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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 & REVIEW QUESTIONNAIRE

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Respondents to the questionnaire

This questionnaire is intended to Candidates for accession, Parties and relevant stakeholders active in the field of the protection of privacy and personal data.

Objectives of the questionnaire

This questionnaire aims at

- assessing compliance with Convention 108+ by a Candidate for accession to the Convention (be it a State or an International Organisation) (*evaluation*)
- assessing compliance with Convention 108+ by a Party (*review*).

Methodology of the questionnaire

This questionnaire addresses the issues within the scope of Convention 108+ both from a theoretical (how does the legislation implement a principle/right/obligation) and practical points of view (how is such principle/right/obligation enforced?). Addressing the level of protection afforded both *in law* and *in practice* allows to get an accurate overview of the level of protection of personal data in a given jurisdiction and of the practical implementation and interpretation of the law by supervisory authority(ies) and courts.

Structure of the questionnaire

The questionnaire consists in 8 sections.

Section 1. General context

The first section is addressed to Candidates only.

Parties to **Convention 108** should fill in this section at the first review.

- *Political organisation and general institutional context of the State*

The questionnaire begins with a description of the political organisation and the general institutional context of the evaluated States.

- *Mandate and immunity regime of the International Organisation (IO)*

The immunity regime of the international organisation must be carefully analysed in order to assess its compatibility with an accession to Convention 108+. Indeed, although exceptional, a possible incompatibility might arise in case an IO is not exclusively subject to its own data protection rules, but remains subject to certain rules linked to another jurisdiction (host country, for example).

Section 2. Data Protection Laws

- *International commitments and constitutional protection*

The questionnaire intends to collect information regarding the international commitments (whether binding or non-binding) of the States in the field of privacy and data protection.

It also addresses the question of the constitutional protection, if any, of privacy and personal data.

- *General legislation implementing Convention 108+*

This part of the questionnaire is dedicated to the general data protection legislation (in case of States) or general regulatory binding instrument (in case of IO). It identifies the relevant provisions of the law and the applicable exemptions/restrictions to certain principles.

However, the specific safeguards and provisions applicable to activities that are exempted or partially exempted from the scope of the general data protection law(s) are addressed in sections 3 to 6 of the questionnaire.

This sub-section is divided in 12 sub-topics. The questionnaire covers both the implementation *in the law* of the principles/rights/obligations and their implementation *in practice* (in the case law, for instance, or by the supervisory authority(ies) and/or through recommendations).

1. Scope of application
2. Proportionality
3. Principle of legitimacy
4. Purpose limitation principle
5. Data quality principle
6. Principle of limited retention
7. Special categories of data
8. Transparency principle
9. Principle of security
10. Individual's rights
11. Additional obligations
12. International transfers

Sections 3 to 5. Legality, necessity and proportionality of exceptions for major legitimate interests of the Candidate/Party or of private parties

The right to protection of personal data is not absolute. Exceptions are allowed under certain conditions. They must meet the criteria of lawfulness, necessity and proportionality required by Article 11. These exceptions may be provided in the general data protection legislation or in specific legislation.

- *Exceptions for national security and defence purposes*

This section focuses on national security and defence exceptions provided by the domestic legislation of Candidates/Parties, and how these exceptions respect the essence of the fundamental rights and freedoms and constitute a necessary and proportionate measure in a democratic society.

Under this section, the focus is on national provisions on the processing of personal data by intelligence and/or law enforcement agencies. The domestic law should be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures.

- *Exceptions for important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest*

Under this section, the focus is on exceptions provided by national provisions to protect important economic interests of the Party, or to ensure the independence of the judiciary, or in the framework of criminal law enforcement activities. Other essential objectives of general public interest may also justify exceptions according to Article 11.

- *Exceptions for major legitimate interests of private parties*

This sections aims at gathering information on possible exceptions to protect the data subject him/herself or to protect other private parties. For the latter, after general questions on possible exceptions, the questionnaire considers three areas where exceptions may be

necessary for the protection of rights and fundamental freedoms of others: the right to freedom of expression, intellectual property rights (copyright law), and freedom of access to information.

Section 6. Restrictions for data processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

Section 7. Supervision and enforcement

A supervision and enforcement mechanism is an essential aspect of the Convention 108+. Supervision and enforcement of the principles and obligations enshrined in Convention 108+ require ensuring effective and independent oversight, promoting compliance with data protection law, providing supervisory authority(ies) with the necessary enforcement powers, assisting data subjects in the exercise of their rights and providing appropriate sanctions and remedies mechanisms.

Section 8. Co-operation and mutual assistance

Parties must designate supervisory authorities and set up mechanisms of cooperation on international enforcement matters (joint investigations) or to deal with data subject's complaints having a transnational character.

Specific issues regarding international organisations

A number of the Convention provisions may not be applicable to most IOs which are not subject to national legislations and benefit from a wide immunity of jurisdiction.

The provisions that may not be relevant to most IOs are, in particular, those referring to **judicial redress** in the Convention 108+:

- Article 12 and Article 9, f.: the establishment of appropriate **judicial sanctions** and the right for every individual to have a **remedy** where his or her rights under this Convention have been violated.
- Article 15, § 2, d.: the power of competent supervisory authority(ies) to **engage in legal proceedings or to bring to the attention of the competent judicial authorities** violations of the provisions of this Convention.
- Article 15, §9: The possibility to **appeal against decisions of the supervisory authority(ies)** through the courts.

