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DATAPROTECT 25
JAI 80
MI 145
FREMP 24
RELEX 114

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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) - Preparation of the 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, 3 April 2014

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NOTE

from: Commission Services
to: Delegations

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)
- Preparation of the CAHDATA meeting on 28-30 April 2014

The delegations will find in the Annex proposals for the second CAHDATA meeting, text suggestions and comments by the Commission in view of the CAHDATA meeting on 28-30 April 2014.

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)	DAPIX meeting 11.04.2013 Information by the Commission with a view to the CAHDATA meeting on 28-30 April 2014 (Strasbourg)
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Working Document
Convention 108 with Additional Protocol and Modernisation proposals

Note: the present document aims at making visible the modernisation proposals adopted by the Consultative Committee at its 29th Plenary meeting (27-30 November 2013), as well as proposals developed further to the 1st meeting of the CAHDATA and aimed at facilitating discussions during the 2nd meeting of the CAHDATA of 28-30 April 2014 and the preliminary comments thereto.

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2 nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data Preamble	Title : 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,	unchanged	The member States of the Council of Europe and other signatories 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;	unchanged	Considering that the aim of the Council of Europe is to achieve greater unity between countries, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;		
Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;	Considering that it is necessary, given the diversification, intensification and globalisation of data processing exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person,	Considering that it is necessary, given the diversification, intensification and globalisation of data processing exchanges of personal data flows, to secure human dignity and the protection of human rights and fundamental freedoms of every person,		

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	in particular through the right to control one's personal data and the processing of such data.	in particular the right to personal autonomy, exercised through the fight to control of one's personal data and of the processing of such data.		
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;	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 public access to official documents ;	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 ;		
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 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	Recognising that it is necessary to promote at the global level the fundamental values of respect for privacy and protection of personal data at the global level, thereby contributing to the free flow of information		

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	between peoples; Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	between peoples; Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.		
Have agreed as follows:	unchanged	unchanged		
Chapter I – General provisions	Chapter I – General provisions	Chapter I – General provisions		
Article 1 – Object and purpose 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").	Article 1 – Object and purpose The purpose of this Convention is to secure for every individual subject to the jurisdiction of the Parties , whatever their nationality or residence, the protection of their personal data when undergoing processing, thus contributing to respect for their rights and fundamental freedoms, and in particular their right to privacy.	Article 1 – Object and purpose The purpose of this Convention is to secure for every individual subject to the jurisdiction of the Parties , whatever their nationality or residence, the protection of their personal data when undergoing processing, thus contributing to respect for their 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	Article 2 – Definitions unchanged unchanged	Article 2 – Definitions unchanged unchanged		

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identifiable individual ("data subject");				
b "automated data file" means any set of data undergoing automatic processing;	Deleted – see 3.1 below	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, making disclosure, available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on data; 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 ;	c "data processing" means any operation or set of operations which is performed upon personal data, and in particular such as 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 such data;	c "data processing" means any operation or set of operations which is performed upon personal data, and in particular such as 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 such data;	Both authorised or unauthorised destruction of data should be covered as a data processing operation (cf. definition of processing contained at EU level in Article 2 (b) of Directive 95/46/EC; or at national level, e.g. in Section 1(1) of the Irish Data Protection Act 1988(revised).

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		criteria established according to any criteria which allow to search for personal data ;		
d "controller of the file" 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.	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.	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;	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;	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	Article 3 – Scope	Article 3 – Scope		

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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.	1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction, thereby protecting the right to protection of personal data of any person subject to its jurisdiction. 1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.	1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby protecting the right to protection of personal data of any person subject to its jurisdiction. 1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.	1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby protecting the right to protection of personal data of any person subject to its jurisdiction. 1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.	<i>It is important to provide the data protections to any person and not only citizens –this could be lost without the currently deleted text.</i>
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: a that it will not apply this Convention to certain categories of	delete	delete		
a that it will not apply this Convention to certain categories of	delete	delete		

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2 nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
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;				
bthat 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	delete		
cthat it will also apply this Convention to personal data files which are not processed automatically.	delete	delete		
3Any State which has extended the scope of this Convention by any of the declarations provided for in	delete	delete		

