



Strasbourg, 13 December 2019

T-PD-BUR(2019)49RAP

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

(Convention 108)

49th meeting of the Bureau

Strasbourg, 11-13 December 2019

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

1. The Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Data (“Convention 108”) held its 49th meeting in Strasbourg from 11 to 13 December 2019, with Ms Alessandra Pierucci (Italy) in the chair. The agenda, as adopted by the Bureau and the list of participants are set out in Appendices I and II.

2. The Bureau of the Committee of Convention 108:

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

- the ratification by Bulgaria of the Protocol (CETS n°223) amending Convention 108 and depositing its instrument of ratification on 10 December being the first Party to do so, and calling on other Parties to do the same;

- the Ad-hoc Committee on Artificial Intelligence (CAHAI) starting its work, on the feasibility study of an international legal framework on AI, on the mapping of the latest trends regarding AI type data processing, and on the progress report to be presented to the Committee of Ministers by May 2020 and of the importance of a close cooperation with the Committee of Convention 108;

- the excellent organisation and outcomes of the IGF held in Berlin (25-29 November 2019);

2.2. took note of the information provided by the Secretariat on:

- a) recent signatures of Convention 108+ (amending Protocol CETS n°223) by Switzerland on 21 November 2019, by Serbia on 22 November 2019 and by North Macedonia on 5 December 2019, thus bringing - to date - the total number of signatures to 37, welcoming the announced signature by the Slovak Republic (17 December 2019);

- b) recent ratification of Convention 108+ by Bulgaria on 10 December 2019 and on the announced deposit of ratification instruments by Croatia (scheduled for 18 December 2019);

- c) a first exercise of follow-up on the state of signatures and ratification, carried out by the Ministers’ Deputies and their Group of Rapporteurs on Legal Cooperation (GR-J) based on the information provided by countries in line with the decision adopted at the May 2019 Ministerial session (CM/Del/Dec(2018)128/5);

2.3 took note of the information provided by Ms Cécile de Terwangne and Mr Franck Dumortier on the documents relating to the evaluation and follow-up mechanism under Convention 108+ and to the examination of the request for accession by Costa Rica, held an exchange of views with the experts regarding proposed modifications to the documents, and agreed that revised versions will be circulated to delegations in time for compiling written comments with a view to further discussions at the 50th Bureau meeting;

2.4 took note of the presentation provided by the Secretariat on the developments in the negotiations of the draft Second Additional Protocol to the Budapest Convention on Cybercrime (CETS n°185) and of the information provided by a delegation regarding the imminence (starting January 2020) of the main negotiations on the privacy and data protection regime applicable to the second additional Protocol, reaffirming that the data protection regime of the second additional Protocol should be based on Convention 108+ and confirming its availability to contribute to the on-going negotiations on the basis of the opinion of the Committee (T-PD(2019)8FIN) adopted during the 39th plenary meeting;

2.5 took note of the presentation by Ms Sandra Azria (via videoconference) of the report on facial recognition and held an exchange of views with the expert on the set of recommendations and proposed modifications, agreeing that a revised version will be circulated to delegations in time for compiling written comments with a view to further discussions at the 50th Bureau meeting;

2.6 took note of the presentation by Ms Jen Persson of the recommendations contained in her report “Children’s data protection in Education systems: Challenges and possible remedies”, held an exchange of views with the expert on the set of recommendations and proposed modifications, agreeing that a revised version will be circulated to delegations in time for compiling written comments with a view to further discussions at the 50th Bureau meeting;

2.7 took note of the information on co-operation with other Council of Europe bodies, notably the CAHAJ which held its first meeting on 18-20 November 2019 (see *supra*) and the close inter-relation between this work and the work of the Committee, the Committee of Convention on the Manipulation of Sports Competitions (Macolin Convention) and the Steering Committee on Media and Information Society (CDMSI), in particular in respect of the approval by the CDMSI of the draft Recommendation on the human rights impact of algorithmic decision-making (see opinion T-PD(2019)09) and the forthcoming Council of Europe Conference of Ministers responsible for Media and Information Society (Nicosia, Cyprus, 28-29 May 2020);

2.8 took note of the major developments at national and international level in the data protection field, and in particular of the information provided by Mr Omar Seghrouchni, President of the CNDP of Morocco, on the work of the Digital Identity Working Group of the African Network of Data Protection Authorities (a first meeting of the working group was held in Rabat, 4-5 December 2019) and by Mr Gérald Page, Chair of ICRC Data Protection Commission, regarding the biometrics policy adopted by the ICRC. In light of the importance of the topic of digital identity, and its articulation with the current work of the Committee, notably on facial recognition, and past work (Progress reports on biometrics of 2005 and 2014), the Bureau decided to propose that this thematic be tackled by the Plenary in 2020, falling under item 5.5 of the Work programme of the Committee, instructing its Secretariat to initiate substantive work on this topic, with the assistance of an expert, in view of the 50th Bureau meeting;

