



Strasbourg, 23 November 2012

T-PD(2012)Inf

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

**COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES
COOPERATION AVEC D'AUTRES INSTANCES DU CONSEIL DE L'EUROPE**

DG I – Human Rights and Rule of Law

**EUROPEAN COMMITTEE ON LEGAL CO-OPERATION / COMITÉ EUROPÉEN
DE COOPÉRATION JURIDIQUE (CDCJ)**

The CDCJ is currently working on a draft recommendation on the protection of whistleblowers in the private and public sectors. The feasibility study should shortly be published and a first draft of a preliminary draft recommendation was approved by the Bureau of the CDCJ at its meeting on 7-9 November and will be circulated for comment among the heads of delegation. It is planned that the text will be completed by the CDCJ at a plenary meeting to be held in the second half of 2013.

COMMITTEE ON BIOETHICS / COMITE DE BIOETHIQUE (DH-BIO)

Activities of the Committee on Bioethics (DH-BIO)

- Following the adoption of the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes, the DH-BIO is currently considering the possibility of preparing a legal instrument dealing with the **use of predictive health-related personal data, in particular genetic data, for insurance purposes**. In this context, a document (<http://www.coe.int/t/dg3/healthbioethic/Source/Final%20E%20consult%20doc.pdf>) was sent for consultation, resulting in responses and comments made by 46 stakeholders. The compilation of the responses has been made available on the website of the Bioethics Department (http://www.coe.int/t/dg3/healthbioethic/Activities/07_Human_genetics_en/GT4assur%20Consultation/default_en.asp). Currently, an analysis of the responses is being prepared that would allow the DH-BIO to identify elements which could serve as a basis for the elaboration of a possible legal instrument.
- In addition, in the light of Article 20 of the Additional Protocol concerning Genetic Testing for Health Purposes, a **leaflet** providing general objective information **on genetic tests**, including their nature and the potential implications of their results, has been developed by the DH-BIO. This leaflet has been published in English and French on the website of the Bioethics Department (http://www.coe.int/t/dg3/healthbioethic/Source/en_geneticTests_hd.pdf) and will be translated in about twenty other languages thanks to the support of Eurogentest and the European Society of Human Genetics.
- The DH-BIO is also in the process of **re-examining Recommendation (2006)4 on Research using Biological Materials of Human Origin**, as prescribed by its Article 26, stipulating that the document should be re-examined “not more than five years after its adoption”. In this context, a Symposium on Biobanks and Biomedical Collections was held on 19-20 June 2012, with one session devoted specifically to the issue of privacy and data protection. The proceedings and the broadcast of the symposium have been made available on the website of the Bioethics Department (<http://tv.coe.int/internet/bioethics/index.html>). In the light of the presentations and discussions at the symposium, the Coordination Group on biobanks has identified possible topics and suggestions for the re-examination, which will be presented for discussion to the DH-BIO at its next plenary meeting on 4-6 December 2012.
- It is also to be noted that the DH-BIO will be discussing at its next plenary meeting its programme of activities for 2014-2015. The topics proposed by several delegations include the issue of **access to data contained in (electronic) medical files**.

ANTI-DOPING CONVENTION / CONVENTION CONTRE LE DOPAGE (T-DO)

Following the presentation by the T-DO secretariat at the 28th T-PD plenary meeting (Strasbourg, 19-22 June 2012), the agenda of the T-DO Monitoring Group was mainly taken up with the World Anti-Doping Code review, with a second submission of European contributions made to the Agency in September 2012.

On 11 September 2012, the Secretary General and Deputy Secretary General of the Council of Europe had the opportunity of meeting the president of the World Anti-Doping Agency, the Hon. John Fahey, and their legal counsel, Mr. Olivier Niggli.

This meeting was an occasion for to discussing the European Union project to reform the arrangements for data protection and develop a new rule in this area, and its impact on anti-doping work. It was also explained that, contrary to the messages conveyed by WADA so far, the projects conducted by the European Union should not be seen as a threat in the short term. Furthermore, the already existing mechanisms developed by the European Union were not the only ones available, since other tools covered this question. The framework developed by the Council of Europe was a valuable basis, including Article 8 of the European Convention on Human Rights and Article 6 of Convention 108.

During these discussions, it was suggested that a footnote be included in the World Anti-Doping Code 2015 with reference to Convention 108.

This message was further reinforced during an informal meeting between a delegation of the T-DO Monitoring Group and the team in charge of preparing this World Anti-Doping Code 2015 (Lausanne, 17 October 2012).

Various attempts were made to clarify and calm the debates down. However, WADA has continued to convey the idea that the projects of the European Union are a threat in the short term and that the best solution would be to include in the draft rule currently under development an exception for the anti-doping work, taking account of the specific nature of sport (see attached document).

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The WADA management upheld this approach at the meeting of the WADA Executive Committee and Foundation Board (Montreal, 17-18 November 2012).

