



HRVATSKI SABOR

KLASA: 022-03/19-01/180

URBROJ: 65-19-02

Zagreb, 12. rujna 2019.



Hs\*\*NP\*022-03/19-01/180\*65-19-02\*\*Hs

**P.Z. br. 747**

**ZASTUPNICAMA I ZASTUPNICIMA  
HRVATSKOGA SABORA**

**PREDSJEDNICAMA I PREDSJEDNICIMA  
RADNIH TIJELA**

Na temelju članaka 178. i 192, a u svezi članka 207.a Poslovnika Hrvatskoga sabora u prilogu upućujem *Konačni prijedlog zakona o potvrđivanju Protokola kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka*, koji je predsjedniku Hrvatskoga sabora podnijela Vlada Republike Hrvatske, aktom od 12. rujna 2019. godine.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Ivana Malenicu, ministra uprave, Darka Nekića, Katicu Prpić i Josipu Rimac, državne tajnike u Ministarstvu uprave, te doc. dr. sc. Mladena Nakića, pomoćnika ministra uprave.

**PREDSJEDNIK**

**Gordan Jandroković**



# P.Z. br. 747

VLADA REPUBLIKE HRVATSKE

Klasa: 022-03/19-11/09  
Urbroj: 50301-25/05-19-7

Zagreb, 12. rujna 2019.



Hs\*\*NP\*022-03/19-01/180\*50-19-01\*\*Hs

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ZAGREB, Trg Sv. Marka 6		
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PREDSJEDNIKU HRVATSKOGA SABORA

Predmet: Konačni prijedlog zakona o potvrđivanju Protokola kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka

Na temelju članka 85. Ustava Republike Hrvatske (Narodne novine, br. 85/10 – pročišćeni tekst i 5/14 – Odluka Ustavnog suda Republike Hrvatske) i članka 207.a Poslovnika Hrvatskoga sabora (Narodne novine, br. 81/13, 113/16, 69/17 i 29/18), Vlada Republike Hrvatske podnosi Konačni prijedlog zakona o potvrđivanju Protokola kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Ivana Malenicu, ministra uprave, Darka Nekića, Katicu Prpić i Josipu Rimac, državne tajnike u Ministarstvu uprave, te doc. dr. sc. Mladena Nakića, pomoćnika ministra uprave.

PREDSJEDNIK  
mr. sc. Andrej Plenković

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU PROTOKOLA KOJIM SE  
MIJENJA I DOPUNJUJE KONVENCIJA ZA ZAŠTITU OSOBA GLEDE  
AUTOMATIZIRANE OBRADU OSOBNIH PODATAKA**

# KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU PROTOKOLA KOJIM SE MIJENJA I DOPUNJUJE KONVENCIJA ZA ZAŠTITU OSOBA GLEDE AUTOMATIZIRANE OBRADJE OSOBNIH PODATAKA

## I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA

Ustavna osnova za donošenje ovoga Zakona sadržana je u odredbi članka 140. Ustava Republike Hrvatske (Narodne novine, br. 85/10 – pročišćeni tekst i 5/14 – Odluka Ustavnog suda Republike Hrvatske).

## II. OCJENA STANJA I CILJ KOJI SE DONOŠENJEM ZAKONA ŽELI POSTIĆI

Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka (dalje u tekstu: Konvencija) Vijeća Europe sastavljena je i otvorena za potpisivanje 28. siječnja 1981. godine u Strasbourgu. Konvencija služi kao temelj zakonodavnog okvira u međunarodnoj zaštiti podataka u većini europskih zemalja te je ostvarila utjecaj i na zakonodavstvo mnogih zemalja izvan Europe. Konvencija je još uvijek jedini obvezujući međunarodni sporazum u području zaštite osobnih podataka s potencijalom da postane globalni standard.

Republika Hrvatska stranka je Konvencije i Dodatnog Protokola uz Konvenciju za zaštitu osoba glede automatizirane obrade osobnih podataka u vezi nadzornih tijela i međunarodne razmjene podataka (Narodne novine – Međunarodni ugovori, broj 4/05). Sukladno Konvenciji, u Republici Hrvatskoj je donesen i Zakon o zaštiti osobnih podataka (Narodne novine, broj 103/03) koji sadrži načela za zaštitu podataka postavljena u Konvenciji.

Vijeće Europe kontinuirano je nastojalo modernizirati i usavršavati Konvenciju kako bi ista zadržala status kvalitetnog i suvremenog zakonodavnog okvira za zaštitu osobnih podataka. Posljednji ciklus modernizacije započeo je 2011. godine u svrhu boljeg odgovora na suvremene izazove proizašle iz modernih informacijsko – komunikacijskih tehnologija, interneta, globalizacije i iznimnog porasta protoka osobnih informacija. Glavna zadaća pritom je povjerena međuvladinom *ad-hoc* odboru Vijeća Europe za zaštitu podataka (CAHDATA) koji je završio s radom u lipnju 2016. godine. Od rujna 2016. godine modernizacija Konvencije odvijala se kroz sastanke Izvjestiteljske skupine za pravnu suradnju (GR-J), cikluse neformalnih konzultacija država članica Vijeća Europe te neformalne konzultacije u formatu EU-28 uz sudjelovanje predstavnika Europske Komisije. Proces modernizacije ujedinjuje različite normativne okvire koji su razvijani u različitim dijelovima svijeta i nude multilateralan okvir koji je fleksibilan, snažan i transparentan te olakšava protok podataka uz efikasnu zaštitu od zloupotrebe.

Rezultat procesa rada Vijeća Europe na osuvremenjivanju Konvencije je Protokol kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka (dalje u tekstu: Protokol). Cilj Protokola je modernizirati odredbe Konvencije u skladu sa suvremenim potrebama pojedinaca u odnosu na zaštitu osobnih podataka i obrade istih, a koje proizlaze iz sve većih ugroza nastalih globalizacijskim procesima, razvojem interneta i ekspanzijom protoka podataka. Također, intencija je i harmonizacija sa zakonodavstvom Europske unije na području zaštite osobnih podataka odnosno sa Uredbom EU 2016/679 Europskog parlamenta i Vijeća od 27. travnja 2016. o zaštiti pojedinaca u vezi s obradom osobnih podataka i o slobodnom kretanju takvih podataka te o stavljanju izvan snage Direktive 95/46/EZ (Opća uredba o zaštiti podataka), a koja je u primjeni od 25. svibnja 2018. godine.

Tekst Protokola sastavljen je i otvoren za potpisivanje 10. listopada 2018. godine u Strasbourgu te ga je dosad potpisalo 27 država stranaka. Sukladno članku 37. Protokola, Protokol će stupiti na snagu prvoga dana u mjesecu koji slijedi nakon isteka razdoblja od tri mjeseca od datuma kada su sve stranke Konvencije izrazile svoj pristanak da budu vezane Protokolom ili nakon isteka razdoblja od pet godina od datuma njegova otvaranja za potpisivanje u odnosu na one države koje su izrazile svoj pristanak da budu vezane njime.

Vlada Republike Hrvatske na sjednici održanoj 8. ožujka 2019. godine donijela je Odluku o pokretanju postupka za sklapanje Protokola kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka te je 22. ožujka 2019. godine, izvanredni i opunomoćeni veleposlanik Toma Galli, stalni predstavnik Republike Hrvatske pri Vijeću Europe, na temelju punomoći Vlade Republike Hrvatske, u ime Republike Hrvatske, potpisao predmetni Protokol.

### **III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM**

Tekst Protokola načelno sadrži odredbe Konvencije koje su nadopunjene s detaljnijim tekstom s obzirom na preporuke i smjernice, a koje za cilj imaju osigurati dosljednost i kompatibilnost s drugim zakonodavnim okvirima na području zaštite osobnih podataka, posebno s onim Europske unije. Posebno se u prvim člancima naglašava uloga globalizacije i diverzifikacija obrade podataka. Također, obrada i osobni podaci povezuju se s temeljnim ljudskim pravima i slobodama te se stavlja naglasak na jačoj kontroli pojedinca pri obradi osobnih podataka.

Protokolom su osuvremenjene definicije automatizirane obrade podataka, voditelja obrade i drugih relevantnih pojmova te je moderniziran izričaj u skladu sa stručnom nomenklaturom iz područja zaštite osobnih podataka. Također, povećan je obujam podataka koji može biti obrađen, no proporcionalno je pojačana zaštita i nadzor nad obradom istih. Također, inovacije Protokola su i jačanje odgovornosti kontrolora za zaštitu podataka, uvođenje zaštite osobnih podataka po dizajnu te propisivanje obveze prijave povrede sigurnosti podataka. Nadalje, Protokolom se jača transparentnost pri obradi podataka i dodatno se štite građani uvođenjem prava na izuzimanje pri automatiziranoj obradi osobnih podataka koja u obzir nije uzela i mišljenje pojedinca te prava na prigovor.

Protokolom se uvodi mogućnost međunarodne suradnje Nadzornih tijela i uspostavljanje mreže, a u svrhu što kvalitetnijeg rada tijela. Poseban naglasak stavljen je i na jačanje Odbora Konvencije sastavljenog od predstavnika država članica i efikasniju implementaciju standarda za zaštitu osobnih podataka kako bi se učvrstio kredibilitet Konvencije. Također, Protokolom o izmjeni Konvencije se uvodi pravo da međunarodne organizacije prihvate Konvenciju.

### **IV. OCJENA POTREBNIH SREDSTAVA ZA PROVOĐENJE ZAKONA**

Za provođenje ovoga Zakona nije potrebno osigurati dodatna financijska sredstva u državnom proračunu Republike Hrvatske.

## V. ZAKONI KOJIMA SE POTVRĐUJU MEĐUNARODNI UGOVORI

Temelj za donošenje ovoga Zakona nalazi se u članku 207.a Poslovnika Hrvatskoga sabora (Narodne Novine, br. 81/13, 113/16, 69/17 i 29/18) prema kojem se zakoni kojima se, u skladu s Ustavom Republike Hrvatske, potvrđuju međunarodni ugovori donose u pravilu u jednom čitanju, a postupak donošenja pokreće se podnošenjem konačnog prijedloga zakona o potvrđivanju međunarodnog ugovora.

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AUTOMATIZIRANE OBRADE OSOBNIH PODATAKA**

**Članak 1.**

Potvrđuje se Protokol kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka, sastavljen u Strasbourgu 10. listopada 2018. godine, u izvorniku na engleskom i francuskom jeziku, a koji je Republika Hrvatska potpisala 22. ožujka 2019. godine.

**Članak 2.**

Tekst Protokola iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik glasi:

## **Protokol kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka**

### **Preambula**

Države članice Vijeća Europe i druge stranke Konvencije za zaštitu osoba glede automatizirane obrade osobnih podataka (ETS br. 108), otvorene za potpisivanje u Strasbourgu 28. siječnja 1981. (u daljnjem tekstu: Konvencija),

uzimajući u obzir Rezoluciju br. 3 o zaštiti podataka i privatnosti u trećem tisućljeću, donesenu na 30. Konferenciji ministara pravosuđa Vijeća Europe (Istanbul, Turska, 24. - 26. studenoga 2010.);

uzimajući u obzir Rezoluciju 1843 (2011) Parlamentarne skupštine Vijeća Europe o zaštiti privatnosti i osobnih podataka na internetu i u internetskim medijima i Rezoluciju 1986 (2014) o unaprjeđenju zaštite i sigurnosti korisnika u kibernetičkom prostoru;

uzimajući u obzir Mišljenje 296 (2017) o nacrtu protokola o izmjeni Konvencije za zaštitu osoba glede automatizirane obrade osobnih podataka (ETS br. 108) i pripadajuće objašnjenje, koje je Stalni odbor donio u ime Parlamentarne skupštine Vijeća Europe 24. studenoga 2017.;

budući da su se od donošenja Konvencije pojavili novi izazovi u pogledu zaštite osoba glede obrade osobnih podataka;

s obzirom na potrebu da se i ubuduće osigura vodeća uloga Konvencije u zaštiti osoba glede obrade osobnih podataka te općenito u zaštiti ljudskih prava i temeljnih sloboda,

sporazumjele su se:

### **Članak 1.**

1. Prva uvodna izjava preambule Konvencije zamjenjuje se sljedećim:

„Države članice Vijeća Europe i druge potpisnice ove Konvencije,”

2. Treća uvodna izjava preambule Konvencije zamjenjuje se sljedećim:

„s obzirom na to da je potrebno osigurati ljudsko dostojanstvo i zaštitu ljudskih prava i temeljnih sloboda svake osobe te, s obzirom na diverzifikaciju, intenzifikaciju i globalizaciju obrade podataka i tokova osobnih podataka, osobnu autonomiju utemeljenu na pravu osobe da kontrolira svoje osobne podatke i obradu takvih podataka.

