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**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF
INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA**

CONVENTION 108

**EVALUATION AND FOLLOW-UP MECHANISM
UNDER CONVENTION 108+
PROCESS AND RATIONALE**

Directorate General of Human Rights and Rule of Law

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Introduction

The follow-up of the implementation of Convention 108¹ was a priority issue for the Consultative Committee of the Convention which accordingly included this question in its *“Work programme for 2009 and beyond”*.

The Committee endorsed on 15 April 2014 a document entitled "Elements of information on the evaluation and monitoring mechanism" (T-PD-BUR(2013)02). These elements of information were based on the provisions contained in the Convention 108 modernisation proposals. They were also largely based on the 2011 report² of the scientific expert. This report was intended to provide reflection elements on the modalities and mechanisms that would be relevant to develop for the evaluation and monitoring of the implementation of the modernised Convention in order to ensure long-term protection of individuals' fundamental rights and freedoms with regard to the processing of personal data in time and space at global level.

The amending Protocol (CETS No. 223) to the Convention for the protection of individuals with regard to the automatic processing of personal data (ETS No. 108) was adopted by the Committee of Ministers at its 128th session held in Elsinore, Denmark, on 17-18 May 2018 and was open for signature on 10 October 2018.

This document updates the 2014 "Elements of Information on the Evaluation and Monitoring Mechanism" with respect to the final text of the modernised Convention 108 (hereinafter "Convention 108+").

1. Missions of the Convention Committee: evaluation of Candidates to accession and follow-up of the Parties

Convention 108+ assigns new evaluation and follow-up functions to the Convention Committee - the current Consultative Committee – and strengthens its powers in that respect. These functions are exercised in respect of Candidates for accession to the Convention (evaluation functions) and existing Parties (follow-up functions) (see the corresponding provisions in Appendix I).

Thus, from the entry into force of the Amending Protocol, the Convention Committee will have new functions:

- Evaluate a Candidate for accession in terms of the guaranteed level of protection and its conformity with the Convention;
- Assess, at the request of a State or an international organisation, the compliance of their level of protection with the Convention.
- Review the implementation of the Convention by a Party to the Convention.

As a result of these various evaluations and reviews, the Convention Committee makes recommendations, if necessary, on the measures to be taken to achieve compliance with the provisions of the Convention.

The purpose of this information is to indicate how to proceed with the evaluations and follow-ups referred to above.

¹ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) of 1981

² [T-PD-BUR\(2010\)13Rev - Report on the modalities and mechanisms for assessing implementation and follow-up of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data \(ETS No. 108\) and its Additional Protocol](#), by Marie GEORGES.

2. Purpose of the evaluation and follow-up mechanism

The purpose of the evaluation and follow-up mechanism is to evaluate the effectiveness of the measures a Candidate for accession or a Party has taken in its law to give effect to the provisions of Convention 108+.

To achieve this purpose, the evaluation and follow-up mechanism aims to assess the compliance of the legal framework of a data protection system with the provisions of Convention 108+ and the actual implementation of that system by using notably publicly available information e.g. periodical reports by the supervisory authorities, resourcing of supervisory authorities, court decisions etc. No Candidate for accession or Party shall be required to provide classified information.

2.1 Evaluation

The purpose of the implementation of an evaluation mechanism is to identify whether the level of protection provided by a Candidate for accession³ is in compliance with the Convention. The aim of this evaluation is to prepare 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 be taken to reach compliance with the provisions of the Convention.

In view of the Convention's objective of ensuring a harmonised level of protection and thus promoting the free flow of data between Parties, it is necessary to evaluate the level of protection prior to accession, in order to guarantee that all new Parties satisfy their commitments. This verification is necessary to ensure trust between Parties, as an indispensable condition to the free flow of personal data.

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

In addition, a new paragraph has been added to Article 4 in relation to the 1981 Convention, stipulating that each Party "*undertakes: a. to allow the Convention Committee provided for in Chapter VI to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of this Convention; and b. to contribute actively to this evaluation process.*"

In view of evaluating both the measures taken and their effectiveness, the evaluation must take into account all necessary elements, namely:

- a comprehensive data protection legislation providing the general principles applicable to any sector, the data subject's rights, rules on transborder transfers of data and an independent supervisory authority (composition, statute, activities);
- possible other special laws supplementing the general data protection legislation;
- and information about the concrete implementation and effectiveness of the legislative measures.

³ A Candidate for accession could be a state but also an international organisation.

2.2 Follow-up

With regard to the follow-up mechanism, the main aim is to review the implementation of the Convention by a Party and to ensure that the latter complies with its commitments. As stated above, a Party undertakes to allow the Convention Committee to evaluate the observance of its commitments and must actively contribute to this review⁴.

* *
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In the event of non-compliance, the Convention Committee shall recommend measures to take and shall facilitate, where necessary, the settlement of all difficulties related to the application of the Convention⁵.

The Convention Committee should learn lessons from the evaluation and follow-up exercises carried out and regularly take stock of them, in particular in order to draft new guidelines and recommendations⁶. The evaluations and follow-ups could also lead to the identification of good practices among the Parties under review. In that respect, the Secretariat will facilitate the dissemination of the best practices identified by preparing a compilation.

