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AD HOC COMMITTEE ON DATA PROTECTION
COMITE AD HOC SUR LA PROTECTION DES DONNEES
(CAHDATA)

Compilation of comments received / Compilation des commentaires reçus

Directorate General / Direction Générale
Human Rights and Rule of Law / Droits de l'Homme et Etat de droit

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CROATIA / CROATIE

Article 9

Proposal to add the following wording after item b of the Article 9 -

„Freedom of expression by understanding of this Convention can not violate the right of privacy, reputation and dignity and / or other fundamental rights of other people when there is no public interest in relation to the activity of the journalists nor when there is a defense of individual's own, substantial right prevailing over the mentioned rights. Freedom of expression also does not imply nor allow speech of hate and/or inciting to hatred, any kind of discrimination and oral /written abuses against a group of people or the individuals. „

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

T-PD PROPOSALS	PROPOSALS FOR DISCUSSION	Comments
Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data	
Article 9 – Exceptions and restrictions	Article 9 – Exceptions and restrictions	
<p>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 law and constitutes a necessary measure in a democratic society for:</p>	<p>1 No exception to the <u>provision set out in</u> 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 law and constitutes a necessary <u>and proportionate</u> measure in a democratic society for:</p>	<p>We propose to delete article 5.3 from the list of possible derogations. Or it is not clear how it could be a derogation from the principles laid down in this article especially from "lawfull processing" and "legitimate purpose" as far as it should be foreseen by a law?</p>

Nota bene: Within the Convention shall be more emphasized the security-privacy relation.

APF (AUSTRALIAN PRIVACY FOUNDATION)

The APF notes the Resolution concerning the Convention 'modernisation' proposals adopted by the European Conference of Data Protection Authorities on 5 June 2014, endorsing the work undertaken by the Consultative Committee, noting that 'any reduction in the level of protection currently afforded by Convention would be a step backwards', and supporting twelve proposals by the Consultative Committee to strengthen the Convention. The APF supports and endorses those comments by the European Conference.

In particular, the APF notes the comments by the European Conference that the expansion of Convention 108 to countries outside the Council of Europe 'must not lead to a reduction in the high standards of data protection' in the current Convention and in the proposed modernization. As a civil society organization based in a country which we hope will eventually accede to the Convention, we strongly endorse this view. High but realistic standards for accession to the Convention are necessary before the APF would support Australian accession, because of the consequences for Australia of being a party to the Convention, in particular the requirements of free flow of personal data to other Parties, pursuant to Article 12. The interests of Australian data subjects require that no parties to the Convention must have inadequate data protection standards, and our support for Australian accession is contingent upon that.

APF supports the proposed changes to the T-PD Proposals contained in the Proposals for Discussion, subject to the reservations expressed below

APF supports these changes: Preamble 3rd paragraph; Art. 1 (but subject to our reservations concerning Art. 3(1) and Art. 1bis); Art. 2(c); Art. 3 (except Art 3(1) as below); Art. 4; Art 5 (except Art. 5(3)(c) as below); Art. 6 (except Art. 6(2) as below); Art 7 (except Art. 7(2) as below); Art 7bis (except Art. 7bis(1) as below); Art. 8; Art. 8bis (except Art. 8bis (3) as below); Art. 9; Art. 10; Art. 12 (except Art. 12(7)(c) as below); Art. 12bis; Art. 13 (except as below); Arts. 14-20; Art. 21; and Art. 22.

APF proposes the following changes to the Proposals for Discussion, in order both to improve them, and to guard against weakening of the T-PD proposals:

- Art. 3(1) should be improved by addition of the words 'including any person subject to the jurisdiction of the Party', so as to avoid any limitation of protection to citizens or residents only.
- Art. 5(3)(c) should be improved by re-introduction of the words 'and limited to the minimum necessary', as in the T-PD proposals. The principal of minimality in personal data collection is becoming every day more essential for data protection laws to be effective, particularly as it becomes more difficult to control use and disclosure, or 'Big Data' practices. Preventing collection of personal data unless its collection is necessary for legitimate purposes is now an essential principle of data protection. By far the majority of countries outside Europe with data privacy laws have already adopted the minimum collection principle. If Convention 108 does not require minimum collection, there is a serious question to be asked as to whether they should even consider acceding to Convention 108, because data exports to countries with no such principle will place the privacy of their citizens at risk.
- Art. 6(2) should be improved by stating 'guard against and if possible prevent'.
- Art. 7(2) should have appended to it words such as 'and also in appropriate cases shall notify the data subjects who may be affected, in circumstances to be determined by law, including whenever required by the competent supervisory authority'.
- Art. 7bis(1) should be improved by addition, after 'categories of recipients of the personal data', the words 'and the location of any recipient who is outside the jurisdiction in which the controller is located, and the means of exercising the rights set out in article 8'.

- Art. 7(1bis) should be improved by stating, instead of 'already has the relevant information', the words "has already received the relevant information from the data controller".
- Art. 8bis (3) should be improved by concluding with the words ', including taking them into account from the earliest stages in the design of products and services'.
- Art. 12(7)(c) should be improved by addition of a new clause Art. 12(10): 'A supervisory authority shall be as transparent as possible (subject to protecting the rights of data subjects) when making decisions concerning data subjects or controllers, either singly or by category, and in particular should publish their decisions in a systematic and permanent form allowing free public access.' Without such transparency, supervisory authorities cannot be held accountable by the public or their representatives, and neither data subject nor controllers, nor their representative, can understand the practical implementation of the law.
- Art. 14 should be improved by addition of a new clause Art. 13(4) 'A supervisory authority shall give explicit consideration to joining those associations of supervisory authorities which it is eligible to join, and if it decides not to so join it shall publish its reasons.'

