Strasbourg, 11 December 2015

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)

37th meeting of the Bureau

Strasbourg, 9-11 December 2015

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law
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) held its 37th meeting in Strasbourg from 9 to 11 December 2015, with Mr Jean-Philippe Walter (Switzerland) in the chair. The agenda, as adopted by the T-PD Bureau and the list of participants are set out in Appendices I and II.

The Bureau of the T-PD:

1. took note of the information provided by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate, in particular on:
   - the importance for the T-PD to be involved in the discussion on surveillance and terrorism, boosted by the Paris terrorist attacks, in order to strike the right balance between a securitarian approach and applicable human rights, including the right to respect for privacy and the protection of personal data;
   - the Ministers’ Deputies decision to invite Tunisia to accede to Convention 108 and to its Additional Protocol;
   - the modernisation of Convention 108, linked in particular to the state of progress of the trilogue negotiations within the EU that is about to be concluded and which should enable the Committee of Ministers’ Rapporteur Group on Legal Co-operation to resume discussions at its next meeting in 2016 and decide on the subsequent steps;
   - the launching of a series of “Data Protection Talks” with the participation of Max Schrems for the first edition to be held after the 37th Bureau meeting on 11 December, to discuss the ruling of the Court of Justice of the European Union of 6 October 2015;

2. took note of the concerns expressed once again by the Chair on the inadequacy of the resources allocated to the Committee and its Secretariat in relation to the importance and relevance of the topic, as well as the budgetary needs that will arise when establishing the follow-up mechanism, which will require not only additional staff for the Secretariat but also a second annual Plenary meeting. The Data Protection Commissioner raised similar concerns highlighting that additional staff is essential for the accomplishment of her duties;

3. took note of the information presented by the experts, Mr Gert Vermeulen and Mr Dariusz Kloza, on the issue of Cooperation between Data Protection Authorities within the framework of the Global Cross Border Enforcement Cooperation Arrangement adopted at the 36th International Conference of Data Protection and Privacy Commissioners with regard to the current provisions of the Convention and draft modernised Convention 108. It held an exchange of views with the experts and instructed the Secretariat to draft a letter to the International Conference addressing the relevant provisions of Convention 108 and their articulation with the Arrangement;

4. examined the draft Recommendation on the protection of health data presented by the expert, Ms Jeanne Bossi Malafosse, and agreed that the Secretariat and the expert will revise the draft recommendation on the basis of the discussions and comments received in writing, for its transmission to delegations and observers for comments before the 38th Bureau meeting;

5. took note of the information presented by Mr Philip Kerfs, on the OECD Standard for Automatic Exchange of Financial Account Information, in particular regarding Appendix C to the Multilateral Agreement between the competent authorities, and invited Mr Kerfs to keep the Bureau informed on any further developments in this regard;

6. examined the draft guidelines on “the protection of individuals with regard to the processing of personal data in a world of Big Data”, prepared by the Secretariat on the basis of the experts’ report and instructed the Secretariat to forward a revised version to the delegations and observers for written comments, in view of the 38th Bureau meeting;

7. took note of the information provided by representatives of other Council of Europe Bodies:
   - the Secretariat of the Cybercrime Committee (T-CY), on the decisions taken during the T-CY 14th Plenary meeting (1-2 December 2015) which are of interest for the T-PD, and in particular on the
intention of the Cloud Evidence Group to organise a meeting on 23 May 2016 to continue the dialogue with data protection experts and to report back to the T-CY on the outcomes;

- the Secretariat of the Committee of Experts on Terrorism (CODEXTER), regarding the participation of the T-PD in the drafting group that will update Recommendation Rec(2005)10 on the use of “special investigation techniques” in relation to serious crimes including acts of terrorism and appointed Mr Péter Kimpian (Hungary) to represent the T-PD in the drafting group;
- the Secretariat of the Bioethics Committee (DH-Bio), concerning notably the approval by the DH-Bio of the draft recommendation “on research on biological materials of human origin” and the finalisation of the draft recommendation on “the processing for insurance purposes of personal health-related data, in particular data resulting from genetic tests”, as well as concerning future areas of possible cooperation (draft Recommendation on the protection of health data and work on emerging technologies);

