



数据保护官沙龙（DPO Salon）公益出品

《个人数据自动化处理中的个人保护公约》
中译文

译文序：洪延青

翻译：（姓氏音序排名）

陈舒 孟洁 钱开耘 严少敏 张向拓 朱敏

审校：何国锋

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译文序

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The modernised Convention 108: novelties in a nutshell

现代化的《108号公约》：简而言之新颖

With the modernisation of the 1981 Convention 108, its original principles have been reaffirmed, some have been strengthened and some new safeguards have been laid down: They had to be applied to the new realities of the on-line world while new practices had led to the recognition of new principles in the field. The principles of transparency, proportionality, accountability, data minimisation, privacy by design, etc. are now acknowledged as key elements of the protection mechanism and have been integrated in the modernised instrument.

随着1981年《108号公约》（“《公约》”）的现代化，其原有的原则得到重申，一些原有的原则得到强化，并制定了新的保障措施。这些原则须适用于网络世界的新现实，而新的实践已使这一领域新的原则得到承认。透明性、相称性、问责制、数据最小化、设计隐私等原则已被公认为个人数据保护机制的关键要素，并已纳入此现代化的《公约》。

The main novelties¹ of the modernised Convention can be presented as follows:
现代化的《公约》主要新颖之处如下：

Object and purpose of the Convention (Article 1)

《公约》的目标和目的（第一条）

Under article 1 the objective of the Convention is clearly underlined, namely to guarantee to every individuals within the jurisdiction of one of the Parties (regardless of their nationality or place of 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.

第一条明确强调了的《公约》目的，即保证在《公约》缔约方的管辖范围内每一个体（不论其国籍或住所地）的个人数据在被处理时均得到保护，从而使个体的权利和基本自由得到尊重，特别是他们的隐私权。

Using this wording, the Convention highlights the fact that the processing of personal data may positively enable the exercise of other fundamental rights and freedoms, which can thus be facilitated by guaranteeing the right to data protection.

《公约》通过使用这些措辞强调了一个事实，即对个人数据的处理会积极促使其他基本权利和自由的行使，通过保障数据保护的权力从而促进上述权利实现。

Definitions and scope of application (Articles 2 and 3)

定义及适用范围(第二条、第三条)

¹ This document presents the novelties and does not repeat the provisions which already exist since the 1981 Convention and its 2001 additional Protocol. For a complete view of the modernised Convention, please read the consolidated version published on our website.

本文件提出了新颖之处，而且不重复自1981年《公约》及其2001年《附加议定书》以来已经存在的条款。现代化的《公约》完整内容，请参阅本网站的整合版本。



While essential notions such as the definition of personal data and the one of data subjects are not at all modified, other changes are proposed in the definitions: the concept of 'file' is abandoned. 'Controller of a data file' is replaced by 'data controller', in addition to which the terms 'processor' and 'recipient' are used.

《公约》对于基本概念（比如个人数据和数据主体的定义）并未作任何修改，但其他定义有修改：“文件”的概念被抛弃。“数据文件的控制者”被“数据控制者”取代，此外还增加了“处理者”和“接收方”这两个术语。

The scope of application includes both automated and non-automated processing of personal data (manual processing where the data form part of a structure which makes it possible to search by data subject according to pre-determined criteria) which falls under the jurisdiction of a party to the Convention. The omnibus nature of the Convention is preserved and the scope naturally continues to cover the processing in the private and public sectors indistinctly, as this is one of the great strengths of the Convention.

《公约》适用范围是缔约方管辖范围内的个人数据处理活动。上述个人数据处理活动既包括自动化的个人数据处理，也包括非自动化的个人数据处理（指对有可能根据预设标准检索的以结构化方式呈现的个人数据的人工处理）。《公约》的总括性得到保留，其范围自然继续模糊地涵盖私营部门和公共部门的个人数据处理，这也是《公约》的一大优势。

On the other hand, the Convention no longer applies to data processing carried out by a natural person for the exercise of purely personal or household activities.

另一方面，《公约》不再适用于自然人在纯粹的个人或家庭活动中进行的数据处理活动。

Furthermore, Parties are no longer provided with the possibility to make declarations aimed at exempting from the application of the Convention certain types of data processing (e.g. national security and defense purposes).

此外，缔约方不再有权做出声明，对特定类型的数据处理(例如基于国家安全和国防目的的个人数据处理)适用《公约》予以豁免。

Duties of the parties (Article 4)

缔约方责任(第四条)

Each Party has to adopt in its domestic law the measures necessary to give effect to the provisions of the Convention.

各缔约方须通过国内法采取必要措施使本《公约》的条款得以生效。

Furthermore, each Party should demonstrate that such measures have actually been taken and are effective and accept that the Convention Committee may check that these requirements have been complied with. This evaluation process of the Parties ("follow-up mechanism") is necessary to guarantee that the level of protection established by the Convention is actually afforded by the Parties.

此外，各缔约方须证明已经切实采取该等措施，并行之有效，且接受《公约》委员会可以检查上述要求是否得到遵守。对缔约方的这一评估过程(“跟进机制”)对于确保各缔约方实际达到《公约》所确立的个人数据保护水平是必要的。

It is important to note that international organisations now have the possibility to accede to the Convention (Article 27), as does the European Union (Article 26).

需要注意的是,现代化后的《公约》允许国际组织可像欧盟(第二十六条)一样加入《公约》(第二十七条)。

Legitimacy of data processing and quality of data (Article 5)



数据处理的合法性与数据质量(第五条)

Article 5 clarifies the application of the principle of proportionality to underline that it should apply throughout the entire processing, and in particular in respect of the means and methods used in the processing. It is furthermore reinforced by the principle of data minimisation.

第五条澄清了相称性原则的适用,强调该原则应贯穿适用于个人数据处理的整个过程,特别是在处理过程中所使用的手段和方法方面。此外,比例性原则还通过数据最小化原则得到加强。

A new provision is introduced to clearly lay down the legal basis of the processing: the consent (which to be valid has to satisfy several criteria) of the data subject or some other legitimate basis laid down by law (contract, vital interest of the data subject, legal obligation of the controller, etc.).

引入的一条新条款明确规定了处理个人数据的法律依据:数据主体的同意(有效的同意须满足数个标准)或其他法定的合法依据(合同,数据主体的重大利益,数据控制者的法定义务,等等)。

Sensitive data (Article 6)

敏感数据(第六条)

The catalogue of sensitive data has been extended to include genetic and biometric data, as well as data processed for the information they reveal relating to trade-union membership or ethnic origin (those two latter categories are being added to the existing ban on the processing of personal data revealing racial origin, political opinions or religious or other beliefs, health or sexual life and personal data relating to offences, criminal proceedings and convictions).

