

EXPLANATORY REPORT

Adopted in Strasbourg on 2 February 2012

I – INTRODUCTION

1. This Convention is the legal basis for the use of the electronic Platform of the International Commission on Civil Status (“ICCS”), whose function is to replace a paper civil-status document with a computerised one, and to use electronic, rather than postal, means of transmission. This instrument is the end-result of the ICCS’s efforts, whose history should be briefly retraced before its main characteristics are presented.

A. HISTORICAL OVERVIEW

2. The aim of the ICCS is to “facilitate international co-operation in civil-status matters and to further the exchange of information between civil registrars”. In order to further co-operation between the authorities of different countries, the ICCS has drawn up numerous conventions organising, in matters relating to civil status or nationality, an exchange of information between authorities, sometimes automatically and sometimes on request, or the issue of civil-status data to individuals. A list of the relevant instruments is set out in Appendix II to this Convention.

3. The importance and the usefulness of these conventions have increased with the constant growth in the number of civil-status situations with a foreign element: persons residing in a country other than that of their nationality, couples of different nationalities, persons having two or more nationalities, etc.

4. The increase in international exchanges has coincided with the development of new information and communication technologies in the domain of civil status. However, electronic processing involves a greater risk of infringing personal rights and the protection of private life than does manual processing. This technological evolution has, therefore, inevitably led to an adaptation of the relevant legal rules. Thus, on an international level, one should cite Convention No. 108 of the Council of Europe, of 28 January 1981, for the Protection of Individuals with regard to Automatic Processing of Personal Data, and its Additional Protocol of 8 November 2001, as well as Directive 95/46/CE of 24 October 1995 of the European Parliament and the Council on the same topic. These elements encouraged the ICCS to start work with the aim of adapting its instruments to this technical evolution. The Organisation was, consequently, led to create a Platform for the exchange of civil-status data by electronic means, and to draw up this Convention.

5. The preamble of this Convention recalls the various stages that, progressively and logically, led the ICCS to begin work aiming to take the new technologies into account and enable them to be used for the international exchanges that are provided for in its conventions. From the beginning of the eighties, the ICCS has given its attention to the practical and legal consequences of the progressive introduction, within the civil-registration services of its member States, of new technologies facilitating the management of their work and making their civil registrars’ work more efficient. Several international instruments drawn up by the ICCS indirectly reflect this preoccupation. For instance, Article 5 of Recommendation No. 4 relating to the accessibility to the public of civil-status registers and records, adopted by the General Assembly in Rome on 5 September 1984, states that « records shall, whenever possible, be made on forms which can be reproduced in part ». This Article foreshadows the work carried out later on the harmonisation of civil-status records and extracts, which led to the adoption of two Recommendations, adopted in Lisbon on 10 September 1987 and in Madrid on 7 September 1990 (Nos. 5 and 7).

6. These developments, combined with the evolution of its member States' domestic law, led the ICCS to examine, in greater detail, the legal aspects of the computerisation of civil status. It considered it necessary to specify, in particular, the principles that should govern the establishment of records by automated means, the updating and correction of those records and the use of civil-status data registered on computer. Such is the objective of Recommendation No. 8, on the computerisation of civil registration, adopted by the General Assembly in Strasbourg on 21 March 1991. This instrument establishes the minimum technical criteria to be met in the setting up and functioning of any computerised civil-registration system and lays down some standards to govern the communication of civil-status data registered on computer, both within a member State and beyond its borders.

7. The increasing use of computerisation by civil-registration offices also inspired Convention No. 25 on the coding of entries appearing in civil-status documents, signed at Brussels on 6 September 1995. This instrument was conceived in order to facilitate the international circulation and the understanding of civil-status documents. This is because a civil registrar presented with a document that is coded pursuant to Convention No. 25 can, using a glossary, automatically decode and understand the document without needing a translation.

8. The significant development of electronic transmissions then led the ICCS to wish to extend the possibility of using this new means of communication for exchanges between States of data relating to the status of persons and to nationality. The ICCS accordingly drew up Convention No. 30 on international communication by electronic means, signed in Athens on 17 September 2001, that permits Contracting States to utilise electronic means for communicating to each other data whose exchange or issue is provided for by conventions concluded or to be concluded within the ICCS. From 2001, the ICCS had thus made available to States party to these conventions a legal framework enabling them to benefit from technological progress in their application. The Convention of 2001 has not come into force, as it has not been ratified, partly because the technical developments in the various countries were not advanced enough.

