



Strasbourg, 21 August 2014

T-PD(2014)RAP31Abr_En

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

31st Plenary meeting

Strasbourg, 2-4 June 2014

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 31st plenary meeting in Strasbourg from 2 to 4 June 2014 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 the information provided by Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate, on major developments at the Council of Europe in the field of data protection and related fields since the 30th plenary meeting (15-18 October 2013) and the main events organised by the Council of Europe or to which the Council had contributed, such as the European Conference of Data Protection Authorities, jointly organised by the Council of Europe on 5 June 2014 with the French data protection authority, the Commission Nationale de l'Informatique et des Libertés (CNIL);
2. amended Article 10 of its **Rules of Procedure** concerning elections of the Committee Chairs and Vice-Chairs;
3. carried out a second reading of the revised draft **Recommendation** on the protection of personal data used for **employment** purposes and approved the draft text, instructing the Secretariat to forward it to the Steering Committee on Media and Information Society (CDMSI) with a view to its submission to the Committee of Ministers for adoption;
4. took note of progress in the work of the Ad Hoc Committee on Data Protection (CAHDATA) and of the anticipated changes to the draft **modernised Convention** presented by the scientific expert (Ms de Terwangne), and expressed its concern at the risk of lowering the level of protection which the T-PD had achieved in adopting its modernisation proposals in 2012;
5. took note of the information on the **evaluation and follow-up mechanism** and the need to amend the draft **explanatory report** of the modernised version in the light of the changes proposed by the CAHDATA;
6. confirmed that **Recommendation (87)15** regulating the use of personal data in the **police** sector would not be revised and instructed its Bureau to analyse needs in this area and the foreseeable standard-setting solutions and corresponding proposals, taking account of work currently in progress in the Cybercrime Convention Committee (T-CY) and the Committee of Experts on Terrorism (CODEXTER);
7. examined the latest version of the **questionnaire on the protection of medical data** and the background document which would be enclosed with it, and instructed its

* 62 participants in total, 30 men and 32 women.

Secretariat to incorporate the changes which delegations might wish to make following a call for written comments, finalise the questionnaire and forward it to delegations for response;

8. took note of the presentation by the scientific expert (Mr Cottier) on the topic of '**big data**' and, following an exchange of views, decided to instruct its Bureau to initiate the exploratory work on this matter in order to identify what action the Committee could take in this regard;
9. took note of the "**Report** on the implications for data protection of the growing use of mechanisms for automatic inter-state exchanges of personal data for administrative and tax purposes, as well as in connection with money laundering, financing of terrorism and corruption", presented by its authors (Ms Porasso and Mr Aouizerat) and instructed its Bureau to take the necessary follow-up and propose the requisite activities;
10. took note of the **major developments** at national level in the data protection field since its last plenary meeting (information compiled in a special document), and of the events organised for **Data Protection Day 2014** (celebrated on 28 January each year) in particular the "Handbook on European data protection law" drawn up in conjunction with the European Union's Fundamental Rights Agency (FRA);
11. took note of the information provided concerning **co-operation with other Council of Europe bodies** and in particular the relevant work of the CDMSI and its Committee of Experts on the Rights of Internet Users (MSI-DUI), the Drafting Group of the Draft International Convention against the manipulation of sport competitions, the Committee on Bioethics (DH-BIO), the Parliamentary Assembly (PACE) and the T-CY, asking its Bureau to closely monitor the work of the latter regarding cross-border access to data to ensure that the right to personal data protection was fully upheld;
12. adopted an **opinion** on the data protection implications of mechanisms for automatic **inter-state exchanges of personal data for administrative and tax purposes** (Appendix III) and stressed the need for broad dissemination of this opinion at national level, calling on the Committee of Ministers to contribute to ensuring that the right to data protection was fully upheld, in particular by forwarding the opinion to the relevant national players; it also instructed its Secretariat to forward the opinion to the competent authorities in the OECD;
13. adopted an **opinion** on Recommendation 2041(2014): "Improving user protection and security in cyberspace" and instructed its Secretariat to transmit the opinion to the Committee of Ministers within the prescribed period;
14. took note of the information provided by the **observers** attending the meeting and decided, further to the request received, to grant the observer status to the International Committee of the Red Cross;