敏感数据的目录扩展到包括遗传数据和生物特征数据,以及数据处理的信息揭示有关工会会员或族裔出身(后面这两个类别中被添加到现有禁止处理的个人数据种类中。现有禁止处理的个人数据种类包括揭示种族出身、政见或宗教或其他信仰,健康或性生活以及与违法行为、刑事诉讼和定罪有关的个人数据)。

Data security (Article 7)

数据安全(第七条)

In terms of data security, the requirement to notify, without delay, any security breaches is introduced. This requirement is limited to cases which may seriously interfere with the rights and fundamental freedoms of data subjects, which should be notified, at least, to the supervisory authorities.

在数据安全方面,《公约》引入了及时通知任何个人数据安全泄露的要求。该要求限定在对可能严重妨碍数据主体的权利和基本自由的数据泄露案件须至少通报监管机构。

Transparency of processing (Article 8)

数据处理的透明性(第八条)

Controllers will have the obligation to guarantee transparency of the data processing and will to that end have to provide a required set of information, in particular relating to their identity and usual place of residence or establishment, on the legal basis and the purposes of the processing, the data recipients and on the categories of personal data processed. They should furthermore provide any additional information necessary to ensure a fair and transparently processing. The Controller is exempted from providing such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.

数据控制者将有义务保证数据处理的透明性。为实现透明性,数据控者须按要求提供一套数据处理的信息,特别是关于数据控制者身份和经常住所地或机构,数据处理的法律依据和处理的目的,数据接收者、个人数据处理的类型。数据控制者还须额外提供任何必要的信息,以确保个人数据得到公平和透明的处理。数据控制者免于提供上述信息的条件是有法律明确规定或被证明上述数据处理的信



息不可能提供或须付出不成比例的努力才能提供的。

Rights of the data subject (Article 9)

数据主体的权利(第九条)

Data subjects are granted new rights so that they have greater control over their data in the digital age.

数据主体被赋予新的权利，以使其在数字时代对其个人数据有更大的控制权。

The modernised Convention extends the catalogue of information to be transmitted to data subjects when they exercise their right of access. Furthermore, data subjects are entitled to obtain knowledge of the reasoning underlying the data processing, the results of which are applied to her/him. This new right is particularly important in terms of profiling of individuals².

现代化的《公约》扩大了数据主体行使访问权时数据控制者须传送的信息目录。此外，当数据处理的结果作用于数据主体本人时，数据主体有权获得数据处理背后的推理知识。这种新权利在个人数据画像方面尤为重要。

It is to be associated with another novelty, namely the right not to be subject to a decision which affects the data subject which is based solely on an automated processing, without the data subject having her/his views taken into consideration.

这将与另一新颖性相关，即对于完全基于自动处理，而未考虑数据主体意见的决策，如对数据主体造成影响，数据主体有权免受上述决策的制约。

Data subjects have a right to object at any time to their personal data being processed, unless the controller demonstrates compelling legitimate grounds for the processing which override their interests or rights and fundamental freedoms.

数据主体有权在任何时候反对针对其个人数据的处理，除非数据控制者证明个人数据处理是基于令人信服的高于数据主体权益及基本自由的合法事由。

Additional obligations (Article 10)

其他义务(第十条)

The modernised Convention imposes broader obligations on those processing data or having data processed on their behalf.

现代化的《公约》对处理数据或代表其处理数据的主体规定了更广泛的义务。

Accountability becomes an integral part of the protective scheme, with an obligation for the controllers to be able to demonstrate compliance with the data protection rules.

问责制成为个人数据保护方案不可分割的组成部分，控制者有义务证明其遵守数据保护规则。

Controllers should take all appropriate measures – including when the processing is outsourced – to ensure that the right to data protection is ensured (privacy by design, examination of the likely impact of the intended data processing on the rights and fundamental freedoms of data subjects (“privacy impact assessment”) and privacy by default).

控制者应采取一切适当措施，包括数据处理是被外包处理的情形，确保个人数据保护的权利要求得到保障。

² On this subject see Recommendation (2010) 13 on the Protection of Individuals with regard to Automatic Processing of Personal Data in the context of profiling and its Explanatory memorandum.

在该问题上请看推荐的(2010)13对个人数据自动处理的个人保护上下文分析和摘要说明。



这些措施包括通过设计保护隐私、评估预期的数据处理可能对数据主体权利和基本自由的影响（隐私影响评估）和默认保护隐私。

Exceptions and Restrictions (Article 11)

例外和限制(第十一条)

The rights laid down in the Convention are not absolute and may be limited when this is prescribed by law and constitutes a necessary measure in a democratic society on the basis of specified and limited grounds.

《公约》所规定的权利并不是绝对的，且当法律有规定以及构成民主社会中基于指定和限定理由的必要措施时，该等权利可能会受到限制。

Among those limited grounds are now included “essential objectives of public interest” as well as a reference to the right to freedom of expression.

这些限定的理由中，现代化的《公约》引入了“公共利益的基本目标”以及言论自由的权利。

The list of provisions of the Convention that can be restricted has been slightly extended (see references to Articles 7.1 on security and 8.1 on transparency in Article 11.1) and a new paragraph of this Article specifically deals with processing activities for national security and defense purposes, for which the “monitoring” powers of the Committee as well as some missions of the supervisory authorities can be limited. The requirement that processing activities for national security and defense purposes be subject to an independent and effective review and supervision is clearly laid down.

《公约》条款限定的条款略有扩展(参见11.1条对7.1条安全、8.1条透明性的规定)。第11条有一款新的规定专门针对以国家安全和国防为目的的处理活动。对于此类数据处理活动，《公约》委员会以及一些监管代表团的“监督”的权力能够得到限制。《公约》明确规定，为国家安全 and 国防目的而进行的数据处理活动应接受缔约方独立和有效的审查和监督。

It is important to recall once again that contrary to the previous provisions of Convention 108, Parties to the modernised Convention will no longer be able to exclude from the scope of application of the Convention certain types of processing.

须再次指出的是，与《公约》第108号旧规定不同的是，现代化的《公约》的缔约方将不再能够将某些种类的数据处理排除在《公约》的适用范围之外。

Transborder flows of personal data (Article 14)

个人数据跨境流通(第十四条)

The aim of this provision is to facilitate, where applicable, the free flow of information regardless of frontiers, while ensuring an appropriate protection of individuals with regard to the processing of personal data.

