



Strasbourg, 29 August 2008

T-PD-BUR (2008) RAP14 prov

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

(T-PD-BUR)

14th meeting
10-11 June 2008
Strasbourg, room G01

DRAFT MEETING REPORT

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

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I. OPENING OF THE MEETING

1. The Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) held its 14th meeting at the Council of Europe headquarters in Strasbourg on 10 and 11 June 2008, with Mr João Pedro Cabral (Portugal) in the chair.
2. The list of participants is set out in Appendix I to this report.

II. ADOPTION OF THE AGENDA

3. The agenda, as adopted by the Bureau, is set out in Appendix II to this report, together with an indication of the documents concerning each of the items discussed.

III. STATEMENT BY THE SECRETARIAT

4. The Bureau took note of the information supplied by the Secretariat concerning the latest developments in the Organisation in general, and in the data protection field in particular, since the plenary meeting of the T-PD in March 2008.
5. As regards the Main developments within the Council of Europe, the Secretariat informed the Bureau that a global Conference on Co-operation against Cybercrime had taken place at the Council of Europe on 1-2 April 2008. It had gathered more than 200 participants from 65 countries around the world. At the end of the Conference, participants had adopted conclusions and guidelines for the cooperation between law enforcement and internet service providers against cybercrime¹.
6. As regards new developments in the field of personal data protection since the last meeting of the T-PD, the Convention for the protection of individuals with regard to the automatic processing of personal data (ETS No. 108, hereafter Convention 108) was ratified by Andorra on 6 May 2008 (entry into force on 1 September 2008). Therefore, the Convention now has 40 ratifications and 3 signatures non followed by ratifications.
7. The Additional Protocol to Convention 108 on supervisory authorities and transborder data flows (ETS No. 181, hereafter the Additional Protocol) registered 2 new ratifications by Andorra on 6 May 2008 (entry into force on 1 September 2008) and by Austria on 4 April 2008 (entry into force on 1 August 2008). Thus, the Additional Protocol now has 20 ratifications and 13 signatures not followed by ratification.
8. As regards the Amendments to Convention 108 allowing the European Communities to accede, no new acceptance had been registered since the last meeting. Therefore, there were still only 28 States out of the now 40 State parties to the Convention that had accepted these Amendments.
9. Turning to the progress of the joint project between the Council of Europe and the OSCE on data protection within the framework of the civil registry in Albania, the Secretariat informed the Bureau that the law on personal data protection had been adopted by the Albanian Parliament in March 2008. This law foresaw the establishment of a single data protection commissioner, elected by Parliament. The Council of Europe was still

¹ Available on www.coe.int/cybercrime

awaiting his/her election to start training him/her and his/her staff. Meanwhile, it was organising awareness activities about the new legal framework among stakeholders in the public and private sectors.

10. The Steering Committee on Bioethics (CDBI) approved in June 2008 the terms of reference of a new working party on human genetics (GT 4) that will be tasked with the drafting of two legal instruments on genetic testing, in the field of insurances and employment. Following past practice, the CDBI sought the participation of one data protection expert in the work of this group.

11. The Council of Europe would have an active participation in the next Internet Governance Forum, that will take place in Hyderabad, India, on 3-6 December 2008. It proposed the organisation of several workshops, two of which dealt with data protection issues: one on the protection of personal data and cybercrime: ensuring security in compliance with privacy on the Internet and one on the protection of personal data and privacy in the information society : towards an an international instrument with a global reach? The Council of Europe was also planning to host a Europe-wide preparatory meeting to the IGF on 20-21 October 2008 on the theme 'Fostering security, privacy and openness on the Internet'.

IV. PROFILING

12. The Bureau heard a presentation by professor Yves Poulet, scientific expert, of the preliminary draft recommendation on personal data protection with regard to the process of profiling (document T-PD-BUR (2008) 02) and the working document from Jean-Philippe Walter (Switzerland) prepared on the basis of the preliminary draft recommendation. This presentation was followed by a discussion between professor Poulet, Jean-Marc Dinant, the other scientific expert for this activity, and the Bureau.

