Strasbourg, 21 November 2019 T-PD(2019)RAP39Abr

CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA

(Convention 108)

39th Plenary meeting

Strasbourg, 19-21 November 2019

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

1. The Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter 'Convention 108'), established under Article 18 of Convention 108, held its 39th plenary meeting[1] in Strasbourg from 19 to 21 November 2019, with Ms Alessandra Pierucci (Italy) in the chair. The agenda as adopted by the Committee and the list of participants are set out in Appendix 1 and Appendix 2.

The Committee:

2.1. took note of the information provided by Jan Kleijssen, Director, Information Society – Action against Crime, regarding namely:

- the beginning on 18 September of the five-year mandate of Marija Pejčinović Burić (Croatia) as Secretary General of the Council of Europe, after being elected in June 2019 by the Parliamentary Assembly and the strategic importance, highlighted by her on several important occasions, of data protection;

- the normalisation of the budgetary situation of the Organisation following the payment by the Russian Federation of its contribution to the budget of the Council of Europe;

- the setting up of the Ad Hoc Committee on Artificial Intelligence (CAHAI), which held its first plenary meeting on 18-20 November 2019 and is tasked to examine the feasibility and potential elements on the basis of broad multi-stakeholder consultations, of a legal framework for the development, design and application of artificial intelligence, based on Council of Europe's standards on human rights, democracy and the rule of law;

- the unique opportunity given this week to exchange views with the cybercrime community during the Octopus Conference with a view to safeguarding the necessary consistency between Convention 108+ and the second additional Protocol to the Budapest Convention;

- the outstanding support for Convention 108+ as global standard witnessed at the 41st International conference of data protection and privacy commissioners (ICDPPC, Tirana, 21-24 October 2019).

2.2. took note of the information provided by the Secretariat on a) the state of accession to Convention 108, and in particular of the recent accession from 1 September 2019 of Morocco as 55th Party to Convention 108, of the depositing of a Declaration of territorial extension of the Convention 108 by the United Kingdom to the territory of Gibraltar and its entry into force on 1 November 2019; b) recent signatures of Convention 108+ (amending Protocol CETS n°223) by San Marino on 16 July 2019, by Greece on 6 September 2019, by Argentina on 19 September 2019, by Armenia on 2 October 2019, and on 21 November, by Switzerland, thus bringing the total number of signatures to 35, also took note of the announcement of the imminent signature of Serbia; c) on the adoption of ratification laws by Lithuania and Slovakia, d) the progress made regarding the accession request by Costa Rica to accede to the modernised Convention and e) the follow-up exercise carried out by the competent Group of Rapporteurs of the Committee of Ministers in relation to the decision of the Committee of Ministers (see CM/Del/Dec(2018)128/5) stressing the importance of a speedy accession to the amending Protocol;

2.3 took note of the presentation by Ms Cécile de Terwangne of the documents relating to the evaluation and follow-up mechanism under Convention 108+ and of the results of the work carried out by the corresponding Working. The Committee held an exchange of views with the expert regarding the draft documents, and instructed its Bureau to review the document at its 49th Bureau meeting based on the discussions, and possible written comments (delegations are invited to send their comments until 6 December 2019);

[1] 116 participants in all, 61 women and 55 men

2.4 took note of the presentation by Professor Gert Vermeulen of the "*Draft opinion on the provisional text and explanatory report of the draft Second Additional Protocol to the Budapest Convention on Cybercrime (ETS 185) on direct disclosure of subscriber information and giving effect to orders from another Party for expedited production of data*", held an exchange of views, adopted the opinion (document T-PD(2019)08FIN) ad referendum and instructed its Secretariat to transmit it to the Secretariat of the T-CY for information and consideration of the T-CY;

2.5 participated in Workshop 2*: "Data protection and criminal justice: what are the issues"* of the Octopus 2019 conference and took note of the invitation of its chair to develop a privacy regime for the second additional Protocol to the Budapest Convention based on the modernised Convention and of its availability to assist the T-CY drafting groups and plenary in doing so;

2.5 took note of the presentation by Mr Frédéric Wickert of the report on facial recognition and the corresponding set of recommendations, held an exchange of views with the expert and instructed its Bureau to review the documents at its 49th Bureau meeting based on the discussions, and possible written comments (delegations are invited to send their comments until 6 December 2019);

2.6 took note of the presentation by Ms Jen Persson of her report "Children's data protection in Education systems: Challenges and possible remedies" and by Ms Jun Zhao, held an exchange of views with the experts and instructed its Bureau to review the documents at its 49th Bureau meeting based on the discussions, and possible written comments (delegations are invited to send their comments until 6 December 2019);

2.7 took note of the presentation by Mr Yves Poullet and Mr Benoit Frénay of their report on profiling and the set of proposals regarding the update to the 2010(13) Recommendation on profiling, held an exchange of views with the experts and instructed its Bureau to review the documents at its 49th Bureau meeting based on the discussions, and possible written comments (delegations are invited to send their comments until 6 December 2019);

