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**AD HOC COMMITTEE ON DATA PROTECTION
COMITE AD HOC SUR LA PROTECTION DES DONNEES
(CAHDATA)**

Working Document on Convention 108 – compilation of replies

Document de travail sur la Convention 108 – compilation des réponses

Directorate General / Direction Générale
Human Rights and Rule of Law / Droits de l'Homme et Etat de droit

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BELGIUM / BELGIQUE

Vous trouverez les commentaires/remarques de BE sur le texte de la convention 108 en vue de la réunion CAHDATA : dans le préambule, § 3 et à l'article 4§1 : utilisation du mot « secure » : est-ce un terme habituel provenant des traités ?

- Art. 5, §3, c) : nous souhaitons que les termes entre crochets « limited to the minimum necessary » soient mis dans l'explanatory memorandum. En effet, nous estimons que les termes « not excessive » couvrent la notion de minimisation des données.
- Art. 7bis §1 : Nous préférons l'ancienne formulation du T-PD avec l'ajout de « transparent » en fin de §.
- Art. 7bis §2 : Nous nous interrogeons : Est-ce que cela signifie que les exceptions à l'information de la personne ne peuvent être appliquées qu'en cas de collecte indirecte ?
- Art 8, d) : Nous nous interrogeons sur l'opportunité de viser le marketing direct et la possibilité d'avoir un droit d'opposition plus strict dans cette matière. La révision de la Convention 108 nous semble être le bon moment pour se poser la question.
- Art. 8, f) : l'utilisation du mot « them » pose question. Dans le préambule de l'article 8, les mots utilisés sont « every person ». Donc le « tem » devrait être changé en « him or her ». Par ailleurs, nous aimerions savoir si le f) de l'article 8 est à lier avec le a) du même article, dans la mesure où il s'agit dans les 2 cas de la prise de décision automatisée.
- Art. 8bis, §3 : Nous sommes en faveur de la conservation de ce §. Nous serions toutefois en faveur de reprendre la formulation du T-PD. Subsidièrement, nous proposons de remplacer le mot « provide » par « promote » ou « encourage ».
- Art. 9§1^{er} : nous ne voyons pas comment il est possible d'avoir des exceptions au §3 de l'article 5.
- Art. 12bis §2, c) : nous souhaitons une définition de « corrective action ».
- Art. 12bis §2, e) Nous sommes d'avis que ce libéra manque de clarté. Nous estimons que la formulation proposée par le T-PD était bien plus claire. En effet, dans la dernière formulation proposée, on ne vise que les « data subject » or nous pensons que cela doit viser également les « controllers, processors, products conceptors/designers ».
De plus, nous estimons que la référence aux « rights » n'est pas suffisante. Il faut également couvrir les obligations de chacun.
Finalement, nous ne soutenons pas une référence particulière aux enfants. Nous souhaiterions viser une catégorie plus large de « vulnerable persons ».
- Art. 12bis, §5bis : nous souhaitons changer « annual » en « periodical ».
- Art. 19, g) : ok pour le « may ». Néanmoins, ce libéra est un peu difficile à comprendre dans la mesure où nous ne voyons pas qui peut soumettre un projet de modèle pour approbation. Ne faudrait-il pas envisager d'introduire ici quelques règles de procédure ? Ou à tout le moins renvoyer à des règles de procédure existantes ? La démarche est positive mais elle doit être précisée pour sortir ses effets.
- Art. 20 §3 : l'ancienne version de ce § prévoyait que l'UE pouvait avoir le droit de vote après avoir adhéré à la Convention, ici cette condition a disparu. Nous aimerions quelques explications sur cette modification.

Joëlle Jouret, Attachée-Juriste, SPF Justice

GEORGIA / GÉORGIE

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 the 1st meeting of the CAHDATA and aimed at facilitating discussions during the 2nd meeting of the CAHDATA of 28-30 April 2014.

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION
	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data
Preamble	Preamble	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 on the rule of law, and fundamental freedoms <small>Comment [n1]: It is better to leave the current text of the paragraph taking into consideration that the emphasis is made on the general aim of the Council of Europe and not this particular convention</small>
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 and exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person, in particular through the right to control one's personal data and the processing of such data.	Considering that it is necessary, given the diversification, intensification and globalisation of data processing and exchanges of personal data flows, to secure human dignity and the protection of human rights and fundamental freedoms of every person, in particular the right to personal autonomy, exercised through the right to control of one's personal data and of the processing of such data. <small>Comment [n2]: T-PD Proposal provides for the better wording of this part</small>
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 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 at the global level, thereby contributing to the free flow of information between peoples;
	Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	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	Article 1 – Object and purpose	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”).	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.	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	Article 2 – Definitions	Article 2 – Definitions
For the purposes of this Convention:	unchanged	unchanged
a “personal data” means any information relating to an identified or identifiable individual (“data subject”);	unchanged	unchanged
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, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on 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;

	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 ;	where no automated processing is not used, data processing means an the operations-or set of operations performed upon personal data carried-out within a structured set of such data which are accessible and retrievable according to specific 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, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.	d “controller” means the natural or legal person, public authority, service, agency or any other body which alone or jointly with others has the decision-making power with respect to data processing.	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
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.
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:	delete	delete

<p>a that it will not apply this Convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;</p>	delete	delete
<p>b that it will also apply this Convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;</p>	delete	delete
<p>c that it will also apply this Convention to personal data files which are not processed automatically.</p>	delete	delete
<p>3 Any State which has extended the scope of this Convention by any of the declarations provided for in 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.</p>	delete	delete
<p>4 Any 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.</p>	delete	delete
<p>5 Likewise, 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.</p>	delete	delete

<p>6 The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the Convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.</p>	<p>delete</p>	<p>delete</p>
<p>Chapter II – Basic principles for data protection</p>	<p>Chapter II – Basic principles for the protection of personal data</p>	<p>Chapter II – Basic principles for the protection of personal data</p>
<p>Article 4 – Duties of the Parties</p>	<p>Article 4 – Duties of the Parties</p>	<p>Article 4 – Duties of the Parties</p>
<p>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.</p>	<p>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 effective application.</p>	<p>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 <small>Comment [n3]: Usage of term “ensure” provides for the better wording</small></p>
<p>2 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.</p>	<p>2 These measures shall be taken by each Party prior to ratification or accession to this Convention.</p>	<p>2 These measures shall be taken by each Party prior to ratification or accession to this Convention.</p>
	<p>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.</p>	<p>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 process, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.</p>
<p>Article 5 – Quality of data</p>	<p>Article 5 – Legitimacy of data processing and quality of data</p>	<p>Article 5 – Legitimacy of data processing and quality of data</p>
	<p>1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.</p>	<p>1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.</p>

	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 :	3 Personal data undergoing automatic processing shall be :
a obtained and processed fairly and lawfully;	a. processed lawfully and fairly.	a. processed lawfully, and fairly and in a transparent manner.
b stored for specified and legitimate purposes and not used 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;	b. collected for explicit , specified and legitimate purposes and not processed in a way incompatible with those purposes;
c adequate, relevant and not excessive in relation to the purposes for which they are stored;	c. adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are processed ;	c. adequate, relevant and [not excessive] and [limited to the minimum necessary] in relation to the purposes for which they are processed ;
d accurate and, where necessary, kept up to date;	unchanged	unchanged
e preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.	e preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed .	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

Comment [k4]: Taking into account that these are the principles of data processing, T-PD proposal provides for the better wording of the paragraph notwithstanding the fact that in certain circumstances “not excessive” and “limited to the minimum necessary” might be overlapping

<p>Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.</p>	<p>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, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides appropriate safeguards, complementing those of the present Convention.</p> <p>2. Appropriate safeguards shall prevent the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.</p>	<p>1 The processing of:</p> <ul style="list-style-type: none"> - genetic data, - personal data concerning suspected offences, offences, criminal proceedings and convictions, and related security measures, - biometric data uniquely identifying a person, - personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides specific and appropriate safeguards are complementing the Convention. <p>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.</p>
<p>Article 7 – Data security</p>	<p>Article 7 – Data security</p>	<p>Article 7 – Data security</p>
<p>Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.</p>	<p>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, modification or dissemination of personal data.</p>	<p>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, destruction, loss, use, modification or disclosure of personal data.</p>
	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>
	<p>Article 7bis – Transparency of processing</p>	<p>Article 7bis – Transparency of processing</p>

Comment [n5]: Term “provided” will be better wording than the term “enshrined”

	<p>1 Each Party shall see to it that the controller ensures the transparency of data processing by informing the data subjects, unless they have already been informed, of at least the identity and habitual residence or establishment of the controller, the purposes of the processing carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.</p>	<p>1 Each Party shall provide that where personal data are collected from data subjects or indirectly from another source, unless they have been obtained from the controller shall be the data subjects habitual residence controller and the purposes or the processing for which the data are intended carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as providing them with any additional other information necessary to ensure fair and transparent lawful data processing of the personal data.</p> <p>Comment [n6]: Referring to the cases when the information is obtained indirectly from another source contradicts with paragraph 2 of this Article. Therefore, we suggest the deletion of this reference</p>
	<p>2. Where the personal data are not collected from the data subjects, the controller shall nonetheless not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.</p>	<p>2. Where the personal data are not collected from the data subjects, the controller shall nonetheless not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.</p>
<p>Article 8 – Additional safeguards for the data subject</p>	<p>Article 8 – Rights of the data subject</p>	<p>Article 8 – Rights of the data subject</p>
<p>Any person shall be enabled:</p>	<p>Any person shall be entitled:</p>	<p>Every person shall be entitled:</p>
<p>a to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;</p>	<p>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;</p>	<p>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;</p>
	<p>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 ;</p>	<p>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.)</p>

<p>b to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;</p>	<p>c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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;</p> <p>d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;</p>	<p>b be entitled to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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 retention 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;</p> <p>c be entitled to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;</p> <p>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 their interests or rights and fundamental freedoms ;</p>
<p>c to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;</p>	<p>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;</p>	<p>e be entitled to obtain, upon on 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;</p>
<p>d to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.</p>	<p>See f below</p>	<p>See f below</p>
	<p>f to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;</p>	<p>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, communication, rectification, erasure or to an objection, as referred to in this Article;</p>

	<p>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.</p>	<p>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.</p>
	<p>Article 8bis – Additional obligations</p>	<p>Article 8bis – Additional obligations</p>
	<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.</p>	<p>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 processing under their control is in compliance with the measures taken to give effect to this Convention of this Convention the compliance with the applicable law.</p> <p>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 prevents or at least minimises the risk of interference with those rights and fundamental freedoms.</p>

	<p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- Each Party can take the measures needed to adapt the application of the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p>3— Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- 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 in 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 where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>
Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions
1 No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this article.	1 No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by law and constitutes a necessary measure in a democratic society for:	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
a protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention, investigation and prosecution of criminal offences;

b protecting the data subject or the rights and freedoms of others.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.	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.
3 Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.	3 Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for statistical purposes or for the purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.	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 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	Article 10 – Sanctions and remedies	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.	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.	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	Article 11 Extended protection	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.	unchanged	unchanged
Chapter III – Transborder data flows	Chapter III – Transborder flows of personal data	Chapter III – Transborder flows of personal data
Article 12 – Transborder flows of personal data and domestic law	Article 12 - Transborder flows of personal data	Article 12 - Transborder flows of personal data
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

<p>2 A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.</p>	<p>1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph is regulated by binding harmonised rules of protection shared by States belonging to a regional international organisation and the transfer of data is not governed by measures provided for in paragraph 3.b.</p>	<p>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.</p>
<p>3 Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:</p>	<p>2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the transfer of data can only occur where an appropriate level of personal data protection based on the principles of the Convention is guaranteed.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>b) ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.</p>	<p>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.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>b) ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.</p>

<p>a insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided by law and constitute a necessary measure in a democratic society.</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided for by law and constitute a necessary measure in a democratic society.</p>
	<p>5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be informed of the modalities regulating the transfers of data provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrate the quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers of data.</p>	<p>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.</p>
<p>b when the transfer is made from its territory to the territory of a non Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.</p>	<p>Delete</p>	<p>Delete</p>
<p>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)</p>	<p>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</p>	<p>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</p>

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 may allow for the transfer of personal data:	Delete	Delete
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.