2.9 took note, under item 10 of the agenda on observers, of the information provided by the representative of the European Data Protection Supervisor (EDPS) on the confirmation on 5 December of the appointment of Mr Wojciech Wiewiórowski as European Data Protection Supervisor, for a 5 years’ mandate, and on the recent publication of its activity report, a new strategic policy also being under preparation. The Bureau took note of the request by the data protection authority of São Tomé and Príncipe to be granted observer status and instructed the Secretariat to launch a written procedure to enable the Committee to decide on this request prior to its 40th plenary meeting;

2.10 decided, regarding the request made by a delegation during the 39th plenary meeting on the interpretation of some provisions of Convention 108+, that a draft document providing interpretative guidance on those questions would be prepared in view of discussions at the 50th Bureau meeting;

2.11 confirmed the dates of the plenary meeting 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 25 to 27 March 2020 in Paris and 28 to 30 September 2020 in Paris.

APPENDIX I

AGENDA

	1. Opening of the meeting
T-PD(2019)RAP39Abr	Abridged report of the 39 th Plenary meeting (Strasbourg, 19-21 November 2019)
T-PD-BUR(2019)48RAP	Abridged report of the 48 th Bureau meeting (Paris, 25-27 September 2019)
T-PD(2017)WP2018-2019 T-PD(2019)WP2020-2021final	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
	<u>Required action:</u> The Bureau 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
	<u>Required action:</u> The Bureau will take note of the information provided by the secretariat. <ul style="list-style-type: none">• 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 Franck Dumortier, CRIDS, Namur <u>Required action:</u> The Bureau/WG will take note of the information provided by the by the experts and will hold an exchange of views on the topic

Terms of Reference	ToR of the Working Group on the evaluation and monitoring mechanism
T-PD(2018)20rev3	Evaluation questionnaire
T-PD(2018)21rev3	Document on the evaluation and follow-up mechanism under Convention 108+: process and rationale
	7. Law enforcement transborder access to data
T-PD(2019)8FIN	<u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and will hold an exchange of views on the issues at stake.
	T-PD(2019)3 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 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	<p>Experts: Sandra Azria, Lawyer; Frédéric Wickert, Founder and CEO of A.I. Sense</p> <p><u>Required action:</u> The Bureau will take note of the draft report 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.</p>
	9. Data protection and education systems
T-PD(2019)06BISrev3 T-PD(2019)06rev3	<p>Expert: Jen Persson, Director, “defenddigitalme”</p> <p><u>Required action:</u> The Bureau 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.</p>
	10. Cooperation with other Council of Europe bodies and entities
	<u>Required action:</u> The Bureau will take note of the information provided by the secretariat.
	<ul style="list-style-type: none"> • Bioethics Committee (DH-BIO) • CAHAJ • Macolin Convention

	<ul style="list-style-type: none"> • Steering Committee on Media and Information Society (CDMSI)
	11. Overview of activities and major developments in the field of data protection
	<u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and delegations.
ICRC Biometrics Policy	<p>Theme: Data Protection and Digital Identity:</p> <ul style="list-style-type: none"> • African Network - Digital identity Working Group (Rabat, 4-5 December 2019) - Omar Seghrouchni, President of the CNDP Morocco • ICRC Biometrics policy – Gérald Page, Chair of ICRC Data Protection Commission • IGF (Berlin, 25-29 November 2019)
	12. Observers
	<u>Required action:</u> The Bureau will take note of the information provided by the observers.
	Observers - State of play and admission criteria
	13. Interpretation of provisions
	<u>Required action:</u> The Bureau will discuss the possible interpretation of provisions of modernised Convention 108 as requested by a delegation during the 39 th plenary meeting
	14. Next meetings
	<u>Required action:</u> The Bureau will take note of the dates for the next meetings.
	<p><u>Dates of further Bureau meetings in 2020:</u></p> <ul style="list-style-type: none"> • 50th Bureau meeting (Paris, 25-27 March 2020) • 51st Bureau meeting (Paris, 28-30 September 2020) <p><u>Dates of the Plenary meetings in 2020:</u></p> <ul style="list-style-type: none"> • 40th Plenary meeting (Strasbourg, 1-3 July 2020) • 41st Plenary meeting (Strasbourg, 18-20 November 2020)
	15. Any Other Business

