



Strasbourg, 3 July 2015

T-PD(2015)RAP32Abr_en

**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF
INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA
[ETS No. 108]
(T-PD)**

32nd Plenary meeting

Strasbourg, 1-3 July 2015

DRAFT ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

The Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), established under Article 18 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108], held its 32nd plenary meeting in Strasbourg from 1 to 3 July 2015 with Mr Jean-Philippe Walter (Switzerland) in the Chair. The agenda, as adopted by the T-PD, and the list of participants¹ are set out in Appendices 1 and 2.

The T-PD:

1. took note of the information provided by Mr Philippe Boillat, Director General, Directorate General of Human Rights and Rule of Law, and in particular:

- the modernisation of Convention 108,
- the major developments that had occurred in the field of data protection and related fields since the 31st plenary meeting (2-4 June 2014), in particular the European Conference of Data Protection Authorities which the Council of Europe had jointly organised with the French “Commission Nationale de l’Informatique et des Libertés” (CNIL) on 5 June 2014,
- the state of signatures and ratifications of and accessions to Convention 108, welcoming, in passing, the participation of all non-member states present at the meeting.

In reply to a question from the Chair of the Committee concerning the lack of resources allocated to data protection, the Director General gave his assurance that data protection was one of the Council of Europe’s priorities and that he was hopeful that additional resources would soon be forthcoming;

2.1 took note of the progress made in the **modernisation of Convention 108** and the decision taken by the Committee of Ministers of the Council of Europe to resume examination of the text of the modernised Convention 108 after the summer, on account of the reservations expressed by the European Union and the Russian Federation regarding the text approved by the Ad hoc Committee on Data Protection (CAHDATA) at its meeting on 1 to 3 December 2014. The Chair drew the Committee’s attention to the possibility of introducing derogations in Article 9 of the modernised Convention 108 with regard to Articles 12 et 12bis, which would weaken the level of protection compared with the current text of the Convention and the Additional Protocol, which did not provide for the possibility of such a derogation. Furthermore, the Committee acknowledged that the formulation of Article 12(7) of the draft text of the modernised Convention was problematic and instructed its Bureau to consider this question in order to come up with proposed new wording;

2.2 took note of the presentation given by the expert (Ms C. Gayrel) on the structure of the draft questionnaire which would serve as a basis for the **evaluation and monitoring mechanism** and instructed its Bureau to draw up, in conjunction with the expert, a draft questionnaire;

3. took note of the draft **explanatory report** as modified in the light of the observations received from the members and observers of the CAHDATA;

4. took note of the **state of signatures** and ratifications of and accessions to Convention 108 and its Additional Protocol, in particular the ratification of Convention 108 by San Marino, ratification of the Additional Protocol by Denmark, the invitation to Mauritius and Senegal to accede to Convention 108 and its Additional Protocol, and the intention of Tunisia to deposit in the very near future its request to be invited to accede;

¹ 79 participants in all, 40 men and 39 women.

5. **re-elected** the Council of Europe's Data Protection Commissioner – Ms Eva Souhrada-Kirchmayer – for a three year term of office and **elected** a new member of the Bureau – Mr Péter Kimpiàn (Hungary) – to replace Ms Jouret (Belgium) who had changed post and was no longer a member of the Bureau;

6.1 took note of the presentation given by the expert (Mr E. Beaman) on the basis of his draft report on **the use of personal data in the police sector**, and his proposal regarding the need for a binding instrument in this field, held an exchange of views and confirmed that the drafting of a practical guide to the use of data by the police would be an appropriate approach in the current context. It instructed the Bureau to ensure the necessary follow-up and to suggest the action required;

6.2 took note of the draft report by the experts (Mr D. Korff and Ms M. Georges) on “Passenger Name Records (PNR), data mining and data protection: the need for strong safeguards”, instructed the experts to finalise their report and agreed that a draft opinion would be produced by the Bureau on the basis of the recommendations provided by the experts;

7. took note of the presentation by the expert (Ms J. Bossi Malafosse) on the basis of her report concerning the updating of Recommendation No. R (97) 5 on the **protection of medical data** and, following an exchange of views, decided that consideration should be given to the drafting of a new Recommendation which will take account of the new challenges raised by technological developments and instructed its Secretariat to take steps to this end so that a draft recommendation could be submitted to the Committee at its next plenary meeting;

