
Ad hoc Committee on Data Protection (CAHDATA) – Draft Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108)

Working document containing the draft Protocol and highlighting reservations that have been made thereon.

Preamble

The member States of the Council of Europe and the other Parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, opened for signature in Strasbourg on 28 January 1981 (hereinafter referred to as “the Convention”),

Having regard to Resolution No. 3 on data protection and privacy in the third millennium adopted at the 30th Council of Europe Conference of Ministers of Justice (Istanbul, Turkey, 24-26 November 2010);

Having regard to Resolution 1843 (2011) of the Parliamentary Assembly of the Council of Europe on “The protection of privacy and personal data on the Internet and online media” and Resolution 1986 (2014) on “Improving user protection and security in cyberspace”;

Having regard to Opinion No. ... (2015) adopted by the Parliamentary Assembly of the Council of Europe on ... 2015;

Considering that new challenges to the protection of individuals with regard to the processing of personal data have emerged since the Convention was adopted;

Considering the need to ensure that the Convention continues to play its pre-eminent role in protecting individuals with regard to the processing of personal data, and more generally in protecting human rights and fundamental freedoms,

Have agreed as follows:

Article 1

1. The third recital of the Preamble of the Convention shall be replaced by the following:

“Considering that it is necessary to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on a person’s right to control his or her personal data and the processing of such data;”

2. The fourth recital of the Preamble of the Convention shall be replaced by the following:

“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;”

3. The following recital shall be added after the fourth recital of the Preamble of the Convention:

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

4. The fifth recital of the Preamble of the original Convention shall be deleted. New sixth and seventh recitals shall be added, which read as follows:

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

“Recognising the interest of a reinforcement of international co-operation between the Parties to the Convention;”

Article 2

The text of Article 1 of the Convention shall be replaced by the following:

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

Article 3

1. Littera b of Article 2 of the Convention shall be replaced by the following:

“b. “data processing” means any operation, or set of operations, which is performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data;”

2. Littera c of Article 2 of the Convention shall be replaced by the following:

“c. where automated processing is not used, data processing means an operation or set of operations performed upon personal data within a structured set of such data which are accessible or retrievable according to specific criteria;”

3. Littera d of Article 2 of the Convention shall be replaced by the following:

“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;”

4. The following new litterae shall be added after littera d of Article 2 of the Convention:

“e. “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;

- f. “processor” means a natural or legal person, public authority, service, agency or any other body which processes personal data on behalf of the controller.”

Article 4

1. Paragraph 1 of Article 3 of the Convention shall be replaced by the following:

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

2. Paragraph 2 of Article 3 of the Convention shall be replaced by the following:

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

3. Paragraphs 3 to 6 of Article 3 of the Convention shall be deleted.¹

Article 5

The title of Chapter II of the Convention shall be changed to the following:

“Chapter II – Basic principles for the protection of personal data”.

Article 6

1. Paragraph 1 of Article 4 of the Convention shall be replaced by the following:

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

2. Paragraph 2 of Article 4 of the Convention shall be replaced by the following:

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

3. A new paragraph shall be added after paragraph 2 of Article 4 of the Convention:

“3. Each Party undertakes:

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

Article 7

1. The title of Article 5 shall be changed to the following:

“Article 5 – Legitimacy of data processing and quality of data”.

2. The text of Article 5 of the Convention shall be replaced by the following:

“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, whether public or private, 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 unambiguous² consent of the data subject or of some other legitimate basis laid down by law.

¹ Outstanding issue: Reservation by the Russian Federation (see document DD(2016)172).

² Outstanding issue: Reservation of the European Union in order to ensure consistency with the European Union reform which still has to decide if the qualification of consent should be "unambiguous" or "explicit".

3. Personal data undergoing processing shall be processed lawfully.
4. Personal data undergoing processing shall be:
 - a. processed fairly and in a transparent manner;
 - b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes; further processing for historical, statistical and scientific purposes is, subject to appropriate safeguards, compatible with those purposes;³
 - c. adequate, relevant and not excessive⁴ in relation to the purposes for which they are processed;
 - d. accurate and, where necessary, kept up to date;
 - e. preserved in a form which permits identification of the data subjects for no longer than is necessary for the purposes for which those data are processed.”⁴

Article 8

The text of Article 6 of the Convention shall be replaced by the following:

“1. The processing of:

- genetic data;
- personal data relating to offences, criminal proceedings and convictions, and related security measures;
- biometric data uniquely identifying a person;
- personal data for the information they reveal relating to racial origin, political opinions, trade union membership, religious or other beliefs, health or sexual life;

shall only be allowed where specific and additional appropriate safeguards are enshrined in law, complementing those of this Convention.”⁵

2. Such safeguards shall guard against the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.”

Article 9

The text of Article 7 of the Convention shall be replaced by the following:

“1. Each Party shall provide that the controller, and where applicable the processor, takes appropriate security measures against risks such as accidental or unauthorised access to, destruction, loss, use, modification or disclosure of personal data.

