

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 11 December 2015

T-PD-BUR(2015)37RAP

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

37th meeting of the Bureau

Strasbourg, 9-11 December 2015

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

The Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD-BUR) held its 37th meeting in Strasbourg from 9 to 11 December 2015, with Mr Jean-Philippe Walter (Switzerland) in the chair. The agenda, as adopted by the T-PD Bureau and the list of participants are set out in Appendices I and II.

The Bureau of the T-PD:

1. took note of the information provided by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate, in particular on:

- the importance for the T-PD to be involved in the discussion on surveillance and terrorism, boosted by the Paris terrorist attacks, in order to strike the right balance between a securitarian approach and applicable human rights, including the right to respect for privacy and the protection of personal data;
- the Ministers' Deputies decision to invite Tunisia to accede to Convention 108 and to its Additional Protocol;
- the modernisation of Convention 108, linked in particular to the state of progress of the trilogue negotiations within the EU that is about to be concluded and which should enable the Committee of Ministers' Rapporteur Group on Legal Co-operation to resume discussions at its next meeting in 2016 and decide on the subsequent steps;
- the launching of a series of "Data Protection Talks" with the participation of Max Schrems for the first edition to be held after the 37th Bureau meeting on 11 December, to discuss the ruling of the Court of Justice of the European Union of 6 October 2015;

2. took note of the concerns expressed once again by the Chair on the inadequacy of the **resources** allocated to the Committee and its Secretariat in relation to the importance and relevance of the topic, as well as the budgetary needs that will arise when establishing the follow-up mechanism, which will require not only additional staff for the Secretariat but also a second annual Plenary meeting. The Data Protection Commissioner raised similar concerns highlighting that additional staff is essential for the accomplishment of her duties;

3. took note of the information presented by the experts, Mr Gert Vermeulen and Mr Dariusz Kloza, on the issue of **Cooperation between Data Protection Authorities** within the framework of the Global Cross Border Enforcement Cooperation Arrangement adopted at the 36th International Conference of Data Protection and Privacy Commissioners with regard to the current provisions of the Convention and draft modernised Convention 108. It held an exchange of views with the experts and instructed the Secretariat to draft a letter to the International Conference addressing the relevant provisions of Convention 108 and their articulation with the Arrangement;

4. examined the **draft Recommendation on the protection of health data** presented by the expert, Ms Jeanne Bossi Malafosse, and agreed that the Secretariat and the expert will revise the draft recommendation on the basis of the discussions and comments received in writing, for its transmission to delegations and observers for comments before the 38th Bureau meeting;

5. took note of the information presented by Mr Philip Kerfs, on the OECD Standard for **Automatic Exchange** of Financial Account Information, in particular regarding Appendix C to the Multilateral Agreement between the competent authorities, and invited Mr Kerfs to keep the Bureau informed on any further developments in this regard;

6. examined the draft guidelines on "the protection of individuals with regard to the processing of personal data in a world of **Big Data**", prepared by the Secretariat on the basis of the experts' report and instructed the Secretariat to forward a revised version to the delegations and observers for written comments, in view of the 38th Bureau meeting;

7. took note of the information provided by representatives of other Council of Europe Bodies:

- the Secretariat of the Cybercrime Committee (**T-CY**), on the decisions taken during the T-CY 14th Plenary meeting (1-2 December 2015) which are of interest for the T-PD, and in particular on the

intention of the Cloud Evidence Group to organise a meeting on 23 May 2016 to continue the dialogue with data protection experts and to report back to the T-CY on the outcomes;

- the Secretariat of the Committee of Experts on Terrorism (**CODEXTER**), regarding the participation of the T-PD in the drafting group that will update Recommendation Rec(2005)10 on the use of “special investigation techniques” in relation to serious crimes including acts of terrorism and appointed Mr Péter Kimpiàn (Hungary) to represent the T-PD in the drafting group;
- the Secretariat of the Bioethics Committee (**DH-Bio**), concerning notably the approval by the DH-Bio of the draft recommendation “on research on biological materials of human origin” and the finalisation of the draft recommendation on “the processing for insurance purposes of personal health-related data, in particular data resulting from genetic tests”, as well as concerning future areas of possible cooperation (draft Recommendation on the protection of health data and work on emerging technologies);

8. took note of the information presented by Mr Péter Kimpiàn on his participation in the 54th **ICANN** meeting in Dublin, stressing the importance of T-PD participation in ICANN’s forthcoming meetings;

9. took note of the information presented by the expert, Marie Georges, concerning her report on “**Passenger Name Records**”, and after holding a discussion with the expert, examined the “draft opinion on Air Transport Passengers Information” prepared by the Secretariat, instructing it to submit a revised version to delegations and observers for written comments before the 38th Bureau meeting;

10. took note of the information provided by the Data Protection Commissioner on the **revision of the “Regulation of 1989** instituting a system of data protection for personal data files at the Council of Europe”, highlighting the importance of being consulted on the draft Regulation, and agreed with the request of the Chair regarding the consultation of the T-PD in order to examine the consistency of the draft Regulation with Convention 108 and the necessity to adopt quickly the revised Regulation;

11. took note of the information presented by the **observers**, by AEDH on the organisation of a Conference on 27 January 2016 to celebrate the 10th anniversary of the Data Protection Day, by ICRC on the adoption in June 2015 of the rules on personal data in the humanitarian work field, the adoption of the resolution on “Privacy and International Humanitarian Action” at the 37th International Conference of Data Protection and Privacy Commissioners, as well as the cooperation with the Brussels Privacy Hub that will enable the organisation of six workshops which aim at issuing guidelines on personal data protection for humanitarian actions and the cooperation with the EDPS which will enable the organisation of a workshop on data protection within International Organisations on 5 February 2016 in Geneva;

12. confirmed that the **38th Bureau meeting** will be held in Paris from 22 to 24 March 2016 and the **33rd Plenary** meeting will be held in Strasbourg from 29 June to 1 July 2016.

