



Strasbourg, 30 September 2020

T-PD-BUR(2020)50RAP

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

(Convention 108)

50th meeting of the Bureau

Strasbourg, 28-30 September 2020
via videoconference

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 50th meeting¹ via videoconference from 28 to 30 September 2020, 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 (see appendix III);

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

- a) signatures of Convention 108+ (amending Protocol CETS n°223) by Romania on 26 June 2020, and Bosnia-Herzegovina and Malta on 2 July 2020 bringing the total number of signatures to 34 to date,
- b) ratifications of Convention 108+ by Lithuania on 23 January 2020, Serbia on 26 May 2020, Poland on 10 June 2020, Mauritius – as the first African Party to ratify Convention 108+ – on 4 September 2020, Estonia on 17 September 2020 and Cyprus on 21 September 2020, bringing the total number of ratifications to 8. Several Parties made use of Article 37.3 of the amending protocol and declared provisional application of Convention 108+ pending entry into force,
- c) the preparation of the draft opinion regarding the accession request of Costa-Rica, as first country requesting accession to the Convention after the opening for signature of the amending Protocol CETS n°223,
- d) the next exercise of follow-up on the state of signatures and ratifications, carried out by the Ministers’ Deputies and their Group of Rapporteurs on Legal Cooperation (GR-J) in line with the decision adopted at the Elsinore Ministerial session of 18-19 May 2018 (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 evaluation and follow-up mechanism under Convention 108+, held an exchange of views with the experts regarding the proposed modifications to the draft documents (T-PD(2018)20rev5, T-PD(2018)21rev5) and agreed that revised versions will be circulated mid-October to delegations in view of further exchanges at the 40th Plenary;

2.4 took note of the presentation provided by Mr Gert Vermeulen on the main considerations to be taken into account in the negotiations of the draft Second Additional Protocol to the Budapest Convention on Cybercrime (CETS n°185) based on the opinion of the Committee of Convention 108 (T-PD(2019)8FIN). A delegation called upon other Parties to Convention 108 to get swiftly engaged in the discussions on data protection by liaising with national negotiating delegations and/or requesting membership to the subgroup of the Protocol Drafting Group dealing with safeguards, in order to ensure consistency of regimes between the two Council of Europe conventions (the Budapest Convention and the modernised Convention 108). The Bureau reaffirmed the Committee’s position that the data protection regime of the second additional Protocol should be aligned with Convention 108+ and called for greater transparency in the negotiations on the data protection regime of the second additional Protocol to the Budapest Convention;

2.5 took note of the presentation by Ms Sandra Azria on the Draft Guidelines on facial recognition and held an exchange of views agreeing that a revised version of the draft Guidelines will be circulated mid-October to delegations in view of their examination and further enhancement at the next Plenary;

2.6 took note of the presentation by Ms Jen Persson on the Draft Guidelines on Children’s Data Protection in an Education setting, held an exchange of views with the expert and decided that a revised version of

¹ [113](#) participants in total; 60 women and 55 men

the draft Guidelines will be circulated mid-October to delegations in view of their examination and possible adoption at the next Plenary;

2.7 took note of the presentation by Mr Yves Pouillet and Mr Benoit Frénay on the revision of Recommendation 2010(13) on profiling, held an exchange of views with the experts and decided that a draft Revised Recommendation will be prepared on the basis of exchanges and will be circulated mid-October to delegations, as well as to the Steering Committee on Media and Information Society, in view of its examination and possible finalisation at the next Plenary;

2.8 took note of the presentation by Mr Pat Walshe of his report on Digital identity, held an exchange of views with the expert and decided that a revised version would be circulated mid-October to delegations in view of further discussions at the next Plenary, expressing support for further work of the Committee on this topic, possibly in the form of guidelines;

2.9 took note of the presentation by Mr Colin Bennett of his report on "*Personal data processing by and for political campaigns: the application of the modernised Convention 108*", held an exchange of views with the expert and decided that a revised version would be circulated mid-October to delegations in view of further discussions at the next Plenary, expressing support for further work of the Committee on this topic and inviting the expert to reflect on a possible high-level structure of possible guidelines, to be discussed at the 40th Plenary;

2.10 took note of the information on co-operation with other Council of Europe bodies and entities, notably:

- the Ad Hoc Committee on Artificial Intelligence (CAHAI) on the publication of its progress report and outcomes of the first meeting of its Policy Development Group which was held on 21-22 September 2020 and the close inter-relation between this work and the work of the Committee,

- the Steering Committee for the Rights of the Child (CDENF). The Bureau supported the joint preparation with the CDENF of a draft declaration on the protection of children in the digital environment ahead of the Plenary meeting, to be submitted for possible adoption to the Committee of Ministers in 2021,

- the Steering Committee on Media and Information Society (CDMSI), in particular on the 1st meeting of the Committee of Experts on Freedom of Expression and Digital Technologies (MSI-DIG) on 15-16 September 2020 during which two documents dealing with crosscutting issues of interest for the Committee of Convention 108 were discussed, notably a draft "*Recommendation of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression*" and a "*Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation*", on the 1st meeting of the Committee of Experts on Media Environment and Reform (MSI-REF) held on 23-24 September 2020 where a deliverable on election communication and media coverage of electoral campaigns was discussed and on the organisation of the Conference of Ministers responsible for Media and Information Society to be held on 10-11 June 2021 in Nicosia ;

2.11 took note of the presentation by the Secretariat on the overview of activities and major developments in the field of data protection, notably on the three joint statements issued by the Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe, a) on the right to data protection in the context of the COVID-19 pandemic (published on 30 March 2020), b) on Digital Contact Tracing (published on 28 April 2020), c) on "Better protecting individuals in the context of international data flows: the need for democratic and effective oversight of intelligence services" (published on 7 September) and supported the publication of the first annual data protection report in Parties to Convention 108, which will give a broad overview of the use of digital solutions in the context of Covid-19;

2.12 took note, under item 15 of the agenda on observers, of the information provided by:

- the Global Privacy Assembly (GPA) on the upcoming GPA 2020 Closed Session on 13-15 October 2020 which will be held via videoconference with several resolutions likely to be adopted and on inviting members of the GPA to register and participate in the proposed meetings,
- the Swiss Data protection authority regarding the adoption of a new data protection legislation which should enable the country to rapidly ratify the modernised Convention 108,
- the Privacy Commission of New-Zealand regarding the entry into force of the Privacy Act 2020 on 1st December, on the work on digital identity, AI and finally, on data portability.

The Bureau furthermore decided that the request by the Privacy Commission of Bermuda to be granted observer status would be submitted for decision to the next Plenary meeting;

2.13 approved the draft agenda of the 40th Plenary meeting of the Committee;

2.14 took note of the preparation by the Secretariat of a draft reply to the request made by a delegation during the 39th plenary meeting on the interpretation of some provisions of Convention 108+, which will be made available to Delegations mid-October in view of the 40th Plenary meeting. The Bureau took note of complementary requests of clarification of that delegation on the notions of 'disclosure' and on transborder data flows. The Bureau also supported the preparation by the Committee of a guidance note, or any other form of document facilitating the application of the Convention, with regard to Article 11 of Convention 108+, to be further discussed at the next Plenary meeting;

2.15 confirmed the dates of the 40th Plenary meeting, to be held remotely from 18 to 20 November 2020, and of the next Bureau meeting, to be held remotely from 16 to 18 December 2020.

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)49RAP	Abridged report of the 49 th Bureau meeting (Strasbourg, 11-13 December 2019)
T-PD(2019)WP2020-2021final	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.
	<ul style="list-style-type: none">• Consolidated text of the modernised version of Convention 108
	<ul style="list-style-type: none">• Explanatory report of the modernised Convention 108
	<ul style="list-style-type: none">• 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, Senior Consultant, Cybersecurity-Law
	<u>Required action:</u> The Bureau will take note of the information provided by the experts on the comments received 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)20rev5	Evaluation questionnaire
T-PD(2018)21rev5	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 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	Expert: Mr Gert Vermeulen, Full Professor of (European and international) criminal law and director of the Institute for International Research on Criminal Policy (IRCP). <u>Required action:</u> The Bureau will take note of the information provided by the Secretariat.
	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(2020)3	Expert: Sandra Azria, Avocat <u>Required action:</u> The Bureau will take note of the presentation by the expert and will hold an exchange of views on the draft Guidelines, in light of the comments received, with a view to enabling the finalisation of the draft.
	9. Data protection in an education setting
T-PD(2019)06BISrev3 T-PD(2019)06rev	Expert: Jen Persson, Director, “defenddigitalme” <u>Required action:</u> The Bureau will take note of the presentation by the expert and will hold an exchange of views on the draft Guidelines, in light of the comments received, with a view to enabling the finalisation of the draft.