该条规定的目的在于当确保在处理个人数据方面给予个体适当保护时，在适用的条件下促进数据不分国界的自由流通。

The purpose of the transborder flow regime is to ensure that information originally processed within the jurisdiction of a Party always remains protected by appropriate data protection principles.

个人数据跨境流通制度的目的是确保原先在缔约方管辖范围内处理的数据始终受到适当的数据保护原则的保护。

Data flows between Parties cannot be prohibited or subject to special authorisation as all of them, having subscribed to the common core of data protection provisions set out in the Convention, offer a level of protection considered appropriate. One exception exists: when there is a real



and serious risk that such transfer would lead to circumventing the provisions of the Convention.

各缔约方之间的数据流通不应被禁止，也不应被设置特别授权，因为所有缔约方都已同意《公约》中规定的保护共同核心条款，并同意提供被认为是适当的保护水平。有一个例外：当这种数据转移会导致规避《公约》规定的真实、严重的危险时。

In the absence of harmonised rules of protection shared by States belonging to a regional international organisation and governing data flows (see for instance the data protection framework of the European Union), data flows between Parties should thus operate freely.

如果属于同一区域国际组织的国家间没有统一的保护规则，也没有统一的数据流管理规则（例如欧盟的数据保护框架），各缔约方之间的数据应自由流通。

Regarding transborder flows of data to a recipient that is not subject to the jurisdiction of a Party, an appropriate level of protection in the recipient State or organisation is to be guaranteed. As this cannot be presumed since the recipient is not a Party, the Convention establishes two main means to ensure that the level of data protection is indeed appropriate; either by law, or by ad hoc or approved standardised safeguards that are legally binding and enforceable (notably contractual clauses or binding corporate rules), as well as duly implemented.

针对不受《公约》缔约方管辖的接收方的个人数据跨境流通，应保证接收国或接受组织具有适当的个人数据保护水平。鉴于接收方不是缔约方无法推定其个人保护水平，《公约》确立了两种主要手段，以确保数据保护的真正适当：或者通过法律，或者通过具有法律约束力和可执行性的特设或经批准的标准化保障措施(尤其是合同条款或有约束力的公司规则)以及通过适当的实施。

Supervisory authorities (Article 15)

监管机构(第十五条)

Building on Article 1 of the additional protocol, the modernised Convention complements the catalogue of the authorities' powers with a provision that, in addition to their powers to intervene, investigate, engage in legal proceedings or bring to the attention of the judicial authorities violations of data protection provisions, the authorities also have a duty to raise awareness, provide information and educate all players involved (data subjects, controllers, processors etc.). It also allows the authorities to take decisions and impose sanctions. Furthermore, it is recalled that the supervisory authorities should be independent in exercising these tasks and powers.

在附加议定书的第一条基础上，现代化的《公约》补充了个人数据监管机构的权力的目录之条款，除了介入、调查、参与诉讼或提请司法机关注意违反数据保护规定行为的权力外，个人数据监管机构还有责任增强所有的数据处理的参与者（数据主体、控制者、处理者）的意识，提供信息并教育上述参与者。《公约》还允许监管机构做出裁决并进行惩罚。此外，应当指出，监管机构应当独立执行这些任务和行使这些权力。

Forms of co-operation (Article 17)

合作形式(第十七条)

The modernised Convention also addresses the issue of co-operation (and mutual assistance) between the supervisory authorities.

现代化的《公约》还涉及监管机构之间的合作(和互助)问题。

The supervisory authorities have to co-ordinate their investigations, to conduct joint actions and to provide to each other information and documentation on their law and administrative practices relating to data protection.

监管机构须配合彼此的调查工作，采取联合行动，并互相提供有关其与数据保护有关的法律和行政实践的信息和文件。



The information exchanged between the supervisory authorities will include personal data only where such data are essential for co-operation or where the data subject has given the specific, free and informed consent.

监管机构之间交换的信息中只有在下述的情形下才会包含个人数据，即该等数据对协作是必须的或数据主体已给予明确、自由及知情基础上的同意。

Finally the Convention provides a form for increased co-operation: the supervisory authorities of the Parties have to form a network in order to organise their co-operation and to perform their duties as specified by the Convention.

最后，《公约》规定了一个增进合作的形式：各缔约方的监督管机构须建立一个网络以便组织合作，并按照《公约》规定履行职责。



Convention Committee (Articles 22, 23 and 24)

《公约》委员会(第二十二、二十三及二十四条)

The Convention Committee plays a crucial role in interpreting the Convention, encouraging the exchange of information between the Parties and developing data protection standards.

《公约》委员会在解释《公约》、鼓励缔约方之间信息交流和制定数据保护标准方面扮演着极为重要的角色。

The role and powers of this Committee is strengthened with the Modernised Convention. It no longer is limited to a “consultative” role but also has assessment and monitoring powers. It will provide an opinion on the level of data protection provided by a state or international organisation before accession to the Convention. The committee is also able to assess the compliance of the domestic law of the Party concerned and determine the effectiveness of the measures taken (existence of a supervisory authority, responsibilities, existence of effective legal remedies).

现代化的《公约》强化了该委员会的角色和权力。其不再局限于“咨询”的角色，还拥有了评估和监督权力。其将在一个国家或国际组织加入《公约》之前，就该国或该国际组织提供的数据保护水平给出意见。委员会还能够评估有关缔约方的国内法对《公约》的遵守情况，并确定所采取措施的有效性(监管机构的存续、职责、有效法律救济措施的存续)。

It is also able to assess whether the legal norms governing the data transfers provide sufficient guarantee of an appropriate level of data protection.

它还能够评估规制数据传输的法律规范是否提供了充分的保障以达到适当的数据保护水平。



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

欧洲理事会

European Treaty Series – No. 108

欧洲条约集-第108号

Convention for the Protection of Individuals with regard to Automatic Processing
of Personal Data
as it will be amended
by its Protocol CETS No. 223

个人数据自动化处理中的个人保护公约
公约将通过第 223号议定书修订

Strasbourg, 28.I.1981
法国斯特拉斯堡，1981年1月28日



Preamble³

序言

The member States of the Council of Europe, and the other signatories hereto,
欧洲理事会的成员国及其他签约国在此，

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;

鉴于欧洲理事会致力于实现成员国之间更大的团结，尤其是基于对法治、人权和基本自由的尊重；

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 of his or her personal data and the processing of such data;

鉴于保障每个人的人格尊严和保护人权及基本自由之必要性，并鉴于数据处理和个人数据流通的多样化、集约化和全球化，基于个人控制其个人数据以及处理该等数据之个人自主权；

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;

回顾个人数据保护的权利应考虑其社会角色，并且应当与包括言论自由在内的其他人权和基本自由相协调；

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

鉴于本公约允许在实施其中制定的规则时将查阅官方文件的权利原则考虑在内；

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 people;

认识到在全球范围内提升隐私权尊重和个人数据保护的基本价值、从而促进人与人之间信息的自由流通之必要性，。

Recognising the interest of a reinforcement of international co-operation between the Parties to the Convention,

认识到强化公约各缔约方之间的国际合作之利益，

Have agreed as follows:

达成一致如下：

Chapter I – General provisions

第一章 – 总则

Article 1 – Object and purpose⁴

³ Text as it will be amended according to the Protocol CETS No. 223 as from its entry into force.