B. THIS CONVENTION

9. The outcome of its work on the 2001 Convention did not prevent the ICCS from pursuing its activities in this area. Considering it essential that exchanges of civil-status data at international level should not remain a « poor relative », deprived of the advantages brought about at national level by technological advances, it continued its work, on the technical as well as the legal front.

1. The objectives and the methods of the Convention

10. With a view to fulfilling the objectives of the 2001 Convention, which was limited to the legal aspects of computerisation, the ICCS oriented its work in a complementary direction, by examining the possibility of creating a technical tool enabling international exchanges to be carried out by electronic means. With this in mind, it created a working group with the task of studying the feasibility of a project for a system for communicating civil-status data internationally by electronic means, concentrating on the technical aspects and financial implications of such a project. In the light of the conclusions of a group of IT experts, the ICCS decided, at the 2007 General Assembly in Munich, to launch a project to build a platform for the electronic communication of civil-status data and then, at the 2008 General Assembly in Luxembourg, to build a prototype. This prototype was successfully demonstrated at the March 2009 General Assembly in Strasbourg.

11. In October 2009, the ICCS submitted a co-financing request for its Platform project to the European Commission, in the context of the Civil Justice programme call for proposals for transnational projects. This request having been granted, the ICCS put out in October 2010 a call for tenders for the creation of the Platform, a process that concluded with the signature of a contract with a specialised company. The work was still in progress when this Convention was adopted.

12. As the legal framework provided by the 2001 Convention seemed sufficient to most member States, it was at first envisaged to complete it with Rules of Procedure defining the conditions for using the Platform for the exchange of civil-status data by electronic means. But, in the opinion of some member States, a new binding instrument was indispensable, in particular to introduce therein the provisions regarding data protection, which had been relegated to the explanatory report of the 2001 Convention. These States judged such an instrument to be unavoidable because (a) the project had particularly sensitive implications in relation to the protection of personal data in view of the nature of the data to be exchanged and required making a choice of an electronic-signature system ; (b) the Platform would serve to transmit data and documents that must have the value of officially recorded instruments in the various countries ; and (c) mere Rules of Procedure would not suffice to modify domestic law in the ways that might prove necessary. These States would have found it difficult to use the system without a legal framework in the form of an international convention.

2. The main ideas of the Convention

13. The object of the Convention is to determine the conditions for and the effects of using the Platform created and managed by the ICCS (Article 2). The conditions mentioned begin with a description of the possible uses of the Platform, which are the following: either those that form the cornerstone and concern the implementation of ICCS conventions to which a State is party (Article 3), or certain optional extensions (Article 4). It is provided that a Contracting State may decide to use the Platform in a progressive manner (Article 5). It should be noted that, like the 2001 Convention, this Convention is intended to be the “handmaid” of conventions drafted by the ICCS; thus, it does not modify those conventions and creates no new obligation to exchange or issue information, the Platform being no more than a technical tool to be used in their implementation.

14. The Contracting States undertake not to use the data transmitted via the Platform for any purposes other than civil-status purposes or the purposes referred to in the applicable ICCS conventions (Article 6) and to use, for transmissions via the Platform, an electronic signature whose technical characteristics are specified in the Rules of Procedure set out in Appendix I to the Convention (Article 7).

15. As for the effects of using the Platform, Article 8 stipulates that the States must recognise that the data transmitted via the Platform have a value in law that is at least equal to that of data transmitted in a material form. In this way, the Convention fulfils its main objective, which is to enable the States to replace the paper documents previously used by computerised documents.

16. . Articles 9 and 10 concern the opening of the Convention and how to become party to it. The two basic principles are that a State may use the Platform only if it is « qualified » (that is to say, if it ensures an adequate level of protection in the processing of personal data) and if it is party to an ICCS convention providing for the exchange or issue of civil-status data. Articles 11, 12 and 13 set out the procedure to be followed in order to determine whether a State is “qualified” and the essential conditions it must fulfil in order to satisfy this requirement. Articles 14 and 15 cover, respectively, the entry into force of the Convention and the option of applying it on a provisional basis.

17. The necessity of ensuring the protection of personal data led the ICCS to include a number of specific provisions in the Convention. The most important are to be found in Articles 17 and 18, putting

in place mechanisms by which a State's use of the Platform may be suspended, either by a resolution adopted by the General Assembly or following a declaration by a Contracting State. A procedure for terminating such suspensions is also included.

