

Strasbourg, 18 December 2020

T-PD-BUR-(2020)51RAPAbr

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

(Convention 108)

51st meeting of the Bureau

Strasbourg, 16-18 December 2020

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 51st meeting¹ via videoconference from 16 to 18 December 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 Patrick Penninckx, Head of Information Society Department (see appendix III):

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

- a) The current 33 signatures and 10 ratifications (the latest one since the Plenary meeting being Finland, on 10 December 2020) of Convention 108+ two years after the opening for signature of the amending Protocol. Five Parties (Bulgaria, Cyprus, Estonia, Lithuania and Norway) have made use of Article 37.3 of the amending protocol and declared the provisional application of Convention 108+ pending its entry into force;
- b) the objective to have at least 38 ratifications by 10 October 2023 to enable a partial entry into force of Convention 108+ according to Article 37.2 of the amending Protocol;
- c) the Committee of Ministers' bi-annually review of the status of signatures and ratification of the amending Protocol in line with the decision adopted at the May 2018 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 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 and agreed that revised versions of the draft documents (T-PD(2018)20rev6, T-PD(2018)21rev6) will be circulated to delegations in view of further exchanges at the 52nd Bureau meeting and instructed the Secretariat to liaise with Costa-Rican authorities to follow-up on the points identified in the expert report;

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) reaffirmed the importance of ensuring consistency between the respective legal Council of Europe instruments and expressed concern on the calendar and time left for a meaningful contribution of the Committee before finalisation of the negotiations, confirming its availability to initiate the preparation of a draft Opinion as soon as the draft provisions on safeguards and data protection will be made available;

2.5 took note of the presentation by the Secretariat on the Draft Guidelines on facial recognition, held an exchange of views and finalised the text, instructing the Secretariat to submit the final draft to the participants for a last confirmation of the text (by 8 January) before sending the draft Guidelines to the Committee for adoption by written procedure;

2.6 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 finalised the draft Recommendation, instructing the Secretariat to circulate the revised draft for final confirmation of the text before its submission to the Committee for approval by written procedure (and subsequent transmission to the Steering Committee on Media and Information Society (CDMSI) for communication to the Committee of Ministers);

¹ 117 participants in total; 60 women and 57 men

2.7 took note of the presentation by Mr Pat Walshe on Digital identity and the possible approach to take for the preparation of Guidelines and what they could address, held an exchange of views with the expert and instructed the Secretariat to liaise with the expert, with a view to a presentation of draft Guidelines at the 52nd Bureau meeting;

2.8 took note of the presentation by Mr Colin Bennett on the processing of personal data by and for political campaigns and the possible approach to take for the preparation of Guidelines and what they could address, held an exchange of views with the expert and instructed the Secretariat to liaise with the expert, with a view to a presentation of draft Guidelines at the 52nd Bureau meeting;

2.9 took note of the presentation by Ms Eleni Kosta on “Automatic exchange of data”, held an exchange of views with the expert, based on the developments since the adoption of the *Opinion on the implications for data protection of mechanisms for automatic inter-state exchanges of data for administrative and tax purposes* (T-PD(2014)05) and instructed the Secretariat to liaise with the expert in view to having a draft report prepared ahead of the 52nd Bureau meeting;

2.10 took note of the presentation by the Secretariat on the interpretation of some provisions of Convention 108+ as requested by one delegation, held an exchange of views based on the draft document prepared by the Secretariat (T-PD(2020)06rev2) and decided that a revised version reflecting comments made by delegations will be circulated and that the opinion of the Legal Advisor of the Council of Europe will be requested regarding the interpretation of the notion of “jurisdiction” in relation to article 14 of Convention 108+, for finalisation of the document at the next Bureau meeting;

2.11 took note of the presentation by Mr Thorsten Wetzling on the range of issues to address in the context of exceptions and restrictions to the provisions of Convention 108+ (Article 11) further to the decision of the 40th Plenary meeting of the Committee to initiate work on a Guidance note on Article 11, held an exchange of views with the expert and instructed the Secretariat to liaise with the expert in view of the preparation of initial elements of a draft guidance note ahead of the 52nd Bureau meeting;