The regime of immunity has a direct incidence on the responsibility of IOs and possibility for individual data subjects to exercise their right to redress. As concerns the issues of “*judicial redress*” and “*remedies*” in the context of IOs, the availability of “*reasonable alternative means*” (in particular, the access to an independent agency to settle disputes) is the fundamental requirement to counterbalance¹ the immunity from jurisdiction enjoyed by international organisations.

¹ The principle established by the European Court of Human Rights, in the context of Article 6 of the European Convention of Human Rights, is the “counterbalance” principle. Indeed, if the Court generally asserts that “*the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments*”, the Court examines whether the immunity from jurisdiction of an IO under the Convention is acceptable, in particular if “*applicants had available to them reasonable alternative means to protect effectively their rights*” (ECtHR, *Waite and Kennedy v. Germany*, 18 February 1999).

Duty to contribute to the evaluation process

Each Party undertakes: a. to allow the Convention Committee provided for in Chapter V 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 4, §3)

Please indicate your role for the purpose of this evaluation (from the government, from a data protection authority or from other stakeholders).

Evaluation questionnaire

(Questions to Candidates)

Section 1. General context

(questions to States: see also the “country profile” in Appendix)

1. Political organisation and general institutional context of the State

- How is the principle of separation of powers implemented?
- How is the independence of the judiciary warranted?

(questions to international organisations)

2. Mandate and immunity regime of the International Organisation (IO)

- What is the mandate of the organisation?

Immunity regime criterion:

The processing of personal data by International Organisations (IO) shall be subject to a comprehensive set of rules having a binding character supervised by a competent supervisory authority and providing an effective remedy (see §34 to 36 of the Explanatory Report).

The privileges and immunities of IOs enable IOs to ensure that their own regulatory framework exclusively applies to their data processing.

It can happen that an IO may be operating from the territory of a country that does not (yet) recognise its privileges and immunities. In that country, there is therefore a risk that the IO may not be in a position to apply exclusively its own regulatory framework and may also be forced to apply domestic laws. If this country is not party to Convention 108+ nor recognised as affording an appropriate level of protection, accession of the organisation to the Convention may consequently lead to liberalise the flows of data towards the jurisdiction of such State, (possibly) creating a loophole of protection.

Such a “loophole scenario”, even if exceptional, may arise when the IO is operating in a State that has not formally recognised its privileges and immunities under a status agreement or domestic laws, where domestic courts do not apply customary international law relating to immunity of IOs, and lastly where national legislations would actively prevent an IO from applying its own rules.

Such loopholes may still be considered as compatible with Convention 108+ if the flows of data towards that jurisdiction may be considered as entering within one of the exceptions provided for in Article 14§4 of the Convention.

The regime of immunity of an IO therefore requires an evaluation on a case-by-case basis of the mandate and data processing activities of the organisation.

- Does the international organisation benefit from the immunity of jurisdiction? Explain in general the extent to which the IO remains subject to national laws of one or more of the States in which it operates (e.g.: whether the IO works in a country that does not formally recognise its privileges and immunities by way of status agreement or domestic legislation, whether it is deemed that the IO does not enjoy privileges and

immunities under customary international law, whether customary international law is not applied by domestic courts).

- Are the rules governing the processing of personal data in the IO binding?
- Are there any provisions in domestic laws preventing the IO from applying/enforcing its rules?
- If all the above applies, is processing of personal data carried out by the IO subject to the jurisdiction of States that are not parties to Convention 108+ or that are not recognised as affording an appropriate level of protection?

Evaluation & Review questionnaire

(Questions to Candidates and Parties)

For Parties: *If the answer to a question has not changed since the last evaluation or review process, just indicate “no change”.*

When examples of case-law from supervisory authorities or courts are to be mentioned, only new cases since the last evaluation or review process should be mentioned.

For All: *Evidence (legislative articles, guidelines, regulations, case law) should be provided in the original version and translated in one of the two official languages of the Council of Europe - English or French*

Section 2. Data Protection Law(s)

3. International commitments relevant for the protection of personal data

- What international or regional instruments relating to data protection has the Party, Candidate State or International Organisation ratified? What are the legal effects of such international commitments in the internal legal order?

4. Constitutional protection

- Is the **right to data protection** or elements of such right, protected under the constitution or any other type of norm endorsing a constitutional value? If yes, explain it or quote the relevant articles or norms. What is the scope of this right following the main relevant case law? (Mention essential constitutional or Supreme Court’s case law in this respect).

5. General legislation implementing Convention 108+

- What is/are the general data protection instrument(s) regulating the processing of personal data and implementing the obligations of Convention 108+? Mention here the main relevant binding instruments – legislation and delegated acts or regulations – useful for the evaluation of the implementation of the Convention and having a comprehensive scope of application. Attach this/these text/s. (Sectoral or specific legislation regulating certain processing activities should be discussed in the relevant Sections of the present questionnaire hereunder.)

