



Strasbourg, 14 June 2019

T-PD(2019)RAP38Abr

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

**CONVENTION 108**

**38<sup>th</sup> Plenary meeting**

Strasbourg, 13-14 June 2019

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**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 38<sup>th</sup> plenary meeting<sup>1</sup> in Strasbourg on 13 and 14 June 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 Mr Christos Giakoumopoulos, Director General of Human Rights and the Rule of Law, regarding in particular the political and budgetary situation of the Council of Europe, with the forthcoming election of the new Secretary general, the decisions taken at the 129<sup>th</sup> Session of the Committee of Ministers (Helsinki, 16-17 May 2019) and the organisation's willingness to support the implementation of the Work Programme of the Committee for 2020-2021;

2.2 took note of the information provided by the Secretariat on the state of accession to Convention 108 and in particular of the accession of Argentina as 54<sup>th</sup> Party (taking effect as of 1 June 2019) and of Morocco as 55<sup>th</sup> Party (taking effect as of 1 September 2019), on signatures of Convention 108+ (amending Protocol CETS n°223) by Cyprus and Hungary on 9 January, by Andorra on 28 January, by Italy on 5 March 2019, by Croatia on 22 March 2019, by Poland and Slovenia on 16 May 2019, by Tunisia on 24 May 2019 thus bringing the total of signatures to 30, and on the availability of an Arabic and Spanish translation of Convention 108+;

2.3 took note of the presentation given by Ms Cécile de Terwangne on the evaluation and follow-up mechanism under Convention 108+ and held an exchange of views with the expert, deciding to set up a working group composed of Bureau and interested delegations and tasked of pursuing the development of the mechanism proposals. The Committee also took note of the presentation of Ms Ana Gomez Heredero regarding new accession requests and Article 36.2 of amending Protocol CETS n°223, confirming that any new request to accede should be examined in light of Convention 108+ and instructing its Secretariat to prepare a draft opinion regarding Costa Rica's accession request, based on evaluation criteria contained in document T-PD(2018)20rev;

2.4 took note of the presentation by the UN Special rapporteur on the right to privacy, Professor Joseph A. Cannataci on his activities, referring to his 2019 report to the Human Rights Council (document A/HRC/40/63), notably on privacy in context, security and surveillance; the gender perspective of the right to privacy, health data protection and privacy metrics;

2.5 took note of the presentation provided by Professor Gert Vermeulen on his report "Inclusion of data protection safeguards relating to law enforcement trans-border access to data in the Second Additional Protocol to the Budapest Convention on Cyber-crime (ETS 185)" and held an exchange of views, with the participation of Mr Alexander Seger, Executive Secretary of the Committee of the Cybercrime Convention (T-CY) on the issues at stake, took note of the concerns expressed both by some delegations and the T-CY secretariat (the Committee of Convention 108 should at a later stage be formally requested to produce an opinion on the privacy and data protection issues related to the draft Second Additional Protocol to the Budapest Convention) and stressed the necessity to encourage the domestic coordination involving delegations participating in the drafting negotiations, took note of the Opinion 3/2019 by the EDPS regarding the participation of the Commission in the negotiations of a second additional protocol to the Budapest Convention, as well as of the Council decision of 6 June 2019 authorising the Commission to negotiate on behalf of the EU in such negotiations and recalled that the additional protocol should contain specific guarantees and safeguards on privacy and data protection as enshrined in Convention 108+ (amending Protocol CETS n°223);

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<sup>1</sup> 128 participants in all, 68 women and 60 men.

2.6 took note of the presentation by Mr Daniel Cooper and held an exchange of views on the basis of the report “National platforms and data protection” on data exchange models in the field of fight against sport manipulation and decided to include the cooperation with the Group of Copenhagen and the future Committee of the Macolin Convention in its Work Programme for 2020-2021;

2.7 took note on the presentations by Professors Yves Poulet and Benoit Frénay, on the privacy and data protection issues arising from the use of profiling, and held an exchange of views with the experts, deciding to include in the 2020-2021 work programme the re-examination of the Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling, stressing the relevance of guidelines and other instruments produced by the Committee, in particular on big data and artificial intelligence;

2.8 took note of the presentations by Mr Frédéric Wickert and Ms Sandra Azria on the technical and legal considerations of the use of facial recognition technologies, and held an exchange of views on the privacy and data protection issues related to this form of data processing, deciding to include it in the Work Programme 2020-2021;

2.9 took note of the presentation by Ms Jen Persson on data protection in the educational sector, and held an exchange of views, with the participation of Ms Livia Stoica, Secretary of the ad hoc Committee on the rights of the child (CAHENF) on the data protection challenges in the education systems, highlighting possible synergies between the Committee of Convention 108 and the CAHENF. The Committee decided to include this topic in its work programme for 2020-2021;

