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**AD HOC COMMITTEE ON DATA PROTECTION
(CAHDATA)**

INFORMATION DOCUMENT

DG I – Human Rights and Rule of Law

Introduction

1. At their 1079th meeting (10 March 2010), the Ministers' Deputies welcomed the adoption of the work programme of the Consultative Committee (T-PD) of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108 – hereafter 'Convention 108') and encouraged the T-PD to start preparing, in accordance with priorities mentioned in the work programme, a draft additional protocol to Convention 108.
2. Furthermore, at their 30th Conference (Istanbul, Turkey, 24-26 November 2010), Council of Europe Ministers of Justice expressed their support for the modernisation of Convention 108 in their Resolution No. 3 on data protection and privacy in the third millennium. The Parliamentary Assembly of the Council of Europe also welcomed the modernisation exercise in its Resolution 1843 (2011) on "The protection of privacy and personal data on the Internet and online media".
3. The T-PD worked intensively on the modernisation of Convention 108 in 2011 and 2012 and reached consensus on the modernisation proposals which were adopted at third reading by the Committee at its 29th plenary meeting (27-30 November 2012). With the adoption of the text by the T-PD, the technical phase of the modernisation work is thus completed. The abridged report of the T-PD, together with the modernisation proposals, is available at the T-PD's website.²
4. The Committee of Ministers decided on 10 July 2013 to set up an ad hoc Committee on data protection (CAHDATA), bringing together representatives of all Council of Europe member States, other Parties to the Convention as well as other non-European States and entrusted with the task of finalising the modernisation work by formally negotiating an Amending Protocol to Convention 108.

Modernising Convention 108: objectives and main features

5. With new data protection challenges arising every day, it appears evident that Convention 108 should be modernised in order to better address threats to privacy resulting from the use of new information and communication technologies, and to strengthen the Convention's evaluation and follow-up mechanism.
6. A broad consensus clearly emerged from the contributions submitted in the 2011 public consultation and subsequent discussions held in various fora, underlining that the general and technologically neutral nature of the Convention's provisions must be maintained (with more detailed sectoral texts by way of soft-law instruments), that the coherence and compatibility with other legal frameworks (in particular the data protection framework of the European Union) must be preserved and that the Convention's open character which gives it a unique potential of a universal standard, must be reaffirmed.
7. The modernisation of Convention 108 is highly relevant. With increasing flows of ubiquitous data and related legal uncertainty as to the applicable law comes the necessity to ensure that common core principles are in place in as many countries as possible around the globe to guarantee an appropriate level of protection of individuals with regard to the processing of personal data.

The work of the Consultative Committee of the Convention (T-PD)

8. The T-PD started its work by commissioning scientific experts to prepare a report³ to identify areas where Convention 108 would need to be modernised to address new challenges.

9. A second report⁴ was prepared with a view to tackling another crucial aspect of the modernisation: the evaluation of the implementation of Convention 108 by the contracting Parties.

10. On the basis of the first report, a list of issues to be examined was drawn up, and a consultation document⁵ was prepared containing 30 questions.

11. Those 30 questions were publicly submitted for reactions and comments on the occasion of the 30th Anniversary of Convention 108 on 28 January 2011.

12. Numerous responses were received from the public sector (governmental authorities and data protection authorities), the private sector (banking, insurance, electronic commerce, marketing, audio-visual distribution, socio-economic research, etc.), academia and interested associations, and from various continents, not only from Europe.

13. It took three meetings of the Bureau of the T-PD in 2011 to translate this material⁶ into concrete modernisation proposals.⁷ These were examined in first reading by the 27th plenary meeting of the T-PD (30 November - 2 December 2011).

14. Further to the discussions held during this 27th plenary meeting and subsequent comments, revised versions⁸ of the modernisation proposals were prepared by the Bureau of the T-PD. Drafts were also sent for comments to relevant Council of Europe committees, as well as to stakeholders of the private sector and civil society.

15. During its 28th plenary meeting (19-22 June 2012), the T-PD reviewed at second reading the proposals for modernisation of Convention 108⁹ and decided to instruct its Bureau to finalise these proposals with a view to their examination at the 29th plenary meeting (27-30 November 2012).