6. Scope of application of the legislation implementing Convention 108+

Criterion

The material and territorial scope of application of the Convention follows from the Articles 1, 2.a., 2.b. and 3 of the Convention. The evaluation of the national general data protection legislation must rely on the following criteria:

- 'Each Party undertakes to apply [the] Convention to data processing subject to its jurisdiction in the public and private sectors [...]' (Art. 3, §1)
- 'The purpose of [the] Convention is to protect every individual whatever his or her nationality or residence, with regard to the processing of their personal data' every (Art. 1) 'No discrimination between citizens and third country nationals in the application of these guarantees is allowed. Clauses restricting data protection to a State's own nationals or legally resident foreign nationals would be incompatible with the Convention.' (Explanatory Report, §15)
- The Convention applies to the processing of 'personal data', defined as 'any information relating to an identified or identifiable individual' (Art. 2.a.)
- 'Data processing' means any operation or set of operations which is performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying of logical and/or arithmetical operations on such data. Where automated processing is not used, data processing means an operation or set of operations performed upon personal data within a structured set of such data which are accessible or retrievable according to specific criteria. (Art. 2.b. and 2.c)
- The Convention 'shall not apply to data processing carried out by an individual in the course of purely personal or household activities.' (Art. 3, §2)

- *Territorial scope*
 - What is the territorial scope of the general data protection legislation?
- *Notion of personal data*
 - What is the definition of "personal data" given by the(se) law(s)? Has the notion of personal data been interpreted in opinions or illustrative decisions by the supervisory authority notably following a complaint or a consultation, or by the court in case-law² If yes, how?
 - Who are the persons considered as data subjects (natural person, legal person, national) in these law(s)?
- *Activities covered by the general legislation(s)*
 - What is the definition of the notion of 'data processing' given by the(se) law(s)? Has the notion of 'data processing' been interpreted in opinions or illustrative decisions by the supervisory authority or by courts in case law? If yes, how?
 - To which data processing sectors does the law apply (material scope of application)?
- *Notions of 'controller' and 'processor'*
 - What is the definition of 'controller' and 'processor' given by the(se) law(s)? Have these notions been interpreted in opinions or illustrative decisions by the supervisory authority or by courts in case law? If yes, how?

² The case-law which is relevant for data protection, coming from courts as well as from any competent authority.

- *Activities or organisations excluded by the general legislation(s)*
- Are there activities or organisations *totally or predominantly excluded* from the scope of application of the relevant general legislations? (mention only exclusions) If yes, what is the legal regime of personal data in such context?

If partial exclusions are provided for certain activities (such as media activities), see Sections on exceptions.

7. Principle of proportionality

Criterion

'Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, whether public or private, and the rights and freedoms at stake' (Art. 5, §1).

- How does the law provide for the principle of proportionality to be applied at all stages of the data processing? Does the law provide for the principle of proportionality to be applied at only some stages of data processing?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the principle of proportionality at all stages of data processing? If so, please provide an outline of these guidelines/regulations (explain or attach them). A list of the adopted guidelines and regulations should be available in English or French.

8. Legitimacy

Criterion

'Data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law' (Art. 5, §2).

- What are the legitimate bases provided by the general data protection legislation(s) for the processing of personal data?
- What is the definition of 'consent'?
- Has the notion of consent been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, regarding consent? If so, please provide an outline of these guidelines/regulations (explain or attach them). A list of the adopted guidelines and regulations should be available in English or French.

9. Purpose limitation principle

Criterion

'Personal data undergoing processing shall be collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is, subject to appropriate safeguards, compatible with those purposes' (Art. 5, §4 b.).

- How does the law provide for the purpose limitation principle and principle of further compatible use?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific regulations, guidelines or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the purpose limitation principle in practice? If so, please provide an outline of these guidelines/regulations (explain or attach them). A list of the adopted guidelines and regulations should be available in English or French).
- What are the safeguards applicable to the processing of personal data for historical, statistical and scientific purposes?

Please detail any of the data processing activities exempted from this principle in the Sections on exceptions.

10. Data quality principle

Criterion

'Personal data undergoing processing shall be adequate, relevant and not excessive in relation to the purposes for which they are processed' (Art. 5, §4 c.); 'accurate and, where necessary, kept up to date' (Art. 5, §4 d.).

- How does the law provide for the data quality principle?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or in by courts in case law case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the data quality principle in practice? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Please detail any of the data processing activities exempted from this principle in the Sections on exceptions.

11. Principle of limited retention of personal data

Criterion

'Personal data undergoing processing shall be preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed.' (Art. 5, §3 e.)

- How does the law provide for the principle of limited retention of personal data? Do certain laws define a retention period?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the principle of limited retention in practice? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Please detail any of the data processing activities exempted from this principle in the Sections on exceptions.

12. Special categories of personal data

Criterion

'The processing of genetic data; personal data relating to offences, criminal proceedings and convictions, and related security measures; biometric data uniquely identifying a person; personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life; shall only be allowed where appropriate safeguards are enshrined in law, complementing those of this Convention.' (Art. 6).

- Does the law identify special categories of data subject to a specific regime? If yes, mention all categories of personal data.
- What are, if any, the complementing specific and additional safeguards enshrined in law for the processing of such categories of personal data?
- Does the law allow for those categories to be expanded and, if so, how is this done?
- Have these special categories of data or their regime been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, regarding special categories of data? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

13. Transparency principle

Criterion - principle

The principle of transparency follows from several provisions of the Convention. First the Convention demands that 'personal data undergoing processing shall be processed fairly and in a transparent manner' (Art. 5, §4 a.). Second, '[e]ach Party shall provide that the controller informs the data subjects of: a) the controller's identity and habitual residence or establishment; b) the legal basis and the purposes of the intended processing; c) the categories of personal data processed; d) the recipients or categories of recipients of the personal data, if any; and e) the means of exercising the rights set out in Article 9; as well as any necessary additional information in order to ensure fair and transparent processing of the personal data.' (Art. 8, §1)

- How does the law provide for the principle of transparency of a data processing? (*mention all relevant provisions, except those relating to individual's access rights which are detailed under Question 14.*)
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation or by courts in case-law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the principle of transparency in practice? If so, please provide an outline of these. A list of the adopted guidelines and regulations should be available in English or French.

