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

30th plenary meeting

Strasbourg, 15 – 18 October 2013

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ABRIDGED REPORT

Directorate General of 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 30th plenary meeting in Strasbourg from 15 to 18 October 2013 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 1 and 2.

The T-PD:

1. Took note of information provided by Mr Philippe Boillat, Director General of the Directorate General of Human Rights and Rule of Law, on the modernisation of Convention 108, major developments in the field of data protection and related fields since the 29th plenary meeting (27-30 November 2012) and the main events organised by the Council of Europe or in partnership with it;

2. Examined the draft Explanatory Report to the modernised Convention (proposals adopted by the T-PD at its 29th plenary meeting) and instructed the Secretariat to amend it in the light of the discussions, with a view to its subsequent submission to the Ad Hoc Committee on Data Protection (CAHDATA), responsible for finalising the report in parallel with the work being done on the draft of the modernised Convention;

3. Took note of information on the evaluation and follow-up mechanism being prepared by the Secretariat and instructed the latter to revise and supplement this document, taking account of the positions adopted at the meeting, with a view to its subsequent transmission, for information, to the CAHDATA;

4. Examined the revised draft Recommendation on the protection of personal data used for employment purposes and instructed the Secretariat to revise the draft in the light of the observations made, so as to permit its finalisation and consultation of delegations before its adoption at the next plenary meeting;

5. Examined the final report on implementation of Recommendation (87)15 regulating the use of personal data in the police sector, prepared by the scientific expert Mr Joseph Cannataci, and decided to publish the report after allowing delegations a final deadline for its verification (8 November) and to forward the report to other Council of Europe committees concerned, such as the Cybercrime Convention Committee (T-CY) and the European Committee on Crime Problems (CDPC) as well as the CAHDATA, and lastly instructed its Bureau to draw up tangible proposals concerning the follow-up to be given to this report;

6. Took note of information provided by Mr Joseph Cannataci concerning the review of implementation of Recommendation (97)5 on the protection of medical data and instructed the Secretariat to submit to delegations the documents concerning the various working approaches (deadline for replies 30 November) so as to permit the sending of a questionnaire (which will either be exhaustive or less comprehensive) by the end of the year;

* 66 participants in total. Gender distribution: 33 men and 33 women
7. Took note of information provided by the scientific expert Mr Paul De Hert concerning the report on collection and processing of **biometric** data, information provided by the scientific expert Mr Douwe Korff concerning the report on the implications for private life of use of the **Internet** and of information on the report on **nanotechnology** and its implications for the right to privacy and invited the experts to finalise their reports for publication by the year end;

8. Decided on the Committee's future priorities for the 2014-2015 biennium, in the light of the scientific experts' statements and the discussions, and instructed the Secretariat to finalise the **work programme** accordingly;

9. Took note of activities and **major developments** at national level in the data protection field since the last plenary meeting and of the participation by the Secretariat or Committee representatives in various events, and particularly to the 35th International Conference of Data Protection and Privacy Commissioners (Warsaw, 23-26 September 2013);

10. Took note of the information provided on **Data Protection Day** 2014 concerning, firstly, the preparation of a compilation of national initiatives and, secondly, the launch of the handbook on European data protection case law prepared in partnership with the European Union Agency for Fundamental Rights ((FRA);

11. Took note of information provided by Professor Kai Rannenberg on the **standardisation** work and standards of the International Organization for Standardisation (ISO) and, in view of this work’s interest for the Committee, instructed the Secretariat to take the necessary steps to request "liaison" organisation status;

12. Took note of information provided concerning **co-operation with other Council of Europe bodies**, in particular the work being done by the Steering Committee on Media and Information Society (CDMSI) and its Committee of Experts on Rights of Internet Users (MSI-DUI), by the drafting group for an international convention to combat the manipulation of sports results, by the Committee on Bioethics (DH-BIO), represented by its Secretary, Ms Laurence Lwoff, who presented the work of common interest of the Committees, and by the Parliamentary Assembly of the Council of Europe (PACE);

13. Drew attention to the need for very close monitoring of the work of the **Cybercrime** Convention Committee (T-CY) concerning transfrontier access to data, so as to ensure the proposals' consistency with personal data protection law;

