



Strasbourg, le 10 December 2012

T-PD (2012) RAP 29 Abr\_en

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

**29<sup>th</sup> plenary meeting**

Strasbourg, 27 - 30 November 2012

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**ABRIDGED REPORT**

DG I – 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 29th plenary meeting in Strasbourg from 27 to 30 November 2012, with Mr Jean-Philippe Walter (Switzerland) in the Chair. The agenda, as adopted by the T-PD, and the list of participants are set out in Appendices I and II.

The T-PD:

1. took note of information provided by Mr Jan Kleijssen, Director of Information Society and Action against Crime, DGI, on the modernisation of Convention 108, major developments in the field of data protection and related fields since the 28th plenary meeting (19-22 June 2012) and changes in the Secretariat of the Consultative Committee.
2. gave a third reading to the **proposals for modification of Convention 108**, revised by its Bureau following the 28th plenary meeting, and adopted those proposals for transmission to the Committee of Ministers (set out in Appendix 3), and invited the Committee of Ministers to entrust the finalisation of the proposals to an ad hoc committee, instructing its Bureau to finalise the draft explanatory report in the light of the discussions;
3. took note of the revised draft **Recommendation** on the protection of personal data used for **employment** purposes and instructed the Secretariat to forward it to the delegations and observers for comment, with a view to its finalisation by the Committee's Bureau and examination at the 30th plenary meeting;
4. took note of the progress of work to monitor implementation of **Recommendation (87)15** regulating the use of personal data in the **police** sector and invited the scientific expert, Mr Joseph Cannatacci, to finalise his report as soon as possible so that it could examine the report and decide on follow-up at its 30th plenary meeting;
5. took note of the transmission to the Secretariat of the Committee of Ministers of its opinion on the **request of the Kingdom of Morocco** to be invited to accede to Convention 108, as well as of the opportunity that an invitation to accede to the convention, where necessary accompanied of complements, could represent in terms of reform and evolution of a legislative system as well as its implementation, in the time elapsing between the invitation made and the effective accession;
6. took note of the information presented concerning **Data Protection Day 2013** and of the request made to the participants to pass on information to the Secretariat regarding national initiatives for preparation of the usual compilation;
7. took note of activities and **major developments** in the data protection field since its last plenary meeting and in particular the participation of the Secretariat or representatives of the Committee in various events (Appendix 4);
8. took note of **future activities or events** linked to data protection (Appendix 4) as well as the preparation by the Agency for Fundamental Rights of a manual on European data protection law in partnership with the Council of Europe;

9. welcomed the indispensable discussion on data protection relating to the Internet, noting that the **International Telecommunication Union** could assist with identifying technical solutions and stressed the need to maintain data protection normative activities within structures such as the Council of Europe, whose very essence lay in the protection of fundamental rights; inviting its delegations, in the light of these exchanges, to make contact with national representatives who would be taking part in the **World Conference on International Telecommunications** (3-14 December 2012, Dubai) with a view to conveying that message;

10. took note of the information provided by the representative of **Google**, Ms Marisa Jimenez, regarding initiatives taken by this company relating to users' services and the relationship between private sector and law enforcement authorities;

11. took note of the implementation of the **2012 work programme** as well as the activities envisaged for 2013 and held an exchange of views on the priority topics to feature in its work programme for the next two-year period (2014-2015), instructing its Bureau to place the discussions on a formal footing, and also took note of the "recommendations on the protection of privacy in media coverage" developed in Ukraine in the framework of a Joint project with the European Union, and underlined the benefits of a larger dissemination of those recommendations, notably through future cooperation with the Steering Committee on Media and Information Society (CDMSI);

12. took note of the information provided on the **cooperation with other Council of Europe bodies** and institutions and in particular of the revised draft Declaration of the Committee of Ministers on risks to fundamental rights stemming from digital tracking and other surveillance technologies, the work carried out by the Committee of Experts on Rights of Internet Users (MSI-DUI), the activities focusing on sport-related conventions, which might require new cooperation (draft International Convention to combat the manipulation of sports results, World Anti-Doping Agency), the activities of the Committee on Bioethics which might also require future contribution, as well as the scheduled holding, in October 2013 in Belgrade, of the Council of Europe Conference of Ministers responsible for Media and Information Society where privacy and data protection issues might be covered;

13. took note of the information provided on the **state of signatures, ratifications and accessions** and welcomed the first participation of Armenia (44th party);

14. took note of the information submitted by the **observers** on the one hand (set out in Appendix 5) welcoming the admission of Internet Society and the supervisory authority of the Republic of Korea, and took note of the information provided by the **Council of Europe Data Protection Commissioner** on the other hand;

15. took note of the updating of **national information on the internet site** and the repeated call to pass on updated information, together with information on contact points wishing their details to be forwarded over the *Global privacy enforcement network* (GPEN);

16. took note of a letter sent by its Chair to various entities within the ICANN;

17. took note of the dates proposed for the 30th plenary meeting (15 -18 October 2013), and for Bureau meetings (29th meeting: 5-7 February, 30th meeting: 28-30 May and 31st meeting: 26-28 November 2013).

## APPENDIX 1

### LISTE DES PARTICIPANTS

Strasbourg, le 30 November/novembre 2012

T-PD 29(2012)LP

#### CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS 108]

#### COMITE CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES PERSONNES A L'EGARD DU TRAITEMENT AUTOMATISE DES DONNEES A CARACTERE PERSONNEL [STE 108] (T-PD)

29<sup>th</sup> meeting / 29<sup>ème</sup> réunion  
Strasbourg, 27-30 November / novembre 2012  
Palais – salle 1

#### LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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

##### **ALBANIA / ALBANIE**

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Flora Çabej Pogaçe, Albanian Commissioner for Personal Data Protection

Elka Dafa, Expert of Legal Procedural and Foreign Relations Department

##### **ANDORRA / ANDORRE**

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Joan Crespo Piedra, Cap de l'Agencia

Anna Cadena, Inspector, Agencia Andorrana de Protecció de Dades Personals

##### **ARMENIA / ARMENIE**

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Mr. Vahagn Harutyunyan, Deputy - Head of Division of Struggle against High-tech Crimes, General Department of Combat Against Organized Crime, Republic of Armenia Police

##### **AUSTRIA / AUTRICHE**

Matthias Schmidl, Knowledge officer, Bundeskanzleramt, Verfassungsdienst

##### **AZERBAIJAN / AZERBAÏDJAN**

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Ravan Jabiyev, Senior Lawyer, Ministry of National Security of Republic of Azerbaijan

##### **BELGIUM / BELGIQUE**

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Joëlle Jouret, SPF Justice, Direction générale de la législation et des libertés et droits fondamentaux, Service des droits de l'homme

Valérie Verbruggen, Conseiller Juridique, Commission de la protection de la vie privée