<p>2 a To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>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;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;</p> <p>e. shall be responsible for raising awareness of and providing information on data protection;</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data; (see new paragraph 2bis below)</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>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 may in particular sanction administrative offences;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of the domestic law giving effect to the provisions of this Convention;</p> <p>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</p> <p>on data protection</p>
		<p>2bis. The competent authority shall be consulted by the Supervisory Authority involving the processing of personal data which may severely affect data subjects by virtue of the nature, scope and purpose of such processing.</p> <p><small>Comment [n7]: Protection of the personal data of children is very important issue. However, taking into consideration the fact that this Article provides for the basic powers and functions of the Supervisory Authority, it will be preferable to avoid putting emphasis on such a specific topic since it is hard to see any rationale behind it</small></p>

<p>b. Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.</p>	<p>3 Each supervisory authority 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.</p>	<p>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 Comment [n8]: It will be better to use the term "their right to data protection" instead of "their data protection rights" his/her rights and with regard to the data processing within its competence and shall keep data subjects informed of progress of the follow-up given to such a claim.</p>
<p>3 The supervisory authorities shall exercise their functions in complete independence.</p>	<p>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.</p>	<p>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.</p>
	<p>5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p>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.</p> <p>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.</p>	<p>5 Each Party shall ensure that the supervisory authorities are provided with the resources necessary for the performance of their powers Comment [n9]: Notwithstanding the fact the general reference to resources cover the ones enlisted in the T-PD proposal, it is preferable to provide in the text of the convention the specific and concrete obligations for the state parties (financial, human and technical resources and infrastructure), therefore, we support the T-PD wording</p> <p>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.</p> <p>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.</p>
<p>4 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>

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 and useful information and cooperating with each other 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;
	b coordinating their investigations or interventions or conducting joint actions;	b coordinating their investigations or interventions, or conducting joint actions;
	c providing information on their law and administrative practice relating to data protection.	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.
	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.
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
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 assistance shall contain all the necessary particulars, relating inter alia to:	Incorporated into Article 12bis	Incorporated into Article 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 for assistance.	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 for assistance.	1 A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2 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 the authorities responsible for replying;	unchanged	unchanged
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 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 supervisory authority making the request for assistance.	1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [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 supervisory authority making the request for assistance.
2 The data subject may not be charged costs or fees in connection with the steps taken on his 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.	1 A Convention Committee shall be set up after the entry into force of this Convention.
2 Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the Convention shall have the right to be represented on the committee by an observer.	unchanged	unchanged
3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the Convention to be represented by an observer at a given meeting.	3 The 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 .	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 .
	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.	4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party.
Article 19 – Functions of the committee	Article 19 – Functions of the committee	Article 19 – Functions of the committee
The Consultative Committee:	The Convention 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;	a may make recommendations with a view to facilitating or improving the application of the Convention;
b may make proposals for amendment of this Convention in accordance with Article 21;	unchanged	unchanged
c shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 21, paragraph 3;	unchanged	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 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 personal data protection the former provides is in compliance with the provisions of this Convention and where necessary recommend measures to take to reach such compliance;
	g may develop or approve models of standardised safeguards referred to in Article 12;	g may develop or approve models of standardised safeguards referred to in Article 12;
	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 Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.
2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.
	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.
3 After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.	4 After each of its meetings, the 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 Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.

<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>

	8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by the Convention without at the same time accepting the amendment.	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 be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.	1 This Convention shall be open for signature by the member States of the Council of Europe, 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.	1 This Convention 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 <u>this</u> 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.
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 Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.	unchanged	unchanged
Article 23 – Accession by non-member States	Article 23 – Accession by non-member States and international organisations	Article 23 – Accession by non-member States and international organisations

<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to the Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>
<p>2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>2 In respect of any State or international organisation acceding to the present Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>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.</p>
<p>Article 24 – Territorial clause</p>	<p>Article 24 – Territorial clause</p>	<p>Article 24 – Territorial clause</p>
<p>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.</p>	<p>1 Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.</p>	<p>1 Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.	unchanged	unchanged
Article 25 – Reservations	Article 25 – Reservations	Article 25 – Reservations
No reservation may be made in respect of the provisions of this Convention.	unchanged	unchanged
Article 26 – Denunciation	Article 26 – Denunciation	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.	unchanged	unchanged
2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.	unchanged	
Article 27 – Notifications	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:	The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:	
a any signature;	unchanged	
b the deposit of any instrument of ratification, acceptance, approval or accession;	unchanged	
c any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;	unchanged	
d any other act, notification or communication relating to this Convention.	unchanged	

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

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

ITALY / ITALIE

Rome, 14 March 2014

Our ref. 7989/88903

Dear colleagues,

1. As you may remember, during the first meeting of the CAHDATA that took place in Strasbourg on 12-14 November 2013, Italy offered to send a proposal for amending **Article 9, para 1** of the document adopted by the T-PD Plenary on 29 November 2012, used by the CAHDATA as basis for the discussion on the modernisation of Convention 108.

1.1 During the meeting, Italy noted that among the provisions subject to exceptions there is also Article 5.3, which includes the basic principles of data protection (lawfulness, fairness of the processing; proportionality; principle of purpose) which we believe should be in principle respected in any sector (e.g. police). The idea that the respect for the fundamental data protection rules should be ensured regardless of the context of the data processing inspired the adoption of Recommendation (87)15, whose main aim is to apply, though with the necessary adjustments, the basic principles of Convention 108 to the police sector. The application of such principles in this context is of the utmost importance since, as highlighted by the Explanatory Memorandum of Recommendation (87)15, it is actually “in this domain that the consequences of a violation of the basic principles laid down in the Convention could weigh most heavily on the individual”.

More recently the draft Directive on the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, which is currently under discussion at EU level, set out the basic principles relating to processing of personal data – similar to those contained in our Article 5.3 (See Article 4 of the draft Directive).

Against this background, we believe that **the modernized Convention would represent an important chance to enhance the application of the basic principles of data protection as set forth in Article 5.3 in the different sectors at stake. This is why we propose not to include Article 5.3 among the provisions that may be subject to exceptions under Article 9.1.**

1.2 Furthermore, in respect of data breach notification (Article 7.2) transparency of the processing (Article 7 bis) and rights of the data subject (Article 8) which in the current drafting of Article 9.1 are also included among the provisions subject to exceptions, **it may be appropriate to state that Parties, rather than providing for exceptions, should be able to “adapt” such provisions in order to take account of the specific interests as referred to by letter a) and b) of Article 9.** This approach would ensure sufficient flexibility both to guarantee that the important public interests at stake are duly recognized while respecting individuals’ fundamental rights and to adapt the Convention to the ongoing progress in data protection.

1.3 Having said that, we suggest amending Article 9.1 as reported in the attached document.

1.4 We seize the opportunity to highlight that also paragraphs 2 and 3 of Article 9 might benefit from some rewording: the words “Restrictions on the exercise of provisions” do not appear to be appropriate, since the “exercise” should refer to “rights” rather than to “provisions”.

Regarding these paragraphs, you may want to consider the option of using the word “adaptations”, instead of “restrictions”, also with regard to paragraph 3 (like in para 1). In respect of para 2, its drafting might have to be reconsidered also in the light of the further evaluation of Article 12.

* * *

2. We also would like to highlight two additional aspects of the modernized Convention which would deserve further reflection in our view.

2.1 Article 3, para 1bis: “The Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities”.

We fully agree on the need to exempt purely personal or household activities from the scope of the Convention to avoid unnecessary and burdensome over-application of data protection rules, which may impact on other fundamental freedoms (e.g. freedom of expression). However, we believe that the current technological scenario requires us to reflect more deeply on the limits of such exemption. Smartphones, micro-cameras also inserted in different devices (e.g. Google glasses) may be indeed easily used by a person to create huge archives of images/data which, though created in principle for purely personal purposes, may expose individuals to significant risks (in particular in contexts such as cloud computing), contrary to their privacy expectations. It is therefore important to consider such scenarios in order to draw attention to the risks and challenges arising from such processing as also related to security issues in order not to deprive individuals of whatever data protection safeguards. For example, one might envisage that the Convention does not apply to the processing of personal data carried out by natural persons for exclusively personal or household activities **unless the data are intended for dissemination or communication to a large audience, as also provided for by some national laws.**

2.2 Article 12bis, para 9 “The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity”.

As discussed in the first CAHDATA meeting, we believe that, with the necessary adjustments in order to guarantee courts’ autonomy and independence, as provided for by many states’ constitutional order, it is appropriate to ensure that data processing is carried out also in the judicial sector with due and effective respect for data protection standards.

In this regard, we may want to reflect upon the need to ensure effective compliance with data protection rules also in this context, which has several privacy implications. In particular one might envisage the possibility not to exclude, in principle, that national law, with due respect for the principle of separations of powers, may confer some limited competence on DPAs - for example in the field of security measures which prove especially important in this sector. **To that end, one might replace the word “shall” in Article 12 bis, para 9 by “may”.**

* * *

3. In respect of the new document delivered by the secretariat on 3 March 2014 (CAHDATA(2014)1) which contains the proposals prepared further to the discussions of the first CAHDATA meeting, we appreciate the new text which appears more readable and clear, **and we thank the Chairman of the T-PD for his further observations with which we fully agree.**

However, we would like to share some additional comments:

- 3.1 Preamble, recital 3:** we would prefer to keep the previous wording “the right to control of one’s personal data” which fully reflects the core of a modern view of data protection as distinguished from (although closely related to) the more traditional right to private life.
- 3.2 Article 3, para 1:** for the same reason, we would prefer to keep the reference to the right to protection of personal data which is now recognized as an autonomous right, as for example in Article 8 of the European Charter of Fundamental Rights.
- 3.3 Article 6, para 1:** we are in favour of keeping the words “complementing those of this Convention”: considering that all the other principles of the Convention apply to sensitive data, this would clarify that for sensitive data additional **specific safeguards** should be adopted.
- 3.4 Article 8 lett. d):** we would prefer to keep the word “compelling” (legitimate grounds).
- 3.5 Article 12 bis, para 2bis:** we have some concerns regarding the introduction of the following words [...] “which may severely affect data subjects by virtue of nature, scope and purpose of such processing”.

It is not always easy to perceive the potential risks on data subjects’ rights that can derive from administrative or legislative measures involving the processing of personal data. The body which is in the best position to make this evaluation is the national DPA to which legislative and administrative measures should therefore be in any case submitted. This is why we would suggest to at least delete the word “**severely**”.

Article 12 bis, para 5: we suggest to reconsider, at least for the Explanatory Memorandum that the adequate resources which supervisory authorities should be provided with refer to human, technical and financial resources, which are all necessary to perform their functions and exercise their powers independently and effectively.

Looking forward to further collaboration and fruitful discussion,

Giuseppe Busia
Secretary General, Italian
DPA

Article 9.1 of the modernized Convention

Amendment proposed by Italy:

1. No exception to the principles expressed in this Chapter shall be allowed. Parties may adapt the provisions of Articles 7.2, 7bis and 8 when such adaptation is provided for by law and constitutes a necessary measure in a democratic society for:

- a) the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;
- b) the protection of the data subject or the rights and freedoms of others, notably freedom of expression.

[...]

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 the 1st meeting of the CAHDATA and aimed at facilitating discussions during the 2nd meeting of the CAHDATA of 28-30 April 2014.

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION
	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data
Preamble	Preamble	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 and exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person, in particular through the right to control one's personal data and the processing of such data.	Considering that it is necessary, given the diversification, intensification and globalisation of data processing and exchanges of personal data flows , to secure human dignity and the protection of human rights and fundamental freedoms of every person, in particular the right to personal autonomy , exercised through the right right 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 ;

Comment [DPA10]: In our view "guarantee/ensure" seems to be more appropriate than "secure".