2.10 held an exchange of views on topics to be included in the Work Programme of the Committee for 2020-2021 and on corresponding working methods and decided that key areas will be a) the follow-up to the modernisation of the Convention, b) the promotion of the Convention, c) a specific guidance based on the principles of the Convention, concerning facial recognition, the processing of personal data in the context of education systems and a re-examination of the profiling (Recommendation (2010)13), c) cooperation with the committees of other conventions, on issues related to the manipulation of sports competitions (the Macolin Convention), cybercrime (the Budapest Convention), bioethics (the Oviedo Convention) and children’s rights (CAHENF), d) Data protection day, Stefano Rodotà award and other awareness raising initiatives;

2.11 took note of the information provided by Ms Pamela McCormick from the Registrar of the European Court of Human Rights (ECtHR) on the latest cases and pending cases before the Court with relation to Article 8 of the ECHR, and welcomed the recent update of the compilation of the case law of the ECtHR ;

2.12 took note of the information on co-operation with other Council of Europe bodies, in particular with the CAHENF (see paragraph 2.9), the Bioethics Committee (DH-Bio) presented by Mr Lee Hibbard, the Steering Committee on Media and Information Society (CDMSI) and the Committee of experts on Human Rights Dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT);

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

2.14 took note of the compilation of replies to the questionnaire on the governance of data protection authorities;

2.15 took note of the major developments at national and international level in the data protection field, in particular the compilation of replies received from delegations (document T-PD(2019)MOS) and of the following events: “Protection of digital privacy: challenges and perspectives” (Fes, Morocco, 28 January 2019), the CPDP Conference “Data Protection and democracy” (Brussels, Belgium, 30 January-1

February 2019), the conference “Governing the Game Changer – Impacts of artificial intelligence development on human rights, democracy and the rule of law” (Helsinki, Finland, 26-27 February 2019), the Mobile World Congress 2019 (MWC Barcelona), the UNCTAD e-commerce week and third Session of the Intergovernmental Group of Experts on e-commerce and the Digital Economy (Geneva, 1-5 April 2019), the Spring Conference of European Data Protection Authorities (Tbilisi, 9-10 May), the IAPP Global Privacy Summit 2019 (Washington, May 1-3, 2019), the 2019 Data Protection Workshop within International Organisations (Paris, 17-18 June 2019), EuroDIG (The Hague, 19-20 June 2019), the International Conference on Privacy in Africa (24-27 June 2019), the ICDPPC (Tirana, 21-25 October 2019) and the IGF (Berlin, 28-29 November 2019);

2.16 took note of the information provided by the following observers: a) ICDPPC on the new strategy and policy role of the Conference Interpol on the latest review of the privacy and data protection regulations, b) Interpol regarding notably the current review of the data protection regulations, c) Abu Dhabi Global Market Registration Authority on the legislative developments in the field of data protection in the Gulf region and the main achievements of the authority, d) Chile on the current legislative developments and subsequent perspective of joining Convention 108+ , calling for the support of the Council of Europe in these endeavours, e) the International Committee of the Red Cross on the publication end of 2018 of a study prepared jointly with Privacy International on “the humanitarian metadata problem: ‘Doing no harm’ in the digital era” and launch of a new working series of data protection in Humanitarian action tackling block chain, digital identity, AI and machine, Connectivity as aid and use of social media, f) ADHR on its concerns on the latest legislative trends regarding online hate-speech, and congratulated Brazil and European Digital Rights (EDRI) for their first participation as observers;

2.17 took note of the information provided by the Data Protection Commissioner, highlighting the cases he dealt with since the 37<sup>th</sup> Plenary meeting and regretting that to date, a revised Regulation for data processing carried out by the Council of Europe is still not available;

2.18 took note of the presentations by the laureates of the Stefano Rodotà prize, Ingrida Milkaite and Eva Lievens, and Jef Ausloos, special mention of the Jury, held an exchange of views with them on their research and formally attributed the prize to the laureates;

2.19 confirmed the dates of the plenary meetings to be held in Strasbourg on 19 to 21 November 2019 and of the next Bureau meetings, to be held from 25 to 27 September 2019 in Paris and from 11 to 13 December 2019 in Strasbourg.