18. Articles 19 and 20 concern the declarations that can be made by a Contracting State. Article 21 deals with the sharing of the costs of the Platform. Article 22 introduces a simplified procedure for modifying the Convention or its Appendices. Article 24 excludes any ratification, acceptance or approval of or accession to Convention No. 30 after the entry into force of this Convention.

II – COMMENTARY ON THE ARTICLES OF THE CONVENTION

Article 1

19. Article 1 gives definitions of terms used in the Convention.

20. The definition of « data processing » is drawn from Directive 95/46/CE of the European Parliament and of the Council, of 24 October 1995.

21. Article 1 does not provide any definition for the expression « civil-status data », whose significance varies from one country to the next. But, in summary, those words should be taken to mean information relating to one or more of the legal attributes determining the status and capacity of a person within his family and society in civil matters.

Article 2

22. The Rules of Procedure, which are an integral part of the Convention, deal with methods used for the technical functioning of the Platform and the obligations resulting therefrom for the Contracting States. The Convention and the Rules also indicate certain effects of using the Platform, for example the value in law of the information thus exchanged.

Article 3

23. Article 3 states that the Contracting States may use the Platform in order to implement ICCS conventions, concluded or to be concluded, that provide for the exchange or issue of civil-status data, the only condition being that these States must be party to the Convention for whose application they wish to effect electronic transmissions. Certain ICCS conventions provide for transmissions between authorities, either automatic or on request (see the list in Appendix II to the Convention, sections 1 and 2) and others provide for the issue of documents to individuals (see the list in Appendix II to the Convention, section 3). Paragraph 1 of Article 3 concerns all of these hypotheses.

24. For conventions providing for a transmission between authorities, using the Platform serves simply to replace postal by electronic transmissions, which requires no more than technical adaptations. However, in order to facilitate matters for users and authorise electronic transmissions via the Platform also in the application of conventions providing for the issue of a document to an individual, it seemed necessary to create a specific power enabling a civil registrar or another authority to act on behalf of such individuals. Paragraph 2 of Article 3 was included for this purpose. This enables a Contracting State to authorise certain authorities (for instance, a local authority, a civil-registration or population-registration service, diplomatic or consular authorities, ...) to serve as an intermediary and act on behalf

of an individual by transmitting a request for the issue of a document and by receiving the document that would have been supplied to the individual directly or by post. It should be noted that this is an option, as no State is obliged to authorise an authority for this purpose. Nevertheless, this procedure does have advantages : it will make the citizen's life easier, as he or she will not have to contact a foreign authority in order to obtain the document he or she needs ; moreover, the fact that the transmission takes place directly between authorities will reduce delays and minimise the risk of fraud. Any State availing itself of this option shall make a declaration to that effect and shall indicate the authorities it has authorised for this purpose (see below, commentary on Article 19).

25. The procedure envisaged in paragraph 2 may be used only if the individual is entitled to receive the requested data; the authority asked to transmit the request will refuse to do so if its law does not recognise that the individual has the capacity to receive the data, and the authority of the requested State will refuse to transmit the data if this would be contrary to its law. The obligation for the requesting authority to provide details concerning the individual (paragraph 3) should enable the requested authority to determine whether he or she has the requisite capacity.

26. The copy mentioned in paragraph 4 will be issued in the form laid down by the domestic law of the issuing authority, and the certification will cover only the transmission itself. This is because the issuing authority does not have the original register in its possession and therefore can certify only that it did actually receive the data reproduced in the paper document, but not that they are accurate. Paragraph 4 establishes a person's right to obtain a paper copy. This does not preclude any future developments such as the communication of these documents to the applicant by electronic means.

27. Paragraph 5 concerns the fee that may have to be paid by an individual for the issue of a document pursuant to Article 3, paragraph 2, of the Convention. In such a case, an authority in State A will have transmitted, on behalf of an individual, a request to an authority in State B to issue a document. The authority in State A will then have received this document and handed it to the individual. The document will thus have been issued twice, first via its transmission from State B to State A, and then, when it is handed to the individual. However, legislation and practice in the matter of fees vary considerably, since the issue of civil-status documents is free in certain States and not in others. One aim of this Article is to avoid the individual's having to pay twice if a fee is payable in both of the countries involved. The authors of the Convention considered that the most practical solution in such a case was to provide that only State A shall receive the fee: it is the authority of this State that will be in direct contact with the individual and will be handing the document to him or her. Furthermore, the fee should not be higher than the fee due for a similar document issued pursuant to domestic law. It should be noted that this Article does not apply to cases where a document is issued to an authority rather than an individual, and that it in no way modifies the provisions of ICCS conventions that stipulate the free issue of civil-status documents (for instance, the Convention on the issue free of charge and the exemption from legalisation of copies of civil-status records, signed at Luxembourg on 26 September 1957). Paragraph 5 applies to documents issued both on paper and, if appropriate, in an electronic format.