14. Expresses its concerns in relation to the requirements of the European Convention on Human Rights and Convention 108 on mass surveillance allegations and instructed the Secretariat to submit to delegations a message to be addressed to the Committee of Ministers (see final version in appendix 3 of this report) in view of its finalisation by written procedure, which after its adoption will be submitted to the Committee of Ministers in a letter signed by the chair of the T-PD;
15. Adopted an opinion on PACE Recommendation (2024) 2013 on national security and access to information (appendix 4) and examined the draft revised Recommendation (2006) 4 on research on biological materials of human origin, prepared by DH-BIO, and suggested its adoption by written procedure as soon as possible in order to contribute to the work of this committee during its next plenary meeting (26-28 November 2013);

16. Took note of the information provided on the state of signatures, ratifications and accessions and welcomed the accession of Uruguay (45th party), the first participation by the Russian Federation (46th party) and the progress made on accession by the Kingdom of Morocco, which had been invited to accede to the Convention in January;

17. Took note of the information submitted by the observers;

18. Took note of the report by the Council of Europe Data Protection Commissioner on her activities since the last plenary meeting;

19. Took note of the request to update the national information on the Internet site and the call made to delegations to contribute to a new section concerning reference material on data protection in each country;

20. Took note of the updating of the joint OECD-APEC- Council of Europe list of contact points and invited delegations that so wished to join this initiative;

21. Appointed Mr Stanislav Durina (Slovakia) and Ms Alessandra Pierucci (Italy) as "Equality" Rapporteurs;

22. Took note of the dates of the first meeting of the CAHDATA, scheduled from 12 to 14 November 2013 (with the next meetings proposed for 17-19 February 2014 and 14-16 May 2014), and the dates of the 31st plenary meeting (2-5 June 2014) and the Bureau meetings (31st meeting: 18-20 December 2013, 32nd meeting: 25-27 March 2014, 33rd meeting: 15-17 October 2014 and 34th meeting: 16-18 December 2014).
APPENDIX 1

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS
MEMBERS OF THE T-PD/ MEMBRES DU T-PD

ALBANIA / ALBANIE
Erton Karagjoi, Director of the Registration Department, Commissioner for Personal Data Protection, Rr "Abdi Toptani, Nr. 4, Kati i II-te, Tirana, Albania

ANDORRA / ANDORRE
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ARMENIA / ARMENIE
Vahagn Harutyunyan, Deputy- Head of Division of Struggle against High-tech Crimes, General Department of Combat Against Organized Crime, Republic of Armenia Police, 130 Nalbandyan St. Yerevan

AUSTRIA / AUTRICHE
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BELGIUM / BELGIQUE (apologised / excusé)

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CROATIA / CROATIE
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CYPRUS / CHYPRE (apologised / excusé)

CZECH REPUBLIC / RÉPUBLIQUE TCHÉQUE
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DENMARK / DANEMARK (apologised / excusé)

ESTONIA / ESTONIE
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<td>Kaja Puusepp, Supervision Director</td>
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Igor Milashevskiy, Advisor to the Minister of communication and mass communications of the Russian Federation (Head of delegation);

Dmitriy Vyatkin, Deputy Chairman of the State Duma Committee on constitutional legislation and state building;

Mikhail Vinogradov, Deputy Director of Department for international law and cooperation, Ministry of Justice of the Russian Federation;

Andrey Fedosenko, Chief Counselor of the Staff of the State Duma Committee on constitutional legislation and state building;

Aleksandra Aronova, Counselor of the Department for regulation of radio frequencies and communication networks, Ministry of communication and mass communications of the Russian Federation;
Konstantin Kosorukov, Deputy for Legal Affairs to the Permanent Representative of the Russian Federation at the Council of Europe.

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Olena Smirnova, Deputy Head of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights

UNITED KINGDOM / ROYAUME-UNI

URUGUAY (apologised / excusé)

OBSERVERS/OBSERVATEURS

KINGDOM OF MOROCCO / ROYAUME DE MAROC (apologised / excusé)
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<th>Country</th>
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<tr>
<td>TURKEY</td>
<td>Tamer AKÇALI, Judge, Ministry of Justice of the Republic of Turkey, General Directorate of External Relations and International Law</td>
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<td>USA</td>
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<td>FRANCE</td>
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<td>USA</td>
<td>INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS / Conférence internationale des Commissaires à la protection des données et de la vie privée (apologised / excusé)</td>
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<td>USA</td>
<td>IBERO-AMERICAN DATA PROTECTION NETWORK / RESEAU IBERO-AMERICAIN DE PROTECTION DES DONNEES (apologised / excusé)</td>
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<td>USA</td>
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Paul de Hert, Tilburg Institute for Law, Technology, and Society, Tilburg University, P.O. Box 90153

