



Strasbourg, 17 November 2010

T-PD-BUR (2010) RAP 22 EN

**THE BUREAU OF THE CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS 108]  
(T PD-BUR)**

**22<sup>nd</sup> meeting of the Bureau**

Strasbourg, 15-17 November 2010

**ABRIDGED REPORT**

1. The Bureau of the Consultative Committee of Convention for the protection of individuals with regard to automatic processing of personal data [ETS 108] (hereinafter Convention 108) (T-PD) held its 22<sup>nd</sup> meeting from 15 to 17 November 2010 at the Council of Europe in Strasbourg. The list of participants and the meeting agenda are reproduced in Appendices I and II to this report respectively.

**Opening of the meeting**

2. The meeting was opened by Ms Maud DE BOER-BUQUICCHIO, Deputy Secretary General of the Council of Europe, who welcomed the participants and underlined the importance of work on the modernisation of Convention 108 which is in line with the Secretary General's priorities for 2011 (see Appendix III). She confirmed her full support for the upcoming work of the T-PD.

She expressed the hope that a resolution supporting the modernisation process of Convention 108 will be adopted at the 30th Council of Europe Conference of Ministers of Justice (Istanbul, Turkey, 24-26 November 2010).

Finally, she underlined that the celebrations of the 30th anniversary of Convention 108, to be organised together with the Commission of the EU on 28 January next year, will provide an excellent opportunity to show the commitment of the Council of Europe to aligning its work with the demands of present day society.

**Statement by the Secretariat**

3. The Bureau took note of the information provided by Mr Jan KLEIJSSSEN, Director of Standard-Setting and Mr Jörg POLAKIEWICZ, Head of Law Reform Department.

- As from the 1st of December 2010, Mr Simon TONELLI will become of the Head of the Public and Private Law Division. Previously, Mr Tonelli ensured the the functions of Head of the Migration Division and the Secretariat of the European Committee on Migration (CDMG) of the Council of Europe.
- The draft recommendation on the protection of individuals with regard to automatic processing of personal data in the context of profiling was approved by the European Committee on Legal Co-operation (CDCJ) on 13 October 2010 and is expected to be adopted by the Committee of Ministers of the Council of Europe at its forthcoming meeting.
- The organisation of the celebration of Data Protection Day on 28 January 2011, to mark the 30<sup>th</sup> anniversary of the Convention, is progressing well in collaboration with the Commission of the European Union.
- Ukraine has ratified Convention 108 and its additional protocol. Both will enter into force as regards Ukraine on 1 January 2011.

#### Participation of the T-PD members in other committees

##### 4. The Bureau took note of:

- the participation of Ms Catherine POZZO DI BORGO in the Internet Governance Forum (IGF) held in Vilnius, Lithuania, on 14-17 September 2010;
- the participation of Ms Rita VAITKEVICIENE in the 5<sup>th</sup> meeting of the Working Party (Group of Specialists) on Predictivity, Genetic Testing and Insurance (CDBI-CO-GT4) which took place from 5 to 7 October 2010;
- the following future activity of the Steering Committee on Bioethics (CDBI) which could be relevant to the work of the T-PD: seminar on biobanks which will be organised within the context of the review of Committee of Ministers' Recommendation (2006)4 on research on biological materials of human origin;
- the following possible future activity of the CDBI where a collaboration with T-PD might be envisaged: access to medical files.

#### Updates from other international organisations

##### 5. The Bureau took note of the following updates:

- The representative of the International Conference of Data Protection and Privacy Commissioner informed the Bureau about 32nd Conference (27-29 October 2010, Jerusalem, Israel) and of the resolutions which were been adopted. A summary of the presentation can be found by clicking on the relevant item in the on-line agenda.
- The representative of the French-speaking association of personal data protection authorities (AFAPDP) informed the Bureau about the recent activities of the association and the Conference which is scheduled to take place on 30 November 2010 in Paris. The conference will be followed by the 1<sup>st</sup> collective seminar, which will take place on 1 and 2 December 2010.

- The representative of the Organisation for Economic Co-operation and Development (OECD) informed the Bureau about the celebration events being organised this year by the OECD to celebrate the 30 years anniversary of the OECD Privacy Guidelines. Three events organised to celebrate the anniversary and an Anniversary Report on The Evolving Privacy Landscape, currently being prepared, will serve as input to a review of the OECD Privacy Guidelines next year. The process for this review will be discussed by the OECD Working Party on Information, Security and Privacy at its forthcoming meeting scheduled to take place from 2 to 3 December 2010. The OECD representative underlined that there is considerable merit in working to ensure that the review of data protection frameworks underway in the Council of Europe, the European Union and OECD are complimentary, and suggested that countries having common membership may be well placed to help to play a role in this respect.
- The Bureau took note of information provided by the representative from Interpol. A summary of the presentation can be found by clicking on the relevant item in the on-line agenda.