13. Professor Poulet explained that the starting point of the documents was a distinction between statistics and profiling:

- In the case of statistics, a group of persons are considered for a specific purpose, in order to confirm data statistically and take strategic decisions on this basis;
- Profiling on the other hand is a technique which consists in putting together a great quantity of individualised or anonymous data in order to draw rules of inferences of different data, to create new data and to take decisions about on data subjects on the basis of this new data. Profiling is thus a technique, not a purpose and this technique may be used for several purposes – for example targeted advertising, dynamic pricing, filtering access to some products or services.

14. A matching identifier is a crucial notion in the context of profiling. A matching identifier is an item of personal data making it possible to identify the same individual in two data processing operations, each of which has a different file controller or a distinct purpose.

15. Profiling entails specific risks: it is possible to infer from data concerning a group of persons some data about one person within this group. However, there are error risks in doing so and these errors may have adverse consequences for the data subject.

16. Profiling is also an opaque process for the data subject: he/she is not aware that data about him/her are collected, especially when this collection goes through new technologies, like internet or mobile phones. In addition, the data subject is unaware of the fact that some decisions are taken about him/her on the basis of profiling results.

17. To fight this opacity, the draft proposes a series of measures: during the collection of data, the draft foresees the information of the data subject and the possibility of opposition to the collection. Even more importantly, measures of information and improvement of the right of access are foreseen to fight opacity about the fact that measures are taken on the basis of profiling. It is proposed that these measures be applicable to all processings using profiling.

18. The draft recommendation goes even further in foreseeing specific rules for profiling, among which:

- Fight against some methods of data collection which are totally unknown of the data subject, like data connected to the use of communication devices;
- Strict regulation or even ban of profiling in certain cases where the risks of error or discrimination are particularly high – for example when sensitive data are concerned - or for some purposes, like access to housing or insurances;
- Specific rules are proposed for terminals and service providers.

19. In the discussion ensuing this presentation of the preliminary draft recommendation, the Bureau underlined that the purpose of this recommendation was not to demonise profiling, but to establish safeguards for its use.

20. It considered whether the draft recommendation should deal with profiling for criminal purposes. Some members were of the opinion that this area should not be ignored entirely by the text, as some criminal data are sometimes used for civil purposes, like in the field of insurance. Other members objected that the draft recommendation could and should not deal with areas connected with state prerogatives of criminal investigation. The Bureau agreed that, until further examination of the text, a general principle about profiling in criminal matters could be accepted, with wide exceptions for criminal procedures. It agreed to keep this question of the scope in mind when examining the text of the draft recommendation.

21. Kevin Fraser (United Kingdom) pointed out that, while the focus of the text was clearly on civil and commercial matters, there was no mention of the health area, where profiling was being used to identify risks for diseases and improve treatment.

22. Alain Brun (European Commission) questioned the use being made in the text of the recommendation R (97) 18 on statistics and the consideration that it could not be applied to profiling. In his opinion, some elements of this recommendation could be useful and could be applied to profiling. Similarly, the issue of opacity could be dealt with in the framework of existing rules on information.

23. The Bureau then turned to a more detailed examination of the preliminary draft recommendation, on the basis of the working document prepared by Jean-Philippe Walter (document T-PD-BUR (2008) 03).

24. Leaving the preamble for an ulterior examination, the Bureau first considered the Appendix to the draft recommendation. It introduced no change to the first two definitions on “personal data” and “sensitive data”. Regarding the latter, it considered adding the notion of criminal suspicions but decided against it, preferring to stick to the model of Article 6 of Convention 108.

25. The Bureau considered at some length the definition of matching identifier, which is a new definition for the purposes of this recommendation. It wondered in particular whether a matching identifier, which enables to recognise the same individual in different processings, is in itself a personal data. This recognition of the individual does not necessarily amount to an identification, since it is not necessary to know who an individual

is in the context of profiling. What matters is to be able to link several processing operations to the same individual, whoever he/she is. The Bureau noted that considering that a matching identifier was a personal data amounted to bringing the whole of the second stage of the profiling process – the data mining stage – under the scope of data protection rules. It was not sure yet that this step could be made. Another solution was conceivable, which was that matching identifiers could be personal data or not depending on the context and on whether they enabled the identification of the individual. The Bureau thus decided to leave this definition, including the issue of whether a matching identifier was a personal data, between brackets and to come back to it during the next reading. On the same definition, the Bureau also put the example of cookies between brackets, since there was no consensus in member states as to whether cookies were personal data.

