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T-PD(2012)11 Mos

**THE CONSULTATIVE COMMITTEE OF THE CONVENTION
FOR THE PROTECTION OF INDIVIDUALS
WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS No. 108]**

**COMITÉ CONSULTATIF DE LA CONVENTION POUR LA PROTECTION
DES PERSONNES A L'EGARD DU TRAITEMENT AUTOMATISÉ DES DONNÉES A
CARACTÈRE PERSONNEL [STE n°108]**

(T-PD)

Modernisation of Convention 108: compilation of comments received

Modernisation de la convention 108 : compilation des commentaires reçus

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AUSTRIA/ AUTRICHE

1) General comments:

The following comments are made with reference to the proposals presented by the Bureau of the T-PD in document **T-PD-BUR(2012)04 rev2 en** of 16 October 2012.

2) Comments on Articles:

Article 5:

An additional letter should be inserted into this Article dealing with the processing of personal data which is “*necessary in order to protect the vital interests of the data subject*”. This specific situation is not covered by letters a.to d. but also needs to be considered (see for example Art. 7 (d) of Directive 95/46/EC).

Article 6:

The meaning of **para 1** is not entirely clear and phrased in a very vague manner; it is not clear which situations should be covered by it. Nearly all data processing may present a serious risk to the interests, rights and fundamental freedoms of data subjects (e.g. data collected during a job interview may entail a risk of discrimination, especially data revealing the sex or age of the candidate). The Republic of Austria therefore suggests either to redraft para 1 in order to make it clearer.

Article 8bis:

According to the present version, the reference “*or where applicable the processor*” in **para 2** should be deleted. However, situations might arise when a processor himself wants to use a sub-processor for certain processing operations (e.g. the processor wants to use a “cloud”). In this case, the risk analysis should be carried out by the processor and not by the controller. Therefore, the reference “*or where applicable the processor*” should not be deleted. This approach is also in line with Art. 33 of the proposed General Data Protection Regulation of the EU.

Para 4 provides for the possibility of derogation to paras 1 to 3. The Republic of Austria is of the opinion that derogation should only be possible in the cases covered by paras 2 and 3. Para 1 covers obligations that each controller – regardless of his size – must be able to fulfil. If derogation from para 1 was possible, it could be argued that a controller might be exempted from his duty to inform data subjects or from his duty to rectify or to erase personal data (arg. “*the controller...shall take...all appropriate measures to implement the provisions giving effect to the principles and obligations [e.g. the right to information] of this Convention...*”).

Article 9:

The legal value added of the phrase “*an accessible and foreseeable law*” in **para 1** is unclear. According to the opinion of the Republic of Austria, each law is per se accessible (at least via an official Gazette) and foreseeable (via the parliamentary discussion process). This phrase should therefore be deleted.

Article 20:

Para 5 refers to the “*present Article*” when dealing with the examination of the level of protection. However, examination of the level of protection is not covered by Art. 20. Therefore, the reference to the “*present Article*” should be replaced by the reference to the corresponding Article of the Convention (probably Art. 19.e).

Article 23:

During the 28th Plenary Meeting of the T-PD it was decided to open Convention 108 for accession of international organisations other than the EU as well. This decision should be reflected in the title and the wording of Art. 23, for example using the following text (like in Document T-PD-BUR(2012)01Rev_en):

*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 any 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 any 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.*

BULGARIA/ BULGARIE

In connection with the sent request for review and comments on the newly proposed texts of Convention 108/81/CE for the protection of individuals with regard to automatic processing of personal data, the Commission for Personal Data Protection would like to make the following comments:

1. **On Art. 6 “Processing of sensitive data”, para.1-** We are of opinion that the
foreseen

definition allows for too broad interpretation, because even in the current legislation the provision of additional protection is not enough ground for sensitive data processing. The processing should be restricted to specific cases, for example, as set in Art.9, para. 2 of the European Commission’s proposal for general Data Protection Regulation.

2. **On Art. 7 “Data Security”, para.2–** we think that in the text „Each Party shall provide
that

the Controller shall notify, without delay, **at least** the supervisory authorities ...”, „at least” doesn’t offer enough guarantees with regard to the individuals’ right to be informed by data breaches, foreseen in para.1. We think that this word should be deleted and the text should be as follows: “Each Party shall provide that the Controller shall notify, without delay, the supervisory authorities and **individuals...**”

3. **On Art.7 bis “Transparency of the processing”, para.2-** “disproportionate efforts”
should be

clarified, because the individuals’ right to be informed is a main right in the privacy and personal data protection field and can be restricted in very limited cases. In this connection, we propose “disproportionate efforts” to be deleted from the text or to be explained in details with specific examples.

