

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 1 September 2016

T-PD(2016)RAP33Abr_en

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

33rd Plenary meeting

Strasbourg, 29 June - 1 July 2016

ABRIDGED REPORT

Directorate General of Human Rights and Rule of Law

The Consultative Committee (T-PD) of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108, hereafter 'Convention 108'], established under Article 18 of Convention 108, held its 33rd plenary meeting¹ in Strasbourg from 29 June to 1 July 2016 with Mr Jean-Philippe Walter (Switzerland) in the Chair. The agenda as adopted by the Committee and the list of participants are set in Appendix 1 and in Appendix 2.

The Committee:

1. took note of the information provided by Mr Jan Kleijssen, Director of Information Society and Action against Crime, regarding in particular the modernisation of Convention 108, major developments that had occurred in the field of data protection and related fields since the 32nd plenary meeting (1-3 July 2015) and expressed the Secretariat's gratitude to the Cypriot authorities, in particular the Office of the Commissioner for Personal Data Protection, for having seconded Ms Maria Michaelidou to the Data Protection Unit for the past four years;

2.1 regarding the **Ad hoc Committee on Data Protection (CAHDATA)** (15-16 June 2016), it welcomed the finalisation of the work of modernisation of the Convention 108 by the CAHDATA and recalled the importance, five years after the initiation of the related work, of delivering without further delay the modernisation of the Convention, enabling its prompt entry into force. The Committee decided to reaffirm to the Committee of Ministers its full support for the modernisation of the Convention and its continued readiness to contribute to this important objective, whichever legal form such a modernisation will take;

2.2 took note of the presentation given by the expert, Ms Claire Gayrel, on the draft questionnaire on the **evaluation and monitoring mechanism** relating to the modernisation of Convention 108 and held an exchange of views with the expert;

2.3 took note of the information presented by the expert, 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 Convention 108 and took note of the fact that a reply would be sent by the Chair to the International Conference addressing the relevant provisions of Convention 108 and their articulation with the Arrangement;

2.4 took note of the **state of signatures** and ratifications of and accessions to Convention 108 and its Additional Protocol; in particular the recent ratification of Convention 108 by Turkey, accession by Mauritius and the pending request by Cape Verde;

2.5 examined the draft recommendation on the protection of **health data**, held an exchange of views with the expert, Ms Jeanne Bossi Malafosse, and agreed that the draft would be revised in light of the comments received and discussions, before being submitted to the Plenary for another reading;

2.6 examined the draft practical guide on the use of personal data by the **police**, held an exchange of views with the experts, Mr David Allen and Ms Evelien van Beek, and instructed its Bureau to ensure the necessary follow-up with a view to resuming examination of a revised draft at a forthcoming Bureau meeting;

¹ 77 participants in all, 41 men and 36 women.

2.7 examined the draft guidelines on ‘the protection of individuals with regard to the processing of personal data in a world of **big data**’, held an exchange of views with the expert, Mr Alessandro Mantelero, and instructed its Bureau to ensure the necessary follow-up with a view to resuming examination of a revised draft at a forthcoming Bureau meeting, aiming at a subsequent adoption of the Guidelines by written procedure;

2.8 took note of the information provided by Mr Filippo Nosedà on the **automatic exchange of personal data** in tax matters and the data protection implications of the applicable standards, instructing its Bureau to propose possible follow-up actions in the field, with due regard for the work carried out by the Article 29 Working Party in this field;

2.9 examined the draft Guiding Principles on the **Protection of Privacy in the Media Coverage**, held an exchange of views with the expert, Mr Bertil Cottier, and instructed its Bureau to ensure the necessary follow-up with a view to resuming examination of a revised draft at a forthcoming Bureau meeting, with consultation of the Steering Committee on Media and Information Society (CDMSI);

2.10 examined the draft **opinion on passenger name records** (PNR), held an exchange of views with the expert, Ms Marie Georges, and agreed that the revised version would be circulated for rapid comments before being finalised and submitted to delegations for adoption by written procedure before the end of July;

2.11 took note of the information on **co-operation with other Council of Europe bodies** and in particular, the work of the CDMSI and its Committee of Experts on Internet Intermediaries (MSI-NET), of the Committee of the Cybercrime Convention (TC-Y) and its ‘Cloud evidence group’, of the ‘Action plan on combating transnational organised crime’ adopted by the European Committee on Crime Problems (CDPC), the work of the Parliamentary Assembly and the one of the Bioethics Committee (DH-BIO);