3. Četvrta uvodna izjava preambule Konvencije zamjenjuje se sljedećim:

„podsjećajući da pravo na zaštitu osobnih podataka treba razmatrati u svjetlu njegove uloge u društvu i uskladiti s drugim ljudskim pravima i temeljnim slobodama, uključujući slobodu izražavanja;”



4. Nakon četvrte uvodne izjave preambule Konvencije dodaje se sljedeća uvodna izjava:

„s obzirom na to da ova Konvencija dopušta da se pri provedbi njome propisanih pravila vodi računa o načelu prava na pristup službenim dokumentima,”

5. Peta uvodna izjava preambule Konvencije briše se. Dodaju se nove peta i šesta uvodna izjava, koje glase:

„prepoznajući da je potrebno na globalnoj razini promicati temeljne vrijednosti poštovanja privatnosti i zaštite osobnih podataka te na taj način doprinosti slobodnom protoku informacija među ljudima;”

„prepoznajući interes jačanja međunarodne suradnje između stranaka ove Konvencije,”

## **Članak 2.**

Tekst članka 1. Konvencije zamjenjuje se sljedećim:

„Svrha je ove Konvencije zaštititi svaku osobu, bez obzira na njezino državljanstvo ili prebivalište i boravište, glede obrade njezinih osobnih podataka te na taj način doprinijeti poštovanju njezinih ljudskih prava i temeljnih sloboda, a osobito prava na privatnost.”

## **Članak 3.**

1. *Točka b.* članka 2. Konvencije zamjenjuje se sljedećim:

„b. 'obrada podataka' znači svaku operaciju ili skup operacija izvršenih na osobnim podacima, kao što je prikupljanje, pohrana, očuvanje, izmjena, pronalaženje, otkrivanje, stavljanje na raspolaganje, brisanje ili uništavanje takvih podataka, ili provođenje logičkih i/ili aritmetičkih operacija na njima;”

2. *Točka c.* članka 2. Konvencije zamjenjuje se sljedećim:

„c. ako se ne upotrebljava automatizirana obrada, 'obrada podataka' znači operacija ili skup operacija izvršenih na osobnim podacima sa strukturiranim skupom takvih podataka koji su dostupni ili se mogu pronaći prema posebnim kriterijima;”

3. *Točka d.* članka 2. Konvencije zamjenjuje se sljedećim:

„d. 'voditelj obrade' znači fizička ili pravna osoba, tijelo javne vlasti, služba, agencija ili drugo tijelo koje samo ili zajedno s drugima ima pravo odlučivanja o obradi podataka;”

4. Nakon članka 2. *točke d.* Konvencije dodaju se sljedeće nove točke:

„e. 'primatelj' znači fizička ili pravna osoba, tijelo javne vlasti, služba, agencija ili drugo tijelo kojem se otkrivaju ili stavljaju na raspolaganje osobni podaci;

f. 'izvršitelj obrade' znači fizička ili pravna osoba, tijelo javne vlasti, služba, agencija ili drugo tijelo koje obrađuje osobne podatke u ime voditelja obrade.”

**Članak 4.**

1. Stavak 1. članka 3. Konvencije zamjenjuje se sljedećim:  
„1. Svaka stranka obvezuje se na primjenu ove Konvencije pri obradi podataka u svojoj nadležnosti u javnom i privatnom sektoru, osiguravajući na taj način pravo svake osobe na zaštitu njezinih osobnih podataka.”
2. Stavak 2. članka 3. Konvencije zamjenjuje se sljedećim:  
„2. Ova se Konvencija ne primjenjuje na obradu podataka koju osoba obavlja u okviru isključivo osobnih ili kućanskih aktivnosti.”
3. Stavci 3. do 6. članka 3. Konvencije brišu se.

**Članak 5.**

Naslov poglavlja II. Konvencije zamjenjuje se sljedećim:

„Poglavlje II. – Temeljna načela zaštite osobnih podataka”.

**Članak 6.**

1. Stavak 1. članka 4. Konvencije zamjenjuje se sljedećim:  
„1. Svaka stranka poduzima u svojem zakonodavstvu potrebne mjere kako bi provela odredbe ove Konvencije i osigurala njihovu učinkovitu primjenu.”
2. Stavak 2. članka 4. Konvencije zamjenjuje se sljedećim:  
„2. Te mjere mora poduzeti svaka stranka i moraju stupiti na snagu do trenutka ratifikacije ili pristupanja ovoj Konvenciji.”
3. Nakon stavka 2. članka 4. Konvencije dodaje se novi stavak:  
„3. Svaka stranka obvezuje se:
  - a. da će omogućiti Odboru Konvencije iz poglavlja VI. evaluaciju učinkovitosti mjera koje je poduzela u svojem zakonodavstvu radi provedbe odredaba ove Konvencije;
  - i
  - b. da će aktivno doprinositi tom postupku evaluacije.”

**Članak 7.**

1. Naslov članka 5. zamjenjuje se sljedećim:  
„Članak 5. – Zakonitost obrade podataka i kvaliteta podataka”.
2. Tekst članka 5. Konvencije zamjenjuje se sljedećim:  
„1. Obrada podataka mora biti razmjerna zakonitoj svrsi kojoj služi i u svim fazama obrade odražavati pravednu ravnotežu između svih uključenih interesa, javnih i privatnih, i predmetnih prava i sloboda.

2. Svaka stranka osigurava da se obrada podataka može izvršiti na temelju slobodne, posebne, informirane i nedvosmislene privole ispitanika ili na nekom drugom legitimnom temelju propisanome zakonom.
3. Osobni podaci koji su predmet obrade obrađuju se u skladu sa zakonom.
4. Osobni podaci koji su predmet obrade moraju biti:
  - a. obrađeni na pošten i transparentan način;
  - b. prikupljeni u izričite, specifične i zakonite svrhe i ne smiju biti obrađeni na način koji nije u skladu s tim svrhama; daljnja obrada u svrhe arhiviranja u javnom interesu, u svrhe znanstvenog ili povijesnog istraživanja ili u statističke svrhe u skladu je, uz primjerene zaštitne mjere, s tim svrhama;
  - c. primjereni, relevantni i ne suvišni u odnosu na svrhe njihove obrade;
  - d. točni i, prema potrebi, ažurni;
  - e. sačuvani u obliku koji omogućuje identifikaciju ispitanika samo onoliko dugo koliko je potrebno u svrhe radi kojih se osobni podaci obrađuju.”

#### **Članak 8.**

Tekst članka 6. Konvencije zamjenjuje se sljedećim:

„1. Obrada:

- genetskih podataka;
- osobnih podataka o kaznenim djelima, kaznenim postupcima i osudama te povezanim sigurnosnim mjerama;
- biometrijskih podataka koji omogućuju jedinstvenu identifikaciju osobe;
- osobnih podataka radi otkrivanja informacija o rasnom ili etničkom podrijetlu, političkim mišljenjima, članstvu u sindikatu, vjerskim ili drugim uvjerenjima, zdravlju ili spolnom životu,

dopuštena je isključivo ako su zakonodavstvom propisane primjerene zaštitne mjere koje dopunjuju zaštitne mjere iz ove Konvencije.

2. Takve zaštitne mjere otklanjaju rizike koje obrada osjetljivih podataka može predstavljati za interese, prava i temeljne slobode ispitanika, prije svega rizik od diskriminacije.”

#### **Članak 9.**

Tekst članka 7. Konvencije zamjenjuje se sljedećim:

- „1. Svaka stranka osigurava da voditelj obrade i, ako je primjenjivo, izvršitelj obrade poduzimaju primjerene sigurnosne mjere protiv rizika kao što je slučajan ili

neovlašten pristup, uništenje, gubitak, uporaba, izmjena ili otkrivanje osobnih podataka.

2. Svaka stranka osigurava da voditelj obrade bez odgode obavješćuje barem nadležno nadzorno tijelo u smislu članka 15. ove Konvencije o onim povredama podataka koje mogu ozbiljno ugroziti prava i temeljne slobode ispitanika."

#### **Članak 10.**

Nakon članka 7. Konvencije dodaje se novi članak 8. kako slijedi:

„Članak 8. – Transparentnost obrade

1. Svaka stranka osigurava da voditelj obrade izvješćuje ispitanike o:
  - a. svojem identitetu i uobičajenom boravištu ili poslovnom nastanu;
  - b. pravnom temelju i svrhama planirane obrade;
  - c. kategorijama osobnih podataka koji se obrađuju;
  - d. primateljima ili kategorijama primatelja osobnih podataka, ako postoje;i
  - e. načinima ostvarivanja prava propisanih u članku 9.,

kao i svim dodatnim informacijama koje su potrebne kako bi se osigurala poštena i transparentna obrada osobnih podataka.
2. Stavak 1. ne primjenjuje se ako ispitanik već raspolaže odgovarajućim informacijama.
3. Ako se osobni podaci ne prikupljaju od ispitanika, voditelj obrade nije dužan pružiti takve informacije ako je obrada izričito propisana zakonom ili ako se to pokaže nemogućim ili uključuje nerazmjerne napore."

#### **Članak 11.**

1. Dosadašnji članak 8. Konvencije postaje članak 9., a naslov članka se zamjenjuje sljedećim:
 

„Članak 9. – Prava ispitanika”.
2. Tekst članka 8. Konvencije (novi članak 9.) zamjenjuje se sljedećim:
 

„1. Svaka osoba ima pravo:

  - a. da se na nju ne odnosi odluka koja na nju znatno utječe, a temelji se isključivo na automatiziranoj obradi podataka, pri čemu njezina stajališta nisu uzeta u razmatranje;
  - b. dobiti, na zahtjev, u razumnim vremenskim razmacima i bez suvišne odgode ili troškova, potvrdu o obradi osobnih podataka koji se na nju odnose, obavijest o obrađivanim podacima u razumljivom obliku, sve dostupne informacije o njihovom izvoru, razdoblju njihova čuvanja, kao i sve druge informacije koje je voditelj obrade dužan pružiti kako bi se osigurala transparentnost obrade u skladu s člankom 8. Stavkom 1;

- c. na zahtjev, biti obaviještena o razlozima obrade podataka ako se rezultati takve obrade na nju primjenjuju;
  - d. na temelju svoje situacije u svakom trenutku uložiti prigovor na obradu osobnih podataka koji se na nju odnose, osim ako voditelj obrade dokaže da postoje legitimni razlozi za obradu koji nadilaze njezine interese, prava i temeljne slobode;
  - e. na zahtjev dobiti, besplatno i bez suvišne odgode, ispravak ili brisanje takvih podataka, ovisno o slučaju, ako se obrađuju ili su obrađivani protivno odredbama ove Konvencije.
  - f. na pravni lijek prema članku 12. ako su povrijeđena njezina prava iz ove Konvencije;
  - g. na pomoć nadzornog tijela u smislu članka 15. pri ostvarivanju prava iz ove Konvencije, bez obzira na njezino državljanstvo ili prebivalište i boravište.
2. Stavak 1.a ne primjenjuje se ako je odluka donesena na temelju zakona koji se primjenjuje na voditelja obrade, a kojim su propisane i primjerene mjere zaštite prava, sloboda i legitimnih interesa ispitanika.”