APF considers that all of these improvements are necessary to maintain the high standards needed of the Convention. APF also agrees with the European Conference that each State Party should ensure that its supervisory authority participates in the Consultative Committee of Convention 108.

T-PD

Propositions du Bureau du T-PD sur / Proposals of the Bureau of the T-PD on

Preliminary remarks / Remarques préliminaires :

The proposals for change (visible below) are based on the position of the Bureau of the TPD discussed during the 33rd meeting (Paris, 30 September-2 October 2014).

Les propositions de modification (visibles ci-dessous) sont basées sur les orientations du Bureau du T-PD telles qu'établies lors de sa 33^{ème} réunion (Paris, 30 septembre- 2 octobre 2014).

Preamble / Préambule

Considering that it is necessary to **guarantee** 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,~~ **their** personal autonomy based on their right to control of their personal data and the processing of such data;

Art. 1 – Object and purpose / Objet et but

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

Art. 3 – Scope / Champ d'application

1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby **ensuring every** individual's right to protection of their personal data.

Art. 4 – Duties of the Parties / Engagements des Parties

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 **shall have come into force** by the time of ratification or accession to this Convention.

Art. 5 - Legitimacy of data processing and quality of data / Légimité des traitements de données et qualités des données

2. Each Party shall provide ... and [explicit, unambiguous] consent of data subject or

3. Personal data undergoing processing shall be processed lawfully and fairly.

4. Personal data undergoing processing shall be processed:

a. in a transparent manner.

b. ~~Personal data undergoing processing shall be~~ collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;

c. adequate, relevant, not excessive and **limited to the minimum necessary** in relation to the purposes for which they are processed;

Art. 6 - Processing of sensitive data / Traitement de données sensibles

1 The processing of:

- genetic data,

- personal data relating to offences, criminal proceedings and convictions, and related security measures,
- biometric data uniquely identifying a person,
- personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life,
shall only be allowed where (...) specific and additional appropriate safeguards are enshrined in law, complementing those of the previous Articles of the present Convention.

Article 7bis – Transparency of processing / Transparence des traitements

1 Each Party shall provide that the controller informs the data subjects of the controller's identity and habitual residence or establishment, the purposes of the intended processing (...), **the categories of data processed** and, **if any where applicable**, the recipients or categories of recipients of the personal data ~~(...)~~ **and the means of exercising the rights set out in Article 8**, as well as providing them with any necessary additional (...) information in order to ensure **a lawful**, fair and transparent processing of the personal data.

1bis Paragraph 1 shall not apply where the data subject already has the relevant information **as set forth in paragraph 1**.

Art. 8 – Rights of the data subject / Droits des personnes concernées

~~A data subject~~ **Every person** shall have a right:

New e. to object to the processing for marketing purposes.

e to obtain, on request, ~~and without excessive delay or expense~~, rectification or erasure, as the case may be, of such data if these are being **or have been** processed contrary to the law giving effect to this Convention;

f to have a remedy under Article 10, where **data subjects' rights set out** ~~under the law giving effect to this Convention~~ have been violated;

g to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 12 bis, in exercising their rights **set out** ~~under the law giving effect to this Convention~~.

Art. 8bis – Additional obligations / Obligations complémentaires

1- Each Party shall provide that controllers and, **where applicable**, processors take all appropriate measures **to comply with the obligations set out** ~~apply the law giving effect to~~ **under** this Convention and be able to demonstrate (...) **in particular** to the competent supervisory authority provided for in Article 12 bis that the data processing under their control is in compliance with the law of this Convention the compliance with the applicable law.

2- Each Party shall provide that controllers and, where applicable, processors, undertake a risk analysis of 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] ~~structure~~ **design** the data processing ~~operations~~ in such a manner as to prevent or minimise the risk of interference with those rights and fundamental freedoms.

Article 9 – Exceptions and restrictions / Exceptions et restrictions

1. No exception to the provisions set out in this Chapter shall be allowed, except to the provisions of **Articles 5.4 3 in respect of the fairness of the processing**, 7.2, 7bis and 8 when such derogation is provided for by law and constitutes a necessary and proportionate measure in a democratic society for:

a the protection of national security, 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;

2. 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 ~~and scientific purposes~~ **or for the purposes of scientific research**, when there is no recognisable risk of infringement of the rights and fundamental freedoms of data subjects.

Article 12 - Transborder flows of personal data / Flux transfrontières de données à caractère personnel

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 can only take place where an appropriate level of (...) protection based on the provisions of this Convention is **guaranteed**.

3. An appropriate level of protection can be **ensured** by:

4a) the data subject has given his or her specific, free and **[explicit, unambiguous]** consent, after being informed of risks arising in the absence of appropriate safeguards, or

5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of this Convention is provided with all relevant information concerning the ~~safeguards applying in the case of~~ transfers of data referred to in paragraphs 3.b, 4.b and 4.c.

