



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 10 November 2011

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

27th Plenary meeting
29 November – 2 December 2011
Strasbourg, Agora Building, Room G03

ELECTION OF THE COUNCIL OF EUROPE

DATA PROTECTION COMMISSIONER

DG I – Human Rights and Rule of Law

Introduction

1. In accordance with Article 1 of the Appendix to the Secretary General's Regulation of 17 April 1989 instituting a system of data protection for personal data files at the Council of Europe, at its 26th meeting (1-4 June 2010) the Consultative Committee re-elected Mr Karel Neuwirt (Czech Republic) for a three-year term of office as Data Protection Commissioner.

2. Article 3 of the Appendix reads as follows:

"The term of office of the Data Protection Commissioner shall be three years, and may be renewed once."

3. The Secretary General drew up, in accordance with Article 2 of the appendix to the Regulation, a list of names out of which a Data Protection Commissioner could be elected.

4. The Regulation outlining a data protection system for personal data files in the Council of Europe has been reproduced in Appendix I to this memorandum.

5. It is recalled that during the discussions which took place before the election of the first Council of Europe Data Protection Commissioner, the Director of Legal Affairs had identified a number of selection criteria; a Commissioner should in particular:

- be familiar with administrative requirements within the Council of Europe;
- be familiar with the problems connected with files in small administrations;
- not have direct links with a member of the Council of Europe Secretariat.

6. The Director of Legal Affairs has also pointed out that the Council of Europe Data Protection Commissioner, although elected by the Consultative Committee, had no direct relations with this Committee. The Commissioner could thus be a national of a State which had signed or ratified Convention 108, or of a State which had neither signed or ratified. He should, however, be a national of a member State.

7. At the elections for Commissioner in 2010, the Legal Advice Department had explained that the rule concerning the independence of the Commissioner contained in Article 1 of the Appendix to the Regulation outlining a data protection system for personal data files in the Council of Europe referred to the Commissioner's independence in relation to the Secretary General of the Council of Europe, the Council of Europe's statutory and other bodies and the authorities of the member states. It had also stated that civil servant or public employee status did not in itself preclude election to the post of Commissioner.

The Legal Advice Department had also pointed out that the Commissioner was required to be sufficiently available to perform tasks commensurate with those of a Commissioner.

8. The Consultative Committee is invited to proceed to the election by secret vote of the Council of Europe Data Protection Commissioner.

9. In accordance with Article 2 of the Appendix to the Regulation outlining a data protection system for personal data files in the Council of Europe, the Secretary General submits for this purpose a list of names (Appendix II) together with the curricula vitae of the candidates.

APPENDIX I

REGULATION

outlining a data protection system for personal data files in the Council of Europe

The Secretary General of the Council of Europe,

Bearing in mind the provisions of the Convention for the protection of individuals with regard to automatic processing of personal data of 28 January 1981, concluded within the Council of Europe, and in particular its entry into force on 1 October 1985;

Determined to respect the principles of data protection contained in the Convention within the Council of Europe itself,

Decides as follows:

Article 1

The provisions of this Regulation shall apply to all personal data which are collected, stored and used by the Organisation automatically or manually, excepted personal data collected, stored and used in the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols to that Convention.

Article 2

The collection, storage and use of personal data shall only take place for the performance of the necessary internal administrative tasks of the Organisation or for the discharge of the functions envisaged in the Statute.

Article 3

1. Personal data shall be collected, stored and used fairly and lawfully with the knowledge of the person concerned.
2. The collection, storage and use of personal data, including their communication to third parties, for purposes other than those stated in Article 2, may only take place with the express and written consent of the person concerned or in accordance with safeguards laid down in regulations already existing within the Organisation or to be adopted notably pursuant to Article 6 (b) and (c) of the Appendix to this Regulation.

Article 4

For the purpose of ensuring respect for the data protection principles set out in this Regulation, the function of an independent Data Protection Commissioner shall be established in accordance with the provisions in the Appendix to this Regulation.

Article 5

A list of all automated or manual files kept by the Organisation shall be deposited with the Data Protection Commissioner. The list shall specify the person or body responsible for each particular file, the purpose of the file, the sort of data contained on the file, the persons or bodies to whom the data may be communicated and the purposes for which communication may legitimately take place.

Any proposal aimed at automating particular files or introducing new data processing techniques shall be communicated to the Data Protection Commissioner.