文本将自第223号议定书生效时起依据其进行修订。

⁴ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其进行修订。



第一条 宗旨和目的

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

本公约的目的是在个人信息处理方面对每个个体均予以保护，不论其国籍或住所，从而增进对该个体的人权和基本自由，尤其是隐私权的尊重。

Article 2 – Definitions⁵

第二条 – 定义

For the purposes of this Convention:

为本公约之目的：

- a “personal data” means any information relating to an identified or identifiable individual (“data subject”);
“个人数据”系指与一个已识别或可识别的自然人（“数据主体”）有关的任何信息。
- b “data processing” means any operation or set of operations 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;
“数据处理”系指对个人数据的任何一项或系列操作，例如收集、存储、保留、修改、检索、披露、使其可得、删除或销毁，或对该等数据执行逻辑和/或算法操作。
- 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;
在未使用自动化处理时，“数据处理”系指对一个由可根据特定标准被访问或检索的个人数据组成的结构化数据集之中的个人数据所做的一项或系列操作。
- d “controller” means the natural or legal person, public authority, service, agency or any other body which, alone or jointly with others, has decision-making power with respect to data processing;
“控制者”系指单独或者共同对数据处理有决定权的自然人或法人、公共机关、服务方、代理或其他主体。
- e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;
“接收者”系指作为数据披露或数据可供访问对象的自然人或法人、公共机关、服务方、代理或其他主体。
- 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.
“处理者”系指代表控制者处理个人数据的自然人或法人、公共机关、服务方、代理或其

⁵ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其进行修订。



他主体。

Article 3 – Scope⁶

第三条 – 适用范围

- 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.
各缔约方承诺在其管辖的公共和私人领域将本公约适用于数据处理，从而保护每个个体在个人数据保护方面的权利。
- 2 This Convention shall not apply to data processing carried out by an individual in the course of purely personal or household activities.
本公约不适用于由个人在纯私人或家庭活动中进行的数据处理。

Chapter II – Basic principles for the protection of personal data⁷

第二章 – 个人数据保护的基本原则

Article 4 – Duties of the Parties⁸

第四条-缔约方义务

- 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.
各缔约方应当在其立法上采取必要措施使本公约的条款生效并确保其有效适用。
- 2 These measures shall be taken by each Party and shall have come into force by the time of ratification or of accession to this Convention.
各缔约方应采取该等措施并且应当在其正式批准或正式加入本公约时使得该等措施生效。
- 3 Each Party undertakes:
各缔约方保证:
 - 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
允许第六章规定的公约委员会评估其在其法律中为实施本公约各项规定而采取的措施的效力；以及
 - b to contribute actively to this evaluation process.
积极推动该评估进程。

Article 5 – Legitimacy of data processing and quality of data⁹

第五条 数据处理的合法性和数据质量

⁶ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其进行修订。

⁷ Title as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
标题将自第223号议定书生效时起依据其进行修订。

⁸ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其进行修订。

⁹ 同上。



- 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.
数据处理应与追求的合法目的相称，并在处理的所有阶段于所有关联的利益之间反映一种公正平衡，不论公利还是私利，以及所关涉的权利和自由。
- 2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law.
各缔约方应规定数据处理能够在数据主体自由、具体、知情以及明确同意的基础上或者法律规定的其他合法基础之上进行。
- 3 Personal data undergoing processing shall be processed lawfully.
正在处理中的个人数据应依法处理。
- 4 Personal data undergoing processing shall be:
正在处理中的个人数据应当：
 - a processed fairly and in a transparent manner;
公正、透明的处理；
 - b collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is, subject to appropriate safeguards, compatible with those purposes;
为了明确、具体及合法的目的而收集，不得与这些目的不相符的方式处理；在适当的保障措施下，为公共利益存档目的、科学或历史研究目的或统计目的而进行的进一步处理，符合上述目的；
 - c adequate, relevant and not excessive in relation to the purposes for which they are processed;
对于其处理目的，适当、关联且不过量；
 - d accurate and, where necessary, kept up to date;
准确以及，如有必要，保持最新；
 - 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.
以允许数据主体识别的形式保存，不超过实现该等数据处理的目的所需的时间；

Article 6 – Special categories of data¹⁰

第六条 特殊类型数据

- 1 The processing of:
处理以下数据：
 - genetic data;

¹⁰ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其进行修订。



遗传数据；

- personal data relating to offences, criminal proceedings and convictions, and related security measures;
与违法行为、刑事诉讼和定罪以及相关的安全措施有关的个人数据；
- biometric data uniquely identifying a person;
唯一识别个人的生物特征数据；
- personal data for the information they reveal relating to racial or ethnic origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life,
揭示与种族或族裔出身、政见、工会会员、宗教或其他信仰、健康或性生活有关信息的个人数据，

shall only be allowed where appropriate safeguards are enshrined in law, complementing those of this Convention.

只有在法律规定了适当的安全措施、补充本公约规定的情况下才应当被允许。

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

这些安全措施应当防止处理敏感数据可能给数据主体的利益、权利和基本自由带来的风险，尤其是歧视风险。

Article 7 – Data security¹¹

第七条 数据安全

- 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.

各缔约方应当规定控制者以及处理者（若适用）采取适当的安全措施防范诸如个人数据的意外或未经授权的访问、损坏、丢失、使用、修改或披露。

- 2 Each Party shall provide that the controller notifies, 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.