### **Članak 12.**

Nakon članka 9. Konvencije dodaje se novi članak 10. kako slijedi:

#### „Članak 10. – Dodatne obveze

1. Svaka stranka osigurava da voditelji obrade i, ako je primjenjivo, izvršitelji obrade poduzimaju primjerene mjere radi ispunjavanja obveza iz ove Konvencije i kako bi nadležnom nadzornom tijelu iz članka 15. mogli dokazati, poštujući unutarnje zakonodavstvo doneseno u skladu s člankom 11. stavkom 3., da je obrada podataka kojom upravljaju usklađena s odredbama ove Konvencije.
2. Svaka stranka osigurava da voditelji obrade i, ako je primjenjivo, izvršitelji obrade ispituju vjerojatni učinak planirane obrade podataka na prava i temeljne slobode ispitanika prije početka takve obrade i planiraju obradu podataka na način da se rizik od ugrožavanja tih prava i temeljnih sloboda spriječi ili svede na najmanju moguću mjeru.
3. Svaka stranka osigurava da voditelji obrade i, ako je primjenjivo, izvršitelji obrade primjenjuju tehničke i organizacijske mjere kojima se vodi računa o posljedicama prava na zaštitu osobnih podataka u svim fazama obrade podataka.
4. Svaka stranka može, uzimajući u obzir nastale rizike koji proizlaze za interese, prava i temeljne slobode ispitanika, prilagoditi primjenu odredaba stavaka 1., 2. i 3. u zakonu kojim se osigurava provedba odredbi ove Konvencije, u skladu s prirodom i količinom podataka, prirodom, opsegom i svrhom obrade i, gdje je primjereno, s veličinom voditelja obrade ili izvršitelja obrade.”

### **Članak 13.**

Dosadašnji članci 9. do 12. Konvencije postaju članci 11. do 14. Konvencije.

**Članak 14.**

Tekst članka 9. Konvencije (novi članak 11.) zamjenjuje se sljedećim:

- „1. Nikakve iznimke od odredaba navedenih u ovom poglavlju nisu dopuštene, osim od odredaba članka 5. stavka 4., članka 7. stavka 2., članka 8. stavka 1. i članka 9., ako je takva iznimka predviđena zakonom, ako poštuje suštinu temeljnih prava i sloboda i predstavlja nužnu i razmjernu mjeru u demokratskom društvu u svrhe:
  - a. zaštite nacionalne sigurnosti, obrane, javne sigurnosti, važnih gospodarskih i financijskih interesa države, nepristranosti i neovisnosti pravosuđa ili sprečavanja, istrage i progona kaznenih djela, izvršenja kaznenih sankcija te drugih bitnih ciljeva u općem javnom interesu;
  - b. zaštite ispitanika ili prava i temeljnih sloboda drugih, osobito slobode izražavanja.
2. Ograničenja provedbe odredaba iz članka 8. i 9. mogu se zakonom predvidjeti glede obrade podataka u svrhe arhiviranja u javnom interesu, u svrhe znanstvenog ili povijesnog istraživanja ili u statističke svrhe ako ne postoji prepoznatljiv rizik od kršenja prava i temeljnih sloboda ispitanika.
3. Osim iznimaka dopuštenih u stavku 1. ovoga članka, glede aktivnosti obrade podataka u svrhe nacionalne sigurnosti i obrane, svaka stranka može zakonom, u mjeri koja je nužna i razmjerna u demokratskom društvu za postizanje takvog cilja, predvidjeti iznimke od članka 4. stavka 3., članka 14. stavaka 5. i 6. te članka 15. stavka 2. točaka a., b., c. i d.

Ovime se ne dovodi u pitanje uvjet da aktivnosti obrade podataka u svrhe nacionalne sigurnosti i obrane podliježu neovisnom i učinkovitom preispitivanju i nadzoru u skladu s unutarnjim zakonodavstvom dotične stranke.”

**Članak 15.**

Tekst članka 10. Konvencije (novi članak 12.) zamjenjuje se sljedećim:

„Svaka stranka obvezuje se na uspostavu primjerenih sudskih i izvansudskih sankcija i pravnih lijekova za povrede odredaba ove Konvencije.”

**Članak 16.**

Naslov poglavlja III. zamjenjuje se sljedećim:

„Poglavlje III. - Prekogranični protok osobnih podataka”.

**Članak 17.**

1. Naslov članka 12. Konvencije (novi članak 14.) zamjenjuje se sljedećim:
 

„Članak 14. – Prekogranični protok osobnih podataka”.
2. Tekst članka 12. Konvencije (novi članak 14.) zamjenjuje se sljedećim:

- „1. Stranka ne smije isključivo radi zaštite osobnih podataka zabraniti ili uvjetovati posebnim ovlaštenjem prijenos takvih podataka primatelju koji je pod jurisdikcijom druge stranke Konvencije. Ipak, takva stranka može to učiniti ako postoji stvaran i ozbiljan rizik da bi prijenos drugoj stranci ili prijenos iz te druge stranke državi koja nije stranka mogao dovesti do zaobilaženja odredaba Konvencije. Stranka to može učiniti i ako je obvezana usklađenim pravilima o zaštiti koja su zajednička državama članicama regionalnih međunarodnih organizacija.
  2. Ako je primatelj pod jurisdikcijom države ili međunarodne organizacije koja nije stranka ove Konvencije, prijenos osobnih podataka može se izvršiti isključivo ako je osigurana primjerena razina zaštite na temelju odredaba ove Konvencije.
  3. Primjerena razina zaštite može se osigurati:
    - a. zakonodavstvom države ili međunarodne organizacije, uključujući primjenjive međunarodne ugovore ili sporazume; ili
    - b. *ad hoc* ili odobrenom standardiziranom zaštitom koju pružaju pravno obvezujući i provedivi instrumenti koje su usvojile i provele osobe uključene u prijenos i daljnju obradu.
  4. Neovisno o odredbama prethodnih stavaka, svaka stranka može propisati da se prijenos osobnih podataka može izvršiti u sljedećim slučajevima:
    - a. ako je ispitanik dao izričitu, posebnu i slobodnu privolu nakon što je obaviješten o rizicima koji proizlaze iz nedostatka primjerenih zaštitnih mjera; ili
    - b. ako u konkretnom slučaju posebni interesi ispitanika to zahtijevaju; ili
    - c. ako su zakonom predviđeni prevladavajući legitimni interesi, osobito važni javni interesi, te takav prijenos predstavlja nužnu i razmjernu mjeru u demokratskom društvu; ili
    - d. ako on predstavlja mjeru koja je u demokratskom društvu nužna i razmjerna za slobodu izražavanja.
  5. Svaka stranka osigurava da se nadležnom nadzornom tijelu u smislu članka 15. ove Konvencije pružaju sve bitne informacije o prijenosu podataka iz stavka 3. točke b. i, na zahtjev, stavka 4. točaka b. i c.
  6. Svaka stranka također osigurava da nadležno tijelo bude ovlašteno tražiti od osobe koja izvršava prijenos podataka da dokaže djelotvornost zaštite ili postojanje prevladavajućih legitimnih interesa i da nadležno tijelo može radi zaštite prava i temeljnih sloboda ispitanika zabraniti takve prijenose, suspendirati ih ili ih uvjetovati.”
3. Tekst članka 12. Konvencije (novi članak 14.) sadržava odredbe članka 2. Dodatnog protokola iz 2001. godine u vezi s nadzornim tijelima i međunarodnom razmjenom podataka (ETS br. 181) o prekograničnom protoku osobnih podataka prema primatelju koji nije pod jurisdikcijom stranke Konvencije.

#### **Članak 18.**

Nakon poglavlja III. Konvencije dodaje se novo poglavlje IV. kako slijedi:

„Poglavlje IV. – Nadzorna tijela”.

**Članak 19.**

Novi članak 15. sadržava odredbe članka 1. Dodatnog protokola iz 2001. (ETS br. 181) i glasi:

„Članak 15. – Nadzorna tijela

1. Svaka stranka osigurava odgovornost jednog ili više tijela za osiguravanje usklađenosti s odredbama ove Konvencije.
2. U tu svrhu, ta tijela:
  - a. imaju ovlasti za provedbu istrage i intervencije;
  - b. obavljaju funkcije u vezi s prijenosom podataka iz članka 14., posebno s odobravanjem standardiziranih zaštitnih mjera;
  - c. imaju ovlasti za donošenje odluka o povredama odredaba ove Konvencije te mogu, posebno, izricati upravne sankcije;
  - d. imaju ovlast za sudjelovanje u pravnim postupcima ili upozoravanje nadležnih pravosudnih tijela na povrede odredaba ove Konvencije;
  - e. promiču:
    - i. javnu svijest o svojim funkcijama i ovlastima, kao i svojim aktivnostima;
    - ii. javnu svijest o pravima ispitanika i ostvarivanju tih prava;
    - iii. osviještenost voditelja obrade i izvršitelja obrade o njihovim odgovornostima iz ove Konvencije;

posebna se pažnja pridaje pravima djece i drugih ranjivih osoba na zaštitu podataka.
3. S nadležnim nadzornim tijelima provodi se savjetovanje o prijedlozima zakonodavnih ili upravnih mjera kojima se predviđa obrada osobnih podataka.
4. Svako nadležno nadzorno tijelo postupa po zahtjevima i pritužbama ispitanika o njihovim pravima na zaštitu podataka i izvješćuje ispitanika o napretku zahtjeva ili pritužbe.
5. Nadzorna tijela djeluju potpuno neovisno i nepristrano pri obavljanju svojih dužnosti i izvršavanju svojih ovlasti te pritom ne smiju tražiti niti prihvatiti upute.
6. Svaka stranka osigurava da se nadzornim tijelima osiguraju potrebna sredstva za učinkovito obavljanje njihovih funkcija i izvršavanje njihovih ovlasti.
7. Svako nadzorno tijelo priprema i objavljuje periodičko izvješće koje sadržava pregled njegovih aktivnosti.
8. Na članove i osoblje nadzornih tijela primjenjuju se obveze povjerljivosti glede povjerljivih informacija kojima imaju ili su imali pristup prilikom obavljanja svojih dužnosti i izvršavanja svojih ovlasti.



9. Protiv odluka nadzornih tijela može se podnijeti žalba nadležnom sudu.

10. Nadzorna tijela nisu nadležna u pogledu obrade koju tijela provode kada djeluju u sudbenom svojstvu.”

#### **Članak 20.**

1. Poglavlja IV. do VII. Konvencije postaju poglavlja V. do VIII. Konvencije.
2. Naslov poglavlja V. zamjenjuje se naslovom »Poglavlje V. – Suradnja i uzajamna pomoć«.
3. Dodaje se novi članak 17., a dosadašnji članci 13. do 27. Konvencije postaju članci 16. do 31. Konvencije.

#### **Članak 21.**

1. Naslov članka 13. Konvencije (novi članak 16.) zamjenjuje se sljedećim:  
„Članak 16. – Imenovanje nadzornih tijela”.
2. Stavak 1. članka 13. Konvencije (novi članak 16.) zamjenjuje se sljedećim:  
„1. Stranke su suglasne da će surađivati i pružati jedna drugoj uzajamnu pomoć u provedbi ove Konvencije.”
3. Stavak 2. članka 13. Konvencije (novi članak 16.) zamjenjuje se sljedećim:  
„2. U tu svrhu:
  - a. svaka stranka imenuje jedno ili više nadzornih tijela u smislu članka 15. ove Konvencije, o čijim nazivima i adresama obavješćuje glavnog tajnika Vijeća Europe;
  - b. svaka stranka koja je imenovala više od jednog nadzornog tijela navodi nadležnost svakog tijela u obavijesti iz prethodne točke.”
4. Stavak 3. članka 13. Konvencije (novi članak 16.) briše se.

#### **Članak 22.**

Nakon članka 16. Konvencije dodaje se novi članak 17. kako slijedi:

„Članak 17. – Oblici suradnje

1. Nadzorna tijela uzajamno surađuju u mjeri koja je potrebna za obavljanje njihovih dužnosti i izvršavanje njihovih ovlasti, posebno na sljedeće načine:
  - a. pružanjem uzajamne pomoći putem razmjene bitnih i korisnih informacija i uzajamne suradnje pod uvjetom da se poštuju sva pravila i zaštitne mjere ove Konvencije glede zaštite osobnih podataka;
  - b. koordinacijom svojih istraga ili intervencija ili poduzimanjem zajedničkih radnji;
  - c. pružanjem informacija i dokumentacije o svojem pravu i upravnoj praksi u vezi sa zaštitom podataka.

2. Informacije iz stavka 1. ne uključuju osobne podatke koji su u postupku obrade, osim ako su takvi podaci ključni za suradnju ili ako je dotični ispitanik dao izričitu, posebnu, slobodnu i informiranu privolu za pružanje tih podataka.
3. Nadzorna tijela stranaka uspostavljaju mrežu radi organizacije uzajamne suradnje i obavljanja dužnosti iz prethodnih stavaka."

