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

**LE COMITE CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES PERSONNES
A L'EGARD DU TRAITEMENT AUTOMATISE
DES DONNES A CARACTERE PERSONNEL [STE n°108]**

(T-PD)

**Compilation of reports of T-PD representatives in other committees and *fora* as well as
other events and conferences**

**Compilation des rapports des représentants du T-PD aux travaux d'autres comités et *fora*
ainsi qu'à des événements et conférences**

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Report of Mr Matthias Schmidl on “International Workshop on Public/Private Cooperation against Cybercrime and Criminal Money on the Internet” in Istanbul on 26-28 November 2012

Report on the participation in the “International Workshop on Public/Private Cooperation against Cybercrime and Criminal Money on the Internet” in Istanbul

The Workshop took place from 26 to 28 November 2012 and focused on the sharing of threat information between private and public bodies in the field of cybercrime and criminal money on the internet.

Matthias Schmidl (Austria) held a presentation on 26 November dealing with aspects of data protection. He informed the participants about the legal basis of data protection rules in international and European law, notably the Convention of the Council of Europe for the Protection of individuals with regard to automatic processing of personal data (Convention 108), and how rules of data protection may affect cross-border information sharing. He also briefly mentioned the efforts of the EU to modernise its data protection acquis and the efforts of the Council of Europe to modernise Convention 108.

Report of Mr Matthias Schmidl on the participation in the T-CY event “Hearing of the private sector and civil society stakeholders on transborder access to data” on 3 June 2013 and the “9th T CY Plenary” on 4 June 2013 in Strasbourg

The Hearing on 3 June 2013 focused on transborder access to data on the basis of current Art. 32.b of Convention 185 (Convention on Cybercrime – Budapest Convention) and on the possibility to allow for enhanced possibilities for transborder access through an Additional Protocol to Convention 185.

The first day of the 9th T-CY Plenary also focused on a possible Additional Protocol to Convention 185 and on data protection issues.

Matthias Schmidl (Austria) participated in both events as representative of the T-PD.

On 3 June 2013 he made several interventions to draw the participants’ attention to the fact that data protection plays an important role when dealing with transborder access to data. He particularly pointed out that the current practice of some LEAs to investigate data abroad by directly contacting ISPs is problematic with regard to the rules of Convention 108 and its Additional Protocol on transborder data flow.

On 4 June 2013 the T-PD representative was asked to give the Plenary an update of the current state of play of the modernizing process of Convention 108. In this respect he underlined again that Convention 108 pursues an overall approach and, consequently, is also relevant for LEAs. He also pointed out that an ISP-address can – under certain circumstances – also be regarded as personal data within the meaning of Convention 108.

Report of Nevena Ruzic on the meeting of key stakeholders on the protection of whistleblowers on 30-31 May 2013 in Strasbourg

The Secretariat of the European Committee on Legal Co-operation (CDCJ) of the Council of Europe organised a “meeting to consult key stakeholders on the protection of whistleblowers on 30-31 May 2013. The meeting gathered experts from different countries (including the U.S.A. and Canada) and of different field of work, *inter alia* participants who themselves had blown the whistle in their countries. The meeting was divided into three themes: 1. Free speech, transparency and privacy; 2. Legal framework; and 3. Remedies and proceedings.

Thought the discussions throughout the entire day and a half had been fruitful and dynamic, in this report discussions and information pertaining to the right to privacy and personal data protection will be reflected.

During the first session dedicated to free speech, transparency and privacy, European Court of Human Rights Judge Helena Jaderblom (Sweden) emphasised that the names of public officials as well as their official position should not be treated as personal information. Also, she said that a different approach to the protection of whistleblowers in public and private sectors might be required. [as a personal comment: Such a different approach would affect different data protection schemes in public and private sectors respectively] During the same session, Ms. Marie-France MAZARS, Honorary Dean of the Court of Cassation said that the differentiation between confidentiality and anonymity is highly important when discussing internal reporting.

The second session Legal framework was dedicated to regulation and internal reporting mechanisms. Mr Björn Rohde-Liebenau, Consultant, Ombudsman and Mediator, RCC Risk Communication Concepts, emphasised that there could not be ‘self-regulation’ in whistleblowing and that private companies need public authorities.

The final session was on Remedies and proceedings opened by Pieter Omtzigt, member of the House of Representatives (The Netherlands), member of the Parliamentary Assembly of the Council of Europe and Mr Robert FRANCIS QC, Barrister.

The discussion during the entire meeting was to a great extent focused on the concept of “good faith” and the scope of “employee”. With regard to internal reporting mechanisms, although for many speakers essential, they were said to be inefficient and not functional. The participants were not discussing in depth draft recommendation of the Committee of Ministers to member States on protecting "Whistleblowers".

Follow-up: 20 June, Draft recommendation done and sent to Member States for comments

October 2013 Recommendation revisited by CDCJ