(move article 12.6 to 9)

6. Each Party shall also provide that the supervisory authority be entitled to request that the person who transfers data demonstrate the effectiveness of the safeguards or the existence of prevailing legitimate interests and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers where the safeguards are not deemed appropriate **or the legitimate interests do not prevail**.

Art. 12bis - Supervisory authorities / Autorités de contrôle

2 To this end, such authorities:

...
e. shall promote public awareness of the rights of data subjects and the exercise of such rights, and the awareness of controllers and processors of their responsibilities under this Convention; specific attention shall be given to the data protection rights of **children ~~more~~ and other vulnerable individuals**;

2bis. The competent supervisory authorities shall be consulted on proposals for any legislative or **non-individual** administrative measures ~~involving~~ **which provide for or relate to** the processing of personal data ~~which may severely affect data subjects by virtue of the nature, scope and purpose of such processing~~.

3 Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their right **to the protection of personal data** and shall keep data subjects informed of progress.

5 Each Party shall ensure that the supervisory authorities **have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively**.

5bis Each supervisory **authority** shall prepare and publish a periodical (...) report outlining its activities and shall ensure transparency in respect of such activities.

7 a providing mutual assistance by exchanging relevant and useful information and cooperating 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.**

New paragraph 8 (current Article 13.4): The information referred to in paragraph 7.a shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given unambiguous, specific, free and informed consent to its provision.

Article 13 – Co-operation between Parties / Coopération entre les Parties

~~Delete paragraph 3: A supervisory authority designated by a Party shall at the request of a supervisory authority designated by another Party exchange all useful information, in particular, and solely for the protection of personal data, by taking all appropriate measures under its law to provide factual information relating to specific processing carried out on its territory.~~

Paragraph 4: The information referred to in ~~paragraph 3~~ Art. 12bis paragraph 7 ...

Article 14 – Assistance to data subjects resident abroad / Assistance aux personnes concernées ayant leur résidence à l'étranger

(move this Article right after Article 8 ?):

1. Each Party shall assist any data subject ~~resident abroad~~ to exercise his or her rights under the law which gives effect to Article 8 of this Convention.
2. Where a data subject resides in 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.

Article 19 – Functions of the committee / Fonctions du comité

f may, at the request of a State or an international organisation **or on its own initiative** 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 take to reach such compliance;

INTERNET SOCIETY / SOCIETE DE L'INTERNET (ISOC)

T-PD PROPOSALS	PROPOSALS FOR DISCUSSION
: Convention for the Protection of Individuals Regard to the Processing of Personal Data	Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data
Preamble	Preamble
unchanged	unchanged
unchanged	unchanged
Considering that it is necessary, given the diversification, intensification and globalisation 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 right to control one's personal data and the processing of such data.	Considering that it is necessary to secure 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 their right to control of their personal data and the processing of such data;
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;	Recalling that the right to protection of personal data is to be considered in respect of its role in society and reconciled with other human rights and fundamental freedoms, including freedom of expression;
Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of public access to official documents ;	Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of (...) access to official documents;
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 peoples;	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 peoples;
Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.	Recognising the interest of reinforcing international cooperation between the Parties to the Convention.
unchanged	unchanged
Chapter I – General provisions	Chapter I – General provisions
Article 1 – Object and purpose	Article 1 – Object and purpose

Comment [CR1]: This would benefit from some further consideration and "word-smithing".
The T-PD proposal has better phrasing.

The purpose of this Convention is to secure for every individual subject to the jurisdiction of the Parties, whatever their nationality or 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.	The purpose of this Convention is to protect individuals with regard to the processing of their personal data, thereby contributing to respect for their human rights and fundamental freedoms, and in particular their right to privacy.
Article 2 – Definitions	Article 2 – Definitions
unchanged	unchanged
unchanged	unchanged
Deleted – see 3.1 below	Deleted – see 3.1 below
c “data processing” means any operation or set of operations which is performed upon personal data, and in particular the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on data;	c “data processing” means any operation or set of operations which is performed upon 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;
where no automated processing is used, data processing means the operations carried out within a structured set established according to any criteria which allow to search for personal data ;	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 (...);
d “controller” means the natural or legal person, public authority, service, agency or any other body which alone or jointly with others has the decision-making power with respect to data processing.	d “controller” means the natural or legal person, public authority, service, agency or any other body which alone or jointly with others has the decision-making power with respect to data processing;
e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;	e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;

Comment [CR2]: Consider removing the notion of a “structured set” – this seems less relevant today, e.g. in light of the rapid evolution of “search” technologies and techniques.

Inference engines are increasingly capable of working with unstructured data.

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;	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.
Article 3 – Scope	Article 3 – Scope
1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction, thereby protecting the right to protection of personal data of any person 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.	1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in both the public and private sectors, thereby securing individuals' right to protection of their personal data whether they be nationals or non-nationals. 1bis This Convention shall not apply to data processing carried out by an individual in the course of purely personal or household activities.
delete	delete
delete	delete
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delete	delete
Chapter II – Basic principles for the protection of personal data	Chapter II – Basic principles for the protection of personal data
Article 4 – Duties of the Parties	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.	1 Each Party shall take the necessary measures in its (...) law to give effect to the provisions set out in this Convention and to secure their effective application.
2 These measures shall be taken by each Party prior to ratification or accession to this Convention.	2 These measures shall be taken by each Party by the time of ratification or accession to this Convention.

