



Strasbourg, 30 September 2021

T-PD-BUR(2021)53RAPAbr

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

(Convention 108)

53rd meeting of the Bureau

Strasbourg, 28 – 30 September 2021
Hybrid format

ABRIDGED REPORT

Secretariat of the Council of Europe Convention for the protection of individuals
with regard to automatic processing of personal data

- Item 1 **Opening of the meeting¹**
- Item 2 **Adoption of the agenda**
- Item 3 **Statement by the secretariat**
The Bureau took note of the information provided by Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate (see Appendix III).
- Item 4 **Convention 108+ State of play**
The Bureau took note of the information provided by the secretariat on the signatures and ratifications of the Protocol amending Convention 108 (CETS No. 223, hereafter Convention 108+): 43 signatures out of which, 13 ratifications. Italy and Uruguay have ratified respectively in July and August.
- The Bureau took note of the information provided by the secretariat on the latest developments regarding Costa Rica's request for accession and asked the expert working group set up following the Committee Plenary meeting in June to report on the update of the expert report at the Committee Plenary meeting in November.
- Item 5 **Evaluation and follow up mechanism under Convention 108+**
The Bureau took note of the information provided by the expert on the related expert report and questionnaire, the chair of the Working Group on the evaluation and follow-up mechanism (WG-EFM), and the secretariat. The Bureau held an exchange of views and instructed the secretariat to gather comments on the Expert report on process and rationale of the evaluation and review mechanism under Convention 108+, as well as on the draft questionnaire, by 14 October for review and finalisation at the Committee Plenary meeting in November. The Bureau also instructed the secretariat to prepare draft elements of rules of procedure to be presented at the Committee Plenary meeting in November in the perspective of launching a test phase of the evaluation and review mechanism.
- Item 6 **Digital identity**
The Bureau took note of the information provided by the expert on the further developed Draft Guidelines on digital identity, as well as by the secretariat and instructed the secretariat to gather comments on the text by 14 October with a view to further amending and finalising the document and discussing it at the Committee Plenary meeting in November.
- Item 7 **Personal data processing by and for political campaigns**
The Bureau took note of the information provided by the expert on the latest developments of the draft Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns. The Bureau instructed the secretariat to gather comments on the text by 14 October, with a view to finalising the document at the Committee Plenary meeting in November.
- Item 8 **Inter-state exchanges of data for Anti-Money Laundering/Countering Financing of Terrorism, and tax purposes**
The Bureau took note of the information provided by the secretariat on the Outline of the Draft guidelines on the implications for data protection of mechanisms for inter-state exchanges of data for Anti-Money Laundering/Countering Financing of Terrorism, and tax purposes as well as the Moneyval secretariat, held an exchange of views, approved the structure of the guidelines and instructed the secretariat to gather comments by 14 October on the draft guidelines presented and to update the text together with the experts and the support of an anti-money laundering expert, under the guidance of the Bureau, for discussion at the Committee Plenary meeting in November.