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**BOSNIA AND HERZEGOVINA / BOSNIE HERZEGOVINE**

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Vesna Pehar, Assistant Director, Department for International Cooperation and Public Relations,  
Personal data protection Agency

**BULGARIA / BULGARIE (apologised / excusé)**

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**CROATIA / CROATIE**

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Dubravko Bilić, Croatian Agency for Protection of Personal Data

**CYPRUS / CHYPRE**

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Constantinos Georgiades, Data Protection Officer/ Agent pour la Protection des Données, Office of the  
Commissioner for Personal Data Protection / Bureau du Commissaire pour la protection des données  
privées

**CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE**

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Hana Štěpánková, Head of the Press Department, Spokeswoman, Office for Personal Data Protection

**DENMARK / DANEMARK (apologised / excusé)**

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**ESTONIA / ESTONIE**

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Kaja Puusepp, Supervision Director, Estonian Data Protection Inspectorate

**FINLAND / FINLANDE**

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Leena Vettentranta, Senior Specialist (Data Protection), Ministry of Justice

**FRANCE**

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Catherine Pozzo di Borgo, Commissaire du Gouvernement adjoint auprès de la CNIL, Services du  
Premier Ministre

**GEORGIA / GEORGIE**

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Nino Sarishvili, Head of Research and Analysis Unit, Analytical Department, Ministry of Justice

**GERMANY / ALLEMAGNE**

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Claudia Thomas, Desk Officer Data Protection Unit, Bundesministerium des Innern

**GREECE / GRECE**

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Evangelos Papakonstantinou, Attorney At Law, LL.M., Dr. Jur.

**HUNGARY / HONGRIE (apologised / excusé)**

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**ICELAND / ISLANDE**

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Teitur Skúlason, Lawyer, Data Protection Authority in Iceland

**IRELAND / IRLANDE**

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Noreen Walsh, Civil Law Reform Division, Department of Justice and Equality

**ITALY / ITALIE**

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Alessandra Pierucci, Garante per la Protezione dei Dati Personali

**LATVIA / LETTONIE (apologised / excusé)**

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**LIECHTENSTEIN**

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Philipp Mittelberger, Datenschutzbeauftragter, Stabsstelle für Datenschutz (Data Protection Office)

**LITHUANIA / LITUANIE**

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Barbara Jurgelevicienė, Head of Complaints Investigation and International Cooperation Division

**LUXEMBOURG**

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Gérard Lommel, Président de la Commission Nationale pour la protection des données

**MALTA / MALTE**

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Ingrid Camilleri B.A., Head of Legal Unit, Office of the Data Protection Commissioner

**MONACO**

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Isabelle Rouanet-Passeron, Conseiller Technique, Département de l'Équipement, de l'Environnement et de l'Urbanisme

**MONTENEGRO**

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Radenko Lacmanovic, Council member of Data Protection Agency of Montenegro

Bojana Lakovic, personal assistant

**NETHERLANDS / PAYS-BAS**

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Lotte Valkenburg, Ministry of Security and Justice, Legislation Department

Dr. Heleen L. Janssen, Senior legal specialist, Ministry of the Interior and Kingdom Relations, Department of Constitutional Affairs and Legislation

**NORWAY / NORVEGE**

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Hanne Gundersrud, Permanent Representation of Norway to the Council of Europe

**POLAND / POLOGNE**

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Wojciech Rafal Wiewiorowski, Inspector General for Personal Data Protection, Social Education and International Cooperation, Bureau of the Inspector General for Personal Data Protection

**PORTUGAL**

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João Pedro Cabral, Legal Adviser, Directorate General of Justice Policy, Ministry of Justice

**REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

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Nicolae Lungu, Head of the Legal Affairs Division and Public Relation for the National Center for the Data Protection

**ROMANIA / ROUMANIE**

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Georgeta Basarabescu, President of the National Supervisory Authority for Personal Data Processing

Alina Savoiu, Autoritatea Nationala de Supraveghere a Prelucrării Datelor cu Caracter Personal

**SERBIA / SERBIE**

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Nevena Ruzic, Commissioner for Information of Public Importance and Personal Data Protection, Head of the Office

**SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE (apologised / excusé)**

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**SLOVENIA / SLOVENIE**

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Marijan Conc, State Supervisor for personal data , Information Commissioner Office

**SPAIN / ESPAGNE**

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Agustín Puente Escobar, Director, Agencia Española De Protección De Datos, State Attorney - Head of the Legal department

**SWEDEN / SUEDE**

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David Törngren, Legal Adviser, Ministry of Justice

**SWITZERLAND / SUISSE**

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Jean-Philippe Walter, [Chair of the T-PD], Office du Préposé fédéral à la protection des données et à la transparence (PFPDT), Chancellerie fédérale

Monique Cossali Sauvain, La cheffe, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Domaine de direction Droit public, Unité Projets et méthode législatifs

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / « L’EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE »**

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Dimitar Gjeorgjievski, Director of the Directorate for Personal Data Protection, Street Samoilova

**UKRAINE**

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Olena Zerkal, Director of Department for Interaction with Government Authorities, Ministry of Justice

**UNITED KINGDOM / ROYAUME-UNI**

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John Bowman, Head of EU Data Protection Policy, Ministry of Justice

**OBSERVERS/OBSERVATEURS****RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE (apologised / excusé)**

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**TURKEY / TURQUIE**

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Nurullah YAMALI, Counsellor (Rapporteur Judge) / Permanent Representation of Turkey to the Council of Europe

**USA / ETATS-UNIS**

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Lara Ballard, Special Advisor for Privacy and Technology Office of Communications and Information Policy U.S. Department of State – Washington DC

**ASSOCIATION EUROPEENNE POUR LA DEFENSE DES DROITS DE L’HOMME / EUROPEAN ASSOCIATION FOR THE DEFENSE OF HUMAN RIGHTS (AEDH)**

Marise Artiguelong, Déléguée, AEDH

**FRENCH-SPEAKING ASSOCIATION OF PERSONAL DATA PROTECTION AUTHORITIES / ASSOCIATION FRANCOPHONE DES AUTORITÉS DE PROTECTION DES DONNÉES PERSONNELLES (AFAPDP)**

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Floriane Leclercq, Chargée de mission, Commission nationale de l’informatique et des libertés

**INTERNATIONAL CHAMBER OF COMMERCE (ICC) / CHAMBRE DE COMMERCE INTERNATIONALE (CCI)**

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Christopher Kuner, Centre for European Legal Studies, University of Cambridge

**INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS /  
CONFERENCE INTERNATIONALE DES COMMISSAIRES A LA PROTECTION DES DONNEES ET DE  
LA VIE PRIVEE**

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Laurent Lim, CNIL, Juriste chargé de mission, Service des affaires européennes et internationales

**IBERO-AMERICAN DATA PROTECTION NETWORK / RESEAU IBERO-AMERICAIN DE  
PROTECTION DES DONNEES (apologised / excusé)**

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**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