## APPENDIX I.

### AGENDA

	<b>1. Opening of the meeting</b>
<a href="#">T-PD(2018)RAP37Abr</a>	Abridged report of the 37 <sup>th</sup> Plenary meeting (Strasbourg, 20-22 November 2018)
<a href="#">T-PD(2019)47RAP</a>	Abridged report of the 47 <sup>th</sup> Bureau meeting (Paris, 20-22 March 2019)
<a href="#">T-PD(2017)WP2018-2019</a>	Work programme of the Committee 2018-2019
<a href="#">T-PD(2017)Rules</a>	Rules of procedure
	<b>2. Adoption of the agenda</b>
	<b>3. Statement by the secretariat</b>
	Christos Giakoumopoulos, Director General Directorate General - Human Rights and the Rule of Law
	<b>4. Modernisation of Convention 108</b>
	Required action: The Committee will take note of the information provided by the secretariat.
	<ul style="list-style-type: none"> <li>• <a href="#">Consolidated text of the modernised version of Convention 108</a></li> <li>• <a href="#">Explanatory report of the modernised Convention 108</a></li> <li>• <a href="#">Amending Protocol</a></li> </ul>
	<b>5. State of play, ratifications and accessions</b>
	Required action: The Committee will take note of the information provided by the secretariat.
	<ul style="list-style-type: none"> <li>• <a href="#">Convention 108+: chart of signatures and ratification</a></li> <li>• <a href="#">Convention 108: chart of signatures and ratifications</a></li> </ul>
	<b>6. Evaluation and follow up mechanism under Convention 108+</b>
	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.
<a href="#">T-PD(2018)20rev</a>	Draft questionnaire on the evaluation and follow-up mechanism

<a href="#">T-PD(2018)21rev</a>	Information elements on the evaluation and follow-up mechanism
	<b>7. Law enforcement transborder access to data</b>
<a href="#">T-PD(2019)3</a>	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.
<a href="#">Preparation of a 2nd Additional Protocol to the Budapest Convention on Cybercrime: Consultation with data protection experts - Issues for discussion</a>  <a href="#">T-CY discussion paper: Conditions for obtaining subscriber information – static versus dynamic IP addresses</a>  <a href="#">Provisional Answers from the Committee of Convention 108 to the Discussion paper for the Octopus Conference</a>  <a href="#">Key messages of the Octopus Conference 2018</a>	
	<b>8. Work programme</b>
<a href="#">Draft Work programme 2020-2021</a>	Experts: Frédéric Wickert, Founder and CEO of A.I. Sense Sandra Azria, Lawyer Jen Persson, Director, “defenddigitalme” Yves Pouillet, Honorary Rector of the University of Namur, former Director of the Research Center for Computer Science and Law (CRIDS) and Benoit Frénay, associate professor at the Faculty of Computer Science of the Université de Namur.
	<p><u>Required action:</u> The Committee will take note of the presentations by the experts on the following thematic:</p> <ul style="list-style-type: none"> <li>- facial recognition</li> <li>- data protection and education systems</li> <li>- <a href="#">Recommendation CM/Rec(2010)13</a> on the protection of individuals with regard to automatic processing of personal data in the context of profiling</li> </ul> <p>The Committee will hold an exchange of views on the forthcoming Work Programme of the Committee for 2020-2021 and</p>

	corresponding working methods and will adopt the work programme.
	<b>9. Case-Law</b>
<a href="#">ECHR Compilation</a>	<u>Required action:</u> The Committee will take note of the information provided by Pamela McCormick, Co-secretary of the Advisory Committee on Disputes of the ECtHR
	<a href="#">Court of Justice of the European Union</a> <a href="#">Inter-American Court of Human Rights</a>
	<b>10. Cooperation with other Council of Europe bodies and entities</b>
	<u>Required action:</u> The Committee will take note of the information provided by the secretariat.
	<ul style="list-style-type: none"> <li>• <a href="#">CAHENF</a></li> <li>• <a href="#">Bioethics Committee (DH-BIO)</a></li> <li>• <a href="#">CEPEJ</a></li> <li>• <a href="#">Steering Committee on Media and Information Society (CDMSI)</a> <ul style="list-style-type: none"> <li>○ <a href="#">MSI-AUT</a></li> </ul> </li> </ul>
	<b>11. Macolin Convention</b>
<a href="#">T-PD(2019)4</a>	Expert: Daniel Cooper, Partner, Covington & Burling LLP
	<u>Required Action:</u> The Committee will take note of the report and information provided by the expert and will hold an exchange of views on the issues at stake.
	<b>12. Cooperation projects</b>
	<u>Required action:</u> The Committee will take note of the information provided by the secretariat.
<a href="#">T-PD(2019)02Rev2</a>	Cooperation projects of the Council of Europe in the data protection field (Information Document)
	<b>13. Compilation document</b>
	<a href="#">Compilation of replies – DPAs governance models</a>
	<b>14. Overview of activities and major developments in the field of data protection</b>
	<u>Required action:</u> The Committee will take note of the information provided by the Secretariat.
	<ul style="list-style-type: none"> <li>• “Protection of digital privacy: challenges and perspectives” (Fes, Morocco, 28 January 2019)</li> </ul>