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Douwe Korff, Professor of International Law at London Metropolitan University, Wool Street House, Gog Magog Hills, Barbraham, Cambridge CB22 3AE, United Kingdom

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THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION / LE COMITÉ EUROPÉEN DE COOPÉRATION JURIDIQUE (CDCJ) (apologised / excusé)

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

Philippe Boillat, Director General / Directeur général

**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

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

Lee Hibbard, Head of Unit / Chef d’unité

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

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

Maria Michaelidou, Programme Advisor / Conseillère de programme

Szilvia Simond, Assistant / Assistante

**INTERPRETERS/INTERPRETES**

Lucie De Burlet
Didier Jungling
Luke Tilden
Gregoire Devictor
Katia di Stefano
APPENDIX 2

AGENDA

I. OPENING OF THE MEETING

II. ADOPTION OF THE AGENDA

III. STATEMENT BY THE SECRETARIAT
Mr Philippe Boillat, - Director General, General Direction of Human Rights and Rule of Law - [link to the speech](French only)

- **T-PD-BUR(2013)RAP30Abr**
  Abridged report of the 30th meeting of the Bureau of the T-PD (28-30 May 2013)

- **T-PD-BUR(2013)RAP29Abr**
  Abridged report of the 29th meeting of the Bureau of the T-PD (5-7 February 2013)

- **T-PD (2012)RAP29Abr**

- **T-PD(2012)Rules**
  T-PD’s rules of procedure

- **DP(2013)CASE LAW**
  List of ECHR judgments (non-exhaustive)

IV. MODERNISATION OF CONVENTION 108

*Required action:* The T-PD will take note of the information provided by the Secretariat concerning the Ad hoc Committee (CAHDATA) and will examine the draft explanatory report and the information elements on the evaluation and follow-up mechanism.

- **T-PD-BUR(2013)3Rev2**
  Draft Explanatory report of the modernised version of Convention 108

- **T-PD-BUR(2013)02Rev3**
  Information elements on the evaluation and follow-up mechanism

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*Related documents:*

- **CAHDATA(2013)ToR**
  Terms of reference of the Ad hoc Committee (CAHDATA) on Data Protection

- **T-PD(2012)04Rev4**
  Final document on the modernisation of Convention 108
V. DATA PROTECTION USED FOR EMPLOYMENT PURPOSES

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

- **T-PD(2013)09**  
  Compilation of comments received

- **T-PD(2013)05Rev**  
  Draft revised Recommendation on the protection of personal data used for employment purposes

- **T-PD(2013)05rev_en**  
  German comments
Related documents:

- **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 examine the final report of the expert and will decide on the following work.

- Recommendation (87)15 – “Twenty-five years down the line”: Final experts’ Report *(restricted)*

- **Recommendation (87)15** of the Committee of Ministers to the member States on regulating the use of personal data in the police sector

Mr Joseph Cannataci, Chair in European Information Policy & Technology Law, University of Groningen, Adjunct Professor SECAU Security Research Centre

### VII. RECOMMENDATION ON MEDICAL DATA

**Required action:** The Committee will take note of the work proposals and agree on the next steps.

- **Topics for questionnaire and interviews**

- **Recommendation N° R (97) 5** on the protection of medical data (13 February 1997)

### VIII. EXPERTS’ REPORTS

**Required action:** The Committee will take note of the draft reports prepared by the scientific experts and will decide on the necessary follow-up.

- **T-PD(2013)06** Progress report on the application of the principles of Convention 108 to the collection and processing of biometric data
  
  *Mr Paul De Hert and Mr Koen Christianen, Tilburg Institute for Law, Technology, and Society (TILT) Tilburg University*

  
  *Mr Douwe Korff, professor of international law at London Metropolitan University, London, UK*
• **T-PD(2013)08** Nanotechnology, Ubiquitous Computing and The Internet of Things: “Challenges to Rights to Privacy and Data Protection Draft Report to the Council of Europe”
  *Mr Matthew Kearnes and Ms Georgia Miller, University of New South Wales*

Mr Douwe Korff, Professor of international law at London Metropolitan University, UK

Mr Paul De Hert, Professor of European Criminal Law, Tilburg Institute for Law, Technology, and Society (TILT) Tilburg University

**IX. OVERVIEW OF ACTIVITIES AND MAJOR DEVELOPMENTS IN THE FIELD OF DATA PROTECTION SINCE THE LAST PLENARY MEETING**

*Required action:* The Committee will take note of the information presented and will have an exchange of views on these points.

