

Ministers' Deputies

CM Documents

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962 Meeting, 26 April 2006

10 Legal questions

10.1 Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) (T-PD) –

Abridged report of the 22nd plenary meeting (Strasbourg, 8-10 March 2006)

Item to be considered by the GR-J on 30.03.2006

I. INTRODUCTION

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 the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108) (hereafter Convention 108), held its 22nd meeting in Strasbourg on 8-10 March 2006. The agenda, as adopted by the T-PD, is set out in Appendix 1. The list of participants can be obtained from the Directorate General of Legal Affairs.

II. POINTS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR DECISION

2. The T-PD took note of the feasibility study carried out by its Bureau on the proposal to organise a European Data Protection Day, similar to other European Days organised by the Council of Europe. This study took the form of a questionnaire, which was sent to all T-PD members requesting that it be forwarded to national data protection authorities. The results showed that the initiative was positively welcomed by most member states. At the meeting, the European Commission reiterated its readiness to be closely associated in the celebration and promotion of a European Data Protection Day and Interpol expressed its support in favour of this initiative and informed the T-PD that it could act as a relay in promoting the Day.

3. The T-PD invites the Committee of Ministers to agree to declare a European Data Protection Day as from 2007, which will be held each year during the week of 28 January (date of the opening of Convention 108 for signature). It also invites the Committee of Ministers to instruct the T-PD to draw up a draft organisational charter for the Day on the basis of the proposal set out in Appendix 2.

¹ This document has been classified restricted at the date of issue. Unless the Committee of Ministers decides otherwise, it will be declassified according to the rules set up in Resolution Res(2001)6 on access to Council of Europe documents.

III. POINTS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR INFORMATION

4. The T-PD:

- i) elected Mr Joao Pedro CABRAL (Portugal) as Chair, Ms Eva Souhrada-Kirchmayer (Austria) as 1st Vice-Chair, Ms Anne-Marije Fontein (Netherlands) as 2nd Vice-Chair and Ms Vaida Linartaitė (Lithuania), Mrs Dorota Skolimowska (Poland), Mr Jean-Philippe WALTER (Switzerland), Mr Paul Boyle (United Kingdom) as members of the Bureau, for a two-year renewable term of office.
- ii) adopted a work programme for the T-P for coming years, which will focus on the following issues in the context of global telecommunication networks: profiling, transborder data flows, and the interpretation of the notion of controller of the file and of automatic processing.
- iii) held an exchange of views on major developments in Council of Europe member states in the data protection field since its last meeting (2-4 February 2005).
- iv) pursued the examination of the question of the formalisation of a fundamental right to data protection through an appropriate Council of Europe instrument and instructed the Bureau to carefully examine the added value and modalities of such an instrument.
- v) held an exchange of views on the follow-up to the progress report on the application of the principles of Convention 108 to the collection and processing of biometric data, and agreed to continue the collection of examples of concrete cases in member states where biometrics were used in the private sphere, notably in the employment sector.
- vi) took note with satisfaction of the final Declaration and two Resolutions adopted at the 27th International Conference of Data Protection and Privacy Commissioners in Montreux, Switzerland, on 14-16 September 2006. The final Declaration included an appeal to the Council of Europe to invite non-member states of the Organisation to accede to Convention 108, as foreseen by Article 23 of the Convention.
- vii) was informed of the latest developments in the Council of Europe's activities to combat terrorism.
- viii) took note with interest of the Steering Committee on Bioethics's (CDBI) work as regards the drawing up of a draft Protocol to the Convention on human rights and biomedicine devoted to genetic testing, and welcomed its invitation to take part in the next plenary meeting of the CDBI.
- ix) took note with interest of the OECD's work on cross-border enforcement and welcomed the invitation extended by the OECD to states who were non-members of the OECD but member states of the Council of Europe to reply to a questionnaire on the cross-border enforcement of privacy laws. In this connection, the OECD stated that it would build on the Council of Europe and the European Union's past work in this field. It also suggested that for the enforcement of the existing legal framework to be effective, given the current volumes and destinations of transborder data flows, co-ordination with other international organisations was essential.
- x) Agreed, subject to the availability of the necessary appropriations within the budget for 2007, to hold its next plenary meeting during the week of 12 March 2007.

