

*N.B. This document provides a preliminary text indicating the possible content and form of an international Convention on Geoinformation. It is a working document for the purpose of consultation and discussion only. It binds neither the International Bar Association nor entities consulted informally during its preparation, including the European Commission.*

## **Convention on Geoinformation**

[Place, Date]

### **Preamble**

[The member States of the Council of Europe and the other States signatory hereto – *To be discussed*]

[Considering that the Council of Europe has the aim of achieving a greater unity between its members and recognizing the contribution its work has made to international law-making, especially in areas connected with the use of information society technologies;]

Convinced that Geoinformation offers immense potential for economic and social good especially for such purposes as climate and environmental monitoring, resource management, infrastructure development and security surveillance;

Considering that acquisition of and access to Geoinformation should therefore generally be facilitated in order to advance the welfare of all States and peoples;

Mindful that the data gathered for Geoinformation and the Geoinformation itself can be altered by integrating it with other information and transforming it over various data processing architectures and that tools which allow correction and enhancement in this connection can also facilitate falsification, loss, degradation or hindrance of access, which can lead to disruption of increasingly interdependent information systems;

Mindful also that other risks may arise in relation to rights of individual privacy and legitimate security interests, while adoption of national measures without coordination may on the one hand reduce their efficacy, particularly in emergency situations in which life or property may be in peril, and on the other may introduce undue burdens for those providing Geoinformation services;

Convinced that it is therefore in the general interest to have in place principles that regulate the availability and quality as well as the exploitation of Geoinformation internationally;

Desiring that this Convention establish those principles and the accompanying mechanisms for their implementation in such a manner that they also take account of technological and operational advances that are foreseeable in order to provide a sufficient degree of certainty for all concerned;

Considering the work of the United Nations and particularly its Initiative on Global Geospatial Information Management and that of those organizations involved in the International Charter on Space and Major Disasters, as well as the numerous public and private initiatives aimed at improving access to and use of Geoinformation;

Have agreed as follows:

**Article 1**  
***Purpose and Scope***

1. This Convention seeks to facilitate the development and use of dependable Geoinformation internationally while providing for effective legal protection for those affected by it.
2. Nothing in this Convention is intended to prejudice the sovereignty, security, *ordre public* or other essential interests of States Parties or to impinge upon generally recognized fundamental rights and freedoms of the individual. It shall in particular not apply to individuals where Geoinformation is used solely for personal, including family, or domestic purposes.
3. This Convention's principles provide a minimum international standard for access to, the quality of, and the manner of exploitation of Geoinformation. States Parties may therefore provide for achievement of the goal stated in paragraph 1 to a higher standard under their laws and procedures than is stipulated in this Convention but shall provide information in this respect to the Consultative Committee in accordance with Article 11.

**Article 2**  
***Definitions***

"Geoinformation" means information, including the data on which it is based, captured from light, heat, ultraviolet, sonar or radar sources by equipment in space, in the air, on or under the ground or the sea including ice cover, regarding activity within the geosphere irrespective of purpose. It shall include in particular georeferencing of phenomena within the geosphere as well as spatial metadata, geomagnetic sensing data, all forms of imagery including photography and data derived from precipitation samples.

"Geoinformation Controller" means a person within the jurisdiction or under the administrative control of a State Party which, either alone or acting with others, determines the purposes for which any Geoinformation is processed.

"Processing" means creating, obtaining, recording or storing Geoinformation or carrying out any operation or set of operations on it, including:

- (a) organization, adaptation or alteration,
- (b) retrieval, consolidation or use,
- (c) disclosure by transmission, dissemination or otherwise making available, or
- (d) alignment, combination, blocking, removal or destruction.

"State Party" means a State which has signed and ratified this Convention; it shall include regional integration organizations to the extent permitted under their constituent instruments and shall be deemed, for the purposes of Articles 1 to 10, to include intergovernmental organizations that have affirmed acceptance of its principles according to Article 15(3).

"State of the Geoinformation Controller" means the State Party within the jurisdiction or under the administrative control of a State Party within which the Geoinformation Controller has its principal place of organizational or corporate decision-making, subject to such determinations as are made pursuant to Article 5(8) regarding particular obligations.