	<ul style="list-style-type: none"> <li>• International Conference Computers, Privacy &amp; Data Protection “Data Protection and democracy” (CPDP 2019) (Brussels, Belgium, 30 January-1 February 2019)</li> <li>• “Governing the Game Changer – Impacts of artificial intelligence development on human rights, democracy and the rule of law” (Helsinki, Finland, 26-27 February 2019)</li> <li>• MWC2019 Barcelona – Ministerial program (Barcelona, 25-27 February 2019)</li> <li>• UNCTAD - E-commerce week (Geneva, 1-4 April 2019)</li> <li>• Spring Conference of European Data Protection Authorities Data Protection authorities (Tbilisi 9-10 May)</li> <li>• IAPP Global Privacy Summit 2019 (Washington, May 1-3, 2019)</li> <li>• 2019 Data Protection Workshop within International Organisations (Paris, 17-18 June 2019)</li> <li>• EuroDIG (The Hague, 19-20 June 2019)</li> <li>• XVII Meeting of the Iberoamerican network, (Mexico, 19-21 June 2019)</li> <li>• International Conference on Privacy in Africa (Accra, 24-27 June 2019)</li> <li>• AFAPDP (Dakar, 16-18 September 2019)</li> <li>• ICDPPC (Tirana, 21-25 October 2019)</li> <li>• IGF (Berlin, 28-29 November 2019)</li> </ul>
	<b>15. Observers</b>
	<u>Required action:</u> The Committee will take note of the information provided by the observers.
	Observers - State of play and admission criteria
	<b>16. Data Protection Commissioner</b>
	<u>Required action:</u> The Committee will take note of the information provided by the Council of Europe Data Protection Commissioner.
	<a href="#">Secretary General's Regulation</a>
	<b>17. Stefano Rodotà Award</b>
	Guests: Ingrida Milkaite and Eva Lievens, Jef Ausloos
	<u>Required action:</u> The Committee will meet the laureates of the prize, and of the Jury's special mention, will take note of their presentations and will hold an exchange of views with them.
	<b>18. Next meetings</b>
	<u>Required action:</u> The Committee will take note of the dates for the next meetings.
	<b>19. Any Other Business</b>



## APPENDIX II.

### LIST OF PARTICIPANTS

#### MEMBERS / MEMBRES

##### **ALBANIA / ALBANIE**

Blerta Nerguti, Director of the Department of Legal Affairs Department, Information and Data Protection Commissioner (IDP)

##### **ANDORRA / ANDORRE**

Anna Cadena, Data Protection Agency of Andorra, Carrer Dr. Vilanova, 15-17, 5, edifici Consell General, AD 500-Andorra la Vella

Joan Crespo, Head of the Data Protection Agency of Andorra, Carrer Dr. Vilanova, 15-17, -5, edifici Consell General, AD 500-Andorra la Vella

##### **ARMENIA / ARMENIE**

Gevorg Hayrapetyan, Head of the Personal Data Protection Agency, RA Ministry of Justice, 41a Halabyan street, 0078, Yerevan, Armenia

##### **ARGENTINA / ARGENTINE**

Eduardo Andrés Bertoni, Directeur de l'Agence d'Accès à l'Information Publique, Julio Argentino Roca 710, 2° Piso, Ciudad Autónoma de Buenos Aires, C.P C1067ABP

##### **AUSTRIA / AUTRICHE**

Michael Adelman, LL.M. (WU), Austrian Data Protection Authority, Barichgasse 40-42, 1030 Vienna

**AZERBAIJAN / AZERBAÏDJAN** No information received / Absence d'information

##### **BELGIUM / BELGIQUE**

Alexander Hoefmans, Chef de service, Égalité des chances, SPF Justice, 115 Boulevard de Waterloo, 1000 Brussel

Valérie Verbruggen, Conseiller Juridique, Autorité de protection des données, 35 Rue de la presse, 1000 Bruxelles

**BULGARIA / BULGARIE** No information received / Absence d'information

##### **CABO VERDE / CAP VERT**

Djamilson Pinto, Member of the National Commission of Data Protection (CNPD), Av. da China, Rampa Terra Branca, Apartado 1002 - C.P. 7600

##### **CROATIA / CROATIE**

Nikolina Novaković, Senior Associate, Department for International Cooperation, European and Legal Affairs, Personal Data Protection Agency, Martićeva 14, 10000 Zagreb

**CYPRUS / CHYPRE** (apologised / excusé)

**CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE**

Jiří Maštálka, Office for Personal Data Protection Pplk. Sochora 27, 170 00 Prague 7

**DENMARK / DANEMARK** No information received / Absence d'information

**ESTONIA / ESTONIE** (apologised / excusé)

**FINLAND / FINLANDE**

Virpi Koivu, Senior Specialist, Department for Democracy and Public Law, EU Law and Data Protection, Ministry of Justice, PO Box 25, FI-00023

**FRANCE**

Agnès Maitrepierre, Chargée de mission auprès du Directeur des affaires juridiques du Ministère des affaires étrangères et du développement international, 57 Boulevard des Invalides, 75700 Paris

