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**CONSULTATIVE COMMITTEE OF THE CONVENTION
FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC
PROCESSING OF PERSONAL DATA
[ETS NO. 108]**

**Opinion on Uruguay's request
to be invited to accede to Convention 108 and its additional Protocol**

Directorate General of Human Rights and Legal Affairs

Introduction

On 31 March 2011, the Secretary General of the Council of Europe has received a letter from the Minister of Foreign Affairs of Uruguay requesting that Uruguay be invited to accede to Convention 108 and to its additional Protocol (CETS 181).

The 43 delegations of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) have been invited on 8 April 2011 to indicate by 9 May 2011, if they considered that Uruguay had, in accordance with Article 4.1 of Convention 108, taken the necessary measures in its domestic law to give effect to the basic data protection principles of the Convention. Delegations received a copy of the relevant legislation which was appended to the above mentioned request.

A total of 10 positive replies¹ confirming that Uruguay has taken the necessary measures in its domestic law to give effect to the basic data protection principles of Convention 108 were received by the Secretariat. The remaining 33 delegations remained silent; there have been no negative responses.

The T-PD recalls that, in 2008, it invited the Committee of Ministers to take note of its recommendation to allow non-member States with data protection legislation in accordance with Convention 108 to accede to this Convention. The Ministers' deputies took note of this recommendation and agreed to examine any accession request in light of this recommendation (1031st meeting - 2 July 2008²).

The T-PD finally wishes to underline that, on 12 October 2010, the Article 29 Data Protection Working Party adopted a favourable Opinion on the level of protection of personal data in Uruguay in the framework of the adequacy procedure carried out by the European Union.

Opinion

In accordance with Article 4 of Convention 108, each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in the Convention (Chapter II), including its additional Protocol.

¹ Bosnia and Herzegovina, Cyprus, Estonia, Finland, Italy, Latvia, "the former Yugoslav Republic of Macedonia", Monaco, Switzerland and the United Kingdom.

²[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec\(2008\)1031&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2008)1031&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

The T-PD notes the following:

- Article 72 of the Constitution of the Republic of Uruguay guarantees the fundamental right to the protection of personal data;

- scope of the data protection regime (Articles 1 and 3 of Convention 108): Uruguay's legislation has a comprehensive scope which covers all types of data processing concerning natural persons performed in the public and private sectors, with the exception of those carried out for strictly personal or domestic purposes, processing connected with public safety, defence, national security and state law enforcement activities, together with that of files governed by specific legislation (sectoral data protection provisions). The law is applicable by analogy to legal persons when it proves necessary (cf. Articles 2 and 3 of the Law; Articles 2 and 3 of the Decrees);

- quality of data (Article 5 of Convention 108): Uruguay's legislation gives effect to the fundamental principles of data protection such as limitation of purposes, quality, lawfulness and good faith, proportionality, accuracy of data and limited time of the retention (cf. Articles 5-8 of the Law);.

- special categories of data (Article 6 of Convention 108): Uruguay's legislation provides appropriate safeguards for complementary protection measures for the processing of sensitive data (cf. Articles 18-22 of the Law);

- data security (Article 7 of Convention 108): Uruguay's legislation provides for appropriate measures to be taken for protection against accidental or unauthorised destruction or accidental loss of data (cf. Articles 10-11 of the Law; Article 7 and following. of Decree No. 414/009);

- principle of transparency (Articles 5a and 8a of Convention 108): Uruguay's legislation lays down a general obligation to inform the subject of personal data processing (cf. Articles 13 & 9 of the Law; Article 5 and following. of Decree No. 414/009);

- additional safeguards for the data subject (Article 8b to 8d of Convention 108): Uruguay's legislation provides for and implements the rights of access, rectification (deletion where appropriate), including the right of objection and the right of the data subject to take legal action (cf. Articles 14-17 & 37-45 of the Law; Articles 9-14 of Decree No. 414/009);

- exceptions and restrictions (Article 9 of Convention 108): Uruguay's legislation provides for exceptions and restrictions to the basic principles of data protection which are confined to what is necessary for safeguarding fundamental values in a democratic society (cf. Article 26 of the Law);

- sanctions and remedies (Article 10 of Convention 108): Uruguay's legislation provides effective procedural mechanisms: in particular, deterrent sanctions (cf. Article 35 of the Law; Article 32 of Decree No. 414/009) and rights of appeal, speedy judicial procedures without charge for any subject of personal data processing (Articles 9, 14-17 and 37-45 of the Law; Articles 10-14 and 29-30 of Decree No. 414/009);

- transborder data flows (Article 12 of Convention 108 and Article 2 of its additional Protocol): Uruguay's legislation contains specific provisions governing transborder data flows of a personal nature, proscribing in particular the transfer of personal data to states or international organisations not ensuring an adequate standard of protection consistent with the rules of international law or of regional legislation (cf. Article 23 of the Law; Articles 4 and 34-35 of Decree No. 414/009);

- supervisory authority (Article 1 of the additional Protocol): Uruguay's legislation provides for a supervisory authority for data protection, holding real functions of advice, information and supervision together with effective powers of investigation, intervention (including coercive measures) and court action (cf. Articles 34-35 of the Law; Articles 23-27 & 31 of Decree No. 414/009).

In light of the above, the T-PD considers that Uruguay has taken the necessary measures in its domestic law to give effect to the basic data protection principles of Convention 108 and of its additional Protocol. Consequently it supports its accession to the Convention and to its additional Protocol, pursuant to Article 23 of Convention 108.