Article 4

28. Article 4 deals with certain extensions of the use of the Platform. These are only options that may be availed of by a Contracting State on condition that it also uses the Platform for « basic » transmissions, as provided for by the ICCS conventions mentioned in Article 3, paragraph 1. But there is nothing to prevent a State from making, at the same time as an ordinary use of the Platform, an extended use as envisaged by Article 4. A State availing itself of a possibility of extension shall make a

declaration to that effect and shall indicate, in the case of the extension envisaged in paragraph 1, the data concerned (see below, commentary on Article 19).

29. Recourse by a Contracting State that is not a member of the ICCS to one of the extensions mentioned in Article 4 is subject to the further condition that this has been authorised by a decision of the General Assembly of the ICCS adopted by a majority of two-thirds of the member States (paragraph 3). The authors of the Convention considered that this additional condition was desirable in order to ensure that these extended uses of the Platform by a State that is not a member of the ICCS remain under the control of the ICCS as owner of the Platform.

30. The first extension envisaged in Article 4 (paragraph 1) enables a Contracting State that so wishes to use the Platform for the exchange or issue of data relating to the status of persons or to nationality other than those referred to in the ICCS conventions. For instance, this could be national forms, records or extracts drawn up in conformity with ICCS recommendations, or bearing codes approved by the ICCS, or certain data appearing in population registers. Since this extension concerns data that are not mentioned in ICCS conventions themselves, it will have effect only as regards relations with those Contracting States that have declared that they accept it, bearing in mind that such acceptance may be withdrawn later (paragraph 4). The extension could also concern data whose exchange or issue is envisaged in a bilateral or multilateral agreement between Contracting States, in which case no question of acceptance arises; for example, mention may be made of Article 37 of the Vienna Convention of 24 April 1963 on Consular Relations. The present Convention does not cover the question of whether a State using this extension may authorise an authority to request, transmit or receive the data concerned on behalf of an individual. It also does not cover the question of the fee due in this case.

31. The second extension mentioned in Article 4 (paragraph 2) enables a Contracting State that so wishes to use the Platform for communications within its territory. In this case, no other State being affected, an acceptance of this extension is not required. The word « communication » covers the issuing, requesting and receiving of data.

Article 5

32. Article 5 offers the possibility of using the Platform in a progressive manner. At the moment of adoption of this Convention, the computerisation of civil-registration services had advanced to very different degrees in the various States and it was envisaged that a State might nevertheless use the Platform before all its services had been computerised. This Article therefore enables a Contracting State to use the Platform in accordance with the progress it has made in this field. For example, a State may decide to use the Platform, in the beginning, only for certain authorities, and / or for certain data (for example: the authorities of certain towns or regions, data concerning marriages and deaths, the application of certain conventions). A State availing itself of this possibility shall make a declaration to that effect and shall indicate which authorities and/or which data are concerned (see below, commentary on Article 19). The word “communication” covers issuing, requesting and receiving data.

Article 6

33. Article 6, like any text aiming to protect personal data, imposes the obligation for the Contracting States to use the data transmitted via the Platform only for the specific purposes mentioned therein. It

applies to the ordinary use of the Platform (Article 3) as well as to transmissions carried out following an extension envisaged by Article 4.

34. The expression « civil-status purposes » is defined in Article 1, letter (b). These purposes are indicated in the ICCS conventions applicable in the particular case. It is to be noted that this could cover a purpose other than a *stricto sensu* civil-status purpose, since information regarding nationality, for example, is not considered to be part of civil status in every State.

35. It is not the aim of this Article to restrict any legitimate use an individual might make of a document transmitted via the Platform, for instance an extract of a record provided to a school or to obtain a passport ; this is because the issue of extracts or copies of civil-status records is, in itself, the « civil-status purpose » pursued.