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sub-paragraph 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.				
4Any Party which has excluded certain categories of automated personal data files by a declaration provided for in sub-paragraph 2.a above may not claim the application of this Convention to such categories by a Party which has not excluded them.	delete	delete		
5Likewise, a Party which has not made one or other of the extensions provided for in sub-paragraphs 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	delete		
6The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the Convention with regard to	delete	delete		

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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.				
Chapter II – Basic principles for data protection	Chapter II – Basic principles for the protection of personal data	Chapter II – Basic principles for the protection of personal data		
Article 4 – Duties of the Parties	Article 4 – Duties of the Parties	Article 4 – Duties of the Parties		
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 this Convention and ensure their	1 Each Party shall take the necessary measures in its domestic law to give effect to the provisions set out in this Convention and secure their	1 Each Party shall take the necessary measures in its domestic law to give effect to the provisions set out in this Convention and ensure –secure their	To ensure is to make something happen, which is stronger than 'secure' (which only requires best efforts).

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2 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.	effective application. 2 These measures shall be taken by each Party prior to ratification or accession to this Convention. 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.	effective application. 2 These measures shall be taken by each Party prior to ratification or accession to this Convention. 3 Each Party undertakes to allow the Convention Committee provided for in Chapter V to evaluate the measures it has taken in its law to give effect to the provisions of this Convention 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.	effective application.	
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	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		

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	concerned, be they public or private interests, and the rights and freedoms at stake.	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 [explicit, unambiguous] consent of the data subject or of some legitimate basis laid down by law.	2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [explicit, unambiguous] consent of the data subject or of some legitimate basis laid down by law.		
Personal data undergoing automatic processing shall be:	3 Personal data undergoing automatic processing shall be : a. processed lawfully and fairly.	3 Personal data undergoing automatic processing shall be : a. processed lawfully, and fairly and in a transparent manner.		
obtained and processed fairly and lawfully;	b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;	b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;		
stored for specified and legitimate purposes and not used in a way incompatible with those purposes;	c. adequate, relevant,	c. adequate, relevant	adequate, relevant, and	COM prefers to maintain

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excessive in relation to the purposes for which they are stored;	not excessive and limited to the minimum necessary in relation to the purposes for which they are processed ;	and [not excessive] and [limited to the minimum necessary] in relation to the purposes for which they are processed ;	<u>not excessive and limited to the minimum necessary</u> in relation to the purposes for which they are processed ;	both "not excessive" and "limited to the minimum necessary" to underline expressly both dimensions of the principle of minimisation.
daccurate and, where necessary, kept up to date; 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.	unchanged e which preserved in a form permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed .	unchanged 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	Article 6 – Processing of sensitive data	Article 6 – Processing of sensitive data		
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.	1 The processing of genetic data, of personal data concerning offences, criminal convictions and related security measures, the processing of biometric data uniquely identifying a person, as well as the processing of personal data for the information they reveal relating to racial origin, political opinions, trade-union membership,	1 The processing of: - genetic data, - personal data concerning suspected offences , criminal offences, proceedings and related 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-	1 The processing of: - genetic data, - personal data concerning suspected offences , criminal offences, proceedings and related 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-	

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	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. 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.	union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides specific and appropriate safeguards are enshrined in law, complementing those of the present Convention. 2. Specific and 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.	union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides specific and appropriate safeguards are enshrined in law complementing those of the present Convention.	<i>It is preferable to keep the end of the sentence, which clarifies that the safeguards are not the ones generally foreseen by the Convention but additional ones.</i>
Article 7 – Data security 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.	Article 7 – Data security 1 Every Party shall provide that the controller, and, where applicable the processor, takes the appropriate security measures against accidental or unauthorised access, destruction, loss	Article 7 – Data security 1 Every Party shall provide that the controller, and, where applicable the processor, takes the appropriate security measures against risks such as accidental or unauthorised access to,		

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	modification or dissemination of personal data . 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.	destruction, loss, use, modification or disclosure of personal data. 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.		
	Article 7bis - Transparency of processing 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	Article 7bis - Transparency of processing 1 Each Party shall provide personal data where collected from data subjects or indirectly from another source, unless they have already been informed, the controller shall be responsible for informing the data subjects of at least the identity and habitual residence or establishment of the controller and the		
			1 Each Party shall provide that the controller ensures the transparency of data processing by informing the data subjects, where personal data are collected from data subjects or indirectly from another source unless they have already been informed, of at least the identity and habitual residence or establishment of the	The new proposed formulation with the subordinate clauses is less straight-forward. The suggested reformulation places the controller's transparency requirement at the beginning of the sentence and resembles the text as agreed at technical level. It also includes important elements of transparency, such as information to