8. took note of the information presented by Mr Péter Kimpian on his participation in the 54th ICANN meeting in Dublin, stressing the importance of T-PD participation in ICANN's forthcoming meetings;

9. took note of the information presented by the expert, Marie Georges, concerning her report on "Passenger Name Records", and after holding a discussion with the expert, examined the “draft opinion on Air Transport Passengers Information” prepared by the Secretariat, instructing it to submit a revised version to delegations and observers for written comments before the 38th Bureau meeting;

10. took note of the information provided by the Data Protection Commissioner on the revision of the “Regulation of 1989 instituting a system of data protection for personal data files at the Council of Europe”, highlighting the importance of being consulted on the draft Regulation, and agreed with the request of the Chair regarding the consultation of the T-PD in order to examine the consistency of the draft Regulation with Convention 108 and the necessity to adopt quickly the revised Regulation;

11. took note of the information presented by the observers, by AEDH on the organisation of a Conference on 27 January 2016 to celebrate the 10th anniversary of the Data Protection Day, by ICRC on the adoption in June 2015 of the rules on personal data in the humanitarian work field, the adoption of the resolution on “Privacy and International Humanitarian Action” at the 37th International Conference of Data Protection and Privacy Commissioners, as well as the cooperation with the Brussels Privacy Hub that will enable the organisation of six workshops which aim at issuing guidelines on personal data protection for humanitarian actions and the cooperation with the EDPS which will enable the organisation of a workshop on data protection within International Organisations on 5 February 2016 in Geneva;

12. confirmed that the 38th Bureau meeting will be held in Paris from 22 to 24 March 2016 and the 33rd Plenary meeting will be held in Strasbourg from 29 June to 1 July 2016.
APPENDIX I.

AGENDA

1. OPENING OF THE MEETING

- T-PD(2015)RAP32Abr Abridged report of the 32nd Plenary meeting (1-3 July 2015)

2. ADOPTION OF THE AGENDA

3. STATEMENT BY THE SECRETARIAT

4. MODERNISATION OF CONVENTION 108

Experts: Mr Gert Vermeulen, Director of the Institute for International Research on Criminal Policy (IRCP), Full Professor Criminal Law at Ghent University and Commissioner of the Commission for the protection of privacy (CPP), Belgium.

Mr Dariusz Kloza, Doctoral researcher at the Research Group on Law Science Technology and Society (LSTS), Vrije Universiteit, Brussels, Belgium and at Peace Research Institute Oslo (PRIO).

Required action: The Bureau will hold an exchange of views with the experts on possible barriers to cooperation between Data Protection Authorities (articles 7, 7bis and 13 of the modernised Convention).

- CAHDATA(2014)RAP03Abr Abridged report of the 3rd CAHDATA meeting (1-3 December 2014)
- Draft amending Protocol Draft Protocol amending the Convention 108
- Information document Consolidated text of the modernised version of Convention 108 with reservations

5. BIG DATA

Required action: The Bureau will examine the draft Guidelines prepared by the Secretariat on the basis of the expert report.
6. PROTECTION OF MEDICAL DATA

Expert: Ms. Jeanne Bossi Malafosse, Counsel, DLA Piper France LLP, Paris, France

**Required action:** The Bureau will examine the revised version of the draft Recommendation presented by the expert.

- T-PD(2015)02Mos Compilation of replies received on the protection of medical data (Updated version)
- T-PD(2014)07 “Medical technologies and data protection issues” - Questionnaire
- Recommendation N° (97) 5 on the protection of medical data

7. AUTOMATIC EXCHANGE OF DATA

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

- T-PD(2014)05 Opinion on the implications for data protection of mechanisms for automatic inter-state exchanges of data for administrative and tax purposes
- 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

8. COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES

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

- Steering Committee on Media and Information Society (CDMSI)
  - 9th Plenary meeting (8-11 December 2015)
9. **OVERVIEW OF ACTIVITIES AND MAJOR DEVELOPMENTS IN THE FIELD OF DATA PROTECTION**

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

- **ICANN (54th meeting, Dublin; 18-22 October 2015)**

- **T-PD(2015)03Mos** Compilation of experts’ reports

- **Follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens**

10. **OPINION**

Expert: Ms. Marie Georges, Council of Europe independent expert, Paris, France

*Required action:* The Bureau will examine the draft Opinion prepared by the Secretariat on the basis of the expert report.

- **T-PD-BUR(2015)11** Draft opinion on Air Transport Passengers information

- **T-PD-BUR(2015)05** Report on a draft opinion on Passenger Name Records (PNR), data mining and data protection (French version only)

- **T-PD(2015)11** Passenger Name Records, data mining & data protection: the need for strong safeguards - Draft Council of Europe’s report by Mr Douwe Korff and Ms. Marie Georges

- **T-PD(2015)01Bil** Compilation of opinions

11. **DRAFT DATA PROTECTION REGULATION OF THE COUNCIL OF EUROPE, STATE OF PROGRESS**

*Required action:* The Bureau will take note of the information provided by the Secretariat and the Commissioner and will proceed to an exchange of views.

12. **OBSERVERS**
**Required action**: The Bureau will take note of the information provided by the observers.

- ICRC: Resolution on Privacy and International Humanitarian Action
  (adopted at the 37th International Conference)

13. **ANY OTHER BUSINESS**

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APPENDIX II.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

MEMBERS OF THE BUREAU / MEMBRES DU BUREAU

GEORGIA / GEORGIE (apologised/excusée)
Nino Sarishvili, Head of International Relations and Communications Department, Office of the Personal Data Protection Inspector, 7, Ingorokva Str., 0105, Tbilisi Georgia

HUNGARY / HONGRIE
Péter Kimpiàn, International Affairs and Public Relations Department, National Authority for the Data Protection and Freedom of Information, H-1125 Budapest, Szilágyi Erzsébet fasor 22/C

ITALY / ITALIE (apologised/excusée)
Pierucci Alessandra, (first vice-chair), Piazza di Monte Citorio 121, 00186 Rome

LUXEMBOURG (apologised/excusé)
Gérard Lommel, Commissaire du gouvernement à la protection des données, Ministère d'Etat, Bâtiment Zurich, 3 boulevard Roosevelt, L-2450 Luxembourg

PORTUGAL
João Pedro Cabral, Legal Adviser, Directorate General of Justice Policy, Ministry of Justice, Avenida D. João II, n.º1.08.01 E, Torre H, Pisos 2/3, 1990-097 Lisboa

SERBIA / SERBIE
Nevena Ružić, (second vice-chair), Head of Office, Commissioner for Information of Public Importance and Personal Data Protection, 42 Svetozata Markovica, 11 000 Belgrade

SPAIN / ESPAGNE
Agustín Puente Escobar, Director, Agencia Española De Protección De Datos, State Attorney -Head of the Legal department, C/Jorge Juan, 6, 28001 Madrid

SWITZERLAND / SUISSE
Jean-Philippe Walter, (Président), Préposé fédéral à la protection des données et à la transparence (PFPDT), Chancellerie fédérale, Feldeggweg 1, 3003 Berne

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

BELGIUM / BELGIQUE
Valérie Verbruggen, Conseiller Juridique, Commission de la protection de la vie privée, Rue de la presse, 35 à 1000 Bruxelles

UNITED KINGDOM / ROYAUME-UNI
Nimra Zaheer, EU and International Data Protection Policy, Department for Culture, Media &Sport, 100 Parliament Street, London, SW1A 2NH
OBSEVERS / OBSERVATEURS

