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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

from: Commission Services
to: Delegations

Subject: Negotiations on the modernisation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of personal data (EST 108)
- Follow-up of the CAHDATA meeting on 12-14 November 2013 and
- preparation of CAHDATA meeting on 28-30 April 2014

The delegations will find in the Annex a document by the Commission Services on the modernisation of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of personal data (EST 108) following the CAHDATA meeting on 12-14 November 2013 and in view of the CAHDATA meeting on 28-30 April 2014.

Information on the SoP of the modernisation of Convention 108 following the first CAHDATA meeting on 12-14 November 2013 (Strasbourg)

I. Background

In June 2013, the Council of the European Union has adopted a decision authorising the European Commission to participate on behalf of the European Union in the negotiations on the modernisation of Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data ("Convention 108") and the conditions and modalities of accession of the European Union to the modernised Convention.

The Council Working Party on Information and Data Protection (DAPIX) has been appointed as the special committee by the Council in accordance with Article 218 (4) Treaty on the Functioning of the European Union. A first discussion took place on 7 November in DAPIX ahead of the first meeting of the Ad Hoc Committee on data protection ("CAHDATA") on 12-14 November 2013 in Strasbourg.

II. State of Play

The **state of play** on the modernisation of CoE Convention 108 until now:

- After the adoption of the Council of Europe Consultative Committee on Convention 108 ("T-PD") proposals for the modernisation of the Convention 108, at its 29th plenary meeting on 27-30 November 2012, the Ad Hoc Committee on data protection ("CAHDATA") held its first meeting on 12-14 November 2013 in Strasbourg.
- Almost all of the Member States were represented in the meeting. Several third countries also participated in the CAHDATA, including representatives of the US, Russia (which is now Party of the Convention¹) and Japan.

¹ Russia raised – what seems to be a matter of principle not relating to this Convention in particular – concerns about the voting rights of the EU in the future Convention Committee. In this context it should be noted that, while adhering to Convention 108, Russia has accepted the amendments to the Convention (adopted during the 675th meeting of the Committee of Ministers) allowing the European Union to accede to the Convention. The formulation at stake is the same as the one used in the said amendments.

- At the beginning of the CAHDATA meeting of 12-14 November, the Commission welcomed the on-going modernisation of Convention 108 and expressed its general support to the modernisation proposals as adopted by the Consultative Committee on Convention 108 ("T-PD") at its 29th plenary meeting on 30 November 2012 (reference document T-PD_2012_04_rev4_E). The Commission also indicated that, at this stage and pending further developments in the negotiation of the EU data protection reform, it is not in a position to take definitive positions on the proposals submitted to CAHDATA.
- During that meeting the whole of the modernised draft text was discussed one first time.
- The Ad Hoc Committee ("CAHDATA") elected as its Chair Seamus Carroll (IE) and as its Vice-Chair Monique Cossali Sauvai (CH).
- Informal EU co-ordination meetings were organised on the spot on both the first and on the second day.
- Provisional schedule for further 2014 CAHDATA meetings:
 - 27-30 April 2014;
 - September 2014 (exact date *tbc*);
 - It cannot be excluded that a further meeting will be scheduled.

III. Objective and approach

1. The **objective** of the European Union in these negotiations, as enshrined in the decision authorising the European Commission to participate on behalf of the European Union in the negotiations, is two-fold:
 - First, the modernised Convention 108 is to ensure a high level of protection of fundamental rights and freedoms with respect to the processing of personal data.
 - Second, the consistency of Convention 108 with the EU data protection *acquis* has to be guaranteed, duly taking into account the on-going reform of the EU data protection legislation, since all twenty-eight EU Member States are Parties to the Convention 108.

2. The suggested **approach** in view of the negotiations is the following:

- First, the Union should in principle continue supporting a draft modernised text of Convention 108 providing a high level of protection as well as ensuring consistency with the EU data protection *acquis*.
- Second, taking into account that Convention 108 is an instrument open to ratification by third countries, it is important not to compromise the high level of protection, while keeping the comprehensive and general nature of this international Convention: this corresponds to the global vocation of Convention 108, which seeks to accommodate different legal systems from both within and outside Europe. Avoiding too detailed rules in Convention 108 would both be compatible with the nature of the instrument and facilitate ensuring consistency with the EU data protection *acquis*.
- Third, in view of the discussions on the Data Protection Reform that are taking place in parallel, several provisions of the draft text should be left open or a reservation should be maintained until an agreement is being reached in Brussels.

3. The suggested **working method** in practical terms in view of the upcoming round of negotiation is the following:

- The European Commission has provided DAPIX with document with an Addendum to this document that presents the whole of the draft modernised text with a comment as to whether the text can be supported or whether a reservation should be placed and why.
- To the extent that some of the questions raised by the articles on which a reservation is placed are currently dealt with by the EU Legislator, the European Union should reserve its position in order not to pre-empt the outcome of the internal negotiation process.
- Delegations are invited to take note of the document and bring concrete comments/redrafting suggestions on any outstanding/pending issue to the discussion.