各缔约方应当规定数据控制者至少立即向本公约第十五条所指范围内的主管监管机构通报可能严重妨碍数据主体的权利和基本自由的数据泄露。

Article 8 – Transparency of processing¹²

第八条 数据处理的透明性

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

各缔约方应当规定数据控制者告知数据主体：

¹¹ Article as it will be amended according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其进行修订。

¹² Article as it will be added according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其添加。



-
- a his or her identity and habitual residence or establishment;
他或她的身份、经常住所地或者机构;
 - b the legal basis and the purposes of the intended processing;
拟进行的数据处理的法律依据和目的;
 - c the categories of personal data processed;
处理的个人数据的类型;
 - d the recipients or categories of recipients of the personal data, if any; and
如有的话, 个人数据的接收者或者接收者类型; 以及
 - e the means of exercising the rights set out in Article 9,
行使第九条列出的权利的方式,

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

以及确保个人数据处理的公正透明的任何必要的额外信息。

- 2 Paragraph 1 shall not apply where the data subject already has the relevant information.
第一款不适用数据主体已经了解相关信息的情况。
- 3 Where the personal data are not collected from the data subjects, the controller shall 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.
在个人数据并非收集自数据主体的情况下, 当数据处理系由法律明文规定, 或经证明(提供该等信息)不能做到或涉及不成比例的努力时, 数据控制者无须提供该等信息。

Article 9 – Rights of the data subject¹³

第九条 数据主体的权利

- 1 Every individual shall have a right:
每个人享有以下权利:
 - 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;
不受仅基于自动处理数据而未考虑其意见, 但会对其产生重大影响的决策的制约;
 - b to obtain, on request, at reasonable intervals and without excessive delay or expense, 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;
经请求, 在合理的时间间隔内, 无过度延迟或过多费用, 获取有关他或她的个人数据处理的确认、该等数据以一种可理解的形式进行处理的通信、有关信息来源和保存周期的所有有效信息, 以及依据第八条第一款规定数据控制者被要求提供用以保障数据处理的透明性的任何其他信息;

¹³ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。



- c to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her;
经请求，当数据处理的结果作用于数据主体时，获取数据处理背后的推理知识；
 - d to object at any time, on grounds relating to his or her situation, 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;
在任何时候，基于与其处境有关的理由，拒绝与其有关的个人数据处理，除非数据控制者证明个人数据处理是基于令人信服的高于数据主体权益及基本自由的合法事由；
 - 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;
经请求，根据具体情况免费和无过度延迟的更正或删除正在处理或已经处理的违反本公约规定的数据库；
 - f to have a remedy under Article 12 where his or her rights under this Convention have been violated;
在他或她于本公约之下的权利受到侵害时依据第十二条规定获得救济；
 - 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.
不论其国籍或住所，在第十五条所指范围内的监管机构的协助下，从行使本公约所规定之权利中获益。
- 2 Paragraph 1.a shall not apply if the decision is authorised by a law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests.
如果决定是由数据控制者所服从的法律所授权，且采取了适当的措施保障数据主体的权利、自由和合法权益，则第一款a项不适用。

Article 10 – Additional obligations¹⁴

第十条 其他义务

- 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, subject to the domestic legislation adopted in accordance with Article 11, paragraph 3, 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.
各缔约方应当规定控制者以及处理者（若适用）采取一切适当措施履行本公约之义务，并按照第十一条第三款通过的国内立法规定能够证明，特别向第十五条所规定的主管监管机构证明，其控制下的数据处理符合本公约规定。
- 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

¹⁴ Article as it will be added according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其添加。



a manner as to prevent or minimise the risk of interference with those rights and fundamental freedoms.

各缔约方应当规定控制者和处理者（若适用），在开始此类处理之前，审查拟进行的数据处理对数据主体的权利和基本自由可能产生的影响，且该等数据处理的设计安排应旨在防止或减少妨害此类权利和基本自由的风险。

- 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.

各缔约方应当规定控制者和处理者（若适用），务必采取技术性和组织性的措施，且应在该等措施中考虑数据处理各阶段中对个人数据保护权利的影响。

- 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.

各缔约方可在考虑对数据主体的利益、权利和基本自由所产生的风险的基础上，根据数据的性质和体量、处理行为的性质、范围和目的，以及控制者或处理者的规模（如合适），在促成本公约条款生效的国内法中对本条第一款、第二款和第三款规定的适用进行调整。

Article 11 – Exceptions and restrictions¹⁵

第十一条 例外和限制

1. No exception to the provisions set out in this Chapter shall be allowed except to the provisions of Article 5, paragraph 4, Article 7, paragraph 2, Article 8, paragraph 1, and Article 9, when such an exception is provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for:
- 本章中所作的规定不得设置任何例外情形，除非是针对第五条第四款、第七条第二款、第八条第一款和第九条的规定，且该等例外是通过法律所规定，实质性尊重基本权利和自由，且是在民主社会中为以下目的所采取的必要且恰当的措施：

- a the protection of national security, defence, 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 and the execution of criminal penalties, and other essential objectives of general public interest;

保护国家安全、国防、公共安全、国家重要经济和财政利益、司法公正和独立，或者刑事犯罪的预防、调查和起诉、刑罚的执行，以及其他一般公共利益的基本目标。

- b the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.

保护数据主体或其他主体的权利和基本自由，特别是言论自由。

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 archiving purposes in the public interest, scientific or historical research purposes or statistical purposes when there is no recognisable risk of infringement of the rights and fundamental freedoms of data subjects.

如果对数据主体的权利和基本自由不存在明显的侵害风险，则基于公共利益存档之目的、科学

¹⁵ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。



或历史研究之目的或统计之目的，法律可就数据处理限制第八条和第九条所述规定的适用。

3. In addition to the exceptions allowed for in paragraph 1 of this article, with reference to processing activities for national security and defence purposes, each Party may provide, by law and only to the extent that it constitutes a necessary and proportionate measure in a democratic society to fulfill such aim, exceptions to Article 4, paragraph 3, Article 14, paragraphs 5 and 6, and Article 15, paragraph 2, *litterae* a, b, c and d.

除本条第一款所允许的例外情形外，就基于国家安全和国防之目的数据处理活动，各缔约方可通过法律对第四条第三款、第十四条第五款和第六款以及第十五条第二款a、b、c和d项规定设置例外情况，但该等例外仅为在民主社会中为实现上述目的所必须采取的恰当措施。

This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision under the domestic legislation of the respective Party.

虽有上述规定，各缔约方仍可根据国内法对基于国家安全和国防目的的处理活动开展独立和有效的审查和监督。

Article 12 – Sanctions and remedies¹⁶

第十二条 处罚和救济措施

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

各缔约方承诺就违反本公约规定的行为制定适当的司法及非司法的处罚和救济措施。

Article 13 – Extended protection¹⁷

第十三条 延伸保护

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.