#### **Članak 23.**

1. Naslov članka 14. Konvencije (novi članak 18.) zamjenjuje se sljedećim:
 

„Članak 18. – Pomoć ispitanicima”.
2. Tekst članka 14. Konvencije (novi članak 18.) zamjenjuje se sljedećim:
  - „1. Svaka stranka pruža pomoć svakom ispitaniku, bez obzira na njegovo državljanstvo ili prebivalište i boravište, u ostvarenju prava iz članka 9. ove Konvencije.
  2. Ako ispitanik boravi na području druge stranke, mora mu se omogućiti podnošenje zahtjeva putem posrednika nadzornog tijela koje je ta stranka imenovala.
  3. Zahtjev za pomoć mora sadržavati sve potrebne pojedinosti koje se, među ostalim, odnose na:
    - a. ime i prezime, adresu i sve druge bitne pojedinosti kojima se identificira ispitanik koji podnosi zahtjev;
    - b. obradu na koju se zahtjev odnosi ili voditelja te obrade;
    - c. svrhu zahtjeva.”

#### **Članak 24.**

1. Naslov članka 15. Konvencije (novi članak 19.) zamjenjuje se sljedećim:
 

„Članak 19. – Zaštitne mjere”.
2. Tekst članka 15. Konvencije (novi članak 19.) zamjenjuje se sljedećim:
  - „1. Nadzorno tijelo koje je primilo informacije od drugog nadzornog tijela, uz zahtjev ili kao odgovor na vlastiti zahtjev, ne smije koristiti te informacije u svrhe koje nisu navedene u zahtjevu.
  2. Ni u kojem slučaju nadzorno tijelo ne smije podnijeti zahtjev u ime ispitanika na vlastitu inicijativu i bez izričite privole dotičnog ispitanika.”

#### **Članak 25.**

1. Naslov članka 16. Konvencije (novi članak 20.) zamjenjuje se sljedećim:
 

„Članak 20. – Odbijanje zahtjeva”.
2. Uvod članka 16. Konvencije (novi članak 20.) zamjenjuje se sljedećim:
 

„Nadzorno tijelo kojemu je zahtjev upućen na temelju članka 17. ove Konvencije ne može odbiti udovoljiti mu, osim ako:”

3. *Točka a.* članka 16. Konvencije (novi članak 20.) zamjenjuje se sljedećim:

„a. zahtjev je nespojiv s njegovim ovlastima.“

4. *Točka c.* članka 16. Konvencije (novi članak 20.) zamjenjuje se sljedećim:

„c. bi udovoljenje zahtjevu bilo nespojivo sa suverenosti, nacionalnom sigurnošću ili javnim poretkom stranke koja ga je imenovala ili s pravima i temeljnim slobodama osoba koje su pod jurisdikcijom te stranke.“

#### **Članak 26.**

1. Naslov članka 17. Konvencije (novi članak 21.) zamjenjuje se sljedećim:

„Članak 21. – Troškovi i postupci“.

2. Stavak 1. članka 17. Konvencije (novi članak 21.) zamjenjuje se sljedećim:

„1. Suradnja i uzajamna pomoć koju si stranke pružaju prema članku 17. te pomoć koju pružaju ispitanicima prema člancima 9. i 18. neće biti razlog naplate troškova ili pristojbi, osim onih za stručnjake i prevoditelje. Potonje troškove ili pristojbe snosi stranka koja je podnijela zahtjev.“

3. Izrazi "njegov ili njezin" zamijenit će "njegov" u stavku 2. članka 17. Konvencije (novi članak 21).

#### **Članak 27.**

Naslov poglavlja V. Konvencije (novo poglavlje VI.) zamjenjuje se sljedećim:

„Poglavlje Vi. – Odbor Konvencije“.

#### **Članak 28.**

1. Izraz „Savjetodavni odbor“ u stavku 1. članka 18. Konvencije (novi članak 22.) zamjenjuje se izrazom „Odbor Konvencije“.

2. Stavak 3. članka 18. Konvencije (novi članak 22.) zamjenjuje se sljedećim:

„3. Odbor Konvencije može odlukom dvotrećinske većine predstavnika stranaka pozvati promatrača da bude zastupljen na sjednicama Odbora.“

3. Nakon stavka 3. članka 18. Konvencije (novi članak 22.) dodaje se novi stavak 4.:

„4. Svaka stranka koja nije članica Vijeća Europe doprinosi financiranju aktivnosti Odbora Konvencije u skladu s načinima koje je utvrdio Odbor ministara u dogovoru s tom strankom.“

#### **Članak 29.**

1. Izraz „Savjetodavni odbor“ u uvodu članka 19. Konvencije (novi članak 23.) zamjenjuje se izrazom „Odbor Konvencije“.

2. Izraz „prijedloge“ u točki a. članka 19. Konvencije (novi članak 23.) zamjenjuje se izrazom „preporuke“.

3. Riječi „u skladu sa člankom 21.“ u točki b. i riječi „u skladu s člankom 21. stavkom 3.“ u točki c. članka 19. Konvencije (novi članak 23.) zamjenjuju se riječima „u skladu s člankom 25.“ odnosno riječima „u skladu s člankom 25. stavkom 3.“.
4. Točka d. članka 19. Konvencije (novi članak 23.) zamjenjuje se sljedećim:  
 „d. može izraziti mišljenje o svakom pitanju koje se odnosi na tumačenje ili primjenu ove Konvencije;“.
5. Nakon točke d. članka 19. Konvencije (novi članak 23.) dodaju se sljedeće nove točke:  
 „e. prije svakog novog pristupanja Konvenciji priprema mišljenje za Odbor ministara o razini zaštite osobnih podataka kandidata za pristup i, prema potrebi, preporuča mjere koje je potrebno poduzeti radi usklađivanja s odredbama ove Konvencije;  
 f. može, na zahtjev države ili međunarodne organizacije, procijeniti je li razina zaštite osobnih podataka koju ta država ili međunarodna organizacija pruža usklađena s odredbama ove Konvencije i, prema potrebi, preporučiti mjere koje je potrebno poduzeti radi takvog usklađivanja;  
 g. može razvijati ili odobravati modele standardiziranih zaštitnih mjera iz članka 14.;  
 h. preispituje načine na koje stranke provode ovu Konvenciju i preporuča mjere koje je potrebno poduzeti kad stranka nije usklađena s ovom Konvencijom;  
 i. omogućuje, prema potrebi, prijateljsko rješavanje svih poteškoća u vezi s primjenom ove Konvencije.“

### **Članak 30.**

Tekst članka 20. Konvencije (novi članak 24.) zamjenjuje se sljedećim:

- „1. Odbor Konvencije saziva glavni tajnik Vijeća Europe. Prvu će sjednicu održati unutar razdoblja od dvanaest mjeseci od stupanja ove Konvencije na snagu. Nakon toga sastaje se najmanje jedanput godišnje, a u svakom slučaju kad njegovo sazivanje zahtijeva jedna trećina predstavnika stranaka.
2. Nakon svake sjednice Odbor Konvencije podnosi Odboru ministara Vijeća Europe izvješće o svojemu radu i o djelovanju ove Konvencije.
3. Pravila glasovanja u Odboru Konvencije utvrđena su u elementima za poslovnik u dodatku Protokolu CETS br. 223.
4. Odbor Konvencije sastavlja ostale elemente svojega poslovnika i posebno utvrđuje postupke ocjenjivanja i preispitivanja iz članka 4. stavka 3. i članka 23. točaka e., f. i h. na temelju objektivnih kriterija.“

### **Članak 31.**

1. Stavci 1. do 4. članka 21. Konvencije (novi članak 25.) zamjenjuju se sljedećima:  
 „1. Izmjene ove Konvencije može predložiti stranka, Odbor ministara Vijeća Europe ili Odbor konvencije.“

2. Svaki prijedlog za izmjenu i dopunu glavni tajnik Vijeća Europe priopćuje strankama ove Konvencije, drugim državama članicama Vijeća Europe, Europskoj uniji i svakoj državi nečlanici ili međunarodnoj organizaciji koja je pozvana da pristupi ovoj Konvenciji u skladu s odredbama članka 27.
  3. Osim toga, svaka izmjena i dopuna koju predloži stranka ili Odbor ministara priopćuje se Odboru Konvencije, koji Odboru ministara podnosi svoje mišljenje o predloženoj izmjeni i dopuni.
  4. Odbor ministara razmatra predložene izmjene i dopune i svako mišljenje koje mu je Odbor Konvencije podnio te može izmjene i dopune odobriti."
2. Nakon stavka 6. članka 21. Konvencije (novi članak 25.) dodaje se novi stavak 7. kako slijedi:
- „7. Osim toga, Odbor ministara može, nakon savjetovanja s Odborom Konvencije, jednoglasno odlučiti da pojedina izmjena i dopuna stupa na snagu po isteku razdoblja od tri godine od datuma kad je otvorena za prihvaćanje, osim ako stranka izrazi glavnom tajniku Vijeća Europe prigovor na stupanje te izmjene i dopune na snagu. Ako stranka izrazi prigovor, izmjena i dopuna stupa na snagu prvoga dana mjeseca koji slijedi nakon datuma kad stranka ove Konvencije koja je izrazila prigovor položi ispravu o prijehu kod glavnog tajnika Vijeća Europe.”

#### **Članak 32.**

1. Stavak 1. članka 22. Konvencije (novi članak 26.) zamjenjuje se sljedećim:
 

„1. Ova će Konvencija biti otvorena za potpisivanje od strane država članica Vijeća Europe i Europske unije. Ona podliježe ratifikaciji, prijehu ili odobrenju. Isprave o ratifikaciji, prijehu ili odobrenju polažu se kod glavnog tajnika Vijeća Europe.”
2. Izraz „država članica” u stavku 3. članka 22. Konvencije (novi članak 26.) zamjenjuje se izrazom „stranka”.

#### **Članak 33.**

Naslov i tekst članka 23. Konvencije (novi članak 27.) zamjenjuje se kako slijedi:

„Članak 27. – Pristupanje država nečlanica ili međunarodnih organizacija

1. Nakon stupanja ove Konvencije na snagu, Odbor ministara Vijeća Europe može, nakon savjetovanja sa strankama ove Konvencije i njihova jednoglasnog pristanka, te uzimajući u obzir mišljenje koje je pripremio Odbor Konvencije u skladu s člankom 23.e, pozvati svaku državu nečlanicu Vijeća Europe ili međunarodnu organizaciju da pristupi ovoj Konvenciji odlukom koju donese većinom predviđenom u članku 20.d Statuta Vijeća Europe i uz jednoglasnost predstavnika država stranaka koje imaju pravo zasjedati u Odboru ministara.
2. U odnosu na svaku državu ili međunarodnu organizaciju koja pristupi ovoj Konvenciji u skladu sa stavkom 1. ovog članka, Konvencija stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma polaganja isprave o pristupu kod glavnog tajnika Vijeća Europe.“

**Članak 34.**

Stavci 1. i 2. članka 24. Konvencije (novi članak 28.) zamjenjuju se sljedećima:

- „1. Svaka država, Europska unija ili druga međunarodna organizacija može, u trenutku potpisivanja ili pri polaganju svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, odrediti područje ili područja na koja se ova Konvencija primjenjuje.
2. Svaka država, Europska unija ili druga međunarodna organizacija može, na bilo koji kasniji datum, izjavom upućenom glavnom tajniku Vijeća Europe, proširiti primjenu ove Konvencije na svako drugo u izjavi određeno područje. U odnosu na takvo područje, Konvencija stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma na koji glavni tajnik primi takvu izjavu.

**Članak 35.**

1. Izraz „država” u uvodu članka 27. Konvencije (novi članak 31.) zamjenjuje se sa „stranka”.
2. Pozivanje na „članke 22., 23. i 24.” u točki c. zamjenjuju se pozivanjem na „članke 26., 27. i 28.”.

**Članak 36. – Potpisivanje, ratifikacija i pristup**

1. Ovaj Protokol otvoren je za potpisivanje državama strankama Konvencije. On podliježe ratifikaciji, prihvatu ili odobrenju. Isprave o ratifikaciji, prihvatu ili odobrenju polažu se kod glavnog tajnika Vijeća Europe.
2. Nakon otvaranja ovog Protokola za potpisivanje, a prije njegova stupanja na snagu, svaka druga država svoj pristanak da bude vezana ovim Protokolom izražava pristupom. Ona ne može postati stranka Konvencije ako istodobno ne pristupi i ovom Protokolu.