Bruno Gencarelli, Directorate C: fundamental rights and Union citizenship, Unit C3 Data Protection

Katerina Dimitrakopoulou, Policy Officer, Directorate C: fundamental rights and Union citizenship, Unit C3 Data Protection

**COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE**

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Guy Stessens, Council of the European Union, General Secretariat - DG D 2B, Judicial co-operation in criminal matters

**EUROPEAN DATA PROTECTION SUPERVISOR / LE CONTRÔLEUR EUROPEEN DE LA  
PROTECTION DES DONNEES**

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Alba Bosch Moliné, Legal officer, Policy & Consultation Unit

**INTERPOL (apologised / excusé)**

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

Brendan Van Alsenoy, Junior Policy Analyst, Directorate for Science, Technology and Industry, Information and Communications Policy

**« INTERNET SOCIETY » / L'INTERNET SOCIETY" (ISOC)**

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Robin Wilton, Technical Outreach Director - Identity and Privacy

Christine Runnegar, Senior Policy Advisor

**PERSONAL INFORMATION PROTECTION COMMISSION (PIPC) OF SOUTH KOREA / COMMISSION  
POUR LA PROTECTION DES DONNÉES PERSONNELLES (PIPC) DE LA CORÉE DU SUD  
(apologised / excusé)**

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**OTHER PARTICIPANTS / AUTRES PARTICIPANTS**

**COUNCIL OF EUROPE DATA PROTECTION COMMISSIONER**

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Eva Souhrada-Kirchmayer

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**EXPERTS SCIENTIFIQUES/SCIENTIFIC EXPERTS**

Bertil Cottier, professeur de droit de la communication à la Faculté des sciences de la communication de l'Università della Svizzera italiana, professeur associé de la Faculté de droit de l'Université de Lausanne

Cécile de Terwangne, Professeur à la Faculté de Droit, Directrice de recherche au CRIDS (Centre de Recherches Informatique, Droit et Société), Facultés Universitaires Notre-Dame de la Paix (FUNDP)



Marie Georges, Consultante

Jean-Philippe Moïny, Chercheur au CRIDS (Centre de Recherches Informatique, Droit et Société),  
Doctorant FNRS, Facultés Universitaires Notre-Dame de la Paix (FUNDP)

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

**The European Committee on Legal Co-operation / Le Comité européen de coopération juridique  
(CDCJ) (apologised / excusé)**

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### **GUESTS / INVITES**

Marisa Jimenez, European Privacy Policy Senior Counsel, Google

### **SECRETARIAT**

**DG I – HUMAN RIGHTS AND RULE OF LAW /  
DG I - DROITS DE L'HOMME ET ÉTAT DE DROIT**

**Information Society and Action against Crime Directorate / Direction de la Société de l'Information  
et de la lutte contre la criminalité**

Jan Kleijssen, Director/Directeur

**Media, Information Society, Data Protection and Cybercrime Department / Service des médias, de  
la société de l'information, de la protection des données et de la cybercriminalité**

Jan Malinowski, Head/Chef de service

**• Data Protection and Cybercrime Division / Division de la protection des données et  
cybercriminalité**

Alexander Seger, Head of Division/ Chef de Division

Sophie Kwasny, Secretary of the TPD / Secrétaire du T-PD

Maria Michaelidou, Programme Advisor / Conseillère de programme

Szilvia Simond, Assistant / Assistante

### **TRAINEES /STAGIAIRES**

Bienias Michal

**• Information Society / Société de l'Information**

Lee Hibbard, Head of Unit / Chef d'unité

**Human Rights Directorate / Direction des droits de l'Homme**

**Human Rights Policy and Development Department / Service des politiques et du développement des droits de l'Homme**

Jörg Polakiewicz, Head/Chef de Service

**INTERPRETERS/INTERPRETES**

Christopher Tyczka  
Derrick Worsdale  
Nadine Kieffer

Chef d'équipe : Christopher Tyczka

## APPENDIX 2

Strasbourg, 05 December 2012

T-PD 29 (2012) OJ\_en

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

29<sup>th</sup> Plenary meeting

<p>27 November 2012 (9.30 a.m.) 30 November 2012 (4 p.m.)</p>
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Strasbourg, Palais, Room 1

#### AGENDA

**I. OPENING OF THE MEETING**

**II. ADOPTION OF THE AGENDA**

**III. STATEMENT BY THE SECRETARIAT**

MR JAN KLEIJSSSEN, DIRECTOR, INFORMATION SOCIETY AND ACTION AGAINST CRIME

- T-PD-BUR(2012) RAP28Abr Abridged report of the 28<sup>th</sup> meeting of the Bureau of the T-PD (27-28 September 2012)
- T-PD-BUR (2012) RAP28 Report of the 28<sup>th</sup> meeting of the Bureau of the T-PD (27-28 September 2012)
- T-PD (2012) RAP28Abr Abridged Report of the 28<sup>th</sup> Plenary meeting of the T-PD (19 June - 22 June 2012)
- T-PD (2012) RAP28 Draft Report of the 28<sup>th</sup> plenary meeting of the T-PD (19-22 June 2012)
- T-PD-BUR (2012) RAP27 Report of the 27<sup>th</sup> meeting of the Bureau of the T-PD (16-18 April 2012)
- T-PD(2012) Rules T-PD's rules of procedure



- T-PD-BUR(2011)15 Modalities for the amendment of Council of Europe treaties
  - T-PD-BUR(2011)25 Secretariat Comments on the strengthening of the Convention's follow up mechanism
- Ms Cécile de Terwangne, Professor Law Faculty, Namur University (FUNDP), CRIDS Research Director
- Mr Jean-Philippe Moïny, CRIDS Researcher, Namur University (FUNDP)
- Ms Marie Georges, Scientific Expert: modalities and mechanisms for assessing implementation of Convention 108

#### V. DATA PROTECTION USED FOR EMPLOYMENT PURPOSES

*Required action: The Committee will consider the revised draft of the 1989 Recommendation.*

- T-PD(2012)12 Draft (revised) Recommendation on the protection of personal data used for employment purposes
- T-PD-BUR(2010)11FIN Study on Recommendation (89)2 on the protection of personal data used for employment purposes and to suggest proposals for the revision of the above-mentioned Recommendation by Mr Giovanni Buttarelli.
- Recommendation (89)2 on the protection of personal data used for employment purposes

#### VI. DATA PROTECTION AND POLICE

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

- Recommendation (87)15 of the Committee of Ministers to the member States on regulating the use of personal data in the police sector
- "Recommendation (87)15 – Twenty-five years down the line: Interim Report " **(restricted)**
- ExpRec(87)15E - Explanatory memorandum to Recommendation N°R(87)15 of the Committee of Ministers to member states regulating the use of personal data in the police sector