8. took note of the information provided by the Liechtenstein delegation on **automatic exchanges of data**, relating to recent developments in the European Union and to the challenges posed particularly following the Statement of the WP29 of 4 February 2015 and Directive 2014/107/EU of the Council of 9 December 2014 amending Directive 2011/16/EU and instructed its Secretariat to commission an expert to study the case-law on the principle of proportionality and its Bureau to consider the follow-up to be given to the proposals made by Liechtenstein;

9. took note of the information provided by the expert (Ms A. Rouvroy) as part of her preliminary draft report on **Big Data**, held an exchange of views with the expert and agreed that on the basis of the recommendations made by the expert in her final report, and in particular with regard to the role of Convention 108 in addressing the challenges posed by Big Data, the Bureau should identify what action could be taken in this field;

10. took note of the report on “**ICANN's** procedures and policies in the light of human rights, fundamental freedoms and democratic values”, and on the declaration of the Committee of Ministers on ICANN, human rights and the rule of law”, presented by the expert (Ms M. Zalnieriute), and instructed its Secretariat to liaise with the Council of Europe's Internet policy co-ordinator, in the context of the CDMSI, in order to take part in current or future activities, in the relevant area of expertise;

11. took note of the information on **co-operation with other Council of Europe bodies** and in particular the relevant work carried out by the Steering Committee on Media and Information Society (CDMSI), the Bioethics Committee (DH-BIO), the Commissioner for Human Rights on the subject of “The rule of law on the Internet and in the wider digital world” and “Democratic and effective oversight of national security services” and, lastly, the Cybercrime Committee (T-CY), particularly with regard to the announced public hearing in Strasbourg on 30 November 2015 at which the T-PD is invited to participate and which would be looking at the question of criminal justice access to data in the cloud, and the response to the T-CY in relation to the scenarios on data transfer prepared by the Article 29 working party;

12. adopted an **opinion** on Parliamentary Assembly Recommendation 2067(2015) on “Mass surveillance” and instructed its Secretariat to forward it to the Secretariat of the Committee of Ministers within the deadlines laid down;

13. agreed that the **draft work programme for 2016-2017** would be transmitted by written procedure for comments to be submitted by 31 August 2015;

14. took note of the information presented by the expert (Ms S. McCarthy) at the **focus session** on profiling in the context of the fight against terrorism and held an exchange of views with the expert;

15. took note of the **major developments at national and international level** in the data protection field since its last plenary meeting (information compiled in a special document), such as the activities of the CEEPA group presented by the delegation of Albania and the European Conference of Data Protection Authorities (Manchester, 18-20 May 2015);

16. took note of the report of the **Council of Europe Data Protection Commissioner** on the activities carried out between 2011 and 2014 and information on the revised draft Regulation, and invited the Secretariat to forward to it the draft Regulation for comments prior to adoption to ensure its consistency with Convention 108 ;

17. took note of the information presented by the **observers** attending the meeting;

18. took note of the presentation on **the international privacy law library** by the expert Mr Graham Greenleaf, and responded favourably to the expert’s suggestion of organising an event to which would be invited all non-member countries which had adopted legislation in the field of personal data protection, to enable them to become more familiar with Convention 108 with a view to accession;

19. confirmed that the 36th meeting of the T-PD Bureau would be held in Paris from 6 to 8 October 2015, that the 37th meeting of the Bureau would be held in Strasbourg from 9 to 11 December 2015 and agreed that the dates of the 33rd plenary meeting would be notified subsequently by the Secretariat.