<p>3 Each Party undertakes to allow the Convention Committee provided for in Chapter V to 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.</p>	<p>3 Each Party undertakes to: (a) allow the Convention Committee to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of this Convention (...); and (b) contribute actively to this evaluation process (...).</p>
<p>Article 5 – Legitimacy of data processing and quality of data</p>	<p>Article 5 – Legitimacy of data processing and quality of data</p>
<p>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.</p>	<p>1 Data processing shall be proportionate having regard to the legitimate purpose sought to be pursued and, at all stages of the processing, reflect a fair and just balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.</p>
<p>2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [explicit, unambiguous] consent of the data subject or of some legitimate basis laid down by law.</p>	<p>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 accessible and precise law.</p>
<p>3 Personal data undergoing automatic processing shall be :</p>	<p>3 Personal data undergoing (...) processing shall be :</p>
<p>a. processed lawfully and fairly.</p>	<p>a. processed lawfully, fairly and in a transparent manner;</p>
<p>b. collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;</p>	<p>b. only collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes;</p>
<p>c. adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are processed;</p>	<p>c. adequate, relevant and not excessive (...) having regard to the purposes for which they are processed;</p>
<p>unchanged</p>	<p>unchanged</p>

Comment [CR3]: Suggest it is unnecessary to say "provided for in Chapter V"

Comment [CR4]: What does this mean?

Comment [CR5]: Proposed alternate text:

1(a) Data processing shall be both a necessary and proportionate means of achieving a legitimate purpose
1(b) At all stages, the data processing shall be a fair and just balance between all rights, freedoms and interests.
1(c) At no time, may data processing impair the very essence of an individual's right to privacy.

Comment [CR6]: Consider adding a requirement that a "controller" actively make a determination in advance as to the legitimacy of purpose and the balance.

Does "at all stages of processing" add anything? (By definition, data processing includes different stages, e.g. collection.)

If something is needed, perhaps "at all times" is more appropriate.

Comment [CR7]: Consider "choice" as an alternative to "consent"

Comment [CR8]: Consider replacing "collected" with "processed" as collected falls within the definition of processing

Comment [CR9]: Consider alternate text:

"only processed for explicit, specified and legitimate purposes and only processed in ways that are compatible with those purposes"

Comment [CR10]: Consider replacing "not excessive" with "reasonable"

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.	e. only preserved in a form which permits: (i) identification of data subjects; or (ii) correlation of personal data pertaining to them; for no longer than is necessary for the purposes for which those data are processed.
Article 6 – Processing of sensitive data	Article 6 – Processing of sensitive data
<p>1 The processing of genetic data, of personal data concerning offences, criminal convictions and related security measures, the processing of biometric data uniquely identifying a person, as well as the processing of personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides appropriate safeguards, complementing those of the present Convention.</p> <p>2. Appropriate safeguards shall prevent the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.</p>	<p>1 The processing of:</p> <ul style="list-style-type: none"> - genetic data, - personal data relating to offences, criminal proceedings and convictions, and related security measures, - biometric data uniquely identifying a person or a limited group of individuals, - personal data for the information they may reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, <p>shall only be allowed where (...) specific and additional appropriate safeguards are enshrined in law, complementing those of the previous Articles of the present Convention.</p> <p>2. Such (...) safeguards shall guard against the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.</p>
Article 7 – Data security	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 access, destruction, loss modification or dissemination of personal data.	1 Each Party shall provide that the controller and, where applicable, the processor implement appropriate security measures against risks such as accidental or unauthorised: access to; destruction; loss; use; modification; or disclosure of personal data.

Comment [CR11]: What does this mean?

Was this meant to be: "and sentencing"?

Comment [CR12]: These are traditional notions of what is sensitive data. However, it is readily becoming apparent that other categories may in some circumstances have a similar privacy-impact risk, e.g. location data.

For discussion: consider whether something should be added to traditional categories, e.g.:

- personal data for the information they may reveal relating to location, social connections and relationships

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.	2 Each Party shall provide that the controller shall notify, without delay (...) the competent supervisory authority 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.
Article 7bis – Transparency of processing	Article 7bis – Transparency of processing
1 Each Party shall see to it that the controller ensures the transparency of data processing by informing the data subjects, unless they have already been informed, of at least the identity and habitual residence or establishment of the controller, the purposes of the processing carried out, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.	1 Each Party shall provide that the controller informs the data subjects of the controller's identity and habitual residence or establishment, the purposes of the intended processing (...) and, where applicable, the recipients or categories of recipients of the personal data (...) as well as providing them with any necessary additional (...) information in order to ensure fair and transparent processing of the personal data. 1bis Paragraph 1 shall not apply where the data subject already has the relevant information.
2. Where the personal data are not collected from the data subjects, the controller shall nonetheless 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.	2. Where the personal data are not collected from the data subjects, the controller shall nonetheless 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.
Article 8 – Rights of the data subject	Article 8 – Rights of the data subject
Any person shall be entitled:	A data subject shall have a right:
a not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having their views taken into consideration;	a not to be subject to a decision significantly affecting him/her that is based solely on an automated processing of data, without having their views taken into consideration;
b to object at any time to the processing of personal data concerning him/her unless the controller demonstrates compelling legitimate grounds for the processing which override their interests or rights and fundamental freedoms ;	b (...) (moved to new d.)