26. Regarding the definition of processing, the Bureau considered the possible inclusion of the notion of storage, which is not mentioned in the Convention's definition. While recognising that the definition of processing in the Convention was an open one, and had been declined and adapted in the various recommendations, the Bureau decided for the time being to keep this word between brackets and to add a separate sentence explaining that storage was a form of processing.

27. Turning to the definition of profiling, the Bureau considered two possible wordings: the initial one, slightly shortened and a simpler version, where the elements of the initial definition would find their place in the future draft explanatory memorandum. It decided to keep the alternative until the next reading.

28. The Bureau modified the definition of profile.

29. The Bureau pointed out that the notion of data warehouse was used only in the preamble of the draft recommendation. It also considered that this definition, as well as the definition of datamining, were likely to evolve with technical progress and that it was therefore too early to establish them strictly. It decided to keep both definitions between brackets.

30. Turning to the section on scope, the Bureau shortened and amended section 2.1. It decided to keep subsection 2.2 between brackets and to decide later whether this sentence was necessary or should be moved to the explanatory memorandum.

31. The Bureau decided to re-focus and rename section 3 as dealing with "general principles". To this end, only subsection 3.1 was kept, with the addition of the first sentence of subsection 3.3. The remaining subsections were moved to section 4, as one (section 3.2) was an explanation of the principle of data quality and the other (remainder of section 3.3) dealt with the principle of finality.

32. The Bureau started to examine section 4, but time prevented it to conclude this examination. It noted that subsection 4.1 dealt with both the principles of lawfulness and proportionality and considered dealing with these principles separately. Items a) and b) of subsection 4.1 also were somewhat confusing in that they mixed two drafting techniques: item a) was referring generally to the law instead of listing the conditions of lawfulness and item b), in starting with "these interests" seemed on the contrary to imply a listing. In the opinion of the Bureau, either one or the other technique should be chosen. Should the technique of a list be chosen, a possibility could be to use Article 7 of the Data Protection Directive 95/46 as a basis, but one should check whether the whole of Article 7 is applicable to profiling. Bureau members agreed to check this before their next meeting.

33. The Bureau wondered what was the use of subsection 4.2 and the reference to the recommendation on statistics. The experts explained that this sentence aimed at ensuring the compatibility of the future recommendation on profiling with the

recommendation on statistics. Some members were of the opinion that this sentence was actually an illustration of the principle of purpose limitation and was therefore unnecessary.

34. As this first reading of the draft recommendation could not be completed due to time constraints, the Bureau decided to continue it by e-mail, with a view to gathering comments and contributions in time for its next meeting in October 2008.

V. WORKING METHODS

35. Further to the request of the T-PD, the Bureau considered the proposal for modification of Article 10 ter of the T-PD's internal rules (document T-PD-BUR (2008) 1), which had not been examined in its entirety at the last plenary meeting.

36. The Bureau discussed a possible deletion of the last sentence of Article 10 ter 1, but decided against it as the mention of a specific time limit enabled members to prepare discussions during meetings and also enable the Secretariat to arrange of the translation of amendments received.

37. Concerning Article 10 ter 3, the Bureau approved the inclusion of a second sentence foreseeing a shorter time-limit for sending comments in urgent cases. It decided to propose this amendment, as it appears in Appendix III, to the T-PD for a vote by written procedure.

38. Following the written procedure organised by the Secretariat, this amendment was approved by the T-PD by unanimity of the votes cast.

VI. STATUS AND POWERS OF DATA PROTECTION SUPERVISORY AUTHORITIES

39. The Bureau held a discussion on the adequate implementation of this activity, focusing first on its scope.

40. The Chair proposed as a first step to draw a report on the current practice within member states on the implementation of the Additional Protocol, as this had never been done. Several members were of the opinion that merely recording the differences between member states would have little added value.

41. A more useful exercise could be to try and flesh out the explanatory memorandum of the Additional Protocol, which was rather rudimentary. Perhaps a minimum platform of implementation of the Additional Protocol could even be identified.