#### Report on the lacunae of Convention 108 resulting from technological developments

6. The Bureau considered the report prepared by the Research Centre for Computer and Law, Belgium, (CRID) and authorised its publication. The Bureau decided to reword the questionnaire concerning the revision of Convention 108 in light of the discussions held and to send the revised document to the T-PD for comments. The comments will then be examined by a rapporteur appointed by the T-PD Bureau with the aim of preparing a final version of the questionnaire. Following the finalisation of the questionnaire, the T-PD Bureau will pursue its work in accordance with the revised road map (see Appendix IV).

#### Working methods of the T-PD regarding the revision of Convention 108

7. The Bureau discussed the current internal rules of the T-PD and, proposed an amendment to Article 4 (Appendix V) aiming at facilitating the participation of different stakeholders in the revision process. It instructed the Secretariat to submit the draft proposal to the T-PD for approval in written. The Bureau also instructed the Secretariat to revise the road map concerning the revision of Convention 108 in light of the discussions held.

#### Draft report on the Committee of Ministers Recommendation No. R(87) 15 of 17 September 1987 regulating the use of personal data in the police sector

8. The Bureau considered the report prepared by Joseph A. CANNATACI, Professor, Centre for Law, Information & Converging Technologies, United Kingdom, and authorised its publication. The Bureau decided to discuss the follow-up to be given to the report at the 24th Bureau meeting.

#### Draft report on the Committee of Ministers Recommendation No. R(89) 2 of 18 January 1989 regulating the use of personal data used for employment purposes

9. The Bureau considered the report prepared by Giovanni BUTTARELLI, Assistant European Data Protection Supervisor, and authorised its publication. The Bureau agreed that the draft proposal constitutes an excellent basis for future work. However, several points need to be considered. The T-PD members are requested to comment on the draft recommendation contained in Appendix to the report and send to the Secretariat the relevant national legislation in relation to the proposals made in the draft recommendation. It was also decided to send the draft recommendation to the International Labour Office and to invite them to participate in the

drafting process. The contributions received will be examined by the Bureau at its 23rd meeting.

Participation of the T-PD in the consultation on the Commission's comprehensive approach on personal data protection in the European Union.

10. The Bureau agreed that the T-PD should participate in the aforementioned consultation. The first draft of its reply will be prepared by the Secretariat together with the Bureau members and then submitted to the T-PD for approval.

Observer status request from the AEDH (European Association for the Defence of Human Rights)

11. The Bureau considered the aforementioned request for observer status and agreed to invite the President of the abovementioned Association to the 23rd Bureau meeting in order to discuss in detail the association's interest in the T-PD work. The Bureau also decided, in order to facilitate the decision making process, to elaborate specific conditions which would govern the granting of observer status as far as requests from organisations and associations are concerned.

Presentation of the collaborative space

12. The Bureau welcomed the setting-up of a collaborative space on the T-PD website and the consultation possibilities it will provide.

Dates of the next meetings of the Bureau of the T-PD Bureau in 2011

13. The 23rd meeting of the Bureau of the T-PD will take place from 23 to 25 March in Strasbourg or from 28 to 30 March in Belgrade. The 24th Bureau meeting will take place from 20 to 22 June or from 28 to 30 June in Strasbourg.

## Appendix I – Participants' list

### MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

#### CZECH REPUBLIC/RÉPUBLIQUE TCHÈQUE

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## Appendix II – Draft agenda

### 1. OPENING OF THE MEETING BY MS MAUD DE BOER-BUQUICCHIO, DEPUTY SECRETARY GENERAL OF THE COUNCIL OF EUROPE

### 2. STATEMENT BY THE SECRETARIAT

- Abridged report 21<sup>st</sup>  
T-PD-BUR (2010) RAP 21 Abridged report of the 21<sup>st</sup> meeting of the T-PD-BUR (Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108]), (13-15 April 2010)

### 3. ADOPTION OF THE AGENDA

### 4. REPORT ON CONVENTION 108 LACUNAE RESULTING FROM TECHNOLOGICAL DEVELOPMENTS

Required action: the Bureau will consider the report with a view to authorising its publication. It will decide the on procedures to follow and will consider the appropriate follow up.