2.12 took note of the information provided by the Secretariat on cooperation with other Council of Europe bodies and entities:

a) examined and finalised the draft “declaration of the Committee of Ministers on the need to intensify efforts to respect and protect children’s privacy in the digital environment”, jointly prepared with the Steering Committee for the Rights of the Child (CDENF), instructing the Secretariat to submit it to the Committee for approval by written procedure before its transmission to the Committee of Ministers,

b) took note of the presentation by Mr Daniel Cooper on the progress made in relation to the “Macolin Convention Data Protection Principles” jointly elaborated by the Bureau and the Group of Copenhagen and confirmed the willingness of the Committee to provide expertise to the Secretariat and the Committee of the Macolin Convention, deciding that the revised Principles would be examined at the 52nd meeting of the Bureau with a view to their possible subsequent endorsement by the Committee,

c) took note of the presentation by Mr Alessandro Mantelero on the update of decisions taken at the 3rd plenary meeting of the *ad hoc* Committee on Artificial Intelligence (CAHAI) and confirmed the importance, highlighted in the feasibility study of CAHAI, of the articulation of that work with the existing data protection standards of the Council of Europe;

2.13 took note of the presentation by the Secretariat of the overview of activities and major developments in the field of data protection, notably the forthcoming events to be organised worldwide on 28 January 2021 on the occasion of the 15th edition of data protection day, which will also mark the 40th anniversary of Convention 108, and the invitation made to all to contribute actively to a range of global and regional events which will

include a Conference on “*Challenges in the transborder flow of data in light of Convention 108 and the GDPR*” organised by the German chairmanship of the Committee of Ministers, a panel organised in the framework of the CPDP Conference, several regional discussions in Asia, Africa and Latin-America, a special video message compilation from key personalities in the field of the protection of privacy and personal data, the preparation of a declaration of the Committee of Ministers, the publication of a special issue of the Computer Law and Security Review journal and finally, the announcement of the winner of the Stefano Rodotà Award;

2.14 took note, under item 17 of the agenda of information provided by observers, welcoming in particular three new observers to the Committee:

- Open Net Korea, informing the Bureau on the organisation’s contribution to the adoption of the Korean data protection legislation and its activities for the promotion of the right to privacy and data protection as enshrined in the modernised Convention 108 throughout Asia,
- Access Now, introducing the organisation and its regional outreach activities which consist advancing robust data protection legislation and global convergence discussion and informing on its plan for the next data protection day celebrations;
- the Privacy Commissioner for Bermuda, introducing the authority and the mutual benefits that the organisation’s observer status before the Committee can bring, notably in developing strategies and policies in small island jurisdictions in the area of privacy and data protection and in promoting Convention 108 in the North American/Caribbean Region;

And finally, by Interpol, informing the Bureau notably on the training programmes organised under the programme Glacy+ 3 for law enforcement authorities, the upcoming setup of a secure communication platform enabling the Interpol network of 192 DPOs to easily share information and good practices;

2.15 took note of the information provided by the Secretariat on the 3rd edition of the Stefano Rodotà Award which is open for candidacy until 18 December 2020, inviting delegations to disseminate the information and the possibility to still submit applications;

2.16 confirmed the dates of the next Plenary meetings, to be held from 28-30 June 2021 and 17-19 November 2021 and of the next Bureau meetings from 24-26 March 2021, from 28-30 September 2021 and from 20-22 December 2021.

APPENDIX I

AGENDA

	1. Opening of the meeting
T-PD(2020)RAP40Abr	Abridged report of the 40 th Plenary meeting (18-20 November 2020)
T-PD-BUR(2019)50RAP	Abridged report of the 50 th Bureau meeting (remote, 28-29 September 2020)
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
	Patrick Penninckx, Head of Information Society Department
	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
Expert Report - Costa-Rica	<ul style="list-style-type: none"> • Convention 108+: chart of signatures and ratification • Convention 108: chart of signatures and ratifications <p>Expert: Mr Franck Dumortier, Senior Consultant, Cybersecurity-Law</p> <p><u>Required action:</u> The Bureau will take note of the information provided by the expert and will hold an exchange of views.</p>
	6. Evaluation and follow up mechanism under Convention 108+
	<p>Expert: Ms Cécile de Terwangne, CRIDS, Namur</p> <p><u>Required action:</u> The Bureau will take note of the information provided by the expert and will hold an exchange of views on the latest versions of the documents.</p>