In a nutshell, the objective pursued is to ensure the credibility of Convention 108+ and to establish genuine dynamic of harmonised protection, guaranteeing that data flows between Parties occur among states or organisations offering an appropriate level of protection.

3. Composition and functions of the Convention Committee

3.1 Composition of the Convention Committee and of its Evaluation and Follow-Up Group(s)

The Committee is composed of representatives of each Party to Convention 108+ (or in their absence, the deputy representatives), as well as observers. Observers do not have the right to vote.

According to the (current) rules of procedures of the Convention Committee, the Bureau is in charge of drafting opinions. The Committee can decide to set-up working groups (also called working Parties in the rules of procedure) and decide on their composition and mandate. In order to render the evaluation and follow-up mechanism more efficient, such Working Groups – called “Evaluation and Follow-Up Groups” – should be set up.

Evaluation and Follow-up Groups

In order to carry out the evaluations and follow-up, it is suggested that one or more Evaluation and Follow-Up Groups be set up within the Convention’s Committee. Each Group is in charge of several evaluations or follow-ups.

Each Evaluation and Follow-Up Group will be composed of six members and six substitutes, one-third of members being renewed each year (after the initial period of three years), in order to ensure some stability in its methods and work. Substitution is implemented as soon as a member

⁴ Article 4, para 3 of Convention 108+.

⁵ Article 23.h of Convention 108+.

⁶ The Committee may also revise or adjust the evaluation and monitoring mechanism as necessary in the light of its experience.

is no longer available to take part in the activities of the Group. The president is elected by and amongst the members of each Evaluation and Follow-Up Group and appointed for three years.

Each Party is invited to propose, after consultation of their data protection supervisory authority, one or more experts to be part of the Evaluation and Follow-Up Groups. A representative of a Party in the Convention Committee may be designated as an expert by this Party. Experts could also be external to the Committee (from the academic sector or lawyers, for example). A list of all these experts will be drawn by the Secretariat and submitted to the Committee for designation⁷.

The designated persons:

- must have recognised expertise in the field of data protection (for instance in a data protection authority, a government agency, in the judiciary, as attorney/barrister, academic, data protection officer, consultant, computer scientist, etc.). Experience in monitoring activities would be an asset.
- need to have a sufficient command of one of the Council of Europe's official languages (English or French),
- need to be able to conduct interviews and discussions in legal and other technical subject-matters with a broad variety of interlocutors,
- and have adequate analytical and drafting skills.

Members of the Evaluation and Follow-Up Groups sit in their individual capacity and must be independent and impartial in the exercise of their functions.

They will benefit from training on evaluation and follow-up organised by the Secretariat.

Persons taking part in an evaluation or follow-up process should participate until the end of the process, except in case of force majeure. In such a case they are being substituted.

The composition of the Evaluation and Follow-Up Groups should respect a geographical (in terms of countries as in terms of international organisations), gender, institutional balance (representatives of governments and of supervisory authorities, be it data protection authorities or other public bodies such as national security authorities and oversight bodies). Each Group should gather legal and technical expertise.

When the state or the international organisation of a particular Group member is being reviewed, the said member shall be substituted for the follow-up process of that country or of that organisation, to ensure that the process is delivered in an impartial manner.

For each evaluation or follow-up process, one member of the Evaluation and Follow-Up Group will be designated as rapporteur and will be in charge of drafting the evaluation or follow-up document.

3.2. Role of the Convention Committee and of its Evaluation and Follow-Up Group(s)

The role of the Convention Committee is to facilitate and improve the effective implementation of Convention 108+⁸.

The Convention Committee must 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

⁷ A relatively detailed curriculum vitae will be required for all proposed experts, in order to assess the person's ability to carry out the requested tasks.

⁸ Article 23.a of the Convention

Candidate for accession⁹. In this evaluation process, the Convention Committee assumes an advisory and assistance function to the Candidate for accession in view of its compliance to the requirements of the Convention. It can recommend to that Candidate measures to achieve compliance and to overcome possible difficulties in implementing the Convention¹⁰.

Furthermore, the Committee shall review the implementation of the Convention by the Parties¹¹. In the framework of the follow-up of the Parties, one of its roles is also to provide advice and assistance. In particular, it can suggest corrective measures in case of non-compliance¹².

Evaluation and Follow-Up Group(s)

The Evaluation and Follow-Up Groups established by the Convention Committee to carry out the evaluation and follow-up procedures will have the following tasks and responsibilities linked to the different steps of the procedure (sending of a questionnaire, possible additional questions and field visit, elaboration of the preparatory report: see the detail of these functions under item 8 below):

- To analyse the answers to the questionnaire regarding the Candidates or the Parties undergoing review;
- To draft a preparatory report of evaluation or follow-up (as the case may be);;
- When necessary, to send additional questions for clarifications or further understanding of received answers;
- To organise and participate in the field visit (when necessary);
- To finalise and adopt the preparatory report: with conclusions and, if needed, recommendations.

The preparatory report of the Evaluation and Follow-Up Groups will be submitted for approval to the Convention Committee during its plenary meeting or by written procedure.