4. **On Art. 8 “Rights of data subject”:**

- point b)- the definition “prevailing legitimate grounds” is unclear and subject to interpretation. We suggest the definition to be clarified because in all cases the legitimate ground suggests the existence of legal grounds.

- point e) to be amended as follows:

“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, **as well as by established false or inaccurate information**”.

5. **On Art. 8 bis “Additional obligations”, para.4:**

“Each Party can decide to derogate in full or in part to the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume of data processed and the risks for the interests, rights and fundamental freedoms of

the data subjects"- we think that the personal data controllers' requirements can be reduced, however, the undertaking of measures and the implementation of data processing mechanisms (Art. 8bis, para.1), the assessment of the risk of the negative data protection impact (Art. 8 bis, para.2), the implementation of technologies following the privacy by design principle (Art. 8bis, para.3) should not be derogated. Even if the requirements are reduced, this cannot be done only on the ground of controller's size. In this regard, we propose the text of para.4 to be deleted.

6. **On Art. 9 "Exceptions and restrictions", para.1-** with regard to the proposed exceptions

from the foreseen principles:

- **with regard to Art.5, para.3-** we think that no exceptions from the principles in points a),

b) and d) should be foreseen. In the text should be left: Art. 5, para.3, points c) and e).

- **with regard to Art. 7, para. 2-** should be deleted, because no exception from the obligation to notify the data protection authorities by severe data breaches should exist.

- **with regard to Art. 8, para.a) and g)-** should not be foreseen in the exceptions, because

the individual's right not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having his/her views taken into consideration and the right to benefit, whatever his/her residence, from the assistance of a supervisory authority, should not be restricted.

7. **On Art. 9 "Exceptions and restrictions", para.3** – "Restrictions on the exercise of the provisions specified in Articles7 bis 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"- the processing for statistical and research purposes regardless of its risk is not a ground for restriction of the application of Art. 7 bis and 8. We propose this text to be deleted.

8. **On Art.12 bis "Supervisory authority", para.9:**

"The supervisory authorities shall not be competent with respect to processing carried out by judicial bodies in the exercise of their judicial functions."- we are of the opinion that no exception with regard to the judicial authorities should be foreseen, as such does not exist in the current data protection legislation as well. We suggest the deletion of para.9 of Art. 12 bis from the text.

NETHERLANDS – PAYS-BAS

Article 9 – exceptions and restrictions

1. No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for:
 - a. The protection of 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.
2. No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 6, 7.2, 7bis, 8, 8bis, 12 and 12bis (2) , (3) , (6) and (7) (b) 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.
3. Restrictions on the exercise of provisions specified in Article 12¹ may be admitted when they are provided for by law and constitute a necessary measure in a democratic society for the freedom of expression.
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 purpose of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.

Article 12

...

7. 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.

Article 12bis

...

10. An exception to the principles expressed in sections (2), (3), (6) and (7) (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.

Article 16

...

- c. compliance with the request would be incompatible with the sovereignty, national 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.

¹ Comment: Article 9 covers exceptions to the principles expressed in Chapter II. Article 12 is part of Chapter III. The Netherlands suggests moving any reference exceptions with regard to article 12 to Chapter III. The Netherlands' text proposal thus also refers to article 12 (and 12bis).

ROMANIA/ ROUMANIE

Concerning paragraph 3 of the preamble, where it is stated that it is necessary to guarantee the human dignity and the protection of fundamental rights and liberties, we propose “especially the right of privacy and the right of personal data protection”– in relation to the recognition of those rights in the Universal Declaration of human rights, art. 7 and 8 of European Charter of fundamental rights, art. 16 of the Lisbon Treaty, the recommendations of the Council of Europe.

In Article 3 where it is specified that the provisions of the Convention do not apply to the processing carried out by natural persons for their own use, except the situations in which the data are intentionally disclosed, we suggest to preserve the exception for the clarity of the application of the norm.

At Article 4 paragraph 3, we propose to eliminate the obligation to transmit reports as it implies the increase of the administrative burdens.

In Article 7 bis paragraph 2 we suggest to eliminate exception “where the processing is prescribed by law” and to maintain only the exception of the disproportionate effort, because this would imply the exemption of the data controllers from the public sector and of the ones from a significant part of the private sector from the obligation to inform, which will be to the detriment of the data subjects.