42. Some members however called for cautiousness, as the text of the Additional Protocol left a wide margin of flexibility to state parties in the definition of powers to be given to data protection supervisory authority. In contrast, the Additional Protocol allowed much less flexibility in the implementation of the notion of independence. The T-PD's activity could therefore focus, at least in a first stage, on the notion of independence.

43. The Bureau agreed with this idea and decided that the activity on the status and powers of supervisory authority would deal as a first step with the notion of independence.

44. The Bureau then discussed the way in which the activity could be implemented and in particular whether a questionnaire should be drawn up.

45. Hana Štěpánková (Czech Republic) proposed to use as a basis of a

questionnaire the section on independence of the document containing the draft list of criteria (document T-PD-BUR (2007) 07rev). The budgetary and organisational aspects of independence should be taken into account, as well the manner in which the power of investigation was used in practice.

46. The Bureau agreed that a key point was the possibility for data protection supervisory authorities to make a decision without influence or instructions. In this context, the way in which the budget was prepared and adopted and whether or not the supervisory authorities had a say in the process was instrumental.

47. Possible questions that were proposed to be included in the questionnaire were:

- whether the budget was prepared by the supervisory authority or by another entity;
- whether the budget requested as a whole by the authority was granted;
- whether there was a check on the way in which the budget was spent;
- whether the authority could itself hire its own staff;
- whether the supervisory authority was subject to instructions or pressure;
- what the legal basis of the supervisory authority was and whether this provided sufficient safeguards;
- what the position of the supervisory authority was in the hierarchy of the state system;
- whether it was possible to dissolve the authority;
- the composition of the authority and its term of office; some members wondered in particular whether collegiality was a better guarantee of independence.

48. Other questions were suggested regarding the role of the supervisory authority in the legislative process and the process of sanction against data controllers, but they were found by the Bureau to be out of the scope of the activity as re-defined in the course of this discussion.

49. The Bureau asked the Secretariat to prepare a draft questionnaire that it would examine electronically or at its next meeting. This questionnaire, once agreed upon, should be sent to all members of the T-PD, who should then send it on to their relevant national authority. The answers should be requested by the end of the year, so that the T-PD could examine the results of the questionnaire at its next plenary meeting in 2009.

VII. CURRENT ISSUES

VII.1 Data protection in the field of sport anti-doping

50. Hana Štěpánková reported back to the Bureau about the working meeting organised at the Council of Europe office in Paris on 23 May 2008 on the new World Anti-Doping's Agency (WADA) draft international standard for the protection of privacy and data protection. This meeting gathered the drafters of the text, commissioned by WADA, experts from the Council of Europe Anti-Doping Convention Committee, the T-DO and experts on data protection, namely herself, a Swiss lawyer, Mr Christian Flueckiger, recommended by Jean-Philippe Walter, as well as the secretaries of the T-DO and the T-PD.

51. Thanks to a very detailed preliminary work on the text by the anti-doping and data protection experts, the Council of Europe was able to make a series of amendment requests and drafting proposals, all of which were accepted by WADA experts. The new version of the draft standard recently made available by WADA (document T-PD-BUR (2008) Inf 01) was the result of this work and represented, in her view, a clear improvement on earlier versions of the text.

52. The Secretariat informed the Bureau that WADA had asked stakeholders for their comments on this draft international standard, with a 14 July 2008 deadline.

53. The Bureau agreed that this version of the draft standard took better account of data protection rules and ensured a better protection of data subjects. However, in its opinion, there was still room for improvement and some shortcomings remained with regard to Convention 108.

54. In view of these remaining issues, the Bureau discussed the best course of action. Some members expressed the wish to make comments on the draft international standard. The Bureau envisaged asking members to send their comments individually to WADA, but a majority of members favoured the preparation of an opinion by the T-PD as a whole. In their opinion, WADA's text represented an important step towards the global nature of data protection and the T-PD should not remain silent while shortcomings with the level of protection of Convention 108 were still clear.