APPENDIX I.

AGENDA

1. OPENING OF THE MEETING

- T-PD-BUR(2015)RAP36Abr Abridged report of the 36th meeting of the Bureau du T-PD (6-8 October 2015)
- T-PD(2015)RAP32Abr Abridged report of the 32nd Plenary meeting (1-3 July 2015)
- T-PD(2016)WP Work programme of the T-PD 2016-2017
- T-PD(2014)WP Work programme of the T-PD 2014-2015
- T-PD(2014)Rules T-PD's rules of procedure

2. ADOPTION OF THE AGENDA

3. STATEMENT BY THE SECRETARIAT

4. MODERNISATION OF CONVENTION 108

Experts: Mr Gert Vermeulen, Director of the Institute for International Research on Criminal Policy (IRCP), Full Professor Criminal Law at Ghent University and Commissioner of the Commission for the protection of privacy (CPP), Belgium.

Mr Dariusz Kloza, Doctoral researcher at the Research Group on Law Science Technology and Society (LSTS), Vrije Universiteit, Brussels, Belgium and at Peace Research Institute Oslo (PRIO).

Required action: The Bureau will hold an exchange of views with the experts on possible barriers to cooperation between Data Protection Authorities (articles 7, 7bis and 13 of the modernised Convention).

- 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

5. BIG DATA

Required action: The Bureau will examine the draft Guidelines prepared by the Secretariat on the basis of the expert report.

- T-PD-BUR(2015)12 Draft Guidelines
- T-PD-BUR(2015)09 Report: Of Data and Men - Fundamental rights and freedoms in a world of massive data (Report by Antoinette Rouvroy et Jean-Noël Colin)

6. PROTECTION OF MEDICAL DATA

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

Required action: The Bureau will examine the revised version of the draft Recommendation presented by the expert.

- T-PD-BUR(2015)10 Draft Recommendation on the protection of health data
- T-PD(2015)07 Draft presentation report on the possible update of the Recommendation n° R (97) 5 on the protection of medical data by Ms. Jeanne Bossi Malafosse
- T-PD(2015)02Mos Compilation of replies received on the protection of medical data (*Updated version*)
- T-PD(2014)07 “Medical technologies and data protection issues” - Questionnaire
- Recommendation N° (97) 5 on the protection of medical data

7. AUTOMATIC EXCHANGE OF DATA

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

- 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

8. COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES

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

- Steering Committee on Media and Information Society (CDMSI)
 - 9th Plenary meeting (8-11 December 2015)

- Cybercrime Committee (T-CY)
 - Hearing : Criminal justice access to data (30 November 2015)
 - 14th Plenary meeting (1-2 December 2015)
- CODEXTER
- DH-BIO
 - Emerging technologies and Human Rights

9. OVERVIEW OF ACTIVITIES AND MAJOR DEVELOPMENTS IN THE FIELD OF DATA PROTECTION

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

- ICANN (54th meeting, Dublin; 18-22 October 2015)
- T-PD(2015)03Mos Compilation of experts' reports
- Follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens

10. OPINION

Expert:

Ms. Marie Georges, Council of Europe independent expert, Paris, France

Required action: The Bureau will examine the draft Opinion prepared by the Secretariat on the basis of the expert report.

- T-PD-BUR(2015)11 Draft opinion on Air Transport Passengers information
- T-PD-BUR(2015)05 Report on a draft opinion on Passenger Name Records (PNR), data mining and data protection (French version only)
- T-PD(2015)11 Passenger Name Records, data mining & data protection: the need for strong safeguards - Draft Council of Europe's report by Mr Douwe Korff and Ms. Marie Georges
- T-PD(2015)01Bil Compilation of opinions

11. DRAFT DATA PROTECTION REGULATION OF THE COUNCIL OF EUROPE, STATE OF PROGRESS

Required action: The Bureau will take note of the information provided by the Secretariat and the Commissioner and will proceed to an exchange of views.

12. OBSERVERS

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

- ICRC: Resolution on Privacy and International Humanitarian Action
(adopted at the 37th International Conference)

13. ANY OTHER BUSINESS

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APPENDIX II.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

GEORGIA / GEORGIE (apologised/excusée)

Nino Sarishvili, Head of International Relations and Communications Department, Office of the Personal Data Protection Inspector, 7, Ingorokva Str., 0105, Tbilisi Georgia

HUNGARY / HONGRIE

Péter Kimpiàn, International Affairs and Public Relations Department, National Authority for the Data Protection and Freedom of Information, H-1125 Budapest, Szilágyi Erzsébet fasor 22/C

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Gérard Lommel, Commissaire du gouvernement à la protection des données, Ministère d'Etat, Bâtiment Zurich, 3 boulevard Roosevelt, L-2450 Luxembourg

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SERBIA / SERBIE

Nevena Ružić, (second vice-chair), Head of Office, Commissioner for Information of Public Importance and Personal Data Protection, 42 Svetozata Markovica, 11 000 Belgrade

SPAIN / ESPAGNE

Agustín Puente Escobar, Director, Agencia Española De Protección De Datos, State Attorney -Head of the Legal department, C/Jorge Juan, 6, 28001 Madrid

SWITZERLAND / SUISSE

Jean-Philippe Walter, (Président), Préposé fédéral à la protection des données et à la transparence (PF PDT), Chancellerie fédérale, Feldeggweg 1, 3003 Berne

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OBSERVERS / OBSERVATEURS

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) / ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUE (OCDE)

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