Terms of Reference	ToR of the Working Group on the evaluation and monitoring mechanism
T-PD(2018)20rev6	Evaluation questionnaire
T-PD(2018)21rev6	Document on the evaluation and follow-up mechanism under Convention 108+: process and rationale
	7. Law enforcement transborder access to data
Towards a Protocol to the Convention on Cybercrime: additional stakeholder consultations	Expert: Mr Gert Vermeulen, Full Professor of (European and international) criminal law and director of the Institute for International Research on Criminal Policy (IRCP).
T-PD(2019)8FIN	<u>Required action:</u> The Committee will take note of the information provided by the expert and the Secretariat and will decide on any necessary follow-up.
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	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)3rev2	<u>Required action:</u> The Bureau will take note of the presentation by the Secretariat and will examine the draft Guidelines with a view to their finalisation, for subsequent submission to the Committee for adoption by written procedure.
	9. Update of the Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling
Recommendation CM/Rec(2010)13 T-PD(2019)07rev <i>published 1/12</i> T-PD(2019)07BISrev4	Experts: Mr Yves Poulet, Honorary Rector of the University of Namur, former Director of the Research Center for Computer Science and Law (CRIDS) and Mr Benoit Frénay, associate professor at the Faculty of Computer Science, CRIDS <u>Required action:</u> The Bureau will examine the draft Revised recommendation a view to its finalisation, for submission to the Committee for approval by written procedure and subsequent transmission to the Committee of Ministers by the Steering Committee on Media and Information Society (CDMSI)

	10. Digital identity
T-PD(2020)4rev	<p>Expert: Mr Pat Walshe, Director of Privacy Matters</p> <p><u>Required action:</u> The Bureau will take note of the presentation by the expert with regard to a possible structure for the Guidelines and will hold an exchange of views with the expert.</p>
	11. Personal data processing by and for political campaigns
T-PD(2020)2rev	<p>Expert: Mr Colin Bennett, Professor, Department of Political Science, University of Victoria</p> <p><u>Required action:</u> The Bureau will take note of the presentation by the expert with regard to a possible structure for the Guidelines and will hold an exchange of views with the expert.</p>
	12. Automatic Exchange of data
T-PD(2014)05 Opinion on the implications for data protection of mechanisms for automatic inter-state exchanges of data for administrative and tax purposes	<p>Expert: Mrs Eleni Kosta, TILT, Tilburg University</p> <p><u>Required action:</u> the Bureau will take note of the presentation by the expert and will hold an exchange of views.</p>
	13. Interpretation of provisions
T-PD(2020)06rev	<p><u>Required action:</u> The Bureau will examine the revised draft with a view to its finalisation and submission to the Committee for adoption by written procedure.</p>
	14. Guidance note on Article 11 of Convention 108+
	<p>Expert: Mr Thorsten Wetzling, Head of Research, Digital Rights, Surveillance and Democracy, Stiftung Neue Verantwortung</p> <p><u>Required action:</u> The Committee will take note of the information provided by the expert and will hold an exchange of views.</p>
	15. Cooperation with other Council of Europe bodies and entities
Revised Draft Declaration T-PD(2020)07rev <i>published 11/12</i>	<p><u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and will examine the revised draft declaration jointly prepared with the CDENF with a view to its finalisation and submission to the Committee for approval by written procedure.</p>
	<ul style="list-style-type: none"> • CAHAI • Steering Committee on the Rights of the child (CDENF) • Steering Committee on Media and Information Society (CDMSI) • The Convention on the Manipulation of Sports Competitions (the Macolin Convention) <i>new - published 1/12</i>

	<p>Experts: Daniel Cooper, Covington & Burling LLP Alessandro Mantelero, Associate Professor, Private Law, Polytechnic University of Turin</p> <p><u>Required action:</u> The Bureau will take note of the information provided by the experts, will hold an exchange of views and decide on the necessary follow-up</p>
	16. Major developments and activities in the field of data protection
	<u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and delegates.
	17. Observers
List of Observers	<u>Required action:</u> The Bureau will take note of the information provided by the observers.
	18. Stefano Rodotà Award
	<u>Required action:</u> The Bureau will take note of the information provided by the Secretariat.
	19. Next meetings
	<u>Required action:</u> The Bureau will take note of the dates for the next meetings.
	<p>Dates of next meetings in 2021</p> <p><u>Dates of Bureau meetings:</u></p> <p>52nd Bureau : 24-26 March 2021 53rd Bureau : 28-30 September 2021 54th Bureau : 20-22 December 2021</p> <p><u>Dates of Plenary meetings:</u></p> <p>41st Plenary : 28-30 June 2021 42nd Plenary : 17-19 November 2021</p>
	20. Any Other Business

APPENDIX II

LIST OF PARTICIPANTS

MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

GEORGIA / GÉORGIE

Tamar Kaldani, (first Vice-Chair / première Vice-présidente)