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	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.	purposes of the processing for which the data are intended carried out, the data processed, the recipients of the categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as providing them with any additional information necessary to ensure fair and transparent lawful data processing of the personal data.	controller, and the purposes of the processing for which the data are intended, 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 providing them with any additional information necessary to ensure fair, and transparent <u>and lawful</u> data processing of the personal data.	data subjects relating to the exercise of their rights. The addition of 'transparent' after 'fair' is to be welcomed, but lawfulness should also be maintained.
	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.	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 – Additional safeguards for the data subject	Article 8 – Rights of the data subject	Article 8 – Rights of the data subject		

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Any person shall be enabled:	Any person shall be entitled:	Every person shall be entitled:	Every person shall be entitled <u>have the right</u> :	"Shall have the right" is simpler and more straightforward than "be entitled to", the latter might also risk to be understood as weakening the data subject's rights.
ato 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;	a not to be subject to a decision significantly affecting him/her, based solely on an automated automatic processing of data without having their views taken into consideration;		
	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 ;	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 ; (moved to new d.)		
bto obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him	c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of	b be entitled to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of	b <u>be-entitled</u> to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of	

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are stored in the automated data file as well as communication to him of such data in an intelligible form;	the processing of personal data relating to him/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 to ensure the transparency of processing in accordance with Article 7bis paragraph 1; d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;	the processing of personal data relating to him/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 to ensure the transparency of processing in accordance with Article 7bis paragraph 1; c be entitled to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ; d be entitled 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	the processing of personal data relating to him/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 to ensure the transparency of processing in accordance with Article 7bis paragraph 1; c be-entitled to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ; d be-entitled 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	'Compelling' is the reason why the legitimate grounds in the case at hand override the data subject's rights; this wording derives from Article 14(a) of Directive 95/46/EC.

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		their interests or rights and fundamental freedoms ;	their interests or rights and fundamental freedoms ;	
cto 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, upon request, as the case may be, rectification or erasure of such data if these have been processed contrary to the law giving effect to the provisions of this Convention;	e be entitled to obtain, upon request, as the case may be, rectification or erasure of such data if these have been processed contrary to the law giving effect to the provisions of this Convention;	e be entitled to obtain, upon request, as the case may be, rectification or erasure of such data if these have been processed contrary to the law giving effect to the provisions of this Convention;	
dto 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	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, erasure or to an objection, as referred to in this Article;	f be entitled to have a remedy if a decision significantly affecting them, based solely on an automated processing, has been taken without having taken his/her views taking into consideration their views or no response is given to a request under this Article has been received from the controller for confirmation;	f be entitled to have a remedy if a decision significantly affecting them, based on an automated processing, has been taken without having taken his/her views taking into consideration their views or no response is given to a request under this Article has been received from the controller for confirmation, communication;	

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		communication; rectification, erasure or to an objection, as referred to in this Article;	rectification, erasure or to an objection, as referred to in this Article;	
	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.	g be entitled 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.	g <u>be entitled</u> 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.	
	Article 8bis – Additional obligations	Article 8bis – Additional obligations		
	1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing 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	1- Each Party shall provide that the controllers and, or where applicable, processors, 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 that the data	1 Each Party shall provide that controllers and, or where applicable, processors, shall take at all stages of the processing all appropriate measures <u>to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and</u> and be able to demonstrate <u>at least</u> to the supervisory authorities provided for in Article 12	By maintaining this part of the text, each Party will be able to verify the respect of such measures. "At least" should be maintained because others, such as the Courts

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	Convention with the applicable law. 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.	processing under their control is in compliance with the measures taken to give effect to this Convention of this Convention with the compliance with the applicable law. 2- Each Party shall provide that the controllers and, or where applicable, processors, shall undertake a risk assessment of the likely carry out a risk analysis of the potential impact of the intended data processing on the data protection rights and fundamental freedoms of the data subjects prior to the commencement of such processing, and shall design data processing operations in a manner which such a way as to prevent or at least minimises the risk of interference with those rights and fundamental freedoms.	bis that the data processing under their control is in compliance with the measures taken to give effect to this Convention of this Convention with the compliance with the applicable law. 2- Each Party shall provide that the controllers and, or where applicable, processors, shall undertake an assessment of the likely carry out a risk analysis of the potential impact of the intended data processing on the data protection rights and fundamental freedoms of the data subjects prior to the commencement of such processing, and shall design data processing operations in a manner which such a way as to prevent or at least minimises the risk of interference with those rights and fundamental freedoms.	or, if appropriate, data subjects, would also benefit from this.