¹ 112 participants in total; 68 women and 44 men

- Item 9 **Report on the need for a Guidance note on Article 11 of the modernised Convention 108**
The Bureau took note of the information provided by the secretariat, held an exchange of views and instructed the secretariat to gather comments on the text by 14 October and prepare an update together with an expert and under the guidance of the Bureau for discussion at the Committee meeting in November.
- Item 10 **Contractual clauses in the context of transborder data flows**
The Bureau took note of the information provided by the member of the Bureau in respect of Switzerland, held an exchange of views and instructed the secretariat to prepare, in cooperation with the Bureau, a draft revised and updated Model contract to ensure appropriate protection in the context of transborder data flows.
- Item 11 **Cooperation with other Council of Europe bodies and entities**
The Bureau took note of the information provided by the secretariat on this cooperation. It decided to accept the request by the Committee of Experts on freedom of expression and digital technologies (MSI-DIG) to provide comments on two specific elements (namely guideline 1.10, and section 6) of the finalised 'Draft recommendation on the impact of digital technologies on freedom of expression'.
- Item 12 **Major developments and activities in the field of data protection**
The Bureau took note of the information provided by the secretariat, and notably of the recent motion for a recommendation on "Pegasus and similar spyware and secret state surveillance" signed by members of the PACE legal affairs committee – ahead of the PACE part-session, the vice-chair of the Convention Committee, Ms Tamar Kaldani, had been invited to a hearing by the PACE legal affairs committee on the Pegasus spyware issue. It also took note of the opportunity for Council of Europe Member States to sign or ratify Protocol CETS No. 223 on the occasion of the forthcoming Conference of Ministers of Justice on the 'digitalization of Justice and the application of artificial intelligence for judicial purposes' in Budapest. The Bureau also took note of the appointment of Ms Ana Brian Nougères as UN Special Rapporteur on the Right to Privacy – Ms Nougères will be invited to address the Committee on the occasion of its November Plenary meeting.
- Item 13 **Observers**
The Bureau took note of the positive result of the written procedure regarding the request by the Benin Authority for the Protection of Personal Data (APDP) to take part in the meetings of the Committee under article 4 bis of the Rules of Procedure. It also took note of the information provided by the EDPS as GPA representative to the T-PD ahead of the forthcoming global Privacy Assembly session in October, as well as of the information provided by the IIHR on the recent developments within the framework of the Organisation of American States and on events organised by the IIHR and OAS in the data protection field.
- Item 14 **Next meetings in 2021**

42nd Plenary : 17-19 November 2021
54th Bureau : 20-22 December 2021
- Item 15 **Stefano Rodotà Award**
The Bureau took note of information provided by the secretariat regarding the slightly amended rules of procedure creating two categories of award. The meeting was also the occasion for the laureate of the 2021 Stefano Rodotà award to present the work for which he was awarded.
- Item 16 **Any Other Business**

APPENDIX I

AGENDA

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| | 1. Opening of the meeting |
| T-PD(2021)41RAPAbr <i>Pro memoria</i> | Abridged report of the 41 st Plenary meeting (28-30 June 2021) |
| T-PD-BUR(2021)52RAP <i>Pro memoria</i> | Abridged report of the 52 nd Bureau meeting (24-26 March 2021) |
| T-PD(2019)WP2020-2021final | Work programme of the Committee 2020-2021 |
| T-PD(2017)Rules <i>Pro memoria</i> | Rules of procedure |
| | 2. Adoption of the agenda |
| | 3. Statement by the Secretariat Jan Kleijssen, Director, Information Society and Action against Crime Directorate |
| | 4. Convention 108+ State of play |
| | <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 | <ul style="list-style-type: none">• Convention 108+: chart of signatures and ratification• Convention 108: chart of signatures and ratifications |
| T-PD(2020)08rev Expert Report - Costa-Rica | Costa-Rica <u>Required action:</u> The Bureau will take note of the information provided by the Secretariat and will hold an exchange of views |
| | 5. Evaluation and review mechanism under Convention 108+ |
| Terms of Reference <i>Pro memoria</i> | ToR of the Working Group on the evaluation and review mechanism |
| T-PD(2018)21rev9 <i>New 21/09</i> | Expert report on the evaluation and review mechanism under Convention 108+: process and rationale |
| T-PD(2018)20rev9 <i>New 24/09</i> | Questionnaire Expert: Ms Cécile de Terwangne, CRIDS, Namur |