2. Each Party shall provide that the controller shall notify, without delay, at least the competent supervisory authority within the meaning of Article 15 of this Convention, of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.”

Article 10

A new Article 8 shall be added after Article 7 of the Convention as follows:

“Article 8 – Transparency of processing

1. Each Party shall provide that the controller informs the data subjects of:

³ Outstanding issue: Reservation of the European Union on Art. 5.4.b and 5.4.e in order to ensure consistency with the European Union reform.

⁴ The Explanatory Report will clarify that “not excessive” refers both to the quantity and quality of the data concerned.

⁵ Outstanding issue: Reservation of the European Union in order to ensure consistency with the European Union reform.

- a. the controller's identity and habitual residence or establishment;
- b. the legal basis and the purposes of the intended processing;
- c. the recipients or categories of recipients of the personal data, if any; and
- d. the means of exercising the rights set out in Article 9;

as well as any necessary additional information in order to ensure fair and transparent processing of the personal data.

- 2. Paragraph 1 shall not apply where the data subject already has the relevant information.
- 3. 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 11

- 1. Article 8 will be renumbered to Article 9 of the Convention and the title shall be changed to the following:

"Article 9 – Rights of the data subject".

- 2. The text of the original Article 8 of the Convention shall be replaced by the following:

"Every individual shall have a right:

- a. not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration;
- b. to obtain, on request, at reasonable intervals and without excessive delay or expense⁶, confirmation of the processing of personal data relating to him or her; the communication in an intelligible form of the data processed; all available information on their origin, on the preservation period as well as any other information that the controller is required to provide in order to ensure the transparency of processing in accordance with Article 8, paragraph 1;
- c. to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her;
- d. to object at any time to the processing of personal data concerning him or her unless the controller demonstrates legitimate grounds for the processing which override his or her interests or rights and fundamental freedoms;⁷
- e. to obtain, on request, free of charge and without excessive delay, rectification or erasure, as the case may be, of such data if these are being or have been processed contrary to the provisions of this Convention;
- f. to have a remedy under Article 12 where his or her rights under this Convention have been violated;
- g. to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 15, in exercising his or her rights under this Convention."

Article 12

A new Article 10 shall be added after the new Article 9 of the Convention as follows:

"Article 10 – Additional obligations

- 1. Each Party shall provide that controllers and, where applicable, processors take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate, in particular to the competent supervisory authority provided for in Article 15, that the data processing under their control is in compliance with the provisions of this Convention.

⁶ Outstanding issue: Reservation of the European Union which prefers the wording "free of charge". The phrase should therefore read "to obtain, on request, at reasonable intervals, free of charge and without excessive delay...".

⁷ Outstanding issue: Reservation of the European Union in order to ensure consistency with the European Union reform.

2. Each Party shall provide that controllers and, where applicable, processors, examine the likely impact of intended data processing on the rights and fundamental freedoms of data subjects prior to the commencement of such processing, and shall design the data processing in such a manner as to prevent or minimise the risk of interference with those rights and fundamental freedoms.

3. Each Party shall provide that controllers, and, where applicable, processors, implement technical and organisational measures which take into account the implications of the right to the protection of personal data at all stages of the data processing.

4. Each Party may, having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, adapt the application of the provisions of paragraphs 1, 2 and 3 in the law giving effect to the provisions of this Convention, according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor.”

Article 13

Articles 9 to 12 of the original Convention shall be renumbered to Articles 11 to 14 of the Convention.

Article 14

1. The text of the original Article 9 of the Convention (new Article 11) shall be replaced by the following:

“1. No exception to the provisions set out in this chapter shall be allowed, except to the provisions of Articles 5, paragraph 4, 7, paragraph 2, 8, paragraph 1 and Article 9 when such an exception is provided for by law and constitutes a necessary and proportionate measure in a democratic society for:⁸

- a. the protection of national security, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences;
- b. the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.