- T-PD-BUR (2010) 09 prov  
FR Version part 1 Draft report on the lacunae of the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No 108) resulting from technological developments
- T-PD-BUR (2010) 09 prov  
FR Version part 2  
**(French)**
- **New**  
T-PD-BUR (2010) 10  
Restricted Road map for revision to Convention N°108
- **New**  
T-PD-BUR (2010) 15  
Restricted Questionnaire regarding revision to Convention N°1 08
- **New**

**5. DRAFT REPORT ON THE COMMITTEE OF MINISTERS RECOMMENDATION No. R(87) 15 OF 17 SEPTEMBER 1987 REGULATING THE USE OF PERSONAL DATA IN THE POLICE SECTOR**

Required action: the Bureau will consider the report with a view to authorising its publication and considering the appropriate follow up.

- T-PD-BUR (2010) 12 prov  
**New** Draft report on the Committee of Ministers Recommendation No. R(87) 15 of 17 September 1987 regulating the use of personal data in the police sector

**6. DRAFT REPORT ON THE COMMITTEE OF MINISTERS RECOMMENDATION No. R(89) 2 OF 18 JANUARY 1989 REGULATING THE USE OF PERSONAL DATA USED FOR EMPLOYMENT PURPOSES**

Required action: the Bureau will consider the report with a view to authorising its publication and considering the appropriate follow up.

- T-PD-BUR (2010) 11 prov  
**New** Draft report on the Committee of Ministers Recommendation No. R(89) 2 of 18 January 1989 regulating the use of personal data used for employment purposes

**7. DRAFT REPORT ON THE MODALITIES AND MECHANISMS FOR ASSESSING THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (ETS N° 108) AND ITS ADDITIONAL PROTOCOL**

Required action: the Bureau will examine the report with a view to authorising its publication and will consider the appropriate follow up.

- T-PD-BUR (2010) 13 prov  
**New** Draft report on the modalities and mechanisms for assessing the implementation of the Convention for the protection of individuals with regard to automatic processing of personal data (ETS N° 108) and its Additional Protocol.
- T-PD-BUR (2010) 10  
**New** Road map for the work on Convention N°108

**8. OTHER ISSUES:**

**A. Update from other international organisations: OEDC (Organisation for Economic Co-operation and Development), AFAPDP (French-Speaking Association of Personal Data Protection Authorities) and International Conference of Data Protection Commissioners**

**B. Participation of T-PD members in other committees and fora**

*Required action: the Bureau will take note of Ms Pozzo di Borgo's participation in the Internet Governance Forum and of Ms Vaitkevičienė's participation in the meeting of the Group of Specialists on Predictivity, Genetic Testing and Insurance*

**C. Observer status request from the AEDH (Association Européenne pour la Défense des droits de l'Homme)**

**D. Presentation of the collaborative space**

*Required action: the Bureau will make suggestions following the presentation by the Directorate of Information Technologies of the new collaborative space*

**E. participation of the T-PD in the consultation of regarding the review of the European Union legal data protection framework.**

*Required action: the Bureau will discuss the ongoing consultation and make suggestions regarding the T-PD participation.*

## **9. DATES OF THE NEXT MEETINGS OF THE BUREAU OF THE T-PD-BUR IN 2011**

### **DRAFT ORDER OF BUSINESS**

	<b>15 November 2010</b>	<b>16 November 2010</b>	<b>17 November 2010</b>
<b>09.30</b>	Items 1-3, 8	4	7
<b>11.00</b>	8, 4	4	7
<b>13.00</b>	Lunch	Lunch	Lunch
<b>14.00</b>	4	5	6
<b>17.30</b>	4	5	6, 8E
<b>20.00</b>	Dinner		

**Appendix III – 22nd T-PD Bureau Member opening statement of the Deputy Secretary General Ms Maud de Boer-Buquicchio, on 15 November 2010**

- ⇒ I am happy to be opening your meeting, which will launch an important work in the field of privacy and data protection : the modernisation of Convention 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data.
- ⇒ Your future work follows a decision by the Committee of Ministers of last March and is in line with the Secretary General's priorities for 2011 which foresee the reviewing of our Conventions.
- ⇒ The call from the Committee of Ministers could not have been more timely. Data protection and privacy are at a cross-roads. Nowadays, information about us is constantly being recorded, communicated and analysed without our knowledge, let alone our consent. We easily overlook the fact that every action that involves using technology is recorded somewhere.
- ⇒ Some argue that it is no longer possible for individuals to decide in any meaningful way as to how information about them is gathered, shared and used by others. Speaking at the International Conference of Data protection Commissioners in Jerusalem last month, Ann Cavoukian, Information and Privacy Commissioner of Ontario, Canada, announced the 'death' of privacy by 2020.
- ⇒ We must not allow this to happen. That is the reason why the Council of Europe has taken up the double challenge of modernising and strengthening Convention 108 as well as promoting its implementation worldwide.
- ⇒ The modernisation will pursue two objectives:
  - to deal with challenges for privacy resulting from the use of new Information and Communication Technologies and;
  - to strengthen the Convention's follow-up mechanism.
- ⇒ The core principles contained in Convention 108 have stood the test of time. The technologically-neutral, principle-based approach constitutes a strength of Convention 108. But you will not only have to apply these principles to the new realities of the on-line world. You will have to consider new principles, such as accountability or the principle of data minimisation, which should guide the design of any system which involves the collection and

storage of personal information. You will also have to consider new challenges for data protection in the context of cloud computing.