APPENDIX I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

MEMBERS OF THE T-PD / MEMBRES DU T-PD

ALBANIA / ALBANIE

Besnik Dervishi, The Commissioner, Rr. Kavajës, Nd. 80, H. 1, Kati 5, 1023, Tirana

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ANDORRA / ANDORRE

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ARMENIA / ARMENIE

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AUSTRIA / AUTRICHE

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BOSNIA AND HERZEGOVINA / BOSNIE HERZEGOVINE

Samira Čampara, Assistant Director, Department for International Cooperation and Public Relations, Personal Data Protection Agency in Bosnia and Herzegovina

BULGARIA / BULGARIE

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Desislava Nikolova, Legal Affairs, International Cooperation, Planning and Training Directorate, Commission for Personal Data Protection, Republic of Bulgaria

CROATIA / CROATIE

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CYPRUS / CHYPRE (apologised / excusé)

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

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DENMARK / DANEMARK (apologised / excusé)

ESTONIA / ESTONIE (apologised/excusé)

FINLAND / FINLANDE

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SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

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THE AUSTRALIAN PRIVACY FOUNDATION / LA FONDATION AUSTRALIENNE POUR LE RESPECT DE LA VIE PRIVÉE (APF / AFP)

Graham Greenleaf AM, Professor of Law & Information Systems, UNSW Australia, Co-Director, Australasian Legal Information Institute (AustLII), Asia-Pacific Editor, Privacy Laws & Business International Report (PLBIR)

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EUROPEAN COMMISSION / COMMISSION EUROPEENNE

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EUROPEAN PARLIAMENT / PARLEMENT EUROPEEN

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EXPERTS SCIENTIFIQUES / SCIENTIFIC EXPERTS

Edward William Beaman, BA .LLM. PGCHR .FCMI. FHEA. JP. VR., Senior Lecturer, School of Forensic & Investigative Sciences, University of Central Lancashire, PR12HE

Jeanne Bossi-Malafosse, Avocat à la Cour – Counsel, DLA Piper France LLP, 27 rue Laffitte, 75009 Paris

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Antoinette Rouvroy, Professeur à la Faculté de Droit, Namur, Belgique

Monika Zalnieriute, Research Fellow at Centre for Internet & Human Rights, European University of Viadrina Vilnius g. 14 -7, LT- 01402 Vilnius, Lithuania

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COUNCIL OF EUROPE BODIES / ORGANES DU CONSEIL DE L'EUROPE

Office of the Commissioner for Human Rights / Bureau du Commissaire aux droits de l'homme

Matthieu Birker, Adviser / Conseiller

Directorate General Human Rights and Rule of Law / Direction générale Droits de l'Homme et Etat de Droit

Philippe Boillat, Director General / Directeur général

Directorate of Information Society and Action against Crime / Direction de la société de l'information et de la lutte contre la criminalité

Jan Kleijssen, Director / Directeur

Bioethics / Bioéthique

Laurence Lwoff, Secretary of DH-BIO / Secrétaire du DH-BIO

Törrönen Anneli, Administrator / Administratrice

Criminal Law and Counter-Terrorism Divisions / Divisions du droit pénal et terrorisme

Carlo Chiaromonte, Secretary to the CDPC/ Secrétaire du CDPC

Division for Legal Co-operation / Division de la coopération juridique (CDCJ)

Sonja Agustsdottir, Legal Officer / Juriste, Justice and legal co-operation department / Service de la coopération judiciaire et juridique

SECRETARIAT

Information Society Department / Service de la société de l'information

Media and Internet Governance / Médias et gouvernance de l'Internet

Lee Hibbard, Coordinateur de la politique de l'Internet / Internet Policy Coordinator

Elvana Thaçi, Steering Committee on Media and Information Society / Comité directeur sur les médias et la société de l'information (CDMSI), Administrator / Administrateur

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Szilvia Simond, Assistant / Assistante

TRAINEES / STAGIAIRES

Valeriya Skopintseva, Study visitor / visiteur d'études

INTERPRETERS / INTERPRETES

Amanda Beddows
Gillian Waknehut
Maryline Neuschwander

APPENDIX II

AGENDA

1. OPENING OF THE MEETING

- [T-PD-BUR\(2015\)RAP35Abr](#) Abridged report of the 35th meeting of the Bureau of the T-PD (25-27 March 2015)
- [T-PD-BUR\(2014\)RAP34Abr](#) Abridged report of the 34th meeting of the Bureau of the T-PD (16-18 December 2014)
- [T-PD-BUR\(2014\)RAP33Abr](#) Abridged report of the 33rd meeting of the Bureau of the T-PD (30 September-2 October 2014)
- [T-PD\(2014\)RAP31Abr](#) Abridged Report of the 31st Plenary meeting of the T-PD (2-4 June 2014)
- [T-PD\(2014\)WP](#) Work programme of the T-PD for 2014-2015
- [T-PD\(2014\)Rules](#) T-PD's rules of procedure

2. ADOPTION OF THE AGENDA

3. STATEMENT BY THE SECRETARIAT

Mr Philippe Boillat, Director General, Directorate General Human Rights and Rule of Law

4. MODERNISATION OF CONVENTION 108

Scientific expert: Ms. Cécile de Terwangne, Professor Law Faculty, Namur University (FUNDP), CRIDS Research Director, Namur, Belgium

Required action: The Committee will take note of the information provided by the Secretariat and will examine the draft Explanatory Report of the modernised version of Convention 108.

