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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

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**PROPOSALS FOR A NEW PROCEDURE OF NOTIFICATION
OF ACTS RELATED TO COUNCIL OF EUROPE'S TREATIES**

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

Note on the new notification procedure

1. The current notification procedure can be summarised as follows: Notifications are drafted in both English and French but are not signed individually, nor sent individually to the member States. The notifications are generally grouped and sent in packages which content depends on the amount of treaty actions to be notified and which are sent out once about every three weeks. Each package of notifications is preceded by a note verbale bearing the stamp of the Council of Europe and the initials of the Director General of Legal Affairs. Depending on the wishes of each State, the notifications are sent either to the Permanent Representation at the Council of Europe or to the Ministry of Foreign Affairs (in the latter case a copy is sent to the Permanent Representation). Notifications to the Permanent Representation are transmitted by internal post, those to the Ministry of Foreign Affairs by ordinary mail.

2. The proposed new notification procedure would consist in:

- making all notifications available online, in a database which would offer a variety of search functions, including search by Party, treaty, and date of legal act. The notifications would contain a digitized signature. They could be downloaded and printed in a secure PDF-format.
- informing all Permanent and Observer Representations and diplomatic missions of non-member States as well as interested ministries and other authorities in the capitals at regular intervals (e.g. each Friday) by e-mail about the legal acts that have been registered and put on the notifications website.

3. The proposed procedure would be in conformity with the final clauses of Council of Europe treaties. The duty of the depositary to notify States and other interested Parties of any acts mentioned in the final clauses has an essentially informative function. The notification is not a substantive part of the transaction by which the depositing State establishes treaty relations with other States. When adopting the 1969 Vienna Convention on the Law of Treaties, the Parties accepted that the act of deposit will be sufficient by itself to establish a legal nexus between the depositing State and any other State which has expressed its consent to be bound by the treaty (see the International Law Commission's Commentary on Article 78 of the Vienna Convention on the Law of Treaties, YBILC 1966 vol. II, pp. 271).

4. The authenticity of the data would be ensured by its location on a secure website within the Council of Europe. The technology used is called HTTPS. It ensures the identification of the Treaty Office website and the encryption of the data when transported on the Internet from the web server to the PC used for consultation. The server management procedures include security operations designed to minimize the risk of any known security threat. Making the notifications available on a secure website offers better protection against data interference than transmission by e-mail. The sender address and the contents of an e-mail can be modified or faked much more easily than the contents of a website.

In addition to taking all necessary measures to prevent the damaging, deterioration, alteration or suppression of data, the Treaty Office will also keep copies of all notifications, which may be used to reconstitute the data base if necessary. In this context, it should be recalled that the current notification procedure does not offer any real guarantee for the authenticity of the notified information. The initialled note verbale accompanied by unsigned notifications does not constitute reliable evidence of either the sender's identity or the integrity of the attached data. Other depositaries, such as the United Nations, have also abandoned the practice of individually signed notifications and have started to use notification through electronic means.

5. The proposed notification procedure offers several advantages. It would both be more efficient and less costly than the existing procedures:

- all States and other interested Parties would be informed almost instantaneously of any new legal acts relating to Council of Europe treaties thus considerably reducing the delays that are inherent in the current transmission by post;
- the publication on the web site of the texts of the reservations and declarations would be considerably speeded up. As for now, those data are published on the web site of the Treaty Office only once the notification has been transmitted, that is to say about every three weeks;
- the information would be available anywhere in the world and could easily be downloaded and printed by any interested person (the cumbersome and costly dissemination of photocopies could thus be abolished);
- the regular notice of new legal acts could be sent automatically to a variety of authorities and institutions in each country that are interested in Council of Europe treaties;
- the notifications database would serve as a lasting source of information of the authentic version of treaty data, thus fulfilling an important documentary function (Permanent Representations and other competent state authorities would no longer be required to archive notifications);
- for the Council of Europe, the rather cumbersome and costly procedure of sending out written notifications by post could be abandoned.