



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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

**CONVENTION 108**

**INFORMATION ELEMENTS ON THE EVALUATION  
AND FOLLOW-UP MECHANISM**

DG I – Human Rights and Rule of Law

## Introduction

The follow-up of the implementation of Convention 108<sup>1</sup> 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 of Ministers of the Council of Europe encouraged in 2010 the Consultative Committee to start preparing a draft protocol to Convention 108, in accordance with the priorities set out in the work programme.

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 report<sup>2</sup> 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 128<sup>th</sup> session held in Elsinore, Denmark, on 17-18 May 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 to the Convention, the Convention Committee will have new functions:

- To evaluate a candidate for accession in terms of the guaranteed level of protection and its conformity with the Convention;
- To 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 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 reviews referred to above.

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

<sup>2</sup> [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

### 2.1 Evaluation

The purpose of the implementation of an evaluation mechanism is to identify the level of protection provided by a candidate for accession<sup>3</sup> and its compliance with the Convention. The purpose is to enable the objective verification prior to the Committee of Ministers' decision, inviting the said candidate to accede to the Convention.

Prior to acceding to the modernised Convention 108 +, the candidate for accession must take the necessary measures to ensure that its domestic law allows the Convention to be implemented. 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 the modernised Convention 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 these commitments, it is important that guidelines be laid down for evaluating both the measures taken and their effectiveness.

To that end, the evaluation must take into account all elements necessary for achieving the objective of the Convention, namely: a comprehensive data protection legislation, providing for the general principles applicable to any sector, possibly supplemented by other special laws, including regarding transfer of data to a state non-party to the Convention and an independent supervisory authority (composition, statute, activities). Such requirement relates directly to the need of guaranteeing the effectiveness of the legislative measures in the field.

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 assess the level of protection prior to ratification or 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.

### 2.2 Follow-up

With regard to the follow-up mechanism, the main objective is to monitor the implementation of the Convention by a Party and to ensure that the latter complies with its commitments. As stated above, a contracting Party undertakes to allow the Convention Committee to evaluate the observance of its engagements and must actively contribute to the evaluation<sup>4</sup>.

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 Convention<sup>5</sup>.

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<sup>3</sup> A candidate for accession could be a state but also an international organisation.

<sup>4</sup> Article 4, para 3 of Convention 108 +

<sup>5</sup> Article 23.h of Convention 108 +

The Convention Committee should learn lessons from the evaluations exercises carried out and regularly take stock of them, in particular in order to draft new legal standards guidelines and recommendations. The evaluations could also lead to the identification of good practices among the Parties under the evaluation. In that respect, the Secretariat will facilitate the dissemination of the best practices identified during the evaluations 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 working group(s)

The Committee is composed of representatives of each Contracting Party to Convention 108+ (or in their absence, the deputy representatives), as well as observers.

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 and decide on their composition and mandate. This would help to render the evaluation and follow-up mechanism more efficient.

#### *Working groups*

In order to carry out the evaluations and follow-up, it is suggested that one or more working groups be set up within the Convention's Committee.

Each working group will be composed of six members and a president appointed for three years, 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 adopted doctrine.

The members come from states or international organisations Parties to the Convention. Each Party will propose one or more experts who could be asked to be part of the working groups. A list of these experts will be drawn by the Secretariat and submitted to the Committee for designation. The designated persons must enjoy expertise in the data protection field<sup>6</sup> and will benefit from training on evaluation and follow-up organised by the Secretariat every year or every two years, depending on available resources.

Persons taking part in an evaluation or follow-up process should participate until the end of the process, except in case of force majeure.

The composition of the working groups should respect a geographical, gender and institutional origin balance (representatives of governments and supervisory authorities, be it data protection authorities or sectorial instances in charge of enforcing the right to data protection for example in respect of national security).

When the state or the international organisation of a working group member is being reviewed, the said member shall be replaced for the evaluation process of that country or of that organisation, to ensure that the process is delivered in an impartial manner.

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<sup>6</sup> 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.

### 3.2. Role of the Convention Committee and of its Working group(s)

The role of the Convention Committee is to facilitate, promote and guarantee the effective implementation of Convention 108 +<sup>7</sup>.

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 candidate for accession<sup>8</sup>. 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 can assist in overcoming possible difficulties it may meet in implementing the Convention<sup>9</sup>.