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 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 at the global level , thereby contributing to the free flow of information between peoples;
	Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	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	Article 1 – Object and purpose	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”).	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.	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	Article 2 – Definitions	Article 2 – Definitions
For the purposes of this Convention:	unchanged	unchanged
a “personal data” means any information relating to an identified or identifiable individual (“data subject”);	unchanged	unchanged
b “automated data file” means any set of data undergoing automatic processing;	Deleted – see 3.1 below	Deleted – see 3.1 below

<p>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;</p>	<p>c “data processing” means any operation or set of operations which is performed upon personal data, and in particular the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on data;</p>	<p>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;</p>
	<p>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 ;</p>	<p>where no automated processing is not used, data processing means an the operations or set of operations performed upon personal data carried out within a structured set of such data which are accessible and retrievable according to specific criteria established according to any criteria which allow to search for personal data ;</p>
<p>d “controller of the file” means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.</p>	<p>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.</p>	<p>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.</p>
	<p>e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;</p>	<p>e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;</p>
	<p>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;</p>	<p>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;</p>
<p>Article 3 – Scope</p>	<p>Article 3 – Scope</p>	<p>Article 3 – Scope</p>

<p>1 The Parties undertake to apply this Convention to automated personal data files and automatic processing of personal data in the public and private sectors.</p>	<p>1 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.</p> <p>1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.</p>	<p>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.</p> <p>1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities.</p>
<p>2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:</p>	<p>delete</p>	<p>delete</p>
<p>a that it will not apply this Convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;</p>	<p>delete</p>	<p>delete</p>
<p>b that it will also apply this Convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;</p>	<p>delete</p>	<p>delete</p>
<p>c that it will also apply this Convention to personal data files which are not processed automatically.</p>	<p>delete</p>	<p>delete</p>

Comment [DPA11]: We would prefer to keep the reference to the “right to protection of personal data” which is now recognized as an autonomous right, as for example in Article 8 of the European Charter of Fundamental Rights. The reference to the right to protection of personal data could be more appropriately moved to Article 1.

Comment [DPA12]: As better explained in our Position Paper, we fully agree on the need to exempt personal or household activities from the scope of the Convention. Such exemption indeed avoids unnecessary and burdensome over-application of data protection rules, which may impact on other fundamental freedoms (e.g. freedom of expression). However, we believe that the current technological scenario requires us to reflect more deeply on the limits of such exemption. Smartphones, micro-cameras also inserted in different devices (e.g. Google glasses) may be indeed easily used by a person to create huge archives of images/data which, though created in principle for purely personal purposes, may expose individuals to significant risks contrary to their privacy expectations. It is therefore important to consider such scenarios in order to draw attention to the risks and challenges arising from such processing as also related to security issues in order not to deprive individuals of whatever data protection safeguards. For example, one might envisage that the Convention does not apply to the processing of personal data carried out by natural persons for exclusively personal or household activities unless the data are intended for dissemination or communication to a large audience, as also provided for by some national laws.

3 Any State which has extended the scope of this Convention by any of the declarations provided for in subparagraph 2.b or c above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.	delete	delete
4 Any Party which has excluded certain categories of automated personal data files by a declaration provided for in subparagraph 2.a above may not claim the application of this Convention to such categories by a Party which has not excluded them.	delete	delete
5 Likewise, a Party which has not made one or other of the extensions provided for in subparagraphs 2b and c above may not claim the application of this Convention on these points with respect to a Party which has made such extensions.	delete	delete
6 The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the Convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.	delete	delete
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 effective application.	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 effective application.
2 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.	2 These measures shall be taken by each Party prior to ratification or accession to this Convention.	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.	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 process, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.
Article 5 – Quality of data	Article 5 – Legitimacy of data processing and quality of data	Article 5 – Legitimacy of data processing and quality of data
	1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.	1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.
	2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [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 :	3 Personal data undergoing automatic processing shall be :
a obtained and processed fairly and lawfully;	a. processed lawfully and fairly.	a. processed lawfully, and fairly and in a transparent manner.

b stored for specified and legitimate purposes and not used 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;	b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;
c adequate, relevant and not excessive in relation to the purposes for which they are stored;	c. adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are processed;	c. adequate, relevant and [not excessive] and [limited to the minimum necessary] in relation to the purposes for which they are processed;
d accurate and, where necessary, kept up to date;	unchanged	unchanged
e preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.	e preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed.	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, 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.	1 The processing of: - genetic data, - personal data concerning suspected offences, offences, criminal proceedings and convictions, and related security measures - biometric data uniquely identifying a person, - personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where 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.
Article 7 – Data security	Article 7 – Data security	Article 7 – Data security

Comment [DPA13]: We are in favour of keeping the words “limited to the minimum necessary”. The principle of minimization goes beyond the the relevant and not excessive nature of personal data. It reflects the idea that controllers should minimize or even avoid the collection of personal data where possible and that data processing systems should be designed and selected in accordance with the aim of collecting, processing or using no personal data at all or as few personal data as possible. The introduction of this principle, which is strictly linked to the use of anonymisation techniques and privacy enhancing technologies has been solicited by Article 29 Working Party and by the Madrid International Standards. Such principle is now among the general principles of the Draft Regulation at EU level.

Comment [DPA14]: We may want to specify that we refer to security measures “adopted by courts” in order not to create confusion with the security measures provided for by Article 7

Comment [DPA15]: We believe it is important to highlight that the specific and appropriate safeguards for sensitive data complement the measures provided for by the Convention for “non sensitive data”. We are therefore in favour of keeping the words “complementing those of the present Convention”.

<p>Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.</p>	<p>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 modification or dissemination of personal data.</p>	<p>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, destruction, loss, use, modification or disclosure of personal data.</p>
	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>
	<p>Article 7bis – Transparency of processing</p>	<p>Article 7bis – Transparency of processing</p>
	<p>1 Each Party shall see to it that the controller ensures the transparency of data processing by informing the data subjects, unless they have already been informed, of at least the identity and habitual residence or establishment of the controller, the purposes of the processing carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.</p>	<p>1 Each Party shall provide that where personal data are 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 purposes of the processing for which the data are intended carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.</p>
	<p>2. Where the personal data are not collected from the data subjects, the controller shall nonetheless not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.</p>	<p>2. Where the personal data are not collected from the data subjects, the controller shall nonetheless not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.</p>
<p>Article 8 – Additional safeguards for the data subject</p>	<p>Article 8 – Rights of the data subject</p>	<p>Article 8 – Rights of the data subject</p>

Comment [DPA16]: We believe that we should keep the reference to the (categories of) data processed, the recipients and the means of exercising the rights, which in our view are crucial elements to be known by the data subject.

Any person shall be enabled:	Any person shall be entitled:	Every person shall be entitled :
a to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;	a not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having their views taken into consideration;	a to not be subject to a decision significantly affecting him/her, based solely on an automate Comment [DPA17]: We are not sure about the difference in English between automatic and automated 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.)
b to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;	c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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;	b be entitled to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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 retention Comment [DPA18]: Article 2, lett. c) refers to "preservation". Consistency in the terminology should be checked all over the text.
	d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;	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 Comment [DPA19]: We are in favour of keeping the word "compelling" legitimate grounds for which override their interests or rights and fundamental freedoms ;
c to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;	e to obtain, 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 on 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;

<p>d to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.</p>	<p>See f below</p>	<p>See f below</p>
	<p>f to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;</p>	<p>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, communication, rectification, erasure or to an objection, as referred to in this Article;</p>
	<p>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.</p>	<p>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.</p>
	<p>Article 8bis – Additional obligations</p>	<p>Article 8bis – Additional obligations</p>

	<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.</p>	<p>1- Each Party shall provide that the controller and, or where applicable, the processor, shall take 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 processing under their control is in compliance with the measures taken to give effect to this Convention of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controllers and, or where applicable, processors, shall undertake assessment of the likelihood 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 prevents or at least minimises the risk of interference with those rights and fundamental freedoms.</p>
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Comment [DPA20]: To ensure the consistency of wording, we may want to use the expression “controller, and, where applicable the processor,” as done in Article 7.1

Comment [DPA21]: The deleted part, in particular the reference to the internal mechanism, could be considered by the Explanatory Memorandum.

Comment [DPA22]: See the previous comment on para 1.

	<p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- Each Party can take the measures needed to adapt the application of the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- 3- Each Party may take 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 order to give effect to the principles of the Convention, according to the nature of the data, the nature, the volume or nature of the data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p>Comment [DPA23]: We believe that this principle plays a crucial role in data protection. If the wording sounds too strong we may want to consider the formulation used by Recommendation (2010)13 on profiling – Article 2.2 on which an agreement was already reached at the time of its adoption.</p> <p>“ Member states should encourage the design and implementation of procedures and systems in accordance with privacy and data protection, already at their planning stage, notably through the use of privacy-enhancing technologies.”</p> <p>Comment [DPA24]: The volume of data, although not as such, could be a relevant parameter for the evaluation of scalability.</p>
Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	<p>Comment [DPA25]: As explained in our position paper we believe that the modernized Convention would represent an important chance to enhance the application of the basic principles of data protection as provided for by Article 5.3 in the different sectors at stake. Article 5.3 sets forth general principles which are flexible enough to be respected also in sensitive sectors (e.g. police) while not compromising the public interest pursued. This is why we propose not to include Article 5.3 among the provisions that may be subject to exceptions under Article 9.1. In respect of data breach notification (Article 7.2) transparency of the processing (Article 7 bis) and rights of the data subject (Article 8) which in the current drafting of Article 9.1 are also included among the provisions subject to exceptions, it may be appropriate to state that Parties, rather than providing for exceptions, should be able to “adapt” such provisions in order to take account of the specific interests as referred to by letter a) and b) of Article 9. This approach would ensure sufficient flexibility both to guarantee that the important public interests at stake are duly recognized while respecting individuals’ fundamental rights, and to adapt the Convention to the ongoing progress in data protection.</p>
1 No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this article.	1 No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by law and constitutes a necessary measure in a democratic society for:	1 No exception to the principles expressed in this Chapter shall be allowed. Parties may adapt the provisions of Articles 5, 6 and 8 when such adaptation 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	

a protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention, investigation and prosecution of criminal offences;
b protecting the data subject or the rights and freedoms of others.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.	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 be 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.
3 Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.	3 Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for statistical purposes or for the purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.	3 Restrictions on the exercise of the provisions specified in Article 8 may be provided by law with respect to data processing for statistical purposes or for the 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	Article 10 – Sanctions and remedies	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.	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.	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	Article 11 Extended protection	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.	unchanged	unchanged
Chapter III – Transborder data flows	Chapter III – Transborder flows of personal data	Chapter III – Transborder flows of personal data

Comment [DPA26]: The wording of this sentence would need some redrafting. Is it correct in English to speak about restrictions on the exercise “of the provisions”? Moreover, we may want to use the word “adaptations” rather than “restrictions” as in para 1.

Comment [DPA27]: see previous comment.

Article 12 – Transborder flows of personal data and domestic law	Article 12 - Transborder flows of personal data	Article 12 - Transborder flows of personal data
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.
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 implemented by the persons involved in the transfer and further processing.	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 implemented by the persons involved in the transfer and further processing.

<p>a insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided by law and constitute a necessary measure in a democratic society.</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided for by law and constitute a necessary measure in a democratic society.</p>
	<p>5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be informed of the modalities regulating the transfers of data provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrate the quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers of data.</p>	<p>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.</p>
<p>b when the transfer is made from its territory to the territory of a non Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.</p>	<p>Delete</p>	<p>Delete</p>
<p>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)</p>	<p><i>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</i></p>	<p><i>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</i></p>

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 may allow for the transfer of personal data:	Delete	Delete
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.

<p>2 a To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>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;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;</p> <p>e. shall be responsible for raising awareness of and providing information on data protection;</p>	<p>2 To this end, such authorities:</p> <p>a. shall have effective powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data; (see new paragraph 2bis below)</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>c. shall have the powers to issue decisions and where appropriate to take corrective action impose administrative violations of the law with respect to domestic law giving effect to the provisions of this Convention and may in particular sanction administrative offences;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of the domestic law giving effect to the provisions of this Convention;</p> <p>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 protection rights of children and information on data protection</p>
		<p>f - shall be consulted on any legislative or administrative measures involving the processing of personal data [which affect data subjects by nature, scope and purpose of processing].</p>

Comment [DPA28]: We may want to refer to both "issue decisions" and "take corrective action".

Comment [DPA29]: We have concerns regarding the introduction of the words "which may affect severely data subjects by virtue of the nature, scope and purpose of such processing". It is not always easy to perceive the potential risks on data subjects' rights that can derive from administrative or legislative measures involving the processing of personal data. The body which is in the best position to make this evaluation is the national DPA to which legislative and administrative measures should therefore be in any case submitted. This is why we suggest to delete the sentence in brackets.