"Adhering international organization" means any public international organization which signs and declares its adherence to this Convention in accordance with Article 15(3).

“Rules of Procedure” means the rules drawn up by the Consultative Committee in accordance with Article 12(4).

### **Article 3** **Geoinformation Quality**

1. States Parties shall encourage each Geoinformation Controller to establish a secure electronic record (hereafter “Custody Record”) in respect of the processing of Geoinformation, taking due account of relevant standards mentioned in the Annex to this Convention.
2. The Custody Record shall, to the extent reasonably practicable, include reference to all persons in whose custody the Geoinformation has been held and processed and shall give details of transfers made and of applications resulting from each stage in processing together with notes on models and standards used or interface requirements observed and any qualifications as regards the Geoinformation’s suitability for typical applications with which it would normally be associated.
3. Each Geoinformation Controller transferring Geoinformation to another person shall ensure that its Custody Record accompanies the Geoinformation transferred and that the recipient establishes its own Custody Record, making reference to the transferor and its Custody Record.
4. The above requirements shall not apply to Geoinformation generated exclusively for national security purposes. Where Geoinformation originally generated for national security purposes is subsequently provided for civil purposes, it shall be provided in such a way that a Custody Record is established on the basis of this Article and includes any qualifications that may be necessary to indicate the Geoinformation’s suitability for typical civil applications with which it would normally be associated.
5. The Consultative Committee shall review the implementation of this Article periodically and may recommend the establishment of standards based on such review.

### **Article 4** **Recognition of Geoinformation rights**

1. A person holding Geoinformation may exercise all the rights to which it is entitled in the Geoinformation without territorial limitation, subject to the other provisions of this Convention.
2. In order to facilitate the exercise of rights in Geoinformation held in any State Party, States Parties shall take all reasonable efforts to ensure that the following rights are recognized within their jurisdiction on the basis of mutual recognition:
  - Copyright;
  - Protection granted to collections of data.

### **Article 5** **Processing Obligations of Geoinformation Controllers**

1. In addition to observance of national requirements relating to confidentiality, data collection, licensing and access in the jurisdiction(s) in which they operate, Geoinformation Controllers shall take due account of recognized standards in these respects, in particular pursuant to Article 8.

2. A Geoinformation Controller which has identified Geoinformation in its possession that can be used to avert harm to the Earth's natural environment shall make the circumstances concerned known promptly to the State(s) Part(ies) concerned and shall provide the Geoinformation concerned promptly under fair and reasonable conditions upon request, either directly or through the State of the Geoinformation Controller, at the Controller's option.
3. A Geoinformation Controller which has identified Geoinformation in its possession that can aid one or more State Parties affected by a natural or man-made disaster shall inform the State Part(ies) concerned as soon as possible of the Geoinformation in question as well as the State of the Geoinformation Controller. The State of the Geoinformation Controller or such other State as the Geoinformation Controller shall request as expedient in the circumstances of the disaster shall transmit the Geoinformation to the affected State upon an affected State's request under fair and reasonable conditions and, in case of extreme urgency, without the requirement for prior performance of those conditions before transmission to the affected State. The State of the Geoinformation Controller or other transmitting State shall nevertheless have the right subsequently to bring the matter to the attention of the Consultative Committee if the affected State does not fulfil the conditions subsequently.
4. A Geoinformation Controller in a State Party shall make available to another State Party Geoinformation relating to the territory of that State Party, subject always to the reservations set out in Article 1(2). The Geoinformation Controller shall do so either directly, at the Controller's option, or through the State of the Geoinformation Controller upon request by the State Party seeking the Geoinformation. In either case, the Geoinformation concerned shall be made available on a non-discriminatory basis and under fair and reasonable conditions.
5. States Parties shall encourage Geoinformation Controllers to publish salient details of their Custody Records and details of the scope and pattern of observations of persons in a Geoinformation Transparency Register to be established in each State Party and made accessible for consultation.
6. States Parties shall encourage Geoinformation Controllers to participate in the formulation and application of internationally accepted codes of practice in relation to the manner of acquiring, processing and disseminating Geoinformation. To this end, they shall work with the Consultative Committee in engaging Geoinformation Controllers in appropriate parts of its work programme along with representatives of affected user groups.
7. Geoinformation Controllers shall adhere to the norms of personal data protection applicable in the jurisdiction of each State Party to which the different parts of Geoinformation under its control relate at the time or times in question.
8. States Parties shall cooperate within the Consultative Committee to establish the circumstances according to which a Geoinformation Controller operating in more than one country shall be determined to be subject to a particular State Party for the performance of particular obligations under this Article as the State of the Geoinformation Controller.