- **T-PD(2013)03Mos** Information on the recent developments at national level in the data protection field
- **T-PD(2013)03Mos Addendum**

- **T-PD(2013)01Mos** Compilation of reports of T-PD representatives in other committees and fora as well as other events and conferences

**X. DATA PROTECTION DAY**

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

**XI. EXCHANGE OF VIEWS**

*Required action:* The Committee will hold an exchange of views on the subject of data protection and the International Organization for Standardisation (ISO).


**XII. WORK PROGRAMME**

*Required action:* The Committee will discuss the draft programme for 2014-2015 and finalise it.


- [Council of Europe Internet Governance Strategy (2012-2015)]
XIII. **COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES**

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

- Steering Committee on Media and Information Society (CDMSI)
  - Conference of Council of Europe Ministers responsible for Media and Information Society, Freedom of Expression and Democracy in the Digital Age, Opportunities, Rights, Responsibilities (Belgrade, 7 and 8 November 2013)
  - Committee of Experts on Rights of Internet Users (MSI-DUI)
- European Committee on Legal Cooperation (CDCJ)
- Cybercrime Convention Committee (T-CY)
- Committee on Bioethics (DH – Bio)
- Enlarged Partial Agreement on Sport (EPAS) – Sport Conventions Division
- Council of Europe Parliamentary Assembly (PACE)
  - Recommendation 2024 (2013) “National security and access to information”
  - Resolution 1954 (2013) “National security and access to information”
- DG PROG : Cooperation programs

XIV. **OPINIONS**

*Required action: The Committee will examine the draft opinion and will take note of the finalised ones.*

- T-PD(2013)02 Compilation of opinions

XV. **STATE OF SIGNATURES, RATIFICATIONS AND ACCESSION**

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

- Overview Convention 108
- Overview additional Protocol

XVI. **OBSERVERS**

*Required action: The admission of a new observer will be welcomed (Australian Privacy Foundation) and it will be taken note of the information presented by the observers.*

XVII. **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

XVIII. CONTACT POINTS AND NATIONAL INFORMATION

Required action: The Committee will take note of the information provided by the Secretariat concerning the joint OECD-APEC-Council of Europe list of contact points and the Council of Europe web site.

XIX. 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 2014.

XX. OTHER BUSINESS

DRAFT ORDER OF BUSINESS
(PROVISIONAL AND SUBJECT TO CHANGE IN LIGHT OF THE DISCUSSIONS)

<table>
<thead>
<tr>
<th></th>
<th>15 October</th>
<th>16 October</th>
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<th>18 October</th>
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<tbody>
<tr>
<td>Opening</td>
<td>9:30 am</td>
<td>9:00/9:30am</td>
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<tr>
<td>Lunch</td>
<td>01:00-2:30 pm</td>
<td>12:30/1:00 pm - 2:00/2:30 pm</td>
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<td>Ends</td>
<td>6:00 pm</td>
<td>5:30/6:00 pm</td>
<td>5:30/6:00 pm</td>
<td>4:00 pm</td>
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<tr>
<td>Informal Gathering</td>
<td>8 pm</td>
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APPENDIX 3
(final version)

At its 30th plenary meeting in Strasbourg from 15 to 18 October 2013, the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data discussed the implications that the information revealed by Edward Snowden regarding mass surveillance programmes might have for the protection of human rights and fundamental freedoms. In this regard, it noted that there is a need to reflect on the strengthening of the measures aimed at enforcing the legal framework applicable to the processing of personal data in the context of surveillance programmes conducted for purposes of national security, in order to guarantee everyone concerned respect for their rights. It also underlined the fact that data processing of this type must according to the case law of the European Court of Human Rights be subject to effective, independent and transparent scrutiny.