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| | <p><u>Required action:</u> The Bureau will take note of the information provided by the Working Group, the expert and the Secretariat and will hold an exchange of views on the latest developments.</p> |
| <p>T-PD-BUR(2021)5 Information note on the procedures of various monitoring mechanisms <i>Pro memoria</i></p> | <p>Document prepared by the Secretariat</p> |
| | <p>6. Digital identity</p> |
| <p>T-PD-BUR(2021)2rev2 <i>New 20/09</i></p> <p>T-PD-BUR(2021)2rev2MOS Compilation of comments <i>New 27/09</i></p> | <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 on the draft of the Guidelines together with written comments received and will hold an exchange of views.</p> |
| | <p>7. Personal data processing by and for political campaigns</p> |
| <p>T-PD-BUR(2021)3rev2 <i>New 10/09</i></p> <p>T-PD-BUR(2021)3rev2MOS Compilation of comments <i>New 27/09</i></p> | <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 on the draft Guidelines received and will hold an exchange of views.</p> |
| | <p>8. Inter-state exchanges of data for Anti-Money Laundering/Countering Financing of Terrorism, and tax purposes</p> |
| <p>T-PD(2021)4rev <i>New 23/09</i></p> <p>Outline of the Draft guidelines on the implications for data protection of mechanisms for inter-state exchanges of data for Anti-Money Laundering/Countering Financing of Terrorism, and tax purposes <i>New 23/09</i></p> <p>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 <i>Pro memoria</i></p> | <p><u>Required action:</u> The Bureau will take note of the presentation by the Secretariat and will hold an exchange of views.</p> |
| | <p>9. Report on the need for a Guidance note on Article 11 of the modernised Convention 108</p> |

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| T-PD(2021)6rev | <p><u>Required action:</u> The Bureau will take note of the information provided by the Secretariat will hold an exchange of views and decide on the necessary follow-up.</p> |
| | <p>10. Contractual clauses in the context of transborder data flows</p> |
| <p>Model contract - Transborder data flows</p> <p>Guide to Contractual clauses – Transfer of personal data</p> <p>Standard Contractual Clauses – EU</p> | <p>Caroline Gloor Scheidegger</p> <p><u>Required action:</u> The Bureau will take note of the information provided by the Secretariat will hold an exchange of views and decide on the necessary follow-up.</p> |
| | <p>11. Cooperation with other Council of Europe bodies and entities</p> |
| | <ul style="list-style-type: none"> • CAHAI Information on the latest CAHAI meeting (7-9 July 2021) Expert: Alessandro Mantelero, Associate Professor, Private Law, Polytechnic University of Turin • Cybercrime Convention Committee (T-CY) Information on the state of play of the Draft second Additional Protocol • Steering Committee on the Rights of the child (CDENF) Information on the latest developments • Steering Committee on Media and Information Society (CDMSI) Information on the latest developments • Committee on Bioethics (DH-BIO) Information on the latest developments • The Convention on the Manipulation of Sports Competitions (the Macolin Convention) • Data protection principles Information on the latest developments • Council of Europe Convention on Access to Official Documents Tromsø Convention <p><u>Required action:</u> The Bureau will take note of the information provided by the experts and the Secretariat, will hold an exchange of views and decide on the necessary follow-up.</p> |

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| <i>Pro memoria</i> | 12. Major developments and activities in the field of data protection |
| | 13. Observers |
| List of Observers T-PD(2018)04Rev3 <i>Pro memoria</i> | Request by the Benin Authority for the Protection of Personal Data (APDP) to take part in the meetings of the Committee <u>Required action:</u> The Bureau will take note of the positive result of the written procedure. |
| | 14. Next meetings |
| | Dates of next meetings in 2021 <u>Date of the next Bureau meeting:</u> 54 th Bureau : 20-22 December 2021 <u>Date of the next Plenary meeting:</u> 42 nd Plenary : 17-19 November 2021 <u>Required action:</u> The Bureau will take note of the dates for the next meetings. |
| | 15. Stefano Rodotà Award |
| Stefano Rodotà Data Protection Award Rules | Expert: Mr. Gabriel Kasper, the winner of the Stefano Rodotà Award 2021 <u>Required action:</u> The Bureau will take note of the Information provided by the Secretariat. |
| | 16. Any Other Business |

APPENDIX II

LIST OF PARTICIPANTS

MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

ITALY / ITALIE

Alessandra Pierucci, (Chair / Présidente)

