

Brussels, 29 January 2020

Alexander Seger

Head of the Cybercrime Division, Council of Europe

Members of the Cybercrime Convention Committee of the Council of Europe

By email only

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Dear Mr Seger,

Dear Members of the Cybercrime Convention Committee,

As several members of the European Data Protection Board (EDPB) had the opportunity to participate to the Octopus conference which took place in Strasbourg on 20-22 November 2019, I would like to extend my thanks to the Cybercrime Convention Committee (T-CY) for the organisation of this event, allowing for a fruitful exchange on issues related to international cooperation in combating cybercrime, in particular the Second Additional Protocol to the Budapest Convention, and the importance of data protection safeguards in this context.

We are particularly grateful that the EDPB contribution to the consultation on the Second Additional Protocol¹ has been made available to participants and that members of the EDPB were able to present our main observations and recommendations. EDPB members who attended the Octopus Conference welcomed the opportunity to further discuss the provisional text of provisions on direct disclosure of subscriber information and on the giving effect of orders for expedited production of data. We understand, however, that discussions were limited to the perimeter of these provisional texts and could not fully extend to other provisions, such as the ones related to data protection, which are still being negotiated.

The drafting of the Second Additional Protocol is sensitive from a data protection perspective, as all the envisaged new procedures involve the collection of personal data, including not only subscriber but also traffic data, on the basis of orders from another jurisdiction. For the EU, but also most of the other Parties to the Budapest Convention that have rules on international data transfers (e.g. as Parties to the Council of Europe Convention 108), this makes it indispensable to ensure that strong safeguards providing a high level of data protection become an integral part of the final text, applicable to all Parties. The EDPB contribution to the consultation on the Additional Protocol includes a detailed reference to specific safeguards, which might be further developed in the future once more information on the status and content of the discussions becomes available. As already stated in the contribution, the EDPB considers it essential that the provisional text submitted to public consultation is complemented by dedicated provisions on data protection safeguards, which must then be assessed together in order to ensure that the draft Additional Protocol translates into a sustainable arrangement, in compliance with EU primary and secondary law.

¹ EDPB contribution to the consultation on a draft second additional protocol to the Council of Europe Convention on Cybercrime - 13/11/2019.

The EDPB considers it essential that the ongoing discussions for the drafting of the Additional Protocol are carried out with a high level of transparency and ultimately lead to the establishment of a modernised instrument for the exchange of personal data with third countries for fighting cybercrime that is both consistent with the Council of Europe acquis, in particular Convention 108, and fully compatible with the EU Treaties and the Charter of Fundamental Rights. We therefore hope that the T-CY will swiftly reach a provisional agreement in drafting such data protection safeguards and that a dedicated consultation process will be carried out prior to the finalisation of the draft Second Additional Protocol.

The EDPB intends to closely follow the advancement of the negotiations while remaining available and committed to provide a constructive and objective contribution with a view to ensure that data protection considerations are duly taken into account in the overall drafting process of the Second Additional Protocol to the Budapest Convention.

Yours sincerely,



Andrea Jelinek



Andrea Jelinek
Chair of the European Data Protection Board

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