#### VII. MOROCCO

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

- T-PD(2012)09rev Kingdom of Morocco - request to be invited to accede to Convention 108 – Opinion of the T-PD

#### VIII. OVERVIEW OF DATA PROTECTION ACTIVITIES SINCE THE LAST PLENARY MEETING

*Required action: the T-PD members will take note of the participation of the T-PD members and the Secretariat in various events and of the information provided.*

- T-PD-BUR(2012)02Mos Compilation of reports of T-PD representatives in other committees and fora as well as other events and conferences

34th International Conference of Data Protection and Privacy Commissioners (23-24 October, Punta del Este, Uruguay) (links only in English)

Uruguay Declaration on profiling

[http://privacyconference2012.org/wps/wcm/connect/7b10b0804d5dc38db944fbfd6066fd91/Uruguay\\_Declaration\\_final.pdf?MOD=AJPERES](http://privacyconference2012.org/wps/wcm/connect/7b10b0804d5dc38db944fbfd6066fd91/Uruguay_Declaration_final.pdf?MOD=AJPERES)

Uruguay Resolution on cloud computing

[http://privacyconference2012.org/wps/wcm/connect/92d083804d5dbb9ab90dfbfd6066fd91/Resolutionon\\_Cloud\\_Computing.pdf?MOD=AJPERES](http://privacyconference2012.org/wps/wcm/connect/92d083804d5dbb9ab90dfbfd6066fd91/Resolutionon_Cloud_Computing.pdf?MOD=AJPERES)

Uruguay Resolution on the future of privacy

[http://privacyconference2012.org/wps/wcm/connect/ae021f804d5dbfeeb937fbfd6066fd91/aResolution\\_on\\_the\\_Future\\_of\\_Privacy.pdf?MOD=AJPERES](http://privacyconference2012.org/wps/wcm/connect/ae021f804d5dbfeeb937fbfd6066fd91/aResolution_on_the_Future_of_Privacy.pdf?MOD=AJPERES)

#### EVENTS AND CONFERENCES 2012

- **3<sup>RD</sup> ANNUAL EUROPEAN DATA PROTECTION AND PRIVACY CONFERENCE**  
(4 DECEMBER, BRUSSELS)
- **ITU – WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS (WCIT)**  
(3 – 14 DECEMBER, DUBAI)
- **2<sup>ND</sup> MEETING OF THE COMMITTEE OF EXPERTS ON RIGHTS OF INTERNET USERS (MSI-DUI)**  
(13-14 DECEMBER, STRASBOURG)

#### IX. DATA PROTECTION DAY

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

6<sup>th</sup> International Conference on Computers, Privacy and Data Protection (23-25 January 2013, Brussels)

#### X. EXCHANGE OF VIEWS

*Required action: The Committee will have an exchange of views on data protection issues which could arise in the use of Google's services.*

## XI. WORK PROGRAMME

*Required action: The Committee will take note of the information provided and will reflect on its next activities.*

- T-PD (2012) WP Work programme for the T-PD for 2012 and 2013

Council of Europe Internet Governance Strategy 2012-2015

## XII. COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES

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

T-PD(2012)Inf - Cooperation with other Council of Europe bodies

- Steering Committee on Media and Information Society (CDMSI)

CDMSI(2012)002Rev6 - Draft Committee of Ministers declaration on risks to fundamental rights stemming from digital tracking and other surveillance technologies

- European Committee on Legal Cooperation (CDCJ)
- Council of Europe Parliamentary Assembly (PACE)
- Enlarged Partial Agreement on Sport (EPAS) – Sport Conventions Division

Comments to the Proposed EU Data Protection Regulation (English only)

- Committee on Bioethics (DH – Bio)

## XIII. OPINIONS

*Required action: The Committee will take note of the finalised opinions.*

- T-PD(2012)01Rev2 Compilation of opinions

## XIV. STATE OF SIGNATURES, RATIFICATIONS AND ACCESSION

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

- Overview Convention 108
- Overview additional Protocol

## XV. OBSERVERS

*Required action: The Committee will welcome its new Observers (the Internet Society and the Personal Information Protection Commission of the Republic of Korea) and will take note of the information provided by the Observers.*

T-PD(2012)13

**XVI. 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

**XVII. CONTACT POINTS AND NATIONAL INFORMATION**

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

**XVIII. NEXT MEETINGS**

*Required action: The Committee will take note of the proposed dates for the next meetings of the Bureau and of the Plenary meeting of the T-PD in 2013.*

Calendar of meetings 2013

**XIX. OTHER BUSINESS**

**CAPACITY BUILDING IN UKRAINE - Mr Bertil Cottier**

Recommendations on the protection of privacy in media coverage  
(English only)

- WADA
- ICANN

**DRAFT ORDER OF BUSINESS**

		<b>27 Nov 2012</b>	<b>28 Nov 2012</b>	<b>29 Nov 2012</b>	<b>30 Nov 2012</b>
<i>Opening</i>	<b>9:30 am</b>	Items I, II, III, IV	Item IV	Item IV	Items V, VI,X
<i>End</i>	<b>12:30 am/1 pm</b>	Lunch	Lunch	Lunch	Lunch
<i>Re- opening</i>	<b>2 pm/2:30 pm</b>	Item IV	Item IV	Items IV, VII	Items VIII- XIX
	<b>8 pm</b>	Informal gathering			



## APPENDIX 3

### FINAL DOCUMENT

#### **Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data**

#### **PROPOSALS**

#### **Title : Convention for the Protection of Individuals with Regard to the Processing of Personal Data**

##### **Preamble**

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is **necessary, given the diversification, ~~and intensification~~ and globalisation of data processing and exchanges of personal data, to guarantee human dignity and the protection of human rights and fundamental freedoms of every person, in particular through the right to control one's ~~own personal~~ data and the ~~use~~ processing ~~made of~~ such data.**

~~Reminding- Recalling~~ that the right to protection of personal data is to be considered in respect of its role in society and that it has to be reconciled with other human rights and fundamental freedoms, including freedom of expression;

Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of public access to public-official documents ~~[for Parties which recognise this principle];~~

Recognising that it is necessary **to promote at the global level** the fundamental values of respect for privacy **and protection of personal data, thereby contributing to** the free flow of information between peoples;

Recognising the interest of a reinforcement of international cooperation between the Parties to the Convention.