Comment [DPA30]: isn't it more appropriate to put this sentence after letter c)?

<p>b. Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.</p>	<p>3 Each supervisory authority 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.</p>	<p>3 Each supervisory authority can be requested shall deal with requests and complaints lodged by data subjects any person to investigate a claim concerning their data the protection of his/h fundamental freedom the data processing w competence and shall subjects informed of progress of the follow-up given to such a claim.</p> <p>Comment [DPA31]: We would prefer to refer to “the protection of rights and fundamental freedoms with regard to the data processing” which gives a more comprehensive definition of the rights at stake.</p>
<p>3 The supervisory authorities shall exercise their functions in complete independence.</p>	<p>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.</p>	<p>4 The supervisory authorities shall act with independence in performing their du exercising their powe 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.</p> <p>Comment [DPA32]: We believe we should keep the word “complete” which better qualifies the independence DPAs should be endowed with.</p>
	<p>5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p>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.</p> <p>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.</p>	<p>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, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and eff</p> <p>5bis Each supervisor prepare and publish a public report outlining shall see to it that transparency on their activities be ensured.</p> <p>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.</p> <p>Comment [DPA33]: We suggest to reconsider, at least for the Explanatory Memorandum, that the adequate resources to ensure independent and effective action of the DPAs refer to human, technical and financial resources.</p>
<p>4 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>

<p>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.</p>	<p>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:</p>	<p>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:</p>
	<p>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;</p>	<p>a providing mutual assistance by exchanging relevant and useful information. 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;</p>
	<p>b coordinating their investigations or interventions or conducting joint actions;</p>	<p>b coordinating their investigations or interventions, or conducting joint actions;</p>
	<p>c providing information on their law and administrative practice relating to data protection.</p>	<p>c providing information and documentation on their law and administrative practice relating to data protection.</p>
	<p>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.</p>	<p>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.</p>
	<p>9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.</p>	<p>9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.</p>
<p>Chapter IV – Mutual assistance</p>	<p>Chapter IV – Mutual assistance</p>	<p>Chapter IV – Mutual assistance</p>
<p>Article 13 – Co-operation between Parties</p>	<p>Article 13 – Co-operation between Parties</p>	<p>Article 13 – Co-operation between Parties</p>
<p>1 The Parties agree to render each other mutual assistance in order to implement this Convention.</p>	<p>unchanged</p>	<p>unchanged</p>

Comment [DPA34]: As stated in our position paper we believe that, with the necessary adjustments in order to guarantee courts' autonomy and independence, it is appropriate to ensure that data processing is carried out also in the judicial sector with due and effective respect for data protection standards.

In this regard, we may want to reflect upon the need to ensure effective compliance with data protection rules also in this context, which has several privacy implications. In particular one might envisage the possibility not to exclude, in principle, that national law, with due respect for the principle of separations of powers, may confer some limited competence on DPAs - for example in the field of security measures which prove especially important in this sector. To that end, one might replace the word "shall" in Article 12 bis, para 9 by "may".

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
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 assistance shall contain all the necessary particulars, relating inter alia to:	Incorporated into Article 12bis	Incorporated into Article 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 for assistance.	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 for assistance.	1 A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2 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 the authorities responsible for replying;	unchanged	unchanged
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 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 supervisory authority making the request for assistance.	1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [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 supervisory authority making the request for assistance.
2 The data subject may not be charged costs or fees in connection with the steps taken on his 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.	1 A Convention Committee shall be set up after the entry into force of this Convention.
2 Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the Convention shall have the right to be represented on the committee by an observer.	unchanged	unchanged
3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the Convention to be represented by an observer at a given meeting.	3 The 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.	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.
	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.	4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party.
Article 19 – Functions of the committee	Article 19 – Functions of the committee	Article 19 – Functions of the committee
The Consultative Committee:	The Convention 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;	a may make recommendations with a view to facilitating or improving the application of the Convention;
b may make proposals for amendment of this Convention in accordance with Article 21;	unchanged	unchanged
c shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 21, paragraph 3;	unchanged	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 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 personal data protection the former provides is in compliance with the provisions of this Convention and where necessary recommend measures to take to reach such compliance;
	g may develop or approve models of standardised safeguards referred to in Article 12;	g may develop or approve models of standardised safeguards referred to in Article 12;
	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 Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.

2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.
	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.
3 After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.	4 After each of its meetings, the 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 Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.

<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>

	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>
	<p>8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by the Convention without at the same time accepting the amendment.</p>	<p>8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by this Convention without at the same time accepting the amendment.</p>
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
<p>1 This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.</p>	<p>1 This Convention 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.</p>	<p>1 This Convention 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.</p>

<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
<p>3 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.</p>	<p>unchanged</p>	<p>unchanged</p>
<p>Article 23 – Accession by non-member States</p>	<p>Article 23 – Accession by non-member States and international organisations</p>	<p>Article 23 – Accession by non-member States and international organisations</p>
<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to the Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>
<p>2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>2 In respect of any State or international organisation acceding to the present Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>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.</p>

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, 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, 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.	2 Any State, the European Union or other international organisation may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.	unchanged	unchanged
Article 25 – Reservations	Article 25 – Reservations	Article 25 – Reservations
No reservation may be made in respect of the provisions of this Convention.	unchanged	unchanged
Article 26 – Denunciation	Article 26 – Denunciation	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.	unchanged	unchanged

2	Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.	unchanged	
Article 27 – Notifications		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:		The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:	
a	any signature;	unchanged	
b	the deposit of any instrument of ratification, acceptance, approval or accession;	unchanged	
c	any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;	unchanged	
d	any other act, notification or communication relating to this Convention.	unchanged	

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

1. This protocol shall be open for signature by the Parties to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which all Parties to the Convention have expressed their consent to be bound by the protocol in accordance with the provisions of paragraph 1 of this Article.

3. However, this protocol shall enter into force following the expiry of a period of [two] years after the date on which it has been opened to signature, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those states which were Parties to the Convention at the date of opening for signature of this protocol.

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

THE NETHERLANDS / PAYS-BAS

- **General remark: so far, we did not fully take notice of the explanatory report, which became only accessible on Thursday 17 April. That means that our text proposals and considerations on the Convention are with a reservation.**

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 the 1st meeting of the CAHDATA and aimed at facilitating discussions during the 2nd meeting of the CAHDATA of 28-30 April 2014.

CURRENT TEXT OF THE CONVENTION AND ADDITIONAL PROTOCOL	T-PD PROPOSALS	PROPOSALS FOR DISCUSSION
	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data
Preamble	Preamble	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 and exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person, in particular through the right to control one's personal data and the processing of such data.	Considering that it is necessary, given the diversification, intensification and globalisation of data processing and exchanges of personal data flows , to secure human dignity and the protection of human rights and fundamental freedoms of every person, in particular the right to personal autonomy, exercised through the right 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 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 at the global level , thereby contributing to the free flow of information between peoples;
	Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	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	Article 1 – Object and purpose	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”).	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.	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	Article 2 – Definitions	Article 2 – Definitions
For the purposes of this Convention:	unchanged	unchanged
a “personal data” means any information relating to an identified or identifiable individual (“data subject”);	unchanged	unchanged
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, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on 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;

	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 ;	where no automated processing is not used, data processing means an the operations or set of operations performed upon personal data carried out within a structured set of such data which are accessible and retrievable according to specific 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, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.	d “controller” means the natural or legal person, public authority, service, agency or any other body which alone or jointly with others has the decision-making power with respect to data processing.	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
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.
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:	delete	delete

<p>a that it will not apply this Convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;</p>	delete	delete
<p>b that it will also apply this Convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;</p>	delete	delete
<p>c that it will also apply this Convention to personal data files which are not processed automatically.</p>	delete	delete
<p>3 Any State which has extended the scope of this Convention by any of the declarations provided for in 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.</p>	delete	delete
<p>4 Any 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.</p>	delete	delete
<p>5 Likewise, 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.</p>	delete	delete

<p>6 The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the Convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.</p>	<p>delete</p>	<p>delete</p>
<p>Chapter II – Basic principles for data protection</p>	<p>Chapter II – Basic principles for the protection of personal data</p>	<p>Chapter II – Basic principles for the protection of personal data</p>
<p>Article 4 – Duties of the Parties</p>	<p>Article 4 – Duties of the Parties</p>	<p>Article 4 – Duties of the Parties</p>
<p>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.</p>	<p>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 effective application.</p>	<p>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 effective application.</p>
<p>2 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.</p>	<p>2 These measures shall be taken by each Party prior to ratification or accession to this Convention.</p>	<p>2 These measures shall be taken by each Party prior to ratification or accession to this Convention.</p>
	<p>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.</p>	<p>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 process, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.</p>
<p>Article 5 – Quality of data</p>	<p>Article 5 – Legitimacy of data processing and quality of data</p>	<p>Article 5 – Legitimacy of data processing and quality of data</p>
	<p>1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.</p>	<p>1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.</p>

	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 :	3 Personal data undergoing automatic processing shall be :
a obtained and processed fairly and lawfully;	a. processed lawfully and fairly.	a. processed lawfully, and fairly and in a transparent manner .
b stored for specified and legitimate purposes and not used 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;	b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;
c adequate, relevant and not excessive in relation to the purposes for which they are stored;	c. adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are processed;	c. adequate, relevant and [not excessive] and [limited to the minimum necessary] in relation to the purposes for which they are processed;
d accurate and, where necessary, kept up to date;	unchanged	unchanged
e preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.	e preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed.	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

<p>Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.</p>	<p>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, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides appropriate safeguards, complementing those of the present Convention.</p> <p>2. Appropriate safeguards shall prevent the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.</p>	<p>1 The processing of:</p> <ul style="list-style-type: none"> - genetic data, - personal data concerning suspected offences, offences, criminal proceedings and convictions, and related security measures, - biometric data uniquely identifying a person, - personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides specific and appropriate safeguards are enshrined in law, complementing those of the present Convention. <p>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.</p>
<p>Article 7 – Data security</p>	<p>Article 7 – Data security</p>	<p>Article 7 – Data security</p>
<p>Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.</p>	<p>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 modification or dissemination of personal data.</p>	<p>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, destruction, loss, use, modification or disclosure of personal data.</p>
	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>	<p>2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.</p>
	<p>Article 7bis – Transparency of processing</p>	<p>Article 7bis – Transparency of processing</p>

	1 Each Party shall see to it that the controller ensures the transparency of data processing by informing the data subjects, unless they have already been informed, of at least the identity and habitual residence or establishment of the controller, the purposes of the processing carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.	1 Each Party shall provide that where personal data are 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 purposes of the processing for which the data are intended carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as providing them with any additional other information necessary to ensure fair and transparent lawful data processing of the personal data.
	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
Any person shall be enabled:	Any person shall be entitled:	Every person shall be entitled:
a to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;	a not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having their views taken into consideration;	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.)

<p>b to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;</p>	<p>c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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;</p> <p>d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;</p>	<p>b be entitled to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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 retention 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;</p> <p>c be entitled to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;</p> <p>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 their interests or rights and fundamental freedoms ;</p>
<p>c to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;</p>	<p>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;</p>	<p>e be entitled to obtain, upon on 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;</p>
<p>d to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.</p>	<p>See f below</p>	<p>See f below</p>
	<p>f to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;</p>	<p>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, communication, rectification, erasure or to an objection, as referred to in this Article;</p>

	<p>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.</p>	<p>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.</p>
	<p>Article 8bis – Additional obligations</p>	<p>Article 8bis – Ad</p>
	<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.</p>	<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis that the data processing under their control is in compliance with the measures taken to give effect to this Convention of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controller, or where applicable, the processor, shall 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 prevents or at least minimises the risk of interference with those rights and fundamental freedoms.</p>

Comment [HJ35]: Article 8bis is very detailed when considering that Convention 108 should have a general character. In our opinion, it is an example of too detailed rulemaking that we should avoid in order to promote the accession of third countries to C 108. .