- ⇒ The increase in storage and processing capacities enables information concerning an individual to circulate within the network, even though it may no longer be valid. This makes the current principles of accuracy and proportionality of data obsolete. A new right to oblivion or automatic “data erasers” would enable individuals to take control over the use of their own personal data.
  
- ⇒ In your work, Article 8 of the European Convention on Human Rights which protects the right to respect for private and family life and the case-law of the European Court of Human Rights will be an obvious guideline. The Court held many times that mere storage of information about an individual's private life is an interference in the applicants' right for private life. The Court also held in the case *S. and Marper v. the United Kingdom* that the retention of the fingerprint and DNA data of the applicants, as persons suspected but not convicted of certain criminal offences, was an interference in the applicants' right for private life.

Ladies and Gentlemen,

- ⇒ it is of utmost importance to ensure a trusted Internet-based environment which offers protection to individuals, especially minors and other vulnerable groups.
  
- ⇒ The abuse of content on the Internet created by children is a growing concern, not to mention the horrible statistics concerning pedopornographic images which nobody seems to be able to erase from the net. I strongly believe that the new Convention 108 has to take these developments into account.
  
- ⇒ Other Council of Europe standards are already addressing the new challenges arising from the evolution of technology. The need to protect children from crimes committed through internet is tackled in both the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and in our Convention on Cybercrime.
  
- ⇒ On our modern information highways, it is not sufficient to have traffic codes. As with cars, we need in-built driver security. The design and implementation of procedures and systems in

accordance with privacy and data protection, already at draft conception stage, should be encouraged, notably through the use of privacy enhancing technologies.

- ⇒ Back in the late 1970s, the Council of Europe already associated non-European countries such as Australia, Canada, Japan and the United States to the elaboration of what later became Convention 108. This is even more important nowadays, as the internet does not know any frontiers.
- ⇒ That is why I am very happy to see in the room participants from different Council of Europe members states, the representatives of International Conference of Data Protection Commissioners, the Association of French Speaking Data Protection Authorities, Interpol.
- ⇒ The current patchwork of different national legislations is an obstacle for the free flow of data and makes it almost impossible for individuals to enforce their rights. We need common core elements for personal data protection that can be applied worldwide. The call for internationally agreed privacy standards has never been louder. It comes from business and civil society communities alike, most forcefully in the Madrid privacy declaration “Global Privacy Standards for a Global World” of 3 November 2009.
- ⇒ Next week I shall address the 30th Council of Europe Conference of Ministers of Justice, which is expected to adopt a resolution supporting the modernisation process of Convention 108.
- ⇒ In the Council of Europe, we value a multi-stakeholder approach encompassing different regions of the world, civil society and business. A thorough and balanced instrument can only emerge if everyone contributes to the process, based on their specific experience and expertise.
- ⇒ I am convinced that you will produce a comprehensive, workable privacy framework that is efficient, consistent, flexible, robust and transparent.
- ⇒ You can count on all my support in your endeavours.
- ⇒ Finally, I look forward to the celebrations of the 30th anniversary of Convention 108 together with the European Commission on 28 January next year, where the Council of Europe will be able to show once again that we are a modern Organisation, capable of adjusting our work to the demands of present day society.