16. The proposals¹⁰ and related written comments¹¹ were examined in third reading by the 29th plenary meeting of the T-PD (27-30 November 2012) and modernisation proposals¹² were adopted for transmission to the Committee of Ministers, together with the T-PD's recommendation that the finalisation of the proposals be entrusted to an intergovernmental ad hoc committee.

Setting-up an ad hoc committee: rationale and procedure followed

17. The decision to set up an ad hoc committee on data protection (CAHDATA) was made on the basis of the following reasons:

- providing a high-level inter-governmental forum for negotiation: The T-PD only represents the Parties to the Convention (the number went from 43 at the beginning of the modernisation work to currently 46 Parties) and is composed of national experts belonging to independent supervisory authorities in certain cases and from governments (for instance Ministries of Justice, Interior, Telecommunication) in others. A number of questions raised during the modernisation exercise, such as the strengthening of the follow-up and evaluation mechanism, and the corresponding role of the Committee of the Parties, need to be

discussed at inter-governmental level involving all 47 member States. Intergovernmental data protection work falls under the Steering Committee on Media and Information Society (CDMSI), since 2012; enabling member States and other Parties to the Convention to appoint governmental representatives with specific subject-matter expertise is essential (see also paragraph 19);

- ensuring consistency and complementarity with the relevant European Union's framework: all European Union member States are parties to the Convention and are thus currently involved in the review of the European Union's data protection framework (package proposing a Regulation and a Directive) as they are in the modernisation process of Convention 108. Both frameworks must be formulated in a way that allows for global promotion of Convention 108 while consistency between both of them is maintained, in particular through formal coordination as regards the member States of the European Union. On 7 June 2013, the Council of the European Union adopted to this end a Decision authorising the European Commission to participate on behalf of the European Union in the negotiations of the modernisation of Convention 108 and the conditions and modalities of accession of the European Union to the modernised Convention. The purpose of the mandate is to ensure consistency between European Union rules and the amended instrument, and notably in relation to rules on transborder data flows, as well as to give the Commission the power to negotiate the EU's accession to Convention 108;

- supporting the global potential of Convention 108: the Council of Europe Convention is, throughout the world, the sole international legally binding instrument in the field. In August 2013, Uruguay became the first non-European country to join the Convention (at its 1160th meeting on 30 January 2013 the Ministers' Deputies also invited the Kingdom of Morocco to accede) and several other countries have expressed interest in acceding. Associating as much as possible non-European countries to the discussions of what could become in the future a global standard for data protection is highly desirable. This means that other States need to be able to formally participate in the modernisation process.

18. It is expected that two to three meetings will be required for this task: one in 2013 (12-14 November 2013), and at least another one in 2014 (29-31 January 2014, possibly followed by another meeting in the year).

²[http://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/T-PD\(2012\)RAP29Abr_rev_E%20-%20Abridged%20report%20of%20the%2029th%20T-PD%20WEB%20\(MM\).pdf](http://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/T-PD(2012)RAP29Abr_rev_E%20-%20Abridged%20report%20of%20the%2029th%20T-PD%20WEB%20(MM).pdf)

³ [Report on the lacunae of the Convention for the protection of individuals with regard to automatic processing of personal data \(ETS No. 108\) resulting from technological developments](#) (T-PD-BUR(2010)09, by Jean-Marc Dinant, Cécile de Terwangne, Jean-Marc Moïny, Yves Poulet and Jean-Marc Van Gyzeghem of the CRID Namur).

⁴ Report on the modalities and mechanisms for assessing implementation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and its Additional Protocol (T-PD-BUR(2010)13Rev) by Marie Georges.

⁵http://www.coe.int/t/dghl/standardsetting/dataprotection/Consultation_Modernisation_Convention_108_EN.pdf

⁶ Document T-PD-BUR(2011)01MOSrev6.

⁷ Document [T-PD-BUR\(2011\)27](#) of 15 November 2011.

⁸ Documents T-PD-BUR(2012)01Rev of 5 March 2012 , T-PD-BUR(2012)01 of 18 January 2012.

⁹ Documents T-PD-BUR(2012)01Rev2 of 27 April 2012and T-PD(2012)04 Rev.

¹⁰ Document [T-PD\(2012\)04Rev2.](#)

¹¹ Documents [T-PD\(2012\)11Mos and addendum.](#)

¹² See Appendix III to the abridged report of the 29th plenary meeting of the T-PD.