

DIRECTORATE OF SECURITY, INTEGRITY  
AND RULE OF LAW  
DIGITAL DEVELOPMENT AND GOVERNANCE  
DEPARTMENT

## **METHODOLOGY FOR THE FIRST ROUND OF EVALUATION UNDER CONVENTION 108+**

### **Process and rationale**

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Information document prepared by the Secretariat

[www.coe.int/dataprotection](http://www.coe.int/dataprotection)

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## Introduction

The Committee of Ministers adopted 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) at its 128<sup>th</sup> session held in Elsinore, Denmark, on 17-18 May 2018 (“Convention 108+”). The amending Protocol was open for signature on 10 October 2018.

Until September 2024, 31 party ratified Convention 108+. 7 more ratifications are required for that the modernised Convention enters into force partially for the ratifying countries, which will give rise to new competences and functions of the newly established Committee under Convention 108+. This would imply, inter alia, based on Article 23 of Convention 108+ that:

*“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.”*

These functions are exercised in respect of Candidates for accession to the Convention (evaluation functions, art. 23, lit. e and f) and existing Parties (review functions, art. 23, lit. h).

With 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 compliance with the Convention with a view of adopting an opinion on this subject for the Committee of Ministers;
- Assess, at the request of a State or an international organisation, their compliance with the provisions of this Convention.
- Review the implementation of the Convention by a Party to the Convention.

Taken into account that 13 years have passed since the Committee of Convention 108 embarked on the modernisation of Convention 108 aiming at ensuring an appropriate protection of individuals in the digital age and facilitating free flow of data between Parties and beyond,

Considering that such objectives are increasingly timely given recent economic and geopolitical context,

Given that trust and confidence is key for the protection of individuals within the territory of the Parties and for transborder data flow,

Cognizant that international cooperation requires thorough implementation of Convention 108+, the Secretariat proposes that a first round of evaluation of a general nature of the 38 ratifying parties is carried out upon the entry into force of the modernised Convention based on the methodology presented in this document, subject to the adoption of the newly established committee under Convention 108+.

This document is based on the Expert Document prepared by Professor Cécile de Terwangne

on the Evaluation and review mechanism under Convention 108+, Process and rationale (T-PD(2018)21rev11) that the Committee of Convention (T-PD) endorsed during the 42<sup>nd</sup> plenary meeting, held in Strasbourg on 17-19 November 2021. It, however, provides only a methodology for the first round of evaluation which is proposed to be of a general nature and is without prejudice to any document elaborated by the newly established Committee of Convention 108+ based on Article 24, paragraph 4 of Convention 108+ which provides that:

*“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”.*

The purpose of this document is to indicate how to proceed with the first round of evaluation of a general nature in a timely manner and without unnecessary delay.

## **1. Purpose of the first round of evaluation of a general nature**

The purpose of the first round of evaluation of a general nature is to evaluate the compliance of the legal framework of a Party and deliver a general report on how Parties give effect to the provisions of Convention 108+.

In a nutshell, the objective pursued is to give a general overview on the state of the protection of individuals and their personal data, and on data flows between Parties and from the Parties to non-Parties. This process based on peer review can also increase trust and confidence among Parties, contribute to harmonised implementation of Convention 108+ and identify areas that need to be improved by Parties or through cooperation mechanisms.

To achieve this purpose, the first round of evaluation of a general nature aims to assess the compliance of the domestic legal framework with the provisions of Convention 108+. With the help of a questionnaire and by using notably publicly available information e.g. domestic legislation, reports by the supervisory authorities, information about the resources allocated to the supervisory authorities, court decisions etc. a report is to be drafted on the actual implementation of the provisions of Convention 108+ in line with Article 4 of Convention 108+ which provides that:

*"1. Each Party shall take the necessary measures in its law to give effect to the provisions of this Convention and secure their effective application.*

*2. These measures shall be taken by each Party and shall have come into force by the time of ratification or of accession to this Convention.”*

The first round of evaluation of a general nature is suggested to provide a general overview for the newly established Committee under Convention 108+ on the level of personal data protection of the Party and on the state of play of the transborder flow of data, and where necessary, recommend measures to be taken to reach full compliance with the provisions of the Convention. The compendium of the summary of the reports is suggested to be presented to the Committee of Ministers before its publication.

In view of ensuring a harmonised level of protection for individuals and the free flow of data between Parties, it seems to be necessary to evaluate the state of play in Parties upon the entry into force of Convention 108+, in order to guarantee that Convention 108+ can achieve its objectives. A peer-review is also instrumental to establish trust and confidence between Parties, and foster cooperation.

The first round of evaluation of a general nature will concentrate on evaluating both the measures taken at domestic level in view of compliance with Convention 108+ and their effectiveness, the evaluation is proposed to 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.

In the event of non-compliance, the Convention Committee shall recommend measures to take as detailed in Chapter 9 and shall facilitate, where necessary, the settlement of all difficulties related to the application and implementation of the Convention<sup>1</sup>.

The Convention Committee should learn lessons from the first round of evaluation of a general nature carried out and take stock of them, in particular in order to draft their rules and procedures, including for the evaluation and follow up mechanism and also new guidelines and recommendations where appropriate. The Committee may also revise or adjust the present methodology as necessary in the light of its experience. The evaluations and reviews 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.

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<sup>1</sup> Article 23.h of Convention 108+.

## APPENDIX I

### Convention for the protection of individuals with regard to the processing of personal data - Convention 108+ (abstract)<sup>2</sup>

#### Article 4 – Duties of the Parties

- 1 Each Party shall take the necessary measures in its law to give effect to the provisions of this Convention and secure their effective application.
- 2 These measures shall be taken by each Party and shall have come into force by the time of ratification or of accession to this Convention.
- 3 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.

#### 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.

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<sup>2</sup> Convention 108+ – consolidated version:  
[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016807c65bf](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf)

## **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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## 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
North Macedonia	24/03/2006	24/03/2006	01/07/2006
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
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

Order of ratification:

1. Bulgaria – 10 December 2019
2. Croatia – 18 December 2019
3. Lithuania – 23 January 2020
4. Serbia – 26 May 2020
5. Poland – 10 June 2020
6. Mauritius - on 4 September 2020
7. Estonia on 17 September 2020
8. Cyprus on 21 September 2020
9. Malta on 2 November 2020
10. Finland – 10 December 2020
11. Spain – 28 January 2021
12. Italy – 8 July 2021
13. Uruguay – 5 August 2021
14. Germany – 5 October 2021
15. North Macedonia – 13 October 2021
16. Armenia – 25 January 2022

17. Romania – 9 March 2022
18. Austria – 13 July 2022
19. Albania - 22 July 2022
20. Andorra – 18 October 2022
21. Iceland – 20 January 2023
22. France – 27 March 2023
23. Argentina – 17 April 2023
24. Lichtenstein – 17 May 2023
25. Slovakia – 15 June 2023
26. Slovenia – 20 June 2023
27. Bosnia and Herzegovina – 7 July 2023
28. Switzerland - 7 September 2023
29. Portugal – 18 October 2023
30. Hungary – 19 October 2023
31. San Marino – 16 November 2023

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