

Ministers' Deputies

CM Documents

CM(2002)199 (restricted) 20 December 2002

825 Meeting, 22 January 2003

10 Legal questions

10.3 Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) -

a. Abridged report of the 18th meeting (Strasbourg, 9-11 October 2002)¹

LIST OF ITEMS EXAMINED AND DECISIONS TAKEN

1. 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 that Convention (ETS No. 108, hereinafter "Convention 108"), held its 18th meeting from 9 to 11 October 2002, with Mr Jean-Philippe WALTER (Switzerland) in the chair.
2. Under Article 20, para. 3 of Convention 108, "after each of its meetings, the Consultative 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". The present report is accordingly addressed to the Committee of Ministers, which is invited to take note of it as a whole.
3. In particular, during this meeting, the T-PD:
 - i. examined and adopted the Guide to the preparation of contractual clauses governing data protection during the transfer of personal data to third parties not bound by an adequate level of data protection, as contained in the Addendum to this abridged report (CM(2002)199 Addendum). The Guide consists of three parts: the first part sets out the background, the second explains the purpose of the Guide and the third contains the principles to be taken into account when preparing contractual clauses;

¹ The list of participants can be obtained from the Directorate General of Legal Affairs (DGI).

- ii. stressed that the Guide did not replace the clauses contained in the 1992 model contract, but amplified and refined them – so that the two documents could be regarded as complementary. It also pointed out that this document was intended as a guide to preparation of contractual clauses, and was not a binding legal instrument. Finally, the guide itself was meant to be dynamic, and would be added to as necessary, in the light of future developments;
 - iii. invited the Committee of Ministers to take note of the preparation of the Guide to the preparation of contractual clauses governing data protection during the transfer of personal data to third parties not bound by an adequate level of data protection, and its publication on the Council of Europe's data protection website;
 - iv. examined the main conclusions of the European Conference on Data Protection held in Warsaw (Poland) on 19 and 20 November 2001 on the theme "Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data: Present and Future". The T-PD stressed that the principles stated in Convention 108 remained as relevant as ever, and the contributions made by that text should not be questioned. In the light of the Warsaw Conference's conclusions, it did not seem opportune to envisage amending the Convention at present or to prepare a new protocol. Moreover, the reports and statements presented at the Conference had provided enough material to permit assessment of Convention 108 with reference to the new challenges posed for personal data protection by technological and legal developments in the information society;
 - v. considered its work programme and agreed that the following questions should be given priority:
 - a) the rights of persons data subjects. In this connection, the T-PD stressed that a guide to their rights and obligations would be very useful;
 - b) application of the principles laid down in Convention 108 to the new technological developments;
 - c) transborder data flows;
 - d) thorough examination of the exceptions and restrictions specified in Article 9 of Convention 108, including the interpretations of this article given in national laws and the case-law of the European Court of Human Rights;
 - vi. examined the question of future structures and working methods of the Council of Europe committees in the field of data protection;
 - vii. held an exchange of views on the major developments in the data protection field at the national level;
 - viii. elected its Vice-Chairman and a member of the Drafting Group of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD-GR).
4. The T-PD invited the Committee of Ministers to take note of the report of its 18th meeting as a whole. The detailed report of the meeting (T-PD (2002) RAP 18) is available from Directorate General I – Legal Affairs.

Appendix**AGENDA**

1. Opening of the meeting by the Chairman
2. Adoption of the agenda
3. Communication by the Secretariat General of the Council of Europe
4. Examination and adoption of the draft Guide to the preparation of contractual clauses governing data protection during the transfer of personal data to third parties not bound by an adequate level of data protection prepared by the T-PD-GR
5. Assessment of the main conclusions of the European Conference on Data Protection on "Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data: Present and Future" (Warsaw, Poland, 19-20 November 2001) and analysis of Convention 108 in the light of new developments in the field of data protection
6. Future structures and working methods of the committees of the Council of Europe in the field of data protection
7. Exchange of views on major developments in data protection since the 17th meeting of the T-PD (8-10 October 2001)
8. Election of the second Vice-Chair of the T-PD and one member of the T-PD-GR
9. Other business
10. Date of the 19th meeting of the T-PD