

Convention 108+ evaluation and follow-up mechanisms

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Aim of Convention 108+:

- To ensure a harmonised level of protection of individuals with regard to the processing of their personal data
- To promote the free flow of data between Parties

Need to ensure TRUST between Parties



Necessary to evaluate the level of protection to guarantee that all (new) Parties satisfy their commitments

- Evaluation mechanism
 - For Candidates to accession (States or IO)

Article 4 Conv. 108+: "1. *Each Party shall take the necessary measures in its law to give effect to the provisions set out in this Convention and ensure their effective application.* 2. *These measures shall be taken by each Party and must be entered into force at the latest at the time of ratification or accession to this Convention.*"

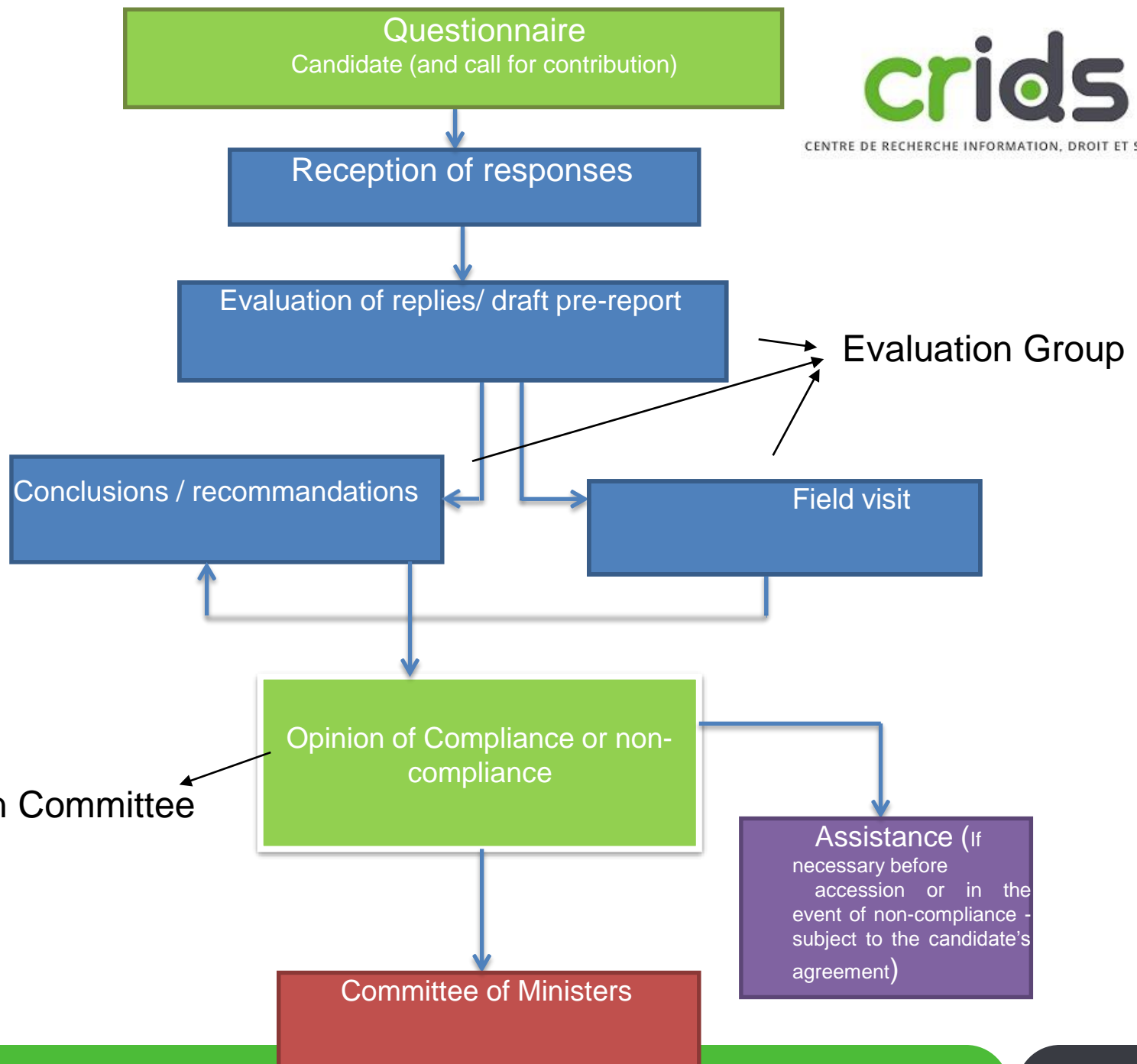
- Follow-up mechanism
 - For Parties (States and IO)