Nana Botchorichvili, Juriste, Service des Affaires européennes et internationales, CNIL, 3 Place de Fontenoy, TSA 8071, 75334 Paris Cedex 07

**GEORGIA / GÉORGIE**

Tamar Kaldani (first Vice-Chair / première Vice-présidente), Personal Data Protection Inspector of Georgia, 7, N. Vachnadze Str., Tbilisi, 0105

Niko Tatulashvili, Head of International Relations Department, Office of Personal Data Protection Inspector, 7, N. Vachnadze Str., Tbilisi, 0105

**GERMANY / ALLEMAGNE**

Corinna Holländer, Data Protection (V II 4), Legal Advisor, Federal Ministry of the Interior, Building and Community (BMI) Alt-Moabit 140, 10557 Berlin

Stefan Niederer, The Federal Commissioner for Data Protection and Freedom of Information, Unit 14 - European and International Affairs, Husarenstraße 30, 53117 Bonn

**GREECE / GRÈCE**

Sofia Kostoula, Judge of First Instance, Investigating Judge of Chania, Crete, Hellenic Republic,

Plateia Eleftherias, 73100, Chania

**HUNGARY / HONGRIE** (apologised / excusé)

**ICELAND / ISLANDE**

Björg Thorarensen, Chairperson of the Board of the Data Protection Authority Iceland, Raudarárstigur 10, 105 Reykjavík

## **IRELAND / IRLANDE**

Noreen Walsh, Civil Law Reform Division, Department of Justice and Equality, Bishop's Square  
Redmond's Hill, Dublin 2

## **ITALY / ITALIE**

Alessandra Pierucci (Chair/Présidente), Garante, Roma

## **LATVIA / LETTONIE**

Kristīne Šāvēja, Senior Expert of Division of European Union and International Cooperation Matters,  
Data State Inspectorate of Latvia, 11/13 -15 Blaumana Street, 1011 Riga

## **LIECHTENSTEIN**

Julia Stütz, Legar Officer, Data Protection Authority, P.O. Box 684, 9490 Vaduz

## **LITHUANIA / LITUANIE**

Danguolė Morkūnienė, Deputy Director, State Data Protection Inspectorate, L. Sapiegos str. 17, 10312  
Vilnius

## **LUXEMBOURG**

Gérard Lommel (second vice-chair / deuxième Vice-président), Commissaire du gouvernement à la  
protection des données, Ministère d'Etat, Bâtiment Zurich, 3 boulevard Roosevelt, L-2450 Luxembourg

## **MALTA / MALTE**

Ingrid Camilleri, B.A., LL.D., Head – Legal, Office of the Information and Data Protection Commissioner,  
Airways House, Second Floor, High Street, Sliema SLM 1549

Isabelle Camilleri, Information and Data Protection Analyst, Strategy and Support, 280, Republic Street,  
Valletta

## **MAURITIUS / MAURICE**

Druheisha Madhub, Data Protection Commissioner, Data Protection Office, 5th Floor, SICOM Tower,  
Wall Street, Ebène

## **MEXICO / MEXIQUE**

Joaquín González Casanova, Director General of International Affairs, National Institute for Transparency,  
Access to Information and Personal Data Protection (INAI)

Lorena Alvarado Quezada, Adjointe à l'Observateur Permanent, Mission Permanente du Mexique auprès  
du Conseil de l'Europe

Camille Baumann, stagiaire à la Mission permanente

Nina Audinet, stagiaire à la Mission permanente

## **MONACO**

Corinne Laforest de Minotty, Chargée de Missions auprès du Conseiller de Gouvernement-Ministre des Relations Extérieures et de la Coopération, Département des Relations Extérieures et de la Coopération, Ministère d'Etat, Place de la Visitation, 98000 Monaco

## **MONTENEGRO**

Radenko Lacmanović, member of Council, Agency for Personal Data Protection and Free Access to Information of Montenegro, Bulevar Svetog Petra Cetinjskog br. 147, Podgorica

Dušan Slijepčević, Assistant of Mr Lacmanović

## **NETHERLANDS / PAYS-BAS**

Jaap Van Rijn van Alkemade, Senior Legislative Lawyer, Ministry of Justice and Security, Postbus 20301, 2500 EH The Hague

## **NORTH MACEDONIA / MACÉDOINE DU NORD**

Igor Kuzevski, Secretary General, Directorate for Personal Data Protection, Goce Delcev 18, 1000 Skopje

## **NORWAY / NORVEGE**

Torunn Olsen, Higher Executive Officer, Ministry of Justice and Public Security

## **POLAND / POLOGNE**

Urszula Góral, Director of the Social Education and International Cooperation Department, Bureau of the Data Protection Authority, ul. Stawki 2, 00-193 Warszawa

## **PORTUGAL**

João Pedro Cabral, Legal Adviser, Directorate General of Justice Policy, Ministry of Justice, Avenida D. João II, n.º1.08.01 E, Torre H, Pisos 2/3, 1990-097 Lisboa