Appendix 1**AGENDA**

1. Opening of the meeting
2. Adoption of the agenda
3. Statement by the Secretariat
4. Election of the T-PD Chair and two Vice-Chairs and of four Bureau members
5. Exchange of views on major developments in the data protection field since the 21st meeting of the T-PD (2-4 February 2005)
6. Draft work programme for the T-PD
7. Proposal for the organisation of a European Data Protection Day
8. Formalisation of a fundamental right to data protection through an appropriate Council of Europe instrument
9. Current issues to be examined
 - Follow-up of the progress report on the application of the principles of Convention 108 to the collection and processing of biometric data [T-PD (2005) BIOM]
 - Follow-up of the 27th International Conference of Data Protection and Privacy Commissioners in Montreux (Switzerland, 14-16 September 2005)
 - Data protection and the fight against terrorism
10. Date of the 23rd meeting of the T-PD
11. Other business
 - Steering Committee on Bioethics (CDBI) : Draft Protocol on genetic testing
 - OCDE work on cross-border enforcement of privacy laws

Appendix 2

PROPOSAL FOR THE ORGANISATION OF A EUROPEAN DATA PROTECTION DAY

A. WHY ORGANISE A EUROPEAN DATA PROTECTION DAY?

1. Data protection issues, including their cross-border dimension, are for ever present in citizens' lives – at work, in their relations with public authorities, in the health field, when they buy goods or services, when they travel or surf the internet.
2. Nevertheless, it is a well-known fact that European citizens are unfamiliar with data protection issues and unaware of their rights in this respect. Moreover, data protection law does not usually feature in the curricula of schools and universities.
3. On the European Data Protection Day, events could be organised all over Europe to raise awareness on data protection and inform citizens of their rights and of good practices, thereby enabling them to exercise these rights more effectively.
4. The European Data Protection Day should be a special occasion, a time set aside by each and every one of us to familiarise ourselves with a largely unknown, yet major, facet of our everyday lives.

B. WHO WOULD THE EUROPEAN DATA PROTECTION DAY BE AIMED AT?

5. The aim of the European Data Protection Day would be to give European citizens the chance to understand what personal data is collected and processed about them and why, and what their rights are with respect to this processing.
6. They should also be made aware of the risks inherent and associated with the illegal mishandling and unfair processing of their personal data.
7. The objective would therefore be to inform and educate the public at large as to their day-to-day rights, but would also provide data protection professionals with the opportunity of meeting data subjects.

C. WHAT PART WOULD STATES AND/OR INTERESTED NATIONAL OR INTERNATIONAL BODIES BE ASKED TO PLAY?

8. Each State and/or interested national or international body would be free to choose whether to participate in the European Data Protection Day or not. States and/or interested bodies having decided to take part would then determine the type of activity they wish to have. The Day would be organised in a flexible and decentralised manner so as to cater for the wishes and resources of each participant.
9. Each State and/or interested body would have to finance any activity it decided to organise within the framework of this Day. However, in view of the fact that most data protection supervisory authorities and some public or private sector parties already organise awareness-raising activities, participation in the Data Protection Day would not necessarily entail an additional financial burden. It would be more a matter of including the 28th of January when planning events in the framework of a State and/or interested body's awareness-raising strategy.

D. WHAT PART WOULD THE COUNCIL OF EUROPE AND THE EUROPEAN COMMISSION PLAY IN THE CELEBRATION OF THE EUROPEAN DATA PROTECTION DAY?

10. The Council of Europe would be entrusted with promoting initiatives and ensuring consistency among the different activities organised for the purposes of this Day. The European Commission is considering the possibility of taking part in it within the framework of its co-operation activities with the Council of Europe foreseen in the EC Treaty.

11. Every year, the Council of Europe and the European Commission could be directly involved in one event organised in a member state.

E. SUGGESTED ACTIVITIES WHICH COULD BE ORGANISED BY STATES AND/OR INTERESTED NATIONAL OR INTERNATIONAL BODIES

12. Amongst the many activities which could be organised within the framework of the European Data Protection Day, States and/or interested bodies could choose to organise events such as:

- Open days at data protection authorities or other relevant bodies;
- Mock-cases, examples involving the collection and processing of personal data and the exercise of the right of access;
- Meetings between data protection professionals (free advice, visits to schools and associations) and individuals;
- Conferences at local level;
- Production of specific information material;
- Awareness-raising initiatives for children and young people (posters, competitions or awards).

13. Law faculties could be associated in the organisation of these events.

F. INFORMATION ON THE ACTIVITIES ORGANISED WITHIN THE FRAMEWORK OF THE EUROPEAN DATA PROTECTION DAY

14. The Council of Europe's portal and website would include a section on the European Data Protection Day which would contain a list of activities carried out within the framework of this Day.

15. Furthermore, appropriate media coverage within member States could help draw citizens' attention to data protection issues. Council of Europe field and information offices could, if necessary, be the link between institutions and States as far as the spreading of information is concerned.

16. Ideally, the Council of Europe would produce a short educational film for television, which could help publicise the Day.