DIRECTORATE OF LEGAL ADVICE
AND PUBLIC INTERNATIONAL LAW
TREATY OFFICE

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

July 2022

CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA of 28 January 1981

(ETS No. 108, entered into force on 1 October 1985)

I. Participation in the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* is not exclusively limited to member States of the Council of Europe. The Convention is also open for accession by other non-member States, provided that they have been formally invited to accede by the Committee of Ministers of the Council of Europe. The relevant provision of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* - Article 23, paragraph 1 - reads as follows:

> "*After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.*"

Procedure for the accession by States which are not member States of the Council of Europe

II. The procedure for the accession of a State which is not a member of the Council of Europe may be summarised as follows:

1. In principle, the Committee of Ministers may take the initiative of inviting a non-member State to accede to a specific Convention. It is nevertheless customary for the non-member State to request accession in a letter addressed to the Secretary General of the Council of Europe. The letter should be signed by the Minister for Foreign Affairs or a diplomatic representative acting upon instructions of his or her government (*see Model application for accession to a treaty*).

2. In accordance with the Council of Europe's practice and before formally inscribing the point on the agenda of the Committee of Ministers, the Secretariat consults at the same time all member States of the Council of Europe, whether they are Parties or not to the Convention, and Parties to this Convention, that are not member States, on the request of invitation.

3. Requests for accession to a Council of Europe convention are examined by the Committee of Ministers' Rapporteur Group on Legal Co-operation (GR-J) and, then, by the Committee of Ministers. In the case of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, the decision on whether or not to issue an invitation has to be unanimously agreed by those Council of Europe members which have ratified the Convention. This decision is usually taken at the level of the Ministers' Deputies. Then, an invitation to accede to the Convention is notified to the State concerned by the Secretariat General.

4. It must be noted that the Committee of Ministers decided, in April 2013, to limit the validity of invitations of non-member States to accede to conventions to a period of five years.

5. Prior to acceding to the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, the State invited has to take the necessary measures to ensure that its domestic law allows the Convention to be implemented. Article 4 of the Convention provides that: "1. *Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.* 2. *These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.*" It should be noted in this context that the Convention institutes a consultative committee of experts (T-PD) which follows the application of the Convention.

Further to the recommendation of the Consultative Committee of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (T-PD), endorsed by a decision of the Ministers' Deputies adopted at its 1031st meeting on 2 July 2008, the T-PD is consulted on any request.

For more information: https://www.coe.int/en/web/data-protection/home

6. The instrument of accession is deposited at the seat of the Council of Europe in Strasbourg, in the presence of a representative of the acceding State and of the Secretary General of the Council of Europe or his Deputy. The representative of the acceding State brings with him or her the instrument of accession and a procès-verbal of deposit is signed by both parties. Should it prove difficult for the acceding State to send a representative to Strasbourg, the instrument of accession may be sent by diplomatic courier. Deposit of the instrument of accession is notified to all concerned, accordingly to Article 27 of the Convention.

7. Article 23, paragraph 2, of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* provides that 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.

8. The Convention has been supplemented by an *Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows* (ETS No. 181), which entered into force on 1 July 2004. States having acceded to the Convention are entitled to accede to the Protocol, without a specific invitation by the Committee of Ministers being necessary.

9. It should be noted that, on 10 October 2018, the Convention has also been supplemented by the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), which has not yet entered into force. After the opening for signature of this Protocol and before its entry into force, a State may not become a Party to the Convention without acceding simultaneously to this amending Protocol.

10. The instrument of accession and any declaration appended to it shall be accompanied by a translation into one of the official languages of the Council of Europe (English or French). It is important to stress that, subject to the applicable provisions of each treaty and in line with the 1969 Vienna Convention on the Law of Treaties, any declarations are to be made when depositing the instrument of accession.

It should be noted that, in accordance with Article 25 of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, no reservation may be made in respect of the provisions of this Convention.

11. It should also be noted that Article 13 of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* provides for the designation of competent authorities to be made. Given the importance of such designation for ensuring the proper operation of the Convention, it is recommended that the designation is made before the entry into force of the Convention in respect of the acceding State.

Financial contribution to the Convention's monitoring mechanism

III. On 6 April 2022, the Committee of Ministers adopted Resolution CM/Res(2022)6 concerning financial arrangements for the participation of the European Union and non-member States in Council of Europe conventions. Any non-member State of the Council of Europe which becomes a Contracting Party to the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* after 6 April 2022 must contribute financially to the monitoring mechanism of the Convention in accordance with the provisions of Resolution CM/Res(2022)6.

IV. The text of the Convention, its explanatory report, the chart of signatures and ratifications and all declarations made with regard to it can be consulted on the website of the Council of Europe's Treaty Office on https://conventions.coe.int. Information concerning the Protocols are also available on this website.

For any further information, please contact the Treaty Office:

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