55. In application of the procedure of Article 15.3 of the T-PD's internal rules, dealing with urgency, the Chair and Vice-Chairs decided that the Bureau should prepare an opinion on the draft standard and send it to the T-PD for an adoption by written procedure. Issues that were raised in the course of the preparation of this opinion were the following:

- While recognising that this was not the object of the current consultation, the Bureau noted that some articles of the World Anti-Doping Code, in particular article 14.2 on public disclosure, seemed to raise issues of compatibility with Convention 108. It wished to bring this to the attention of the T-DO and WADA, in view of a possible future revision of the Code;
- The notion of "participant" used in the draft international standard was found too restrictive, since the rest of the standard also covered personal data of third persons. Therefore, either the notion of participant should be broadened to cover them or another term should be chosen;
- The Bureau recalled the point it had made numerous times in past discussions with WADA, that consent still provided an insufficient legal basis found the countries that had chosen not to regulate sport by law. Jean-Philippe Walter added that in Switzerland, several recent court decisions had underlined that consent could not be regarded as free in such a context;
- With regard to article 10 of the draft international standard, some members wondered whether the text enabled to keep data for historical research purposes. This did not seem to be the case. However, the Bureau did not consider this of such importance to deserve a mention in the T-PD's opinion.

56. The draft opinion as approved by the Bureau appears in Appendix IV. It was sent to the T-PD for decision by written procedure and was adopted by 20 votes to 1.

57. Alain Brun also informed the Bureau that a request had been submitted to the Article 29 Working Party for preparing an opinion on the same draft international standard. The Working Party would decide thereon during its June meeting.

VII.2 Request for observer status from the French-speaking Association of Personal Data Protection Authorities (AFADPD)

58. Jean-Philippe Walter recalled that the French-speaking personal data protection authorities had decided to create an Association which had similar objectives to the Council of Europe's in the field of data protection: encouraging development of personal data protection worldwide and collaborating with various bodies in Europe and worldwide to bring about a global legally-binding instrument on data protection.

59. This association had requested the status of observer with the T-PD, in order to collaborate with it. Such a collaboration could be mutually beneficial, in order to make Convention 108 an instrument of reference, not only in Europe, but also worldwide. It would also follow path of the recently decided more general collaboration between the Council of Europe and the *Association de la Francophonie* on democracy and the rule of law.

60. As the T-PD had already been consulted informally at its last plenary on the principle of such a collaboration with the AFADPD and had reacted positively, the Bureau asked the Secretariat to consult the T-PD in writing on this request. It was approved by the T-PD by unanimity of the votes cast.

VII.3 Update on OECD activities

61. Michael Donohue from the OECD provided an update on the activities of the organisation: he recalled that a Recommendation on privacy enforcement had recently been adopted by the OECD. This Recommendation drew a large circle of co-operation, recognising the new global environment in which privacy operated and called for domestic arrangements as well as international co-operation to ensure enforcement of privacy rules.

62. The OECD was now focusing on implementation and developing among others a contact list and assistance forms. A meeting had also been organised between enforcement authorities, international organisations among which the Council of Europe, and private companies, in order to develop dialogue on issues of common concern and foster the creation of an informal global network.

63. Finally, Michael Donohue informed the Bureau that an OECD Ministerial meeting on the future of the internet economy would take place in Seoul (Korea) the following week. One session of this meeting would be devoted to confidence, with the participation of Jennifer Stoddard, the Canadian Federal Privacy Commissioner, Alex Turk, President of the French data protection Commission and Chair of the Article 29 Working Party, as well as Maud De Boer-Buquicchio, Deputy Secretary General of the Council of Europe. At the end of this meeting, a declaration and a policy paper would be adopted.

VIII. DATE OF MEETINGS IN 2008

64. The Secretariat informed the Bureau that its next meetings would take place in Strasbourg on 13-14 October 2008 and in Paris on 17-18 December 2008.

