



**COMMENTS**

*of the*

*Confederation of European Data Protection Organisations  
(CEDPO)*

*on the*

*MODERNISATION OF CONVENTION 108:  
new proposals*

*- T-PD-BUR(2012)01Rev2\_en -*



**AFCDP GDD**

*France*



*Spain*



*The Netherlands*

## **I. INTRODUCTION**

The Confederation of European Data Protection Organisations (CEDPO) was founded in 2011. Founding members of CEDPO are:

**AFCDP** *Association Française des Correspondants à la Protection des Données à Caractère Personnel* (<http://www.afcdp.net>)

**APEP** *Asociación Profesional Española de Privacidad* (<http://www.a pep.es>)

**GDD** *Gesellschaft für Datenschutz und Datensicherheit* (<http://www.gdd.de>)

**NGFG** *Nederlands Genootschap van Functionarissen voor de Gegevensbescherming* (<http://www.ngfg.nl>)

Together the above organisations represent the interests of private and public sector organisations, data protection officers (DPOs) and other data protection professionals from the four European Member States.

The main purpose of CEDPO is to promote the important role of the data protection officer (DPO) and balanced, practicable, and effective data protection in general. In addition, CEDPO aims to contribute to better harmonisation of data protection law and data protection practices in the European Union / European Economic Area. Based on the experiences gathered and shared by the national data protection organisations, the confederation plans to initiate and maintain constructive communications with competent European institutions. Harmonisation of data protection practices will also be achieved thanks to the interaction between the members of the different national associations.

CEDPO recently published its First Position Paper on the European Commission Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). The Position Paper is available on the CEDPO website at [www.cedpo.eu](http://www.cedpo.eu).

CEDPO would like to take the opportunity to also comment on the envisaged modernisation of CONVENTION 108, especially with regard to the role of the DPO.

## II. COMMENTS ON THE MODERNISATION OF CONVENTION 108

CEDPO welcomes the initiative to modernise Convention 108.

However, CEDPO is disappointed to learn that the designation of Data Protection Officers (DPOs) shall be limited to only briefly being mentioned in the commentary of Article 8bis. There it is stated as follows:

*"The Explanatory Report will specify that one of the possible measures could consist of the designation of a 'data protection officers' entrusted with the means necessary to fulfil its mission independently and of whose designation the supervisory authority has been informed. They can be internal or external to the Controller."*

Experience shows that appointing DPOs helps to improve the protection of personal data. An independent study commissioned by the Dutch Ministry of Justice found that organisations that have appointed a DPO have a higher degree of compliance awareness and knowledge<sup>1</sup>. This is also underscored by the long and successful tradition of DPOs in Germany and the growing number of 'the Controllers of the file'<sup>2</sup> appointing DPOs in France. In Spain, where the DPO role is not mandatory except for security measures regarding specific processing, it has become evident - at least for large companies - that this role is indispensable. DPOs play a key role in accountable organisations.

Both, the European Commission<sup>3</sup> and the Article 29 Working Party<sup>4</sup> have already recommended the appointment of DPOs. In addition, the important and growing role of DPOs has been recognised globally in the "Madrid Resolution" on international privacy standards approved by data protection authorities from over 50 countries at the 31st International Conference of Data protection Commissioners in 2009. One of the most relevant chapters of the document is the one that refers to proactive measures<sup>5</sup>. It includes the recommendation to appoint data protection or privacy officers, with adequate qualifications, resources and powers for exercising their supervisory functions adequately.

The European Commission is obviously seeing the DPO as an important element within a modern legal framework; it has dedicated three articles solely on the designation, position and tasks of DPOs in both the proposed General Data Protection Regulation as well as in the Police Directive.

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<sup>1</sup> Brouwer-Korf, A. (2009). Rapport 'Gewoon Doen, beschermen van veiligheid en persoonlijke levenssfeer'. Den Haag, the Netherlands.

Pro Facto (2008) H.B. Winter et. al *Wat niet weet, wat niet deert: Een evaluatieonderzoek naar de werking van de Wet bescherming persoonsgegevens in de praktijk*

Conclusion reached by the Second Chamber based on the research, "Evaluation of the Data Protection Act" (Tweede Kamer, vergaderjaar 2009-2010, 31 051, nr. 5, page. 29.)

<sup>2</sup> Referring to the current *Convention 108 - Convention for the Protection of Individuals With Regard to the Processing of Personal Data*, Article 2 d

<sup>3</sup> COM(2003) 265 final – Report, p. 18 and 24

<sup>4</sup> WP 106, p.22 and 23

<sup>5</sup> *Internacional [sic] Standards on the Protection of Personal Data and Privacy* The Madrid Resolution, Part VI: Compliance and Monitoring, 22, 1st paragraph point b.

***Given all the strong signals, CEDPO recommends the Council of Europe to explicitly include wordings in the main text of Article 8bis of the new Convention 108 which deal with the designation and the role of DPOs.***

Moreover, ***CEDPO feels that additional incentives for the designation of the DPO are needed.***

In this regard the First CEDPO Position Paper mentioned in the above introduction may serve as a valuable resource.

CEDPO welcomes the opportunity to support the modernisation of Convention 108 and to constructively contribute to the improved protection of individuals with regard to automatic processing of personal data.

Bonn,

Den Haag,

Madrid,

Paris,

25th May 2012