Article 6

The person or body responsible for a particular file shall, by means of periodic review, ensure that the personal data contained in the file are:

- (a) accurate;
- (b) up to date;
- (c) relevant and not excessive for the purpose for which they were collected and stored;
- (d) secure against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or transfer;
- (e) stored for no longer than is necessary in a form which permits identification of persons concerned.

Article 7

Where the performance of the aims specified in Article 2 makes it absolutely necessary to collect, store or use personal data of a sensitive nature, such data may only be collected, stored and used with the express and written consent of the person concerned.

Article 8

1. Except where overriding reasons of confidentiality exist, any person shall, without charge, be entitled to have access to a file containing information relating to him and, as the case may be, to obtain rectification or erasure of the information where it is shown to be inaccurate, irrelevant, excessive or out of date.

2. In the event of a refusal of access for the reasons specified in the preceding paragraph, the Data Protection Commissioner shall, at the request of the person concerned, determine whether the grounds of refusal are well-founded. For this purpose, he/she shall be empowered to inspect the file and to decide whether access should be granted.

Article 9

This Regulation shall be brought to the attention of all members of staff of the Organisation.

Strasbourg, 17.4.89
(signed) Marcelino OREJA

A P P E N D I X

The Data Protection Commissioner

Article 1

The Data Protection Commissioner shall be elected by the Consultative Committee established under Article 18 of the Convention for the protection of individuals with regard to automatic processing of personal data of January 28, 1981, on the basis of his genuine independence as well as experience and knowledge of the problems connected with data protection.

Article 2

The Consultative Committee shall elect the Data Protection Commissioner from a list of names drawn up by the Secretary General of the Council of Europe.

Article 3

The term of office of the Data Protection Commissioner shall be three years, and may be renewed once.

Article 4

The operational costs of the Data Protection Commissioner shall be borne by the budget of the Council of Europe.

Article 5

The Data Protection Commissioner may draw up rules of procedure.

Article 6

In addition to ensuring respect for the principles set out in this Regulation, the Data Protection Commissioner shall

- (a) investigate complaints from individuals arising out of implementation of this Regulation after completion of the complaints procedure laid down in Article 59 of the Staff Regulation;
- (b) formulate opinions at the request of the Secretary General on any matter relating to implementation of this Regulation;
- (c) bring to the attention of the Secretary General any proposals for improvement of the system of data protection.

Article 7

In the performance of his functions, the Data Protection Commissioner shall be assured of the utmost co-operation from the Secretariat General.

Article 8

If he so wishes the Data Protection Commissioner may at all times make recommendations to the Secretary General.

APPENDIX II

LIST OF CANDIDATES
ESTABLISHED BY THE SECRETARY GENERAL
(ALPHABETICAL ORDER)

Ms Eva Souhrada-Kirchmayer

Eva Souhrada-Kirchmayer

CURRICULUM VITAE



Professional record:

July 2010: Executive member of the Austrian data protection commission and director of the office of the data protection commission.

2004 - 2010: Director of the data protection department in the Federal Chancellery

1997 – 2010: Deputy executive member of the data protection commission

1995: Head of the office of the data protection commission and the data protection council

1994: Deputy director of the data protection department in the Federal Chancellery

1993: Graduate of the “Europaakademie” (postgraduate course)

1991 – 1994: Legal expert in the data protection department of the Federal Chancellery

1983 – 1991: Legal expert in the legal department (university and study law) of the Ministry of Science and Research

1979 – 1983: Assistant at the Faculty of law of the “University Vienna”

1982: Graduate of law studies, doctor juris

International activities:

1994 – 2010: Participation in data protection committees of the Council of Europe (2000 – 2002: Chairman of the CJ-PD, 2006 – 2010: Vice-Chairman of the T-PD, membership in the bureaus of the CJ-PD and T-PD during many years, membership in different working parties of the CJ-PD)

Member of the Art. 29-Working Party

Member of the Art. 31-committee (until July 2010)

Chairman of the EU-Council Working Party “Data protection” during the Austrian presidency of the EU

Activities in international data protection conferences and working groups

Scientific and lecture activities:

Regular publications on data protection in specialist books

Lecturer at the University of Vienna (Faculty of law)

Lecturer at the “Verwaltungsakademie des Bundes” (federal administration academy)

Lectures of data protection at different occasions