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	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. 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.	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. 4- 3- Each Party may, having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, can take the measures needed to adapt the application of the provisions of the previous paragraphs 1 and 2 in the measures giving effect to the provisions of this Convention, according to the nature of the data, the nature, scope and purpose of the processing and the size of the controller, or	<u>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.</u> 4- 3- Each Party may, having regard to the risks arising for interests, rights and fundamental freedoms of the data subjects, can take the measures needed to adapt the application of the provisions of the previous paragraphs 1 and 2 in the measures giving effect to this Convention, according to the nature of the data, the nature, scope and purpose of the processing and the size of	COM preference for maintaining current text as data protection by design / data protection by default should be standard and part of the obligation (see also Article 23 of COM proposal for General Data Protection Regulation). The formulation should be simpler.

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		where applicable the processor, the volume of nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.	the controller, or where applicable the processor, the volume of nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.	
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.	Article 9 – Exceptions and restrictions 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:	Article 9 – Exceptions and restrictions 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:		
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	delete		

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aprotecting 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;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention, and investigation and prosecution of criminal offences;		
bprotecting 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.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.		
	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.	2 Restrictions on the exercise of the provisions specified in Article 12 may also be allowed admitted where they are provided by law and constitute a necessary measure in a democratic society for the freedom of expression.		
3Restrictions 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	3 Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for statistical purposes or for the	3 Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for statistical purposes or for the		

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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.	purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.	purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.		
Article 10 – Sanctions and remedies 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.	Article 10 – Sanctions and remedies Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of domestic law giving effect to the provisions of this Convention.	Article 10 – Sanctions and remedies Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of domestic law giving effect to 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.	Article 11 Extended protection unchanged	Article 11 Extended protection unchanged		
Chapter III – Transborder data flows	Chapter III – Transborder flows of personal data	Chapter III – Transborder flows of personal data		
Article 12 – Transborder	Article 12 - Transborder flows of personal data	Article 12 - Transborder flows of personal data		

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flows of personal data and domestic law				
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	Delete		
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.	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.	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. Such a Party may however do so if bound by binding harmonised rules of protection shared by States belonging to a regional international organisation and where the transfer of data is not governed by measures provided for in paragraph 3.b.	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. Such a Party may however do so if bound by binding harmonised rules of protection shared by States belonging to a regional international organisation and where the transfer of data is not governed by measures provided for in paragraph 3.b.	The last part of the last sentence should be deleted, since the EU framework already foresees BCRs, Standard contractual clauses etc.

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3 Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:	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. 3. An appropriate level of protection can be ensured 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	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 data can only occur where an appropriate level of personal data protection based on the principles of this Convention is ensured. 3. An appropriate level of protection can be ensured 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		(so it will be covered by the "harmonised rules of protection" referred to in the first part of the sentence).

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	implemented by the persons involved in the transfer and further processing.	implemented by the persons involved in the transfer and further processing.		
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;	4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if : 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 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 by law and constitute a necessary measure in a democratic	4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if : 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 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 constitute a necessary measure in a democratic		

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	society. 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.	society. 5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be provided with all relevant information in relation to 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 effectiveness of the safeguards quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers where the safeguards are deemed inadequate of data.	5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be provided with all relevant information in relation to <u>prior to</u> data transfers according to paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. <u>including on the ad-hoc transfers.</u> It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrates the effectiveness of the <u>safeguards - adopted measures -</u> quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers where the <u>measures and</u> safeguards are <u>not</u> deemed inadequate	The information on ad-hoc transfers should be given beforehand to the supervisory authority, otherwise the latter cannot intervene if needed. The "safeguards" are only with respect to para. 3.b (ad hoc safeguards provided by legally binding instruments), but not with respect to 4.b and 4.c, where a balance of interests takes place. Therefore, the term "measures" (referring to this balance) should also be used. The term "not [...]" should sufficient/effective" should be preferred over the term