Have agreed as follows:

## Chapter I – General provisions

### Article 1 – Object and purpose

The purpose of this Convention is to secure for every individual **subject to the jurisdiction of the Parties**, whatever their nationality or residence, **the protection of their personal data when undergoing processing, thus contributing to** respect for their rights and fundamental freedoms, and in particular **their** right to privacy, ~~with regard to the processing of their personal data.~~

### Article 2 – Definitions

For the purposes of this Convention:

a “personal data” means any information relating to an identified or identifiable individual (“data subject”);

Deleted – see 3.1 below

c “data processing” means any operation or set of operations which is performed upon personal data, and in particular the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure or destruction of data, or the carrying out of logical and/or arithmetical operations on data;

where no automated processing is used, data processing means the operations carried out within a structured set established according to any criteria which allow~~s~~ to search for personal data ;

d “controller” means the natural or legal person, public authority, service, agency or any other body **which alone or jointly with others has the decision-making power with respect to data processing.**

e “recipient” means a natural or legal person, public authority, service, agency or any other body to whom data are disclosed or made available;

f “processor“ means a natural or legal person, public authority, service, agency or any other body which processes personal data on behalf of the controller;

### Article 3 – Scope

~~4~~ Each Party undertakes to apply this Convention to **data processing subject to its jurisdiction, thereby protecting the right to protection of personal data of any person subject to its jurisdiction.**

1bis This Convention shall not apply to data processing carried out by a natural person for the exercise of purely personal or household activities [~~; unless the data are intentionally made accessible to persons outside the personal sphere.~~]

## Chapter II – Basic principles for data-the protection of personal data

### Article 4 – Duties of the Parties

1 Each Party shall take the necessary measures in its domestic law to give effect to the provisions set out in **this Convention and ensure their effective application.**

2 These measures shall be taken **by each Party prior to ratification or accession to this Convention.**

3 Each Party undertakes to allow the Convention Committee provided for in Chapter V to evaluate the observance of its engagements and to contribute actively to this evaluation, notably by submitting reports on the measures it has taken and which give effect to the provisions of the present Convention.

### Article 5 – Legitimacy of data processing and quality of data

1 Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, be they public or private interests, and the rights and freedoms at stake.

2 Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and [explicit, unambiguous] consent of the data subject or of some legitimate basis laid down by law.

~~Each Party shall provide that data processing can be carried out only if:~~

~~a. the data subject has freely given his/her [explicit, unambiguous], specific and informed consent, or~~

~~b. it is necessary for the performance of a contract to which the data subject is a party, or~~

~~c. it is necessary to comply with legal obligations binding the data controller, or~~

~~d. it is provided by domestic law for an overriding legitimate interest.~~

3 Personal data undergoing ~~automatic~~ processing shall be :

a ~~obtained~~ and processed lawfully and fairly.

b **collected** for **explicit**, specified and legitimate purposes and not **processed** in a way incompatible with those purposes;

c adequate, relevant, not excessive and limited to the minimum necessary in relation to the purposes for which they are **processed**;

d accurate and, where necessary, kept up to date;

e preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are **processed**.

## Article 6 – Processing of sensitive data

~~1 Data processing which may present a serious risk to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination, are only allowed where the applicable law provides additional appropriate safeguards, meant to prevent such a risk, and complementing the safeguards of the present Convention.~~

~~2. Do [in particular] present such a risk the:~~

~~a. processing of genetic data, data concerning health or sexual life, data concerning criminal offences, convictions and related security measures,~~

~~b. data processed for the racial origin, political opinions, trade-union membership, religious or other beliefs they reveal, and~~

~~c. data processed for the identifying biometric information they contain.~~

1. The processing of genetic data, of personal data concerning offences, criminal convictions and related security measures, the processing of biometric data uniquely identifying a person, as well as the processing of personal data for the information they reveal relating to racial origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where the applicable law provides appropriate safeguards, complementing those of the present Convention.

2. Appropriate safeguards shall prevent the risks that the processing of such sensitive data may present to the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination.

## Article 7 – Data security

1 **Every Party shall provide that the controller, and, where applicable the processor,** takes the appropriate security measures against accidental or unauthorised **modification access, destruction**, loss ~~or destruction accidental of personal data, as well as against modification or dissemination unauthorised access, dissemination or disclosure of~~ **of personal such data.**

2 Each Party shall provide that the controller shall notify, without delay, at least the supervisory authorities within the meaning of Article 12 bis of this Convention of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.

### Article 7bis – Transparency of processing

1 Each Party shall ~~see to it that provide that every the~~ controller ~~must ensure~~ the transparency of data processing ~~in by~~ informing ~~the~~ data subjects, ~~unless they have already been informed, concerning of~~ at least ~~his/her the~~ identity and habitual residence or establishment ~~of the controller~~, the purposes of the processing carried out ~~by him/her~~, the data processed, the recipients or categories of recipients of the personal data, and the means of exercising the rights set out in Article 8, as well as any other information necessary to ensure fair and lawful data processing.

2. ~~Where the personal data are not collected from the data subjects,~~ ~~the~~ controller shall nonetheless not be required to provide such information where the processing is ~~expressly~~ prescribed by law or this proves to be impossible or involves disproportionate efforts.

### Article 8 – Rights of the data subject

Any person shall be **entitled**:

a not to be subject to a decision significantly affecting him/her, based solely on an automatic processing of data without having ~~his/her their~~ views taken into consideration;

b to object at any time to the processing of personal data concerning him/her unless ~~the controller demonstrates compelling legitimate grounds for the processing which override his/her their interests or rights and fundamental freedoms such a processing is compulsory by virtue of the law or the controller can justify of prevailing legitimate grounds~~ ;

c to obtain, on request, at reasonable intervals and without excessive delay or expense confirmation of the processing of personal data relating to him/her, the communication in an intelligible form of the data processed, **all available information on their origin, on the preservation period as well as any other information that the controller is required to provide to ensure the transparency of processing in accordance with Article 7bis paragraph 1;**

d to obtain, on request, **knowledge of the reasoning underlying the data processing, the results of which are applied to him/her ;**

e to obtain, **upon request**, as the case may be, rectification or erasure of such data if these have been processed contrary to the law giving effect to the **provisions** of this Convention;

f to have a remedy if a decision significantly affecting him/her/them has been taken without taking into consideration his/her/their views or no response is given to a request for confirmation, communication, rectification, erasure or to an objection, as referred to in this Article;

g to benefit, whatever his/her/their residence, from the assistance of a supervisory authority within the meaning of Article 12 bis, in exercising the rights provided by this Convention.

### **Article 8bis – Additional obligations**

1- Each Party shall provide that the controller, or where applicable the processor, shall take at all stages of the processing all appropriate measures to implement the provisions giving effect to the principles and obligations of this Convention and to establish internal mechanisms to verify and be able to demonstrate to the data subjects and at least to the supervisory authorities provided for in Article 12 bis of this Convention the compliance with the applicable law of the data processing for which he/she is responsible with the applicable law.

2- Each Party shall provide that the controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and fundamental freedoms of the data subject and design data processing operations in such a way as to prevent or at least minimise the risk of interference with those rights and fundamental freedoms.

3- Each Party shall provide that the products and services intended for the data processing shall take into account the implications of the right to the protection of personal data from the stage of their design and facilitate the compliance of the processing with the applicable law.

