



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 April 2011

T-PD-BUR (2011) RAP 23 EN

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

REPORT

23rd Bureau Meeting

Strasbourg, 22-24 March 2011

1. The Bureau of the Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data [ETS 108] (hereinafter Convention 108) held its 23rd meeting from 22 to 24 March 2011 at the Council of Europe in Strasbourg. The list of participants and the meeting agenda appear in Appendices I and II to this report respectively.

Opening of the meeting and communication of the secretariat

2. The Chair, Mr Jean-Philippe Walter (Switzerland), opened the meeting.
3. The participants noted the information presented by Mr Jan Kleijssen, Director of Standard-Setting, on changes within the Secretariat and on activities launched by the Organisation since the last meeting of the Bureau.
4. He referred to the successful conference in Brussels on 28 January 2011, organised jointly with the European Commission to mark the 5th Data Protection Day and the 30th anniversary of Convention 108.
5. Mr Kleijssen also spoke of the political support given by the Ministers of Justice in Istanbul on the occasion of the 30th Ministerial Conference (24-26 November 2010), who adopted a resolution on "[data protection and privacy in the third millennium](#)"¹ (Resolution no. 3), in which they expressed support for the modernisation of Convention 108, encouraged all those concerned to participate in the modernisation process, called for more ratifications of the Convention and invited the Committee of Ministers of the Council of Europe to consider data protection as a priority for the Council of Europe's future work. Data protection features among the [priorities for 2012/2013](#)² subsequently approved by the Committee of Ministers (1106th

¹http://www.coe.int/t/dghl/standardsetting/minjust/mju30/MJU-30%202010_%20RESOL%203%20E%20final.pdf

²[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=SG/Inf\(2011\)4&Language=lanEnglish&Ver=final&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=SG/Inf(2011)4&Language=lanEnglish&Ver=final&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

meeting of the Ministers' Deputies, 16 February 2011, see paragraph 3 under Pillar II) upon the Secretary General's proposal.

6. Moreover, Mr Kleijssen signalled the opportunities offered by the Council of Europe's transversal projects (children's rights and internet governance) to incorporate into them relevant aspects of data protection.

Adoption of the Agenda

7. The Bureau adopted the agenda as it appears in Appendix II.

Modernisation of Convention 108

8. The scientific expert, Ms Cécile de Terwangne, presented her preliminary views on the results of the consultations undertaken in connection with the modernisation of the Convention. She underlined the interesting results of the consultation process, which had formally started on 28 January on the occasion of Data Protection Day; despite the short period involved (ending on 10 March 2011) had led to a significant contribution (some 50 replies from all the sectors concerned by data protection, including non-European players) of high quality.
9. Ms de Terwangne gave an overview of the main results of the consultation, which can be summarised as follows: strong support for convergence with the European Union's legislative model, the need for a pragmatic approach taking into account the impact of the proposed measures, the need for measures to be effective, simplicity in the formulation of principles and the need to ensure that both the private and public sectors remained within the scope of the Convention. A more detailed report analysing the replies should be available for consideration at the next Bureau meeting.
10. Ms Laura Corrado (European Commission) noted the wish for consistency between the different texts. She indicated that, given EU competences on the subject, the Commission would need a mandate from the Council of the European Union in order to negotiate on behalf of the Union.

Recommendation No. R(89) 2 of 18 January 1989 regulating the use of personal data used for employment purposes

11. The scientific expert, Mr Giovanni Buttarelli, presented the main features of the comments from delegations on the draft he had prepared for the revision of the recommendation. The participants undertook a first reading of part of the draft recommendation (up to paragraph 5.3), in light of the comments received. It was agreed that the draft be revised to take account of the Bureau's discussions and also in light of other comments received and not yet considered by the Bureau. The Bureau agreed to resume the examination of the draft at its next meeting.
12. Despite its complexity, the importance of the subject calls for a rapid revision of the 1989 Recommendation. The Bureau agreed that the revision should take the form of a new recommendation. While not binding, as a legal instrument adopted by the Committee of Ministers, it would carry significant political weight and serve as a valuable benchmark.

13. The Bureau reiterated the invitation to delegations to provide examples of related national legislation in time for the next meeting.

Recommendation No. R(87) 15 of 17 September 1987 regulating the use of personal data in the police sector

14. The scientific expert, Mr Joseph Cannataci, presented the draft questionnaire prepared by his team. The questionnaire will be sent to T-PD members as well as to Council of Europe member states which are not party to the Convention. The Bureau agreed to the rapid transmission of the questionnaire and a relatively short deadline for responses (3 to 4 weeks). Addressees will be invited to send, together with their response, copies of the relevant legislation (in French or English). A first analysis of the replies will be done before the end of May in order to allow the dissemination of a first draft report before the June meeting of the Bureau. A comprehensive analysis of the replies will be prepared thereafter.
15. Bureau members agreed to send to the Secretariat further comments on the draft questionnaire by 4 April in order to enable its rapid finalisation and dissemination.
16. The expert also drew the attention of the Bureau to the opportunity for the T-PD to examine Recommendation No.R(97) 5 on the protection of medical data, in light of the impact of new technologies (such as RFID).