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			<u>sufficient/effective</u> . of data.	"inadequate", which has a specific meaning with respect to the EU acquis.
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.	Delete	Delete		
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)	(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)	(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)		
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	Delete		
2 By way of derogation from paragraph 1 of Article 2 of this Protocol, each Party	Delete	Delete		

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may allow for the transfer of personal data:				
a if domestic law provides for it because of:	Delete	Delete		
– specific interests of the data subject, or	Delete	Delete		
– legitimate prevailing interests, especially important public interests, or	Delete	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	Delete		
Additional Protocol	Chapter III bis Supervisory authorities	Chapter III bis Supervisory authorities		
Article 1	Article 12bis Supervisory authorities	Article 12bis Supervisory authorities		
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 of this Convention.	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 of this Convention.		
2 a To this end, the said	2 To this end, such	2 To this end, such		

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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.	authorities: a. shall have powers of investigation and intervention; a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data; b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards; 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; d. shall have the power to engage in legal	authorities: a. shall have powers of investigation and intervention; a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data; (see new paragraph 2bis below) b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards; c. shall have the powers to take corrective action and, where appropriate, to impose administrative sanctions for violations of the law issue decisions with respect to domestic law giving effect to the provisions of this Convention and	c. shall have the powers to <u>issue decisions</u>, take corrective action and, where appropriate, to impose administrative sanctions for violations of the law issue <u>decisions and fines with respect to domestic law</u> giving effect to the	<i>Issuing (legally binding) decisions is one important feature of what independent supervisory authorities do.</i> <i>It is therefore suggested combining old and new text in order to have flexible wording and refer</i>

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	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; e. shall be responsible for raising awareness of and providing information on data protection;	may in particular sanction administrative offences; 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 the domestic law giving effect to the provisions of this Convention; e. shall promote public be responsible for raising awareness of the rights of data subjects and the exercise of such rights, and the awareness of controllers and processors of their responsibilities under this Convention; specific attention shall be given to the data protection rights of children providing information on data protection;	provisions of this Convention and may in particular sanction administrative offences;	to the domestic law giving effect to the provisions of this Convention.
		2bis. The competent supervisory authorities	2bis. The competent supervisory authorities	

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		shall be consulted on proposals for any or legislative administrative measures involving the processing of personal data which may severely affect data subjects by virtue of the nature, scope and purpose of such processing.	shall be consulted on proposals for any or legislative administrative measures involving the processing of personal data which may severely affect data subjects by virtue of the nature, scope and purpose of such processing <u>with respect to personal data processing and due account shall be taken of the supervisory authority's response.</u>	There is no reason to restrict the supervisory authorities' consultation to only some measures. Supervisory authorities' input is beneficial in all cases and their opinion is not binding.
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.	3 Each supervisory authority can be requested 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 and shall inform the data subject of the follow-up given to such a claim.	3 Each competent supervisory authority can be requested shall deal with requests and complaints lodged by data subjects any person to investigate a claim concerning their data protection rights the protection of his/her rights and fundamental freedoms with regard to the data processing within its competence and shall keep data subjects informed of progress of the follow-up given to		

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3 The supervisory authorities shall exercise their functions in complete independence.	4 The supervisory authorities shall perform their duties and exercise their powers in complete independence. They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.	such a claim. 4 The supervisory authorities shall act with independence and impartiality in performing their duties and exercising their powers perform their duties and exercise their powers in complete independence. They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.	4 The supervisory authorities shall exercise their functions in act with complete independence and act impartially in performing their duties and exercising their powers perform their duties and exercise their powers in complete independence. They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.	By omitting 'complete' from the requirement of independence, the modernised Convention would lower the level of protection with respect to the Convention 108 currently in force, and in Directive 95/46/EC. Impartiality is not a substitute for independence, so it should not be mistaken for a synonym. The last sentence is instructive, in particular in view of the global outreach of this instrument, and in view of those countries which are now at the process of establishing their data protection systems.
	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	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 have adequate human,		

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	independently and effectively. 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. 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.	technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively. 5bis Each supervisory authorities shall prepare and publish an annual draw up a public report outlining its activities and shall see to it that transparency on their activities be ensured. 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.		
4 Decisions of the supervisory authorities, which give rise to complaints, may be appealed	6 Decisions of the supervisory authorities, which give rise to complaints, may be	6 Decisions of the supervisory authorities, which give rise to complaints, may be		

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against through the courts.	appealed against through the courts.	appealed against through the courts.		
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:	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:		
	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;	a providing mutual assistance by exchanging relevant information and cooperating with each other; useful 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-	a providing mutual assistance to the supervisory authority of the other Party by exchanging relevant and <u>necessary</u> information cooperating with each other;	Information to be exchanged should be limited to what is necessary in a given case.