## **REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

Eduard Raducan, Director, National Center for Personal Data Protection of the Republic of Moldova, 48 Serghei Lazo street, MD-2004 Chisinau

**ROMANIA / ROUMANIE** No information received / Absence d'information

## **RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE**

Alexandra Atakisheva, Chief Expert of the Department of legislation initiatives implementation of the Ministry of Digital Development, Communications and Mass Media

Maria Barsukova, Third Secretary, Department for the Protection of Human Rights, Ministry of Foreign Affairs

Valentina Smirnova, Deputy Head of Division of the registry of personal data subjects of the Department of the protection of rights of personal data subjects, Federal Service for Supervision of Communications, Information Technology And Mass Media (Roskomnadzor)

Anastasiya Toporova, Third Secretary, Legal Department, Ministry of Foreign Affairs

Olga Zinchenko, Third Secretary, Department for the Protection of Human Rights, Ministry of Foreign Affairs.

### **SAN MARINO / SAINT MARIN**

Nicola Fabiano, President, Autorita Garante per la protezione dei dati personali, Scala Bonetti, 47893 San Marino

### **SÉNÉGAL**

Paul Mendy, Secrétaire Permanent, Commission de Protection des données personnelles (CDP), BP 25528 Dakar - Fann, 34 Sicap Mermoz VDN Lot B. 34, Mermos VDN, Dakar

Adama Sow, Directeur de la Communication et des Relations publiques, Commission de Protection des données personnelles (CDP), BP 25528 Dakar - Fann, 34 Sicap Mermoz VDN Lot B. 34, Mermos VDN, Dakar

### **SERBIA/SERBIE**

Nevena Ružić, Head of Office, Commissioner for Information of Public Importance and Personal Data Protection, 42 Svetozata Markovica, 11 000 Belgrade

### **SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE**

Petra Lašová, The Office for Personal Data Protection of the Slovak Republic, Department of Legal Services, Hraničná 12n 820 07 Bratislava 27

### **SLOVENIA / SLOVÉNIE**

Tina Ivanc, Office of the Information Commissioner, Dunajska cesta 22, 1000 Ljubljana

### **SPAIN / ESPAGNE**

Pablo Manuel Mateos Gascueña, Head of Service, Spanish Agency of Data Protection, Jorge Juan 6, 28001, Madrid

### **SWEDEN / SUEDE**

Johanna Spanne, Legal Advisor, Division for Constitutional Law, Ministry of Justice, Stockholm

### **SWITZERLAND / SUISSE**

March Buntschu, Préposé fédéral suppléant, Préposé fédéral à la protection des données et à la transparence (PFPDT), Feldeggweg 1, 3003 Berne

### **TUNISIA / TUNISIE**

Chawki Gaddes, Président de l'Instance Nationale de Protection des Données Personnelles, 1, rue Mohamed Moalla, 1002, Mutuelleville, Tunis, B.P. 525

## **TURKEY / TURQUIE**

Osman Ümit Eker, Rapporteur Judge, Directorate General for International Relations and EU Affairs, Ministry of Justice

## **UKRAINE**

Viktor Barvitskyi, Representative of the Commissioner on information rights and representation at the Constitutional Court of Ukraine, 21/8, Instytutska str., Kyiv 01008

## **UNITED KINGDOM / ROYAUME-UNI**

Kaoutar Abousmir, Head of International Data Strategy, Cyber Security and Data Policy Team, 4th Floor, 100 Parliament Street, London SW1A 2BQ

Blandine Cassou-Mounat, Senior Policy Officer, International Engagement, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Eve Fensome, EU and International Data Protection Policy, 100 Parliament Street, London SW1A 2BQ

Christine Ferguson, International Strategy Adviser, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

## **URUGUAY**

Gonzalo Sosa, Advisor to the Executive Council, Unidad Reguladora y de Control de Datos Personales, Liniers 1324, 4th. Floor, Montevideo

## **OBSERVERS / OBSERVATEURS**

### **ABU DHABI GLOBAL MARKET REGISTRATION AUTHORITY**

Shamma AlMemari, Monitoring & Enforcement Specialist – Office of Data Protection, Abu Dhabi Global Market, Office of Data Protection, Abu Dhabi Global Market, PO Box 111999 Abu Dhabi, United Arab Emirates

Sami Mohammed, Monitoring & Enforcement Manager – Office of Data Protection, Abu Dhabi Global Market, PO Box 111999 Abu Dhabi, United Arab Emirates

### **BRAZIL / BRESIL**

José Antônio Ziebarth, Director, office of the Special Secretary of Debureaucratization, Management, and Digital Government, Ministry of Economy

### **BURKINA FASO**

Bienvenue Ambroise Bakyono, Vice-Président, Commission de l'informatique et des libertés (CIL)