GEORGIA / GÉORGIE

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

SENEGAL / SÉNÉGAL

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

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Caroline Gloor Scheidegger, Cheffe du Domaine de direction Relations internationales, Préposé fédéral à la protection des données et à la transparence (PFPDT)

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Jean-Philippe Walter

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Jan Kleijssen, Director / Directeur

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Isabelle Marchini

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APPENDIX III

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

I would like to extend warm welcome to the delegations. Though the meeting is essentially online, due to the flexibility introduced into the sanitary conditions, I'm happy to welcome the Chair of the Committee, present in Strasbourg. The Data Protection Commissioner will join also "in person" tomorrow as he has other meetings this week in Strasbourg. I hope that this opens the way to a progressive "back to business as usual", though it might still take some time before all meetings can take place under normal conditions.

Let me praise the dedication and commitment of all in the often uneasy online working environment and pay tribute to the quality of the work produced in these difficult circumstances and express my gratitude to the participants for their readiness and availability especially considering the time differences.

Summer has been fruitful with two new ratifications of Protocol 223: Italy on 8 July, and Uruguay on 5 August. It should be noted that North Macedonia Data Protection Agency has informed the secretariat that the country has adopted its Law on ratification of Protocol 223 and the deposit of the instrument of ratification is expected anytime. This means that we have 13 ratifications so far and a fourteenth in the pipe.

Though this is certainly good news, the rhythm of ratification remains very low, and this is concerning as to the perspective on the entry into force of the modernised Convention. Despite the fact that quite a number of countries have engaged into the process of ratification, much remains to be done to get to the minimum of 38 ratifications originally expected by 10 October 2023. This requires the active involvement of all concerned, including you all.

I know I am preaching to the converted, but the Convention needs your active support in your respective countries to remind your authorities of the necessity to invest into this process. We all know the situation is not favourable to speed up the legislative process in many countries, and that is why, regular reminders are necessary. The secretariat is active in this respect and for instance works closely with the chair of the GR-J, who on his side regularly reminds the Member States of their commitment and the need for translating words into action in ratifying Protocol 223. In addition, the Chair of the Committee, Ms Pierucci, will address the GR-J on 07 December and carry out an outreach campaign to urge state Parties to quickly sign if not done yet and ratify via their permanent representation in Strasbourg.

It should be noted in this respect that the forthcoming Conference of Ministers of Justice on the 'digitalization of Justice and the application of artificial intelligence for judicial purposes' organised in Budapest on 5 October in the presence of the Secretary General of the Council of Europe will be the opportunity for a number of Council of Europe Conventions and protocols to be made available for signature and/or ratification, including Protocol CETS No. 223.

In this respect, I'm happy to inform you that the T-PD Chair and DGI Director General have sent a letter to the Council of Europe Member States strongly encouraging them to sign and/or ratify the Protocol.

More generally, when it comes to the forthcoming entry into force of the modernised Convention, you've got an advocacy role in this respect. And you are the best placed, in terms of knowledge, expertise and understanding of all what the modernised convention system can bring to all, that is, States, Data Protection Authorities, data controllers, processors, data subjects, as at the end of the day, we're all users of new and emerging data processing techniques and technologies. And if there's something that the last year and a half of fight against the pandemic has taught us, is that we all have a collective and individual interest in making this convention coming to life. Without mentioning that we're never better and stronger but when we're united.

This naturally leads me to point out that your Committee has done an impressive job in reflecting on the process and rationale on the evaluation and review mechanism contained in the modernised

Convention. This reflexion is very important and paves the way to the concrete evaluation and review process to be developed which would be key for the credibility of this instrument. I can only but encourage you to progressively and actively consider applying/trying this in the coming months in the format of a test with one of the countries having ratified Protocol 223 by the time Convention 108+ enters into force, thus making use of article 37.3 and declared its provisional application pending the entry into force. Trying the mechanism will be a valuable exercise that will help engaging into the concrete mechanism. I won't go further, as I'm sure you will have a fruitful debate under item 5 of your meeting's agenda.