Furthermore, the Committee shall review the implementation of the Convention by the Parties<sup>10</sup>. 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-compliance.<sup>11</sup>

#### *Working group(s)*

The working groups established by the Convention Committee to carry out the evaluation and monitoring procedures will have the following tasks and responsibilities (see the detail of these functions under item 8 below):

- To adjust and/or up-date the standard documents that are used to collect information related to the Convention principles and the effectivity of their implementation (evaluation questionnaires);
- To analyse the answers regarding the candidates or the Parties undergoing review;
- To draft pre-reports of evaluation or monitoring (as the case may be), after hearing all stakeholders;
- When necessary, to send ~~an~~ additional ~~questionnaire~~ for clarifications or further understanding of received answers;
- To organise and participate in the field visit (when relevant);
- To draft the final report: with recommendations and conclusions.

The pre and final reports of the working groups will be submitted for approval to the Convention Committee during its plenary meeting or by written procedure.

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<sup>7</sup> Article 23.a of the Convention

<sup>8</sup> Article 23.e of the Convention

<sup>9</sup> 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.

<sup>10</sup> in accordance with the provisions of Article 4.3

<sup>11</sup> Article 23, h of the Convention. See in particular Step 6 of the follow-up procedure presented below.

## 4. Characteristics of the evaluation and follow-up mechanism

The Explanatory Report of the modernised Convention states 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."<sup>12</sup>

As a result, the evaluation and follow-up mechanism must be transparent, impartial and proactive.

### 4.1 Transparency

To ensure the transparency of the evaluation and follow-up mechanism, it is suggested that

- the standard documents adopted for gathering information on the Convention principles and their effective implementation (evaluation questionnaires) be made public;
- answers from the candidates or the Parties (from a state authorities or the institutions of an international organisation) be **in principle** publicly available for consultation; **a document or a part of a document could be kept not public provided it is justified and only for the necessary limited period of time;**
- answers from civil society (associations, NGOs or academics) or from private sector professionals should only be made public upon their authors' consent;
- opinions and recommendations made by the working groups and approved by the Convention Committee be made public.

### 4.2 Impartiality

The use of standard evaluation questionnaires, even when possibly adapted to the particularities of the state of the international organisation undergoing evaluation or follow-up, guarantees the impartiality 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), in order to guarantee the impartiality of the follow-up mechanism, any member of a working group belonging to a Party undergoing a follow-up procedure must withdraw from this procedure.

### 4.3 Proactivity

According to Article 4.3 of Convention 108 +, the evaluation and follow-up procedure must be proactive<sup>13</sup> and based on a mutual exchange of information. To evaluate the level of compliance with the Convention, information is collected from reports prepared by the candidates or the Parties.

Other sources of information may also be taken into account, such as the evaluation carried out by the European Commission on the basis of Article 97 of the GDPR, as well as contributions from NGOs, consumer associations or other actors.

## 5. Order and frequency of evaluations

All Contracting Parties will be evaluated. For impartiality reasons, it is suggested to proceed by alphabetical order (English alphabetical order, see table in Appendix II). The alphabetical order

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<sup>12</sup> 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, § 163

<sup>13</sup> Under Article 4 of the Convention, the Party undertakes to provide information.

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

- the date of accession of the Contracting Party (it is important to check the setting up and operation of the supervising bodies as well as the concrete application of the legislation: a review should systematically be carried out 2 years after the accession);
- judgments of an internal or supranational court ~~the European Court of Human Rights~~ to the Party concerned;
- any possible incidents related to a Party involving the protection of personal data, or;
- a significant change in the legislation of a Party.

It is recommended that a review of each Party takes place every four-six years at least to ensure that the Party complies with its obligations, as well as to assess the capacity of the Party to adapt to technological developments.

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 re-evaluation [regular reviews] is considered necessary. This process will ensure, in terms of time and space, and the sustainability of individual rights and freedoms in light of political, legal, technical, social and economic developments. Each round is estimated to last four-six years.

After a first evaluation, subsequent reviews may in particular focus on the new elements or developments (in law, case law and practice) since the previous report.

To apply the abovementioned criteria, a new evaluation can be requested before the four-six years period. Such a request should be made by a member of the Convention Committee and be accepted by the majority of its members. This new evaluation can be partial and focused on the aspects at stake in the judgement, in the incident or in the legislative change.