Exceptions

In addition to the exceptions provided for in Article 11 of the Convention (see Sections 3 to 6 hereunder), Article 8 provides that the transparency obligations shall not apply

- 'where the data subject already has the relevant information' (Art. 8, §2)
- 'where the personal data are not collected from the data subjects [and] the processing is expressly prescribed by law' (Art. 8, §3)
- 'where the personal data are not collected from the data subjects' and providing the requested information 'proves to be impossible or involves disproportionate efforts.' (Art.8 §3)

- Please list all the exceptions to the transparency requirements based on Article 11 of the Convention 108+ in the Sections on exceptions.
- Does the law provide for additional exceptions to the transparency requirements as referred to in Article 8, §§2-3, or others?
- Have these additional exceptions been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, concerning these additional exceptions? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

14. Principle of security

Criterion

'1. Each Party shall provide that the controller, and, where applicable the processor, takes appropriate security measures against risks such as accidental or unauthorised access to, destruction, loss, use, modification or disclosure of personal data.
2. Each Party shall provide that the controller shall notify, without delay, at least the competent supervisory authority within the meaning of Article 15 of this Convention, of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.' (Art. 7)

- How does the law provide for the principle of data security?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the principle of data security? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French..
- How is the principle of data breach notification provided in the law? Does the law provide for data subjects to be notified of data breaches? Have clarifications been provided by the supervisory authority? Has a concrete way to notify data breaches been put in place?

Please detail any of the data processing activities exempted from this principle in the Sections on exceptions.

15. Individual's rights

Criterion – right not to be subject to automated individual decisions

'Every individual shall have a right not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration.' (Art. 9 a.)

- How is the individual's right not to be subject to an automated individual decision without having his/her view taken into account provided by the law?
- Has this right been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with this right? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right of access

'Every individual shall have a right to obtain, on request, at reasonable intervals and without excessive delay or expense, confirmation of the processing of personal data relating to him or her; the communication in an intelligible form of the data processed; all available information on their origin, on the preservation period as well as any other information that the controller is required to provide in order to ensure the transparency of processing in accordance with Article 8, paragraph 1.' (Art. 9 b.)

- How is the individual's right of access provided by the law?
- Does the law specify the terms and fees for providing information? If yes, what is foreseen by the law?
- Has this right been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts_in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the individual's right of access? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right to know the reasoning underlying data processing

'Every individual shall have a right to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her.' (Art. 9 c.)

- How is the individual's right to know the reasoning underlying data processing provided by the law?
- Has this right been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by court in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with this right? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right to object

'Every individual shall have a right to object at any time, on grounds relating to his or her situation, to the processing of personal data concerning him or her unless the controller demonstrates legitimate grounds for the processing which override his or her interests or rights and fundamental freedoms.' (Art. 9 d.)

- How is the individual's right to object provided by the law?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts_in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with the individual's right to object? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right of rectification and erasure

‘Every individual shall have a right to obtain, on request, free of charge and without excessive delay, rectification or erasure, as the case may be, of such data if these are being or have been processed contrary to the provisions of this Convention.’ (Art. 9 e.)

- How is the individual’s right of rectification and erasure provided by the law?
- Has this principle been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines or regulations, either of general nature or for specific fields of processing, to promote compliance with the individual’s right of rectification and erasure? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right to a remedy

‘Every individual shall have a right to a remedy under Article 12 where his or her rights have been violated.’ (Art. 9 f.)

- What are the different remedies available to individuals (courts, DPA, ombudsperson, other authorities,...)?
- Has this right been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with this right? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Criterion – right to assistance from a supervisory authority

‘Every individual shall have a right to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority, within the meaning of Article 15, in exercising his or her rights under the Convention.’ (Art. 9 g.)

- How is the individual’s right to assistance from a supervisory authority provided by the law?
- Has this right been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines or regulations, either of general nature or for specific fields of processing, to promote compliance with this right? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Please detail any of the data processing activities exempted from all these rights in the Sections on exceptions.

16. Additional obligations

Criterion

'Each Party shall provide that controllers and, where applicable, processors take all appropriate measures to comply with the obligations of [the] Convention and be able to demonstrate, in particular to the competent supervisory authority [...], that the data processing under their control is in compliance with the provisions of [the] Convention.' (Article 10, §1)

'Each Party shall provide that controllers and, where applicable, processors, examine the likely impact of intended data processing on the rights and fundamental freedoms of data subjects prior to the commencement of such processing, and shall design the data processing in such a manner as to prevent or minimise the risk of interference with those rights and fundamental freedoms.' (Article 10, §2)

'Each Party shall provide that controllers, and, where applicable, processors, implement technical and organisational measures which take into account the implications of the right to the protection of personal data at all stages of the data processing.' (Article 10, §3)

'Each Party may , having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, adapt the application of [these] provisions in the law giving effect to the provisions of [the] Convention, according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor.' (Article 10, §4)

- Does the law provide for the obligation to respect the accountability principle? If yes, how?
- Does the law provide for the obligation to examine the impact of processing on the data subject's rights and freedoms? If yes, how?
- Does the law provide for an obligation to implement the privacy by design requirement? If yes, how?
- Does the Law define specific technical and organisational measures that controllers, and, where applicable, processors, should implement? If yes, what specific measures are provided by the law?
- Has the State/IO adapted the obligations according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor? If yes, how?
- Have these additional obligations been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, to promote compliance with these obligations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

17. International transfers

Criterion

Principle of free flows of personal data between Parties to Convention 108+: ‘A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the transfer of such data to a recipient who is subject to the jurisdiction of another Party to the Convention. Such a Party may however do so if there is a real and serious risk that the transfer to another Party, or from that other Party to a non-Party, would lead to circumventing the provisions of the Convention. A Party may also do so, if bound by harmonised rules of protection shared by States belonging to a regional international organisation.’ (Article 14, §1)