2.8 elected Mr Eduardo Bertoni (Argentina) as member of the Bureau (term ending at the 40th Plenary meeting);

2.9 took note of the information on co-operation with other Council of Europe bodies, in particular with the Committee of Convention on the Manipulation of Sports Competitions (Macolin Convention), Committee for the Rights of the Child (CAHENF), Ad-hoc Committee on Artificial Intelligence (CAHAI), Steering Committee on Media and Information Society (CDMSI) and Committee on Bioethics (DH-Bio);

2.10 adopted the opinion (document T-PD(2019)09) on the draft Recommendation of the Committee of Ministers to member States on "the human rights impacts of algorithmic systems" submitted for comments by the Steering Committee on Media and Information Society (CDMSI) and instructed its Secretariat to transmit it to the Secretariat of the CDMSI;

2.11 took note of the information provided by the Secretariat concerning co-operation programmes implemented in the data protection field;

2.12 took note of the major developments at national and international level in the data protection field, in particular the following events: EuroDIG (The Hague, 19-20 June 2019), XVIIth meeting of the Ibero-american network of DPAs (Mexico, 19-21 June 2019), the International Conference on Privacy in Africa (Accra, 24-27 June 2019), AFAPDP Conference (Dakar, 16-18 September 2019), the 41st ICDPPC (Tirana, 21-25 October 2019), the meeting of the working group on data protection and identity of the African network of Data protection authorities (Rabat, 4-5 December) and the IGF (Berlin, 28-29 November 2019);

2.13 took note of the information provided by observers, in particular a) by the ICDPPC / Global Privacy Assembly (GPA) on the latest international conference held in Tirana (21-24 October 2019), on resolutions adopted, on the new policy strategy adopted by the Conference/assembly and the importance, in that respect of Convention 108, b) by the Iberoamerican network of DPAs notably on the outcome of the 17th Iberoamerican meeting of DPAs (Mexico, 19-21 June 2019), c) by Interpol on the current review of data protection rules within the organisation and the setup of a standing committee on privacy and data protection and on the continuation of the training of police officers in the framework of Glacy+ programme,

d) by the Philippines on the upcoming 52nd Asia-Pacific Privacy Forum and on the Global Privacy Forum, as well as the launching of Safe Techs project e) by the Abu Dhabi Global Market Registration Authority on the issuing of first enforcement instructions and current prospects regarding the drafting a comprehensive privacy legislation, and on the need to raise awareness on Convention 108 in the Gulf region, f) by the African network of data protection authorities on the latest activities of the network and the setup of 3 working groups within the now 13 members to the network; g) by South Korea on the latest changes in the national legislation on the protection of privacy and personal data and the on prospect of joining Convention 108+ in the near future, h) by the Australian Privacy Foundation on the recent submissions made to the Committee in cooperation with Privacy International and EPIC, on a proposed Australian bill on a national facial recognition data base and on the report issued by the national competition regulator (ACCC) on the strengthening of the national privacy act;

2.14 took note of the information provided by the Data Protection Commissioner, regarding the nomination of a data protection officer and progress made in respect of the updating of the internal Regulation for data processing carried out by the Council of Europe is still not available;

2.15 took note of the launch of 2nd edition of the Stefano Rodotà prize and the call of the Secretariat to support the dissemination of the call at national level;

2.16 instructed its Bureau to address the question of one delegation regarding the interpretation of the terms 'arithmetical operations' (Article 2, definition of the 'data processing'), the distinction between the legal status of the 'controller' and 'recipient', and in relation to an 'identified or identifiable individual', guidance with regard to anonymisation and pseudonymisation.;

2.17 confirmed the dates of the plenary meetings to be held in Strasbourg from 1 to 3 July 2020 and from 18 to 20 November 2020 and of the next Bureau meetings, to be held from 11 to 13 December 2019 in Strasbourg, 25 to 27 March in Paris and 28 to30 September in Paris.

APPENDIX I

AGENDA

	1. Opening of the meeting
T-PD(2019)RAP38Abr	Abridged report of the 38th Plenary meeting (Strasbourg, 13-14 June 2019)
……	Abridged report of the 48th Bureau meeting (Paris, 25-27 September 2019)
T-PD(2017)WP2018-2019	Work programme of the Committee 2018-2019
.....	Work programme of the Committee 2020-2021
T-PD(2017)Rules	Rules of procedure
	2. Adoption of the agenda
	3. Statement by the secretariat
	Jan Kleijssen, Director of the Information Society and Fight against Crime Directorate
	4. Modernisation of Convention 108
	Required action: The Committee will take note of the information provided by the secretariat.
	• Consolidated text of the modernised version of Convention 108
	• Explanatory report of the modernised Convention 108
	• Amending Protocol
	5. State of play, ratifications and accessions
	Required action: The Committee will take note of the information provided by the secretariat. • Convention 108+: chart of signatures and ratification • Convention 108: chart of signatures and ratifications
	6. Evaluation and follow up mechanism under Convention 108+
	Expert: Ms Cécile de Terwangne, CRIDS, Namur. Required action: The Committee will take note of the information provided by the expert and will hold an exchange of views on the topic.