4. Characteristics of the evaluation and follow-up mechanism

Paragraph 38 of the Explanatory Report of Convention 108+ states that "The evaluation of a Party's compliance will be carried out by the Convention Committee on the basis of an **objective, fair and transparent** procedure established by the Convention Committee and fully described in its rules of procedure." The Explanatory Report further adds that "In providing such opinions on the level of compliance with the Convention, the Convention Committee will work on the basis of a **fair, transparent and public** procedure detailed in its rules of Procedure."¹³

4.1 Transparency

To ensure the transparency of the evaluation and follow-up process while maintaining an appropriate pressure-free working environment:

⁹ Article 23.e of the Convention

¹⁰ Article 23 e of the Convention. For details of measures that may be taken in case of non-compliance with the Convention, see Chapter 7 below.

¹¹ in accordance with the provisions of Article 4.3

¹² Article 23, h of the Convention. See in particular Step 6 of the follow-up procedure presented below.

¹³ Amending Protocol (CETS No. 223) to the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108), Explanatory Report, §39 and §163

- the standard documents adopted for gathering information on the effective implementation of the Convention principles (evaluation and follow-up questionnaires, country profile, information on the procedure) are made public on the website of the Council of Europe;
- information gathered by the Evaluation and Follow-Up Groups in relation to an evaluation or follow-up process, including replies to the questionnaire, reports and related correspondence are kept confidential according to Council of Europe standards. This is without prejudice to the application of candidates' and Parties' Freedom of Information Acts and domestic and international confidentiality rules.

Confidentiality of replies to the questionnaire can be lifted if requested by a respondent. In this case the candidate or Party concerned should be informed prior to such information being made public.

- the preparatory report of the Evaluation and Follow-Up Groups submitted to the Convention Committee and the report adopted by the Convention Committee are made public. The preparatory report is open to comments (see *infra*).

No personal data shall be published without valid legal ground.

Representatives of the Committee, experts participating in evaluation and follow-up teams, the Secretariat and other persons assisting the Committee are required, during and after their term of office, to maintain the confidentiality of the facts or information of which they have become aware during the exercise of their functions.

A provision to the above effect shall be inserted in the contracts of experts and interpreters recruited to assist the Evaluation and Follow-Up Groups.

An effective communication strategy shall be prepared to enhance the impact of the Committee's reports and conclusions.

Documents mentioned here-above are accessible to all Parties and Observers on the Committee except if the confidentiality of a document is deemed necessary by the Evaluation and Follow-Up Group to protect an overriding legitimate interest. Appeal against the Committee's decision to refuse access to a document may be lodged with the Chairperson of the Committee.

4.2 Objectivity

The use of standard evaluation and follow-up questionnaires helps to ensure the objectivity of the process. The same applies to the order following which Parties will be evaluated (see item 5).

Furthermore, as stated above (see 3.2), to help ensure the objectivity of the evaluation and follow-up mechanism, any member of a Evaluation and Follow-Up Group belonging to a Party undergoing the process must withdraw and be replaced by a substitute member of the Group.

4.3 Fairness

To ensure fairness, every evaluation and follow-up assessment should go as far, and no further than Convention 108+ and be consistent with the Explanatory Report.

In joining Convention 108+ Parties commit to, under Article 4.3, allow the Convention Committee to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of the Convention and to contribute actively to this evaluation process notably by submitting reports on the measures it has taken.

Besides the answers collected through the questionnaires, other sources of information of possible interest to the Evaluation and Follow-Up Group could include relevant evaluations carried out by the European Commission on the basis of Article 97 of the GDPR or adequacy

decisions by the European Commission on the basis of Article 45 of the GDPR or the annual report drawn up by the European Data Protection Board regarding the protection of natural persons with regard to processing of personal data in the European Union's member states and in other countries or international organisations, as well as contributions from NGOs, consumer associations or other actors responding to the call for contributions.

5. Order and frequency of evaluations and follow-ups

All Candidates will be evaluated before their accession to the Convention.

Concerning the Parties, for impartiality reasons, it is suggested to proceed by alphabetical order (English alphabetical order, see table in Appendix II).

The alphabetical order could, moreover, be combined with other more "substantial" criteria which will take into account, in particular of,

- the date of ratification of the Contracting Party (a certain time after the ratification, it is important to check the setting up and operation of the supervising bodies as well as the concrete application of the legislation);
- significant judgments of an internal or supranational court regarding the Party concerned which may deliver sufficient grounds for doubts on a properly functioning of the rule of law with regard to privacy and data protection;
- any possible major incidents related to the Party indicating significant non-compliance with Convention obligations; or
- a change in the relevant legislation of the Party significantly affecting the implementation of the provisions of the Convention.

The Secretariat shall bring to the attention of the Committee any relevant communication addressed to it, unless the information contained in it falls outside its field of competence. Any relevant communication received by individual members of the Committee shall be forwarded to the Secretariat who shall bring it to the attention of the Committee.

It is recommended that a follow-up of each Party takes place every six years at least to ensure that the Party complies with its obligations.

Indeed, in the context of technological innovations, as well as innovations in design methods, including participatory design, new procedures for use and the emergence of new or alternative economic models, a cyclical process of regular follow-ups is considered necessary. This process will ensure, in terms of time and space, the sustainability of individual rights and freedoms in light of political, legal, technical, social and economic developments. Each round is estimated to last six years.

After a first review, subsequent follow-ups should in particular focus on the new elements or developments (in law, case law and practice) since the previous report.