4- Each Party can take the measures needed to adapt the application of ~~decide to derogate in full or in part to~~ the provisions of the previous paragraphs, according to the size of the controller, or where applicable the processor, the volume or nature of data processed and, more generally, in light of the risks for the interests, rights and fundamental freedoms of the data subjects.

### **Article 9 – Exceptions and restrictions**

1 No exception **to the principles expressed in this Chapter shall be allowed, except to the provisions of Articles 5.3, 7.2, 7bis and 8 when such derogation is provided for by an accessible and foreseeable law and constitutes a necessary measure in a democratic society for:**

a the protection of national security, public safety, important **economic and financial** interests of the State or **the prevention and** suppression of criminal offences;

b the protection of the data subject or the rights and freedoms of others, **notably freedom of expression**.

2 Restrictions on the exercise of the provisions specified in Article 12 may also admitted where they are provided by law and constitute a necessary measure in a democratic society for the freedom of expression.

3 Restrictions on the exercise of the provisions specified in Articles **7bis and 8** may be provided by law with respect to ~~personal data~~ **processing for statistical purposes or for the purposes** of scientific research, when there is obviously no risk of infringement **of the rights and fundamental freedoms** of data subjects.

#### **Article 10 – Sanctions and remedies**

Each Party undertakes to establish appropriate **judicial and non-judicial** sanctions and remedies for violations of domestic law giving effect to the **provisions of this Convention**.

#### **Article 11 – Extended protection**

None of the provisions of this Chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this Convention.

### **Chapter III – Transborder ~~data-flows~~ of personal data**

#### **Article 12 - Transborder ~~data-flows~~ of personal data**

1 ~~The following provisions shall apply to the disclosure or making available of data to a recipient who is not subject to the jurisdiction of the Party where data are.~~



~~12~~ A Party shall not, for the sole purpose of the protection of personal data, prohibit or subject to special authorisation the ~~disclosure or making available~~ transfer of data to a recipient who is subject to the jurisdiction of another Party to the Convention, unless the Party referred to at the beginning of the present paragraph where data originate from is regulated by binding harmonised ~~regional~~ rules of protection shared by ~~several~~ States belonging to a regional international organisation and the ~~disclosure or making available~~ transfer of data ~~can is~~ not ~~be~~ governed by measures ~~foreseen provided for~~ in paragraph ~~43~~.b.

~~32~~ When the recipient is subject to the jurisdiction of a State or international organisation which is not Party to the Convention, the ~~disclosure or making available~~ transfer of data can only occur where an appropriate level of personal data protection based on the principles of the Convention is guaranteed.

~~43~~. An appropriate level of protection can be ensured by:

- a) the law of that State or international organisation, ~~including particular by the~~ applicable international treaties or agreements, or
- b) ad hoc or approved standardised safeguards legal measures or ad hoc legal measures, provided by legally binding and enforceable instruments the latter having to be binding, capable of effective remedies and adopted and implemented by the persons involved in the transfer and further processing who discloses or makes data accessible and by the recipient.

~~54~~. Notwithstanding the provisions of the previous paragraphs ~~21, 32 and 43~~, each Party may provide that the ~~disclosure or making available~~ transfer of data may take place, if ~~in a particular case~~:

- a) the data subject has given his/her specific, free and [explicit, unambiguous] consent, after being informed of risks arising in the absence of appropriate safeguards, or
- b) the specific interests of the data subject require it in the particular case, or
- c) prevailing legitimate interests, in particular important public interests, are provided protected by law and constitute a necessary measure in a democratic society meeting the criteria of Article 9, prevail.

65. Each Party shall provide that the competent supervisory authority within the meaning of Article 12 bis of the Convention be informed of the modalities regulating the transfers of data flow, foreseen provided for in paragraphs 3.b when ad hoc safeguards are set up, 4.b and 4.c such as ad hoc measures foreseen in paragraph 3.b. It shall also provide that the supervisory authority be entitled to request that the person who transfers discloses or makes data available, or the recipient, demonstrate the quality and effectiveness of actions taken or and that the supervisory authority be entitled to prohibit, suspend, or subject to condition the such disclosure or making available transfers of data within the meaning of paragraphs 43.b. or 5.4 [a and b].

## Chapter III bis Supervisory authorities

### Article 12bis Supervisory authorities

1 Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles of **this Convention**.

2 To this end, such authorities:

a. shall have powers of investigation and intervention;

a'. are consulted when drawing up legislative and administrative measures relating to the protection of individuals with regard to the processing of personal data;

b. shall perform the competences-functions relating to transborder data flow transfers of data foreseen provided for under Article 12.6, notably the approval of standardised safeguards;

c. may shall have the power to issue pronounce decisions necessary with respect to domestic law measures giving effect to the provisions of this Convention and may in particular to sanction administrative offences;

d. shall have the power to engage in legal proceedings or to bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the provisions of this Convention;

e. are shall be responsible for raising awareness of and providing information on data protection;

3 Each supervisory authority can be seized requested by any person to handle investigate a claim concerning the protection of his/her rights and fundamental freedoms with regard to the data processing of personal data within its competence and shall inform the data subject of the follow-up given to such a claim.

4 The supervisory authorities shall **perform their duties and exercise their powers** in complete independence, They shall neither seek nor accept instructions from anyone in the performance of their duties and exercise of their powers.

5 Each Party shall ensure that the supervisory authorities have adequate human, technical and financial resources and infrastructure necessary to perform their mission-functions and exercise their powers independently and effectively.

5bis The supervisory authorities shall draw up a public report of their activities and shall see to it that transparency on their activities be ensured.

5ter. Members and staff of the supervisory authorities shall be bound by obligations of confidentiality with regard to confidential information they have access to or have had access to in the performance of their duties.

6 Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.

7 In accordance with the provisions of Chapter IV, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties, in particular by:

a exchanging all useful information, in particular by taking, under their domestic law and solely for the protection of personal data, all appropriate measures to provide factual information relating to specific processing carried out on its territory, with the exception of personal data undergoing this processing, unless such data is essential for co-operation or that the data subject has previously agreed to in an unambiguous, specific, free and informed manner;

b coordinating their investigations or interventions or conducting joint actions;

c providing information on their law and administrative practice ~~in-relating to~~ data protection.

8 In order to organise their co-operation and to perform the duties set out in the preceding paragraph, the supervisory authorities of the Parties shall form a conference/network.

9 The supervisory authorities shall not be competent with respect to processing carried out by ~~judicial bodies in the exercise of their judicial functions~~ entities acting in their judicial capacity.

## Chapter IV – Mutual assistance

### Article 13 – Co-operation between Parties

1 The Parties agree to render each other mutual assistance in order to implement this Convention.

2 For that purpose:

a each Party shall designate one or more **supervisory** authorities within the meaning of Article 12bis of this Convention, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;

b each Party which has designated more than one **supervisory** authority shall specify in its communication referred to in the previous sub-paragraph the competence of each ~~authority~~.