There is also the possibility that a transversal follow-up mechanism be used. Instead of examining the implementation of the entire Convention by a Party, this consists in examining the implementation of a theme (for example, the data subject's rights, or the additional safeguards for the protection of sensitive data, or the balance with freedom of expression) or of one of the Convention articles by all the Parties. In such a case, a chosen topic is evaluated and followed-up for all the Parties at the same time.

To sum up, there are three types of evaluation:

- cyclical review (every 6 years)
- intermediary review (total or partial)
- transversal review.

## **6. Evaluation and follow-up methods**

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

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

Information may be collected from other sources to supplement the analysis: adequacy surveys carried out in the framework of the transborder data flows of the European Union, NGOs reports on the democratic conditions of political regimes (Rule of Law Index published by the World Justice Project, the Global Corruption Barometer and the Perceptions Corruption Index published by Transparency International, the Global Open Data Index, etc.)<sup>14</sup>.

### 6.1 Evaluation and follow-up questionnaire

A draft model of the evaluation and follow-up questionnaire was developed within the Committee on the basis of the criteria defined in Chapter 7 below<sup>15</sup>. This questionnaire should allow the collection of information on:

- *The general political and institutional context;*
- *The constitutional, legislative and regulatory framework*, and when applying at federal and federated levels, as well as bilateral and multilateral agreements in force concerning the protection of personal data<sup>16</sup>; the legal framework to be analysed is general but also sectorial and extends to legislations that have a direct or 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 or with national security purposes).
- *The specific institutional framework* relating to the supervisory authority (or authorities) of data protection, their independence, their competences, the major actions carried out and those planned;
- *The case-law* related to or having a bearing on the protection of individuals with regard to the processing of their personal data, 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;
- *The social and economic context related to the processing of personal data*: the ICT development in the Contracting Party or candidate for accession concerned, the number and the variation of internet and mobile telephone users, the types (from private or public sector, national or foreign) and the size of data controllers, the development of activity sectors largely depending on processing of personal data (financial, medical, insurance sectors...), the existence of a data processing market or of data processors, the presence of major data centres, the influence of social networks (number of subscribers in this State), the state of development of electronic interaction with administration services and business services...

The basis of the questionnaire is identical for all candidates or Parties. However, adjustments or additions can be made to collect information specific to a candidate or a Party.

<sup>14</sup> See <http://worldjusticeproject.org/rule-of-law-index>; <https://www.transparency.org>; <http://index.okfn.org/about/>.

<sup>15</sup> See T-PD(2018)20, Draft Evaluation and Follow-up Questionnaire.

<sup>16</sup> In respect of international organisations, it's the framework deriving from the founding treaty, as well as relevant regulations adopted therein.

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

### 6.1bis Questionnaires for the transversal follow-up mechanism

In case the implementation of a specific theme or of an article of the Convention in isolation is analysed by all the Parties (transversal follow-up mechanism), an ad hoc questionnaire is prepared by the Convention Committee or by a working group, to be sent to all Parties.

### 6.2 Visits

The modalities of visits are addressed under 8.3

### 6.3 Testing phase

The evaluation and follow-up mechanism should begin by a testing phase: 2 or 3a Parties would make a voluntary contribution. The evaluation 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 unclear elements. This would also give indications as to the appropriateness of the envisaged calendar.

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 be based on the following aspects:

- International commitments regarding the protection of personal data or having an impact on it;
- Constitutional guarantees concerning the protection of personal data<sup>17</sup>;
- General data protection law in force, applicable to all activity sectors, as well as other relevant national laws, in particular 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 sectors...);
- The supervisory authority (or authorities) and the practice it has developed;
- Effective remedies available to the data subject;
- The case-law.

It should be specified that the notion of 'law' in the Convention encompasses not only the legislation in force on data protection but also regulations, administrative guidelines, recommendations, codes of good practice or professional conduct and the case law, if applicable under the jurisdiction of the Contracting Party.

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<sup>17</sup> 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.

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 the modernised 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.

The analysis covers not only the adoption of measures implementing Convention 108 + provisions, but also their real concrete application. 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.

With regard to supervisory authority, it is important to examine the application of the provisions of Article 15 of the modernised Convention 108 and more specifically, the question of its independence, structure, powers, duties, budget and the supervision role of the authority.

## **8. The evaluation and follow-up procedure**

It should be underlined that final reports, as well as any observations made by the Party concerned or the candidate for accession will be made public following their transmission to the Party. The publication of information collected from other sources (private sector, civil society, academics) is subject to the source's consent.