	<p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- Each Party can take the measures needed to adapt the application of the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p>3— Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- 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 in 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 where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>
Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions
1 No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this article.	1 No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by law and constitutes a necessary measure in a democratic society for:	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
a protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;	a the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;	a the protection of, public safety, important economic and financial interests of the State or the prevention, investigation and prosecution of criminal offences;

b protecting the data subject or the rights and freedoms of others.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.	b the protection of the data subject or the rights and freedoms of others, notably freedom of expression. 2 (new section) – Principles expressed in Article 12 shall be allowed, except to the provisions of Articles 5.3, 6, 7.2, 7bis, 8 and 8bis, when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for the protection of national security. Comment [HJ36]: New section 2, that excepts national security with regard to two more Convention articles (6 and 8).
	2 Restrictions on the exercise of the provisions specified in Article 12 may also be admitted where they are provided by law and constitute a necessary measure in a democratic society for the freedom of expression.	3 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.
3 Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.	3 Restrictions on the exercise of the provisions specified in Articles 7bis and 8 may be provided by law with respect to data processing for statistical purposes or for the purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.	4 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 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	Article 10 – Sanctions and remedies	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.	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.	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	Article 11 Extended protection	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.	unchanged	unchanged
Chapter III – Transborder data flows	Chapter III – Transborder flows of personal data	Chapter III – Transborder flows of personal data
Article 12 – Transborder flows of personal data and domestic law	Article 12 - Transborder flows of personal data	Article 12 - Transborder flows of personal data

<p>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.</p>	<p>Delete</p>	<p>Delete</p>
<p>2 A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.</p>	<p>1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph is regulated by binding harmonised rules of protection shared by States belonging to a regional international organisation and the transfer of data is not governed by measures provided for in paragraph 3.b.</p>	<p>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.</p>
<p>3 Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:</p>	<p>2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the transfer of data can only occur where an appropriate level of personal data protection based on the principles of the Convention is guaranteed.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>b) ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.</p>	<p>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.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>b) ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.</p>

<p>a insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided by law and constitute a necessary measure in a democratic society.</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided for by law and constitute a necessary measure in a democratic society.</p>
	<p>5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be informed of the modalities regulating the transfers of data provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrate the quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers of data.</p>	<p>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.</p>
<p>b when the transfer is made from its territory to the territory of a non Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.</p>	<p>Delete</p>	<p>Delete</p>
<p>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)</p>	<p>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</p>	<p>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</p>

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 may allow for the transfer of personal data:	Delete	Delete
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	6 (new section) An exception to the principles expressed in this Article shall be allowed when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for the protection of national security.
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.

<p>2 a To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>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;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;</p> <p>e. shall be responsible for raising awareness of and providing information on data protection;</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data; (see new paragraph 2bis below)</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>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 may in particular sanction administrative offences;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of the domestic law giving effect to the provisions of this Convention;</p> <p>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;</p>
		<p>2bis. The competent supervisory authorities shall be consulted on proposals for any legislative or 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.</p>

<p>b. Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.</p>	<p>3 Each supervisory authority 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.</p>	<p>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 such a claim.</p>
<p>3 The supervisory authorities shall exercise their functions in complete independence.</p>	<p>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.</p>	<p>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.</p>
	<p>5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p>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.</p> <p>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.</p>	<p>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, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p>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.</p> <p>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.</p>
<p>4 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>
<p>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.</p>	<p>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:</p>	<p>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:</p>

	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 and useful information and cooperating with each other 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;
	b coordinating their investigations or interventions or conducting joint actions;	b coordinating their investigations or interventions, or conducting joint actions;
	c providing information on their law and administrative practice relating to data protection.	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.
	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. 10 (new section) An exception to the principles expressed in sections (2) (a), (2) (b), (2) (c), (2) (d), (6) and (7) (a) and (b) of this Article shall be allowed when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for the protection of national security.
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
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 assistance shall contain all the necessary particulars, relating inter alia to:	Incorporated into Article 12bis	Incorporated into Article 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 for assistance.	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 for assistance.	1 A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2 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 the authorities responsible for replying;	unchanged	unchanged
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 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 supervisory authority making the request for assistance.	1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [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 supervisory authority making the request for assistance.
2 The data subject may not be charged costs or fees in connection with the steps taken on his 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.	1 A Convention Committee shall be set up after the entry into force of this Convention.
2 Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the Convention shall have the right to be represented on the committee by an observer.	unchanged	unchanged
3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the Convention to be represented by an observer at a given meeting.	3 The 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.	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.
	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.	4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party.
Article 19 – Functions of the committee	Article 19 – Functions of the committee	Article 19 – Functions of the committee
The Consultative Committee:	The Convention 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;	a may make recommendations with a view to facilitating or improving the application of the Convention;
b may make proposals for amendment of this Convention in accordance with Article 21;	unchanged	unchanged
c shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 21, paragraph 3;	unchanged	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 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 personal data protection the former provides is in compliance with the provisions of this Convention and where necessary recommend measures to take to reach such compliance;
	g may develop or approve models of standardised safeguards referred to in Article 12;	g may develop or approve models of standardised safeguards referred to in Article 12;
	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 Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.	1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.
2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.
	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.	3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.
3 After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.	4 After each of its meetings, the 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 Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.	1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.

<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>	<p>4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
<p>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.</p>	<p>unchanged</p>	<p>unchanged</p>
	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>	<p>7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.</p>

	8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by the Convention without at the same time accepting the amendment.	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 be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.	1 This Convention shall be open for signature by the member States of the Council of Europe, 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.	1 This Convention 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 1984. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.	unchanged	unchanged
3 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.	unchanged	unchanged
Article 23 – Accession by non-member States	Article 23 – Accession by non-member States and international organisations	Article 23 – Accession by non-member States and international organisations

<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to the Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>	<p>1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.</p>
<p>2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>2 In respect of any State or international organisation acceding to the present Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.</p>	<p>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.</p>
<p>Article 24 – Territorial clause</p>	<p>Article 24 – Territorial clause</p>	<p>Article 24 – Territorial clause</p>
<p>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.</p>	<p>1 Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.</p>	<p>1 Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.	unchanged	unchanged
Article 25 – Reservations	Article 25 – Reservations	Article 25 – Reservations
No reservation may be made in respect of the provisions of this Convention.	unchanged	unchanged
Article 26 – Denunciation	Article 26 – Denunciation	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.	unchanged	unchanged
2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.	unchanged	
Article 27 – Notifications	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:	The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:	
a any signature;	unchanged	
b the deposit of any instrument of ratification, acceptance, approval or accession;	unchanged	
c any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;	unchanged	
d any other act, notification or communication relating to this Convention.	unchanged	

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

1. This protocol shall be open for signature by the Parties to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which all Parties to the Convention have expressed their consent to be bound by the protocol in accordance with the provisions of paragraph 1 of this Article.

3. However, this protocol shall enter into force following the expiry of a period of [two] years after the date on which it has been opened to signature, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those states which were Parties to the Convention at the date of opening for signature of this protocol.

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

**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF
INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA /
COMITE CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES
PERSONNES A L'EGARD DU TRAITEMENT AUTOMATISE DES DONNEES A
CARACTERE PERSONNEL (T-PD)**

Comments of the Chairman of the T-PD / Commentaires du président du T-PD

Remarques preliminaries / Preliminary remarks:

Our comments on the informal draft reflected the discussion during the first CAHDATA meeting and our proposals take into account the position of the Bureau of the TPD discussed during the 32nd meeting (Paris, 25 – 27 March 2014).

Nos remarques sur le projet informel reflétant la discussion lors de la 1^{ère} réunion du CAHDATA et nos propositions se basent sur la position du bureau du T-PD discutée lors de sa 32^{ème} réunion (Paris, 25 – 27 mars 2014).

Preamble / Préambule

Considering that it is **necessary, given the diversification, intensification and globalisation of data processing and exchanges of personal data flows, to secure ensure human dignity and through** the protection of human **rights and** fundamental freedoms of every person, in particular **the right to personal autonomy, exercised** through the right to control of one's personal data and **of** the processing of such data.

Considérant qu'il est nécessaire, eu égard à la diversification, l'intensification et à l'internationalisation ~~des échanges et des traitements~~ **et des flux** de données à caractère personnel, de garantir la dignité humaine ~~ainsi que par~~ la protection des droits de l'homme et des libertés fondamentales de chacun, notamment ~~au moyen du droit de contrôler~~ **le droit à l'autonomie personnelle, exercé par le contrôle par chacun de ses données à caractère personnel** et des traitements qui en sont faits

*In English we propose to use the word **ensure**. We are not sure that secure is a better wording. We suggest to adopt in the all text ensure.*

*We suggest to replace "**and**" after dignity by "**through**": in our view, it is the protection of human rights and fundamental freedoms that substantiates the human dignity.*

Concerne uniquement le texte anglais (ensure au lieu de secure).

*Nous proposons de remplacer « **ainsi que** » après dignité avec « **par** » : nous estimons que la protection des droits de l'homme et des libertés fondamentales incarne la dignité humaine.*

Art. 1 – Object and purpose / Objet et but

The purpose of this Convention is to ~~secure~~ **ensure** for every individual **subject to the jurisdiction of the Parties**, whatever their nationality or residence, **the [right to] 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**.

Le but de la présente Convention est de garantir à toute personne physique relevant de la juridiction des Parties, quelles que soient sa nationalité ou sa résidence, **[le droit à] la protection** de ses données à caractère personnel lorsqu'elles font l'objet d'un traitement, contribuant ainsi au respect des droits et des libertés fondamentales, notamment du droit à la vie privée des personnes concernées.

See comment to article 3 / Voir commentaire à l'article 3

Art. 2 – Definitions / Définitions

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, destruction of data, or the carrying out of logical and/or arithmetical operations on such data;**

c « traitement de données » s'entend de toute opération ou ensemble d'opérations effectuées sur des données à caractère personnel, ~~et notamment~~ **telle que** la collecte, l'enregistrement, la conservation, la modification, l'extraction, la communication, la mise à disposition, l'effacement, **la destruction des données**, ou l'application d'opérations logiques et / ou arithmétiques ~~aux~~ **à ces** données ;

We are definitively in favour to keep the expression “destruction”. “Erasure” covers only the logical “destruction”.

Nous sommes en faveur de maintenir l'expression “destruction”, car l'effacement ne couvre que l'effacement logique des données.

where ~~no~~ automated processing is ~~not~~ used, data processing means ~~an~~ **the operations or set of operations performed upon personal data carried out within a structured set of such data which are accessible ~~or~~ and retrievable according to specific criteria established according to any criteria which allow to search for personal data ;**

lorsqu'il n'est pas fait recours à un aucun procédé automatisé ~~n'est pas utilisé~~, le traitement de données s'entend **de l'opération ou des opérations effectuées sur des données à caractère personnel au sein d'un ensemble structuré de données qui sont accessibles ~~ou~~ et peuvent être retrouvées selon des critères spécifiques ;**

“Or” between accessible and retrievable is too restrictive. We prefer the initial proposal adopted by the T-PD / “ou” entre accessible et peuvent être retrouvées est trop restrictif. Nous préférons la version initiale adoptée par le T-PD :

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 ;

lorsque aucun procédé automatisé n'est utilisé, le traitement de données s'entend des opérations effectuées au sein d'un ensemble structuré établi selon tout critère qui permet de rechercher des données à caractère personnel ;

Art. 3 – Scope / Champ d'application

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—thereby protecting the right to protection of personal data of any person subject to its jurisdiction.**

1 Chaque Partie s'engage à appliquer la présente Convention aux traitements de données relevant de sa juridiction **dans le secteur public et privé** garantissant ainsi le droit à la protection des données à caractère personnel de toute personne relevant de sa juridiction **garantissant ainsi le droit à la protection des données à caractère personnel de toute personne relevant de sa juridiction.**

We propose to keep the initial proposal adopted by the T-PD and to add the reference to the public and private sectors or to modify art 1 to underline the right to data protection.

Nous proposons de maintenir la version initiale adoptée par le T-PD et d'ajouter la référence au secteur public et privé ou de modifier l'article 1 pour affirmer le droit à la protection des données.

Art. 4 – Duties of the Parties / Engagements des Parties

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 ensure their effective application.**

1 Chaque Partie prend, dans ~~sa loi son droit interne~~, les mesures nécessaires pour donner effet aux dispositions de la présente Convention ainsi que pour en assurer l'application effective.

In english « ensure » is stronger / concerne que l'anglais

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~~ **observance of its engagements** and to contribute actively to this evaluation process, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.