**Članak 37. – Stupanje na snagu**

1. Ovaj Protokol stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma kada su sve stranke Konvencije izrazile svoj pristanak da budu vezane Protokolom, u skladu s odredbama stavka 1. članka 36.
2. U slučaju da Protokol nije stupio na snagu u skladu sa stavkom 1., nakon isteka razdoblja od pet godina od datuma njegova otvaranja za potpisivanje Protokol stupa na snagu u odnosu na one države koje su izrazile svoj pristanak da budu vezane njime u skladu sa stavkom 1., pod uvjetom da Protokol ima najmanje trideset osam stranaka. Između stranaka Protokola sve odredbe izmijenjene i dopunjene Konvencije proizvode učinke odmah po stupanju na snagu.
3. Do stupanja ovog Protokola na snagu i ne dovodeći u pitanje odredbe koje se tiču stupanja na snagu i pristupa država nečlanica ili međunarodnih organizacija, stranka Konvencije može u trenutku potpisivanja ovog Protokola ili kasnije u svako doba izjaviti da će privremeno primjenjivati odredbe ovog Protokola. U takvim slučajevima odredbe ovog Protokola primjenjuju se isključivo u odnosu na druge stranke Konvencije koje su dale istu izjavu. Takva izjava proizvodi učinak prvoga dana trećeg mjeseca od datuma na koji glavni tajnik Vijeća Europe primi tu izjavu.

4. Od datuma stupanja ovog Protokola na snagu Dodatni protokol uz Konvenciju za zaštitu osoba glede automatizirane obrade osobnih podataka u vezi nadzornih tijela i međunarodne razmjene podataka (ETS br. 181) stavlja se izvan snage.
5. Od datuma stupanja ovog Protokola na snagu, izmjene i dopune Konvencije za zaštitu osoba glede automatizirane obrade osobnih podataka, a koje je odobrio Odbor ministara u Strasbourgu 15. lipnja 1999., izgubile su svoju svrhu.

#### **Članak 38. – Izjave u vezi s Konvencijom**

Od datuma stupanja na snagu ovog Protokola, u odnosu na stranke koje su dale jednu ili više izjava na temelju članka 3. Konvencije, takve izjave prestaju važiti.

#### **Članak 39. – Rezerve**

Nikakva rezerva na odredbe ovog Protokola nije dopuštena.

#### **Članak 40. – Notifikacije**

Glavni tajnik Vijeća Europe obavješćuje države članice Vijeća Europe i svaku drugu stranku Konvencije o:

- a. svakom potpisu;
- b. polaganju svake isprave o ratifikaciji, prihvatu, odobrenju ili pristupu;
- c. datumu stupanja ovoga Protokola na snagu u skladu s člankom 37.;
- d. svakom drugom činu, notifikaciji ili priopćenju koji se odnose na ovaj Protokol.

U potvrdu toga, dolje potpisani, propisno ovlašteni punomoćnici, potpisali su ovaj Protokol.

Sastavljeno u Strasbourgu 10. listopada 2018. na engleskom i francuskom jeziku, pri čemu su oba teksta jednako vjerodostojna, u jednom primjerku koji se pohranjuju u arhivu Vijeća Europe. Glavni tajnik Vijeća Europe dostavlja ovjerene preslike svakoj državi članici Vijeća Europe, drugim strankama Konvencije i svakoj državi pozvanoj da pristupi Konvenciji.

**Dodatak Protokolu: Elementi za poslovnik Odbora Konvencije**

1. Svaka stranka ima pravo glasovati te ima jedan glas.
2. Dvotrećinska većina predstavnika stranaka čini kvorum potreban za održavanje sjednica Odbora Konvencije. U slučaju da Protokol o izmjeni Konvencije stupi na snagu u skladu s njezinim člankom 37. stavkom 2. prije nego što stupi na snagu u odnosu na sve ugovorne stranke Konvencije, kvorum za sjednice Odbora Konvencije čine najmanje 34 stranke Protokola.
3. Odluke prema članku 23. donose se većinom od četiri petine glasova. Odluke na temelju članka 23. točke h. donose se većinom od četiri petine glasova, uključujući većinu glasova država stranaka koje nisu članice regionalne integracijske organizacije koja je stranka Konvencije.
4. Kad Odbor Konvencije donosi odluke na temelju članka 23. točke h., stranka na koju se preispitivanje odnosi ne glasuje. Svaki put kad se odluka tiče stvari iz nadležnosti neke regionalne integracijske organizacije, ta organizacija i njezine države članice ne glasuju.
5. Odluke o postupovnim pitanjima donose se običnom većinom.
6. Regionalne integracijske organizacije u stvarima iz svoje nadležnosti mogu ostvariti svoje pravo glasovanja u Odboru Konvencije brojem glasova koji odgovara broju njihovih država članica koje su stranke Konvencije. Takva organizacija ne može glasovati ako glasuje ijedna od njezinih država članica.
7. U slučaju glasovanja, sve stranke moraju biti obaviještene o predmetu i vremenu glasovanja, kao i o tome hoće li stranke glasovati pojedinačno ili će regionalna integracijska organizacija glasovati u ime svojih država članica.
8. Odbor Konvencije može dodatno izmijeniti i dopuniti svoj poslovnik dvotrećinskom većinom glasova, osim pravila glasovanja koja se može izmijeniti i dopuniti isključivo jednoglasnom odlukom stranaka i na koja se primjenjuje članak 25. Konvencije.



## **Protocol amending the Convention for the Protection of Individuals with regard to Automatic processing of Personal Data**

### **Preamble**

The member States of the Council of Europe and the other Parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), opened for signature in Strasbourg on 28 January 1981 (hereinafter referred to as "the Convention"),

Having regard to Resolution No. 3 on data protection and privacy in the third millennium adopted at the 30th Council of Europe Conference of Ministers of Justice (Istanbul, Turkey, 24-26 November 2010);

Having regard to the Parliamentary Assembly of the Council of Europe's Resolution 1843 (2011) on the protection of privacy and personal data on the Internet and online media and Resolution 1986 (2014) on improving user protection and security in cyberspace;

Having regard to Opinion 296 (2017) on the draft protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its explanatory memorandum, adopted by the Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe on 24 November 2017;

Considering that new challenges to the protection of individuals with regard to the processing of personal data have emerged since the Convention was adopted;

Considering the need to ensure that the Convention continues to play its pre-eminent role in protecting individuals with regard to the processing of personal data, and more generally in protecting human rights and fundamental freedoms,

Have agreed as follows:

### **Article 1**

- 1 The first recital of the preamble of the Convention shall be replaced by the following:

"The member States of the Council of Europe, and the other signatories hereto,"

- 2 The third recital of the preamble of the Convention shall be replaced by the following:

"Considering that it is necessary to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on a person's right to control his or her personal data and the processing of such data;"

- 3 The fourth recital of the preamble of the Convention shall be replaced by the following:

"Recalling that the right to protection of personal data is to be considered in respect of its role in society and that it has to be reconciled with other human rights and fundamental freedoms, including freedom of expression;"

- 4 The following recital shall be added after the fourth recital of the preamble of the Convention:

"Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of access to official documents;"

- 5 The fifth recital of the preamble of the Convention shall be deleted. New fifth and sixth recitals shall be added, which read as follows:

"Recognising that it is necessary to promote at the global level the fundamental values of respect for privacy and protection of personal data, thereby contributing to the free flow of information between people;"

"Recognising the interest of a reinforcement of international co-operation between the Parties to the Convention,"

## Article 2

The text of Article 1 of the Convention shall be replaced by the following:

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

## Article 3

- 1 *Littera* b of Article 2 of the Convention shall be replaced by the following:

"b 'data processing' means any operation or set of operations performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data;"

- 2 *Littera* c of Article 2 of the Convention shall be replaced by the following:

"c 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;"

- 3 *Littera* d of Article 2 of the Convention shall be replaced by the following:

"d 'controller' means the natural or legal person, public authority, service, agency or any other body which, alone or jointly with others, has decision-making power with respect to data processing;"

- 4 The following new *litterae* shall be added after *littera* d of Article 2 of the Convention:

"e 'recipient' means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;

f 'processor' means a natural or legal person, public authority, service, agency or any other body which processes personal data on behalf of the controller."

**Article 4**

1 Paragraph 1 of Article 3 of the Convention shall be replaced by the following:

"1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby securing every individual's right to protection of his or her personal data."

2 Paragraph 2 of Article 3 of the Convention shall be replaced by the following:

"2 This Convention shall not apply to data processing carried out by an individual in the course of purely personal or household activities."

3 Paragraphs 3 to 6 of Article 3 of the Convention shall be deleted.

**Article 5**

The title of Chapter II of the Convention shall be replaced by the following:

"Chapter II – Basic principles for the protection of personal data".

**Article 6**

1 Paragraph 1 of Article 4 of the Convention shall be replaced by the following:

"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 Paragraph 2 of Article 4 of the Convention shall be replaced by the following:

"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 A new paragraph shall be added after paragraph 2 of Article 4 of the 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 7**

1 The title of Article 5 shall be replaced by the following:

"Article 5 – Legitimacy of data processing and quality of data".

2 The text of Article 5 of the Convention shall be replaced by the following:

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

- 2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law.
- 3 Personal data undergoing processing shall be processed lawfully.
- 4 Personal data undergoing processing shall be:
  - a processed fairly and in a transparent manner;
  - b 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;
  - c adequate, relevant and not excessive in relation to the purposes for which they are processed;
  - d accurate and, where necessary, kept up to date;
  - e preserved in a form which permits identification of the data subjects for no longer than is necessary for the purposes for which those data are processed."

#### **Article 8**

The text of Article 6 of the Convention shall be replaced by the following:

"1 The processing of:

- genetic data;
- personal data relating to offences, criminal proceedings and convictions, and related security measures;
- biometric data uniquely identifying a person;
- personal data for the information they reveal relating to racial or ethnic 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.

- 2 Such safeguards shall guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination."

#### **Article 9**

The text of Article 7 of the Convention shall be replaced by the following:

- "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 notifies, 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.”

#### **Article 10**

A new Article 8 shall be added after Article 7 of the Convention as follows:

“Article 8 – Transparency of processing

- 1 Each Party shall provide that the controller informs the data subjects of:
- a his or her 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.
- 2 Paragraph 1 shall not apply where the data subject already has the relevant information.
- 3 Where the personal data are not collected from the data subjects, the controller shall not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.”

#### **Article 11**

- 1 The former Article 8 of the Convention shall be renumbered Article 9 and the title shall be replaced by the following:

“Article 9 – Rights of the data subject”.

- 2 The text of Article 8 of the Convention (new Article 9) shall be replaced by the following:

“1 Every individual shall have a right:

- a 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;
- b 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;

- c to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her;
  - d 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;
  - e 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;
  - f to have a remedy under Article 12 where his or her rights under this Convention have been violated;
  - g to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 15, in exercising his or her rights under this Convention.
- 2 Paragraph 1.a shall not apply if the decision is authorised by a law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests."

#### **Article 12**

A new Article 10 shall be added after the new Article 9 of the Convention as follows:

##### "Article 10 – Additional obligations

- 1 Each Party shall provide that controllers and, where applicable, processors, take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate, subject to the domestic legislation adopted in accordance with Article 11, paragraph 3, in particular to the competent supervisory authority provided for in Article 15, that the data processing under their control is in compliance with the provisions of this Convention.
- 2 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.
- 3 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.
- 4 Each Party may, having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, adapt the application of the provisions of paragraphs 1, 2 and 3 in the law giving effect to the provisions of this Convention, according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor."

**Article 13**

The former Articles 9 to 12 of the Convention shall become Articles 11 to 14 of the Convention.

**Article 14**

The text of Article 9 of the Convention (new Article 11) shall be replaced by the following:

- "1 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 national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest;
  - b the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.
- 2 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.
- 3 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 an aim, exceptions to Article 4, paragraph 3, Article 14, paragraphs 5 and 6, and Article 15, paragraph 2, *litterae* 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 under the domestic legislation of the respective Party."

**Article 15**

The text of Article 10 of the Convention (new Article 12) shall be replaced by the following:

"Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of the provisions of this Convention."

**Article 16**

The title of Chapter III shall be replaced by the following:

"Chapter III – Transborder flows of personal data".