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		operation or that the data subject has previously agreed to in an unambiguous, specific, free and informed manner;		
	b coordinating their investigations or interventions conducting joint actions; c providing information on their law and administrative practice relating to data protection.	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.		
	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.	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.	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 <u>may, in the framework of existing form</u> a conference/network	<i>In times of budgetary constraints and given the multitude of existing fora of data protection supervisory authorities, it is preferable not to undertake an obligation to create a new conference/network but to accommodate the foreseen activities in the framework of existing conferences/networks.</i>
	9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.	9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.		

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Chapter IV – Mutual assistance	Chapter IV – Mutual assistance	Chapter IV – Mutual assistance		
Article 13 – Co-operation between Parties	Article 13 – Co-operation between Parties	Article 13 – Co-operation between Parties		
1 The Parties agree to render each other mutual assistance in order to implement this Convention.	unchanged	unchanged		
2 For that purpose:	unchanged	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 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;	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 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 supervisory authority shall specify in its communication referred to in the previous sub-paragraph the competence of each.	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.		
3 An authority designated by a Party shall at the request of an authority designated by another Party:	Incorporated into Article 12bis	Incorporated into Article 12bis		

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a furnish information on its law and administrative practice in the field of data protection;	Delete	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	Delete		
Article 14 – Assistance to data subjects resident abroad	Article 14 – Assistance to data subjects resident abroad	Article 14 – Assistance to data subjects resident abroad		
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.	Incorporated into Article 12bis	Incorporated into Article 12bis		
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.	Incorporated into Article 12bis	Incorporated into Article 12bis		
3 The request for	Incorporated into Article	Incorporated into Article		

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assistance shall contain all the necessary particulars, relating inter alia to:	12bis	12bis		
a the name, address and any other relevant particulars identifying the person making the request;	Incorporated into Article 12bis	Incorporated into Article 12bis		
b the automated personal data file to which the request pertains, or its controller;	Incorporated into Article 12bis	Incorporated into Article 12bis		
c the purpose of the request.	Incorporated into Article 12bis	Incorporated into Article 12bis		
Article 15 – Safeguards concerning assistance rendered by designated authorities.	Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities	Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities		
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	1 A supervisory 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	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.		

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for assistance.				
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	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 supervisory 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.	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 express consent of the person concerned.		
Article 16 – Refusal of requests for assistance	Article 16 – Refusal of requests for assistance	Article 16 – Refusal of requests for assistance		
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 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 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	unchanged	unchanged		

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the authorities responsible for replying;				
b the request does not comply with the provisions of this Convention;	unchanged	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.	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.		
Article 17 – Costs and procedures of assistance	Article 17 – Costs and procedures of assistance	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 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	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	1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [abroad] under Article 12bis 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		

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assistance.	supervisory authority making the request for assistance. unchanged	supervisory authority making the request for assistance. unchanged		
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	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	unchanged		
Chapter V – Consultative Committee	Chapter V – Convention Committee	Chapter V – Convention Committee		
Article 18 – Composition of the committee	Article 18 – Composition of the committee	Article 18 – Composition of the committee		
1 A Consultative Committee shall be set up after the entry into force of this Convention.	1 A Convention Committee shall be set up after the entry into force of this Convention. unchanged	1 A Convention Committee shall be set up after the entry into force of this Convention. unchanged		
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	unchanged	unchanged		

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right to be represented on the committee by an observer.				
3. The Consultative Committee may, by a 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 Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties entitled to the Parties entitled to vote, 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.	3 The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties entitled to the Parties entitled to vote, invite an observer to be represented at its meetings.	3 The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties entitled to vote, invite an observer to be represented at its meetings.	It makes sense that the Parties entitled to vote would decide to invite an observer to the meetings.
Article 19 – Functions of the committee The Consultative Committee:	Article 19 – Functions of the committee The Convention Committee:	Article 19 – Functions of the committee The Convention Committee:		
a may make proposals with a view to facilitating or improving the application of the Convention;	a may make recommendations with a view to facilitating or improving the application of the Convention; unchanged	a may make recommendations with a view to facilitating or improving the application of the Convention; unchanged		
b may make proposals for amendment of this Convention				