## Appendix IV – Road-map

<b>DATES</b>	<b>MEETING</b>	<b>COMMENTS</b>
<b>15-17 November 2010</b>	T-PD Bureau meeting	<b>Presentation of the report on Convention's lacunae with regard to technological developments and the report on Convention 108 follow-up mechanisms</b>  <b>First discussion on the draft questionnaire</b>
<b>December 2010 /January 2011</b>		<b>Finalisation of the draft questionnaire by the T-PD Bureau. T-PD comments on the draft questionnaire.</b>
<b>January 2011</b>		<b>Adoption of the questionnaire</b>
<b>January/March 2011</b>		<b>Multi stakeholders written consultation using the questionnaire</b>
<b>Mach 2011</b>	Hearing (to be organised jointly together with the Parliamentary Assembly of the Council of Europe)	<b>Discussion on of the questionnaire in the light of on-going preparation of the PACE report on handing of personal information on line</b>
<b>30-31 March Belgrade</b>	Eurodig	<b>Organisation of a workshop in order to gather European stakeholders viewpoint</b>
<b>April 2011</b>		<b>Processing of the contributions received</b>
<b>June 2011</b>	T-PD Bureau meeting	<b>Conclusion of the consultation, discussion on revision of Convention 108 in the light of contributions received</b>
<b>Summer 2011</b>	Regional IGFs	<b>Set of regional multistakeholder consultations</b>
<b>September 2011</b>	IGF 2011, Kenya	<b>Conclusions of the regional multistakeholder consultations</b>
<b>October 2011</b>	T-PD Bureau meeting	<b>Draft proposal for revision of Convention 108</b>
<b>November 2011</b>	International Conference of Data Protection and Privacy Commissioners	<b>Targeted stakeholders' consultation</b>
<b>November 2011</b>	27 <sup>th</sup> T-PD Plenary meeting	<b>Discussion of the draft proposal</b>
<b>1<sup>st</sup> trimester of 2012</b>	Relevant Council of Europe Committee's meeting (CDCJ etc.)	<b>Consultation on the draft proposal</b>
<b>1<sup>st</sup> and 2<sup>nd</sup> trimesters of 2012</b>	T-PD Bureau meetings	<b>Work on the draft proposal in the light of contributions received</b>
<b>3<sup>rd</sup> trimester of 2012</b>		<b>Communication of the draft proposal to the Committee of Ministers of the Council of Europe</b>

**Appendix V - Modification of Article 4 of T-PD's internal rules of procedure**



Strasbourg, 17 November 2010

T-PD-BUR(2010)14

THE BUREAU OF THE CONSULTATIVE COMMITTEE OF THE CONVENTION  
FOR THE PROTECTION OF INDIVIDUALS  
WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA

**(T-PD-BUR)**

22nd meeting  
15-17 November 2010  
Strasbourg, Agora Building, Room G04

**Proposal for modification of Article 4  
of T-PD's internal rules of procedure**

Secretariat document prepared by  
the Directorate General of Human Rights and Legal Affairs

## BACKGROUND

During the 25<sup>th</sup> T-PD plenary meeting, the Committee adopted a working programme for 2009 and beyond (T-PD (2009) 03 WP). One of the priorities set up by the programme was the drafting of the amendments to Convention 108. In accordance with the working plan, the T-PD Bureau decided, at its 20<sup>th</sup> Bureau meeting ( 2-4 March 2010), to launch two studies concerning the possible amendments of the Convention: study the lacunae of the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No 108) resulting from technological developments (T-PD-BUR (2010) 09 prov) and the study on the modalities and mechanisms for assessing the implementation of the Convention for the protection of individuals with regard to automatic processing of personal data (ETS N° 108) and its Additional Protocol (T-PD-BUR (2010) 13 prov) .

Following the released of studies in November 2010 and the discussion held during the 22<sup>nd</sup> Bureau meeting (15 -17 November 2010), the decision was made to continue working on the draft amendments to Convention 108.

During the discussion, the important input from civil society aiming at analysing the future threats to fundamental rights and freedoms, was underlined. It appeared necessary to actively involve to the drafting process the experts from different stakeholders whose concerns and specific experience are of essential importance for successful completion of this task. Governmental policy makers exchanges with the private sector would help to avoid the revised standards being inefficient and obsolete by identifying what needs to be regulated legally and what should be the subject of self regulation, taking into account the constantly evolving technologies and different business models.

Therefore it appears necessary to introduce certain amendments to the T-PD's internal rules of procedure thus enabling a punctual involvement into a given standard-setting work of the T-PD (revision process) to the relevant organisations without granting them a permanent observer status in advance. Such involvement, being of a temporary nature, would not require unanimous agreement of the T-PD members.

The T-PD Bureau underlined on this occasion that the participation at the T-PD meetings the experts from non Council of Europe member states is governed by Article 18 of Convention 108 which detail the conditions for invitation of such representatives.

**In view of the arguments listed above, the Bureau proposes Article 4 of the T-PD's Rules of Procedure to be amended as follows:**

### Article 4 : Experts

- 1. The Committee may, by a majority of the votes cast, decide to invite a person or an Organisation to appoint an expert to participate in the work of the Committee on a specific subject or to be available for consultation during an entire meeting or for part of it.**
- 2. The Organisation concerned shall communicate to the Secretary General of the Council of Europe, the name, address and functions of the appointed representative.**