2.12 took note of the **major developments at national (information compiled in a special document) and international level** in the data protection field since its last Plenary meeting, such as the International conference on the promotion of Convention 108 which was organised on 17 June by the Council of Europe or the 18th Conference of the Central and Eastern European Data Protection Authorities (CEEDPA), as presented by the delegation of Bosnia Herzegovina;

2.13 took note of the report by the **Council of Europe Data Protection Commissioner** on the activities carried out since the last Plenary and invited the Secretariat General to finalise without delay the draft Regulation regarding data processing carried out by the Council of Europe and forward it for comments prior to adoption to ensure its consistency with Convention 108;

2.14 welcomed the admission of Mexico and Indonesia as **observers** to the Committee and decided to review the status attributed to the Hague Conference, the International Labour Office and European Privacy Association (EPA);

2.15 held the **elections** of the Bureau as follows: Ms Alessandra Pierucci (Italy) as Chair, Mr Jean-Philippe Walter (Switzerland) as first Vice-Chair, Mr Gérard Lommel (Luxembourg) as second Vice-Chair, Mr João Pedro Cabral (Portugal), Ms Tamar Kaldani (Georgia), Mr Péter Kimpfián (Hungary), Ms Agnès Maitrepierre (France) and Ms Nevena Ružić (Serbia);

2.16 confirmed that the 39th meeting of the Bureau would be held in Paris from 5 to 7 October 2016 and the 40th meeting in Strasbourg from 30 November to 2 December 2016.

APPENDIX I.

T-PD33(2016)OJ_en

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

33rd Plenary meeting

Council of Europe, Strasbourg (Room 7, Palais)

**From 29 June 2016 – 9.30 am.
to 1 July 2016 – 5.00 pm.**

AGENDA

1. OPENING OF THE MEETING

- T-PD-BUR(2016)RAP38Abr Abridged report of the 38th meeting of the T-PD Bureau (22-24 March 2016)
- T-PD-BUR(2015)RAP37Abr Abridged report of the 37th meeting of the T-PD Bureau (9-11 December 2015)
- T-PD-BUR(2015)RAP36Abr Abridged report of the 36th meeting of the T-PD Bureau (6-8 October 2015)
- T-PD(2015)RAP32Abr Abridged report of the 32nd T-PD Plenary meeting (1-3 July 2015)
- T-PD(2016)WPR Work programme of the T-PD 2016-2017
- T-PD(2014)Rules T-PD's rules of procedure

2. ADOPTION OF THE AGENDA

3. STATEMENT BY THE SECRETARIAT

Jan Kleijssen, Director, Directorate of Information Society and Action against Crime

4. MODERNISATION OF CONVENTION 108

Experts: Ms. Cécile de Terwangne, Professor Law Faculty, Namur University (FUNDP), CRIDS Research Director, Namur, Belgium.

Ms. Claire Gayrel, researcher at CRIDS, FUNDP, Belgium

a. Required action: The Committee will take note of the outcomes of the work of the CAHDATA (draft amending Protocol to Convention 108 and draft explanatory report to the modernised version of the Convention), will take note of the information provided by the expert and will examine the draft questionnaire on the evaluation and follow-up mechanism.

- CAHDATA meeting Strasbourg, 15 - 16 June 2016
- CAHDATA(2016)RAPAbr Abridged report of the CAHDATA meeting (15–16 June 2016)
- Draft explanatory report Draft explanatory report of the modernised Convention 108
- T-PD(2016)01 Draft questionnaire on the evaluation and follow-up mechanism
- T-PD-BUR(2013)02Rev5 Information elements on the evaluation and follow-up mechanism

Expert: 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).

b. Required action: The Committee will take note of the information provided by the expert relating to the cooperation between DPAs and will decide on the follow-up to give to, in view of the 38th International Conference of Data Protection and Privacy Commissioners.

- T-PD-BUR(2016)04 Report of the expert

5. STATE OF PLAY – ACCESSION

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

- Convention 108: chart of signatures and ratifications
- Additional Protocol: chart of signatures and ratifications

6. BIG DATA

Expert: Mr Alessandro Mantelero, Tenured Aggregate Professor at Politecnico di Torino, Italy

Required action: The Committee will take note of the information provided by the expert and will examine the revised version of the draft Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data with a view to their adoption.

- T-PD-BUR(2015)12Rev Draft Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data
- T-PD(2016)06Mos Compilation of comments received

- T-PD(2016)06MosADD Addendum to Compilation of comments received
- T-PD-BUR(2015)09Rev Report: “Of Data and Men” - Fundamental rights and freedoms in a world of massive data (Report by Antoinette Rouvroy)

7. PROTECTION OF MEDICAL DATA

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

Required action: The Committee will take note of the information provided by the expert and will examine the revised version of the draft Recommendation, with a view to its approval and transmission to the Steering Committee on Media and Information Society (CDMSI) .