3. Chaque Partie s'engage à permettre au Comité conventionnel prévu au Chapitre V d'évaluer **les mesures qu'elle aura prises dans sa loi pour donner effet aux dispositions de la présente Convention le respect de ses engagements le respect de ses engagements** et à contribuer activement à **cette procédure** d'évaluation notamment en présentant des rapports sur ~~les mesures qu'elle aura prises pour donner effet aux dispositions de la présente Convention.~~

This new wording is weaker as the initial proposal adopted by the T-PD. The expression observance of its engagements should remain. The words « in its law » should be deleted.

Le nouveau libellé proposé est plus faible que la version adoptée par le T-PD. L'expression respect de ses engagements devrait être maintenue. Les termes « dans sa loi » devraient être biffés.

Art. 5 - Legitimacy of data processing and quality of data / Légitimité des traitements de données et qualités des données

3 Personal data undergoing ~~automatic~~ processing shall be :

a. processed lawfully, ~~and fairly~~ **and in a transparent manner**

3 Les données à caractère personnel faisant l'objet d'un traitement sont:

a traitées licitement, loyalement **et de manière transparente**

We support this new wording / nous soutenons cette nouvelle formulation.

c. adequate, relevant ~~and [not excessive]~~ ~~and [limited to the minimum necessary]~~ in relation to the purposes for which they are **processed**

c adéquates, pertinentes **et [non excessives] et [limitées au minimum nécessaire] au regard des** ~~par rapport aux~~ finalités pour lesquelles elles sont traitées

We are definitively in favor to keep the initial proposal of the T-PD. In our view it's important to have a reference to the principle of dataminimisation: "adequate, relevant, not excessive, and limited to the minimum necessary to the purposes for which they are processed."

Nous sommes fermement en faveur de conserver la version initiale adoptée par le T-PD. Selon nous, il est important d'avoir une référence au principe de minimisation des données : « adéquates, pertinentes, non excessives et limitées au minimum nécessaire par rapport aux finalités pour lesquelles elles sont traitées. »

Art. 6 - Processing of sensitive data / Traitement de données sensibles

1 The processing of:

- genetic data,
- personal data concerning **suspected offences**, offences, criminal **proceedings** and convictions, and related security measures,
- biometric data uniquely identifying a person,
- personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life,
shall only be allowed where the applicable law provides **specific and** appropriate safeguards are enshrined in law, ~~complementing those of the present Convention.~~ **complementing those of the present Convention**

1. Le traitement de :

- données génétiques,
- données **à caractère personnel** concernant des **infractions présumées, des infractions, des**

procédures pénales, des condamnations pénales et mesures de sûreté connexes,
- données biométriques identifiant un individu de façon unique,
- données à caractère personnel pour les informations qu'elles révèlent sur l'origine raciale, les opinions politiques, l'appartenance syndicale, les convictions religieuses ou autres convictions, la santé ou la vie sexuelle, n'est autorisé qu'à la condition que la loi applicable prévoit des garanties **spécifiques et appropriées soient prévues par la loi**, venant compléter celles de la présente Convention. **venant compléter celles de la présente Convention.**

In our view, it is important to emphasize the necessity to fulfill all requirements of the Convention by processing of sensitive data and to adopt additional safeguards for those processing presenting specific risks. Therefore we are in favor to keep the wording of the T-PD.

A notre avis, il est important de souligner et de rappeler la nécessité de remplir toutes les exigences de la convention lors du traitement de données sensibles et celle d'adopter des garanties complémentaires pour ces traitements engendrant des risques spécifiques. Pour cette raison, nous sommes pour le maintien de la version du T-PD.

Art. 8 – Rights of the data subject / Droits des personnes concernées

b **be entitled** to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of 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 retention preservation period as well as any other information that the controller is required to provide to ensure the transparency of processing in accordance with Article 7bis paragraph 1;**

b. **être en droit d'**obtenir, à sa demande, à intervalle raisonnable et sans délai ou frais excessifs, la confirmation d'un traitement de données la concernant, la communication sous une forme intelligible des données traitées, et toute information disponible sur leur origine, l'information sur la durée de conservation des données ainsi que toute autre information que le responsable du traitement est tenu de fournir au titre de la transparence des traitements conformément à l'article 7bis paragraphe 1 ;

We propose to keep preservation in english, see definition of processing / concerne le texte anglais uniquement.

d **be entitled** to object at any time to the processing of personal data concerning him/her unless the controller demonstrates ~~compelling~~ **compelling** legitimate grounds for the processing which override their interests or rights and fundamental freedoms ;

d. **être en droit de** s'opposer à tout moment à ce que des données à caractère personnel la concernant fassent l'objet d'un traitement, à moins que le responsable du traitement ne démontre des motifs légitimes ~~prépondérants~~ **prépondérants** justifiant le traitement qui prévalent sur les intérêts, les droits et sur les libertés fondamentales de la personne concernée ;

See art 14 a) Directive 95/42: the interest must be qualified
Voir art. 14 a) Directive 95/42: l'intérêt doit être qualifié.

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, communication, rectification, erasure or to an objection, as referred to in this Article;~~

be entitled to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;

f. ~~être en droit de disposer d'un recours si une décision l'affectant de manière significative a été prise, sur le fondement d'un traitement automatisé de données, sans que son point de vue soit n'ait été pris en compte ou s'il n'est pas donné suite si le responsable de traitement ne donne pas suite à une demande formulée en application du~~ de confirmation, de communication, de rectification, d'effacement ou à une opposition, visée au présent article ; ~~disposer d'un recours si une décision l'affectant de manière significative a été prise sans que son point de vue soit pris en compte ou s'il n'est pas donné suite à une demande de confirmation, de communication, de rectification, d'effacement ou à une opposition, visée au présent article ;~~

The proposal of the chair is limited to automated decision. We propose to maintain the initial proposal of the TPD and to eventually complete lit a with a right to have a remedy to cover also the case of automated decision.

La proposition de la présidence se limite au décision automatisée. Nous proposons de maintenir la proposition initiale du T-PD et d'éventuellement compléter la lettre a avec un droit de recours qui couvre également les décisions automatisées.

Art. 8bis – Additional obligations / Obligations complémentaires

1- Each Party shall provide that the controllers ~~and, or where applicable, processors,~~ shall take at all stages of the processing ~~at all stages of the processing~~ all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention ~~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** ~~at least~~ to the supervisory authorities provided for in Article 12 bis that the data processing under their control is in compliance with the measures taken to give effect to this Convention ~~of this Convention the compliance with the applicable law.~~

1. Chaque Partie prévoit que les responsables du traitement, ~~ou~~ **et** le cas échéant les sous-traitants, ~~doivent~~ prendre à chaque étape du traitement toutes les mesures appropriées pour mettre en oeuvre les dispositions donnant effet aux principes et obligations de la présente Convention ~~et doit mettre en place des mécanismes internes pour~~ et être en mesure de démontrer ~~à tout le moins~~ **à tout le moins** aux autorités de contrôle prévues à l'article 12bis que le traitement dont ils sont responsables est conforme aux mesures prises pour donner effet à la présente convention, ~~la conformité au regard du droit applicable.~~

We are in favor to keep **at least**. It is important to keep the possibility to give information about the taking measures to other, in particular the data subjects if provided by domestic law.

Nous sommes favorable au maintien de « **à tout le moins** ». Il est important de laisser la possibilité de donner des informations sur les mesures prises à d'autres acteurs, en particulier aux personnes concernées si le droit interne le prévoit.

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 prevents or at least minimises the risk of interference with those rights and fundamental freedoms

2. Chaque Partie prévoit que les responsables du traitement, ou et le cas échéant les sous-traitants, est tenu de procéder à une analyse de l'impact potentiel du traitement de données envisagé sur les droits et libertés fondamentales doivent procéder, préalablement au commencement de tout traitement, à l'évaluation des risques liés à l'impact potentiel du traitement de données envisagé sur le droit à la protection des données des personnes concernées et de doivent concevoir les opérations de traitement de données de manière à prévenir ou pour le moins à minimiser les risques d'atteinte à ces droits et libertés fondamentales.

We prefer the wording "**risk analysis**" less formal / Nous préférons le libellé "**analyse de l'impact**", car moins formel.

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.

3. Chaque Partie prévoit que les produits et services destinés au traitement de données doivent prendre en compte les implications du droit à la protection des données à caractère personnel dès leur conception et faciliter la conformité des traitements de données au regard du droit applicable.

We propose to add a new point in the preamble in line with principle 2.2 Profiling recommendation: "Member states should encourage the design and implementation of procedures and systems in accordance with privacy and data protection, already at their planning state, notably through the use of privacy-enhancing technologies."

Nous proposons d'ajouter un considérant supplémentaire dans le préambule en ligne avec le principe 2.2 de la recommandation sur le profilage: « Les Etats membres devraient encourager l'élaboration et la mise en œuvre de procédures et de systèmes respectant la protection de la vie privée et des données à caractère personnel, dès la phase de conception, notamment grâce à l'utilisation de technologies renforçant la protection de la vie privée. »

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 in paragraphs 1 and 2 in the measures giving

effect to the provisions of this Convention, according to the **volume or** nature of the data, the nature, scope and purpose of the processing **or if appropriate** 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.~~ and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects

4-3. Chaque Partie peut, eu égard aux risques encourus pour les intérêts, droits et libertés fondamentales des personnes concernées, adapter l'application des dispositions des paragraphes 1 et 2, dans les mesures prises pour donner effet aux dispositions de la présente Convention, ~~prendre les mesures nécessaires afin d'adapter l'application des dispositions des paragraphes précédents~~ en fonction **du volume ou** de la nature des données, la nature, la portée et la finalité du traitement **ainsi que , ou si cela est approprié,** de la taille des responsables du traitement, ou le cas échéant des sous-traitants, ~~du volume et de la nature des données traitées, ainsi que de, manière générale, des risques pour les intérêts, droits et libertés fondamentales des personnes concernées.~~

Add « volume » before nature of the data / ajouter « volume » avant nature des données

The size of the controller does have only a circumstantial importance. Therefore we propose to take in account the size only if it's appropriate, for example if a small family firm is processing only personal data concerning its clients.

La taille du responsable du traitement revêt une importance relative. Nous proposons dès lors de prendre en compte la taille uniquement si cela est approprié, par exemple si une petite entreprise familiale ne traite que des données clients.

Art. 12bis - Supervisory authorities / Autorités de contrôle

2 To this end, such authorities:

...

c. shall have the powers to **issue decisions and** 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 may in particular sanction administrative offences;~~

2 A cet effet, ces autorités :

c. disposent du pouvoir ~~de prononcer des décisions relatives au droit interne~~ **de prononcer des décisions et de prendre des mesures de sanction, le cas échéant en matière administrative, en cas de violation de la loi** donnant effet aux dispositions de la présente Convention ~~et peuvent notamment sanctionner les infractions administratives ;~~

We propose to keep the possibility for the authority to issue decisions.

Nous proposons de maintenir la possibilité de prendre des décisions.

e. **shall be responsible for raising awareness of and providing information on data protection 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;

e. sont chargées de sensibiliser **et de fournir des informations sur la protection des données**, ainsi que de sensibiliser les responsables de traitement et les sous-traitants aux responsabilités qui leur incombent en vertu de la présente Convention ; une attention particulière sera portée au droit à la protection des données des enfants. ~~sensibiliser et d'éduquer à la protection des données~~

We propose to take into account not only children but also other special categories of data subjects.

Nous proposons de prendre en compte non seulement les intérêts des enfants mais aussi d'autres catégories de personnes concernées.

2bis. ~~The competent supervisory authorities shall be consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data~~ **be consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data** ~~be consulted on proposals for any legislative or 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.~~

2bis. Les autorités de contrôle compétentes doivent être consultées sur toute proposition législative ou administrative, impliquant des traitements de données à caractère personnel susceptibles ~~de gravement affecter les personnes concernées en vertu de la nature, la portée ou des finalités d'un tel traitement.~~

It's an important task which allow the DPAs to exercise an a priori control. It must not be restricted to situation severely affected data subjects. This right already exist in many law without restrictions.

Il s'agit d'une tâche importante qui permet aux autorités de protection des données d'exercer un contrôle a priori. Cette compétence ne doit pas être restreint à des situations qui affectent gravement les personnes concernées. Ce droit existe déjà dans de nombreuses lois sans restrictions.