In Article 8 bis paragraph 1, we propose the elimination of the disposition regarding the obligation to demonstrate this aspect also to the data subject as it implies an administrative burden.

In Article 13 paragraph 2 letter a), we propose the elimination of the phrase “more authorities”, in relation to the existence of a single authority to the national level in the member states.

OBSERVERS

ASSOCIATION EUROPEENE POUR LA DEFENCE DES DROITS DE L'HOMME (AEDH)

Préambule

Considérant qu'il est nécessaire, eu égard à la diversification, ~~et~~ à l'intensification et à la mondialisation des traitements de données ainsi que des échanges de données à caractère personnel, de garantir la dignité humaine ainsi que la protection des droits de l'Homme et des libertés fondamentales de chacun, **notamment au moyen du droit de contrôler ses propres données et les usages qui sont faits de telles données** ;
Reconnaissant la nécessité de promouvoir à l'échelle universelle les valeurs fondamentales du respect de la vie privée **et de la protection des données à caractère personnel, favorisant par là même** la libre circulation de l'information entre les peuples ;

Chapitre II – Principes de base pour la protection des données à caractère personnel

Article 5 – Légitimité des traitements de données et qualité des données

2 Chaque Partie prévoit que le traitement de données ne peut être effectué que si :

a. la personne concernée a donné son consentement de manière [explicite, non-équivoque], spécifique, libre et éclairée, ou

Article 6 – Traitement de données sensibles

1. Les traitements de données à caractère personnel pouvant présenter un risque grave pour les intérêts, droits et libertés fondamentales de la personne concernée, notamment un risque de discrimination, ne sont possibles qu'à la condition que le droit applicable prévoit, préalablement à la ratification ou à l'adhésion à la présente Convention, des garanties appropriées, de nature à prévenir ce risque, venant compléter celles de la présente convention.

b les données traitées pour révéler l'origine raciale, les opinions politiques, l'appartenance syndicale, les convictions religieuses ou autres convictions ~~qu'elles révèlent~~, et

Article 7bis - Transparence des traitements

1 Chaque Partie prévoit que le responsable du traitement garantit la transparence du traitement de données en informant les personnes concernées de son identité et sa résidence habituelle ou lieu d'établissement, des finalités des traitements qu'il effectue, sur les données traitées, des destinataires ou catégories de destinataires des données, éventuellement des destinataires de pays étrangers et notamment ceux qui ne sont pas signataires de la présente Convention et des moyens d'exercer les droits énoncés à l'article 8, ainsi que de toute autre information nécessaire pour garantir un traitement loyal et licite des données.

Article 8 – Droits des personnes concernées

c. obtenir, **à sa demande**, à intervalle raisonnable et sans délai ~~ou ni~~ frais excessifs la confirmation ~~de l'existence~~ d'un traitement de données la concernant, la communication sous une forme intelligible des données traitées, **toutes informations disponibles 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** ;

e. obtenir **à sa demande**, le cas échéant, la rectification de ces données ou leur effacement lorsqu'elles ont été traitées en violation des dispositions du droit interne donnant effet **aux dispositions** de la présente Convention, et obtenir réparation en cas de préjudice moral ou financier ;

Article 9 – Exceptions et restrictions

1. Aucune exception aux principes énoncés au présent chapitre n'est admise, sauf aux articles 5.3, 7.2, 7bis et 8, à condition qu'une telle dérogation soit prévue par une loi accessible et prévisible, qu'elle soit soumise au contrôle des citoyens, qu'elle ne viole pas la souveraineté d'autres états, et qu'elle constitue une mesure nécessaire dans une société démocratique :

b. à la protection de la personne concernée et des droits et libertés d'autrui, notamment la liberté d'expression.

2. Des restrictions à l'exercice des dispositions visées à l'article 12 peuvent être également admises lorsqu'elles sont prévues par la loi et constituent une mesure nécessaire à la liberté d'expression dans une société démocratique ~~à la liberté d'expression.~~

Chapitre III - Flux transfrontières de données à caractère personnel

Article 12

1 Les dispositions suivantes s'appliquent à la communication ou à la mise à disposition de données à caractère personnel à un destinataire qui ne relève pas de la juridiction de la Partie où se trouvent ces données.

2. Une Partie ne peut, aux seules fins de la protection des données, interdire ou soumettre à une autorisation spéciale la communication ou la mise à disposition des données à un destinataire relevant de la juridiction d'une autre Partie à la Convention, à moins que la Partie dont émanent les données ne soit régie par des règles de protection régionales harmonisées communes à plusieurs états assurant une protection plus étendue et que la communication ou la mise à disposition des données ne puisse être encadrée par des mesures visées au paragraphe 4.b.