Comment [CR13]: Might this open the door for controllers to claim that data subjects "had access to the information, if only they looked for it" (whether or not it has been published somewhere accessible).

Comment [CR14]: Even where processing may be expressly prescribed by law, there may be instances where the controller should be required to provide such information.

<p>c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of the processing of personal data relating to him/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 to ensure the transparency of processing in accordance with Article 7bis paragraph 1;</p> <p>d to obtain, on request, knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;</p>	<p>b to obtain, on request, at reasonable intervals and without excessive delay or expense, details of the processing of personal data relating to him/her in an intelligible form with all available information on the source of the data, the preservation period, as well as any other information that the controller is required to provide to ensure the transparency of processing in accordance with Article 7bis paragraph 1;</p> <p>c to obtain, on request, details of the reasons for which his/her personal data was processed or is being processed;</p> <p>d to object at any time to the processing of personal data relating to him/her unless the controller demonstrates compelling legitimate grounds for the processing which objectively override his/her interests or rights and fundamental freedoms ;</p>
<p>e 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;</p>	<p>e to obtain, on request, and without excessive delay or expense, rectification and/or erasure, as the case may be, of such data if these are being processed contrary to the the law giving effect to this Convention;</p>
<p>See f below</p>	<p>See f below</p>
<p>f to have a remedy if a decision significantly affecting them has been taken without taking into consideration their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;</p>	<p>f to have a remedy under Article 10, (...) where rights under the law giving effect to this Convention have been violated;</p>
<p>g to benefit, whatever their residence, from the assistance of a supervisory authority within the meaning of Article 12 bis, in exercising the rights provided by this Convention.</p>	<p>g to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 12 bis, in exercising their rights under the law giving effect to this Convention.</p>
<p>Article 8bis – Additional obligations</p>	<p>Article 8bis – Additional obligations</p>

Comment [CR15]: Surely a “data subject” has the right to object at any time – the critical point is not objection but what flows – e.g. stop processing,

Comment [CR16]: What about the situation where the data processing complies with the law, yet the data is incorrect or inaccurate? What rights does the data subject have in that instance?

<p>1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.</p>	<p>1- Each Party shall provide that controllers and (...) processors take (...) all appropriate measures (...) to apply the law giving effect to this Convention and to be able to demonstrate (...) to the competent supervisory authority provided for in Article 12 bis that the data processing under their control is in compliance with the law of this Convention the compliance with the applicable law.</p> <p>2- Each Party shall provide that controllers and, where applicable, processors, undertake a risk analysis and assessment of 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 structure the data processing operations so as to prevent or minimise the risk of interference with those rights and fundamental freedoms and any adverse impact on the data subjects.</p>
<p>3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.</p> <p>4- Each Party can take the measures needed to adapt the application of the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.</p>	<p>3- Each Party shall provide in its law that controllers and, processors implement technical and organisational measures to address the implications of the right to the protection of personal data at all stages of data processing operations.</p> <p>4- Each Party, having regard to the risks to the interests, rights and fundamental freedoms of data subjects and the potential impact on those individuals, may 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 of the data; the nature, scope and purpose of the processing; and, where appropriate, the size of the controller or processor.</p>
<p>Article 9 – Exceptions and restrictions</p>	<p>Article 9 – Exceptions and restrictions</p>

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 law and constitutes a necessary measure in a democratic society for:	1 No exception or restriction to the provisions set out 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 in accessible and precise law, and constitutes a necessary and proportionate measure in a democratic society for:
delete	delete
a the protection of national security, public safety, important economic and financial interests of the State or the prevention and suppression of criminal offences;	a the protection of national security, 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;
b the protection of the data subject or the rights and freedoms of others, notably freedom of expression.	b the protection of the data subject or the rights and fundamental freedoms of other individuals, notably freedom of expression.
2 Restrictions on the exercise of the provisions specified in Article 12 may also admitted where they are provided by law and constitute a necessary measure in a democratic society for the freedom of expression.	2- (moved to Article 12)
3 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 purposes of scientific research, when there is obviously no risk of infringement of the rights and fundamental freedoms of data subjects.	3 2. 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 and scientific purposes or for the purposes of scientific research, when there is obviously no recognisable risk of infringement of the rights and fundamental freedoms of data subjects.
Article 10 – Sanctions and remedies	Article 10 – Sanctions and remedies
Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of domestic law giving effect to the provisions of this Convention.	Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of (...) the law giving effect to the provisions of this Convention.
Article 11 Extended protection	Article 11 Extended protection
unchanged	unchanged

Comment [CR17]: Suggest adding new provisions:

"Such exceptions or restrictions shall be confined as narrowly as possible to achieve the objectives in paragraphs (a) and (b)."

"Before an exception or restriction is allowed, Parties shall publicly and clearly articulate the reasons why such an exception or restriction is necessary and proportionate, and provide supporting evidence."

"Each Party shall develop rules or codes of conduct for each exception or restriction to implement appropriate safeguards to ensure that the privacy risks and impacts of such exceptions or restrictions is minimized as much as possible."

Comment [CR18]: The scope of statistical purposes should be outlined in the explanatory memorandum. For example, there should be a clear objective for the analysis, access to the data is essential, the objective is for social benefit (i.e. not commercial benefit).