## Article 17

- 1 The title of Article 12 of the Convention (new Article 14) shall be replaced by the following:
 

"Article 14 – Transborder flows of personal data".
- 2 The text of Article 12 of the Convention (new Article 14) shall be replaced by the following:
  - "1 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.
  - 2 When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to this Convention, the transfer of personal data may only take place where an appropriate level of protection based on the provisions of this Convention is secured.
  - 3 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.
  - 4 Notwithstanding the provisions of the previous paragraphs, 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; or
    - d it constitutes a necessary and proportionate measure in a democratic society for freedom of expression.
  - 5 Each Party shall provide that the competent supervisory authority, within the meaning of Article 15 of this Convention, is provided with all relevant information concerning the transfers of data referred to in paragraph 3, *littera* b and, upon request, paragraph 4, *litterae* b and c.
  - 6 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 such transfers, suspend them or subject them to conditions.”

- 3 The text of Article 12 of the Convention (new Article 14) includes the provisions of Article 2 of the Additional Protocol of 2001 regarding supervisory authorities and transborder data flows (ETS No. 181) on transborder flows of personal data to a recipient which is not subject to the jurisdiction of a Party to the Convention.

#### **Article 18**

A new Chapter IV shall be added after Chapter III of the Convention, as follows:

“Chapter IV – Supervisory authorities”.

#### **Article 19**

A new Article 15 includes the provisions of Article 1 of the Additional Protocol of 2001 (ETS No.181) and reads as follows:

“Article 15 – Supervisory authorities

- 1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this Convention.
- 2 To this end, such authorities:
  - a shall have powers of investigation and intervention;
  - b shall perform the functions relating to transfers of data provided for under Article 14, notably the approval of standardised safeguards;
  - c shall have powers to issue decisions with respect to violations of the provisions of this Convention and may, in particular, impose administrative sanctions;
  - d 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 this Convention;
  - e shall promote:
    - i public awareness of their functions and powers, as well as their activities;
    - ii public awareness of the rights of data subjects and the exercise of such rights;
    - iii awareness of controllers and processors of their responsibilities under this Convention;

specific attention shall be given to the data protection rights of children and other vulnerable individuals.

- 3 The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.

- 4 Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their data protection rights and shall keep data subjects informed of progress.
- 5 The supervisory authorities shall act with complete independence and impartiality in performing their duties and exercising their powers and in doing so shall neither seek nor accept instructions.
- 6 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.
- 7 Each supervisory authority shall prepare and publish a periodical report outlining its activities.
- 8 Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information to which they have access, or have had access to, in the performance of their duties and exercise of their powers.
- 9 Decisions of the supervisory authorities may be subject to appeal through the courts.
- 10 The supervisory authorities shall not be competent with respect to processing carried out by bodies when acting in their judicial capacity."

#### **Article 20**

- 1 Chapters IV to VII of the Convention shall be renumbered to Chapters V to VIII of the Convention.
- 2 The title of Chapter V shall be replaced by "Chapter V – Co-operation and mutual assistance".
- 3 A new Article 17 shall be added, and former Articles 13 to 27 of the Convention shall become Articles 16 to 31 of the Convention.

#### **Article 21**

- 1 The title of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
 "Article 16 – Designation of supervisory authorities".
- 2 Paragraph 1 of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
 "1 The Parties agree to co-operate and render each other mutual assistance in order to implement this Convention."
- 3 Paragraph 2 of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
 "2 For that purpose:  
 a each Party shall designate one or more supervisory authorities within the meaning of Article 15 of this 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*."

4 Paragraph 3 of Article 13 of the Convention (new Article 16) shall be deleted.

#### **Article 22**

A new Article 17 shall be added after the new Article 16 of the Convention as follows:

"Article 17 – 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 this 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.
- 2 The information referred to in paragraph 1 shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given explicit, specific, free and informed consent to its provision.
- 3 In order to organise their co-operation and to perform the duties set out in the preceding paragraphs, the supervisory authorities of the Parties shall form a network."

#### **Article 23**

- 1 The title of Article 14 of the Convention (new Article 18) shall be replaced by the following:  
"Article 18 – Assistance to data subjects".
- 2 The text of Article 14 of the Convention (new Article 18) shall be replaced by the following:
  - "1 Each Party shall assist any data subject, whatever his or her nationality or residence, to exercise his or her rights under Article 9 of this Convention.
  - 2 Where a data subject resides on 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.
  - 3 The request for assistance shall contain all the necessary particulars, relating inter alia to:
    - a the name, address and any other relevant particulars identifying the data subject making the request;

- b the processing to which the request pertains, or its controller;
- c the purpose of the request.”

#### **Article 24**

- 1 The title of Article 15 of the Convention (new Article 19) shall be replaced by the following:  
“Article 19 – Safeguards”.
- 2 The text of Article 15 of the Convention (new Article 19) shall be replaced by the following:
  - “1 A supervisory authority which has received information from another supervisory authority, either accompanying a request or in reply to its own request, shall not use that information for purposes other than those specified in the request.
  - 2 In no case may a supervisory authority be allowed to make a request on behalf of a data subject of its own accord and without the express approval of the data subject concerned.”

#### **Article 25**

- 1 The title of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
“Article 20 – Refusal of requests”.
- 2 The recital of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
“A supervisory authority to which a request is addressed under Article 17 of this Convention may not refuse to comply with it unless:”
- 3 *Littera a* of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
“a the request is not compatible with its powers.”
- 4 *Littera c* of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
“c compliance with the request would be incompatible with the sovereignty, national security or public order of the Party by which it was designated, or with the rights and fundamental freedoms of individuals under the jurisdiction of that Party.”

#### **Article 26**

- 1 The title of Article 17 of the Convention (new Article 21) shall be replaced by the following:  
“Article 21 – Costs and procedures”.
- 2 Paragraph 1 of Article 17 of the Convention (new Article 21) shall be replaced by the following:
  - “1 Co-operation and mutual assistance which the Parties render each other under Article 17 and assistance they render to data subjects under Articles 9 and 18 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party making the request.”

- 3 The terms "his or her" shall replace "his" in paragraph 2 of Article 17 of the Convention (new Article 21).

#### **Article 27**

The title of Chapter V of the Convention (new Chapter VI) shall be replaced by the following:

"Chapter VI – Convention Committee".

#### **Article 28**

- 1 The terms "Consultative Committee" in paragraph 1 of Article 18 of the Convention (new Article 22) shall be replaced by "Convention Committee".

- 2 Paragraph 3 of Article 18 of the Convention (new Article 22) shall be replaced by the following:

"3 The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties, invite an observer to be represented at its meetings."

- 3 A new paragraph 4 shall be added after paragraph 3 of Article 18 of the Convention (new Article 22):

"4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party."

#### **Article 29**

- 1 The terms "Consultative Committee" in the recital of Article 19 of the Convention (new Article 23) shall be replaced by "Convention Committee".

- 2 The term "proposals" in *littera* a of Article 19 of the Convention (new Article 23) shall be replaced with the term "recommendations".

- 3 References to "Article 21" in *littera* b and "Article 21 paragraph 3" in *littera* c of Article 19 of the Convention (new Article 23) shall be replaced respectively by references to "Article 25" and "Article 25, paragraph 3".

- 4 *Littera* d of Article 19 of the Convention (new Article 23) shall be replaced by the following:

"d may express an opinion on any question concerning the interpretation or application of this Convention;"

- 5 The following additional *litterae* shall be added following *littera* d of Article 19 of the Convention (new Article 23):

"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 in order to reach such compliance;

- g may develop or approve models of standardised safeguards referred to in Article 14;
- 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 30

The text of Article 20 of the Convention (new Article 24) shall be replaced by the following:

- "1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year, and in any case when one- third of the representatives of the Parties request its convocation.
- 2 After each of its meetings, the Convention Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of this Convention.
- 3 The voting arrangements in the Convention Committee are laid down in the elements for the rules of procedure appended to Protocol CETS No. 223.
- 4 The Convention Committee shall draw up the other elements of its rules of procedure and establish, in particular, the procedures for evaluation and review referred to in Article 4, paragraph 3, and Article 23, *litterae* e, f and h on the basis of objective criteria."

### Article 31

- 1 Paragraphs 1 to 4 of Article 21 of the Convention (new Article 25) shall be replaced by the following:

- "1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.
- 2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties to this Convention, to the other member States of the Council of Europe, to the European Union and to every non-member State or international organisation which has been invited to accede to this Convention in accordance with the provisions of Article 27.
- 3 Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Convention Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee, and may approve the amendment."

- 2 An additional paragraph 7 shall be added after paragraph 6 of Article 21 of the Convention (new Article 25) as follows:

“7 Moreover, the Committee of Ministers may, after consulting the Convention Committee, unanimously decide that a particular amendment shall enter into force at the expiration of a period of three years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe.”

#### **Article 32**

- 1 Paragraph 1 of Article 22 of the Convention (new Article 26) shall be replaced by the following:

“1 This Convention shall be open for signature by the member States of the Council of Europe and by the European Union. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.”

- 2 The terms “member State” in paragraph 3 of Article 22 of the Convention (new Article 26) shall be replaced by “Party”.

#### **Article 33**

The title and the text of Article 23 of the Convention (new Article 27) shall be replaced as follows:

“Article 27 – Accession by non-member States or 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.
- 2 In respect of any State or international organisation acceding to this Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.”

#### **Article 34**

Paragraphs 1 and 2 of Article 24 of the Convention (new Article 28) shall be replaced by the following:

- "1 Any State, the European Union or other international organisation may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State, the European Union or other international organisation may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General."

#### **Article 35**

- 1 The term "State" in the recital of Article 27 of the Convention (new Article 31) shall be replaced by "Party".
- 2 References to "Articles 22, 23 and 24" in *littera c* shall be replaced by references to "Articles 26, 27 and 28".

#### **Article 36 – Signature, ratification and accession**

- 1 This Protocol shall be open for signature by Contracting States to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 After the opening for signature of this Protocol and before its entry into force, any other State shall express its consent to be bound by this Protocol by accession. It may not become a Party to the Convention without acceding simultaneously to this Protocol.

#### **Article 37 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of paragraph 1 of Article 36.
- 2 In the event this Protocol has not entered into force in accordance with paragraph 1, following the expiry of a period of five years after the date on which it has been opened for signature, the Protocol shall enter into force in respect of those States which have expressed their consent to be bound by it in accordance with paragraph 1, provided that the Protocol has at least thirty-eight Parties. As between the Parties to the Protocol, all provisions of the amended Convention shall have effect immediately upon entry into force.
- 3 Pending the entry into force of this Protocol and without prejudice to the provisions regarding the entry into force and the accession by non-member States or international organisations, a Party to the Convention may, at the time of signature of this Protocol or at any later moment, declare that it will apply the provisions of this Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties to the Convention which have made a declaration to the same effect. Such a declaration shall take effect on the first day of the third month following the date of its receipt by the Secretary General of the Council of Europe.



- 4 From the date of entry into force of this Protocol, the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181) shall be repealed.
- 5 From the date of the entry into force of this Protocol, the amendments to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, approved by the Committee of Ministers, in Strasbourg, on 15 June 1999, have lost their purpose.

#### **Article 38 – Declarations related to the Convention**

From the date of entry into force of this Protocol, with respect to a Party having entered one or more declarations in pursuance of Article 3 of the Convention, such declaration(s) will lapse.

#### **Article 39 – Reservations**

No reservation may be made to the provisions of this Protocol.

#### **Article 40 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any other Party to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c the date of entry into force of this Protocol in accordance with Article 37;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 10th day of October 2018, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to other Parties to the Convention and any State invited to accede to the Convention.

**Appendix to the Protocol: Elements for the rules of procedure of the Convention Committee**

- 1 Each Party has a right to vote and shall have one vote.
- 2 A two-thirds majority of representatives of the Parties shall constitute a quorum for the meetings of the Convention Committee. In case the amending Protocol to the Convention enters into force in accordance with its Article 37 (2) before its entry into force in respect of all Contracting States to the Convention, the quorum for the meetings of the Convention Committee shall be no less than 34 Parties to the Protocol.
- 3 The decisions under Article 23 shall be taken by a four-fifths majority. The decisions pursuant to Article 23, *littera* h, shall be taken by a four-fifths majority, including a majority of the votes of States Parties not members of a regional integration organisation that is a Party to the Convention.
- 4 Where the Convention Committee takes decisions pursuant to Article 23, *littera* h, the Party concerned by the review shall not vote. Whenever such a decision concerns a matter falling within the competence of a regional integration organisation, neither the organisation nor its member States shall vote.
- 5 Decisions concerning procedural issues shall be taken by a simple majority.
- 6 Regional integration organisations, in matters within their competence, may exercise their right to vote in the Convention Committee, with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organisation shall not exercise its right to vote if any of its member States exercises its right.
- 7 In case of vote, all Parties must be informed of the subject and time for the vote, as well as whether the vote will be exercised by the Parties individually or by a regional integration organisation on behalf of its member States.
- 8 The Convention Committee may further amend its rules of procedure by a two-thirds majority, except for the voting arrangements which may only be amended by unanimous vote of the Parties and to which Article 25 of the Convention applies.