2. Restrictions on the exercise of the provisions specified in Articles 8 and 9 may be provided for by law with respect to data processing for historical, statistical and scientific purposes when there is no recognisable risk of infringement of the rights and fundamental freedoms of data subjects.⁹”

Article 15

The text of the original Article 10 of the Convention (new Article 12) shall be replaced by the following:

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

Article 16

The title of Chapter III shall be changed to the following:

“Chapter III – Transborder flows of personal data”.

Article 17

1. The title of the original Article 12 of the Convention shall be changed to the following:

“Article 14 – Transborder flows of personal data”.

⁸ Outstanding issue: Reservation of the European Union and of its member States in respect of the scope of Article 9, notably with regard to exceptions to Articles 12 and 12bis (new Articles 14 and 15), and with Article 5 as regards whether the requirement of “fair processing” should figure in Article 5.3 or in 5.4.

⁹ Outstanding issue: Reservation of the European Union in order to ensure consistency with the European Union reform.

2. The text of the original Article 12 of the Convention (new Article 14) shall be replaced by the following:

“1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of such data to a recipient who is subject to the jurisdiction of another Party to the Convention. Such a Party may, however, do so if bound by harmonised rules of protection shared by States belonging to a regional international organisation.¹⁰

2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to this Convention, the transfer of personal data may only take place where an appropriate level of protection based on the provisions of this Convention is secured.

3. An appropriate level of protection can be secured by:

- a. the law of that State or international organisation, including the applicable international treaties or agreements; or
- b. ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.

4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of personal data may take place if:

- a. the data subject has given explicit, specific and free consent, after being informed of risks arising in the absence of appropriate safeguards; or
- b. the specific interests of the data subject require it in the particular case; or
- c. prevailing legitimate interests, in particular important public interests, are provided for by law and the transfer constitutes a necessary and proportionate measure in a democratic society.

5. Each Party shall provide that the competent supervisory authority, within the meaning of Article 15 of this Convention, is provided with all relevant information concerning the transfers of data referred to in paragraph 3 littera b and, upon request, paragraphs 4 litterae b and c.

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

7. Exceptions to the provisions of this article are allowed insofar as they constitute a necessary and proportionate measure in a democratic society for the freedom of expression.¹¹”

3. The text of the original Article 12 of the Convention (new article 14) includes the provisions of the Article of the additional Protocol of 2001 (ETS No. 181) on transborder flows of personal data to a recipient which is not subject to the jurisdiction of a Party to the Convention (Article 2 of the additional Protocol).

¹⁰ Outstanding issue: Reservation by the Russian Federation. The provision limiting the obligations of a State Party in the sphere of transborder flows of personal data subject to appropriate rules of an international regional organisation diffuses and weakens the legal regime of the Convention. Furthermore, such a provision de facto creates a “privileged” group of states with a lesser scope of obligations within the framework of the Convention. The Russian Federation therefore proposes to exclude this provision from the text of indent 1 Article 12 of the Convention (proposal to delete the last sentence of this paragraph, starting “Such a party may however [...]”).

¹¹ Outstanding issue: Reservation of the European Union in order to ensure consistency of the text and with the European Union reform. The present text of paragraph 7 is unclear and prejudicial to legal certainty, as it is too broad. Moreover, it is not clear what provisions of this Article may be subject to exceptions, given that paragraphs 1 and 2 cover 2 different situations. Also, paragraph 2 sets a principle, while paragraph 4 constitutes an exception to this principle.

Article 18

A new Chapter IV shall be added after Chapter III of the Convention, as follows:

“Chapter IV – Supervisory authorities”

Article 19

A new Article 15 includes the provisions of the Article of the additional Protocol of 2001 (ETS No.181) on supervisory authorities (Article 1 of the additional Protocol) and reads as follows:

“Article 15 – Supervisory authorities

1. Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this Convention.
2. To this end, such authorities:
 - a. shall have powers of investigation and intervention;
 - b. shall perform the functions relating to transfers of data provided for under Article 14, notably the approval of standardised safeguards;
 - c. shall have powers to issue decisions with respect to violations of the provisions of this Convention and may, in particular, impose administrative sanctions;
 - d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of the provisions of this Convention;
 - e. shall promote:
 - i. public awareness of their functions and powers, as well as their activities;
 - ii. public awareness of the rights of data subjects and the exercise of such rights;
 - iii. awareness of controllers and processors of their responsibilities under this Convention;

specific attention shall be given to the data protection rights of children and other vulnerable individuals.
3. The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.
4. Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their data protection rights and shall keep data subjects informed of progress.
5. The supervisory authorities shall act with complete independence and impartiality in performing their duties and exercising their powers and in doing so shall neither seek nor accept instructions.
6. 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.
7. Each supervisory authority shall prepare and publish a periodical report outlining its activities.
8. Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties and exercise of their powers.
9. Decisions of the supervisory authorities may be appealed against through the courts.
10. In accordance with the provisions of Chapter V, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in particular by:
 - a. providing mutual assistance by exchanging relevant and useful information and co-operating with each other under the condition that, as regards the protection of personal data, all the rules and safeguards of this Convention are complied with;

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

11. The information referred to in paragraph 10 littera a shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given explicit, specific, free and informed consent to its provision.

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

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

Article 20

1. Chapters IV to VII of the original Convention shall be renumbered to Chapters V to VIII of the Convention.
2. Articles 13 to 27 of the original Convention shall be renumbered to Articles 16 to 30 of the Convention.

Article 21

1. Paragraph 2 of the original Article 13 of the Convention (new Article 16) shall be replaced by the following:
 - "2. For that purpose:
 - a. each Party shall designate one or more supervisory authorities within the meaning of Article 15 of this Convention, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;
 - b. each Party which has designated more than one supervisory authority shall specify the competence of each authority in its communication referred to in the previous sub-paragraph."
2. Paragraph 3 of the original Article 13 of the Convention shall be deleted.

Article 22

1. The title of the original Article 14 of the Convention shall be changed to:

"Article 17 – Assistance to data subjects".
2. The text of the original Article 14 of the Convention (new Article 17) shall be replaced by the following:
 - "1. Each Party shall assist any data subject, whatever his or her nationality or residence, to exercise his or her rights under Article 9 of this Convention.
 2. Where a data subject resides in the territory of another Party, he or she shall be given the option of submitting the request through the intermediary of the supervisory authority designated by that Party.
 3. The request for assistance shall contain all the necessary particulars, relating *inter alia* to:
 - a. the name, address and any other relevant particulars identifying the data subject making the request;
 - b. the processing to which the request pertains, or its controller;
 - c. the purpose of the request."

Article 23

1. The term “authorities” in the title of the original Article 15 (new Article 18) shall be changed to “supervisory authorities”.
2. The text of the original Article 15 of the Convention (new Article 18) shall be replaced by the following:
 - “1. A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
 2. In no case may a designated supervisory authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the explicit consent¹² of the data subject concerned.”

Article 24

1. The recital of the original Article 16 (new Article 19) shall be replaced by the following:

“A designated supervisory authority to which a request for assistance is addressed under Article 16 of this Convention may not refuse to comply with it unless:”
2. Littera c of the original Article 16 of the Convention shall be replaced by the following:

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

Article 25

1. Paragraph 1 of the original Article 17 of the Convention (new Article 20) shall be replaced by the following:

“1. Mutual assistance which the Parties render each other under Article 16 and assistance they render to data subjects under Articles 9 and 17 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 terms “his or her” shall replace “his” in paragraph 2 of the original Article 17 of the Convention.

Article 26

The title of the original Chapter V of the Convention shall be changed to the following:

“Chapter VII – Convention Committee”.

Article 27

1. The terms “Consultative Committee” in paragraph 1 of the original Article 18 of the Convention (new Article 21) shall be replaced by “Convention Committee”.
2. Paragraph 3 of the original Article 18 of the Convention (new Article 21) shall be replaced by the following:

“3. The Convention Committee may, by a decision taken by a majority of two thirds of the representatives of the Parties, invite an observer to be represented at its meetings.”
3. A new paragraph 4 shall be added after paragraph 3 of the original Article 18 of the Convention:

¹² Outstanding issue: Reservation of the European Union in order to ensure consistency of the text: prevents confusion with the notion of “explicit consent” as a legitimate ground for the processing of personal data. The European Union proposes replacing it with “express approval”.