	<p>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</p>
<p>Recommendation CM/Rec(2010)13 T-PD(2019)07BISrev2 T-PD(2019)07rev</p>	<p>Experts: Yves Poulet, Honorary Rector of the University of Namur, former Director of the Research Center for Computer Science and Law (CRIDS) and Benoit Fréney, associate professor at the Faculty of Computer Science, CRIDS</p> <p><u>Required action:</u> The Bureau will take note of the draft report and revised instrument will hold an exchange of views with the experts, with a view to enabling the finalisation of the documents.</p>
	<p>11. Digital identity</p>
<p>T-PD(2020)04</p>	<p>Expert: Pat Walshe, Director of Privacy Matters</p> <p><u>Required action:</u> The Bureau will take note of the preliminary report and will hold an exchange of views with the expert, with a view to enabling the finalisation of the report and deciding on the necessary follow-up.</p>
	<p>12. Personal data processing by and for political campaigns</p>
<p>T-PD(2020)2</p>	<p>Expert: Colin Bennett, Professor, Department of Political Science, University of Victoria</p> <p><u>Required action:</u> The Bureau will take note of the preliminary report and will hold an exchange of views with the expert, with a view to enabling the finalisation of the report and deciding on the necessary follow-up.</p>
	<p>13. Cooperation with other Council of Europe bodies and entities</p>
	<p><u>Required action:</u> The Bureau will take note of the information provided by the Secretariat.</p>
	<ul style="list-style-type: none"> • CAHA • Children's Rights Committee (CDENF) • Steering Committee on Media and Information Society (CDMSI)
	<p>14. Overview of activities and major developments in the field of data protection</p>
	<p>COVID-19 related joint statements “Schrems II” decision</p> <p><u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and delegates.</p>

	15. Observers
	<u>Required action:</u> The Bureau will take note of the information provided by the observers and by the Secretariat.
	Observers - State of play and admission criteria
	16. Agenda of the 40th plenary meeting
	<u>Required action:</u> The Bureau will discuss and decide on the draft agenda of the 40 th plenary meeting (18-20 November)
	17. Interpretation of provisions
	<u>Required action:</u> The Bureau will discuss the guidance to be provided in the interpretation of provisions of Convention 108+ as requested by a delegation during the 39 th plenary meeting
	18. Next meetings
	<u>Required action:</u> The Bureau will take note of the dates for the next meetings.
	Dates of next meetings in 2020 <u>Dates of further Bureau meetings:</u> <ul style="list-style-type: none"> • 51st Bureau meeting (16-18 December) <u>Dates of the Plenary meetings in 2020:</u> <ul style="list-style-type: none"> • 40th Plenary meeting (Strasbourg, 18-20 November)
	19. Any Other Business

APPENDIX II

LIST OF PARTICIPANTS

MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

ARGENTINA / ARGENTINE

Eduardo Andrés Bertoni, Directeur de l'Agence d'Accès à l'Information Publique (AAIP)

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SENEGAL / SÉNÉGAL

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

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Vincent Filhol, Chargé de mission pour les affaires civiles et pénales internationales auprès du Directeur des affaires juridiques du Ministère de l'Europe et des Affaires étrangères

Pascale Serrier, Pole Education au numérique, CNIL, Digital Education –Coordinateur du groupe international du GPA en éducation au numérique (DEWG) Digital Education Working Group

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Londa Toloraia, State Inspector of Georgia, State Inspector's Service

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

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Léa Ouedraogo
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APPENDIX III

Key Elements of the Statement delivered by Jan Kleijssen, Director, Information Society – Action against Crime, DGI

An unprecedented length of time has lapsed (9 months) since the last meeting of the Bureau in December last year. 2 formal meetings (one of the Bureau and one of the Plenary) had to be postponed due to the health situation and travel restrictions related to the COVID-19 pandemic.