Restrictions to transfers towards non-Parties to Convention 108+: ‘When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the transfer of personal data may only take place where an **appropriate level of protection** based on the provisions of this Convention is secured.’ (Article 14, §2) ‘An appropriate level of protection can be secured by: a) the law of that State or international organisation, including the applicable international treaties or agreements; or b) ad hoc or approved standardised safeguards provided by legally binding and enforceable instruments adopted and implemented by the persons involved in the transfer and further processing.’ (Article 14, §3)

Exceptions: ‘Each Party may provide that the transfer of personal data may take place if: a) the data subject has given explicit, specific and free consent, after being informed of risks arising in the absence of appropriate safeguards; or b) the specific interests of the data subject require it in the particular case; or c) prevailing legitimate interests, in particular important public interests, are provided for by law and such transfer constitutes a necessary and proportionate measure in a democratic society.’ (Article 14, §4)

Duty to inform the supervisory authority: ‘Each Party shall provide that the competent supervisory authority, within the meaning of Article 15 of the Convention, is provided with all relevant information concerning the transfers of data referred to in paragraph 3, *littera b* and, upon request, paragraph 4, *littera b* and *c*.’ (Article 14, §5)

Power of intervention of the supervisory authority: ‘Each Party shall also provide that the supervisory authority is entitled to request that the person who transfers data demonstrates the effectiveness of the safeguards or the existence of prevailing legitimate interests and that the supervisory authority may, in order to protect the rights and fundamental freedoms of data subjects, prohibit, suspend or subject to conditions such transfers.’ (Article 14, §6)

- How is the issue of international transfers of personal data addressed under the law? Is the Candidate/Party bound by harmonised rules of protection shared by States belonging to a regional international organisation? If so which rules? Have they been applied in any cases?
- Does the law provide for restrictions regarding international transfers of personal data? If yes, explain the restrictions and describe any safeguards that are provided by law. Are there exceptions to this restrictions regime?
- Does the law provide for measures by which the supervisory authority is made aware of safeguards surrounding transfers? Does the law allow the supervisory authority to request that the person who transfers data demonstrates the effectiveness of the safeguards or the existence of prevailing legitimate interests and to prohibit, suspend or subject to conditions certain transfers?
- Have the international transfers or their regime been interpreted in opinions or illustrative decisions by the supervisory authority, notably following a complaint or a consultation, or by courts in case law? If yes, how?

- Has the supervisory authority issued, on its own initiative, specific guidelines, regulations or any other type of useful document, e.g. FAQs, thematic leaflets, etc., either of general nature or for specific fields of processing, concerning international transfers? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Section 3. Necessary and proportionate exceptions provided by law for national security and defence purposes (article 11, §1,a & §3)

18. Exceptions for national security and defence purposes

Criterion

Exceptions are allowed for data processing carried out for national security and defence purposes. Article 11, paragraph 1, littera a allows exception 'to the provisions of Article 5 paragraph 4, Article 7 paragraph 2, Article 8 paragraph 1, and Article 9 when such an exception is provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for the protection of national security, defence, public safety, [...]' Article 11 paragraph 3 provides: 'In addition to the exceptions allowed for in paragraph 1 of this Article, with reference to processing activities for national security and defence purposes, each Party may provide, by law and only to the extent that it constitutes a necessary and proportionate measure in a democratic society to fulfil such aim, exceptions to Article 4 paragraph 3, Article 14 paragraphs 5 and 6 and Article 15 paragraph 2, a, b, c and d. This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision.'

In Article 4, paragraph 3, '[e]ach 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.' By providing for an exception to this provision, Article 11, §3 allows Parties to not be evaluated on processing activities for national security and defence purposes.

Moreover, 'the Convention Committee shall not evaluate whether a Party has taken effective measures, to the extent it has made use of exceptions and restrictions in accordance with the provisions of the Convention. It follows that under Article 11, §3 a Party shall not be required to provide classified information to the Convention Committee.' (§38 of the Explanatory Report) This is without prejudice to the application of international rules on the exchange of confidential and classified information.

However, the Convention Committee is entitled to verify that exceptions satisfy the criteria of Article 11, §1 and §3: exceptions for national security and defence purposes must be provided for by law and constitute a necessary and proportionate measure in a democratic society. Moreover, processing activities for national security and defence purposes must be subject to independent and effective review and supervision under the domestic legislation.

The lawfulness criterion requires that the measures 'be prescribed by an accessible and foreseeable law, which must be sufficiently detailed.' (§91 of the Explanatory Report) Foreseeability in the special context of the processing of data by public authorities for national security or defence purposes requires the domestic law to be sufficiently clear to give citizens

an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures.

To be 'necessary in a democratic society' data processing must 'pursue a legitimate aim and thus meet a pressing social need which cannot be achieved by less intrusive means. Such a measure should furthermore be proportionate to the legitimate aim being pursued and the reasons adduced by the national authorities to justify it should be relevant and adequate.' (Explanatory Report, §91)

The notion of national security should be understood as interpreted on the basis of the relevant case-law of the ECtHR, which includes in particular the protection of State security and constitutional democracy from espionage, terrorism, support for terrorism and separatism (Explanatory Report §94).