5. Non-obstant les modalités prévues aux paragraphes 2, 3 et 4, chaque Partie peut prévoir que la communication ou la mise à disposition des données peut avoir lieu, si dans un cas particulier non massif ou répétitif :

a) la personne concernée a donné son consentement spécifique, libre et ~~[explicite/non-équivoque]~~, après avoir été informée des risques dus à l'absence de garanties appropriées ;
ou

b) des intérêts spécifiques de la personne concernée le nécessitent ; ou

c) des intérêts légitimes protégés par la loi et répondant aux critères de l'article 9 prévalent.

6. Chaque Partie prévoit que l'autorité de contrôle compétente au sens de l'article 12bis de la Convention soit informée des modalités encadrant les flux de données, notamment des mesures ad hoc prises au sens de l'article 12, paragraphe 4.b.

Elle prévoit également que l'autorité de contrôle puisse exiger de la personne qui communique ou rend accessibles les données ou du destinataire de démontrer la qualité et l'effectivité des mesures prises, ~~ou et~~ que l'autorité de contrôle elle-même puisse interdire, suspendre ou soumettre à condition la communication des données ou leur mise à disposition au sens des paragraphes 4, lettre b ou 5 [lettres a et b].

Article 12 bis Autorités de contrôle

1 Chaque Partie prévoit qu'une ou plusieurs autorités indépendantes sont chargées de veiller au respect des mesures donnant effet, dans son droit interne, aux principes de la présente Convention.

2 A cet effet, ces autorités :

a. disposent de pouvoirs d'investigation et d'intervention sur des traitements de données personnelles présentant des risques d'atteintes aux droits des personnes et d'en publier résultats et recommandations ;

3 Chaque autorité de contrôle **peut être saisie** par toute personne ou toute organisation y ayant intérêt de par son objet, d'une demande relative à la protection de ses droits et libertés fondamentales ou de celle de ses membres à l'égard des traitements de données à

caractère personnel relevant de sa compétence **et informe alors la personne ou l'organisation concernée des suites réservées à cette demande.**

Article 18 – Composition du comité

3 Le comité conventionnel peut, par une décision prise à la **majorité des deux-tiers des représentants des Parties ayant droit de vote**, inviter un observateur tel qu'un état ou une organisation de la société civile impliquée dans l'objet de la présente Convention, en particulier en matière de droits fondamentaux, à se faire représenter à ses réunions.

Article 20 – Procédure

5. Sous réserve des dispositions de la présente Convention, le comité conventionnel établit son règlement intérieur et fixe en particulier les procédures transparentes d'évaluation de l'Article 4.3 et d'examen du niveau de protection des données prévue à l'Article 19 sur la base de critères objectifs, les évaluations et autres documents produits sont rendus publics.

Article 21 – Amendements

8. Si un amendement a été approuvé par le Comité des Ministres, mais n'est pas encore entré en vigueur conformément aux dispositions des paragraphes 6 ou 7, un Etat ou l'Union européenne ou une Institution ou organisation ne peuvent pas exprimer leur consentement à être liés par la Convention sans accepter en même temps cet amendement.

Article 22 – Entrée en vigueur

La présente Convention est ouverte à la signature des Etats membres du Conseil de l'Europe, **de l'Union européenne et d'Etats ou Institutions ou organisations non membres du Conseil de l'Europe ayant participé à l'élaboration du protocole d'amendement ou ayant été invités à adhérer à la Convention ouverte à signature le 28 janvier 1981**. Elle sera soumise à ratification, acceptation ou approbation. Les instruments de ratification, d'acceptation ou d'approbation seront déposés près le Secrétaire Général du Conseil de l'Europe

Article 23 – Adhésion d'Etats non membres

1. Après l'entrée en vigueur de la présente Convention, le Comité des Ministres du Conseil de l'Europe pourra, **après consultation des Parties à la Convention et en avoir obtenu l'assentiment unanime, et à la lumière de l'avis formulé par le comité conventionnel conformément à l'article 19.e**, inviter tout Etat ou tout autre Institution ou organisation non membre du Conseil de l'Europe à adhérer à la présente Convention par une décision prise à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe, et à l'unanimité des représentants des Etats contractants ayant le droit de siéger au Comité **des Ministres**.