本章的任何规定均不得解释为限制或以其他方式影响某一缔约方为数据主体提供比本公约规定的更广泛保护的可能性。

Chapter III – Transborder flows of personal data¹⁸

第三章 个人数据的跨境流通

Article 14 – Transborder flows of personal data¹⁹

第十四条 个人数据的跨境流通

- 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

¹⁶ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

¹⁷ Article as it will be renumbered according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号。

¹⁸ Title as it will be amended according to the Protocol CETS No. 223 as from its entry into force.

标题将自第223号议定书生效时起依据其进行修订。

¹⁹ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。



of another Party to the Convention. Such a Party may, however, do so if there is a real and serious risk that the transfer to another Party, or from that other Party to a non-Party, would lead to circumventing the provisions of the Convention. A Party may also do so, if bound by harmonised rules of protection shared by States belonging to a regional international organisation.

任一缔约方不得仅为保护个人数据之目的在向本公约另一缔约方管辖下的接收方传输该等数据时设置禁止性或特别授权措施，除非向另一缔约方传输或从该另一缔约方向非缔约方传输将会导致真实且严重的对本公约规定的规避风险，或者该缔约方受制于某区域性国际组织的成员国之间共同遵守的保护规则。

- 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.

如果接收方受到非本公约缔约方的国家或国际组织的管辖，只有在基于本公约规定确保适当水平的保护的情况下，才能进行个人数据的传输。

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

适当水平的保护可通过以下方式确保：

- a the law of that State or international organisation, including the applicable international treaties or agreements; or

该国家或国际组织的法律，包括适用的国际条约或协议；或

- 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.

参与传输和后续处理的人员采用和实施的具有法律约束力且可执行的文书所规定的特设或经批准的标准化保障措施。

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

尽管有前述规定，各缔约方可规定个人数据可以在以下情形中进行传输：

- a the data subject has given explicit, specific and free consent, after being informed of risks arising in the absence of appropriate safeguards; or

在被告知缺乏适当的保障措施可能产生的风险后，数据主体仍自愿给出明确且具体的同意；或

- b the specific interests of the data subject require it in the particular case; or

在特定情况下，为数据主体的特定利益所需；或

- c prevailing legitimate interests, in particular important public interests, are provided for by law and such transfer constitutes a necessary and proportionate measure in a democratic society; or

该等传输符合法律设定的普遍性合法权益，尤其是重要的公共利益，且该等传输是在民主社会中所采取的必要恰当措施；或

- d it constitutes a necessary and proportionate measure in a democratic society for freedom of expression.

该等传输是在民主社会中为言论自由之目的所采取的必要恰当措施。

- 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, paragraph 4, *litterae* b and c. 各缔约方应规定，就本条第三款b项所述，以及经请求后就第四款b和c项所述的数据传输，应向本公约第十五条所指范围内的主管监管机构提供所有相关信息。

- 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 such transfers, suspend them or subject them to condition.

各缔约方还应规定，监管机构有权要求数据转让方证明保障措施的有效性或普遍性合法权益的存在，并且监管机构可为保护数据主体的权利和基本自由而禁止或暂停此类数据传输行为，或为其设置条件。

Chapter IV – Supervisory authorities²⁰ 第四章 监管机构

Article 15 – Supervisory authorities²¹ 第十五条 监管机构

1. Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this Convention.
各缔约方应设置一个或多个机构负责确保本公约之规定得到遵守。
2. To this end, such authorities:
为此，该等机构：
 - a shall have powers of investigation and intervention;
应具有调查和介入的权力；
 - b shall perform the functions relating to transfers of data provided for under Article 14, notably the approval of standardised safeguards;
应履行第十四条规定的有关数据传输的职能，尤其是批准标准化保障措施；
 - c shall have powers to issue decisions with respect to violations of the provisions of this Convention and may, in particular, impose administrative sanctions;
应有权对违反本公约规定的行为作出裁决，尤其是进行行政处罚；
 - 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;
应有权参与法律诉讼或提请主管司法机关注意违反本公约规定的行为；
 - e shall promote:
应当增强：
 - i public awareness of their functions and powers as well as their activities;
公众对其职能和权力及其活动的认识；

²⁰ Chapter as it will be added according to the Protocol CETS No. 223 as from its entry into force.
章节将自第223号议定书生效时起依据其添加。

²¹ Article as it will be added according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其添加。



- ii public awareness of the rights of data subjects and the exercise of such rights;
公众对数据主体权利及行使该等权利的认识;
- iii awareness of controllers and processors of their responsibilities under this Convention;
控制者和处理者对其在本公约项下的责任的认识;

Specific attention shall be given to the data protection rights of children and other vulnerable individuals.

应对儿童和其他弱势个体的数据保护权利给予特别关注。

3. The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.
在就个人数据处理提议采取任何立法或行政措施时，应征询主管监管机构的意见。
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.
各主管监管机构应处理数据主体提出的有关其数据保护权利的请求和投诉，并应向数据主体通报进展情况。
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.
监管机构在履行职责和行使职权时，应当完全独立、公正，不得寻求或接受指示。
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.
各缔约方应确保向监管机构提供其有效履行职能和行使其职权所需的资源。
7. Each supervisory authority shall prepare and publish a periodical report outlining its activities.
各监管机构应编制并发布概述其活动的定期报告。
8. Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information to which they have access, or have had access to, in the performance of their duties and exercise of their powers.
监管机构的成员和工作人员在履行职责和行使职权时，应对其可以访问或已获取的机密信息承担保密义务。
9. Decisions of the supervisory authorities may be subject to appeal through the courts.
监管机构的决定可能会被通过法院上诉。
10. The supervisory authorities shall not be competent with respect to processing carried out by bodies when acting in their judicial capacity.
监管机构不具有以司法身份进行（数据）处理的权力。

Chapter V – Co-operation and mutual assistance²²

第五章 合作与互助

²² Title as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

标题将自第223号议定书生效时起依据其重新编号和修订。



Article 16 – Designation of supervisory authorities²³

第十六条 监管机构的指定

- 1 The Parties agree to co-operate and render each other mutual assistance in order to implement this Convention.
各缔约方同意合作并互助，以实施本公约。
- 2 For that purpose:
为此目的：
 - 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;
各缔约方应指定一个或多个本公约第十五条所指的监管机构，该等监管机构的名称和地址应通报欧洲理事会秘书处；
 - 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 *littera*.
指定超过一个监管机构的缔约方应在前款规定中所提及的（给欧洲理事会秘书处的）通知中详细说明各监管机构的权限。

Article 17 – Forms of co-operation²⁴

第十七条 合作形式

- 1 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:
监管机构应在履行职责和行使职权所必需的范围内相互合作，特别是：
 - 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;
在保护个人数据方面遵守本公约的所有规则和保障措施的前提下，通过以交换相关和有用的信息并相互合作的方式提供互助。
 - b co-ordinating their investigations or interventions, or conducting joint actions;
协调调查或干预，或采取联合行动；
 - c providing information and documentation on their law and administrative practice relating to data protection.
提供其有关数据保护的法律和行政实践的信息和文件。
- 2 The information referred to in paragraph 1 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.

