance</b>	<b>Article 17 – Costs and procedures of assistance</b>	
1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects abroad under Article 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 authority making the request for assistance.	1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects under Article 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 <b>supervisory</b> authority making the request for assistance.	<i>Initial support</i>
2 The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.	unchanged	
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.	unchanged	
<b>Chapter V – Consultative Committee</b>	<b>Chapter V – Convention Committee</b>	
<b>Article 18 – Composition of the committee</b>	<b>Article 18 – Composition of the committee</b>	
1 A Consultative Committee shall be set up after the entry into force of this Convention.	1 A <b>Convention</b> Committee shall be set up after the entry into force of this Convention.	<i>Initial support</i>
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.	unchanged	

3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the Convention to be represented by an observer at a given meeting.	3 The <b>Convention</b> Committee may, by a decision taken by a <b>majority of two-thirds of the representatives of the Parties entitled to vote</b> , invite an <b>observer to be represented at its meetings</b> .	<i>Initial support</i>
	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.	<i>Initial support</i>
<b>Article 19 – Functions of the committee</b>	<b>Article 19 – Functions of the committee</b>	
The Consultative Committee:	The <b>Convention</b> Committee:	
a may make proposals with a view to facilitating or improving the application of the Convention;	a may make <b>recommendations</b> with a view to facilitating or improving the application of the Convention;	<i>Initial support</i>
b may make proposals for amendment of this Convention in accordance with Article 21;	unchanged	
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;	unchanged	
d may, at the request of a Party, express an opinion on any question concerning the application of this Convention.	d may express an opinion on any question concerning the <b>interpretation or</b> application of this Convention;	<i>Reservation – articulation with the EU acquis to be examined</i>
	e shall prepare, before any new accession to the Convention, an opinion for the Committee of Ministers relating to the level of data protection of the candidate for accession;	<i>Initial support</i>

	f may, at the request of a State or an international organisation or on its own initiative, evaluate whether the level of data protection the former provides is in compliance with the provisions of this Convention;	<i>Doubt – if no accession is requested, what would be the reason for such evaluation?</i>
	g may develop or approve models of standardised safeguards referred to in Article 12;	<i>Reservation – articulation with the EU acquis (including on BCRs and standard contractual clauses) to be examined</i>
	h shall periodically review the implementation of this Convention by the Parties in accordance with the provisions of Article 4.3 and decide upon measures to take where a Party is not in compliance with the Convention;	<i>Initial support</i>
	i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.	<i>Initial support</i>
<b>Article 20 – Procedure</b>	<b>Article 20 – Procedure</b>	
1 The Consultative 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 every two years and in any case when one-third of the representatives of the Parties request its convocation.	1 The <b>Convention</b> 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.	<i>Initial support</i>

2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the <b>Convention</b> Committee.	<i>Initial support</i>
	3 Each Party has a right to vote and shall have one vote. On questions related to 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 vote.	<i>Initial support</i>
3 After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.	4 After each of its meetings, the <b>Convention</b> Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.	<i>Initial support</i>
4 Subject to the provisions of this Convention, the Consultative Committee shall draw up its own Rules of Procedure.	5. Subject to the provisions of this Convention, the <b>Convention</b> Committee shall draw up its own Rules of Procedure and establish in particular the procedures of evaluation set out in Article 4.3 and of examination of the level of protection provided for in Article 19, on the basis of objective criteria.	<i>Reservation – articulation with the EU acquis to be examined</i>
<b>Chapter VI – Amendments</b>	<b>Chapter VI – Amendments</b>	
<b>Article 21 – Amendments</b>	<b>Article 21 – Amendments</b>	
1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Consultative Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the <b>Convention</b> Committee.	<i>Initial support</i>

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

	<p>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 the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>	<i>Initial support</i>
	<p>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 the Convention without at the same time accepting the amendment.</p>	<i>Initial support</i>

Chapter VII – Final clauses	Chapter VII – Final clauses	
Article 22 – Entry into force	Article 22 – Entry into force	
1 This Convention shall be open for signature by the member States of the Council of Europe. 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.	1 This Convention shall be open for signature by the member States of the Council of Europe, <b>the European Union and States not members of the Council of Europe which have been invited to accede to the Convention opened for signature on 28 January 1981.</b> 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.	<i>Initial support</i>
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.	unchanged	
3 In respect of any member State 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.	unchanged	

Article 23 – Accession by non member States	Article 23 – Accession by non-member States and international organisations	Article 23 – Accession by non-member States and international organisations
<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe 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.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, <b>after consulting the Parties to the Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e</b>, 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.</p>	<p><i>Initial support<sup>1</sup></i></p>
<p>2 In respect of any acceding State, 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.</p>	<p>2 In respect of any State or international organisation acceding to the present 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.</p>	<p><i>Initial support</i></p>

<sup>1</sup> During the T-PD Plenary, it was clarified that the term “international organization” means an intergovernmental organization, in accordance with Article 2 (1) (i) of the Vienna Convention on the Law of Treaties (1969).

Article 24 – Territorial clause	Article 24 – Territorial clause	Article 24 – Territorial clause
1 Any State 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.	1 Any State, <b>the European Union</b> 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.	<i>Initial support</i>
2 Any State 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.	2 Any State , <b>the European Union</b> 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.	<i>Initial support</i>
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.	unchanged	
Article 25 – Reservations	Article 25 – Reservations	
No reservation may be made in respect of the provisions of this Convention.	Unchanged	

<b>Article 26 – Denunciation</b>	<b>Article 26 – Denunciation</b>	
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.	Unchanged	
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.	Unchanged	
<b>Article 27 – Notifications</b>	<b>Article 27 – Notifications</b>	
The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:	The Secretary General of the Council of Europe shall notify the member States of the Council and <b>any Party</b> to this Convention of:	<i>Initial support</i>
a any signature;	Unchanged	
b the deposit of any instrument of ratification, acceptance, approval or accession;	Unchanged	
c any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;	Unchanged	
d any other act, notification or communication relating to this Convention.	Unchanged	

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.

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