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

### **8.1 Follow-up procedure of a Party to the Convention**

The evaluation activity will involve the following steps (see also the diagrams in Appendix III):

**Step 1:** the follow-up questionnaire will be sent to the Contracting Party with a three-month time limit to respond. Under the Convention, the concerned Contracting Party is required to make an active contribution to this exercise. The questionnaire will also be sent to civil society representatives (consumers associations, NGOs, academics, independent experts) and of the private sector. Replies will also be supplemented by comments made by non-states observers to the Convention Committee.

**Step 2:** the Secretariat will receive the replies and will make any necessary requests for additional information within four weeks.

**Step 3:** the working 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 and should not exceed a three-month period. After this audit, the working group will produce a draft report (pre-report) within a two-month period, suggesting whether a field visit<sup>18</sup> 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 pre-report:

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<sup>18</sup> For the modalities of the field visits refer to page 9

- a general description of the legislation, case-law and any other relevant documentation, including statistics, and a summary of best practices regarding implementation of the Convention;
- an overview of any gaps or problems encountered in the implementation of the Convention;
- conclusions comprising recommendations on the measures to be taken to improve the practical implementation of the Convention.

**Step 4:** the draft report will be submitted to the Party concerned, which will have a two-month opportunity to comment on the draft and clarify any issue prior to its formal transmission to the Convention Committee. The pre-report will be revised if necessary, to take account of any comments and observations from the Party concerned. It will be then submitted again to the Contracting Party and to the Convention Committee for examination. The Committee will adopt the finalised report and adoption either during its Plenary meeting (if the Plenary is held within two months of the transmission of the pre-report) or by written procedure.

**Step 5:** Based on the conclusions of the Convention Committee, the final report will be drafted within six weeks. It will indicate whether the Contracting Party is in compliance with the provisions of Convention 108 and will make any necessary recommendations. The final report will be submitted to the country concerned and to the Committee of Ministers. In case of **compliance**, this will conclude the process.

**Step 6:** in case of **non-compliance**, a dialogue will be opened with the Contracting 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 Contracting 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, a re-evaluation questionnaire will be sent to the Party and the compliance will be verified.

## 8.2 Evaluation process of a candidate for accession

The evaluation process of a candidate for accession shall follow the same steps as for the follow-up, with exception of step 6.

Instead of the final report (step 5), the Convention Committee will prepare a compliance opinion within a six-weeks period, based on the assessment described under steps 1 to 4. It will then submit the compliance opinion to the Committee of Ministers which will examine the application for accession (see appendix IV).

The opinion will indicate whether or not the candidate for accession is in a position to be invited to accede. If not, it will offer conclusions and recommendations on steps to be taken to improve the compliance of the evaluated framework of protection with Convention 108+.

If the Conventional Committee delivers a negative opinion, the candidate for accession will be offered assistance for complying with its obligations, such as legal advice or cooperation projects (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.

### 8.3 Details of the transversal follow-up procedure

The transversal follow-up procedure that implies to check the conformity of all Parties to one specific article or one specific topic will follow the same steps than the follow-up procedure. However, the report of the transversal evaluation will contain two types of recommendations:

- general recommendations, and;
- recommendations made by Party

### 8.4 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 principles and their effective implementation, the working group may suggest organising a field visit.

In the interest of flexibility, field visits could be carried out either by the working group in charge of the evaluation, or by an expert appointed by the Convention Committee.

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

This field work will be carried out with the support of the supervisory authority and competent NGOs, if applicable.

## **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 Convention<sup>19</sup> and shall facilitate, where possible, the amicable resolution of 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 will 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 interpretation 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 projects<sup>20</sup> of the Council of Europe, or/and other donators;

<sup>19</sup> In accordance with the provisions of Article 23.h and 23.i of the modernised Convention 108

<sup>20</sup> "Strategic programming and resource mobilisation project of the Council of Europe"

- the Committee may ask the Party/ candidate for accession concerned to submit reports on the progress made in order to comply with its (future) obligations<sup>21</sup>;

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 working 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 Working 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 working group. To reduce costs, the working groups could hold some meetings using conference calls/video-conferences over the internet.