### Article 14 – Assistance to data subjects resident abroad

(this article is cancelled)

### Article 15 – Safeguards concerning assistance rendered by designated supervisory authorities

1 A **supervisory** authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.

~~2 Each Party shall see to it that the persons belonging to or acting on behalf of the designated **supervisory** authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.~~

32 In no case may a designated **supervisory** authority be allowed to make under ~~Article 14, paragraph 2,~~ a request for assistance on behalf of a data subject ~~[resident abroad],~~ of its own accord and without the express consent of the person concerned.

## Article 16 – Refusal of requests for assistance

A designated **supervisory** authority to which a request for assistance is addressed under Articles 13 or 14 of this Convention may not refuse to comply with it unless:

- a the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;
- b the request does not comply with the provisions of this Convention;
- c compliance with the request would be incompatible with the sovereignty, national security or public ~~policy order~~(~~ordre public~~) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.

## Article 17 – Costs and procedures of assistance

1 Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects [~~abroad~~] under Article 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the **supervisory** authority making the request for assistance.

2 The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.

3 Other details concerning the assistance relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.

## Chapter V – Convention Committee

### Article 18 – Composition of the committee

1 A **Convention** Committee shall be set up after the entry into force of this Convention.

2 Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the Convention shall have the right to be represented on the committee by an observer.

3 The **Convention** Committee may, by a decision taken by **a majority of two-thirds of the representatives of the Parties entitled to vote**, invite **an observer to be represented at its meetings**.

4 Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of the Convention Committee according to the modalities established by the Committee of Ministers in agreement with that Party.

## Article 19 – Functions of the committee

The **Convention** Committee:

- a may make **recommendations** with a view to facilitating or improving the application of the Convention;
- b may make proposals for amendment of this Convention in accordance with Article 21;
- c shall formulate its opinion on any proposal for amendment of this Convention which is referred to it in accordance with Article 21, paragraph 3;
- d may, ~~at the request of a Party,~~ express an opinion on any question concerning the **interpretation or** application of this Convention;
- e shall prepare, before any new accession to the Convention, an opinion for the Committee of Ministers relating to the level of data protection of the candidate for accession;
- f may, at the request of a State or an international organisation or on its own initiative, evaluate whether the level of data protection the former provided~~s~~ rules of its domestic law~~is~~ are in compliance with the provisions of this Convention;
- g may develop or approve models of standardised legal safeguards~~measures~~ referred to in Article 12;
- h shall ~~periodically~~ review the implementation of this Convention by the Parties in accordance with the provisions of Article 4.3 and decide upon measures to take where a Party is not in compliance~~ing~~ with its engagements~~the~~ Convention;
- i shall facilitate, where necessary, the friendly settlement of all difficulties related to the application of this Convention.

## Article 20 – Procedure

1 The **Convention** Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this Convention. It shall subsequently meet at least once a year and in any case when one-third of the representatives of the Parties request its convocation.

2 A majority of representatives of the Parties shall constitute a quorum for a meeting of the **Convention** Committee.

3 Each Party has a right to vote and shall have one vote. On questions related to its competence, the European Union exercises its right to vote and casts a number of votes equal to the number of its member States that are Parties to the Convention and have transferred competencies to the European Union in the field concerned. In this case, those member States of the European Union do not vote.

4 After each of its meetings, the **Convention** Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the Convention.

5. Subject to the provisions of this Convention, the **Convention** Committee shall draw up its own Rules of Procedure and establish in particular the procedures of evaluation set out in Article 4.3 and of examination of the level of protection ~~foreseen-provided for in the present~~ Article 19, on the basis of objective criteria.

## Chapter VI – Amendments

### Article 21 – Amendments

1 Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the **Convention** Committee.

2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the **Parties to the Convention, to the other** member States of the Council of Europe, to the European Union and to every non-member State which has been invited to accede to this Convention in accordance with the provisions of Article 23.

3 Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the **Convention** Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the **Convention** Committee and may approve the amendment.

5 The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 of this article shall be forwarded to the Parties for acceptance.

6 Any amendment approved in accordance with paragraph 4 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

7. Moreover, the Committee of Ministers may after consulting the Convention Committee, decide that a particular amendment shall enter into force at the expiration of a period of two years from the date on which it has been opened to acceptance, unless a Party notifies the Secretary General of the Council of Europe of an objection to its entry into force. If such an objection is notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council Europe.

8. If an amendment has been approved by the Committee of Ministers but has not yet entered into force in accordance with the provisions set out in paragraphs 6 or 7, a State, ~~or~~ the European Union, or an international organisation may not express its consent to be bound by the Convention without at the same time accepting the amendment.

## Chapter VII – Final clauses

### Article 22 – Entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, **the European Union and States not members of the Council of Europe which have taken part in the drafting of the amending protocol or have been invited to accede to the Convention opened for signature on 28 January 1981.** It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

3 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

### Article 23 – Accession by non-member States and international organisations



1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, **after consulting the Parties to the Convention and obtaining their unanimous agreement and in light of the opinion prepared by the Convention Committee in accordance with Article 19.e**, invite any State not a member of the Council of Europe [or an international organisation](#) to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2 In respect of any State [or international organisation](#) acceding to the present Convention according to paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 24 – Territorial clause**

1 Any State, ~~of the European Union~~ [or other international organisation](#) may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State ~~of the European Union~~ [or other international organisation](#) may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

#### **Article 25 – Reservations**

No reservation may be made in respect of the provisions of this Convention.

#### **Article 26 – Denunciation**

1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

### **Article 27 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council and **any Party** to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 22, 23 and 24;
- d any other act, notification or communication relating to this Convention.

### **Article ... of the Protocol: signature and entry into force**

1. This protocol shall be open for signature by the Parties to the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which all Parties to the Convention have expressed their consent to be bound by the protocol in accordance with the provisions of paragraph 1 of this Article.

3. However, this protocol shall enter into force following the expiry of a period of [two] years after the date on which it has been opened to signature, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those states which were Parties to the Convention at the date of opening for signature of this protocol.

4. Should such an objection be notified, the protocol shall enter into force on the first day of the month following the expiration of a period of [three] months after the date on which the Party to the Convention which has notified the objection has deposited its instrument of ratification, acceptance or approval with the Secretary General of the Council of Europe.