In light of these developments, the T-DO Secretariat would like to propose a collaboration with T-PD: a T-PD expert would be appointed to review these projects in relation to anti-doping work. First, it would be useful to review what has already been produced in the context of past co-operation between T-DO and T-PD and determine whether, notwithstanding the ongoing projects within the European Union, Article 8 of the European Convention on Human Rights and Article 6 of Convention 108 could be seen as providing an appropriate legal basis for anti-doping work, and whether they would undermine the consent of the athletes with regard to the collection and processing of personal and/or sensitive information. Second, and depending on the answer to the first question, it would be useful to provide an opinion as to whether the projects of the European Union would have any impact on the existing situation. Third, in light of the above, it would be useful to propose ways that the member States of the Council of Europe and/or parties to the Anti-doping Convention could follow to secure, within the existing legal framework, an appropriate basis for the anti-doping work, for example, in considering the extent to which the World Anti-Doping Code could serve as a legal basis.

Such an opinion could then be discussed by the T-DO Monitoring Group, in particular with a view to including in the pan-European mandate (to be prepared by the Ad Hoc European Committee on WADA (CAHAMA) at its next meeting in May 2013) clear indications that would help the European representatives tackle this issue at meetings of the WADA Executive Committee and Foundation Board and propose an appropriate way of addressing it.

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Suite à la présentation faite par le secrétariat du T-DO lors de 28^e réunion plénière du T-PD (Strasbourg, 19-22 juin 2012), l'actualité a été essentiellement occupée par le processus de révision du Code mondial anti-dopage, avec une deuxième soumission faite à l'Agence en septembre 2012.

Le 11 septembre 2012, le Secrétaire Général et la Secrétaire Générale adjointe du Conseil de l'Europe ont eu l'occasion de recevoir le président de l'Agence mondiale anti-dopage, l'Hon. John Fahey, accompagné de son conseiller juridique, M. Olivier Niggli.

Cette rencontre a été l'occasion de discuter informellement le projet de l'Union européenne visant à réformer les dispositifs en matière de protection des données et de développer un nouveau règlement en la matière, de ses impacts sur la travail anti-dopage, du fait que, contrairement aux messages propagés par l'AMA, les projets menées par l'Union européenne ne constituent pas un menace à court terme, mais aussi du fait que les dispositifs juridiques développés par l'Union européenne ne sont pas le seuls à couvrir cette question et que le cadre développé par le Conseil de l'Europe constitue une base appréciable, notamment l'art. 8 de la Convention européenne des droits de l'homme et l'art. 6 de la Convention 108.

Lors de ces entretiens, il a même été suggéré au président de l'AMA d'envisager d'inclure dans une note infra-paginale du Code mondial anti-dopage 2015 actuellement en cours d'élaboration faisant référence à l'existence de la Convention 108.

Ce message a été à nouveau renforcé lors d'une rencontre informelle entre une délégation du Groupe de suivi du T-DO et l'équipe en charge de rédiger le Code mondial anti-dopage 2015 (Lausanne, 17 octobre 2012).

Malgré ces diverses tentatives de clarification et d'apaisement, l'AMA a poursuivi dans l'idée que les projets de l'Union européenne constituaient une menace à court terme et que la meilleure solution consisterait à inclure dans le projet de règlement en cours d'élaboration une exception pour le travail anti-dopage, au titre de la nature spécifique du sport (voir document ci-joint)

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C'est en tout cas en ces termes que le management de l'AMA a posé la question lors de la réunion de son Comité exécutif et de son Conseil de fondation (Montréal, 17-18 novembre 2012).

En regard de ces développements, le secrétariat du T-DO aimerait proposer une collaboration au T-PD. Il s'agirait de mandater un expert T-PD d'étudier la question des projets européens en regard de la problématique du travail anti-dopage. Il serait dans un premier temps utile de revoir les éléments déjà produits antérieurement dans le cadre de la collaboration entre le T-DO et le T-PD et établir si, nonobstant les projets en cours au sein de l'Union européenne, l'art. 8 de la Convention européenne des droits de l'homme et l'art. 6 de la Convention 108 ne présentent pas déjà des exigences de base légale et compromettent le consentement des athlètes comme fondement de la collecte et du traitement d'information à caractère personnel et sensible est conforme avec lui. Dans un second temps, et en fonction de la réponse à cette première question, il serait utile de fournir des commentaires quant à la question de savoir si les projets de l'Union européenne ont un impact sur la situation existante. Enfin, à la lumière de ce qui précède, il serait utile de proposer des pistes que les États membres du Conseil de l'Europe et/ou parties à la Convention contre le dopage T-DO pourraient suivre pour assurer, dans les limites du cadre juridique existant, les conditions du travail anti-dopage, par exemple, de considérer dans quelle mesure le Code mondial anti-dopage pourrait faire office de base légale.

Un tel avis pourrait ensuite être discuté par le Groupe de suivi T-DO, notamment en vue d'inclure dans le mandat pan-européen qui sera préparé par le Comité ad hoc européen sur l'AMA (le CAHAMA) lors de sa prochaine réunion de mai 2013, un mandat clair sur lesquels les représentants européens au sein du Comité exécutif et du Conseil de fondation de l'AMA pourront répondre au management de l'AMA et proposer une manière appropriée de traiter de la question.