APPENDIX I**LIST OF PARTICIPANTS****MEMBERS OF THE BUREAU/MEMBRES DU BUREAU****AUSTRIA/AUTRICHE**

Eva Souhrada-Kirchmayer, *[First Vice-Chair of the T-PD]*, Head of the data protection division, Federal Chancellery, Vienna

CZECH REPUBLIC/RÉPUBLIQUE TCHÈQUE

Hana Štěpánková, International Department, the Office for Personal Data Protection, Prague

FRANCE

Pascale Compagnie, Magistrat, Commissaire du Gouvernement auprès de la CNIL (Commission nationale de l'informatique et des libertés), Services du Premier Ministre, Paris

GERMANY

Eva Inés Silbermann, legal Counsel/Judge, Ministry of the Interior, Division: V II 4 Data Protection Law, Berlin

ITALY/ITALIE

Excused/excusée

PORTUGAL

Joao Pedro Cabral, *[Chair of the T-PD]*, Legal Adviser, Ministry of Justice, Lisboa

SWITZERLAND/SUISSE

Jean-Philippe Walter, *[Second Vice-Chair of the T-PD]*, Office du Préposé fédéral à la protection des données et à la transparence (PFPDT), Chancellerie fédérale, Berne

MEMBERS OF THE T-PD/MEMBRES DU T-PD**BELGIUM/BELGIQUE**

François Danieli, Attaché, Ministère de la Justice, Service Public Fédéral Justice, DG "Législation et Droits fondamentaux", Service des Droits de l'Homme, Cellule "vie privée & protection des données"

ITALY/ITALIE

Allessandra Pierucci, Garante per la Protezione dei Dati Personali, Rome

ROMANIA/ROUMANIE

George Grigore, Department of European Integration and International Affairs - Romanian DPA, Bucharest

SLOVAKIA/SLOVAQUIE

Ms. Veronika Žuffová-Kunčová, LL.M, Foreign Relations Department, Personal Data Protection Office of the SR, Bratislava

UNITED KINGDOM/ROYAUME-UNI

Kevin Fraser, Head of EU Data Protection Policy, Ministry of Justice, London

**COUNCIL OF EUROPE MEMBER STATES/
ETATS MEMBRES DU CONSEIL DE L'EUROPE**

MONACO

Caroline Porasso, Juriste, Commission de Contrôle des Informations, Autorité de contrôle de Monaco

EXPERTS SCIENTIFIQUES/SCIENTIFIC EXPERTS

Professeur Yves Poullet, Directeur du CRID (Centre de Recherches Informatique et Droit, Faculté de Droit, Belgique

Jean-Marc Dinant, Informaticien expert auprès de la Commission Belge de la protection de la vie privée, Maître de conférence à l'Université de Namur, Namur, Belgique

**COMMISSION OF THE EUROPEAN COMMUNITIES/
COMMISSION DES COMMUNAUTÉS EUROPÉENNES**

Alain Brun, Chef de l'Unité de protection des données à la Commission Européenne, Commission européenne, Direction générale Justice, Liberté, Sécurité, Bruxelles

OBSERVERS/OBSERVATEURS

**INTERNATIONAL CHAMBER OF COMMERCE (ICC) / CHAMBRE DE COMMERCE
INTERNATIONALE (CCI)**

Excused/excusé

OECD/OCDE

Michael Donohue, Division Information, Informatique et Communications, France

SECRETARIAT

**Directorate General of Human Rights and Legal Affairs / Direction Générale des
droits de l'Homme et des affaires juridiques**
Directorate of Standard-Setting / Direction des activités normatives

Sophie Meudal-Leenders, *Secretary of the TPD-BUREAU/Secrétaire du T-PD-BUREAU*

Pelin Ataman, Project Manager Project on Data protection within the framework of the civil registry system of Albania

Frédérique Bonifaix, Secretariat, Data Protection

INTERPRETERS/INTERPRETES

Philippe Quaine
Christopher Tyczka

APPENDIX II**AGENDA****1. OPENING OF THE MEETING****2. ADOPTION OF THE AGENDA****3. STATEMENT BY THE SECRETARIAT**

- T-PD-BUR (2008) RAP 13 Report of the 13th 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]), (5-7 December 2007)
- T-PD (2008) RAP 24
New Report of the 24th meeting of the T-PD (Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108]), (13-14 March 2008)

4. PROFILING

Required action: the Bureau will examine the preliminary draft recommendation to state parties on personal data protection with regard to the process of profiling