ASSOCIATION EUROPEENNE POUR LA DEFENSE DES DROITS DE L'HOMME / EUROPEAN ASSOCIATION FOR THE DEFENSE OF HUMAN RIGHTS (AEDH)
Maryse Artiguelong, Déléguée, AEDH, Rue de la Caserne 33 – 1000 Brussels, Belgium

EUROPEAN COMMISSION / COMMISSION EUROPEENNE
Lukasz Rozanski, European Commission, DG Justice and Consumers, Rue de la Loi 200
1049 Brussels, Belgium

EUROPEAN DATA PROTECTION SUPERVISOR / LE CONTRÔLEUR EUROPEEN DE LA PROTECTION DES DONNEES
Jacob Kornbeck, Legal Officer, Postal address: Rue Wiertz 60, B-1047 Brussels
Office address: Rue Montoyer 30, B-1000 Brussels, Belgium

INTERNATIONAL COMMITTEE OF THE RED CROSS / COMITÉ INTERNATIONAL DE LA CROIX-ROUGE
Massimo Marelli, Lawyer/Head of Data Protection Project, Communication & Information Management Department, ICRC Geneva, Switzerland
Julie Tenenbaum, Regional Legal Adviser for Europe, 10bis, Passage d'Enfer, 75014 Paris, France

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) / ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUE (OCDE)
Philip Kerfs, Head, International Cooperation Unit, ICA, CTPA, 2, rue André Pascal, 75775 Paris Cedex 16, France

OTHER PARTICIPANT / AUTRE PARTICIPANT

COUNCIL OF EUROPE DATA PROTECTION COMMISSIONER / COMMISSAIRE A LA PROTECTION DES DONNEES DU CONSEIL DE L'EUROPE
Eva Souhrada-Kirchmayer, Council of Europe, Strasbourg, France

SCIENTIFIC EXPERTS / EXPERTS SCIENTIFIQUES

Jeanne Bossi-Malafosse, Avocat à la Cour – Counsel, DLA Piper France LLP, 27 rue Laffitte, 75009 Paris, France
Marie Georges, experte indépendante, 58 rue de Rochechouart, 75 009 Paris, France
Dariusz Kloza, LL.M., Research Group on Law, Science, Technology & Society (LSTS), Vrije Universiteit Brussel (VUB) - Faculty of Law and Criminology, Room 4B306, Pleinlaan 2, 1050 Elsene, Brussels, Belgium
Gert Vermeulen, Directeur de l'Institut de recherche international sur la politique pénale (IRCP), Professeur de droit pénal à la Faculté de droit, l'Université de Ghent, Commissaire de la Commission vie privée, Belgique Universiteitsstraat 4, B-9000 Ghent, Belgium
SECRETARIAT

Directorate General Human Rights and Rule of Law
Direction Générale Droits de l'Homme et Etat de Droit

Directorate of Information Society and Action against Crime / Direction de la société de l'information et de la lutte contre la criminalité
Jan Kleijssen, Director / Directeur

Information Society Department / Service de la société de l'information
Patrik Penninckx, Head/Chef de service

Cybercrime Division / Division de la cybercriminalité
Alexandru Frunza, Programme Officer

Data Protection Unit / Unité de la protection des données
Sophie Kwasny, Secretary of the T-PD / Secrétaire du T-PD

María Michaelidou, Programme Advisor / Conseillère de programme
Szilvia Simond, Assistant / Assistante

Counter-Terrorism Division, Action against Crime Department, Information Society and Action against Crime Directorate / Division de l'Anti-terrorisme, Département de l’Action contre la criminalité, Direction de la Société de l'information et de l'action contre la criminalité (CODEXTER)
Stephanie Burel, Administrator

Bioethics Department / Service de la Bioéthique
Laurence Lwoff, Secretary of the DH-BIO / Secrétaire du DH-BIO

TRAINEES / STAGIAIRES

Sarah Leonor Duque de Carvalho
Bruno Ricardo Bioni

INTERPRETERS / INTERPRETES

Angela Brewer
Nadine Kieffer
Monique Palmier
Nicolas Guittoneau