## **Article 6**

### ***Protection of persons identified in Geoinformation***

1. Geoinformation Controllers shall take all reasonable measures to ensure that Geoinformation they process which includes information that could identify any natural person is depersonalized, unless that natural person has given his or her consent.
2. A person who, notwithstanding paragraph 1, is identified in Geoinformation shall have an enforceable right to require the relevant Geoinformation Controller to have the Geoinformation relating to that person depersonalized.

## **Article 7**

### ***Relationship of the Convention to existing rights***

The provisions of this Convention shall not affect rights protected under national or international law on the date of this Convention's entry into force. Any State Party shall nevertheless be entitled to raise any inconsistency of such rights with this Convention's operation in the Consultative Committee for its consideration.

## **Article 8**

### ***Encouragement of standards related to Geoinformation***

1. States Parties shall encourage Geoinformation Controllers within their jurisdiction or under the administrative control of a State Party, including by virtue of Article 5(8), to comply with recognized technical and operating standards. The Annex sets out a non-exhaustive list of such standards pertinent to the generation, holding and processing of Geoinformation at the date of this Convention's signature. The Annex shall be subject to change in accordance with paragraph 2 and Article 14(3).
2. The Consultative Committee shall, in dialogue with communities generating relevant standards and under the work programme it establishes:
  - (a) assess the pertinence and utility of existing standards under the Convention, which it shall delete, retain or qualify following such assessment; and
  - (b) consider new standards for inclusion in the Annex.
3. In the absence of standards included in the Annex, Geoinformation Controllers should take account of other standards and include explanatory notes in this regard in their Custody Records.

## **Article 9**

### ***Use of Geoinformation as evidence***

1. States Parties shall encourage the admissibility and use of Geoinformation as evidence before courts, administrative tribunals, and other adjudicative fora.
2. For the purpose of using Geoinformation as evidence, it shall be necessary, whether on the basis of a Custody Record or otherwise, to demonstrate a traceable and secure chain of custody in respect to the Geoinformation processed. Compliance with standards which are included from time to time in the Annex in this regard shall lead to a rebuttable presumption of admissibility and authenticity subject to any qualifications specified in the Annex.
3. Where compliance with the relevant standards included in the Annex cannot be shown or is placed in question on reasonable grounds, expert confirmation of the adequacy of processes used and the likely validity and utility of the information for the probative purpose concerned should be adduced before the relevant court, tribunal or forum.
4. States Parties shall cooperate within the framework of the Consultative Committee in order to facilitate access to the expertise referred to in the preceding paragraph.

**Article 10**  
**Consultative Committee – Constitution and Composition**

1. The Depository shall invite States Parties to convene at the earliest opportunity following the entry into force of this Convention, in order to establish a Consultative Committee.
2. Each State Party shall be entitled to appoint a representative to the Committee who shall be authorized to participate in the Committee's deliberations to the full extent foreseen in this Convention. The representative may be accompanied by an expert. Adhering international organizations shall be entitled to appoint an observer who shall be authorized to attend with the right to be heard and make submissions in accordance with the Rules of Procedure.
3. The Committee shall establish, as and when needed, subcommittees and informal working groups to deal with specific issues.
4. The Committee shall in the first two years of its existence conduct its business on the basis of voluntary contributions in kind by States Parties and adhering international organizations.
5. The Committee shall be empowered after the first two years of existence to establish a fund by a simple majority of States Parties' representatives. This fund shall be administered by the Depository or another international organization nominated by the same majority, in order to cover the Committee's operating expenses. It shall be administered according to the same standards of financial administration and transparency as the Depository or that other international organization normally applies, *mutatis mutandis*.