²³ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

²⁴ Article as it will be added according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其添加。



第一款所述信息不包括正在处理的个人数据，除非这些数据对于合作至关重要，或者有关数据主体已对条款给出了明确、具体、自由和知情的同意。

- 3 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.
为了加强合作并履行前述条款规定的职责，各方监督机构应建立一个网络。

Article 18 – Assistance to data subjects²⁵

第十八条 协助数据主体

- 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.
无论数据主体的国际或居住地，各缔约方应协助其行使其依据本公约第九条享有的权利。
- 2 Where a data subject resides on 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.
如果数据主体存在于另一缔约方的领土上，则应选择通过该缔约方所指定监管机构的中间人提交请求。
- 3 The request for assistance shall contain all the necessary particulars, relating *inter alia* to:
协助请求应包含所有必要的详情，尤其涉及：
 - a the name, address and any other relevant particulars identifying the data subject making the request;
姓名、地址和任何其他有关的识别提出该请求的数据主体的详情；
 - b the processing to which the request pertains, or its controller;
请求所涉及的（数据）处理或其控制者；
 - c the purpose of the request.
请求之目的

Article 19 – Safeguards²⁶

第十九条 保障措施

- 1 A supervisory authority which has received information from another supervisory authority, either accompanying a request or in reply to its own request, shall not use that information for purposes other than those specified in the request.
从另一个监管机构接收信息的监管机构，无论是依从其请求还是答复其请求，都不得基于请求所指定目的之外的其他目的使用该等信息。
- 2 In no case may a supervisory authority be allowed to make a request on behalf of a data subject of its own accord and without the express approval of the data subject concerned.
在任何情况下，都不允许监管机构在未经数据主体明确同意的情况下自动的代表数据主体提出请求。

²⁵ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

²⁶ 同上。



Article 20 – Refusal of requests²⁷

第二十条 请求之拒绝

A supervisory authority to which a request is addressed under Article 17 of this Convention may not refuse to comply with it unless:

根据本公约第十七条提出请求的监管机构不得拒绝遵从该请求，除非：

- a the request is not compatible with its powers;
该请求与其职权不符；
- b the request does not comply with the provisions of this Convention;
该请求不符合本公约之规定；
- 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.
遵守该请求将不符合其指定缔约方的主权、国家安全或公共秩序，或与该缔约方管辖下的个人权利和基本自由不相容。

Article 21 – Costs and procedures²⁸

第二十一条 费用和程序

- 1 Co-operation and mutual assistance which the Parties render each other under Article 17 and assistance they render to data subjects under Articles 9 and 18 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 making the request.
各缔约方根据第十七条合作和互助以及根据第九条和第十八条向数据主体提供的协助不应产生除专家和口译员以外的任何成本或费用。后者的成本或费用应由提出请求的一方承担。
- 2 The data subject may not be charged costs or fees in connection with the steps taken on his or her behalf in the territory of another Party other than those lawfully payable by residents of that Party.
除该缔约方居民合法支付的费用外，不得就代表数据主体在另一缔约方领土内采取的措施向该数据主体收取成本或费用。
- 3 Other details concerning the co-operation and assistance, relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.
有关合作和互助的其他细节，特别是有关方式、程序以及使用的语言，应由有关缔约方直接确定。

Chapter VI – Convention Committee²⁹

²⁷ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

²⁸ 同上。

²⁹ Title as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

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第六章 公约委员会

Article 22 – Composition of the committee ³⁰

第二十二條 委员会的组成

- 1 A Convention Committee shall be set up after the entry into force of this Convention.
公约委员会应于本公约生效后设立。
- 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.
各缔约方应指定一名参加委员会的代表和一名副代表。任何非本公约缔约方的欧洲理事会成员国均有权在委员会有一名观察员代表。
- 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.
公约委员会可以通过缔约方三分之二多数代表作出决定，邀请一名观察员出席其会议。
- 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.
任何非欧洲理事会成员的缔约方应根据部长委员会与该缔约方商定的方式，为公约委员会的活动提供资金。

Article 23 – Functions of the committee ³¹

第二十三條 委员会的职能

The Convention Committee:

公约委员会：

- a may make recommendations with a view to facilitating or improving the application of the Convention;
可以提出建议，以促进或加强公约的适用；
- b may make proposals for amendment of this Convention in accordance with Article 25;
可根据第二十五条提出修改本公约的提案；
- c shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 25, paragraph 3;
应对根据第二十五条第三款提交的任何修正本公约的提案明确表达其意见；
- d may express an opinion on any question concerning the interpretation or application of this Convention;
可就有关本公约的解释或适用的任何问题发表意见；
- 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

³⁰ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

³¹ 同上。



accession and, where necessary, recommend measures to take to reach compliance with the provisions of this Convention;

在候选成员新加入本公约之前，应当就欲加入的候选成员的个人数据保护水平为部长委员会提出意见，并在必要时，建议候选成员采取符合本公约规定的措施；

- 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 be taken to reach such compliance;

可应某一国家或国际组织的请求，评估前者提供的个人数据保护水平是否符合本公约的规定，并在必要时，建议采取符合该等规定的措施；

- g may develop or approve models of standardised safeguards referred to in Article 14;

可以制定或批准第十四条所述的标准化保障措施；

- h shall review the implementation of this Convention by the Parties and recommend measures to be taken in the case where a Party is not in compliance with this Convention;

应审查各缔约方执行本公约的情况，并在某一缔约方未遵守本公约的情况下建议其采取措施；

- i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.

应在必要时针对与本公约的适用相关的所有困难促成友好解决。

Article 24 – Procedure³²

第二十四条 程序

- 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.

本公约委员会由欧洲理事会秘书处召集。其第一次会议应在本公约正式生效起的十二个月内举行。本公约委员会应在第一次会议后至少每年举行一次会议，并应在三分之一的缔约方代表请求召集时举行会议。

- 2 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.