Article 7

36. In order to ensure the security and confidentiality of an electronic transmission of civil-status data via the Platform, the sending authority and the receiving authority must be irrefutably identified and the data transmitted by the one and received by the other must be identical and accessible to them alone. For these reasons, paragraph 1 of Article 7 obliges the Contracting States to use an advanced electronic signature, whose technical elements are specified in Article 7 of the Rules of Procedure. In its current version, Article 7 of the Rules calls for a secure signature-creation device within the meaning of Article 2 §§ 2, 6 and 10 and Appendix III of Directive 1999/93/CE of the European Parliament and Council of 13 December 1999 on a Community framework for electronic signatures. This is because electronic signatures guarantee the security of the transmission, the integrity of its content and the authenticity of the signatory; they prevent any alteration to the content in the course of the transmission and enable the sending authority to be irrefutably identified; the receiving authority is also identified beyond all doubt by the use of private and public keys in the process of receiving the message. The confidentiality of the communication is also ensured by encryption tools and access and rights management.

37. Paragraph 2 of Article 7 underlines the fact that the Platform is only a «bridge» between the sender and the receiver of the data and does not create a civil-status database.

Article 8

38. Article 8 is a key Article of the Convention: if the value in law of the data transmitted via the Platform were not recognised, this would entirely defeat its object, which is to replace the paper documents previously used by computerised documents. It is to be understood that the value in law mentioned is to be recognised only if the conditions for transmission set out in Article 7 are met.

39. It is to be noted that this Article applies equally to the use of the Platform pursuant to Article 3 and to transmissions carried out following an extension in accordance with Article 4. The Article does not create any obligation to accord to data transmitted via the Platform greater value in law than those data would have had if transmitted in a material form (for example, a transmission pursuant to a bilateral agreement with a provision on this subject), but it does not prevent it either.

Articles 9 et 10

40. Articles 9 and 10 deal with the opening of the Convention, the two basic principles being that it is open only to a State which is :

(a) « qualified », that is to say that it ensures an adequate level of protection in the processing of personal data ; and

(b) party to one or more ICCS conventions providing for the exchange or issue of civil-status data, bearing in mind that this Convention is only a « handmaiden » of those instruments.

41. A State meeting both of those conditions will become party to this Convention, if it is a member of the ICCS, by signature followed by ratification, acceptance or approval (Article 9) or, if it is not a member of the ICCS, by depositing an instrument of accession (Article 10) which may, however, be deposited only after the entry into force of the Convention (ibid).

42. Although the Convention is open to any State that is not a member of the ICCS fulfilling the basic conditions, Article 10 lays down that accession by such a State will have effect only as regards its relations with the Contracting State or States that have declared that they accept the accession. The requirement for such acceptance was included in order to afford each State the freedom to choose the States that are not members of the ICCS with which they wish to be bound for the purposes of using electronic means to apply the conventions concerned

43. The words « will have to », appearing in paragraph 2 of Article 10, do not mean that a State is obliged to accept the accession and to use electronic means in its relations with an acceding State, but that if it does, it must make a declaration to that effect.

44. Paragraph 2 enables any Contracting State (including a State having become party by accession) not to accept a previous accession by a State that is not a member of the ICCS.

45. The Platform was cofinanced by the European Union. In this context, the ICCS discussed the possible participation of the European Union in the Convention.

Articles 11, 12 and 13

46. Articles 11, 12 and 13 lay down the procedure to be followed to determine whether a State is « qualified ».

47. Article 11 stipulates that, before signing the Convention or depositing an instrument of ratification, acceptance, approval or accession, a State wishing to use the Platform must contact the ICCS in order for the Bureau of the ICCS to determine whether the State meets the qualifying conditions. This step is necessary due to the very nature of the instrument; it must be taken even before signature of the Convention since a State having signed, but not yet ratified, the Convention has the option of declaring that it is applying its provisions on a provisional basis (Article 15).

48. Article 12 lists the conditions to be met by a State in order for the Bureau of the ICCS to be able to consider it as “qualified”. The list of conditions is based on Convention No. 108 of the Council of Europe as well as the relevant European Union directives. Certain conditions call for the following explanations :

paragraph (a) : the words « specified and legitimate » cover not only the purposes mentioned in Article 6 of this Convention, but also use of the data for the needs of a population or electoral register ;

paragraph (f) : the expression « controller of the file » means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law;

paragraph (g) : this paragraph refers to the processing of data in the requesting State ;

paragraph (h) : the « domestic law » in question is that of the requesting State ;

paragraph (i) : it must be established that the available remedy is effective.