15. took note of the report by the Council of Europe **Data Protection Commissioner** on her activities since the last plenary meeting and the lack of draft revised regulations despite the Committee's contribution prepared in 2010 and the follow-up given to it since then; it called on the Council of Europe Secretariat to adopt as soon as possible regulations which complied with the requirements of Convention 108;
16. took note of the request to update the **national information** on the website and the repeated call to delegations to contribute to the section on reference material in the data protection field in each country;
17. took note of the updated **list of joint OECD-APEC-Council of Europe contact points** and invited those delegations that so wished to join this initiative;
18. in accordance with the amended Rules of Procedure held the **elections** of the Chair and Vice-Chairs of the Committee and of members of the Bureau, and elected Mr Walter (Switzerland) as Chair for a third term of office, Ms Pierucci (Italy) as 1st Vice-Chair, Ms Ruzic (Serbia) as 2nd Vice-Chair, and the following four members of the Bureau: Ms Jouret (Belgium), Mr Lommel (Luxembourg), Mr Puente Escobar (Spain) and Ms Sarishvili (Georgia), with the de jure member of the Bureau (Mr Cabral, Portugal) remaining unchanged;
19. took note of the **dates of the forthcoming meetings**: those of its Bureau (Paris, 30 September to 2 October with a joint meeting with the Bureau of the DH-BIO scheduled for 30 September; Strasbourg from 16 to 18 December, and Paris from 25 to 27 March 2015) and of the holding of the Committee's 32nd plenary meeting in Strasbourg from 16 to 19 June 2015;
20. thanked Ms Štěpánková (Czech Republic, 1st Vice-Chair) and Ms Pozzo-di-Borgo (France, 2nd Vice-Chair) for their commitment and the high quality of their contribution to the work of the Committee. They would be sorely missed.

APPENDIX I

Strasbourg, 2 June / juin 2014

T-PD31(2014)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)

31st meeting / 31^{ème} réunion

Strasbourg, 2-4 June / juin 2014
Palais de l'Europe, Room / salle 2.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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

ALBANIA / ALBANIE

Flora Çabej Pogaçe, Albanian Commissioner for Personal Data Protection, Rruga Abdi Toptani, Ish godina e Ministrise te Transporteve dhe Telekomunikacionit, Kati i dyte, Tirana

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USA / ETATS-UNIS (apologised / excusé)

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INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS / Conférence internationale des Commissaires à la protection des données et de la vie privée (apologised / excusé)

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

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EUROPEAN PARLIAMENT / PARLEMENT EUROPEEN

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EUROPEAN DATA PROTECTION SUPERVISOR / LE CONTRÔLEUR EUROPEEN DE LA PROTECTION DES DONNEES (apologised / excusé)

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Stanislas Frossard, Executive Secretary / Secrétaire exécutif

Action against crime department – CODEXTER / Service de la lutte contre la criminalité - CODEXTER

Kristian Bartholin, Deputy Head, Terrorism Division

SECRETARIAT

Directorate General Human Rights and Rule of Law /
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Jan Malinowski, Head/Chef de service

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Maria Michaelidou, Programme Advisor / Conseillère de programme

Szilvia Simond, Assistant / Assistante

TRAINEES / STAGIAIRES

Nadia Lakhnati

INTERPRETERS / INTERPRETES

Christopher Tyczka
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Christine Trapp

APPENDIX II



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

31st Plenary meeting

2 - 4 June 2014

Council of Europe, Strasbourg (Palais, Room 2)