在每次会议后，公约委员会应向欧洲理事会部长委员会提交关于其工作和本公约运行的报告。

- 3 The voting arrangements in the Convention Committee are laid down in the elements for the rules of procedure appended to Protocol CETS No. 223.

公约委员会的投票机制在第223号议定书所附程序规则要件中被设定。

- 4 The Convention Committee shall draw up the other elements of its Rules of Procedure and establish, in particular, the procedures for evaluation and review referred to in Article 4, paragraph 3, and Article 23, *litterae* e, f and h on the basis of objective criteria.

³² Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。



公约委员会应制定其流程规则的其他要件，特别是基于客观标准设定第四条第三款和第二十三条第e、f和h项提及的评估审核流程。

Chapter VII – Amendments³³

第七章 修订

Article 25 – Amendments³⁴

第二十五条 修订

- 1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.
本公约的修订可由某一缔约方、欧洲理事会部长委员会或公约委员会提议。
- 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 27.
任何修订提案应由欧洲理事会秘书处通报本公约各缔约方、欧洲理事会其他成员国、欧盟以及根据第二十七条规定被邀请加入本公约的各非成员的国家或国际组织。
- 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.
此外，任何由某一缔约方或部长委员会提案的修订应通报公约委员会，公约委员会应向部长委员会提交其对修订提案的意见。
- 4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.
部长委员会应考虑提议的修订和公约委员会提交的任何意见，并可批准该等修订。
- 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.
部长委员会根据本条第四款规定批准的修订文本应转发至各缔约方接受。
- 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.
任何根据本条第四款规定批准的修订应在所有缔约方通知秘书处接受修订后的第三十日生效。
- 7 Moreover, the Committee of Ministers may, after consulting the Convention Committee, decide unanimously that a particular amendment shall enter into force at the expiration of a period of three 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.

³³ Title as it will be renumbered according to the Protocol CETS No. 223 as from its entry into force.
标题将自第223号议定书生效时起依据其重新编号。

³⁴ Article as it will be renumbered according to the Protocol CETS No. 223 as from its entry into force.
条款将自第223号议定书生效时起依据其重新编号。



另外，部长委员会在咨询公约委员会后可一致决定某一特别修订将在该修订开放接受的三年期届满后生效，除非某一缔约方通知欧洲理事会秘书处反对该修订的生效。如果已通知该反对，该修订将在提出反对的本公约某一缔约方向欧洲理事会秘书处交存接受书之日的次月第一日起生效。

Chapter VIII – Final clauses³⁵

第八章 最后条款

Article 26 – Entry into force

第二十六条 生效

- 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.
本公约应向欧洲理事会成员国和欧盟开放签署。其应经过承认、接受或批准。承认、接受或批准的文件应交存至欧洲理事会秘书处。
- 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.
本公约应自欧洲理事会的五个成员国根据前款规定表示同意接受本公约的约束之日起的三个月期间届满的次月第一日起生效。
- 3 In respect of any Party 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.
对于随后表示同意接受本公约约束的任一缔约方，本公约应自交存承认、接受或批准文件之日起的三个月期间届满后的次月第一日起生效。

Article 27 – Accession by non-member States or international organisations³⁶

第二十七条 非成员国或国际组织的加入

- 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 23.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.
在本公约生效后，欧洲理事会部长委员会可在咨询本公约各缔约方并取得他们的一致同意后，并参照公约委员会根据第二十三条e项提出的意见，通过由欧洲理事会章程第二十条d项规定的多数成员国做出并由有权列席部长委员会的缔约国代表一致投票同意的决议，邀请任何非欧洲

³⁵ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。

³⁶ Article as it will be renumbered according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号。



理事会成员的国家或国际组织加入本公约。

- 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.

对于任何依据上述第一款规定加入本公约的国家或国际组织，本公约将自向欧洲理事会秘书处交存加入文件之日的三个月期间届满后的次月第一日起生效。

Article 28 – Territorial clause³⁷

第二十八条 领土条款

- 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.

任何国家、欧盟或其他国际组织可在签署或交存其承认、接受、批准或者加入（本公约）的文件时指明本公约适用的领土范围。

- 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.

任何国家、欧盟或其他国际组织可在之后的任何时间，通过向欧洲理事会秘书处递交声明的方式，扩展本公约的适用范围至在该声明中指明的其他领土。对于该等领土，本公约将自秘书处收到该等声明之日的三个月期间届满后的次月第一日起生效。

- 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.

对于根据前述两款规定做出的指明（适用）领土的任何声明，可通过向秘书处递交通知的方式予以撤回。该等撤回应自秘书处收到该等通知之日的六个月期间届满后的次月第一日起生效。

Article 29 – Reservations³⁸

第二十九条 保留

No reservation may be made in respect of the provisions of this Convention.

不得就本公约的条款做出保留。

Article 30 – Denunciation³⁹

第三十条 废除

³⁷ Article as it will be renumbered according to the Protocol CETS No. 223 as from its entry into force. 条款将自第223号议定书生效时起依据其重新编号。

³⁸ Title as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

标题将自第223号议定书生效时起依据其重新编号和修订。

³⁹ 同上。



- 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.
任何缔约方可于任何时间通过向欧洲理事会秘书处递交通知的方式废除本公约。
- 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.
该等废除将自秘书处收到该等通知之日的六个月期间届满后的次月第一日起生效。

Article 31 – Notifications ⁴⁰

第三十一条 通知

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

欧洲理事会秘书处应通知理事会成员国和本公约缔约方以下事项：

- a any signature;
任何签署；
- b the deposit of any instrument of ratification, acceptance, approval or accession;
任何承认、接受、批准或加入的文件交存；
- c any date of entry into force of this Convention in accordance with Articles 26, 27 and 28;
依据第二十六条、第二十七条和第二十八条规定有关本公约生效的任何日期；
- d any other act, notification or communication relating to this Convention.
任何与本公约有关的其他行动、通知或沟通。

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

以资证明，下列获得正式授权的签名者已签署本公约。

Done at Strasbourg, the 28th day of January 1981, in English and in French, both texts being equally authoritative, in a single copy which shall remain 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 and to any State invited to accede to this Convention.

1981年1月28日于斯特拉斯堡以英法双语成文，英文和法文文本具有同等效力。英文和法文版本应以一份文件的形式交存于欧洲理事会的档案中。欧洲理事会秘书处应向欧洲理事会各成员国和受邀加入本公约的任何国家发送本公约的认证副本。

⁴⁰ Article as it will be renumbered and amended according to the Protocol CETS No. 223 as from its entry into force.

条款将自第223号议定书生效时起依据其重新编号和修订。