## APPENDIX 4

### Conferences and Events in the data protection field since the 28th plenary meeting

- 12<sup>th</sup> Informal Asia Europe Meeting (ASEM) Seminar on Human Rights and Information and Communication Technology (27 - 29 June 2012, Seoul, Korea) - participation of the T-PD Secretariat to present Convention 108 and the modernisation work;
- 43<sup>rd</sup> educational annual session organised by the International Institute on Human Rights (10 and 11 July 2012, Strasbourg) – two thematic courses delivered by the T-PD Secretariat on Convention 108;
- 4<sup>th</sup> congress on electronic crime (23 – 24 August, Sao Paolo, Brazil ) - participation of the T-PD Secretariat to highlight the relevance of Convention 108 on data protection worldwide and to promote accession to it by non-European countries, in particular Brazil;
- International Conference on “Data Protection in the 21<sup>st</sup> Century, Rules of Play for the Information Society” (28 – 30 August and 17-18 October 2012, Berlin) - participation of the T-PD Secretariat in order to contribute to the preparatory workshops and to participate in the conference;
- World Economic Forum Personal Data Workshop, (8 October 2012, Brussels) – participation as a Council’s of Europe expert of a scientific expert from the CRIDS;
- Interparliamentary Committee meeting on “the reform of the EU Data Protection framework - Building trust in a digital and global world” (9 – 10 October, Brussels) - participation of the T-PD Secretariat to promote consistency between the EU package and the modernisation work of Convention 108;
- 33<sup>rd</sup> meeting of the Working Party on Information Security and Privacy of the OECD (18 – 19 October, Paris) - participation of the T-PD Secretariat to report on the modernisation work of Convention 108;
- Conference on the new challenges in the protection of individuals’ privacy and personal data (19 October 2012, Iceland) - participation of the T-PD Secretariat to report on the modernisation work of Convention 108;
- 34<sup>th</sup> International Conference of Data Protection and Privacy Commissioners (23 – 24 October 2012 - Punta del Este, Uruguay) - participation of the T-PD Secretariat:
  - to the pre-event organised by « Public Voice » on 2 panels,
  - as co-organiser of the event « Global response to global challenges »
  - to panels K (Fundamental Rights) and M (Exploring lines of work: research and projects);
  - to the closed session of the conference

- 7<sup>th</sup> Internet Governance Forum (IGF) (6 - 8 November, Baku - Azerbaijan) – the Council of Europe organised a series of events and particularly the Workshop “Who is following me: tracking the trackers” co-organised with the Internet Society.
  
- 4<sup>th</sup> Data Protection workshop in International Organisations, organised by the World Customs Organization, with the support of the European Data Protection Supervisor (EDPS) (8 - 9 November 2012, Brussels) – participation of the Chair of the Consultative Committee and the Council of Europe Data Protection Commissioner;

\*\*\*\*\*

### **Future activities or events linked to data protection**

- 3<sup>rd</sup> annual European Data Protection and Privacy Conference (3 December 2012, Brussels)
- ITU – World Conference on International Telecommunications (WCIT) (3 – 14 December 2012, Dubai)
- 2<sup>nd</sup> meeting of the Committee of Experts on Rights of Internet Users (MSI-DUI) (13 – 14 December 2012, Strasbourg)
- 6<sup>th</sup> CPDP Conference « Computers, Privacy and Data Protection » (23 – 25 January 2013, Brussels)
- International Conference 'Online Privacy: Consenting to your Future' (21-22 March 2013, Malta)
- See also Activities Calendar 2013 on our website

## APPENDIX 5

### Information presented by the observers

#### 1. Internet Society

The Internet Society provided a brief update on some of its recent activities regarding privacy:

- The Internet Society and other members of the Internet Technical Advisory Committee (ITAC) to the OECD participated as speakers in the OECD Technology Foresight Forum - "Harnessing data as a new source of growth: Big data analytics and policies". [1]
- The Council of Europe and the Internet Society co-organised a very successful workshop at the 2012 Internet Governance Forum (IGF) entitled "Who is following me: tracking the trackers, and produced two background papers. [2]
- The Internet Society also co-organised two IGF workshops touching on privacy issues: "Solutions for enabling cross border data flows" (with ICC BASIS), where Sophie Kwasny promoted Convention 108 [3]  
"Governing identity on the Internet (with Citizen Lab at the University of Toronto) [4]
- In November, the Internet Society held a small strategic workshop on Identity Federations Across Boundaries in Prague focusing on issues facing government (citizen-facing) and higher education federation communities, with input from other key contributors. The Internet Society also participated in the W3C workshop "Do Not Track and Beyond" [5] which discussed future directions and next steps for the W3C in tracking protection and Web privacy.

[1] OECD 2012 Technology Foresight Forum agenda:

<http://www.oecd.org/sti/interneteconomy/iccptechnologyforesightforum-harnessingdataasaneewsourceofgrowthbigdataanalyticsandpolicies-agenda.htm>

[2] Information regarding the workshop and links to background papers:

<http://www.internetsociety.org/who-following-me-tracking-trackers-igf2012>

[3] <http://wsms1.intgovforum.org/content/no163-governing-identity-internet>

[4] <http://wsms1.intgovforum.org/content/no86-solutions-enabling-cross-border-data-flows>

[5] <http://www.w3.org/2012/dnt-ws/>

#### 2. OECD

Brendan Van Alsenoy provided an update on the current status of the review of the 1980 OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (Privacy Guidelines). The Working Party for Information Security and Privacy (WPISP) formed an informal group of privacy experts with representatives from government, business, civil

society, the Internet technical community, and academics to discuss the main themes of the review. In September of this year, the expert group finalised its proposals for revisions. The main proposals for revisions to the Privacy Guidelines concern the introduction of a new section on “implementing accountability”, a modernisation of the section on transborder flows of personal data, as well as the addition of several new concepts to the sections on national implementation and international co-operation. The WPISP discussed these proposals during its meeting on 18-19 October and is hoping to finalise them prior to the next ICCP meeting, which will take place in April 2013. Mr. Van Alsenoy also expressed appreciation for willingness of the T-PD to share its national contact points with OECD and APEC for purposes of cross-border privacy law enforcement cooperation. This combined list of contact points has been handed over to the Global Privacy Enforcement Network (GPEN) who will maintain this list in the future.

### **3. AEDH**

AEDH will start in January 2013 a project funded by DG Justice of the EU. Based on the principles of the European Convention on Human Rights, Directive of 1995 and Convention 108 on the right of every citizen to privacy and protection of their personal data, supported by the League of human Rights in France, the German Union Humanistische, the Hungarian Civil Liberties Union and Medel (European network of magistrates), AEDH proposes to inform citizens of ten EU countries about the possibility of an institutional filing/ recording they may be subject to (police, justice, PNR etc) and that this filing/ recording maybe abusive. In order to promote this project, two attractive and innovative awareness tools will be used: a booklet referring to the filing/ recording, to the rights and means of redress for the violations of these rights, and a quiz on the websites of all partners who will reproduce this information, which also may be enhanced by links to ad hoc sites.

### **4. AFAPDP**

The AFAPDP informed the participants on its 6<sup>th</sup> annual conference and its 6<sup>th</sup> general Assembly (Monaco, 21 - 23 November 2012) organised with the support of the *Commission de contrôle des informations nominatives* of Monaco and the international organisation of *Francophonie*.