The Consultative Committee underscored the timeliness of the current work on modernising Convention 108, which should reflect all of the criteria deriving from the case-law of the European Court of Human Rights strictly applying the general principle, provided for by Article 8 of the European Convention on Human Rights, that the right to privacy may only be restricted in exceptional circumstances for the legitimate protection of national security if such restriction is in accordance with the law and necessary in a democratic society. It appears in that respect appropriate to reflect upon the concept of national security and the safeguards surrounding any restriction on the right to data protection in that context.

The Committee underlines that the increased use of technologies allowing for general (or mass) surveillance of persons, whatever their nationality and place of residence, may be contrary to the rights safeguarded by the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Convention 108.

The Committee denounces the use of mass surveillance techniques, which could seriously infringe on human rights and democracy and suggests that a line of action based on Convention 108 be defined in the field.
OPINION ON THE RECOMMENDATION 2024 (2013) ON NATIONAL SECURITY AND ACCESS TO INFORMATION

1. The Ministers’ Deputies agreed at their 1181st meeting of 16 October 2013 to communicate Recommendation (2024)2013 on “National Security and Access to Information”† to the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) for information and possible comments by 29 November 2013.

2. The T-PD welcomes the adoption by the Parliamentary Assembly on 2 October 2013 of Recommendation (2024)2013.

3. The T-PD has examined the Recommendation from the perspective of Council of Europe standards on data protection, in particular the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter “Convention 108”) and its additional protocol on supervisory authorities and transborder data flows (ETS No. 181, hereafter the “additional protocol”).

4. The T-PD welcomes this initiative of promotion of the principle of transparency, including access to information held by public authorities and reliance on the Global Principles on National Security and the Right to Information (hereafter “Global Principles”) adopted on 12 June 2013 by an assembly of experts from international organisations, civil society, academia and national security practitioners, in particular concerning the points highlighted in the above-mentioned resolution, in modernising their legislation and practice.

5. The right to access to information held by public authorities is enshrined in the Council of Europe Convention on Access to Official Documents (CETS No. 205) and protected under Article 10 of the European Convention on Human Rights. In its recent judgement dealing with access to information held by a national security authority the European Court on Human Rights reaffirmed the right to access official documents protected under Article 10 of the ECHR (Youth Initiative for Human Rights v. Serbia, Application no. 48135/06, judgement of 25 June 2013).

6. The right to privacy and personal data protection is protected under Article 8 of the European Convention on Human Rights as well as under Convention 108 and its additional protocol. The right to data protection is to be considered in respect of its role in society and has to be reconciled with the other human rights and fundamental freedoms, including the freedom of expression. Restriction of the right, including restrictions for the protection of national security, may only be admitted if such restriction is provided for by

† Recommendation 2024 (2013), which refers to Resolution refers to Resolution 1954 (2013) on national security and access to information.
law and constitutes a necessary measure in a democratic society. While the right to access to official documents containing personal data should accommodate the exercise of both rights, national security interests should not automatically prevail over the right to privacy and protection of personal data. As acknowledged in the Global Principles that certain information that should not be withheld on national security grounds may potentially nonetheless be withhold on various other grounds recognised in international law — including, personal privacy.

7. The T-PD takes note of the importance given in the Global Principles to the protection of privacy and personal data, most notably the obligation of public authorities to balance between the right to access to documents and the right to privacy.

8. In the context of the modernisation of Convention 108, the T-PD has agreed to highlight in the preamble of the draft modernised Convention the fact that the 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 official documents”.

9. The T-PD furthermore welcomes the balancing of interests and rights incorporated in Article 10 of Resolution 1954(2013) and the reference regarding invasive wiretapping technologies by public authorities, internet providers and others, as well as in Article 11 regarding the protection of journalists communication and source. Illegitimate, invasive or excessive use of communication technologies by public authorities, internet providers as well as any other unavoidably will jeopardise the right to privacy, private communication and personal data protection.

10. The T-PD welcomes the principle emphasised in Resolution 1954(2013) regarding the protection of those who disclose wrongdoings in the public interest (whistle-blower) from any type of retaliation.

11. Finally, the T-PD wishes to emphasise that it is currently revising Recommendation (89)2 on the protection of personal data used for employment purposes, touching upon provisions pertaining to internal reporting mechanisms implemented by employees and which need to meet personal data standards including the protection of personal data and securing of the confidentiality of whistleblowers.