AGENDA

I. OPENING OF THE MEETING

- T-PD-BUR(2014)RAP32Abr Abridged report of the 32nd meeting of the Bureau of the T-PD (25-27 March 2014)
- T-PD-BUR(2013)RAP31Abr Abridged report of the 31st meeting of the Bureau of the T-PD (18-20 December 2013)
- T-PD(2013)RAP30Abr Abridged Report of the 30th Plenary meeting of the T-PD (15-18 October 2013)
- Work programme 2014-2015
- T-PD(2012)Rules T-PD's rules of procedure

II. ADOPTION OF THE AGENDA

III. STATEMENT BY THE SECRETARIAT

Mr Jan Kleijssen, Director Information Society and Action against Crime Directorate, Directorate General Human Rights and Rule of Law – DG I.

IV. MODERNISATION OF CONVENTION 108

Required action: The Committee will take note of the work of the CAHDATA, of the revised draft explanatory report, as well as of the information elements on the evaluation and follow-up mechanism and will examine the structure of the related questionnaire.

Scientific expert: Ms Cécile de Terwangne, Professor Law Faculty, Namur University (FUNDP), CRIDS Research Director

- CAHDATA (2014)01 Working document - Convention 108 with Additional Protocol and Modernisation Proposals
- T-PD-BUR(2013)03rev5 Draft Explanatory report
- T-PD-BUR(2013)02Rev5 Information elements on the evaluation and follow-up mechanism
- T-PD-BUR(2014)05 Structure of the questionnaire of the evaluation and follow-up mechanism
- T-PD(2012)04REV04 Final document on the modernisation of Convention 108

V. DATA USED FOR EMPLOYMENT PURPOSES

Required action: The Committee will finalise the revised draft of the Recommendation in order to transmit it to the CDMSI.

- T-PD(2013)5revFIN Draft revised Recommendation on the protection of personal data used for employment purposes

- T-PD(2014)03 Compilation of comments on the 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 Giovanni Buttarelli
- Recommendation No.R(89) 2 Recommendation 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 presented and will decide on the follow-up to be given

- T-PD(2013)11 Recommendation (87)15 – “Twenty-five years down the line: Final Report”

VII. RECOMMENDATION ON MEDICAL DATA

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

- Questionnaire
- Background document
- Recommendation N° (97) 5 on the protection of medical data

VIII. EXPERTS’ REPORT ON AUTOMATIC EXCHANGES OF PERSONAL DATA

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

Scientific Experts: Ms Caroline Porasso and Mr Benjamin Aouizerat

- T-PD-BUR(2014)01 Report on the implications for data protection of the growing use of mechanisms for automatic inter-state exchanges of personal data for administrative and tax purposes, as well as in connection with money laundering, financing of terrorism and corruption

Draft opinion (see item XIII)

IX. BIG DATA

Required action: The Committee will take note of the presentation made by the scientific expert, will hold an exchange of views and will decide on the necessary follow-up.

Scientific Expert: Mr Bertil Cottier, Professor, University of Lugano

X. 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 hold an exchange of views.

- T-PD(2014)04Mos Information on the recent developments at national level in the data protection field

Handbook on European Data Protection Law

European Conference of Data Protection authorities (Strasbourg, 5 June 2014)

XI. DATA PROTECTION DAY

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

XII. 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)
 - Recommendation on a Guide to human rights for Internet users and explanatory memorandum
- Cybercrime Committee (T-CY)
- Enlarged Partial Agreement on Sport (EPAS) – Sport Conventions Division
 - Draft Convention against the manipulation of sport competitions and draft explanatory report
- Committee on Bioethics (DH-BIO)
 - Draft Recommendation on the use of predictive health-related data for insurance purposes and related opinion (see item XIII)
- PACE
 - Resolution 1986(2014) and Recommendation 2041(2014): Improving user protection and security in cyberspace
 - Resolution 1970 (2014) and Recommendation 2033 (2014): Internet and politics: the impact of new information and communication technology on democracy
 - Introductory memorandum on Mass surveillance and the protection of whistle blowers by Mr Pieter Omtzigt, Rapporteur
- CODEXTER
 - Sub-group on special investigation techniques – [discussion paper](#)

XIII. OPINIONS

Required action: The Committee will examine the draft opinions submitted for adoption and will take note of the compilation of opinions.