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.

17. The scientific expert, Ms Marie Georges, presented her report, highlighting how the Committee's activities relate to current developments. She underlined the enormous potential of the Committee, with its exemplary composition, balanced participation of government representatives and independent authorities, civil society and the private sector observers, and its area of influence extending to states that are not party to the convention and regional networks, which have made it an interlocutor of choice at global level.
18. Ms Georges proposed several possible roles for the Committee: promotion of the Convention, increased involvement in co-operation activities, pre-ratification and periodic assessment of legal frameworks, standard-setting, conflict resolution (e.g. through determination of appeals or arbitration), monitoring.
19. The Bureau underlined the need to ensure an adequate level of data protection in the states parties to Convention 108, especially in view of the provisions of Article 12 of the Convention in respect of transborder flows of personal data. This could involve opinions adopted by the Committee (which might extend to issues such as agreements related to PNR or SWIFT data transfers). Further consideration would be needed as to whether such opinions should be binding or not.
20. The Bureau noted that the current limits of the T-PD's powers are defined by the Convention. Its revision offers an occasion to propose, if appropriate, their broadening.

21. The Bureau also observed that the Council of Europe offers other possibilities for action which could usefully be explored, e.g. the standard-setting power of the Committee of Ministers (recommendations and guidelines), the judicial power of the European Court of Human Rights, the Secretary General's powers of inquiry under Article 52 of the European Convention on Human Rights and the political influence of the Parliamentary Assembly.
22. The added value of Convention 108 was underlined, namely its potential for projecting the principles and values it embodied beyond Europe.
23. The Bureau members were invited to submit to the Secretariat within two weeks further comments on the scientific expert's report, to enable her to finalise it.

Opinion of the Bureau of the T-PD

24. The Bureau adopted the draft opinion on the report prepared by CODEXTER on false identity information subject to certain amendments. It asked the Secretariat to transmit the opinion to CODEXTER's Secretariat once it has been finalised.
25. Mr Cannataci informed the Bureau of the establishment, subject to successful transfer of contracting institution by the European Commission, of the first Centre for Counter-terrorism in Cyberspace, which he hoped will co-operate closely with the T-PD and CODEXTER.
26. As regards the draft texts prepared by the Committee of Experts on New Media (MC-NM) on social networking and search engines, the Bureau expressed concern about the length of time data could be held and the corresponding arrangements for monitoring this, whether data could be indexed and the notion of "sensitive data". Members of the Bureau were asked to send their comments on the draft texts to the Secretariat before 4 April, so that a draft opinion could be prepared and submitted to the T-PD for consideration by written procedure.

Other issues

Other bodies, international organisations and institutions

- Parliamentary Assembly of the Council of Europe (PACE):

28. The participants were informed about a hearing held in Paris on 18 March by the PACE Committee on Culture, Science and Education in connection with the preparation of a report on "Privacy and the management of private information on the Internet and other online media".³ Ms Catherine Pozzo di Borgo (France) represented the T-PD at the hearing, where she informed the Committee on Culture, Science and Education about the work on the modernisation of Convention 108 and its objective.
29. The Bureau also took note of Recommendation 1960 (2011) on the need for a global consideration of the human rights implications of biometrics, which invited the Committee of Ministers of the Council of Europe to revise Convention 108 in order to adapt it to biometric technologies. The Secretariat was asked to follow developments on this matter and inform the Bureau of relevant decisions of the Committee of Ministers.

³ Provisional title.

- Organisation for Economic Cooperation and Development (OECD):

30. The Bureau took note of the circulation by the OECD of a questionnaire on the revision of its Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and asked the Secretariat to forward the questionnaire to the members of the Bureau so that a draft reply could be drawn up, setting out the main thrusts of the modernisation process of Convention 108 and underlining the need for consistency and convergence of the texts, as had been the case 30 years ago.

- Internet Corporation for Assigned Names and Numbers (ICANN):

31. The Bureau asked the Secretariat to find out about work in progress at ICANN to review data management in connection with the WHOIS data base and law enforcement and, in consultation with Mr João Pedro Cabral (Portugal), to make proposals if appropriate as to possible T-PD contribution to that process. Due regard should be had in this regard to the conditions necessary for the exercise of exceptions and the requirements on data accuracy.