APPENDIX II

LIST OF PARTICIPANTS **MEMBERS OF THE BUREAU / MEMBRES DU BUREAU**

ARGENTINA/ARGENTINE

(excused/excusé)

GEORGIA / GÉORGIE

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

ITALY / ITALIE

Pierucci Alessandra, (Chair / Présidente), Piazza di Monte Citorio 121, 00186 Rome

LUXEMBOURG

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

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

SERBIA / SERBIE

Nevena Ružić, Assistant to the Secretary General, Commissioner for Information of Public Importance and Personal Data Protection, 42 Svetozata Markovica, 11000 Belgrade

SENEGAL / SÉNÉGAL

Awa Ndiaye, Présidente, Commission de Protection des données personnelles (CDP), BP 25528 Dakar - Fann, 34 Sicap Mermoz VDN Lot B., 34, Mermos VDN, Dakar

COUNCIL OF EUROPE DATA PROTECTION COMMISSIONER / COMMISSAIRE À LA PROTECTION DES DONNÉES DU CONSEIL DE L'EUROPE

Jean-Philippe Walter

MEMBERS OF THE COMMITTEE / MEMBRES DU COMITÉ

GERMANY / ALLEMAGNE

Elsa Mein, Federal Ministry of the Interior, Building and Community, Data Protection Unit (VII4)

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

MONACO

Corinne Laforest de Minotty, Chargée de missions auprès du Conseiller de gouvernement, Département des relations extérieures et de la coopération, Ministère d'État, Place de la Visitation – BP 522, MC – 98105 Monaco cedex

MOROCCO / MAROC

Omar Seghrouchni, Président, Commission Nationale de contrôle de la protection des Données à caractère Personnel (CNDP)

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Eduard Raducan, Director, National Center for Personal Data Protection of the Republic of Moldova,
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SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

Petra Lašová, Department of Legal Services, Office for Personal Data Protection, Hraničná 12,
820 07 Bratislava 27

UNITED KINGDOM / ROYAUME-UNI

Kaoutar Abousmir, Head of International Data Strategy, Department for Digital, Culture, Media & Sport,
DCMS, 100 Parliament Street, London SW1A 2BQ

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

OBSERVERS / OBSERVATEURS

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

Maryse Artiguelong, Déléguée, AEDH, Brussels, Belgium

EUROPEAN COMMISSION / COMMISSION EUROPÉENNE

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

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

Claire-Agnès Marnier, Legal Officer, European Data Protection Supervisor (EDPS), Postal address:
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**INTERNATIONAL COMMITTEE OF THE RED CROSS / COMITE INTERNATIONAL DE LA CROIX-
ROUGE (ICRC)**

Gérald Page, Chairman of the data Protection Commission / Président de la commission protection des
données

EXPERTS

Sandra Azria, Avocat à la Cour, 48, rue de Charenton, 75012 Paris (11/12/2019 par visioconférence)

Cécile de Terwangne, Professor Law Faculty, CRIDS Research Director, Namur University (FUNDP),
Belgium - Professeur, Faculté de Droit, Directrice de recherches, CRIDS (Centre de Recherche
Information, Droit et Société) - Université de Namur, Belgique (12/12/2019)

Franck Dumortier, Professor Law Faculty, CRIDS Research Director, Namur University (FUNDP), Belgium -
*Professeur, Faculté de Droit, Directrice de recherches, CRIDS (Centre de Recherche Information, Droit et
Société) - Université de Namur, Belgique (12/12/2019)*

Jen Persson, Director, defenddigitalme (13/12/2019)

COUNCIL OF EUROPE SECRETARIAT / SECRÉTARIAT DU CONSEIL DE L'EUROPE

**Directorate General Human Rights and Rule of Law /
Direction générale Droits de l'Homme et État de droit (DG I)**

**Directorate - Information Society and Action against Crime /
Direction - société de l'information et lutte contre la criminalité**

Jan Kleijssen, Director / Directeur

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

Yannick Meneceur, Policy advisor on AI and digital transformation / Conseiller en politiques de transformation numérique et d'IA

Data Protection Unit / Unité de la protection des données

Laura Barrera Cano, Assistant / Assistante
Péter Kimpiàn, Programme Advisor / Conseiller de programme
Sophie Kwasny, Secretary of the Committee / Secrétaire du Comité

Internet Governance Unit / Unité gouvernance de l'Internet

Charlotte Altenhöner-Dion, Head of Unit / Chef d'Unité

INTERPRETERS / INTERPRÈTES

Jean-Jacques Pedussaud (Chef d'équipe)
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Julia Tanner