49. Article 13 concerns the manner in which the Bureau of the ICCS determines whether the requesting State meets the conditions listed in Article 12. Since the ICCS is not equipped with the necessary means, it will often have to resort to an independent expert, chosen by itself, who will make a report covering not only the legal provisions but also the practice followed in this area by the requesting State. This report will not be binding on the Bureau, which will retain its own freedom of assessment and might resort to a further expertise. The expert's fees and expenses shall be paid to him or her by the ICCS, with the State concerned being liable to reimburse them to the ICCS (making, if appropriate, an advance payment).

50. In the course of its examination, the Bureau may take into consideration the fact that a State is party to Convention No. 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, of 28 January 1981, and its Additional Protocol of 8 November 2011.

51. Paragraph 1 of Article 13 specifies that the ICCS will resort to an expert « if necessary ». This step will not be required in the case of the States mentioned in paragraph 2, these States being presumed to meet the conditions set out in Article 12 as they are bound by the directives of the European Union or have established to the satisfaction of the European Commission that they ensure an adequate level of protection. This Convention does not deal with the authorisation given to such a State by its national control authority to transfer data to non-member States.

Article 14

52. Article 14 repeats a usual provision regarding the entry into force of a convention. It should be noted that, as regards the taking effect of this Convention between an acceding State and a Contracting State that has accepted the accession, the time period begins to run only from the date of deposit of the declaration of acceptance of the accession, referred to in Article 10, paragraph 2.

Article 15

53. The aim of Article 15 is to avoid use of the Platform, whose maintenance in working condition will generate costs, being delayed by lengthy ratification procedures. In accordance with Article 25 of the Vienna Convention on the Law of Treaties of 23 May 1969, it enables an ICCS member State having signed, ratified, accepted or approved the Convention, but with regard to which the Convention has not entered into force, to declare that it will apply the provisions of the Convention on a provisional basis. For example, the Convention could be provisionally applied by two States that have signed but not ratified the Convention, by one State that has signed and one State that has ratified, or by two

States that have ratified less than six months previously (see the time period stipulated in Article 14, paragraph 2). However, it should be noted that the period during which a State may provisionally apply the Convention may not exceed five years.

54. The option offered by this Article is open only to an ICCS member State determined by the Bureau to be « qualified » under Article 12 of the Convention. It is not open to a State that is not a member of the ICCS: this is because such a State may become party to the Convention by accession, but such accession is not possible before the entry into force of the Convention and has effect only as regards relations between the acceding State and the Contracting State or States that have accepted the accession (see Article 10, paragraphs 1 and 2).

55. A State declaring that it will apply the Convention on a provisional basis becomes a « Contracting State » (see Article 1, paragraph (e)) ; as such, it must respect all the obligations imposed on it by virtue of the Convention, including that of paying a share of the costs of the Platform.

56. Nothing prevents a State from making a declaration of provisional application pursuant to this Article and, if it uses the Platform for the purposes mentioned in paragraph 1 of Article 3, from extending at the same time its use thereof pursuant to Article 4.

Article 16

57. Paragraph 1 of Article 16 only confirms what is already implicit, namely that the obligations resulting from the Convention in the matter of personal-data protection are permanent and binding for a State as long as it remains party to the instrument. In order to facilitate the task of the ICCS when it comes to controlling the use of the Platform, paragraph 2 obliges the Contracting States to inform the ICCS of any problem relating to data protection they may have encountered while using the Platform; this is because a State that is considered to be « qualified » at the outset might change its legislation or practices in the matter.

Article 17

58. Article 17 reflects the wish of the ICCS to retain control over the use of the Platform, its own creation and its property. It accordingly empowers the General Assembly of the ICCS, by resolution adopted by a majority of two-thirds, to suspend the use of the Platform by any Contracting State and then, if circumstances so permit, to terminate such suspension. This measure would have to be founded on a failure on the part of the State concerned to fulfil one or more of its obligations under the Convention. Such a failure might concern not only undertakings relating to the protection of personal data, but also other obligations, for instance the obligations to pay a share of the costs, to keep the lists of authorities having access to the Platform up to date, or to recognise that data transmitted via the Platform have the value in law required by Article 8 of the Convention.