By applying the above-mentioned criteria, a new follow-up can be requested before the six-year period. Such a request should be made by at least one member of the Convention Committee and be accepted by the majority of its members, according to the Rules of Procedure of the Convention Committee. This new follow-up can be partial and focused on the aspects at stake in the judgement, in the incident or in the legislative change having triggered the follow-up request.

To sum up, there are two types of follow-up:

- cyclical follow-up (every 6 years)
- intermediary follow-up (total or partial)

The Convention Committee will ensure that a reasonable review schedule be achieved for each Party.

The Secretariat will publish a schedule of the programmed follow-ups for all the Parties (corollary to the budgetary and work programming of the Committee).

6. Evaluation and follow-up methods

The Convention Committee shall have at its disposal two methods to evaluate a Candidate for accession or to review the implementation by a Contracting Party and may combine both methods:

- Evaluation/follow-up questionnaires, in all cases and
- field visits, when necessary.

As mentioned in Section 4.1, other sources of information may be used to supplement the analysis: e.g. adequacy decisions adopted in the framework of the transborder data flows of the European Union, European Data Protection Board annual reports, NGOs reports and submissions made further to the call for contributions.

The Committee may decide to address the questionnaire to specific non-governmental organisations, other relevant organisations and members of civil society of the Parties, which shall be invited to respond to it within the time-limit set by the Evaluation and Follow-Up Group. These organisations and persons shall be active in the field of the protection of privacy and personal data and include national coalitions of organisations or national branches of international non-governmental organisations. Moreover, they shall have access to reliable sources of information and be capable of carrying out the necessary verifications of this information. The replies to the questionnaire or requests for information shall be returned to the Secretariat.

The Evaluation and Follow-Up Group shall treat replies to the questionnaire as confidential unless the respondent requests publication, in which case the candidate or Party should be informed prior to such publication.

6.1 Evaluation and follow-up questionnaires

A draft model of the evaluation and follow-up questionnaires has been developed within the Committee¹⁴. The questionnaires should allow the collection of information on:

- *The general political and institutional context (see the country profile);*
- *The constitutional, legislative and regulatory framework concerning the protection of personal data, as well as bilateral and multilateral agreements in force in this field¹⁵. The legal framework to be analysed is general and sectorial. It extends also to legislations that have an indirect link with data protection such as laws not directly concerning data protection but having an impact on its level (for example, those providing for exceptions to the implementation of the law, notably for*

¹⁴ See T-PD(2018)20rev4, Draft Evaluation Questionnaire.

¹⁵ In respect of international organisations, it is the framework deriving from the founding treaty, as well as relevant regulations adopted therein.

national security and defense purposes).

- *The specific institutional framework* relating to the supervisory authority (or authorities) of data protection, their independence, their competences and powers including enforcement, the major actions carried out and those planned;
- *The case-law* which is relevant for data protection, coming from courts and tribunals as well as from any authority involved;
- *The existence of awareness and training programmes* on the right to data protection and their implementation including the security of information systems;
- *Effective remedies (administrative or judicial)* available to individuals;

Depending of the answers received, additional questions could be necessary for clarification or further understanding of collected information.

6.2. Visits

The modalities of visits are addressed under 8.2.

6.3 Testing phase

The evaluation and follow-up mechanism should begin by a testing phase: a few Parties would make a voluntary contribution. The review that would then be carried out would enable to verify the appropriateness of the assessment procedure, the relevance of collected information, the adopted methods and the used sources. This would allow to identify possible gaps or unclear elements and provide the opportunity to identify better solutions. This would also give indications as to the appropriateness of the envisaged schedule.

Following the testing phase, adjustments to the process will then be possible if deemed relevant. The testing phase should not lead to any binding decision.

7. Evaluation and follow-up criteria

Evaluation and follow-up criteria shall reflect the following aspects:

- The general political and institutional context of the country, with particular attention to democracy, democratic institutions and the rule of law, and any effect these matters have on data protection;
- International commitments regarding the protection of personal data or having an impact on it;
- Constitutional guarantees concerning the protection of personal data¹⁶;
- General data protection law in force, applicable to all activity sectors, as well as other relevant national laws, including those providing for restrictions to the right of privacy and to the protection of personal data as well as the laws applicable to specific topics (data security or video-surveillance, for example) or to activity sectors (medical, banking, social security

¹⁶ If the Candidate for accession is an international organisation, the evaluation will not cover constitutional guarantees and legislation but the legally binding instrument that covers the protection of personal data within the said organisation.

sectors...);

- The supervisory authority (or authorities) and the practice it has developed (including its independence, structure, powers, duties, the availability of appropriate resources, the exercising of investigative powers and imposing of sanctions);
- Effective remedies available to the data subject;
- Relevant case-law.

It should be noted that the notion of 'law' in the Convention encompasses all enforceable rules, i.e. not only the legislation in force on data protection but also regulatory measures, administrative guidelines, and the case-law, if applicable under the jurisdiction of the Contracting Party (see paragraph 32 of the Explanatory report).

In order to evaluate the legislation in force and its effectiveness under an application for accession to the Convention, particular attention should be given to the application of the provisions set out in Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 18 of Convention 108+ and in the light of its explanatory memorandum. In the case of follow-up of the situation of a Party, the review covers the application of the same articles, to which must be added the control of the application of Articles 16 and 17 of the Convention.