This exemption is problematic, because we are finding out that these kinds of data are not as anonymous as might have been assumed. This is particularly important given the focus of this provision on information like clinical/healthcare/epidemiology data. What constitutes a "recognisable" risk varies over time, and the harmful impact can be irreversible. Thought also needs to be given to the implications of releasing an 'anonymised' data set to a third party who then fails to treat it as a source of risk (cf. 12 (4) (a) below)

Chapter III – Transborder flows of personal data	Chapter III – Transborder flows of personal data
Article 12 - Transborder flows of personal data	Article 12 - Transborder flows of personal data
Delete	Delete
<p>1. A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph is regulated by binding harmonised rules of protection shared by States belonging to a regional international organisation and the transfer of data is not governed by measures provided for in paragraph 3.b.</p>	<p>1. A Party shall not, for the sole purpose of the protection of personal data, prohibit, restrict or subject to special authorisation the transfer of such data to a recipient who is subject to the jurisdiction of another Party to the Convention unless Such a Party may however do so if bound by (...) harmonised rules of protection shared by States belonging to a regional international organisation (...).</p>
<p>2. When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the transfer of data can only occur where an appropriate level of personal data protection based on the principles of the Convention is guaranteed.</p> <p>3. An appropriate level of protection can be ensured by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>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.</p>	<p>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 exists. based on the provisions of this Convention is secured.</p> <p>3. An appropriate level of protection can be achieved by:</p> <p>a) the law of that State or international organisation, including the applicable international treaties or agreements, or</p> <p>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.</p>

Comment [CR19]: This would benefit from greater clarity.

<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of data may take place, if :</p> <p>a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided by law and constitute a necessary measure in a democratic society.</p>	<p>4. Notwithstanding the provisions of the previous paragraphs, each Party may provide that the transfer of personal data may take place, if :</p> <p>a) the data subject has given his or her specific, free and (...) unambiguous consent, after being informed of risks arising in the absence of appropriate safeguards, or</p> <p>b) the specific interests of the data subject require it in the particular case, or</p> <p>c) prevailing legitimate interests, in particular important public interests, are provided for in accessible and precise law, and constitute a necessary and proportionate measure in a democratic society.</p>
<p>5. 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 transfers of data provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c. It shall also provide that the supervisory authority be entitled to request that the person who transfers data, or the recipient, demonstrate the quality and effectiveness of actions taken and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers of data.</p>	<p>5. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of this Convention is provided with all relevant information concerning the (...) safeguards applying in the case of transfers of data referred to in paragraphs 3.b (...), 4.b and 4.c.</p> <p>6. Each Party shall also provide that the supervisory authority be entitled to request that the person who transfers data (...) demonstrate the effectiveness of the safeguards or the existence of prevailing legitimate interests (...) and that the supervisory authority be entitled to prohibit, suspend or subject to condition such transfers where the safeguards are not deemed appropriate (...).</p>
<p>Delete</p>	<p>7 Exceptions to the provisions specified in this Article may be allowed where they are provided for in accessible and precise law, and constitute a necessary and proportionate measure in a democratic society for the freedom of expression.</p>
<p>(Article 12 above replaces the old Article 12 and Article 2 of the Additional Protocol)</p>	<p>(Article 12 of the modernisation proposals would replace Article 12 and Article 2 of the Additional Protocol)</p>
<p>Delete</p>	<p>Delete</p>
<p>Delete</p>	<p>Delete</p>

Comment [CR20]: Consider "choice" instead of "consent"

Comment [CR21]: These words are probably not needed.

Comment [CR22]: Is there a reason why this phrase appears here?

Delete	Delete
Delete	Delete
Delete	Delete
Delete	Delete
Chapter III bis Supervisory authorities	Chapter III bis Supervisory authorities
Article 12bis Supervisory authorities	Article 12bis Supervisory authorities
1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles of this Convention.	1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the (...) law giving effect to the provisions of this Convention.
<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>c. shall have the power to issue decisions with respect to domestic law giving effect to the provisions of this Convention and may in particular sanction administrative offences;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;</p> <p>e. shall be responsible for raising awareness of and providing information on data protection;</p>	<p>2 To this end, such authorities:</p> <p>a. shall have powers of investigation and intervention;</p> <p>a¹-(see new paragraph 2bis below)</p> <p>b. shall perform the functions relating to transfers of data provided for under Article 12, notably the approval of standardised safeguards;</p> <p>c. shall have powers to issue decisions with respect to violations of the law giving effect to the provisions of this Convention and may impose administrative sanctions;</p> <p>d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of (...) the law giving effect to the provisions of this Convention;</p> <p>e. shall promote:</p> <p>(i) public awareness of the rights of data subjects and the exercise of such rights;</p> <p>(ii) awareness of controllers and processors of their responsibilities under this Convention;</p> <p>specific attention shall be given to the data protection rights of children;</p>