- [CAHDATA\(2014\)RAP03Abr](#) Abridged report of the 3rd CAHDATA meeting (1-3 December 2014)
- [Draft amending Protocol](#) Draft Protocol amending the Convention 108

- [Information document](#) Consolidated text of the modernised version of Convention 108 with reservations
- [Draft Explanatory Report](#) Draft Explanatory Report of the modernised version of Convention 108 – revised version
- [T-PD-BUR\(2013\)3ENrev](#) Draft Explanatory Report of the modernised version of Convention 108
- [T-PD-BUR\(2015\)04](#) Compilation of comments received on the draft Explanatory Report of the modernised version of Convention 108
- [T-PD-BUR\(2013\)02Rev5](#) Information elements on the evaluation and follow-up mechanism
- T-PD(2015)12 Structure of the questionnaire of the evaluation and follow-up mechanism

5.STATE OF PLAY – ACCESSION

Required action: The Committee will take note of the information provided by the Secretariat.

- [Convention 108: chart of signatures and ratifications](#)
- [Additional Protocol: chart of signatures and ratifications](#)

6.ELECTIONS

Required action: The Committee will proceed to the election of one Bureau member and to the election of the Data Protection Commissioner.

- [T-PD\(2015\)09](#) Memorandum concerning elections
- [T-PD\(2015\)10](#) Election of the Council of Europe Data Protection Commissioner

7. DATA PROTECTION AND POLICE

Experts: Mr Ed Beaman, Senior Lecturer, School of Forensic & Investigative Sciences, University of Central Lancashire, United Kingdom

Ms. Marie Georges, Council of Europe independent expert, Paris, France
Mr Douwe Korff, Emeritus Professor of International Law, London Metropolitan University Associate, Oxford Martin School, University of Oxford, United Kingdom

Required action: The Committee will take note of the information presented by the Expert on the basis of the draft report and will hold an exchange of views.

- [T-PD\(2015\)06](#) Draft practical guide regulating the use of personal data in the police sector

Draft report by Mr Ed Beaman

- [T-PD\(2013\)11](#) Recommendation (87)15 – “Twenty-five years down the line: Final Report (by Mr Cannataci)
- [T-PD\(2015\)11](#) Passenger Name Records, data mining & data protection: the need for strong safeguards
Draft report for the Council of Europe by Mr Douwe Korff and Ms. Marie Georges
- [Recommendation No.R\(87\) 15](#) Recommendation regulating the use of personal data in the police sector
(17 September 1987)

8. PROTECTION OF MEDICAL DATA

Expert: Ms. Jeanne Bossi Malafosse, Counsel, DLA Piper France LLP, Paris, France

Required action: The Committee will take note of the information presented by the Expert on the basis of the draft report and will hold an exchange of views.

- [T-PD\(2015\)07](#) Draft presentation report on the possible update of the Recommendation on the protection of medical data by Ms. Jeanne Bossi Malafosse
- [T-PD\(2014\)07](#) Medical technologies and data protection issues”
Questionnaire
- [T-PD\(2015\)02Mos](#) Compilation of replies received on Questionnaire “Medical technologies and data protection issues”
- [Recommendation N° \(97\) 5](#) Recommendation on the protection of medical data

9. AUTOMATIC EXCHANGES OF PERSONAL DATA

Required action: The Committee will take note of the information provided and will discuss the follow-up.