All exceptions shall be carefully examined to assess the proportionality and the necessity of any measures taken in order to derogate from such rights.

As explained under Chapter 2, the analysis covers not only the adoption of measures implementing Convention 108+ provisions, but also their real and concrete application in practice. Also efforts to ensure that field actors know the rules to be respected and to inform data subjects of their rights will be taken into account.

8. The evaluation and follow-up procedure

It should be underlined that the pre-report as well as the final report, will be made public following their respective transmission to the Committee and to the concerned Party.

The procedure described below should be set out in the *Rules of Procedure* of the Convention Committee.

The result of an evaluation or follow-up process could be that the Party or Candidate for accession is: 1) compliant, 2) compliant but improvement is necessary; or 3) non-compliant.

8.1 Evaluation process of a candidate for accession

The evaluation process of a candidate for accession shall follow the following steps (see also the diagrams in Appendix III).

(The deadlines indicated here-under may be exceptionally extended for legitimate reasons such as translation deadlines):

Step 1: the evaluation questionnaire will be sent by the Secretariat to the candidate (Ministry of Foreign Affairs and competent supervisory authority) with a six-month time limit to respond. The questionnaire will also be published on the website of the Council of Europe with an announcement of the evaluation process concerning the candidate. It will be open for replies from any organisations or individuals. If deemed necessary the questionnaire may also be sent to civil society representatives (consumers associations, NGOs, academics, recognised independent

experts).

Step 2: the Secretariat will receive the replies and will make any necessary requests for additional information within four weeks. It will forward all the received documents to the competent Evaluation and Follow-up Group.

Step 3: the Evaluation and Follow-Up Group will examine the information gathered and request additional information if necessary. This evaluation will be based on the standards defined under chapter 7 above. The Evaluation and Follow-Up Group will produce a draft preparatory report within a four-month period, suggesting whether additional time or a field visit¹⁷ is necessary to gather missing information.

In order to acquire an overall vision of the national situation, it is suggested that the following points should be included in the preparatory report deriving from comments and conclusions drawn on each section of the questionnaire:

- a general description of the legislation, case-law and any other relevant documentation, including statistics and best practices regarding implementation of the Convention, where available
- an overview of any gaps or problems encountered in the implementation of the Convention;
- a general description of how the effectiveness of the rules has been ensured in practice, including details of the sanctions applied and remedial measures obtained;
- preliminary conclusions comprising recommendations on the measures to be taken to improve the practical implementation of the Convention.

Step 4: The draft preparatory report will be submitted to the candidate, which will have a two-month opportunity to comment and clarify any issue. The draft preparatory report will be revised if necessary, to take account of any comments and observations from the candidate. It will be then submitted again to the candidate for a final observation within a four weeks period. The Evaluation and Follow-Up Group will adopt it as its preparatory report within eight weeks of the receipt of the final observations of the candidate.

Step 5: The preparatory report, together with the final observations of the candidate, will be submitted to the Convention Committee. Within a period of eight weeks, the Committee will prepare an opinion, based on the assessment described under steps 1 to 4. It will then submit its opinion to the Committee of Ministers which will examine the request for accession (see appendix IV).

The opinion will indicate whether or not the candidate for accession is in a position to be invited by the Committee of Ministers to accede. The opinion will contain a set of recommendations and include details on measures to be taken to reach compliance, where the Committee concludes to non-compliance of the evaluated framework of protection with Convention 108+.

Step 6: If the Conventional Committee delivers a negative opinion or concludes that improvements are necessary, the candidate for accession will be offered assistance for complying with the provisions of the Convention, such as legal expertise or capacity building support (for more details see chapter 9).

This evaluation process should be achieved as rapidly as possible in order to enable the Candidate to initiate improvements and co-operation programmes, where appropriate.

¹⁷ For the modalities of the field visits refer to page 14

8.2. Follow-up procedure of a Party to the Convention

Under the Convention, the concerned Contracting Party is required to make an active contribution to this exercise.

The follow-up procedure shall follow the same steps as for the evaluation, with exception of steps 5 & 6. (see also the diagrams in Appendix III).

Step 5: The preparatory report together with the final observations of the Candidate will be submitted to the Convention Committee.

The Committee will discuss the preparatory report either during its Plenary meeting (if the Plenary is held within two months of the transmission of the preparatory report) or by written procedure. In the latter case, a call for comments will be issued to all Delegations, including Observers. The adoption of the finalised report will be done either at the Plenary meeting or by written procedure. The report will indicate whether the Party is in compliance with the provisions of Convention 108+ and will make any necessary recommendations. The final report will be submitted to the Party. In case of **compliance**, this will conclude the process

Step 6: in case of **non-compliance**, a dialogue will be opened with the Party and a co-operation process will be initiated to help the Party to achieve compliance. A series of measures will be taken as discussed under chapter 9 and the Party will be given a timeframe within which to comply with the report's recommendations. Such timing should take into consideration the nature of the recommendations made in the final report, as well as the complexity of their implementation. Past the allocated timespan, the compliance will be verified.

8.3. Details of field visits

Where the information gathered under step 3 is insufficient to allow an accurate assessment of the level of compliance with the Convention's principles and their effective implementation, the Evaluation and Follow-Up Group may suggest to organise and conduct a field visit.