- T-PD(2014)05 Draft opinion – data protection implications of mechanisms for automatic inter-state exchanges of personal data for administrative and tax purposes
- T-PD(2014)06 Draft opinion – PACE Recommendation 2041 (2014) – “Improving user protection and security in cyberspace”
- T-PD(2014)01 Compilation of opinions

XIV. OBSERVERS

Required action: The Committee will take note of the information provided by the observers and will examine the request for observer status made by the International Committee of the Red Cross

XV. DATA PROTECTION COMMISSIONER

Required action: The Committee will take note of the information provided by the Council of Europe Data Protection Commissioner and will take the necessary actions regarding the forthcoming term 2015-2017.

- Secretary General's Regulation

XVI. 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.

XVII. NEXT MEETINGS

Required action: The Committee will take note of the proposed dates for the next meetings of the Bureau and for the Plenary meeting of the T-PD in 2015.

XVIII. ELECTIONS

Required action: The Committee will proceed to the election for two years of one Chair, two vice-Chairs and four Bureau members.

- T-PD(2014)02 Memorandum concerning elections

XIX. OTHER BUSINESS

APPENDIX III



Strasbourg, 4 June 2014

T-PD(2014)05

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

(T-PD)

OPINION on the implications for data protection of mechanisms for automatic inter-state exchanges of data for administrative and tax purposes

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) has considered the principles inherent in mechanisms for automatic inter-state exchanges of personal data for administrative and tax purposes proposed by the Organisation for Economic Co-operation and Development (OECD) in the light of the Council of Europe's data protection standards.

The T-PD firstly emphasises that, while the automatic exchange of information is legitimately regarded as an essential tool in combating fraud and tax evasion, any such exchanges must fully respect the rule of law and human rights, in particular the rights to privacy and personal data protection[†]. Automatic data exchanges must not under any circumstances weaken the rules governing the protection of personal data, as enshrined in the European Convention on Human Rights and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The T-PD therefore believes that it is vital that specific safeguards be adopted so as to ensure full respect for individuals' fundamental rights when the relevant state policies are implemented.

The automatic inter-state exchanges of personal data for administrative and tax purposes can result in discriminatory measures being taken against individuals (e.g. being denied important services by private parties). In structuring such exchanges, parties should take measures to minimise the risk of discriminatory measures being taken against individuals as much as possible.

The T-PD believes that automated processing carried out in connection with automatic inter-state exchanges of personal data for administrative and tax purposes should rely on a clear legal basis, foreseeable, and should be necessary to achieve the public interest pursued, as provided for by Article 8 of the European Convention on Human Rights and its interpretation by the European Court of Human Rights' in its case law, while the competent authorities should determine which legal instrument they are taking as their basis for the processing.

In this respect, the conventions and the appropriate agreements concluded for the purpose of organising the data exchanges should be drafted clearly and unambiguously, and give exact definitions of their scope, the terms used, the purposes for which data are collected and may be validly used, the concrete categories of persons concerned, an exhaustive list of the data processed and exchanged, a designation of the national authority authorised to obtain and process the data, the rules governing the retention of data by the requesting authority, the frequency with which information is communicated and the practical arrangements for automatic exchange, the rules governing the transmission of the data to other institutions within the destination country or abroad, as well as remedies available to the persons whose data is being processed.

[†] See the OECD "Guidelines on the Protection of Privacy and Transborder Flows of Personal Data", which were updated in 2013

Where the requesting country is governed by specific rules related to personal data protection, the T-PD also stresses that the reference to those rules and to the supervisory authority to which the requesting party is subject should be explicitly mentioned in the convention or agreement. The reference to the fulfilment of relevant regional instruments applicable by the requesting country, be they legally binding or not, could also be consistent with this approach.