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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;	unchanged	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 interpretation or application of this Convention;	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 data protection of the candidate for accession;	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 or on its own initiative, evaluate whether the level of data protection the former provides is in compliance with the	f may, at the request of a State or an international organisation or on its own initiative , evaluate whether the level of personal data protection the former provides is in compliance		

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	provisions of this Convention;	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;	g may develop or approve models of standardised safeguards referred to in Article 12;	g may develop or approve models of standardised safeguards referred to in Article 12; <u>such models shall be without prejudice to rules providing for appropriate safeguards approved by a regional international organisation or States belonging thereto.</u>	Clarification so as to avoid possible incompatibilities between measures adopted at C108 level and EU BCRs/standard contractual clauses etc.; see the link with Art. 12 para. 1
	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;	h shall periodically review the implementation of this Convention by the Parties in accordance with the provisions of Article 4.3 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.	i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.		
Article 20 – Procedure	Article 20 – Procedure	Article 20 – Procedure		
1 The Consultative	1 The Convention	1 The Convention		

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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.	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.	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 the representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.	2 A majority of the representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.	2 A majority of the 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 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	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		

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	States of the European Union do not vote.	States of the European Union do not vote.		
3 After each of its meetings, the Consultative Committee shall submit to the Council 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 Convention 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 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.		
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 Convention 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.	5. Subject to the provisions of this Convention, the Convention 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 personal data protection provided for in Article 19, on the basis of objective criteria.		
Chapter VI – Amendments	Chapter VI – Amendments	Chapter VI – Amendments		
Article 21 – Amendments	Article 21 – 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 Consultative	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or		

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2 nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
Committee.	the Committee.	the Convention	the Committee.	
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 Parties to the Convention, to the other 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.	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 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 Convention 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 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	4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted	4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted		

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
Consultative Committee and may approve the amendment.	by the Convention Committee and may approve the amendment.	by the Convention Committee and may approve the amendment.		
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	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	unchanged		
	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	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		

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	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.	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 the Convention without at the same time accepting the amendment.	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	Chapter VII – Final clauses	Chapter VII – Final clauses		
Article 22 – Entry into force	Article 22 – Entry into force	Article 22 – Entry into force		
1 This Convention shall	1 This Convention	1 This Convention	1 This Convention	

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2 nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
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.	shall be open for signature by the member States of the Council of Europe, 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. 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. unchanged	shall be open for signature by the member States of the Council of Europe, the European Union and States not members of the Council of Europe which have been invited to accede to this Convention opened for signature on 28 January 1981. 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. unchanged	shall be open for signature by the member States of the Council of Europe, the European Union and States not members of the Council of Europe which have been invited to accede to theis Convention <u>opened for signature on 28 January 1981</u>. 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.	This provision means to take into account the transition period between the old and the new C108. It can only be that a third State that has already been invited with the old C108 regime may accede. Otherwise, this provision would 'empty' the provision Art. 23 para. 1 and the evaluation of the third State's level of data protection as foreseen in Article 19 (e) and (f) and the evaluation mechanism.
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	unchanged		
3 In respect of any member State which subsequently expresses its consent to be bound by it, the	unchanged	unchanged	3 In respect of any <u>Party</u> member State which subsequently expresses its consent to be bound by	Clarification since now international organisations can also be Parties to

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
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.			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.	C108.
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		
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.	1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to the Convention obtaining 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	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 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		

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2 In respect of any 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.	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 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.	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	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, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession,	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,		

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION AT 2 nd CAHDATA MEETING	AMENDMENTS PROPOSED BY COM	COMMENTS
	specify the territory or territories to which this Convention shall apply.	specify the territory or territories to which this Convention shall apply.		
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 , 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. unchanged	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. unchanged		
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	unchanged			

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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 25 – Reservations unchanged	Article 25 – Reservations unchanged		
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 26 – Denunciation unchanged	Article 26 – Denunciation unchanged		
	unchanged			
Article 27 – Notifications 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: a any signature;	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: unchanged			

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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.

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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.