Article 24 – Clause territoriale

1. Tout Etat ou l'Union européenne ou tout autre Institution ou organisation peuvent, au moment de la signature ou au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, désigner le ou les territoires auxquels s'appliquera la présente Convention.
2. Tout Etat ou l'Union européenne ou tout autre institution ou organisation peuvent, à tout autre moment par la suite, par une déclaration adressée au Secrétaire Général du Conseil de l'Europe, étendre l'application de la présente Convention à tout autre territoire désigné dans la déclaration. La Convention entrera en vigueur à l'égard de ce territoire le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la déclaration par le Secrétaire Général.

EUROPEAN DATA PROTECTION SUPERVISOR (EDPS)

Preamble

Considering that it is necessary, given the diversification and intensification 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 **recognition of basic principles for data protection, including the rights of individuals and the responsibilities of controllers.**

Article 3 – Scope

1. Each Party undertakes to apply this Convention to data processing 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, **unless the data are intentionally made accessible to persons outside the personal sphere.** (eliminate brackets)

The concept of "personal sphere" should be clarified in the explanatory report.

Article 4 – Duties of the 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 ensure their effective application.**

3. Each Party undertakes to allow the Convention Committee provided for in Chapter V to **periodically** 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.

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.

2. Each Party shall provide that data processing can be carried out only if:

a. the data subject has freely given his/her explicit, **unambiguous, specific** (eliminate brackets) and informed consent, or

b. it is necessary for the performance of a contract to which the data subject is a party, or

c. it is necessary to comply with legal obligations binding the data controller, or

d. it is provided by domestic law for an overriding legitimate interest, **or**

e. it is necessary in order to protect the vital interests of the data subject.

3. Personal data undergoing automatic processing shall be :

b. collected for explicit, specified and legitimate purposes and **not processed in a way incompatible with those purposes;**

The meaning of "compatible purpose" should be explained in the explanatory report

Article 6 – Processing of sensitive data

1. Data processing which may present a serious risk to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination, are only allowed where the applicable law provides additional appropriate safeguards, meant to prevent such a risk, and complementing the safeguards of the present Convention.

2. Do [in particular] present such a risk the:

- a. processing of genetic data, data concerning health or sexual life, data concerning **criminal offences, suspected offences**, convictions and related security measures,
- b. **processing of data revealing** racial origin, political opinions, trade-union membership, religious or other beliefs they reveal, and
- c. data processed for the identifying biometric information they contain.

Article 7 – Data security

1. Every Party shall provide that the controller, and, where applicable the processor, takes the appropriate security measures against accidental or unauthorised modification, loss or destruction accidental of personal data, as well as against unauthorised access, dissemination or disclosure of such data.

2. Each Party shall provide that the controller shall notify, without delay, ~~at least~~ the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may **seriously** interfere with the rights and fundamental freedoms of data subjects. It may also provide that the controller shall notify, without delay, the data subjects of those data breaches which seriously interfere with their rights and fundamental freedoms.

Article 9 – Exceptions and restrictions

1. No exception to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles ~~5.3, 7.2~~, 7bis and 8 when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for:

Article 12 – Transborder data flows

1. The following provisions shall apply to the **intentional** disclosure or making available of data to an **identified** recipient who is not subject to the jurisdiction of the Party where data are.

6. 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 data flow, such as ad hoc measures foreseen in paragraph 4.b. It shall also provide that the supervisory authority be entitled to request that the person who discloses or makes data available, or the recipient, demonstrate **effective compliance with these measures, and that the supervisory authority be** entitled to prohibit, suspend, or subject to condition the disclosure or making available of data within the meaning of paragraphs 4.b. or 5.

Article 19 – Functions of the committee

The Convention Committee:

- a. may make recommendations with a view to facilitating or improving the application of the Convention;
- d. may, at the request of a Party, 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***;
- f. may, at the request of a State or an international organisation ***or on its own initiative***, evaluate whether the rules of its domestic law are in compliance with the provisions of this Convention;
- g. may develop or approve models of standardised legal measures referred to in Article 12;
- h. shall ***periodically (eliminate brackets)*** 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 complying with its engagements;

The explanatory report should provide guidance on the criteria to be considered by the Convention Committee to assess the candidate's level of protection

The available measures should be specified in the text of the Convention or in the explanatory report and they should include the possibility of excluding a Party from the Convention

Article 23 – Accession by non member States

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 ***if*** the opinion prepared by the Convention Committee in accordance with Article 19.e ***concludes that*** a State not a member of the Council of Europe ***has taken the necessary measures to give effect to the provisions of this Convention, invite that State*** 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.