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

**CONVENTION 108**

**Opinion on the draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to  
Member States on Electoral communication and Media Coverage of Election Campaigns**

Directorate General of Human Rights and Rule of Law

1. On 6 April 2021, the Secretariat of the Committee of Experts on Media Environment and Reform (MSI-REF) shared the draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns for information and possible comments.

2. The Bureau of 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), welcomes this important work and examined the abovementioned draft Recommendation.

3. The Bureau of the Committee of Convention 108 first and foremost recalls that personal data should only be processed by data processing techniques and technologies which comply with the existing human rights’ legal frameworks and in particular Convention 108 as modernised (amending protocol CETS No. 223, hereafter “Convention 108+”).

4. The Bureau of the Committee of Convention 108 recalls the necessity of protecting every individual with regard to the processing of their personal data, as provided for in Article 1 of Convention 108+. The Bureau of the Consultative Committee of Convention 108 therefore draws attention to the use of terms such as “abuse of personal data” and “abuse of microtargeting” which constitute violations of the right to data protection and should be referred to as such.

5. The Bureau of the Committee of Convention 108 underlines that in an acceleration of digitalisation and a media coverage of elections context, the quantity of data that can be generated by these new communication tools is ever increasing, notably through the use of various online platforms. The use of algorithmic systems, microtargeting or artificial intelligence (as explained in point 4.4 of the appendix to the draft Recommendation) which are emerging practices in electoral communication must be done in compliance with the right to data protection. Particular attention notably has to be paid to preventing the risk of interference with fundamental rights and freedoms as enshrined in Article 10.2 of Convention 108+<sup>1</sup>.

6. With regard to the recommendation made to member States to ensure that different stakeholders (platforms, political parties and candidates) keep records of advertisements in order to report on granular demographic data (points 2.3 and 2.4), the Bureau of the Committee of Convention 108 points out the importance of Article 5.4 of Convention 108+ and recalls that “The requirement (...) concerning the time-limits for the storage of personal data means that data should be deleted once the purpose for which it was processed has been achieved, or that it should only be kept in a form that prevents any direct or indirect identification of the data subject” as explained in the Explanatory Report to Convention 108<sup>2</sup>. The possibility of anonymising personal data should be attentively considered in order to ensure that the storage

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<sup>1</sup> See also the Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data (<https://rm.coe.int/t-pd-2017-1-bigdataguidelines-en/16806f06d0>), and the Guidelines on artificial intelligence and data protection (<https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8>).

<sup>2</sup><https://rm.coe.int/cets-223-explanatory-report-to-the-protocol-amending-the-convention-fo/16808ac91a>.

of personal data does not last for longer than necessary for achieving the purpose of the processing.

7. Data protection risks are inherently attached to generating large flows of information. The Bureau of the Committee of Convention 108 recalls in this context that “personal data undergoing processing shall be (...) adequate, relevant and not excessive in relation to the purposes for which they are processed” as pointed out in Article 5 of Convention 108+.

8. The Bureau recalls that personal data relating to political opinions<sup>3</sup> fall within special categories of data, which, under article 6 of Convention 108+, shall only be processed where appropriate and complementary safeguards are provided for by law to protect from the risks that the processing of such sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination. While the requirement for transparency in the financing of political campaigns is paramount in a democratic society and for the exercise of the right to free elections, as explained in section 3 of the appendix to the draft Recommendation, the particular nature of such sensitive data should be considered. In this perspective, the Bureau of the Committee of Convention 108 would notably recommend to mention the sensitive nature of data relating to political opinions in the corresponding provisions of the appendix to the draft Recommendation (paragraph 3.3 and 3.4).

9. The Bureau of Committee of Convention 108 supports and promotes the position backed by the MSI-REF considering the importance of States' consideration of the implications of targeted and micro-targeted advertising developed in paragraph 6.1 of the appendix to the draft Recommendation. In order to reaffirm the need to implement formal mechanisms for collaboration between the relevant independent regulatory authorities and data protection authorities (as described in paragraph 6.4 of the appendix to the draft Recommendation) and to ensure compliance with Article 15 of Convention 108+, the Bureau of Committee of Convention 108 stresses the crucial role of supervisory authorities as pointed out in point 117 of the Explanatory Report to Convention 108+.

10. Concerning the possibility for data subjects to opt out, as indicated in point 6.3 of the appendix to the draft Recommendation, the Bureau of the Committee of Convention 108 stresses that according to Article 5.2 of Convention 108+, “data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law”. The Bureau of the Committee of Convention 108 therefore recommends providing the necessary legal basis for such data processing, in full compliance with the provisions of Convention 108+.

11. The Bureau of Committee of Convention 108 finally underlines the topicality of the work carried out by the MSI-REF and also wishes to bring to its attention the work currently carried out by the Committee of Convention 108 on the processing of personal data by and for political campaigns. The Committee of Convention 108 is currently working on the drafting of

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<sup>3</sup> For the qualification of what is and is not a political opinion, see the report on “Personal Data Processing by and for Political Campaigns: The Application of the Council of Europe’s Modernised Convention 108” by Colin Bennett : <https://rm.coe.int/0900001680a01fc3>.

Guidelines on the subject, based on the report by the expert Colin Bennett<sup>4</sup>. Coordination of the respective works would therefore be desirable in view of the possible interest of such work for the MSI-REF.

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<sup>4</sup> "Personal Data Processing by and for Political Campaigns: The Application of the Council of Europe's Modernised Convention 108" by Colin Bennett <https://rm.coe.int/t-pd-2020-02rev-political-campaigns-en-2-/1680a0bf4b>.