32. The Secretariat referred to the conferences at which the Committee might be represented, namely the European Dialogue on Internet Governance (EuroDIG – Belgrade, 30-31 May 2011), the Budapest and Warsaw conferences (16-17 June and 21 September 2011 respectively), the Internet Governance Forum (IGF – Nairobi, 27 to 30 September 2011) and the 33rd International Conference of Data Protection and Privacy Commissioners (Mexico City, from 31 October to 3 November 2011).

33. Ms Sigrid Arzt, Commissioner at the Mexican Federal Institute for Access to Information and Data Protection, informed the participants of the main thrusts of the programme for the abovementioned 33rd International Conference.

34. With regard to other Council of Europe activities, the Bureau agreed that the T-PD be represented at the Council of Europe Conference on “Internet Freedom – From principles to global treaty law?” (Strasbourg, 18-19 April 2011) and the “Monaco + 5” Conference on the strategy on children’s rights (Monaco, 20-21 November 2011). The Bureau noted that a representative of the Committee (Ms Rita Vaitkeviciene, Lithuania) would take part in the next meeting of the Group of Specialists on Predictivity, Genetic Testing and Insurance (subordinate body of the European Committee on Bioethics) from 13 to 15 April 2011. Ms Vaitkeviciene should be asked to prepare a report of the meeting.

Participation request

- Observer:

35. After hearing the President of the European Association for the Defence of Human Rights (AEDH), Mr Pierre Barge, the Bureau decided to submit this association's application to the Committee, via written procedure, for a decision. The Bureau also took note of the intention to reinforce the civil society’s involvement in the Council of Europe work and asked the Secretariat to prepare a memorandum on the subject for the next meeting.

- Expert:

36. The Secretariat informed the Bureau of a request received from the French Association of Correspondents for Personal Data Protection (AFCDP) for an exchange of views. The Bureau agreed that the association could be invited to hold an exchange of views on a specific item of a future meeting in the light of the expertise and added value it could contribute concerning that specific agenda item.

Forthcoming meetings:

37. The Bureau confirmed that its 24th meeting will be held from 28 to 30 June 2011 and the Plenary meeting from 29 November to 2 December 2011 in Strasbourg. It also agreed to hold its 25th meeting in Strasbourg from 10 to 12 October 2011.
38. Given the T-PD's work programme, the Bureau considered the meeting time offered to it insufficient. It would be desirable to hold two plenary meetings each year and resources could usefully be made available for working or drafting groups reporting to the T-PD or to the Bureau.

Appendix I – Participants’ list

MEMBERS OF THE BUREAU

CZECH REPUBLIC

Hana Štěpánková, [*First Vice-chair*], Head of the Press Department, Spokeswoman, Office for Personal Data Protection

FRANCE

Catherine Pozzo-di-Borgo, [*Second Vice-chair*], Commissaire du Gouvernement adjoint auprès de la CNIL, Secrétariat Général du gouvernement

ITALY

Alessandra Pierucci, Civil Servant at the Italian Data Protection Authority, Garante per la Protezione dei Dati Personali

LUXEMBOURG

Gérard Lommel, Président, Commission Nationale pour la protection des données (CNPD)

PORTUGAL

João Pedro Cabral, Legal Adviser, Directorate General of Justice Policy, Ministry of Justice

SPAIN

José Leandro Núñez García, Advisor on International Affairs, Agencia Espanola de Proteccion de Datas

SWEDEN

David Törngren, Legal Adviser, Ministry of Justice

SWITZERLAND

Jean-Philippe Walter, [*Chair*], Préposé fédéral à la protection des données et à la transparence (FPFDT), Chancellerie fédérale

MEMBERS OF THE T-PD

GERMANY

Claudia Thomas, Desk Officer Data Protection Unit

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

Gjeorgjievski Dimitar, Director of Directorate for personal data protection

SCIENTIFIC EXPERTS

Giovanni Buttarelli, Assistant European Data Protection Supervisor

Joseph A. Cannataci, Professor, Centre for Law, Information & Converging Technologies

Marie Georges, Consultant

Cécile de Terwangne, Professeur à la Faculté de Droit, Directrice de recherche au CRID (Centre de Recherches Informatique et Droit), Facultés Universitaires Notre-Dame de la Paix (FUNDP)

OBSERVERS

EUROPEAN COMMISSION

Laura Corrado, Deputy Head of Unit– Data protection Unit, DG Justice

Anne Van Eijndhoven, European External Action Service (EEAS), European Commission Delegation

FRENCH-SPEAKING ASSOCIATION OF PERSONAL DATA PROTECTION AUTHORITIES

Floriane Leclercq, Chargée de mission

Olivier Matter, Legal adviser at the Department of European and International Affairs, Commission nationale de l'informatique et des libertés

IBEROAMERICAN DATA PROTECTION NETWORK (RIPD)

Sigrid Arzt Colunga, Commissioner, Mexican IFAI

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

Christopher Kuner, Special Advisor on Data Protection, Privacy and E-business issues, Hunton & Williams

INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY COMMISSIONERS

Olivier Matter, Legal adviser at the Department of European and International Affairs, Commission Nationale de l'Informatique et des Libertés

INTERPOL

Caroline Goemans-Dorny, Counsel, I.C.P.O. – INTERPOL

OTHER PARTICIPANTS

EUROPEAN ASSOCIATION FOR THE DEFENCE OF HUMAN RIGHTS(AEDH)

Pierre Barge, Président

MEXICAN FEDERAL INSTITUTE FOR ACCESS TO INFORMATION AND DATA PROTECTION (IFAI)

Sigrid Arzt Colunga, Commissioner

SECRETARIAT

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS

Directorate of Standard-Setting

Jan Kleijssen, Director

Tel.: +33 3 88 41 21 16 ; jan.kleijssen@coe.int

Human Rights Development Department

Jörg Polakiewicz, Head of Department

Tel.: +33 3 88 41 29 19 ; jorg.polakiewicz@coe.int

Information society, media and data protection Division

Jan Malinowski, Head of Division

Tel.: +33 3 88 41 28 92 ; jan.malinowski@coe.int

Sophie Kwasny, Secretary of the T-PD

Tel.: +33 3 90 21 43 39 ; sophie.kwasny@coe.int

Elvana Thaci, Administrator

Tel.: +33 3 90 21 56 98 ; elvana.thaci@coe.int

Julia Whitham, Assistant

Tel.: +33 3 88 41 33 66 ; julia.whitham@coe.int

Delphine Cabalion, Assistant

Tel.: +33 3 90 21 52 72 ; Fax: +33 3 90 21 56 48 ; delphine.cabalion@coe.int

Agnese Scrugli, Trainee

Tel.: + 33 3 90 21 59 77 ; agnese.scrugli@coe.int

INTERPRETERS

Nicolas Guittoneau

Didier Jungling

Josette Yoesle-Blanc

Appendix II – Agenda

1. OPENING OF THE MEETING BY MR JAN KLEIJSSSEN, DIRECTOR OF STANDARD SETTING, DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS

2. STATEMENT BY THE SECRETARIAT

- Internal changes in the Secretariat
- Data Protection Day and 30th Anniversary of Convention 108
- Abridged report 22nd T-PD-BUR (2010) RAP 22
Abridged report of the 22nd meeting of Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108], (15-17 November 2010)

3. ADOPTION OF THE AGENDA

4. MODERNISATION OF CONVENTION 108

- T-PD-BUR (2011) 01 prov Preliminary report on the consultation of the modernisation of Convention 108
- T-PD-BUR (2010) 09 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

5. FINAL REPORT ON RECOMMENDATION No. R(89) 2 OF 18 JANUARY 1989 REGULATING THE USE OF PERSONAL DATA USED FOR EMPLOYMENT PURPOSES

- T-PD-BUR (2010) 12 Report on Recommendation No. R(89) 2 of 18 January 1989 regulating the use of personal data used for employment purposes
- T-PD BUR (2011) 02 prov Compilation of comments received from the T-PD on the report on Recommendation No. R(89) 2 of 18 January 1989 regulating the use of personal data used for employment purposes

6. FINAL REPORT ON RECOMMENDATION No. R(87) 15 OF 17 SEPTEMBER 1987 REGULATING THE USE OF PERSONAL DATA IN THE POLICE SECTOR

- T-PD-BUR (2010) 11 Report on Recommendation No. R(87) 15 of 17 September 1987 regulating the use of personal data in the police sector
- T-PD-BUR (2011) 04 prov Processing of Personal Data in the Criminal Justice sector: Questionnaire/Interview Schedule

7. 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) 13 prov 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.

8. OPINION OF THE T-PD BUREAU

- CM (2010) 78 add1 Synoptic and analytical report on the questionnaire on “false identity information as a challenge to immigration authorities” by the CODEXTER
- T-PD-BUR (2011) 03 prov Draft opinion of the T-PD Bureau on the CODEXTER report on “false identity information as a challenge to immigration authorities”
- MC-NM (2010) 003_en Draft Recommendation on measures to protect and promote respect for human rights with regard to social networking services
- MC-NM (2010) 008_en Proposal for draft guidelines for social networking providers
- MC-NM (2010) 004_en Draft Recommendation to Member states on the protection of human rights with regard to search engines
- MC-NM (2010) 009_en Proposal for draft guidelines for search engine providers

9. OTHER ISSUES

A. Other bodies, international organisations and institutions

B. Participation of T-PD members in other committees and *fora* as well as other events and conferences

C. Participation request:

- **Observer:** AEDH (European Association for the Defense of Human Rights)
- **Expert**

10. DATES OF THE NEXT MEETINGS