- **The purpose of processing**

Article 5 b) of Convention 108 foresees that personal data must be used for specified and legitimate purpose(s) and that they must not be used in a way incompatible with such purpose(s). In order to fulfil the overarching principles of necessity and proportionality, the T-T-PD believes that data should only be exchanged when necessary, for the specified and legitimate purpose(s). Furthermore, data gathered and exchanged should not be subsequently used in other processing carried out for purposes not provided for in the legal instrument governing the automatic exchange and under the limitations and procedures foreseen by the administrative, criminal and criminal procedural law of the transmitting authority.

- **Definition of the persons concerned**

A precise definition of the persons concerned is particularly important in order to avoid bulk collection and transfer of personal data. The T-PD therefore believes that it is necessary to refer expressly in the legal instruments to the taxes and levies covered in their scope, which ultimately determine the categories of persons concerned.

In this regard, the T-PD furthermore underlines that the reasons justifying the processing of a specific category of persons concerned (i.e. for reasons of legal arrangements on avoiding double taxation and the prevention of fiscal evasion) should also be mentioned in the legal instruments.

- **Rights of the persons concerned**

The T-PD recalls that any restriction to individuals' fundamental rights should be prescribed by law, be duly justified and subject to tightly controlled conditions and guarantees, including the possibility to seek judicial or administrative redress.

In particular, limitations to the data subjects' rights provided for by Article 8 of Convention 108 (such as the right of information and the right of access) should only take place by way of an exception and provided that it is necessary in view of the public task pursued (for instance in the case of the investigation of tax infringements or criminal offences related to those).

- **Quality of data**

The T-PD points out that, under Article 5 c) of Convention 108 concerning the quality of data, it must be ensured that the data processed are “*adequate, relevant and not excessive in relation to the purposes for which they are stored*”. It also points out that exchanges must respect the principles of lawfulness, fairness and proportionality of the processing set out in Article 5 of Convention 108, which not only refers to the categories of persons whose data are being exchanged but also to the extent of the information covered by the agreement.

The T-PD furthermore underlines the importance of providing standard models with a view to securing the effective protection of individuals through a standardised approach, and with comprehensive lists, of the information exchanged between the competent authorities.

- **Retention of data**

The T-PD points out that, under Article 5 e) of Convention 108, the data must be “*preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored*”.

It is in that regard particularly important that a retention period (limited period of time, duly justified, during which the requesting authority will keep the data) be indicated by the requesting authority. This period should ideally not exceed the retention period provided for in the law of the transmitting authority, in particular where the national law of that authority provides for the prescription of tax obligations or corresponding offences.

- **Transborder data flows**

The T-PD recommends that the States Parties to the Convention ensure, prior to implementing the relevant automated processing, that automatic inter-state exchanges of personal data may validly take place in compliance with their domestic legislation, taking due account of the legislation of the destination country or countries, particularly as regards the possibility of subsequent re-use of the data for purposes other than those originally intended.

Moreover, provisions specifically relating to international transfers should be incorporated in the legal instrument governing the automatic exchange in question, which should also take into account the principle of proportionality, especially to avoid the mass transfer of personal and sensitive information to countries without an appropriate level of protection. Specific attention should be given in the legal instrument to the fact that there can be no onward transfers by the requesting authority to another authority set in a third country unless the transmitting authority has authorised it.

The legal instrument should also cover the guarantees and rights of the data subject, as well as the remedies available and information relating to the independent supervision entrusted to the data protection authority.

- **Security**

The T-PD notes that the security of the exchanges and the systems is a vital aspect which requires adequate technical and organisational measures to be adopted so as to ensure both the reliability and integrity of the data and the relevant processing and also the confidentiality thereof. It underlines the importance of meeting the requirements of Article 7 of Convention 108 and ensuring the security of the entire system by laying down strict rules on encryption of data, access to data, identification of the persons to whom the data are transferred and rules on the full traceability of the exchanges, in particular through the implementation of access logs.