- T-PD (2008) 01 Final version of the study on the application of Convention 108 to the profiling mechanisms
- T-PD-BUR (2008) 02
New Preliminary draft recommendation to state parties on personal data protection with regard to the process of profiling
- T-PD-BUR (2008) 03
New Working document from J.-Ph Walter (Switzerland) elaborated on the basis of document T-PD-BUR (2008) 02

5. T-PD'S WORKING METHODS

Required action: the Bureau will examine and finalise draft amendments to article 10ter of the T-PD's internal rules of procedure, that will be sent to the T-PD for adoption by written procedure

- T-PD-BUR (2008) 01
New Proposal for modification of article 10ter of T-PD's internal rules
- T-PD (2008) 3Rev T-PD's internal rules

6. STATUS AND POWERS OF DATA PROTECTION SUPERVISORY AUTHORITIES

Required action: the Bureau will decide on the adequate implementation of this activity and will pursue its work on the elements gathered

- T-PD-BUR12(2007)Inf 02 Summary of the results of the questionnaire referring to the year 2006 - Questionnaire for the Spring Conference of European Data Protection Authorities, Larnaka, 10-11 May 2007
- T-PD-BUR12(2007)Inf 03 Restricted Questionnaire On Requests for Information put to a controller, Complaints, Audits and Sanctions, and on their Implementation By the Task force on Enforcement of the Working Party 29
- T-PD-BUR13(2007)Inf 01 Restricted Document "Self Evaluation Tool for New Member States" from the Office of the Data Protection Ombudsman / Finland
- T-PD-BUR(2007) 07Rev Restricted Draft list of criteria falling under the definition of data protection supervisory authorities

7. CURRENT ISSUES

7.1. DATA PROTECTION IN THE FIELD OF SPORT ANTI-DOPING

- T-PD-BUR (2008) Inf 01 **New** International standards for the protection of privacy and data protection - document proposed by WADA

7.2. REQUEST FOR OBSERVER STATUS FROM THE FRENCH-SPEAKING ASSOCIATION OF PERSONAL DATA PROTECTION AUTHORITIES

- T-PD-BUR (2008) Inf 02 **New** Letter of the French-speaking Association of personal data protection authorities

7.3. UPDATE ON OECD ACTIVITIES

8. DATES OF THE NEXT MEETINGS OF THE T-PD-BUR IN 2008

APPENDIX III**CONSULTATIVE COMMITTEE OF THE CONVENTION
FOR THE PROTECTION OF INDIVIDUALS
WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA****(T-PD)****MODIFICATION OF ARTICLE 10 TER OF THE T-PD's INTERNAL RULES****As adopted by the T-PD by written procedure**

Article 10 ter: Procedure

1. The texts within the meaning of Article 9 bis paragraphs 5 and 6, submitted for the approval of the Committee shall be prepared by the Bureau. As a general rule they shall be subject to two readings by the Committee. A text may exceptionally be subject to a third reading if two-thirds of the representatives present at the second reading so request. During the second and third readings only those amendments presented in writing at least one month before the plenary meeting shall be debated.

2. As a general rule the Bureau shall adopt the texts it submits to the Committee by consensus. Where there is disagreement, the texts shall be adopted by a simple majority. The minority may present its point of view to the Committee in writing if it informs the Bureau beforehand. Once a text has been adopted, it shall be presented to the Committee by a rapporteur appointed by the Bureau.

3. All proposals by the Bureau shall be sent to the members of the committee, who shall have four weeks in which to send their observations to the Secretariat who shall forward them to all members of the Committee. **This time limit may be reduced to two weeks in urgent cases.**

4. Where documents are sent by electronic mail, the Secretariat shall take the necessary measures to ensure that the electronic mail messages have reached the members of the Committee.

APPENDIX IV

Strasbourg, 10 July 2008

T-PD-BUR (2008) 04 fin

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

**OPINION OF THE T-PD ON THE COMPATIBILITY
OF THE WORLD ANTI-DOPING AGENCY'S
INTERNATIONAL STANDARD FOR THE PROTECTION OF PRIVACY AND
DATA PROTECTION WITH THE COUNCIL OF EUROPE DATA PROTECTION
STANDARDS**

**Text prepared of the T-PD at its 14th meeting and
approved by the T-PD by written procedure**

1. The Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (T-PD) considered the draft international standard for the protection of privacy and data protection – draft of 4 June 2008 – prepared by the World Anti-Doping Agency (WADA) and its compatibility with the Council of Europe’s data protection standards, in particular the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No 108, hereafter Convention 108), its Additional Protocol on supervisory authorities and transborder data flows (ETS No 181, hereafter the Additional Protocol) and Recommendation R (97) 5 on the protection of medical data.