- [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
- [T-PD-BUR\(2014\)01](#) Report on the implications for data protection of the growing use of mechanisms for automatic inter-state exchanges of personal data for administrative and tax purposes, as well as in connection with money laundering, financing of terrorism and corruption
(by C. Porasso)
- [Statement of the WP29](#) Statement of the WP29 of 4 February 2015 on automatic

inter-state exchanges of personal data for tax purposes

- [Directive 2014/107/UE](#) Directive 2014/107/UE of the Council of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

[OCDE Automatic Exchange of Financial Account Information BACKGROUND INFORMATION BRIEF](#)

OCDE [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#) (Publication that contains the text of the Model Competent Authority Agreement and the Common Reporting Standard, and the Commentaries thereon, as they read on 15 July 2014)

10. BIG DATA

Scientific expert: Dr Antoinette Rouvroy, Permanent research fellow, Fund for Scientific Research (FRS-FNRS), Research Centre Information, Law & Society (CRIDS), University of Namur, Belgium

Required action: The Committee will take note of the information presented by the Expert on the basis of the draft preliminary report and will hold an exchange of views.

- T-PD(2015)08 *Draft preliminary report* by Ms Antoinette Rouvroy and Mr Jean-Noël Colin

11. ICANN

Scientific Expert: Ms. Monika Zalnieriute, Fellow at the Centre for Internet & Human Rights European University Viadrina, Germany

Required action: The Committee will take note of the information provided by the Expert and will discuss the follow-up.

- [Report](#) ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values
- [T-PD\(2015\)03Mos](#) Compilation of experts' reports

12. COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES

Required action: The Committee will take note of the information provided, will decide on the follow up and will examine the draft opinion on Recommendation 2067 (2015) – "Mass surveillance".

- **PACE**
 - Draft opinion on the Recommendation 2067 (2015)
 - [Resolution – "Mass surveillance"](#)
 - [Recommendation 2067 \(2015\) – "Mass surveillance"](#)
 - [Report](#) on mass surveillance by by Peter Omtzigt

15. WORK PROGRAMME 2016-2017

Required action: The Committee will examine the draft work programme for 2016-2017 and finalise it.

- [T-PD\(2015\)WP 2016-2017](#) Draft Work programme 2016-2017

16. FOCUS SESSION: PROFILING IN THE CONTEXT OF FIGHT AGAINST TERRORISM

Expert: Ms. Sadhbh McCarthy, Co-founder & Director of the Centre for Irish and European Security

Required action: The Committee will take note of the information provided by the expert and will hold an exchange of views on the issue of profiling in the context of counterterrorism.

17. OVERVIEW OF ACTIVITIES AND MAJOR DEVELOPMENTS IN THE FIELD OF DATA PROTECTION SINCE THE LAST PLENARY MEETING

Required action: The Committee will take note of the information presented and will hold an exchange of views.

- [T-PD\(2015\)03Mos](#) Compilation of experts' reports
- [Resolution: 'Cooperation between data protection authorities'](#) Resolution of the European Conference of Data Protection Authorities, 18-20 May 2015 – Manchester, United Kingdom
- [Resolution: 'Meeting data protection expectations in the digital future'](#) Resolution of the European Conference of Data Protection Authorities, 18-20 May 2015 – Manchester, United Kingdom
- [GPEN](#)
- [T-PD\(2015\)04Mos](#) Information on the recent developments
- [T-PD\(2015\)04Addendum](#) at national level in the data protection field

18. DATA PROTECTION COMMISSIONER

Required action: The Committee will take note of the information provided by the Council of Europe Data Protection Commissioner.

- [Secretary General's Regulation](#)
- Activity report 2011-2014 & interim

19. OBSERVERS

Required action: The Committee will take note of the information provided by the observers.

20. INTERNATIONAL PRIVACY LAW LIBRARY

Expert: Mr. Graham Greenleaf, Co-Director and Professor at the University of New South Wales, Australia

Required action: The Committee will take note of the information provided by the Expert.

- The WorldLII International Privacy Law Library - <http://www.worldlii.org/int/special/privacy/>

21. DATA PROTECTION DAY

Required action: The Committee will take note of the information provided by the Secretariat.

- [DPD\(2015\)COMPILATION_MOS](#) Compilation of Data Protection Day forms 2015

22. NEXT MEETINGS

Required action: The Committee will take note of the proposed dates for the next meetings of the Bureau and for the plenary meeting of the T-PD in 2016.

23. ANY OTHER BUSINESS

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