

Strasbourg, 16 June 2016

CAHDATA(2016)RAPAbr

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

Strasbourg
15-16 June 2016

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

The Ad hoc Committee on data protection (CAHDATA), set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, held its meeting in Strasbourg on 15-16 June. The list of participants¹ is set in Appendix 3.

The CAHDATA:

1. Elected Seamus Carroll (Ireland) as Chair;
2. Examined the outstanding issues as highlighted in the consolidated draft of the modernisation proposals of Convention 108, contained in the working document CAHDATA (2016)01 and agreed on the following:

Article 3.1bis

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

Article 5.2 (lifting of the reserve - deletion of the footnote)

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.

Article 5.4.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 historical, statistical and scientific purposes is, subject to appropriate safeguards, compatible with those purposes;

Article 5.4.c (lifting of the reserve - deletion of the footnote)

adequate, relevant and not excessive in relation to the purposes for which they are processed;

Article 5.4.e (lifting of the reserve - deletion of the footnote)

preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed.

Article 6

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 specific and additional appropriate safeguards are enshrined in law, complementing those of this Convention.

¹ 57 hommes et 48 femmes

Article 8.b (lifting of the reserve - deletion of the footnote)

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 7bis, paragraph 1;

Article 8.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;

New Article 8.2

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 and freedoms and legitimate interests.

Article 9

1. No exception to the provisions set out in this Chapter shall be allowed except to the provisions of Articles 5.4, 7.2, 7bis paragraph 1 and Article 8 when such 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 7bis and 8 may be provided for by law with respect to data processing for **historical, statistical and scientific** **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 fulfill such aim, exceptions to Article 12 (5) and (6) and Article 12bis (2) (a), (b), (c) and (d).

This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision.

New Article 12.4.d (and deletion of 12.7)

it constitutes a necessary and proportionate measure in a democratic society for freedom of expression.

Article 15.2

In no case may a designated supervisory authority be allowed to make a request for assistance on behalf of a data subject of its own accord and without the ~~explicit consent~~express approval of the data subject concerned.

Article 16 – Refusal of requests for assistance

A designated supervisory authority to which a request for assistance is addressed under Article 13 of this Convention may not refuse to comply with it unless:

a. the request is not compatible with the ~~its powers in the field of data protection of the authorities responsible for replying;~~

Article 21.8 (paragraph deleted).

3. Agreed to finalise the draft explanatory report by written procedure;
4. Took note of the special position of the Russian Federation with regard to articles 3.1, 9.1 and 9.2 and the remaining objections with regard to article 12.1 of the draft modernised Convention;
5. Took note of the declaration² made by the Russian Federation regarding article 20.3 of the draft modernised Convention;
6. Instructed the Secretariat to revise the draft amending Protocol according to the above mentioned changes and to transmit it together with the draft explanatory report to the Committee of Ministers for examination.

² See Appendix 2

APPENDIX 1

AGENDA

I. OPENING OF THE MEETING

Mr Patrick Penninckx, Head of Information Society Department

II. ADOPTION OF THE AGENDA

III. ELECTION OF THE CHAIR

- [CAHDATA\(2016\)ToR](#) Terms of Reference
- [CM/Res\(2011\)24](#) Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods

IV. DRAFT AMENDING PROTOCOL: EXAMINATION OF THE OUTSTANDING ISSUES

- [Draft amending Protocol](#) Working document containing the draft Protocol and highlighting reservations
- Information document Consolidated text of the modernised version of Convention 108 (with reservations)
- Draft Explanatory report Draft Explanatory report of the modernised Convention 108

V. ANY OTHER BUSINESS

APPENDIX 2

Statement of the Delegation of the Russian Federation on Article 20.3 of the draft modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS № 108)

“Within the framework of the modernization of the Convention № 108 the Russian Federation has consistently objected to the voting procedure set out in Article 20.3 of the Convention, which delegates the European Union the right to cast the number of votes equal to the number of its member-states in the Convention Committee (the T-PD).

Such voting mechanism automatically gives the European Union the majority necessary to pass most of the decisions of the T-PD. As such, it is clearly unbalanced and prejudicial to the rights of the Parties to the Convention (whether Council of Europe member-states, or not) who are not members of the EU. This disbalance becomes all the more inappropriate in view of the widening of the competence of the T-PD under the modernised Convention.

Furthermore, this provision does not reflect, and, in fact, appears contrary to the existing voting standards of the subordinate bodies of the Council of Europe. Moreover, it is not in line with the modalities of participation of the European Union in other international organisations and bodies.

In light of the above the Russian Federation stands behind its proposal to remove the aforementioned voting mechanism from Article 20.3 of the modernised Convention and intends to pursue this matter at the subsequent stages of the consideration of this issue.”

APPENDIX 3

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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