- Have exceptions under art 11.1.a and 11.3 for national security and defence been provided? Which provisions of the Convention have been made subject to such exceptions? In particular, has an exception been provided to the powers of action of data protection supervisory authorities?
- Are exceptions for data processing for national security and defence purposes provided for by law? Which is/are the main legal bases for these exceptions?
How do these legal bases satisfy the criteria
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)?
 - of *necessity* (no less intrusive means) ?
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)?
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Where the exception is applied, are the processing activities for national security and defence purposes subject to independent and effective review and supervision under domestic legislation? Explain the review and supervision provided by the legislation. Has the institution, body ensuring this function issued corresponding (annual) reports? If so, please provide the reports (at least the last 2 annual reports) in its/their official version and in either English or French
- Have the meaning or scope of these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution, ensuring this function, notably following a complaint or a consultation, or by courts or an independent body in case law? If yes, how?
- Has the supervisory authority or the institution ensuring this function issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Section 4. Necessary and proportionate exceptions provided by law for important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest(article 11, §1, a)

Criterion

'No exception to the provisions set out in this Chapter shall be allowed except to the provisions of Article 5 paragraph 4, Article 7 paragraph 2, Article 8 paragraph 1 and Article 9, when such an exception is provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for:

a. the protection of [...] important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest;' (Art 11, §1, a)

'The Convention Committee shall not evaluate whether a Party has taken effective measures, to the extent it has made use of exceptions and restrictions in accordance with the provisions of this Convention.' (Explanatory Report, §38)

'A measure which is "necessary in a democratic society" must pursue a legitimate aim and thus meet a pressing social need which cannot be achieved by less intrusive means. Such a measure should furthermore be proportionate to the legitimate aim being pursued and the reasons adduced by the national authorities to justify it should be relevant and adequate. Such a measure must be prescribed by an accessible and foreseeable law, which must be sufficiently detailed.' (Explanatory Report, §91)

'The term "important economic and financial interests" covers, in particular, tax collection requirements and exchange control. The term "prevention, investigation and prosecution of criminal offences and the execution of criminal penalties" in this littera includes the prosecution of criminal offences and the application of sanctions related thereto. The term "other essential objectives of general public interest" covers inter alia, the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions and the enforcement of civil law claims.' (Explanatory Report, §95)

19. Exceptions for the protection of important economic and financial interests

- Which is/are the main legal basis/es for exceptions for the protection of important economic and financial interests, in particular for tax collection, exchange control and in the context of the fight against tax or social security fraud? To which provisions of the Convention do these exceptions relate (according to Article 11, §1, exceptions may be provided to the purpose limitation principle, the data quality requirement, the principle of limited retention, the transparency requirement including data breach notification, and to individual's rights)?
- How do these legal bases satisfy the criteria (cf. Explanatory Report, §91)

- of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)?
 - of *necessity* (no less intrusive means) ?
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the rights and interests of the data subjects that is not excessive in relation to the aim pursued is permitted)?
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
 - Has the supervisory authority or the institution ensuring this function issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

20. Exceptions for the protection of the impartiality and independence of the judiciary

- Which is/are the main legal basis/es for exceptions for the protection of the impartiality and independence of the judiciary? To which provision of the Convention do these exceptions relate?
- How do these legal bases satisfy the criteria
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)?
 - of *necessity* (no less intrusive means)?
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)?
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority or the institution ensuring this function issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

21. Exceptions for the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties

- Which is/are the main legal basi/es for exceptions for the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, in particular exceptions linked to the interception of communications, to the major law enforcement files, to the criminal record database, the cross-matching of data bases, the video-surveillance, the use of other special investigative techniques, the

use of AI for data processing, and the participation in international, regional or bilateral criminal justice cooperation regimes? To which provision of the Convention do these exceptions relate?

- How do these legal bases satisfy the criteria:
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)?
 - of *necessity* (no less intrusive means) ?
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)?
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority or the institution ensuring this function issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

22. Exceptions for other essential objectives of general public interest

- Which is/are the main legal basis/es for exceptions for other essential objectives of public interest, in particular for the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions? And for the enforcement of civil law claims? To which provision of the Convention do these exceptions relate?
- How do these legal bases/instruments satisfy the criteria:
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)?
 - of *necessity* (no less intrusive means) ?
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted ?
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority or the institution ensuring this function issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Section 5. Necessary and proportionate exceptions provided by law for major interests of private parties (article 11, §1, b)

Criterion

'No exception to the provisions set out in this Chapter shall be allowed except to the provisions of Article 5 paragraph 4, Article 7 paragraph 2, Article 8 paragraph 1 and Article 9, when such an exception is provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for:

[...]

b. the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.' (Art 11, §1)

23. Exceptions for the protection of the data subject

- Which is/are the main legal basis/es for exceptions for the protection of the data subject? To which provision of the Convention do these exceptions relate?
- How do these exceptions and derogations satisfy the criteria
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)
 - of *necessity* (no less intrusive means)
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)
 - and that the exceptions respect the essence of the fundamental rights and freedoms?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

24. Exceptions for the protection of the rights and fundamental freedoms of others, notably freedom of expression

- Which is/are the main legal basis/es for exceptions for the protection of the rights and fundamental freedoms of other persons than the data subject? To which provision of the Convention do these exceptions relate?
- How do these exceptions and derogations satisfy the criteria
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)
 - of *necessity* (no less intrusive means)
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)

- and that the exceptions respect the essence of the fundamental rights and freedoms?
- More specifically, how are the right to data protection and the right to freedom of expression reconciled? Mention the main relevant provisions and case law decisions that express the balancing of these two rights. Are any other bodies (media or else) competent and if so, have they issued guidance?
- Are there any exceptions, notably to the data subject's rights, justified on the ground of protection of rights related to copyright?
- Is there any legislation organising access to public information in your jurisdiction? If yes, how is the right of access to documents held by public institutions articulated with personal data protection law?
- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Section 6. Restrictions on the rights and additional obligations for data processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes (article 11, §2)