Ahmed Hissène Ange Marie Noël Ouedraogo, Secrétaire général, Commission de l'informatique et des libertés (CIL)

Halidou Rouamba, Membre de la Commission de l'informatique et des libertés (CIL)

## **CHILE / CHILI**

Marcelo Drago, Commissioner, Chilean Transparency Council, Morandé 360 piso 8, Santiago

Fernando Garcia Naddaf, Chief of International Affairs, Chilean Transparency Council, Morandé 360 piso 8, Santiago

## **GABON**

COMMISSION NATIONALE POUR LA PROTECTION DES DONNÉES À CARACTÈRE PERSONNEL (CNPDCP)

Joël Dominique Ledaga, Président

Euloge Nambi, Questeur

Philomène Biyogo, Commissaire Permanent

Steve Singault Ndinga, Commissaire Permanent

## **ISRAEL / ISRAËL**

Sharon Azarya, Head of International Relations Innovation and Policy Development Department, The Government Campus, 125 Begin Road, 9th Floor, POB 7360, Tel Aviv 6701201

Eyal Zandberg, Senior Director of Constitutional Law in the Department of Public and Constitutional Law, Ministry of Justice

## **JAPAN / JAPON**

Satoru Hamaguchi, Director, Personal Information Protection Commission (PPC)

## **MOROCCO / MAROC**

Nouzha Mhandez Tlemçani, Responsable du Département Contrôle et Expertise

Commission Nationale de contrôle de la protection des données à Caractère Personnel (CNDP)

## **PHILIPPINES**

Erlaine Vanessa Lumanog, Attorney IV, Policy Review Division, The National Privacy Commission

5F East Wing, Delegation Building, PICC Complext, Vicente Sotto St. 1307 Pasay City

Ivy Grace Villasoto, OIC-Director of the Privacy Policy Office, The National Privacy Commission

## **REPUBLIC OF KOREA / REPUBLIQUE DE COREE**

Euna Choi, Researcher, Personal Information Cooperation Team, Korea Internet & Security Agency (KISA)

Jeasuk Yun, Manager, Personal Information Cooperation Team, Korea Internet & Security Agency (KISA)

Park Ji Eun, Director General for Investigation and Dispute Mediation, Personal Information Protection Commission (PIPC)

Jung Hye Jin, Deputy director, Personal Information Protection Commission (PIPC)

### **U.S.A.**

Ron Katwan, Legal Adviser, US Mission to the European Union, Brussels, Belgium

### **ASSOCIATION EUROPEENNE POUR LA DEFENSE DES DROITS DE L'HOMME / EUROPEAN ASSOCIATION FOR THE DEFENSE OF HUMAN RIGHTS (AEDH)**

Maryse Artiguelong, Déléguée, Rue de la Caserne 33 – 1000 Brussels, Belgium

### **FRENCH-SPEAKING ASSOCIATION OF PERSONAL DATA PROTECTION AUTHORITIES / ASSOCIATION FRANCOPHONE DES AUTORITÉS DE PROTECTION DES DONNÉES PERSONNELLES (AFAPDP)**

Chawki Gaddes, Président *Ad interim*

### **European Digital Rights (EDRI)**

Chloé Berthelemy, Rue Belliard 12, B-1040 Brussels

### **EUROPEAN DATA PROTECTION SUPERVISOR (EDPS) / LE CONTRÔLEUR EUROPEEN DE LA PROTECTION DES DONNÉES (CEPD)**

Olivier Matter, Legal & Policy Officer, Postal address: Rue Wiertz 60, B-1047 Brussels, Office address: Rue Montoyer 30, B-1000 Brussels

### **EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

Cristina Monti, Policy officer, Directorate General for Justice and Consumers, C4: International data flows and protection, MO59 03/10, B-1049 Brussels/Belgium

### **IBEROAMERICAN NETWORK / RÉSEAU IBERO-AMERICAIN**

Gonzalo Sosa, Lawyer, Advisor to the Executive Council, Data Protection Authority of Uruguay (URCDP)

### **INTERNATIONAL COMMITTEE OF THE RED CROSS / COMITÉ INTERNATIONAL DE LA CROIX-ROUGE (ICRC / CICR)**

Maria-Elena Ciccolini, Deputy Data Protection Officer for Europe and Central Asia, 7, rue Guimard, 1040 Brussels

Massimo Marelli, Head of Data Protection Office, 19 Avenue de la Paix, 1202 Geneva

### **INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS / CONFERENCE INTERNATIONALE DES COMMISSAIRES A LA PROTECTION DES DONNEES ET DE LA VIE PRIVEE**

Olivier Matter, Legal & Policy Officer, EDPS



## **INTERPOL**

Kathleen Bour, Data Protection Officer, 200 Quai Charles de Gaulle 69006 Lyon, France