“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 28

1. The terms “Consultative Committee” in the recital of the original Article 19 of the Convention (new Article 22) shall be replaced by “Convention Committee”.
2. The term “proposals” in littera a of the original Article 19 of the Convention shall be replaced with the term “recommendations”.
3. References to “Article 21” in littera b and “Article 21 paragraph 3” in littera c of the original Article 19 of the Convention shall be replaced respectively by references to “Article 24” and “Article 24 paragraph 3”.
4. Littera d of the original Article 19 of the Convention shall be replaced by the following:

“d. may express an opinion on any question concerning the interpretation or application of this Convention;”.
5. The following additional litterae shall be added following littera d of the original Article 19 of the Convention:
 - “e. shall prepare, before any new accession to the Convention, an opinion for the Committee of Ministers relating to the level of personal data protection of the candidate for accession and where necessary recommend measures to take to reach compliance with the provisions of this Convention;
 - f. may, at the request of a State or an international organisation, evaluate whether the level of personal data protection the former provides is in compliance with the provisions of this Convention and where necessary recommend measures to take to reach such compliance;
 - g. may develop or approve models of standardised safeguards referred to in Article 14;
 - h. shall review the implementation of this Convention by the Parties and recommend measures to take where a Party is not in compliance with this Convention;
 - i. shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.”

Article 29

1. Paragraph 1 of the original Article 20 of the Convention (new Article 23) shall be replaced by the following:

“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. The terms “Consultative Committee” in paragraph 2 of the original Article 20 of the Convention shall be replaced by “Convention Committee”.
3. Paragraph 3 of the original Article 20 shall be replaced by the following:

...
4. New paragraphs 4 and 5 shall be added after paragraph 3 stating the following:
 - “4. After each of its meetings, the Convention Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of this Convention.
 5. The Convention Committee shall draw up its own Rules of Procedure and establish, in particular, the procedures for evaluation referred to in Article 4, paragraph 3 and for examination of the level of protection referred to in Article 22, on the basis of objective criteria.”

Article 30

1. Paragraphs 1 to 4 of the original Article 21 of the Convention (new Article 24) shall be replaced by the following:

“1. Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.

2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties to this Convention, to the other member States of the Council of Europe, to the European Union and to every non-member State or international organisation which has been invited to accede to this Convention in accordance with the provisions of Article 26.

3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Convention Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

4. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.”

2. Additional paragraphs 7 and 8 shall be added after paragraph 6 of the original Article 21 of the Convention as follows:

“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 of Europe.

8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union or an international organisation may not express its consent to be bound by this Convention without at the same time accepting the amendment.¹³”

Article 31

1. Paragraph 1 of the original Article 22 of the Convention (new Article 25) shall be replaced by the following:

“1. This Convention shall be open for signature by the member States of the Council of Europe and by the European Union. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.”

¹³ Outstanding issue: The Russian Federation proposes to remove indent 8 from the Convention. The concept of de facto attributing binding force to amendments that have not yet entered into force appears unfounded. Furthermore it is hard to see how limiting the right of candidate States Party to adhere to the Convention would facilitate the achievement of the aims and purposes of the Convention. Finally, such a provision does not seem to reflect neither the practice of the Council of Europe, nor, in fact any other international body.

2. The terms “member State” in paragraph 3 of the original Article 22 shall be replaced by “Party”.

Article 32

1. The title and the text of the original Article 23 of the Convention shall be replaced as follows:

“Article 26 – Accession by non-member States and international organisations

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 22.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of any State or international organisation acceding to this Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.”

Article 33

Paragraphs 1 and 2 of the original Article 24 of the Convention (new Article 27) shall be replaced by the following:

“1. Any State, the European Union or other international organisation may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State, the European Union or other international organisation may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.”

Article 34

1. The term “State” in the recital of the original Article 27 shall be replaced by “Party”.
2. References to “Articles 22, 23 and 24” in littera c shall be replaced by references to “Articles 25, 26 and 27”.

Article 35 – 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 for 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 for those States which were Parties to the Convention at the date of opening for signature of this Protocol.

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

5. From the entry into force of this Protocol, with respect to a Party having entered one or more declarations in pursuance of Article 2 of the original Convention, such declaration(s) will lapse.¹⁴

6. From the date of the entry into force of this Protocol, the additional Protocol to the Convention shall be considered an integral part of the Convention as amended by the Protocol.

7. From the date of the entry into force of this Protocol, the Amendments to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, approved by the Committee of Ministers, in Strasbourg, on 15 June 1999, have lost their purpose.

Article 36 – Notifications

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

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Article 35;
- d. the other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at [...], this [...], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to other Parties to the Convention and any State invited to accede to the Convention.

¹⁴ Outstanding issue: Reservation by the Russian Federation (see document DD(2016)172).