**Članak 3.**

Za provedbu ovoga Zakona nadležna je Agencija za zaštitu osobnih podataka.

**Članak 4.**

Na dan stupanja na snagu ovoga Zakona, Protokol iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku te će se podaci o njegovom stupanju na snagu objaviti naknadno, u skladu s odredbom članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora (Narodne novine, broj 28/96).

**Članak 5.**

Ovaj Zakon stupa na snagu osmoga dana od dana objave u Narodnim novinama.

## OBRAZLOŽENJE

### **Uz članak 1.**

Člankom 1. utvrđuje se da Hrvatski sabor potvrđuje Protokol kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka sukladno odredbi članka 140. stavka 1. Ustava Republike Hrvatske i članka 18. Zakona o sklapanju i izvršavanju međunarodnih ugovora (Narodne novine, broj 28/96) čime se iskazuje formalni pristanak Republike Hrvatske da bude vezana njegovim odredbama, a na temelju čega će taj pristanak biti izražen i na međunarodnoj razini.

### **Uz članak 2.**

Ova odredba sadrži tekst Protokola kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

### **Uz članak 3.**

Ovom odredbom određuje se tijelo za provedbu ovoga Zakona.

### **Uz članak 4.**

Člankom 4. utvrđuje se da na dan stupnja na snagu ovoga Zakona, Protokol kojim se mijenja i dopunjuje Konvencija za zaštitu osoba glede automatizirane obrade osobnih podataka nije na snazi u odnosu na Republiku Hrvatsku te će se podatak o njegovom stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

### **Uz članak 5.**

Ovom odredbom uređuje se stupanje na snagu Zakona.

**PRILOG – Preslika teksta Protokola u izvorniku na engleskom jeziku**

**PROTOCOL AMENDING  
THE CONVENTION FOR THE PROTECTION OF  
INDIVIDUALS WITH REGARD TO AUTOMATIC  
PROCESSING OF PERSONAL DATA**

**PROTOCOLE D'AMENDEMENT  
À LA CONVENTION POUR LA PROTECTION  
DES PERSONNES À L'ÉGARD DU TRAITEMENT  
AUTOMATISÉ DES DONNÉES À CARACTÈRE PERSONNEL**

## **Preamble**

The member States of the Council of Europe and the other Parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), opened for signature in Strasbourg on 28 January 1981 (hereinafter referred to as "the Convention"),

Having regard to Resolution No. 3 on data protection and privacy in the third millennium adopted at the 30th Council of Europe Conference of Ministers of Justice (Istanbul, Turkey, 24-26 November 2010);

Having regard to the Parliamentary Assembly of the Council of Europe's Resolution 1843 (2011) on the protection of privacy and personal data on the Internet and online media and Resolution 1986 (2014) on improving user protection and security in cyberspace;

- 1. Having regard to Opinion 296 (2017) on the draft protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its explanatory memorandum, adopted by the Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe on 24 November 2017;

Considering that new challenges to the protection of individuals with regard to the processing of personal data have emerged since the Convention was adopted;

Considering the need to ensure that the Convention continues to play its pre-eminent role in protecting individuals with regard to the processing of personal data, and more generally in protecting human rights and fundamental freedoms,

Have agreed as follows:

## **Article 1**

- 1 The first recital of the preamble of the Convention shall be replaced by the following:  
"The member States of the Council of Europe, and the other signatories hereto,"
- 2 The third recital of the preamble of the Convention shall be replaced by the following:  
"Considering that it is necessary to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on a person's right to control his or her personal data and the processing of such data;"
- 3 The fourth recital of the preamble of the Convention shall be replaced by the following:  
"Recalling that the right to protection of personal data is to be considered in respect of its role in society and that it has to be reconciled with other human rights and fundamental freedoms, including freedom of expression;"

- 4 The following recital shall be added after the fourth recital of the preamble of the Convention:  
"Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of access to official documents;"
- 5 The fifth recital of the preamble of the Convention shall be deleted. New fifth and sixth recitals shall be added, which read as follows:  
"Recognising that it is necessary to promote at the global level the fundamental values of respect for privacy and protection of personal data, thereby contributing to the free flow of information between people;"  
"Recognising the interest of a reinforcement of international co-operation between the Parties to the Convention,"

## Article 2

The text of Article 1 of the Convention shall be replaced by the following:

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

## Article 3

- 1 *Littera b* of Article 2 of the Convention shall be replaced by the following:  
"b 'data processing' means any operation or set of operations performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data;"
- 2 *Littera c* of Article 2 of the Convention shall be replaced by the following:  
"c 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;"
- 3 *Littera d* of Article 2 of the Convention shall be replaced by the following:  
"d 'controller' means the natural or legal person, public authority, service, agency or any other body which, alone or jointly with others, has decision-making power with respect to data processing;"
- 4 The following new *litterae* shall be added after *littera d* of Article 2 of the Convention:  
"e 'recipient' means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;  
f 'processor' means a natural or legal person, public authority, service, agency or any other body which processes personal data on behalf of the controller."



#### **Article 4**

- 1 Paragraph 1 of Article 3 of the Convention shall be replaced by the following:  
"1 Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in the public and private sectors, thereby securing every individual's right to protection of his or her personal data."
- 2 Paragraph 2 of Article 3 of the Convention shall be replaced by the following:  
"2 This Convention shall not apply to data processing carried out by an individual in the course of purely personal or household activities."
- 3 Paragraphs 3 to 6 of Article 3 of the Convention shall be deleted.

#### **Article 5**

The title of Chapter II of the Convention shall be replaced by the following:

"Chapter II – Basic principles for the protection of personal data".

#### **Article 6**

- 1 Paragraph 1 of Article 4 of the Convention shall be replaced by the following:  
"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 Paragraph 2 of Article 4 of the Convention shall be replaced by the following:  
"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 A new paragraph shall be added after paragraph 2 of Article 4 of the 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 7**

- 1 The title of Article 5 shall be replaced by the following:  
"Article 5 – Legitimacy of data processing and quality of data".
- 2 The text of Article 5 of the Convention shall be replaced by the following:
  - "1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, whether public or private, and the rights and freedoms at stake.
  - 2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law.
  - 3 Personal data undergoing processing shall be processed lawfully.

- 4 Personal data undergoing processing shall be:
  - a processed fairly and in a transparent manner;
  - b 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;
  - c adequate, relevant and not excessive in relation to the purposes for which they are processed;
  - d accurate and, where necessary, kept up to date;
  - e preserved in a form which permits identification of the data subjects for no longer than is necessary for the purposes for which those data are processed."

#### **Article 8**

The text of Article 6 of the Convention shall be replaced by the following:

"1 The processing of:

- genetic data;
- personal data relating to offences, criminal proceedings and convictions, and related security measures;
- biometric data uniquely identifying a person;
- personal data for the information they reveal relating to racial or ethnic 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.

- 2 Such safeguards shall guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination."

#### **Article 9**

The text of Article 7 of the Convention shall be replaced by the following:

"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 notifies, 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."

## Article 10

A new Article 8 shall be added after Article 7 of the Convention as follows:

“Article 8 – Transparency of processing

- 1 Each Party shall provide that the controller informs the data subjects of:
  - a his or her 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.
- 2 Paragraph 1 shall not apply where the data subject already has the relevant information.
- 3 Where the personal data are not collected from the data subjects, the controller shall not be required to provide such information where the processing is expressly prescribed by law or this proves to be impossible or involves disproportionate efforts.”

## Article 11

- 1 The former Article 8 of the Convention shall be renumbered Article 9 and the title shall be replaced by the following:

“Article 9 – Rights of the data subject”.
- 2 The text of Article 8 of the Convention (new Article 9) shall be replaced by the following:
  - “1 Every individual shall have a right:
    - a 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;
    - b 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;
    - c to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her;
    - d 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;
    - e 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;

- f to have a remedy under Article 12 where his or her rights under this Convention have been violated;
  - g to benefit, whatever his or her nationality or residence, from the assistance of a supervisory authority within the meaning of Article 15, in exercising his or her rights under this Convention.
- 2 Paragraph 1.a shall not apply if the decision is authorised by a law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests."

#### **Article 12**

A new Article 10 shall be added after the new Article 9 of the Convention as follows:

##### "Article 10 – Additional obligations

- 1 Each Party shall provide that controllers and, where applicable, processors, take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate, subject to the domestic legislation adopted in accordance with Article 11, paragraph 3, in particular to the competent supervisory authority provided for in Article 15, that the data processing under their control is in compliance with the provisions of this Convention.
- 2 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.
- 3 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.
- 4 Each Party may, having regard to the risks arising for the interests, rights and fundamental freedoms of the data subjects, adapt the application of the provisions of paragraphs 1, 2 and 3 in the law giving effect to the provisions of this Convention, according to the nature and volume of the data, the nature, scope and purpose of the processing and, where appropriate, the size of the controller or processor."

#### **Article 13**

The former Articles 9 to 12 of the Convention shall become Articles 11 to 14 of the Convention.

#### **Article 14**

The text of Article 9 of the Convention (new Article 11) shall be replaced by the following:

- "1 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 national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest;

- b the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.
- 2 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.
- 3 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 an aim, exceptions to Article 4, paragraph 3, Article 14, paragraphs 5 and 6, and Article 15, paragraph 2, *litterae* 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 under the domestic legislation of the respective Party."

#### **Article 15**

The text of Article 10 of the Convention (new Article 12) shall be replaced by the following:

"Each Party undertakes to establish appropriate judicial and non-judicial sanctions and remedies for violations of the provisions of this Convention."

#### **Article 16**

The title of Chapter III shall be replaced by the following:

"Chapter III – Transborder flows of personal data".

#### **Article 17**

- 1 The title of Article 12 of the Convention (new Article 14) shall be replaced by the following:  
"Article 14 – Transborder flows of personal data".
- 2 The text of Article 12 of the Convention (new Article 14) shall be replaced by the following:
  - 1 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.
  - 2 When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to this Convention, the transfer of personal data may only take place where an appropriate level of protection based on the provisions of this Convention is secured.
  - 3 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.
- 4 Notwithstanding the provisions of the previous paragraphs, 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; or
    - d it constitutes a necessary and proportionate measure in a democratic society for freedom of expression.
  - 5 Each Party shall provide that the competent supervisory authority, within the meaning of Article 15 of this Convention, is provided with all relevant information concerning the transfers of data referred to in paragraph 3, *littera* b and, upon request, paragraph 4, *litterae* b and c.
  - 6 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 such transfers, suspend them or subject them to conditions."
- 3 The text of Article 12 of the Convention (new Article 14) includes the provisions of Article 2 of the Additional Protocol of 2001 regarding supervisory authorities and transborder data flows (ETS No. 181) on transborder flows of personal data to a recipient which is not subject to the jurisdiction of a Party to the Convention.

#### **Article 18**

A new Chapter IV shall be added after Chapter III of the Convention, as follows:

"Chapter IV – Supervisory authorities".

#### **Article 19**

A new Article 15 includes the provisions of Article 1 of the Additional Protocol of 2001 (ETS No.181) and reads as follows:

"Article 15 – Supervisory authorities

- 1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the provisions of this Convention.
- 2 To this end, such authorities:
  - a shall have powers of investigation and intervention;
  - b shall perform the functions relating to transfers of data provided for under Article 14, notably the approval of standardised safeguards;
  - c shall have powers to issue decisions with respect to violations of the provisions of this Convention and may, in particular, impose administrative sanctions;

- d 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 this Convention;
- e shall promote:
  - i public awareness of their functions and powers, as well as their activities;
  - ii public awareness of the rights of data subjects and the exercise of such rights;
  - iii awareness of controllers and processors of their responsibilities under this Convention;

specific attention shall be given to the data protection rights of children and other vulnerable individuals.