This time, yet again, restrictions needed to be applied and holding a Bureau meeting remotely via teleconferencing had to be preferred.

The Secretariat is extremely grateful to Bureau members and other participants for their commitments and readiness to be on the call, with various time zones, and to contribute to the work of the Committee despite the current difficulties we all are facing.

The relevance of the work of the Council of Europe in the current context has to be highlighted, and notably the publication in April by the Secretary General of a toolkit for member states “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis” , or more recently, an information document (SG/Inf(2020)24) on “A Council of Europe contribution to support member states in addressing healthcare issues in the context of the present public health crisis and beyond” calling upon member states to work together to learn COVID-19 health crisis lessons.

In order to assist Parties to Convention 108 in addressing privacy and data protection issues when setting up and implementing measures in view of the fight against the pandemic **two joint statements** have been issued by the Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe :

- one on the right to data protection in the context of the COVID-19 pandemic (published on 30 March 2020)
- one on Digital Contact Tracing (published on 28 April 2020)

These statements recall that general principles and rules of data protection are fully compatible and reconcilable with other fundamental rights and relevant public interests, such as public health. It is essential to ensure that data protection frameworks continue to protect individuals, even more so in times crisis. Furthermore, they provide that necessary privacy and data protection safeguards are to be incorporated in extraordinary measures that are taken to protect public health.

A third joint statement has also been published few weeks ago, in relation to the ‘Schrems II’ judgment of the CJEU, which invalidated the “Privacy Shield” agreement between the EU and the USA on data transfers.

The Council of Europe follows with great interest the discussions around a possible meaningful engagement by the government of the United States on Schrems II, which could include the adoption of a federal bill on privacy, which discussions are also greatly steered and supported by senior representatives of companies with whom the CoE has entered into strategic partnership in November 2017.

The Chair and the Data Protection Commissioner have taken important positions, on those three occasions, in a timely manner and for the benefits of the data protection community. We hope that the last joint statement on transborder data flows will lead to further reflexions on the role of the Convention at global level, as well as more specifically on the need to engage at international level on the issue of intelligence services.

The data protection Unit will co-organise on 9 November an event on this topic with Sophie Int'veld, with participation of Professor Joseph A. Cannataci, the UN Special Rapporteur on the right to privacy, Max Schrems, Dunja Mijatovic, the Council of Europe Commissioner for Human Rights and from the US, Kenneth Propp. More information on this event will follow.

The remote and open webinars that the Bureau of the Committee of Convention 108 and the Data Protection Unit organised early July under the title "*Data Protection Views from Strasbourg in Visio*" greatly contributed to present the work of the Committee to a broader audience than the Delegations usually attending our meetings.

On 1 December 2020, the Tromsø Convention on Access to Official Documents (CETS 205) will enter into force in ten Council of Europe member states (Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Montenegro, Norway, Moldova, Sweden, and Ukraine).

In many jurisdictions, access to information and data protection are entrusted to a single authority competent for both topics and we therefore consider this information of specific relevance to some of the Delegations of the Committee. A first meeting of the Parties to the Convention will be organised once the Convention has entered into force, and synergies with the Committee of Convention 108 will be sought and encouraged.

Other committees have been very busy as well, notably the Committee on Cybercrime (T-CY) is progressing at a rapid pace with the drafting of the second additional Protocol to the Budapest Convention. Last week the Protocol Drafting Plenary held its meeting and made progress in the drafting of articles related to disclosure of data in emergency situations and disclosure of WHOIS data. The article on data protection is of crucial importance to guarantee the same level of protection afforded by the modernised Convention 108 to personal data that will be processed under the scope of the second additional Protocol and the position of the Committee of Convention 108 in that respect is of core importance.

Regarding the Ad Hoc Committee on Artificial Intelligence (CAHAI), the last plenary meeting was held on 6-8 July 2020 and the first meeting of its Policy Development Group (CAHAI-PDG) was held last week on 21-22 September.

The members of the working group initiated the drafting of a feasibility study of a new legal instrument on AI, on the basis of guidelines adopted during the last Plenary meeting. The drafting will take place in an inclusive and multi-stakeholder manner under the coordination of representatives of Member States.