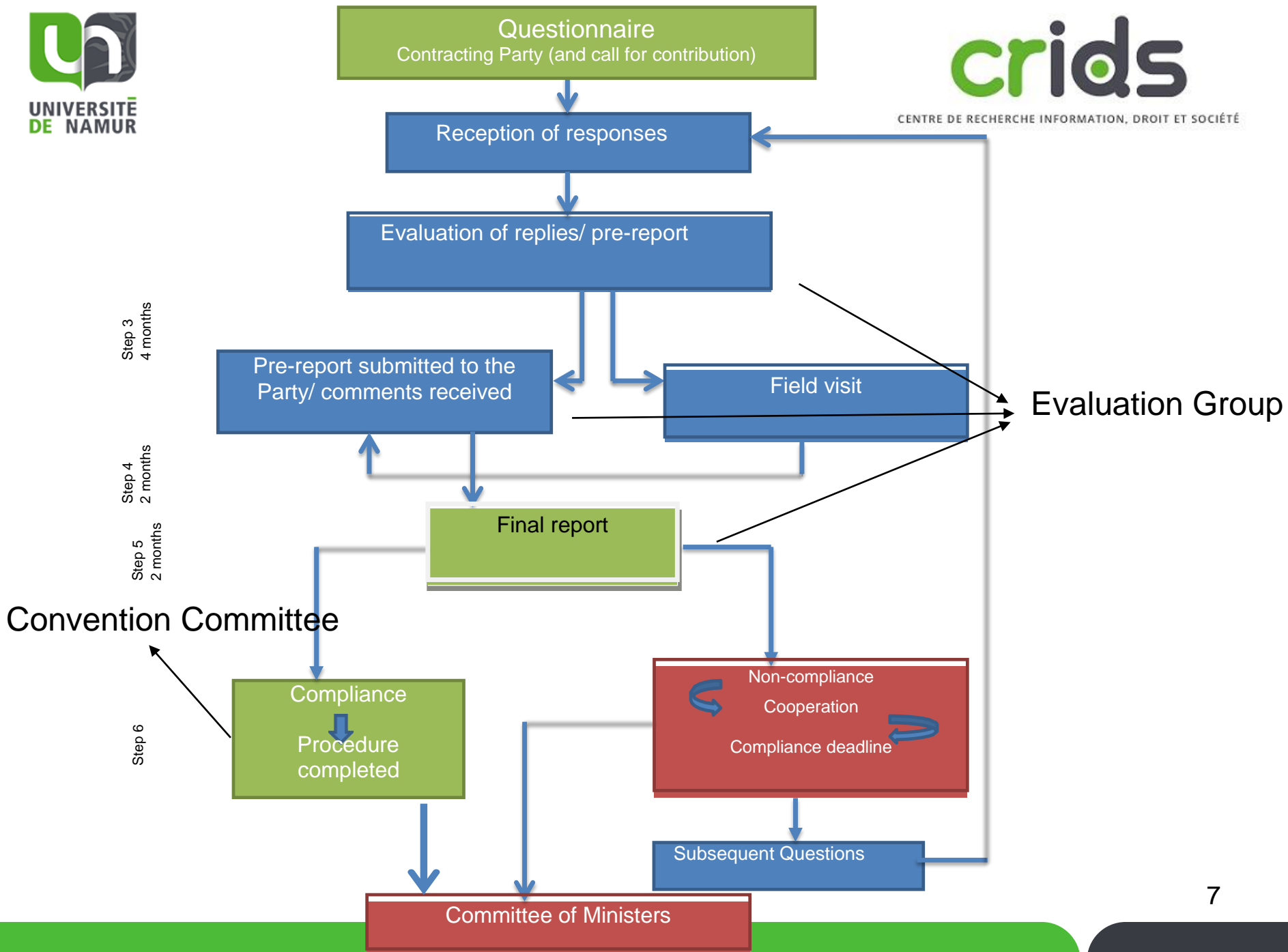
Article 4 Conv. 108+: “3. *Each Party undertakes: a. to allow the Convention Committee provided for in Chapter VI to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of this Convention; and b. to contribute actively to this evaluation process.*”

Role of Convention Committee:

- Set up Evaluation and Follow-up Groups
 - 6 members with recognised expertise in the field of data protection – appointed for 3 years
 - Adopt preparatory reports for the Convention Committee

- Adopt positive/negative opinions relating to the level of protection afforded by a Candidate or Party (sent to the Committee of Ministers of CoE)





Questionnaire: content

- General context
 - Institutional context of State / mandate of IO
- Data protection law(s)
 - International commitments
 - Legislation implementing Convention 108+ (scope, legitimacy of data processing, enhanced protection for sensitive data, principles of proportionality, data quality, limited retention, transparency and security, individual's rights, additional obligations, international transfers)
- Exceptions necessary for major legitimate public interests
 - National security and defense purpose, economic and financial interest, prosecution of criminal offences
- Exeptions necessary for major interests of private parties
 - Freedom of expression

Questionnaire: content

- Sectoral Data protection laws and codes of conduct
- Supervision & Enforcement
 - Establishment of independent supervisory authority(ies) ensuring effective oversight
 - SA promote compliance with data protection requirements and deal with requests and complaints
 - SA have powers of investigation, intervention, decision with respect to violations of the provisions of the Convention; and consultative powers
 - Remedies must be available to data subjects

Characteristics of Evaluation & Follow-up mechanism:

- Transparency of the process
 - Questionnaire is made public on the CoE website
 - Preparatory report of the Ev&Follow-up Group and Opinion of the Convention Committee are made public

- Objectivity: order of review
 - Candidates: before accession
 - Parties: alphabetical order / cyclical follow-up (every 6 years) / earlier if significant judgement, major incident, legislative change (intermediray follow-up)

Thank you for your attention

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