59. The ICCS itself is not able to control the use of the Platform in detail, so it is to be expected that the procedure for suspending a State on account of failure to respect legal or technical obligations will be triggered by information provided by a Contracting State pursuant to Article 16, paragraph 2, or by a report emanating from the European Commission or a national control authority. Naturally, the General Assembly will hear the State concerned before resolving to suspend it. If the suspension is pronounced, the State concerned will no longer be able to receive or transmit any data via the Platform.

60. The State whose use of the Platform is suspended may no longer exercise the rights mentioned in Articles 4, 10, 17 and 22, that is the right to accept an extension, to participate in a decision authorising a Contracting State that is not a member of the ICCS to proceed to an extension, to accept an accession, to participate in a decision concerning the suspension of another State, to participate in a decision to revise or modify the Convention or the Rules of Procedure. However, it does not cease to be a Contracting State and remains, for instance, obliged to pay a share of the costs of the Platform.

Article 18

61. The authors of the Convention considered that, in addition to the power of suspension conferred by Article 17 on the ICCS itself, it was desirable to empower, through Article 18, each Contracting State to suspend the application of the Convention with regard to any other Contracting State and, if circumstances so permit, to terminate such suspension. The declaration of suspension mentioned in this Article could be based on a ground much broader than the ground justifying suspension under Article 17 and might not relate to an obligation stemming from the Convention. For instance, a State availing itself of the power conferred by this Article could ground its decision on knowledge of an incorrect use of the documents transmitted, use of false documents, or transmission of false information, as revealed by a report emanating from its national control authority. The suspension could also be due to a conflict or a breaking off of relations between the States concerned. In the absence of such a clause, a State might be forced to denounce the Convention.

62. A State wishing to make a declaration of suspension pursuant to Article 18 must inform the ICCS of its intention at least two months in advance, in order that the ICCS may examine the expediency of availing itself of its own power of suspension (Article 17). However, it remains possible, in theory, that a State might make a declaration of suspension pursuant to Article 18 even if the General Assembly of the ICCS has decided not to take such a measure.

63. A State which is the object of a suspension under Article 18 remains a Contracting State.

Article 19

64. Article 19 covers the various declarations to be made by a Contracting State concerning the authorisation of authorities to act on behalf of individuals, the implementation of an optional extension of the Platform according to Article 4 and the progressive use of the Platform. These declarations can be made at the time of signing the Convention, at the time of ratification, acceptance, approval or accession, or at any later date.

65. All of these declarations are capable of being modified so as to render them more extensive or more restrictive following the procedure outlined in paragraph 3.

66. It is to be noted that the Contracting States are to keep the ICCS and the administrator of the Platform supplied at all times with a list of their authorities having access to the Platform, as specified in the Rules of Procedure.

Article 20

67. This Article repeats usual provisions concerning possible territorial extensions of the Convention.

Article 21

68. Article 21 deals with the States' participation in the costs and expenses generated by the Platform, which fall into two categories. First, there are the costs of creating the Platform, including notably amounts paid to the subcontractor and fees and expenses paid to the project leader and other IT experts. Then, there are the running costs of the Platform, including notably costs related to its launch, its maintenance in working condition, and its updates and various necessary adaptations.

69. The creation of the Platform was the object of an extraordinary budget sharing the costs among the ICCS member States. A member State that has not participated or has participated partially in these costs and a State that is not a member of the ICCS shall, on becoming party to the Convention and user of the Platform, pay a fixed contribution whose amount shall be fixed by the Bureau of the ICCS (paragraph 2). A Contracting State, whether a member of the ICCS or not, that has not previously discharged the financial obligations mentioned in paragraphs 1 and 2 cannot claim to use the Platform (paragraph 3).

70. The running costs will, in principle, be shared among the Contracting States depending on how much they use the Platform. They will pay a contribution fixed by the Bureau in particular on that basis, in such a way that the Platform will pay for itself. This principle has two exceptions :

(a) for an initial provisional period, the contribution towards the running costs may be fixed without taking account of the amount of use (paragraph 1); thus, during that period, those costs could be shared among all the member States of the ICCS and the Contracting States that are not members of the ICCS, with their contribution being fixed in accordance with the budgetary scale habitually used by the ICCS for the payment of contributions. The intended result of this exception is that the first States using the Platform do not have to pay an excessive amount;

(b) At all times the costs generated by the extensions mentioned in Article 4 of the Convention (exchange or issue of data other than those referred to in the ICCS conventions or use of the Platform for internal communications) shall be borne entirely by the States availing themselves of those extensions (paragraph 4). The amount of such costs will be fixed by the Bureau by reference to actual expenses.