2. This examination follows WADA’s call for comments and previous discussions between WADA, the T-PD and the Monitoring Group of the Council of Europe’s Anti-Doping Convention (T-DO).

3. The T-PD commends WADA for this very important initiative towards a better protection of the privacy and personal data of athletes and all other persons whose data are collected and processed worldwide in connection with anti-doping activities. It salutes in particular the fact that, even if it is only applicable to a special category of persons, this international standard will become, by virtue of its geographical scope, the first global instrument on privacy and data protection.

4. The T-PD is grateful to WADA for this possibility to submit comments on this important text and would like to make the following comments and proposals in order to further improve compatibility of the draft with the Council of Europe’s data protection standards:

Code Article 14.2:

5. The T-PD is aware of the fact that the subject of this consultation is the international standard for the protection of privacy and data protection and not the World Anti-Doping Code itself. Nevertheless, it would like to point out that some of the articles of the Code may raise concerns as regards their compatibility with data protection standards. The T-PD wonders in particular whether public disclosure foreseen under Article 14.2 is really necessary, adequate, relevant and proportionate to the purpose of the fight against doping.

Definition of participant (Section 3.1):

6. The T-PD wonders whether the notion of “participant”, as defined in the draft standard, is too restrictive to cover also the rights of other persons whose personal data may also be collected and processed in the framework of the implementation of the Code, such as the third parties referred to in Section 8 of the draft.

Processing personal information with consent (Section 6):

7. The T-PD reiterates the point it made in its earlier opinion on the ADAMS data base that “the legitimate collection and processing of these data must have a valid legal basis, which may be a law, a contract or free and informed consent. The importance of a valid legal basis is even stronger where sensitive data, such as data concerning health, are concerned”. It still considers that consent cannot really be regarded as free in this context and that therefore, an alternative legal basis should be sought.

8. Therefore, it suggests wording Article 6.1 as follows: “Anti-Doping Organisations shall only process personal information if such processing is required by applicable law, with a participant’s informed consent, or under the conditions of Section 6.3.b of this International Standard.”

9. Regarding the processing of sensitive data (section 6.2), the T-PD would like to stress that all sensitive data are not necessary, adequate and relevant for the purpose of the fight against doping – such is the case for instance of data revealing racial origin, political opinions or sexual preferences. It therefore invites WADA to specify which sensitive data may be processed in this framework.

Incapable persons (Section 6.4):

10. The T-PD suggests broadening the scope of this provision to allow also legal representatives of incapable persons to exercise other rights foreseen under this draft standard, such as the rights foreseen under Section 11.

Disclosure of personal information to third parties (Section 8.4):

11. As this article may entail disclosure of personal information to third parties located in countries that do not have an adequate level of personal data, the T-PD would like to stress that consent in this case should not only be informed, as in Point 6, but should also be free, and written. Therefore, the T-PD recommends removing the reference to section 6 in this section.

12. In addition, the T-PD suggests rewording the whole Section as follows:

“ Anti-Doping Organizations may disclose Personal Information to third parties, besides Anti-Doping Organizations, where such disclosures:

- a. are required by law;
- b. *domestic law allows it and*
 - a. *they take place* with the *free, written and* informed consent of the relevant participant; or
 - b. are necessary to assist law enforcement or governmental authorities in the detection, investigation or prosecution of a criminal offence, provided that the personal information requested is directly relevant to the offence in question and otherwise cannot reasonably be obtained by the authorities

Rights of participants with respect to personal information (Section 11):

13. The T-PD points out that the exception to the right of access foreseen in Section 11.1 is too large and suggests restricting its scope.

14. As regards Section 11.2, the T-PD recommends deleting the words “plainly vexatious”, that are not in line with applicable standards and practice in this field.