4 The supervisory authorities shall act with **complete** independence and be impartial 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.~~ **They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers**

4 Les autorités de contrôle doivent agir **en toute indépendance et impartialité** accomplissent leurs fonctions et exercent leurs pouvoirs en toute indépendance. Elles ne sollicitent ni n'acceptent d'instructions dans l'accomplissement de leurs fonctions et l'exercice de leurs pouvoirs. **Elles ne sollicitent ni n'acceptent d'instructions dans l'accomplissement de leurs fonctions et l'exercice de leurs pouvoirs.**

*We propose to maintain the word **complete** (see art. 1.3 Additional Protocol) and the last sentence (at least in the Explanatory memorandum).*

Nous proposons de maintenir les termes “en toute” (voir art. 1.3 du protocole additionnel) et la dernière phrase (au moins dans l’exposé des motifs).

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, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.

5 Chaque Partie s’assure que les autorités de contrôle disposent des ressources nécessaires à l’accomplissement effectif de leurs fonctions et à l’exercice de leurs pouvoirs. humaines, techniques et financières adéquates et des infrastructures nécessaires pour accomplir leurs fonctions et exercer leurs pouvoirs de manière indépendante et effective.

For the EM: supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively

Pour l’exposé des motifs: ressources humaines, techniques et financières adéquates et des infrastructures nécessaires pour accomplir leurs fonctions et exercer leurs pouvoirs de manière indépendante et effective.

5bis Each supervisory authorities shall prepare and publish an periodical draw up a public report outlining its activities and shall see to it that transparency on their activities be ensured

5bis Chaque Les autorité de contrôle établissent doit préparer et publier un rapport d’activité **périodique annuel** et veillent à garantir la transparence de leur activité.

We propose a periodical and not an annual report to take in account the national specificities

Nous proposons une obligation de rapport périodique et non annuel pour tenir compte des spécificités nationales.

7 In accordance with the provisions of Chapter IV, the supervisory authorities shall cooperate with one another to the extent necessary for the performance of their duties, in particular by:

a ~~providing mutual assistance and cooperating with each other by exchanging relevant and 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~~ **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;**

7 Conformément aux dispositions du chapitre IV, les autorités de contrôle coopèrent entre elles

dans la mesure nécessaire à l'accomplissement de leurs fonctions, notamment en :

a. ~~s'accordant mutuellement assistance par l'échange d'informations pertinentes et utiles et la coopération~~ échangeant toute information utile, en particulier en prenant, conformément à leur droit interne et aux seules fins de la protection des données à caractère personnel, toutes mesures appropriées pour fournir des informations de fait concernant un traitement déterminé effectué sur son territoire à l'exception toutefois des données à caractère personnel faisant l'objet de ce traitement, à moins que ces données ne soient indispensables pour la coopération ou que la personne concernée y ait préalablement explicitement consenti de manière non-équivoque, spécifique, libre et éclairée **échangeant toute information utile, en particulier en prenant, conformément à leur droit interne et aux seules fins de la protection des données à caractère personnel, toutes mesures appropriées pour fournir des informations de fait concernant un traitement déterminé effectué sur leur territoire à l'exception toutefois des données à caractère personnel faisant l'objet de ce traitement, à moins que ces données ne soient indispensables pour la coopération ou que la personne concernée y ait préalablement explicitement consenti de manière non-équivoque, spécifique, libre et éclairée;**

We propose to maintain the initial version. Those details are already in the existing convention (art. 13, 3, b) and are absolutely necessary to specify the framework and the extent of the cooperation.

Nous proposons de maintenir le texte initial du T-PD. Ces détails figurent déjà dans la convention actuelle (art. 13, 3 b) et sont absolument nécessaires pour déterminer le cadre et l'étendue de la coopération.

UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE

The United States would like to re-submit to the CAHDATA group our previous submission made to the T-PD committee in June 2012. This document, in turn, references a previous submission we had made in June 2011 (see footnote 1).

Lara Ballard
Special Advisor for Privacy and Technology
U.S. Department of State

Comments of the United States of America on the Modernisation of Convention 108: New Proposals

Introduction

The United States of America welcomes the opportunity to submit comments on the proposals for the Modernization of Convention 108 contained in Document T-PD-BUR (2012)01Rev2_en, circulated on 27 April 2012. The United States applauds the crucial work of the Consultative Committee for Convention 108, and shares the Council of Europe's commitment to developing new mechanisms to promote interoperability in order to protect privacy in an age of global data flows. The following comments incorporate by reference the United States' previous submission of March 10, 2011.¹

As the United States notes in its February 2012 report *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*,

[C]ross-border data flows are a vital component of the domestic and global economies. Differences in national privacy laws create challenges for companies wishing to transfer personal data across national borders. Complying with different privacy laws is burdensome for companies that transfer personal data as part of well-defined, discrete data processing operations because legal standards may vary among jurisdictions, and companies may need to obtain multiple regulatory approvals to conduct even routine operations. Though governments may take different approaches to meeting these challenges, it is critical to the continued growth of the digital economy that they strive to create interoperability between privacy regimes.²

The United States, despite not having joined Convention 108, respects the approach to privacy and trans-border data flows that was pioneered by the Council of Europe with the creation of Convention 108 in 1981, and takes note of the common ancestry shared between Convention 108 and the 1980 OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. In 2005, the OECD Guidelines' Basic Principles of National Application were adapted for use within the Asia-Pacific Economic Cooperation (APEC) to form the basis for the APEC Privacy Framework. Between 2005 and 2011, a dedicated group of APEC member economies—including but not limited to Australia, Canada, Chile, Chinese Taipei, Hong Kong, Japan, Korea, Mexico, New Zealand, Peru, the Philippines, the United States and Vietnam—developed the APEC Cross-Border Privacy Rules (CBPR), which were finalized and publicly announced during the APEC Leaders' Summit in November 2011.

¹ The March 10, 2011 comments are available at page 444 of the Consultation concerning the modernisation of Convention 108: results, T-PD-BUR(2011) 01 MOS rev 6, June 2011, available at http://www.coe.int/t/dgh/standardsetting/dataprotection/TPD_documents/T-PD-BUR_2011_01_%20MOS6%20Results.pdf. We also refer you to comments submitted to the Council of Europe by the U.S. Federal Trade Commission. See U.S. Federal Trade Commission Staff Comments to the Council of Europe's Consultative Committee on the Modernization of Convention 108 (March 9, 2011), available at <http://www.ftc.gov/os/2011/03/110309staffcommentconvention.pdf>.

² *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (hereinafter "Privacy and Innovation Blueprint"), February 23, 2012, p. 31, available at <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

The United States sees a number of advantages to the APEC approach, which does not at all contradict the Convention 108 approach; indeed, the two approaches could complement each other. The APEC approach is not one of treaty obligations between nation-states. It is an arrangement between member *economies* (which gives certain economies a unique opportunity to participate) that is agnostic as to what sorts of domestic privacy legislation each economy must have in place. It does not seek to harmonize or homogenize domestic privacy legislation; rather, it focuses more narrowly on the issue of how to ensure a basic consistency of consumer privacy protections as data moves from one member economy to the other. It does so by encouraging each member economy to implement the APEC Privacy Principles³ using any combination of domestic legal authority and private oversight mechanisms that is available and effective.

The APEC CBPRs are a system for businesses to transfer their data across borders within the APEC region. To participate, a member economy must have a Privacy Enforcement Authority with “the ability to take enforcement actions under applicable domestic laws and regulations that have the effect of protecting personal information consistent with the CBPR program requirements.”⁴ A “Privacy Enforcement Authority” is defined as “any public body that is responsible for enforcing Privacy Law, and that has powers to conduct investigations or pursue enforcement proceedings.”⁵ The emphasis is not on the form of the privacy law or the nature of the enforcement authority, but on the practical effect. While the decision to participate in the system is voluntary, once an organization has committed to participate, the rules are binding and enforceable.

Private multinational organizations that choose to participate in the APEC CBPR system (“Participants”) must submit to a rigorous certification process conducted by an Accountability Agent.⁶ An Accountability Agent can be either a public or private enforcement body. However, in order to be certified by APEC, the Accountability Agent must “be free of actual or potential conflicts of interest,” and be capable of (1) evaluating applicants to become Participants against the Intake Questionnaire; (2) providing ongoing monitoring and compliance review of its Participants; (3) conducting re-certification and annual attestation; and (4) providing a mechanism to receive and investigate complaints about Participants and to resolve disputes between complainants and Participants in relation to non-compliance with its program requirements, as well as a mechanism for cooperation on dispute resolution with other Accountability Agents recognized by APEC economies when appropriate and where possible.⁷

The APEC CBPR’s complaint resolution mechanisms are intended to work seamlessly and in trans-border fashion based on two aspects of the system: (1) the Accountability Agents, whose enforcement authority over the Participants arises from their contractual relationship with the Participants and without regard to national jurisdiction; and (2) the Cross Border Privacy Enforcement Arrangement (CPEA), which provides a framework for trans-border cooperation between Privacy Enforcement Authorities. Privacy Enforcement Authorities can also rely on

³ The APEC Privacy Principles are available at http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/ECSG/05_ecsg_privacyframewk.ashx.

⁴ See attached APEC Cross-Border Privacy Rules System Policies, Rules and Guidelines, para. 44.

⁵ *Id.*, para. 42.

⁶ See attached Intake Questionnaire.

⁷ See attached Accountability Agent Application for APEC Recognition, Annex A: Accountability Agent Recognition Criteria

Accountability Agents to extend their own jurisdictional reach and limited resources by allowing the Accountability Agents to provide at least a preliminary dispute resolution mechanism; consumer disputes or instances of non-compliance with the program requirements by participating businesses that are not satisfactorily resolved by the Accountability Agents can then also be addressed through dispute resolution mechanisms or law enforcement measures that exist in domestic legislation.

In order to participate in the APEC CBPR, an APEC Member Economy must meet the following conditions, which are to be conveyed to the APEC CBPR Joint Oversight Panel:

- (1) It must have at least one Privacy Enforcement Authority in that Economy that is a participant in the CPEA;
- (2) It must make use of at least one APEC recognized Accountability Agent; and
- (3) It must explain to the APEC CBPR Joint Oversight Panel how the CBPR System program requirements may be enforced in that Economy.

The Joint Oversight Panel then must formally approve the Member Economy's participation and notify the Chair of APEC's Electronic Commerce Steering Group.⁸

An analysis of the APEC Privacy Principles and CBPR raises several issues that are useful to highlight with respect to the Council of Europe's proposed modernization of Convention 108. First, in light of the stringent requirements with respect to privacy compliance in the APEC system, the Council of Europe may wish to consider whether a member economy's participation in the APEC CBPR project is sufficient to satisfy the requirements of Convention 108, as to transfers made using that framework. Second, we suggest a few substantive edits to the Council of Europe's proposal that would make it more interoperable with APEC and other such systems. Third, we suggest that the Council of Europe consider the advisability of incorporating codes of conduct, like the APEC model, as a basis for cross-border data transfers.

Overlap Between APEC CBPR and Convention 108 Compliance; Suggestions for Explanatory Memorandum

Considerable overlap between the APEC CBPR and Convention 108 suggests that participation in the former could be taken as evidence of compliance with the latter; whether and to what extent Member Economy participation in the APEC CBPR would suffice as evidence of compliance with Convention 108 is of course for the Council of Europe to decide. The Charter of the APEC CBPR Joint Oversight Panel makes clear that nothing in the charter is intended to "[c]reate any binding obligations on APEC Economies and/or their government agencies, or affect their existing rights and obligations under international or domestic law." However, the United States respectfully submits that a decision by a Member Economy to participate in APEC expresses a serious commitment to privacy, and should be given significant weight in making any determination as to whether most or all of the requirements of Convention 108 have also been met. Specifically, the following proposals contained in T-PD-BUR(2012)01Rev2_en, if implemented and adopted as revisions to Convention 108, suggest considerable overlap with the APEC CBPR requirements, and the CoE may wish to specifically acknowledge this overlap in an Explanatory Memorandum.

⁸ APEC CBPR Privacy Rules and Guidelines, Annex A: Charter of the APEC CBPR Joint Oversight Panel.