	<p>2bis. The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures involving the processing of personal data which may severely affect data subjects by virtue of the nature, scope and purpose of such processing.</p>
<p>3 Each supervisory authority can be requested by any person to investigate a claim concerning the protection of his/her rights and fundamental freedoms with regard to the data processing within its competence and shall inform the data subject of the follow-up given to such a claim.</p>	<p>3 Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their data protection and shall keep data subjects informed of progress.</p>
<p>4 The supervisory authorities shall perform their duties and exercise their powers in complete independence. They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.</p>	<p>4 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 (...).</p>
<p>5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their functions and exercise their powers independently and effectively.</p> <p>5bis The supervisory authorities shall draw up a public report of their activities and shall see to it that transparency on their activities be ensured.</p> <p>5ter Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties.</p>	<p>5 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 (...).</p> <p>5bis Each supervisory authorities shall prepare and publish a periodical (...) report outlining its activities and shall ensure transparency in respect of such activities.</p> <p>5ter Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to, or have had access to, in the performance of their duties and exercise of their powers.</p>
<p>6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.</p>	<p>6 Decisions of the supervisory authorities (...) may be appealed against through the courts.</p>
<p>7 In accordance with the provisions of Chapter IV, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties, in particular by:</p>	<p>7 In accordance with the provisions of Chapter IV, supervisory authorities shall co-operate with one another as necessary for the performance of their duties and exercise of their powers, in particular by:</p>

a exchanging all useful information, in particular by taking, under their domestic law and solely for the protection of personal data, all appropriate measures to provide factual information relating to specific processing carried out on its territory, with the exception of personal data undergoing this processing, unless such data is essential for co-operation or that the data subject has previously agreed to in an unambiguous, specific, free and informed manner;	a exchanging relevant and useful information and cooperating with each other;
b coordinating their investigations or interventions or conducting joint actions;	b coordinating their investigations or interventions, or conducting joint actions;
c providing information on their law and administrative practice relating to data protection.	c providing information and documentation on their law and administrative practice relating to data protection.
8 In order to organise their co-operation and to perform the duties set out in the preceding paragraph, the supervisory authorities of the Parties shall form a conference/network.	8 In order to organise their co-operation and to perform the duties set out in the preceding paragraph, the supervisory authorities of the Parties shall form a conference/network.
9 The supervisory authorities shall not be competent with respect to processing carried out by entities acting in their judicial capacity.	9 The supervisory authorities shall not be competent with respect to processing carried out by bodies acting in their judicial capacity.
Chapter IV – Mutual assistance	Chapter IV – Mutual assistance
Article 13 – Co-operation between Parties	Article 13 – Co-operation between Parties
unchanged	unchanged
unchanged	unchanged
a each Party shall designate one or more supervisory authorities within the meaning of Article 12bis of this Convention, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;	a each Party shall designate one or more supervisory authorities within the meaning of Article 12bis of this Convention, and communicate the name(s), address(es) and contact details to the Secretary General of the Council of Europe;
b each Party which has designated more than one supervisory authority shall specify in its communication referred to in the previous sub-paragraph the competence of each.	b each Party which designates more than one supervisory authority shall specify the competence of each authority in its communication referred to in the previous sub-paragraph.

Incorporated into Article 12bis	<p>3 A supervisory authority designated by a Party shall at the request of a supervisory authority designated by another Party exchange all useful information, in particular, and solely for the protection of personal data, by taking all appropriate measures under its law to provide factual information relating to specific processing carried out on its territory.</p> <p>4. The information referred to in paragraph 3 shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given unambiguous, specific, free and informed consent to its provision.</p>
Delete	Delete (see 12bis 7b)
Delete	See above
Article 14 – Assistance to data subjects resident abroad	Article 14 – Assistance to data subjects resident abroad
Incorporated into Article 12bis	<p>1 Each Party shall assist any data subject resident abroad to exercise his or her rights under the law which gives effect to Article 8 of this Convention.</p>
Incorporated into Article 12bis	<p>2 Where a data subject resides in the territory of another Party, he or she shall be given the option of submitting the request through the intermediary of the authority designated by that Party.</p>
Incorporated into Article 12bis	<p>3 The request for assistance shall contain all the necessary particulars, relating inter alia to:</p>
Incorporated into Article 12bis	<p>a the name, address and any other relevant particulars identifying the data subject making the request;</p>
Incorporated into Article 12bis	<p>b the processing to which the request pertains, or its controller;</p>
Incorporated into Article 12bis	<p>c the purpose of the request.</p>
Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities	Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities

Comment [CR23]: Possible alternate wording:

“Solely for the purposes of protecting personal data, a supervisory authority designated by one Party may request factual information from a supervisory authority designated by another Party concerning a specific processing that occurred on its territory.”

“Upon receipt of the request, the Party will provide such information as is necessary

1 A supervisory authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.	1 A supervisory authority designated by a Party which has received information from a supervisory authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
Delete	Delete
2 In no case may a designated supervisory authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the express consent of the person concerned.	2 In no case may a designated supervisory authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the express consent of the <u>data subject concerned</u> .
Article 16 – Refusal of requests for assistance	Article 16 – Refusal of requests for assistance
A designated supervisory authority to which a request for assistance is addressed under Article 13 of this Convention may not refuse to comply with it unless:	A designated supervisory authority to which a request for assistance is addressed under Article 13 of this Convention may not decline or refuse to comply with the request unless:
unchanged	unchanged
unchanged	unchanged
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 persons under the jurisdiction of that Party.	compliance with the request would be incompatible with the sovereignty, national security or public order of the recipient Party, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.
Article 17 – Costs and procedures of assistance	Article 17 – Costs and procedures of assistance
1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [abroad] under Article 14 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 which has designated the supervisory authority making the request for assistance.	1 Mutual assistance which the Parties render to each other under Article 13, and assistance they render to data subjects [abroad] under Articles 8 and 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The <u>latter costs or fees</u> shall be borne by the Party which has designated the supervisory authority making the request for assistance.
unchanged	unchanged

Comment [CR24]: Is it worthwhile considering an alternative where a large class of individuals is affected and it would not be practical to obtain their express consent?