- 3 The competent supervisory authorities shall be consulted on proposals for any legislative or administrative measures which provide for the processing of personal data.
- 4 Each competent supervisory authority shall deal with requests and complaints lodged by data subjects concerning their data protection rights and shall keep data subjects informed of progress.
- 5 The supervisory authorities shall act with complete independence and impartiality in performing their duties and exercising their powers and in doing so shall neither seek nor accept instructions.
- 6 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.
- 7 Each supervisory authority shall prepare and publish a periodical report outlining its activities.
- 8 Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information to which they have access, or have had access to, in the performance of their duties and exercise of their powers.
- 9 Decisions of the supervisory authorities may be subject to appeal through the courts.
- 10 The supervisory authorities shall not be competent with respect to processing carried out by bodies when acting in their judicial capacity."

#### **Article 20**

- 1 Chapters IV to VII of the Convention shall be renumbered to Chapters V to VIII of the Convention.
- 2 The title of Chapter V shall be replaced by "Chapter V – Co-operation and mutual assistance".
- 3 A new Article 17 shall be added, and former Articles 13 to 27 of the Convention shall become Articles 16 to 31 of the Convention.

#### **Article 21**

- 1 The title of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
"Article 16 – Designation of supervisory authorities".
- 2 Paragraph 1 of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
"1 The Parties agree to co-operate and render each other mutual assistance in order to implement this Convention."
- 3 Paragraph 2 of Article 13 of the Convention (new Article 16) shall be replaced by the following:  
"2 For that purpose:

- a each Party shall designate one or more supervisory authorities within the meaning of Article 15 of this 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*."
- 4 Paragraph 3 of Article 13 of the Convention (new Article 16) shall be deleted.

#### **Article 22**

A new Article 17 shall be added after the new Article 16 of the Convention as follows:

"Article 17 – 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 this 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.
- 2 The information referred to in paragraph 1 shall not include personal data undergoing processing unless such data are essential for co-operation, or where the data subject concerned has given explicit, specific, free and informed consent to its provision.
- 3 In order to organise their co-operation and to perform the duties set out in the preceding paragraphs, the supervisory authorities of the Parties shall form a network."

#### **Article 23**

- 1 The title of Article 14 of the Convention (new Article 18) shall be replaced by the following:

"Article 18 – Assistance to data subjects".
- 2 The text of Article 14 of the Convention (new Article 18) shall be replaced by the following:
  - 1 Each Party shall assist any data subject, whatever his or her nationality or residence, to exercise his or her rights under Article 9 of this Convention.
  - 2 Where a data subject resides on 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.
  - 3 The request for assistance shall contain all the necessary particulars, relating *inter alia* to:
    - a the name, address and any other relevant particulars identifying the data subject making the request;
    - b the processing to which the request pertains, or its controller;
    - c the purpose of the request."



#### **Article 24**

- 1 The title of Article 15 of the Convention (new Article 19) shall be replaced by the following:  
"Article 19 – Safeguards".
- 2 The text of Article 15 of the Convention (new Article 19) shall be replaced by the following:
  - "1 A supervisory authority which has received information from another supervisory authority, either accompanying a request or in reply to its own request, shall not use that information for purposes other than those specified in the request.
  - 2 In no case may a supervisory authority be allowed to make a request on behalf of a data subject of its own accord and without the express approval of the data subject concerned."

#### **Article 25**

- 1 The title of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
"Article 20 – Refusal of requests".
- 2 The recital of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
"A supervisory authority to which a request is addressed under Article 17 of this Convention may not refuse to comply with it unless:"
- 3 *Littera a* of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
"a the request is not compatible with its powers."
- 4 *Littera c* of Article 16 of the Convention (new Article 20) shall be replaced by the following:  
"c compliance with the request would be incompatible with the sovereignty, national security or public order of the Party by which it was designated, or with the rights and fundamental freedoms of individuals under the jurisdiction of that Party."

#### **Article 26**

- 1 The title of Article 17 of the Convention (new Article 21) shall be replaced by the following:  
"Article 21 – Costs and procedures".
- 2 Paragraph 1 of Article 17 of the Convention (new Article 21) shall be replaced by the following:
  - "1 Co-operation and mutual assistance which the Parties render each other under Article 17 and assistance they render to data subjects under Articles 9 and 18 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party making the request."
- 3 The terms "his or her" shall replace "his" in paragraph 2 of Article 17 of the Convention (new Article 21).

#### **Article 27**

The title of Chapter V of the Convention (new Chapter VI) shall be replaced by the following:  
"Chapter VI – Convention Committee".

### Article 28

- 1 The terms "Consultative Committee" in paragraph 1 of Article 18 of the Convention (new Article 22) shall be replaced by "Convention Committee".
- 2 Paragraph 3 of Article 18 of the Convention (new Article 22) shall be replaced by the following:  
"3 The Convention Committee may, by a decision taken by a majority of two-thirds of the representatives of the Parties, invite an observer to be represented at its meetings."
- 3 A new paragraph 4 shall be added after paragraph 3 of Article 18 of the Convention (new Article 22):  
"4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party."

### Article 29

- 1 The terms "Consultative Committee" in the recital of Article 19 of the Convention (new Article 23) shall be replaced by "Convention Committee".
- 2 The term "proposals" in *littera a* of Article 19 of the Convention (new Article 23) shall be replaced with the term "recommendations".
- 3 References to "Article 21" in *littera b* and "Article 21 paragraph 3" in *littera c* of Article 19 of the Convention (new Article 23) shall be replaced respectively by references to "Article 25" and "Article 25, paragraph 3".
- 4 *Littera d* of Article 19 of the Convention (new Article 23) shall be replaced by the following:  
"d may express an opinion on any question concerning the interpretation or application of this Convention;"
- 5 The following additional *litterae* shall be added following *littera d* of Article 19 of the Convention (new Article 23):  
"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 in order to reach such compliance;  
g may develop or approve models of standardised safeguards referred to in Article 14;  
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 30

The text of Article 20 of the Convention (new Article 24) shall be replaced by the following:

- "1 The Convention Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year, and in any case when one-third of the representatives of the Parties request its convocation.

- 2 After each of its meetings, the Convention Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of this Convention.
- 3 The voting arrangements in the Convention Committee are laid down in the elements for the rules of procedure appended to Protocol CETS No. 223.
- 4 The Convention Committee shall draw up the other elements of its rules of procedure and establish, in particular, the procedures for evaluation and review referred to in Article 4, paragraph 3, and Article 23, *litterae* e, f and h on the basis of objective criteria."

#### Article 31

- 1 Paragraphs 1 to 4 of Article 21 of the Convention (new Article 25) shall be replaced by the following:
  - "1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Convention Committee.
  - 2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties to this Convention, to the other member States of the Council of Europe, to the European Union and to every non-member State or international organisation which has been invited to accede to this Convention in accordance with the provisions of Article 27.
  - 3 Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Convention Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
  - 4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Convention Committee, and may approve the amendment."
- 2 An additional paragraph 7 shall be added after paragraph 6 of Article 21 of the Convention (new Article 25) as follows:
  - "7 Moreover, the Committee of Ministers may, after consulting the Convention Committee, unanimously decide that a particular amendment shall enter into force at the expiration of a period of three years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to this Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe."

#### Article 32

- 1 Paragraph 1 of Article 22 of the Convention (new Article 26) shall be replaced by the following:
  - "1 This Convention shall be open for signature by the member States of the Council of Europe and by the European Union. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe."
- 2 The terms "member State" in paragraph 3 of Article 22 of the Convention (new Article 26) shall be replaced by "Party".

### **Article 33**

The title and the text of Article 23 of the Convention (new Article 27) shall be replaced as follows:

“Article 27 – Accession by non-member States or 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.
- 2 In respect of any State or international organisation acceding to this Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.”

### **Article 34**

Paragraphs 1 and 2 of Article 24 of the Convention (new Article 28) shall be replaced by the following:

- “1 Any State, the European Union or other international organisation may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State, the European Union or other international organisation may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.”

### **Article 35**

- 1 The term “State” in the recital of Article 27 of the Convention (new Article 31) shall be replaced by “Party”.
- 2 References to “Articles 22, 23 and 24” in *littera c* shall be replaced by references to “Articles 26, 27 and 28”.

### **Article 36 – Signature, ratification and accession**

- 1 This Protocol shall be open for signature by Contracting States to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 After the opening for signature of this Protocol and before its entry into force, any other State shall express its consent to be bound by this Protocol by accession. It may not become a Party to the Convention without acceding simultaneously to this Protocol.

### **Article 37 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of paragraph 1 of Article 36.
- 2 In the event this Protocol has not entered into force in accordance with paragraph 1, following the expiry of a period of five years after the date on which it has been opened for signature, the Protocol shall enter into force in respect of those States which have expressed their consent to be bound by it in accordance with paragraph 1, provided that the Protocol has at least thirty-eight Parties. As between the Parties to the Protocol, all provisions of the amended Convention shall have effect immediately upon entry into force.
- 3 Pending the entry into force of this Protocol and without prejudice to the provisions regarding the entry into force and the accession by non-member States or international organisations, a Party to the Convention may, at the time of signature of this Protocol or at any later moment, declare that it will apply the provisions of this Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties to the Convention which have made a declaration to the same effect. Such a declaration shall take effect on the first day of the third month following the date of its receipt by the Secretary General of the Council of Europe.
- 4 From the date of entry into force of this Protocol, the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181) shall be repealed.
- 5 From the date of the entry into force of this Protocol, the amendments to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, approved by the Committee of Ministers, in Strasbourg, on 15 June 1999, have lost their purpose.

### **Article 38 – Declarations related to the Convention**

From the date of entry into force of this Protocol, with respect to a Party having entered one or more declarations in pursuance of Article 3 of the Convention, such declaration(s) will lapse.

### **Article 39 – Reservations**

No reservation may be made to the provisions of this Protocol.

### **Article 40 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any other Party to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c the date of entry into force of this Protocol in accordance with Article 37;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 10th day of October 2018, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to other Parties to the Convention and any State invited to accede to the Convention.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé le présent Protocole.

Fait à Strasbourg, le 10 octobre 2018, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui sera déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des États membres du Conseil de l'Europe, aux autres Parties à la Convention et à tout État invité à adhérer à cette dernière.

Certified a true copy of the sole original document, in English and in French, deposited in the archives of the Council of Europe.

Copie certifiée conforme à l'exemplaire original unique en langues française et anglaise, déposé dans les archives du Conseil de l'Europe.

Strasbourg, 29 October 2018

The Director of Legal Advice  
and Public International Law  
(Legal Adviser)  
of the Council of Europe,

Le Directeur du Conseil Juridique  
et du Droit International Public  
(Jurisconsulte)  
du Conseil de l'Europe,



Jörg POLAKIEWICZ



### **Appendix to the Protocol : Elements for the rules of procedure of the Convention Committee**

- 1 Each Party has a right to vote and shall have one vote.
- 2 A two-thirds majority of representatives of the Parties shall constitute a quorum for the meetings of the Convention Committee. In case the amending Protocol to the Convention enters into force in accordance with its Article 37 (2) before its entry into force in respect of all Contracting States to the Convention, the quorum for the meetings of the Convention Committee shall be no less than 34 Parties to the Protocol.
- 3 The decisions under Article 23 shall be taken by a four-fifths majority. The decisions pursuant to Article 23, *littera h*, shall be taken by a four-fifths majority, including a majority of the votes of States Parties not members of a regional integration organisation that is a Party to the Convention.
- 4 Where the Convention Committee takes decisions pursuant to Article 23, *littera h*, the Party concerned by the review shall not vote. Whenever such a decision concerns a matter falling within the competence of a regional integration organisation, neither the organisation nor its member States shall vote.
- 5 Decisions concerning procedural issues shall be taken by a simple majority.
- 6 Regional integration organisations, in matters within their competence, may exercise their right to vote in the Convention Committee, with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organisation shall not exercise its right to vote if any of its member States exercises its right.
- 7 In case of vote, all Parties must be informed of the subject and time for the vote, as well as whether the vote will be exercised by the Parties individually or by a regional integration organisation on behalf of its member States.
- 8 The Convention Committee may further amend its rules of procedure by a two-thirds majority, except for the voting arrangements which may only be amended by unanimous vote of the Parties and to which Article 25 of the Convention applies.