Such field visits should be conducted by the Evaluation and Follow-Up Group in charge of the specific evaluation or follow-up.

The purpose of the visit will be the collection of information and clarifications concerning any insufficient or incomplete replies provided by the candidate or Contracting Party to the questionnaire. At the same time, the experts carrying out the visit will endeavour to provide an overall view of the national situation in order to ensure that the respect for the Convention's principles is substantive and effective.

This field work can be carried out with the support of the supervisory authority and competent NGOs.

9. Measures in the event of non-compliance

The Convention Committee shall recommend measures to be taken where a Party is not in compliance with the Convention¹⁸ and shall facilitate, where possible, the amicable resolution of

¹⁸ In accordance with the provisions of Article 23.h and 23.i of Convention 108+.

any difficulties related to the application of the Convention.

In the event of non-compliance, the Committee's objective will be to provide assistance to the Party concerned / Candidate for accession and to its competent authorities to comply with its commitments under the Convention. In order to do so, it will take due account of the nature and causes of non-compliance.

These measures should be inducing and constructive:

- the Committee may offer advice and, if necessary, provide assistance from experts; this assistance could take the form of recommendations on the understanding of legal texts or on technical or administrative methodology;
- as the case may be, the Committee may invite and/or provide assistance to the Party/Candidate for accession to draw up an action plan to achieve compliance within a timeframe agreed between the Committee and the Party/ Candidate for accession concerned. The Party may be able to apply for funding towards the implementation of an action plan under the cooperation projects¹⁹ of the Council of Europe, or/and other donators;
- the Committee may ask the Party/Candidate for accession concerned to submit reports on the progress made in order to comply with its (future) obligations²⁰;

If these measures fail to achieve the expected results within the timeframe agreed and if the Party still does not comply with its commitments under the Convention, other measures could be taken, i.e.:

- High-level visits will be organised;
- The Committee of Ministers will be duly informed about the lack of compliance;
- The measures laid down in article 60 of the Vienna Convention on the Law of Treaties of 1969 could apply (possibility for other Parties to suspend the operation of the treaty in respect of the defaulting state).

10. Secretariat of the Convention Committee

The Secretary General shall secure the Convention Committee with the necessary staff, including a Secretary of the Committee. The Secretariat will provide the Committee with the administrative services it may require and will be responsible for co-ordinating the meetings of the Evaluation and Follow-Up Group. It will also forward the questionnaires to the Contracting Parties concerned or to the Candidates for accession concerned, compile the replies received and request further information if the replies are lacking in detail, without prejudice to the right of the Evaluation and Follow-Up Group to request additional information.

11. Financing the evaluation and follow-up activities

The Convention Committee budget will cover the cost of the Committee's evaluation and follow-up activities, such as per-diem and travel costs in order to attend meetings or for field visits, but will not pay any fees to the members of the Evaluation and Follow-Up Group. To reduce costs,

¹⁹ "Strategic programming and resource mobilisation project of the Council of Europe"

²⁰ in accordance with Article 4.3 of Convention 108+

the Groups could hold some meetings using conference calls/video-conferences over the internet, when feasible.

It should also be noted that in accordance with the provisions of Article 22.4 of Convention 108+, any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee as established by the Committee of Ministers in agreement with that Party.

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APPENDIX I

Convention for the protection of individuals with regard to the processing of personal data - Convention 108+ (abstract)²¹

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.
- 2 These measures shall be taken by each Party prior to ratification or accession to this Convention.
- 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.

Article 23 – Functions of the committee

The Convention Committee:

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, evaluate whether the level of personal data protection the former provides is in compliance with the provisions of this Convention and, where necessary, recommend measures to be taken to reach such compliance;

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

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

Article 24 – Procedure

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

Article 27 – 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 this Convention and obtaining their unanimous agreement, and in light of the opinion prepared by the Convention Committee in accordance with Article 23.e, invite any State not a member of the Council of Europe or an international organisation to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

²¹ Convention 108+ – consolidated version:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf

APPENDIX II

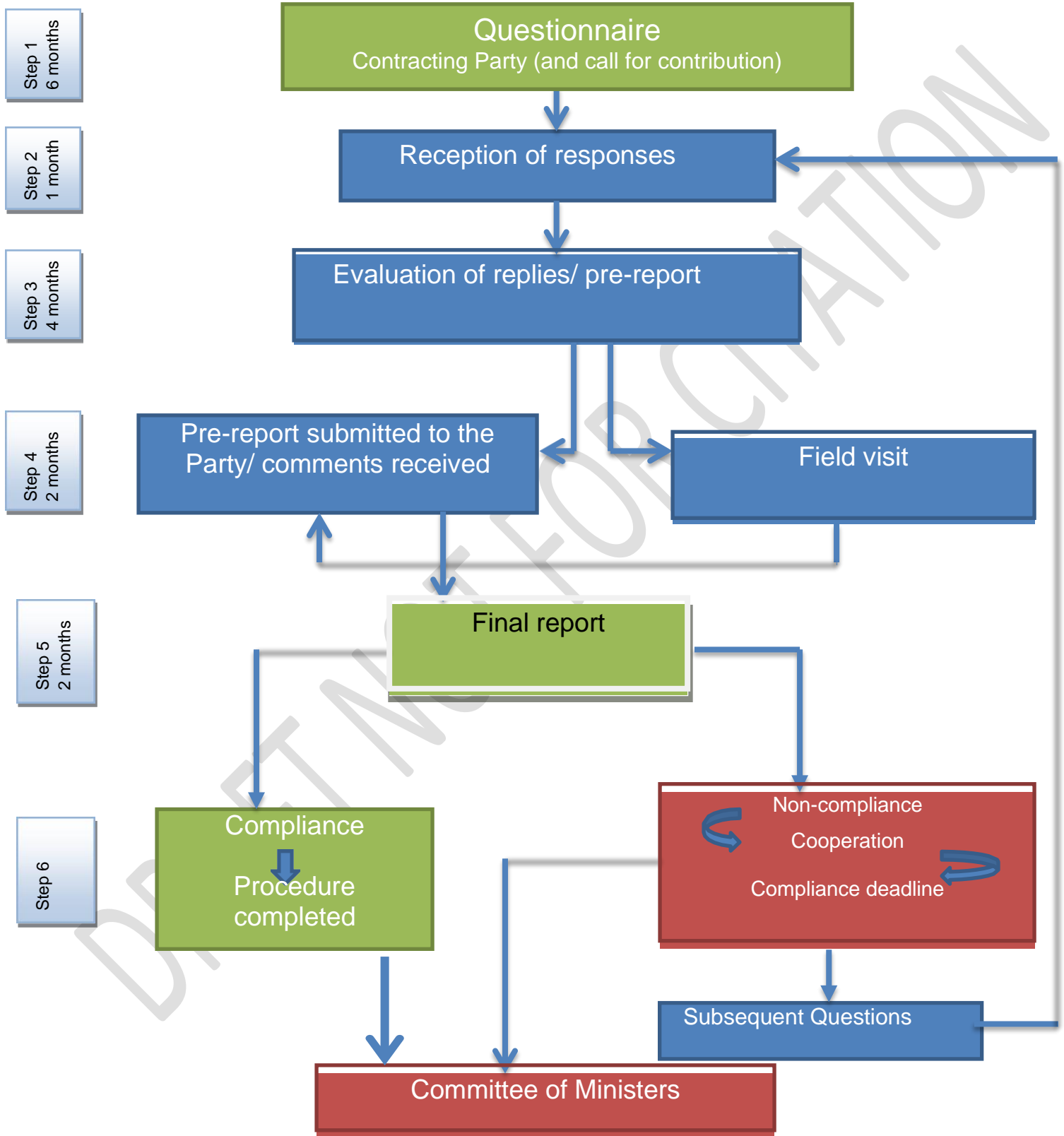
List of Parties to Convention 108

	Signature	Ratification	Entry into Force
Albania	09/06/2004	14/02/2005	01/06/2005
Andorra	31/05/2007	06/05/2008	01/09/2008
Armenia	08/04/2011	09/05/2012	01/09/2012
Argentina		25/02/2019	01/06/2019
Austria	28/01/1981	30/03/1988	01/07/1988
Azerbaijan	03/05/2010	03/05/2010	01/09/2010
Belgium	07/05/1982	28/05/1993	01/09/1993
Bosnia and Herzegovina	02/03/2004	31/03/2006	01/07/2006
Bulgaria	02/06/1998	18/09/2002	01/01/2003
Cabo Verde		19/06/2018	01/10/2018
Croatia	05/06/2003	21/06/2005	01/10/2005
Cyprus	25/07/1986	21/02/2002	01/06/2002
Czech Republic	08/09/2000	09/07/2001	01/11/2001
Denmark	28/01/1981	23/10/1989	01/02/1990
Estonia	24/01/2000	14/11/2001	01/03/2002
Finland	10/04/1991	02/12/1991	01/04/1992
France	28/01/1981	24/03/1983	01/10/1985
Georgia	21/11/2001	14/12/2005	01/04/2006
Germany	28/01/1981	19/06/1985	01/10/1985
Greece	17/02/1983	11/08/1995	01/12/1995
Hungary	13/05/1993	08/10/1997	01/02/1998
Iceland	27/09/1982	25/03/1991	01/07/1991
Ireland	18/12/1986	25/04/1990	01/08/1990
Italy	02/02/1983	29/03/1997	01/07/1997
Latvia	31/10/2000	30/05/2001	01/09/2001
Liechtenstein	02/03/2004	11/05/2004	01/09/2004
Lithuania	11/02/2000	01/06/2001	01/10/2001
Luxembourg	28/01/1981	10/02/1988	01/06/1988
Malta	15/01/2003	28/02/2003	01/06/2003
Mauritius		17/06/2016	01/10/2016
Mexico		28/06/2018	01/10/2018
Monaco	01/10/2008	24/12/2008	01/04/2009
Montenegro	06/09/2005	06/09/2005	06/06/2006
Morocco			01/09/2019
Netherlands	21/01/1988	24/08/1993	01/12/1993
Norway	13/03/1981	20/02/1984	01/10/1985
Poland	21/04/1999	23/05/2002	01/09/2002
Portugal	14/05/1981	02/09/1993	01/01/1994
Republic of Moldova	04/05/1998	28/02/2008	01/06/2008
Romania	18/03/1997	27/02/2002	01/06/2002
Russian Federation	07/11/2001	15/05/2013	01/09/2013
San Marino	02/03/2015	28/05/2015	01/09/2015
Senegal		25/08/2016	01/12/2016
Serbia	06/09/2005	06/09/2005	01/01/2006
Slovak Republic	14/04/2000	13/09/2000	01/01/2001