For example, where a supervisory authority becomes aware of a data breach affecting a class of data subjects who might reasonably be assumed not to be aware of it themselves.

Comment [CR25]: Is it only the costs or fees of interpreters or both that would be borne by the Party?

unchanged	unchanged
Chapter V – Convention Committee	Chapter V – Convention Committee
Article 18 – Composition of the committee	Article 18 – Composition of the committee
1 A Convention Committee shall be set up after the entry into force of this Convention.	1 A Convention Committee shall be set up after the entry into force of this Convention.
unchanged	unchanged
3 The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties entitled to vote, invite an observer to be represented at its meetings.	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.
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.	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.
Article 19 – Functions of the committee	Article 19 – Functions of the committee
The Convention Committee:	The Convention Committee:
a may make recommendations with a view to facilitating or improving the application of the Convention;	a may make recommendations with a view to facilitating or improving the application of the Convention;
unchanged	unchanged
unchanged	unchanged
d may express an opinion on any question concerning the interpretation or application of this Convention;	d may 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;	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 accession and, where necessary, recommend measures to take to reach compliance with the provisions of this Convention;

f may, at the request of a State or an international organisation or on its own initiative, evaluate whether the level of data protection the former provides is in compliance with the provisions of this Convention;	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 take to reach such compliance;
g may develop or approve models of standardised safeguards referred to in Article 12;	g may develop or approve models of standardised safeguards referred to in Article 12;
h shall periodically 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 in compliance with the Convention;	h shall (...) review the implementation of this Convention by the Parties (...) and recommend measures to take where a Party is not in compliance with this Convention;
i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.	i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.
	19bis The specifics of the modalities of exercise by the Convention Committee of the functions provided for in this Article shall be defined in the Rules of Procedure adopted by the Committee in accordance with Article 20.5 which shall regulate, inter alia, the procedures of evaluation and review on the basis of objective criteria.
Article 20 – Procedure	Article 20 – Procedure
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.	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.
2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.	2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the Convention Committee.

Comment [CR26]: Without "on its own initiative", would f. preclude e. if a State did not make a request or specifically requested that the evaluation not occur?

<p>3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.</p>	<p>3 Each Party has a right to vote and shall have one vote. On questions within its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.</p>
<p>4 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 the Convention.</p>	<p>4 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.</p>
<p>5. Subject to the provisions of this Convention, the Convention Committee shall draw up its own Rules of Procedure and establish in particular the procedures of evaluation set out in Article 4.3 and of examination of the level of protection provided for in Article 19, on the basis of objective criteria.</p>	<p>5. Subject to the provisions of this Convention, the Convention Committee shall draw up its own Rules of Procedure (...).</p>
<p>Chapter VI – Amendments</p>	<p>Chapter VI – Amendments</p>
<p>Article 21 – Amendments</p>	<p>Article 21 – Amendments</p>
<p>1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.</p>	<p>1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.</p>
<p>2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties to the Convention, to the other member States of the Council of Europe, to the European Union and to every non-member State which has been invited to accede to this Convention in accordance with the provisions of Article 23.</p>	<p>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 23.</p>
<p>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.</p>	<p>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.</p>

4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.	4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee and may approve the amendment.
unchanged	unchanged
unchanged	unchanged
7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two 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 the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.	7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two 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 Europe.
8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by the Convention without at the same time accepting the amendment.	8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, the European Union, or an international organisation may not express its consent to be bound by this Convention without at the same time accepting the amendment.
Chapter VII – Final clauses	Chapter VII – Final clauses
Article 22 – Entry into force	Article 22 – Entry into force
1 This Convention shall be open for signature by the member States of the Council of Europe, the European Union and States not members of the Council of Europe which have been invited to accede to the Convention opened for signature on 28 January 1981. 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.	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.

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unchanged	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.
Article 23 – Accession by non-member States and international organisations	Article 23 – Accession by non-member States and international organisations
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 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.	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 19.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.
2 In respect of any State or 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.	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.
Article 24 – Territorial clause	Article 24 – Territorial clause
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.	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.

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.	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.
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Article 25 – Reservations	Article 25 – Reservations
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Article 26 – Denunciation	Article 26 – Denunciation
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Article 27 – Notifications	Article 27 – Notifications
The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:	The Secretary General of the Council of Europe shall notify the member States of the Council and any Party to this Convention of:
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Article ... of the Protocol: signature and entry into force

1. This protocol shall be open for signature by the Parties to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This protocol 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 all Parties to the Convention have expressed their consent to be bound by the protocol in accordance with the provisions of paragraph 1 of this Article.
3. However, this protocol shall enter into force following the expiry of a period of [two] years after the date on which it has been opened to signature, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those states which were Parties to the Convention at the date of opening for signature of this protocol.

4. Should such an objection be notified, the protocol 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 the Party to the Convention which has notified the objection has deposited its instrument of ratification, acceptance or approval with the Secretary General of the Council of Europe.

5. From the entry into force of this protocol, with respect to a Party having entered one or more declarations in pursuance of Article 2 of the unamended Convention, such declaration(s) will lapse.