Criterion

Restrictions on the exercise of the provisions specified in Articles 8 and 9 may be provided for by law with respect to data processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes when there is no recognisable risk of infringement of the rights and fundamental freedoms of data subjects. (Art. 11, §2)

25. Restrictions for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

- Are there any restrictions, laid down in the data protection law or any other law, to the rights and to the additional obligations provided for in Articles 8 and 9 of the Convention, which are justified on the ground of scientific or historical research or statistical purposes?
- How do these restrictions satisfy the criteria
 - of *lawfulness* (that the measure be prescribed by an accessible and foreseeable law which must be sufficiently detailed)
 - of *necessity* (no less intrusive means)
 - of *proportionality* to the legitimate aim pursued (the right set and amount of data are processed and only interference with the data subjects' rights and interests that is not excessive in relation to the aim pursued is permitted)
 - and that the restrictions respect the essence of the fundamental rights and freedoms?

- Have these exceptions been interpreted in opinions or illustrative decisions by the supervisory authority or by any institution ensuring this function, notably following a complaint or a consultation, or by courts in case law? If yes, how?
- Has the supervisory authority issued, on its own initiative, specific or general guidelines or regulations? If so, please provide an outline of these guidelines/regulations. A list of the adopted guidelines and regulations should be available in English or French.

Section 7. Supervision & Enforcement

26. Ensuring effective and independent oversight

Establishment of supervisory authority(ies)

Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this convention. (Art. 15, §1)

Criterion of independence

The supervisory authority(ies) shall act with complete independence and impartiality in performing their duties and exercising their powers and in doing so shall neither seek nor accept instructions (Art. 15, §5)

Criterion of capacity

Each Party shall ensure that the supervisory authorities are provided with the resources necessary for the effective performance of their functions and exercise of their powers. (Art. 15, §6)

Criterion of accountability

Each supervisory authority shall prepare and publish a periodical report outlining its activities. (Art. 15, §7)

Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties and exercise of their powers. (Art. 15, §8)

Decisions of the supervisory authority(ies) may be subject to appeal through the courts (Art. 15, §9).³

- Which are the supervisory authority(ies) responsible for ensuring compliance with data protection rules?
- Is/Are such supervisory authority(ies) independent according to statutory provisions (conditions of appointment and revocation,...)?
How does the law ensure that supervisory authorities act with complete independence (resources, budget, decision-making process...)?
- What is the composition of the Steering Committee of the supervisory authorities? How are Heads of the Supervisory authorities/ Steering committees appointed? Is it through a transparent procedure? In what circumstances, can they be removed from office?

³ This requirement may not be applicable to IOs

What are the procedures for doing so? Can supervisory authority(ies) select and hire their staff freely? How many people are presently employed by these authorities?

- How much is the annual budget of the said authorities? Where does their funding come from?
- Are members of the supervisory authority(ies) subject to an obligation of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties and exercise of their powers?
- Does the supervisory authority have an annual report/ activity report? Does it publish its decisions? Can decisions of the supervisory authority(ies) be appealed through the court?
- How many complaints are being handled per year, and of which nature?

27. Promoting compliance with data protection law

Supervisory authority(ies) 'shall promote public awareness of their functions and powers as well as their activities; public awareness of the rights of data subjects and the exercise of such rights; awareness of controllers and processors of their responsibilities under this convention.' (Art.15, §2 e.)

- Does the supervisory authority(ies) promote public awareness of their functions and powers as well as their activities? If so, how? Through campaigns, social media use? (Are there any available survey results on the level of public awareness?)
- Does the supervisory authority(ies) promote awareness of controllers and processors of their responsibilities under this Convention? If so, how?
- Does the supervisory authority(ies) promote public awareness of the rights of data subjects and the exercise of such rights? If so, how? Has it issued documents (e.g. form, standard letter) to make it easier for data subjects to assert their rights?
- Does the supervisory authority(ies) give specific attention to the data protection rights of children and other vulnerable individuals? If so, how?
- What kind of information or guidelines does the supervisory authority publish (to the general public or to specific sectors) in order to foster data protection compliance? Is there a meaningful array of information available on the authority's website?

28. Powers of supervisory authority(ies)

Investigation and intervention powers

Each party shall provide that supervisory authority(ies) shall have powers of investigation and intervention (Art. 15, §2 a.).

Consultation powers

'The competent supervisory authority(ies) shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.' (Art.15, §3).

Supervision of international transfers

'The competent supervisory authority shall perform the functions relating to transfers of data provided for under Article 14, notably the approval of standardised safeguards;

Each party shall provide that the competent supervisory authority is provided with all relevant information concerning the transfers of data under *ad hoc* or approved standardised safeguards and upon request regarding transfers carried out outside appropriate safeguards, in particular those carried out for the specific interests of the data subject in a particular case

or when prevailing legitimate interests, in particular important public interests, are provided for by law and such transfer constitutes a necessary and proportionate measure in a democratic society, or if the transfer constitutes a necessary and proportionate measure in a democratic society for freedom of expression.' (Art. 14, § 4 and 5).

'Each party shall also provide that the supervisory authority is entitled to request that the person who transfers data demonstrates the effectiveness of the safeguards or the existence of prevailing legitimate interests and that the supervisory authority may, in order to protect the rights and fundamental freedoms of data subjects, prohibit, suspend, or subject to condition such transfers.' (Art. 14, §6).