I welcome the participation of Committee members and the Council of Europe in various events which demonstrates the wide-reaching interest of various stakeholders in the work of this Committee and the Organisation related to the protection of privacy and personal data, notably:

- CPDP "Latam conference", which was the occasion to emphasize the benefits that Latin American countries would find in joining Convention 108+;
- Cannes Festival Panel "Big Data Meets Hollywood - Protecting Privacy and Unlocking Innovation";
- EuroDig workshop "The consequences of AI for Data Protection";
- "Recharging Advocacy for Rights" [RARE] camp in the Hague;
- 2nd Artificial Intelligence Policy Conference;
- ERA Summer course on European data protection law, with a session on "Data protection law in Europe – the wider legal framework of the council of Europe"

It should also be noted that your vice-chair, Ms Kaldani was invited to a hearing organised by the PACE legal affairs committee in relation to the Pegasus spyware issue. As you all know, this is a very sensitive issue and during last-week PACE part-session, a motion for a recommendation on "Pegasus and similar spyware and secret state surveillance" was signed by members of the PACE Legal affairs committee and subsequently published. Your Committee will certainly have things to reflect on about this issue in relation to the work carried out on the practical interpretation of Article 11 of the modernised Convention 108.

Regarding other areas of work of interest to your Committee:

- Unfortunately, the GR-H, Group of Rapporteur on Human Rights, has not been able to discuss the draft Recommendation of the Committee of Ministers to member States on the protection of individuals with regard to the processing of personal data in the context of profiling (revising Recommendation (2010)13), due to a particularly heavy agenda and there was not enough time. It should be re-scheduled for the next GR-H meeting, on 21 October.
- CAHAI 5th Plenary session was held the week following your June Plenary session Committee (on 5-7 July). M. Alessandro Mantelero will brief the Bureau members on the main outcomes of that meeting, including that the CAHAI has taken a major decision on finalising the main elements of the new legal framework on AI by December 2020 and thank the T-PD for its past and future input in this important work.
- Turning to the Budapest Convention, I'm pleased to announce that the "2nd Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence" is currently being discussed by the PACE and will be presented with the PACE's recommendations to the Committee of Ministers for adoption in November on the occasion of the 20th anniversary of the Convention. It should be open for signature next Spring.

I have some announcements for the forthcoming plenary: as you know the first UN Special Rapporteur on the Right to Privacy, Mr Joe Cannataci has completed his mandate, and his successor has been appointed. This is someone the DP community knows very well and who, as Mr Cannataci has an extensive experience in this field: Ms Ana Brian Nougères. Her appointment is the occasion to invite her to address the forthcoming Plenary meeting in November.

The Secretary of the Council of Europe Convention on Access to Official Documents – the Tromsø Convention – Ms Elvana Thaci, will also address the Plenary meeting. As the first binding international legal

instrument which recognises a general right of access to official documents held by public authorities, the Tromsø Convention is an important tool with many convergences with your work.

And last but not least, the 2021 Stefano Rodotà award winner, Mr Gabriel Kasper, will address this meeting to present the work for which he was distinguished, that on *“People analytics in private-law employment relationships – Proposals for a more effective enforcement of data protection law”*. As you certainly remember, the 2020 laureate, Ms Camilla Tabarrini, could not formally present the work for which she won the Stefano Rodotà Award last year due to the pandemic, so it is proposed that she present her work on *“Understanding the Big Mind - Does the GDPR Bridge the Human-Machine Intelligibility Gap?”* at the Plenary meeting in November.

In addition, kindly note that preparatory work for the 2022 Stefano Rodotà Award to be awarded on 28th January 2022 is underway. The rules have been updated to create formally two categories of award: one for PhD thesis, and the other one rewarding other research, articles or publications of academic nature. The call for application will be launched in a couple of weeks.

I wish you all a successful meeting.