## **OTHER PARTICIPANTS / AUTRES PARTICIPANTS**

## **COUNCIL OF EUROPE DATA PROTECTION COMMISSIONER / COMMISSAIRE A LA PROTECTION DES DONNEES DU CONSEIL DE L'EUROPE**

Jean-Philippe Walter, Council of Europe, Strasbourg, France

## **EXPERTS SCIENTIFIQUES / SCIENTIFIC EXPERTS**

Sandra Azria, Azria Avocats, 48, rue de Charenton, 75012 Paris

Daniel Cooper, Partner, Covington & Burling LLP, 265 Strand, London WC2R 1BH

Benoit Frenay, Professor, CRIDS (Centre de Recherches Informatique, Droit et Société)

Gert Vermeulen, Director, Institute for International Research on Criminal Policy (IRCP) Ghent University, Campus Aula, Universiteitstraat 4, B-9000 Ghent, Belgium

Jen Persson, Director, defenddigitalme

Yves Poullet, Recteur honoraire de l'université de Namur, Professeur honoraire à la faculté de droit  
Professeur associé à l'Université Catholique de Lille, Membre de l'Académie Royale de Belgique,  
Université de Namur, Rue de Bruxelles 61 - 5000 Namur, Belgique

Cécile de Terwangne, Professeur à la Faculté de Droit, Directrice de recherche au CRIDS (Centre de Recherches Informatique, Droit et Société), Facultés Universitaires Notre-Dame de la Paix (FUNDP) Namur, Belgique

Frédéric Wickert, Founder & CEO A.I. Sense, 2A Rue de l'Église, 67370 Truchtersheim

## **INVITED GUESTS / INVITES**

Jef Ausloos, Postdoctoral researcher, Institute for Information Law (IViR) / University of Amsterdam,

Roeterseilandcampus, Building A, 5th Floor, Room A5-08, Nieuwe Achtergracht 166, 1018 WV, P.O. BOX: 15514, 1001 NA Amsterdam

Joseph A. Cannataci, UN Special Rapporteur on the right to privacy

Elizabeth Coombs, Research Support Officer, Taskforce health data UNSRP

Eva Lievens, Professor at Law & Technology, Ghent University, Faculty of Law & Criminology, Voldersstraat 5, 9000 Ghent, Belgium

Sean McLaughlan, Taskforce health data UNSRP

Ingrida Milkaite, Doctoral researcher, Research group Law & Technology, Department of Interdisciplinary Study of Law, Private Law and Business Law, Ghent University, Faculty of Law and Criminology, Voldersstraat, 59000 Ghent

Marie-Catherine Wagner, Research Associate, University of Vienna, Department of Innovation and Digitalisation in Law, Taskforce health data UNSRP

**COUNCIL OF EUROPE BODIES AND SECRETARIAT / ORGANES ET SECRETARIAT DU CONSEIL DE L'EUROPE**

**European Court of Human Rights / Cour européenne des droits de l'homme**

Pamela McCormick, Registry Lawyer, ECtHR

**Office of the Commissioner for Human Rights / Bureau de la Commissaire aux droits de l'homme**

Matthieu Birker, Adviser / Conseiller

**Directorate of Legal Advice and Public International Law / Direction du conseil juridique et du droit international public (DLAPIL)**

Ana Gomez Heredero, Head of the Treaty Office Unit

**Directorate General of Democracy / Direction générale Démocratie**

**Division of Sport Conventions / Division des Conventions du Sport**

Mikhael de Thyse, Secrétaire, Convention sur la Manipulation de Compétitions Sportives

**Children's rights Division / Division des droits de l'enfant**

Ad hoc Committee for the Rights of the Child / Comité ad hoc pour les droits de l'enfant (**CAHENF**)

Livia Stoica Becht, Secretary to the Ad hoc Committee for the Rights of the Child

**Directorate General Human Rights and Rule of Law /**

**Direction générale Droits de l'Homme et Etat de Droit**

Christos Giakoumopoulos, Directeur général

**Information Society Department / Service de la société de l'information**

Mr Patrick Penninckx, Head of Department / Chef de Service

**Cybercrime Division / Division de la Cybercriminalité**

Alexander Seger, Executive Secretary of the Cybercrime Convention Committee / Secrétaire exécutif du Comité de la Convention sur la Cybercriminalité (T-CY)

Nina Lichtner, Programme Officer

**Data Protection Unit / Unité de la protection des données**

Laura Barrera Cano, trainee / stagiaire

Anne Boyer-Donnard, Principal Administrative Assistant / assistante administrative principale

Péter Kimpiàn, Programme Advisor / Conseiller de programme

Sophie Kwasny, Secretary of the Committee of Convention 108 / Secrétaire du Comité de la Convention 108

Lorena Ungureanu, trainee / stagiaire

**INTERPRETERS / INTERPRETES**

Rémy Jain

Clarissa Worsdale

Christine Trapp