- What are the investigation powers of the supervisory authority(ies) (e.g. mandatory provision of information and mandatory on-site assessments)? If available, provide statistics on the supervisory authority's use of their investigatory powers (e.g. how many times each power has been used in the previous 2 years). Can the supervisory authorities act on complaint and/or on its own initiative? Is there a possibility to sanctions a lack of replies to requests by the supervisory authorities?
- What powers of intervention does the supervisory authority(ies) have? (e.g.: power to impose rectification, deletion, or destruction of inaccurate information; power to take action against controllers who are unwilling to communicate the required information within a reasonable time, data processing prior check mechanisms where processing present particular risks to the rights and fundamental freedoms, power to refer decisions to national courts or other institutions, power to publish details of its decisions in individual cases, etc.)
- Is the supervisory authority(ies) consulted on proposals for any legislative or administrative measures which provide for the processing of personal data? Is there an indication that the authority has not been consulted on important legislative or other issues?
- What are the powers of the supervisory authority(ies) regarding international transfers?

29. Providing assistance to data subjects in the exercise of their rights, dealing with requests and complaints

Criterion: dealing with complaints

'Every individual shall have a right to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 15, in exercising his or her rights under this Convention.' (Art. 9 g.)

Each competent supervisory authority(ies) shall deal with requests and complaints lodged by data subjects concerning their data protection rights and shall keep data subjects informed of progress (Art. 15, §4).

Criterion: request for assistance on behalf of a data subject

'1. Each Party shall assist any data subject, whatever his or her nationality or residence, to exercise his or her rights under Article 9, §1, g of the Convention. 2. Where a data subject resides in the territory of another party, he or she shall be given the option of submitting the request through the intermediary of the supervisory authority designated by that Party.' (Art. 18, §2)

- Can all data subjects, whatever his or her nationality and residence, lodge complaints or requests for assistance to the supervisory authority(ies)? If so, how can individuals lodge a complaint? Is there a form easily available to data subjects for lodging a complaint? Does the authority provide appropriate information via its website or other

means to data subjects on how they can exercise their rights? How many complaints have been submitted by individuals in the last years?

- When a data subject resides in the territory of another Party, is she or he given the option of submitting the request through the intermediary of the supervisory authority designated by that Party?
- What are the specific actions taken by the supervisory authority(ies) to assist data subjects in the exercise of their rights?

30. Sanctions and remedies mechanisms

'Every individual shall have a right to have a remedy where his or her rights under this convention have been violated.' (Art. 9 f.) and '[e]ach Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of the provisions of this convention.' (Art. 12)⁴

In particular, supervisory authority(ies) 'shall have powers to issue decisions with respect to violations of the provisions of this convention and may, in particular, impose administrative sanctions.' (Art. 15, §2 c.)

Besides, they 'shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of the provisions of the convention.' (Art. 15, §2 d.)⁵

- What are the available mechanisms to data subjects in case of violations of the law?
- Do(es) supervisory authority(ies) have the power to impose sanctions with respect to violations of the data protection law? What is the nature of such sanctions? Have these sanctions been used by supervisory authorities? If yes, to which extent?
- Can they engage in legal proceedings or bring to the attention of the competent judicial authorities violations of the provisions of the Convention?

Section 8. Co-operation and mutual assistance

32. Designation of supervisory authorities

'a. [E]ach Party shall designate one or more supervisory authorities within the meaning of Article 15 of [the] Convention, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;

b. Each Party which has designated more than one supervisory authority shall specify the competence of each authority in its communication referred to in the previous *littera*.' (Art. 16)

- What is/are the designated supervisory authorities?

⁴ This requirement may only be partially applicable to IOs

⁵ This requirement may not be applicable to IOs

33. Forms of co-operation

'1. The supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in particular by:

a. providing mutual assistance by exchanging relevant and useful information and co-operating with each other under the condition that, as regards the protection of personal data, all the rules and safeguards of [the] Convention are complied with;

b. co-ordinating their investigations or interventions, or conducting joint actions;

c. providing information and documentation on their law and administrative practice relating to data protection." (Art. 17)

- Is the supervisory authority involved in cooperation on international enforcement matters (joint investigations)? What kind of activities in the area of international cooperation took or take place are taking place?
- Is there any mechanism of cooperation with other supervisory authority(ies) established in other jurisdictions to deal with data subject's complaints having a transnational character?

APPENDIX - Country Profile (proposed elements)

Political organisation and general institutional context of the State (see reports of the Venice Commission)

- What is the political structure of the State (federal, confederal, unitary)?
- Is it a monist or a dualist State?

Core International Human Rights Instruments

<u>ICERD</u>	<u>International Convention on the Elimination of All Forms of Racial Discrimination</u>	21 Dec 1965
<u>ICCPR</u>	<u>International Covenant on Civil and Political Rights</u>	16 Dec 1966
<u>ICESCR</u>	<u>International Covenant on Economic, Social and Cultural Rights</u>	16 Dec 1966
<u>CEDAW</u>	<u>Convention on the Elimination of All Forms of Discrimination against Women</u>	18 Dec 1979
<u>CAT</u>	<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	10 Dec 1984
<u>CRC</u>	<u>Convention on the Rights of the Child</u>	20 Nov 1989
CRPD	Convention on the Rights of Persons with Disabilities	
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	

Regional human rights instruments

- European Convention on Human Rights and Fundamental Freedoms
- American Convention on Human Rights
- The African Charter on Human and Peoples' Rights

Rule of law and risk to the independence of the judiciary

- GRECO reports
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