**Article 11**  
**Functions of the Consultative Committee**

1. The functions of the Consultative Committee shall be:
  - (a) To provide a forum for coordination and dialogue among States Parties and adhering international organizations with respect to realizing the objectives of this Convention;
  - (b) To receive and consider information provided by States Parties, adhering international organizations and other entities pursuant to this Convention;
  - (c) To consider and review relevant standards, in accordance with Article 8;
  - (d) To propose a work programme and guidelines with a view to facilitating or improving the means for application of the Convention, including through:
    - (i) the analysis, compilation and dissemination of best practices derived from national legislative and operational experience in the administration of Geoinformation; and
    - (ii) conducting consultation with States and international organizations that are not party or have not adhered to this Convention as well as with non-governmental entities including Geoinformation Controllers and users and citizens' groups;

- (e) To consider proposals to amend this Convention;
  - (f) At the request of a State Party, adhering international organization or, under such circumstances as may be defined under the Rules of Procedure, a person to express an opinion on any question concerning the application of this Convention.
2. In performing its functions, the Committee shall take account of the existing work of other fora and mechanisms in the Geoinformation and related fields.

**Article 12**  
***Procedure of the Consultative Committee***

1. The Committee shall meet at least once every year and in any case when one-third of its representatives request its convocation.
2. A simple majority of States Parties' representatives shall constitute the quorum for a meeting of the Consultative Committee. This quorum shall be sufficient to elect the Committee's Bureau, to be composed of a chairperson and two vice-chairpersons.
3. After each of its meetings, the Consultative Committee shall publish a report on its work and on the functioning of the Convention.
4. The Consultative Committee shall draw up its own Rules of Procedure and shall adopt them by a two-thirds majority of the representatives appointed by States Parties.
5. Between meetings of the Consultative Committee, the Bureau shall assure continuity and shall consult all States Parties in the event that urgent action is required.

**Article 13**  
***Third State Geoinformation Controllers***

Under internal procedures established in any State Party, persons holding Geoinformation or providing Geoinformation services outside the jurisdiction of any State Party may subscribe to observance of the provisions of Article 3, 5 and 6 as well as to the observance of standards under Article 8. Such persons shall thereupon in each case be treated as Geoinformation Controllers within the State Part(ies) concerned.

**Article 14**  
***Amendments***

1. Any State Party may propose amendments to this Convention.
2. The text of any proposed amendment to this Convention shall be submitted in writing to the Chairperson of the Consultative Committee, who shall communicate it to all States Parties at least 30 days before the meeting of the States Parties at which it is proposed for consideration.
3. The Annex to this Convention may be amended by a simple majority of States Parties by signature by their representatives to the Consultative Committee following consideration and endorsement of the proposed amendment by the Consultative Committee.

4. All other amendments shall be adopted following signature of the proposed amendment by two-thirds of States Parties' representatives and notification of completion of their internal procedures to the Depository.
5. Amendments to this Convention adopted in accordance with this Article shall be communicated by the Depository to all States Parties upon their entry into force. In the case of amendments to the Annex, this shall be on the thirtieth day after the chairperson of the Consultative Committee has communicated the endorsement of the amendment to the Depository. In all other cases, this shall take place on the thirtieth day after receipt of the final instrument of ratification, approval or acceptance of the amendment necessary to constitute a two-thirds majority of States Parties.

## **Article 15**

### ***Signature, ratification, acceptance, approval, accession and adhesion***

1. This Convention shall be open for signature by any State from 1 July 2015 until 31 December 2018 and shall thereafter remain open for accession or adhesion.
2. States may express their consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (c) accession.
3. International organizations may express their consent to be bound by this Convention by signature and declaration of adherence affirming completion of any necessary internal procedures.
4. Ratification, acceptance, approval, accession or adherence shall be effected by the deposit of an instrument to that effect with the Depository.

## **Article 16**

### ***Entry into force***

1. This Convention shall enter into force one month following the date on which ten States Parties have expressed their consent to be bound by it.
2. For a State Party or adhering international organization which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one month after the date of expression of such consent.

## **Article 17**

### ***Withdrawal***

1. At any time following the second anniversary of the date on which this Convention has come into force with respect to a State Party, that Party may withdraw from the Convention by giving written notification to the Depository.
2. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depository.

**Article 18**  
***Depositary***

This Convention shall be deposited with the [Council of Europe at Strasbourg].

DONE [ETC.]