It should also be noted that in accordance with the provisions of Article 22.4 of the modernised 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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<sup>21</sup> in accordance with Article 4.3 of the Convention

## APPENDIX I

### Convention for the protection of individuals with regard to the processing of personal data - Convention 108+ (abstract)<sup>22</sup>

#### 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.

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<sup>22</sup> Modernised Convention – consolidated version:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016807c65bf](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf)

## APPENDIX II

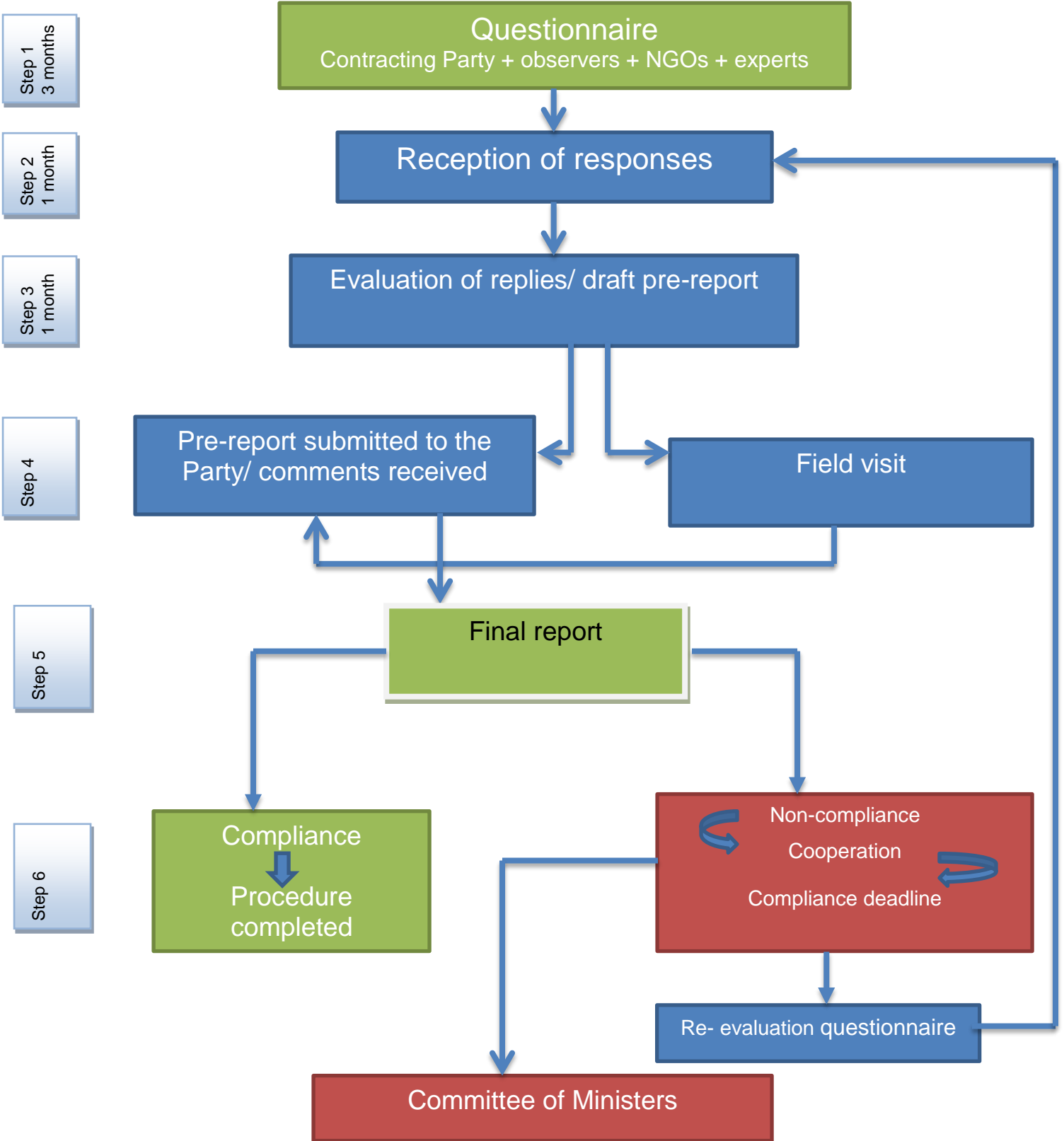
### List of Parties to Convention 108

	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
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

List of Parties to Convention 108

	Signature	Ratification	Entry into Force
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

**APPENDIX III**  
**Follow-up mechanism**  
**Diagram**



## APPENDIX IV

### Evaluation mechanism of a candidate for accession Diagram