Mandate	ToR of the Working Group on the evaluation and monitoring mechanism
T-PD(2018)20rev3	Draft questionnaire on the evaluation and follow-up mechanism
T-PD(2018)21rev3	Information elements on the evaluation and follow-up mechanism
	7. Law enforcement transborder access to data
	Expert: Mr Gert Vermeulen, Full Professor of (European and international) criminal law and director of the Institute for International Research on Criminal Policy (IRCP).
	Required action: The Committee will take note of the information provided by the expert and will hold an exchange of views with the expert on the issues at stake.
T-PD(2019)08rev	Reference documents: Preparation of a 2nd Additional Protocol to the Budapest Convention on Cybercrime: Consultation with data protection experts - Issues for discussion T-CY discussion paper: Conditions for obtaining subscriber information –static versus dynamic IP addresses Provisional Answers from the Committee of Convention 108 to the Discussion paper for the Octopus Conference Key messages of the Octopus Conference 2018
	8. Facial recognition
T-PD(2019)05rev	Experts: Sandra Azria, Lawyer; Frédéric Wickert, Founder and CEO of A.I. Sense
	Required action: The Committee will take note of the report provided by the experts and will hold an exchange of views with the experts, with a view to enabling the finalisation of their report and deciding on the necessary follow-up.
	9. Data protection in education systems
T-PD(2019)06BISrev T-PD(2019)06rev	Experts: Jen Persson, Director, “defenddigitalme” Jun Zhao, Senior Research Fellow, Department of Computer Science, Oxford University
	Required action: The Committee will take note of the report provided by the expert and will hold an exchange of views with the experts, with a view to the finalisation of the report and deciding on the necessary follow-up.

	10. Update of the Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling
Recommendation CM/Rec(2010)13 T-PD(2019)07 T-PD(2019)07BISrev	Experts: Yves Poullet, Honorary Rector of the University of Namur, and Benoit Frénay, associate professor at the Faculty of Computer Science, Namur Digital Institute
	Required action: The Committee will take note of the report provided by the experts and will hold an exchange of views with the experts with a view to the finalisation of their report and deciding on the necessary follow-up.
	11. Elections
	The Committee will proceed to the election of one Bureau member.
	12. Cooperation with other Council of Europe bodies and entities
	Required action: The Committee will take note of the information provided by the secretariat.
T-PD(2019)09	• Macolin Convention • CAHENF • CAHAI • Steering Committee on Media and Information Society (CDMSI) • Draft recommendation Ministerial Conference MSI-AUT
	13. Cooperation projects
Council of Europe HELP course onData Protection and Privacy Rights T-PD(2019)02Rev2	Required action: The Committee will take note of the information provided by the secretariat.
	Cooperation projects of the Council of Europe in the data protection field (Information Document)
	14. Overview of activities and major developments in the field of data protection
	Required action: The Committee will take note of the information provided by the Secretariat and delegates.
	• 2019 Data Protection Workshop within International Organisations (Paris, 17-18 June 2019) • EuroDIG (The Hague, 19-20 June 2019) • International Conference on Privacy in Africa (Accra, 24-27 June 2019) • ICDPPC (Tirana, 21-25 October 2019) • IGF (Berlin, 28-29 November 2019)

	15. Observers
	Required action: The Committee will take note of the information provided by the observers.
	Observers - State of play and admission criteria
	16. Data Protection Commissioner
	Required action: The Committee will take note of the information provided by the Council of Europe Data Protection Commissioner.
	Secretary General's Regulation
	17. Stefano Rodota Award
Link	Required action: The Committee will take note of the information provided by the Secretariat
	18. Next meetings
Calendar	Required action: The Committee will take note of the dates for the next meetings.
	19. Any Other Business

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DRAFT ORDER OF BUSINESS

(Provisional and subject to change in light of the work pace)

		19 November (Tuesday)	**20 November (Wednesday)**	**21 November (Thursday)**
Start	**9:00 am** *the first day then* **9:30 am**	Academic Workshop "Convention 108+ and the future data protection global standard" Computer Law & Security Review (CLSR)	Items 9, 13 to 15	Octopus Conference Workshop 2 "Data protection and criminal justice: what are the issues?" (NB : in the Hemicycle of the Palais de l'Europe)
Break/end	**1 pm**	*Lunch*	*Lunch*	*Lunch*
Start	**2:30 pm**	Items 1 to 6	Items 7, 10 to 12	Items 8, 16 to 19
End	**6 pm**		Informal gathering 8 pm	

APPENDIX II

LIST OF PARTICIPANTS

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