Slovenia	23/11/1993	27/05/1994	01/09/1994
Spain	28/01/1982	31/01/1984	01/10/1985
Sweden	28/01/1981	29/09/1982	01/10/1985
Switzerland	02/10/1997	02/10/1997	01/02/1998
The former Yugoslav Republic of Macedonia	24/03/2006	24/03/2006	01/07/2006
Tunisia		18/07/2017	01/11/2017
Turkey	28/01/1981	02/05/2016	01/09/2016
Ukraine	29/08/2005	30/09/2010	01/01/2011
United Kingdom	14/05/1981	26/08/1987	01/12/1987
Uruguay		10/04/2013	01/08/2013

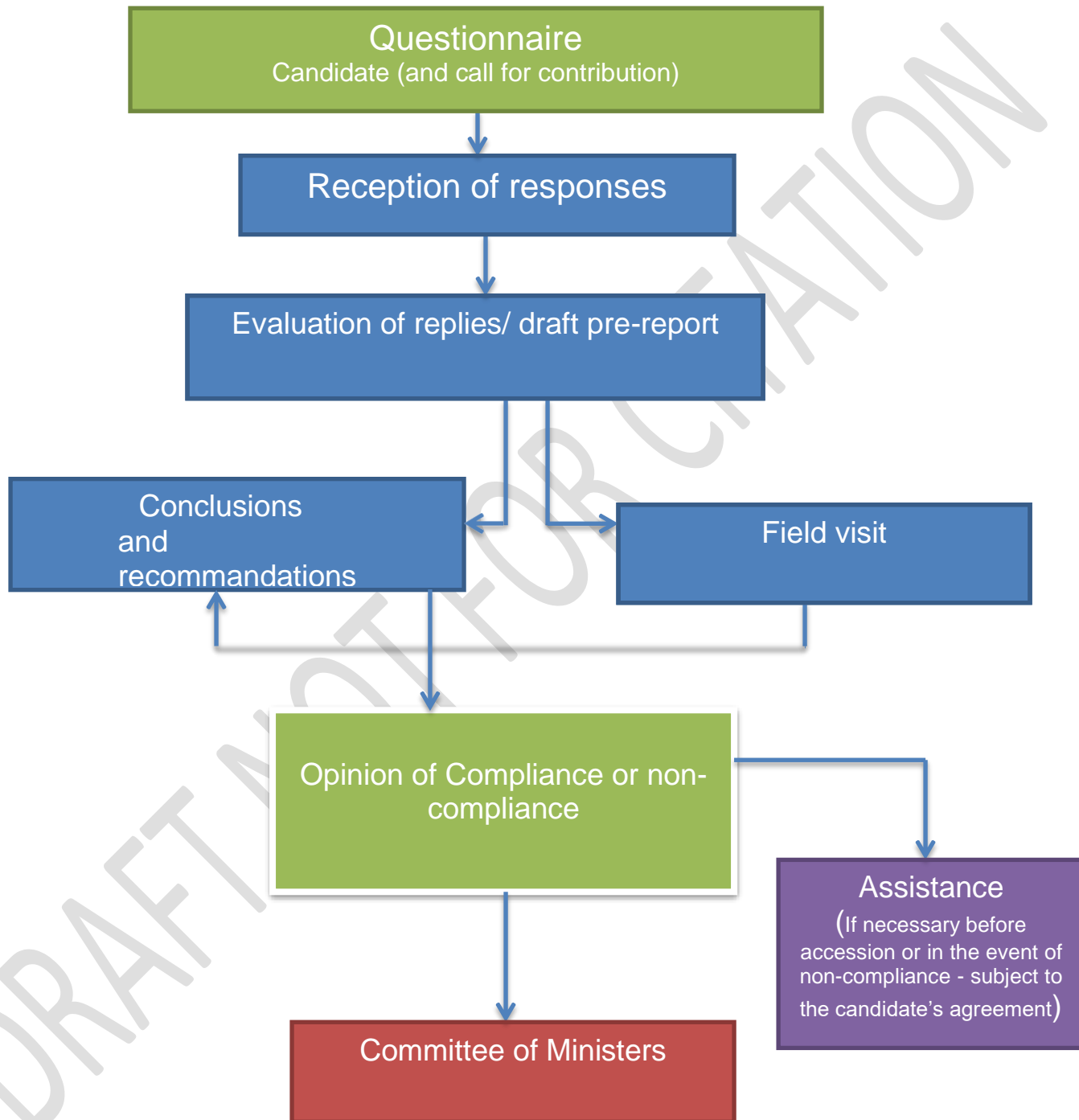
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APPENDIX III
Follow-up mechanism
Diagram



APPENDIX IV

Evaluation mechanism of a candidate for accession
Diagram



APPENDIX V

GLOSSARY (to be completed at a later date)

Convention Committee

Evaluation and Follow-up Group

Evaluation

Follow-up

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