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

CONVENTION 108

38th Plenary meeting

Strasbourg, 13-14 June 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 38th plenary meeting¹ 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 129th 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 54th Party (taking effect as of 1 June 2019) and of Morocco as 55th 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 on 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);

¹ 128 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 Poullet 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-

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 37th 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

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<tbody>
<tr>
<td>1. Opening of the meeting</td>
<td>Abridged report of the 37th Plenary meeting (Strasbourg, 20-22 November 2018)</td>
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<td>T-PD(2017)Rules</td>
<td>Rules of procedure</td>
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<td>2. Adoption of the agenda</td>
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<td>3. Statement by the secretariat</td>
<td>Christos Giakoumopoulos, Director General Directorate General - Human Rights and the Rule of Law</td>
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<td>4. Modernisation of Convention 108</td>
<td>Required action: The Committee will take note of the information provided by the secretariat.</td>
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<td>5. State of play, ratifications and accessions</td>
<td>Required action: The Committee will take note of the information provided by the secretariat.</td>
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<td>6. Evaluation and follow up mechanism under Convention 108+</td>
<td>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.</td>
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<tr>
<td>T-PD(2018)20rev</td>
<td>Draft questionnaire on the evaluation and follow-up mechanism</td>
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<td><strong>T-PD(2018)21rev</strong></td>
<td>Information elements on the evaluation and follow-up mechanism</td>
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<td><strong>7. Law enforcement transborder access to data</strong></td>
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<td><strong>T-PD(2019)3</strong></td>
<td>Expert: Mr Gert Vermeulen, Full Professor of (European and international) criminal law and director of the Institute for International Research on Criminal Policy (IRCP).</td>
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<td>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.</td>
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<td><strong>Preparation of a 2nd Additional Protocol to the Budapest Convention on Cybercrime: Consultation with data protection experts - Issues for discussion</strong></td>
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<td><strong>T-CY discussion paper: Conditions for obtaining subscriber information – static versus dynamic IP addresses</strong></td>
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<td><strong>Provisional Answers from the Committee of Convention 108 to the Discussion paper for the Octopus Conference</strong></td>
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<td><strong>Key messages of the Octopus Conference 2018</strong></td>
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<td><strong>8. Work programme</strong></td>
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<td><strong>Draft Work programme 2020-2021</strong></td>
<td>Experts: Frédéric Wickert, Founder and CEO of A.I. Sense Sandra Azria, Lawyer Jen Persson, Director, “defenddigitalme” Yves Poulet, Honorary Rector of the University of Namur, former Director of the Research Center for Computer Science and Law (CIRDS) and Benoit Frénay, associate professor at the Faculty of Computer Science of the Université de Namur.</td>
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<td>Required action: The Committee will take note of the presentations by the experts on the following thematics:</td>
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<td>- facial recognition</td>
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<td>- data protection and education systems</td>
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<td>- Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling</td>
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<td>The Committee will hold an exchange of views on the forthcoming Work Programme of the Committee for 2020-2021 and</td>
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corresponding working methods and will adopt the work programme.

9. Case-Law

**ECHR Compilation**

Required action: The Committee will take note of the information provided by Pamela McCormick, Co-secretary of the Advisory Committee on Disputes of the ECtHR

**Court of Justice of the European Union**

**Inter-American Court of Human Rights**

10. Cooperation with other Council of Europe bodies and entities

Required action: The Committee will take note of the information provided by the secretariat.

- CAHENF
- Bioethics Committee (DH-BIO)
- CEPEJ
- Steering Committee on Media and Information Society (CDMSI)
  - MSI-AUT

11. Macolin Convention

**T-PD(2019)4**

Expert: Daniel Cooper, Partner, Covington & Burling LLP

Required Action: 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.

12. Cooperation projects

Required action: The Committee will take note of the information provided by the secretariat.

**T-PD(2019)02Rev2**

Cooperation projects of the Council of Europe in the data protection field (Information Document)

13. Compilation document

Compilation of replies – DPAs governance models

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.

- “Protection of digital privacy: challenges and perspectives” (Fes, Morocco, 28 January 2019)
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<th>Event</th>
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<tr>
<td>International Conference Computers, Privacy &amp; Data Protection “Data</td>
<td>January 1 - February</td>
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<td>Protection and democracy” (CPDP 2019) (Brussels, Belgium)</td>
<td>2019</td>
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<td>“Governing the Game Changer – Impacts of artificial intelligence</td>
<td>February 26 - 27</td>
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<td>development on human rights, democracy and the rule of law” (Helsinki, Finland)</td>
<td>2019</td>
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<td>MWC2019 Barcelona – Ministerial program (Barcelona)</td>
<td>February 25 - 27</td>
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<td>UNCTAD - E-commerce week (Geneva)</td>
<td>April 1 - 4</td>
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<td>Spring Conference of European Data Protection Authorities (Tbilisi)</td>
<td>May 9 - 10</td>
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<td>IAPP Global Privacy Summit 2019 (Washington)</td>
<td>May 1 - 3</td>
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<td>2019 Data Protection Workshop within International Organisations</td>
<td>June 17 - 18</td>
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<td>EuroDIG (The Hague)</td>
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<td>XVII Meeting of the Iberoamerican network</td>
<td>June 19 - 21</td>
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<td>International Conference on Privacy in Africa (Accra)</td>
<td>June 24 - 27</td>
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<td>AFAPDP (Dakar)</td>
<td>September 16 - 18</td>
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<td>ICDPPC (Tirana)</td>
<td>October 21 - 25</td>
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<td>IGF (Berlin)</td>
<td>November 28 - 29</td>
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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 Rodotà Award

**Guests:** Ingrida Milkaite and Eva Lievens, Jef Ausloos

**Required action:** 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.

18. Next meetings

**Required action:** The Committee will take note of the dates for the next meetings.

19. Any Other Business
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
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BULGARIA / BULGARIE No information received / Absence d'information

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LUXEMBOURG
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Joaquín González Casanova, Director General of International Affair, 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
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Dušan Slijepčević, Assistant of Mr Lacmanović

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No information received / Absence d’information

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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

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SERBIA/SERBIE

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

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**TURKEY / TURQUIE**

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

**UKRAINE**

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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

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**OBSERVERS / OBSERVATEURS**

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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

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