Article 22

71. Article 22 makes it possible to modify the Convention itself or its Appendices, following the procedures set out. Paragraph 1 does not aim to change the provisions of constitutional law in force in the States.

72. Paragraph 1 of the Article sets no limit on the possibility of modifying the Convention, but any modification requires a double qualified majority, namely unanimity on the part of the Contracting States, and a two-thirds majority of the ICCS member States. It is to be expected that a proposal to amend a key article of the Convention would not meet with the approval of the requisite majority.

73. It should be remembered that a State that is suspended (Article 17) remains a Contracting State; consequently, it will be bound by any decision or resolution referred to in Article 22.

Article 23

74. This Article repeats usual provisions regarding denunciation of the Convention.

Article 24

75. Article 24 is intended to exclude for the future any new ratification of the Convention No. 30 signed in Athens on 17 September 2001, as well as any new accession thereto. This is because Convention No. 30, though signed by several member States, has not yet entered into force due to lack of ratifications, in particular on account of the absence of technical tools allowing its application, and will lose its utility on the entry into force of the present Convention, an instrument which is more detailed and more complete. It is to be noted that use of the Platform is not dependent on ratification of Convention No. 30, something which, on the contrary, is to be avoided.

Article 25

76. This Article enumerates the obligations of the Swiss Federal Council as depositary.

III – TECHNICAL PRESENTATION OF THE PLATFORM

77. The ICCS Platform for the international communication of civil-status data by electronic means is a centralised system placed at the disposal of its user States. Its architecture is designed for interoperability. Countries connected to the system may use a dynamic multilingual interface or integrate the necessary functions within their own local civil-status system or application.

78. The system was designed with several criteria in mind: it must be simple, efficient and secure, and the costs for access, use and maintenance must be reduced as much as possible.

(a) Variable solutions allow a civil registrar to use the Platform, whatever the advancement of computerisation in his or her country, while maintaining the security of transmissions.

(b) Access to the Platform requires an internet connection, a web browser and Acrobat Reader.

(c) To ensure the integrity of the content and the authenticity of the signatory and guarantee the security and confidentiality of messages, the transmission of data via the Platform requires the use of an advanced electronic signature, so that all the data sent via the Platform in application of this Convention are encrypted, given a digital signature and validated at the end of the sending process. The authentication of authorised users is based on a certificate issued by an approved certification authority, in charge of authenticating and validating the signature, or repudiating it. The certificate and the certification authority must conform to conditions set out in the applicable texts, in particular the Directive 1999/93/CE of the European Parliament and Council of 13 December 1999 on a Community framework for electronic signatures. During a transitional period, the ICCS may, on conforming to the same conditions, serve as a certification authority for States that are unable to issue electronic signatures to their civil registrars.

(d) The system is designed to be simple and user-friendly. The procedure for sending and receiving messages is similar to the procedure for sending and receiving emails, with which each user will be familiar. Users (senders and receivers) must log into the Platform to send and fetch messages. If the receiver has not downloaded a message sent to him or her within 20 days of its being sent, the sender

is automatically notified by the Platform that the message sent has not been downloaded by the receiver and has been destroyed.

(e) The various interfaces appear in the national language of each user, who will need to enter only the necessary civil-status data into the form ; if necessary, the user may have access to a special keyboard onscreen enabling him or her to insert easily foreign characters or diacritics from other languages. Multilingual and/or coded forms appended to ICCS conventions, that users are accustomed to using in their paper form, are translated into XML language and converted to PDF.

(f) The ICCS Platform enables the user to find the recipient of an electronic transmission in a drop-down menu established on the basis of information transmitted by the user States including the names of relevant towns and civil-status authorities as well as the names of persons who are authorised to use the Platform, along with their email addresses and, if possible, relevant additional information (postal address, phone and fax numbers). On a national level, a Country Manager is in charge of managing this information and keeping it up to date.

(g) According to the choice made by the States, received data may, or may not, insert themselves into the national system database in order to update it directly. States that already have a computerised system may develop it in such a way that the XML document to be sent can be generated from data in their own system and signed locally, and then encrypted using an electronic signature. In a similar way, an XML document that has been signed and encrypted using a system available on the ICCS Platform can, when received, be decrypted, put together using a local style sheet processor, then presented in a defined format in one of the languages of the receiving State, as long as the data concerning the receiver's language and the desired format of delivery are defined within the XSLT style sheet.