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Awa Ndiaye, (second Vice-Chair / deuxième Vice-présidente), Présidente, Commission de Protection des données personnelles (CDP)

SWITZERLAND / SUISSE

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Jean-Philippe Walter

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Maria Michaelidou, Office of the Commissioner for Personal Data Protection

DENMARK / DANEMARK

Sani Sogliano, Head of Section, Data Protection Division, Ministry of Justice

FINLAND / FINLANDE

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Pat Walshe, Director, Privacy Matters

Thorsten Wetzling, Head of Research, Digital Rights, Surveillance and Democracy

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Eyup Kun, Trainee / Stagiaire

Bohumila Ottová, Assistant / Assistante

INTERPRETERS / INTERPRÈTES

Corinne McGeorge
Jean-Jacques Pedussaud
Luke Tilden

APPENDIX III

Key Elements of the Statement delivered by Patrick Penninckx, Head of Information Society Department - DGI

All delegations and especially the newly elected or re-elected, all female chairmanship of the Bureau should be warmly welcomed as well as the four new Bureau members.

Delegations have received by post the paper version of the 2020 Data protection report, and the modest treat that the Secretariat prepared and sent on the occasion of the 50th Bureau meeting and the 40th Edition of the Plenary meeting which we believe will mark those important anniversaries.

It is unfortunate that the CoE can still not host physical meetings due to the situation related to the Covid19 pandemic, the reason for which this meeting, yet again, will be ran fully online. Remote meetings will continue to be the norm for Council of Europe meetings for the start of 2021 at least. The Secretariat is hopeful that technical difficulties will not hamper the discussion and exchanges and is extremely grateful to all participants for their commitments and readiness to be on the call, with various time zones, and to contribute to the work of the Bureau.

The Bureau and the Committee is to be congratulated for the adoption of the “*Guidelines on Children’s Data Protection in an Education setting*”, as well as Jen Persson, Director of “defend digital me” for her outstanding contribution as expert to this important document which will be used and referenced in the work of other committees as well. It is of high importance that the Committee have issued those guidelines, on such an important area where previous normative guidance in relation to the processing of personal data did not exist. The Secretariat will ensure the widest dissemination possible of this valuable piece of work.

The new initiative of the Committee to provide a Guidance Note on the interpretation of article 11 of Convention 108+ cannot be more timely and of high relevance which, we believe, will result in an interpretative guide for state Parties to base their democratic framework on, regulating the processing of personal data in the digital age. This Guidance will surely enable them to tackle effectively the current challenges while safeguarding the right to privacy of individuals and hopefully can be of use beyond the current Parties, attracting other countries to the Convention, seizing the unique added-value of this crucial Article of Convention 108+.

On 28 January 2021, Convention 108 will be 40 years old therefore Parties are invited to celebrate this landmark date by reaffirming their commitment to the right to data protection, to organise events on this historic occasion and more specifically to ensure the entry into force of Convention 108+. On that date the Committee of Ministers of the Council of Europe will publish a declaration in which they will take stock of current signatures and ratifications and will also call on state Parties to beef up their efforts for a quick entry into force of the Protocol CETS 223 amending Convention 108. The Secretariat will inform the Bureau of other initiatives organised to mark this important date.

The Tromsø Convention on Access to Official Documents entered into force on 1 December 2020 in ten Council of Europe member states. This will be followed by concrete actions to be taken in 2021, which will be in synergies with the work of the Committee of Convention 108.

The Committee on Cybercrime (T-CY) held its drafting plenary meeting on 1-3 December during which draft provisions for the second additional Protocol to the Budapest Convention were discussed, some of which (Joint investigation teams and joint investigations, Expedited disclosure of stored computer data in an emergency, Request for domain name registration information) were open to public consultation until 15 December. Further consultations are envisaged once a complete draft Protocol

is available, that is, tentatively in February/March 2021, at which point the opinion of the Committee of Convention 108 will be of crucial importance. It is hoped that the second additional Protocol to the Budapest Convention will be adopted and opened for signature in 2021.

The CAHAI Plenary is being held in parallel to the Bureau meeting examining the draft feasibility study on a legal framework on AI. Amongst options considered, there is the possibility for the CAHAI to orientate its work towards the elaboration of a binding legal framework on AI.

A conference organised by the German Chairmanship of the Committee of Ministers will be held on 20 January 2021 in order to address, with all stakeholders, the question of the scope and content of a regulation of AI.