- Proposed Article 8bis “Each Party shall provide that the controller is responsible for ensuring respect for the right to the protection of personal data at all stages of the processing....The controller shall establish internal mechanisms to verify and demonstrate to the data subjects and to the supervisory authorities provided for in Article 12 bis of this Convention the compliance of the data processing for which he/she is responsible with the applicable law.” Any data controller that is certified for participation in the APEC CBPR program would appear to easily satisfy this criteria.
- Proposed Article 12 paragraph 3(b) reference to “standardized or ad hoc legal measures, such as contract clauses, internal rules or similar measures that are binding, effective and capable of effective remedies, implemented by the person who discloses or makes personal data accessible and by the recipient.” Any data controller that is an APEC CBPR Participant is legally bound to comply with the APEC CBPR program requirements and could therefore be considered as having met this criteria.
- Proposed Article 12bis, paragraph 5 requirement that “Each party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to accomplish their mission and exercise their powers autonomously and effectively.” The certification that a Member Economy must make to the APEC CBPR Joint Oversight Panel, as to the existence of a Privacy Enforcement Authority that participates in the CPEA, and the Member Economy’s willingness to rely upon at least one Accountability Agent (which, as noted above, effectively extends the resources of the Privacy Enforcement Authority, particularly with regard to trans-border complaints), should satisfy this requirement.
- Proposed Article 13 paragraph 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”). This aligns with the APEC requirement that

APEC Economies will establish a publicly accessible directory of organizations that

have been certified by Accountability Agents as compliant with the CBPR System. The directory will include contact point information that consumers can use to contact participating organizations. Each organization’s listing will include the contact point information for the APEC-recognized Accountability Agent that certified the organization and the relevant Privacy Enforcement Authority. Contact point information allows consumers or other interested parties to direct questions and complaints to the appropriate contact point in an organization or to the relevant Accountability Agent, or if necessary, to contact the relevant Privacy Enforcement Authority.⁹

Moreover, given that the APEC directory will be publicly accessible, this should suffice as communication to the Secretary General of the Council of Europe.

In addition, the proposed Article 19 paragraph h, which assigns the Consultative Committee the task of “review[ing] the implementation of this Convention by the Parties in accordance with the provisions of Article 4.3,” appears to be a new obligation for which the Consultative Committee might wish or need to leverage existing outside resources. Under the APEC CBPR Joint Oversight Panel Charter, the Joint Oversight Panel will, inter alia:

⁹ APEC CBPR Policies, Rules and Guidelines, para. 22.

Collect complaint statistics from recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;

Review any reported material change by the recognized Accountability Agent (e.g. ownership, structure or policies) as required under the Accountability Agent Recognition Criteria and report to APEC Economies its recommendation as to whether such change impacts the appropriateness of recognizing the Accountability Agent as compliant with the requirements of the CBPR System; and

Consider and recommend suspension of the recognition of an Accountability Agent at any time;

In addition, under the Charter,

Participation by an APEC Economy in the CBPR System may be suspended or terminated by a consensus determination by the other APEC Economies that one or more of the following conditions have been met:

- i. Revocation, repeal or amendment of any domestic laws and/or regulations having the effect of making participation in the APEC CBPR System impossible;
- ii. The CBPR Participant's Privacy Enforcement Authority as defined in paragraph 4.1 of the CPEA ceases participation pursuant to paragraph 8.2 of the CPEA; or
- iii. Dissolution or disqualification of a previously recognized Accountability Agent where this function is provided exclusively in the CBPR Participant's Economy by that entity.

If there is any participating APEC Member Economy that is also party to Convention 108, all of this information would appear to be quite pertinent to the work of the CoE's Consultative Committee.

Suggestions on Proposed Changes to Convention 108

The United States also takes note of a degree of overlap between the underlying APEC Privacy Principles and Convention 108's key terms and definitions. However, a few key changes to the CoE's proposals, as described below, could greatly increase interoperability between the two.

Article 5 Legitimacy of Data Processing and Quality of Data, Article 12(4)(a) Trans-Border Data Transfers

Proposed Article 5 (Legitimacy of data processing and quality of data), paragraph 2, suggests that data processing may only be carried out on two bases: (a) the data subject's consent, or (b) "as provided for under domestic law for an overriding legitimate interest or is necessary to comply with legal obligations or contractual obligations binding the data subject." Proposed Article 12(4) contains similar restrictions on the trans-border transfer of data. The United States has some suggestions for both (a) and (b) and suggests an additional ground for both processing and transfer.

Article 5(2)(a) Consent

Under the proposed Article 5(2)(a), consent may only serve as a basis for processing if it is “freely given,” “explicit,” “specific,” and “informed” (proposed Article 12(4) (a) references “specific, free, and explicit consent” within the context of trans-border transfers). Similarly, the U.S. Federal Trade Commission (FTC), has concluded that *affirmative express* consent is appropriate before companies (1) use consumer data in a materially different manner than claimed when the data was collected; or (2) collect sensitive data for certain purposes.¹⁰

Although the concept of consent has been explored in detail in domestic contexts, reaching a global consensus on these issues could be difficult, as the application of this concept has varied widely in the EU and elsewhere...¹¹ In the APEC Privacy Framework, “consent” is referred to under the Principle entitled “Uses of Personal Information,” but the term is not defined in the principles. In the U.S. Privacy and Innovation Blueprint, consent is generally treated as highly contextual.¹²

Given that Convention 108 is designed to apply in a wide variety of both public and private contexts, the United States suggests that the proposed Article 5(2)(a) be shortened to “the data subject has given his/her consent.” The concepts of “freely given,” “explicit,” “specific” and “informed,” which are all important to meaningful consent, should then be explained in greater detail in an Explanatory Memorandum and perhaps compared and contrasted with the permissible uses of the “legitimate interest” exception in proposed Article 5(2)(b). It is entirely possible that what some countries and/or APEC member economies would justify on the basis of “consent,” others would justify on the basis of “legitimate interest,” but they would ultimately reach the same conclusion as to the legitimacy of the processing.

Article 5(2)(b) Legitimate Interests

The proposed phrasing of Convention 108 Article 5(2)(b), “provided for by domestic law for an overriding legitimate interest,” might reflect underlying assumptions that are somewhat unique to European law. The laws of non-European countries sometimes operate under the presumption that processing is legal under domestic law unless deemed illegal, whereas the proposed Article 5(2)(b) presumes that all processing will be illegal unless deemed legal. This appears to be a far more restrictive formulation of the “legitimate interest” exception than exists in the EU’s proposed Regulation Article 6(1)(f), which does not require that the “legitimate interest” be set forth in domestic law (see below). The United States suggests that the phrase “provided for by domestic law” be omitted and that the term “overriding” either be explained in the Explanatory Memorandum or also omitted.

¹⁰ See FTC Report, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (“FTC Report”), March 2012, p. 60, available at <http://ftc.gov/os/2012/03/120326privacyreport.pdf> (emphasis added).

¹¹ Even within the European Union, which is governed by the 2002 e-Privacy Directive (as amended in 2009 to address personal data collection and use on a user’s computer or other device), some member states are implementing the so-called 2009 “Cookie Directive” by requiring express consent in all instances, while others allow for implied consent or take a contextual approach.

¹² See *generally* Privacy and Innovation Blueprint, pp. 11-19 (in particular, the principle of “Respect for Context”).

Article 5(2) Other Bases for Processing

The EU's proposed Regulation, Article 6(1), lists a number of bases for lawful processing of personal data, including where:

- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (f) processing is necessary for the purposes of the legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

The CoE's formulation, by contrast, does not reflect the legitimacy of processing in order to protect the vital interests of data subjects, nor does it reflect the legitimacy of processing "when necessary to provide a service or product requested by the individual," as articulated in Principle 4 of the APEC Privacy Principles (Uses of Personal Information).

Article 6 Processing of Sensitive Data

The United States supports the proposed change to Article 6 (Processing of sensitive data, formerly "special categories of data") in that the proposal suggests that the sensitivity of data should be considered in light of whether "their processing presents a serious risk to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination." The U.S. FTC regards certain categories of data as per se sensitive; namely, data pertaining to children, health data, financial data, Social Security numbers, and precise geolocation data.¹³ The EU has also recognized that certain types of data are inherently sensitive. In the global context, the APEC Privacy Framework does not delineate categories of data deemed per se "sensitive" as, again, there would most likely be no consensus on this issue among a broad array of economies.

¹³ See FTC Report, pp. 5-8 and 47-48.

Presumably, the underlying idea behind the CoE's delineation of "sensitive" categories of data, and the idea more conducive to global consensus, is that special precautions should be undertaken with regard to the types of data that are more likely to directly impact the legitimate rights or interests of data subjects. In some countries or APEC Member Economies, one's religious or other beliefs or trade union membership, for example, might place a data subject in danger of discrimination or even physical harm, whereas in other countries such data might be considered less troubling. Thus, to reach global consensus, it might be best not to create a comprehensive list of categories of sensitive data, which would allow national authorities to continue to address these issues based on their own analysis of the risk, cultural norms, and national interests.

An alternative articulation of Article 6 might read:

The [processing] of certain categories of personal data shall be subject to special restrictions or safeguards where such processing presents a serious risk to the interests, rights, and fundamental freedoms of the data subject. The designation of certain categories of personal data as sensitive under domestic law shall be made in light of the nature, likelihood and severity of the harm threatened by the [processing] of such data.

An explanatory memorandum could then set forth a number of examples of how particular categories of data (such as criminal convictions, trade union memberships, etc.) have the capacity to cause serious harm in particular contexts.

Article 7 Data Security / Article 12bis Supervisory Authorities

The proposal for amending Article 7 contains a new requirement that the controller "shall notify, without delay, at least the supervisory authorities within the meaning of Article 12bis of this Convention of any violation of data which may seriously interfere with the fundamental rights and freedoms of the data subject." The proposed Article 12bis sets forth a number of requirements for supervisory authorities, including that supervisory authorities "shall accomplish their duties and exercise their powers in complete independence. They shall neither seek nor accept instructions from anyone."

The United States is a strong supporter of data breach notification requirements and is generally supportive of such a requirement being added to Convention 108. The problematic aspect of this proposal, from the U.S. perspective (and possibly the perspective of other APEC Member Economies), is that data breaches often both have cyber security and privacy aspects, and accordingly, different types of reporting requirements and obligations for different sectors of activity that should not be set into conflict with one another. For example, in the U.S. Department of State and in many other U.S. federal agencies, internal regulations generally require that all data breaches be reported promptly to the designated Information Systems Security Officer (ISSO) and/or the Computer Emergency Response Team (CERT); if the data breach involves personal data, there are additional requirements and oversight bodies that become involved. The Article 7 proposal, particular when read in light of the Article 12bis proposal, appears to place sole responsibility for responding to both the cyber security and privacy-related aspects of data breaches on a single privacy enforcement authority. Moreover, the two proposed articles, respectively, use the terms "fundamental rights" and "complete independence," terms which may have resonance within Europe but which seem to foreclose non-European approaches to the management of data breaches, as well as alternative privacy oversight mechanisms. Moreover, the United States has difficulty understanding how a supervisory authority could work with a multi-disciplinary group in a way

necessary to investigate and respond to a complex data breach scenario while “neither seek[ing] nor accept[ing] instructions from anyone.”

Codes of Conduct

Finally, we note that the APEC CBPR framework, described above, is an example of an enforceable code of conduct or certification scheme that effectively facilitates cross-border data transfers while ensuring privacy protections for consumers’ personal data between jurisdictions with different privacy frameworks. We believe that the APEC system has tremendous potential to facilitate accountable and efficient data transfers within the APEC region. All stakeholders in such a system could benefit significantly—consumers because they are dealing with accountable organizations who have opted into an efficient privacy management system that includes effective complaint resolution procedures; companies because the system creates greater efficiency, uniformity and predictability with respect to their privacy and data security requirements; and privacy enforcement authorities, such as the FTC, because an efficient self-regulatory system, coupled with effective backstop enforcement contingencies, improves the effectiveness of their privacy enforcement missions.

This framework, and other similar models, significantly enhances global interoperability, which has become increasingly important to ensure the free flow of information. We think it would be useful for the COE to consider the ability to acknowledge such codes of conduct and certification schemes as a proper basis for cross-border transfers.

Conclusion

The United States again thanks the Council of Europe for the opportunity to comment on its revisions to Convention 108 and looks forward to the future work of rediscovering our shared privacy heritage.