- T-PD(2016)04Rev Draft Recommendation on the protection of health data
- Draft Explanatory memorandum Draft Explanatory memorandum of the recommendation on the protection of health data (French version only)
- T-PD(2016)07Mos Compilation of comments received
- T-PD(2016)07MosADD Addendum to compilation of comments received
- T-PD(2015)07 Presentation report on the possible update of the Recommendation n° R (97) 5 on the protection of medical data by Ms. Jeanne Bossi Malafosse
- Recommendation N° (97) 5 on the protection of medical data

8. DATA PROTECTION AND POLICE

Experts: Ms. Evelien van Beek, Senior advisor, Data Protection Authority, the Netherlands.

Mr David Allen, Head of the International Crime Bureau, Intelligence & Operations Directorate National Crime Agency, United Kingdom.

Required action: The Committee will take note of the information provided by the experts and will examine the revised version of the draft practical guide with a view to its adoption.

- T-PD(2016)02rev Draft practical guide on the use of personal data in the police sector
- T-PD(2016)08Mos Compilation of comments received
- T-PD(2016)08MosADD Addendum to Compilation of comments received
- T-PD(2013)11 Recommendation No. R (87) 15 - “Twenty–five years down the line – Final report” by Joseph A. Cannataci
- Recommandation N° R (87) 15 Recommendation No. R(87) 15 regulating the use of personal data in the police sector

9. AUTOMATIC EXCHANGE OF PERSONAL DATA

Expert: Mr Filippo Nosedà, Solicitor – Partner – Head of Department - Withers LLP

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

- Article 29 WP Guidelines Guidelines on the criteria to ensure compliance with data protection requirements in the context of the automatic exchange of personal data for tax purposes (adopted on 16 December 2015)
- 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
- CRS and the right to Privacy - Data Protection Automatic exchange of Personal data in tax matters by Filippo Nosedà

10. DATA PROTECTION AND MEDIA COVERAGE

Expert: Mr Bertil Cottier, tenured professor (communication law) and former Dean of the Faculty of Communication Sciences at the University of Lugano, Associate Professor at the Law Faculty of the University of Lausanne (Internet Governance) and visiting Professor at the Academy of Journalism (University of Neuchâtel).

Required action: The Committee will take note of the information provided by the expert and will examine the draft text with a view to its adoption.

- T-PD(2016)09 Draft Guiding Principles on the Protection of Privacy in the Media Coverage
- T-PD(2016)13Mos Compilation of comments received - Draft Guiding Principles on the Protection of Privacy in the Media Coverage
- T-PD(2016)13MosADD Addendum to Compilation of comments received

11. COOPERATION WITH OTHER COUNCIL OF EUROPE BODIES

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

- **Steering Committee on Media and Information Society (CDMSI)**
 - MSI-NET
- **Cybercrime Committee (T-CY)**
 - Hearing with the data protection community (23 May 2016)
- **CODEXTER**
 - Draft recommendation on Special Investigation Techniques
- **Bioethics Committee (DH-BIO)**
- **European Committee on Crime Problems (CDPC)**
 - Council of Europe action plan on combating transnational organised crime (2016-2020)
- **Parliamentary Assembly of the Council of Europe**
 - Technological convergence, artificial intelligence and human rights
- **Human Rights Commissioner**

12. OVERVIEW OF ACTIVITIES AND MAJOR DEVELOPMENTS IN THE FIELD OF DATA PROTECTION

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

- European Conference of Data Protection Authorities, Budapest, 25-26 May 2016
- T-PD(2016)10Mos Information on the recent developments at national level in the data protection field
- T-PD(2016)11Mos Compilation of experts' reports
- International Conference "**Convention 108: from a European reality to a global treaty**", Strasbourg, 17 June 2016

13. OPINION

Expert: Marie Georges, independent expert

Required action: The Committee will take note of the information provided by the expert and will examine the revised version of the draft Opinion on Passengers Name Record (PNR) with a view to its adoption.

- T-PD-BUR(2015)11rev2 Draft opinion on Passengers Name Record (PNR)
- T-PD(2016)12Mos Compilation of comments received
- T-PD(2016)12MosADD Addendum to Compilation of comments received
- 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(2016)17 Compilation of opinions

14. COOPERATION PROJECTS

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

- **HELP in the 28** Data Protection and privacy rights
*Presentation by Eva Pastrana “HELP in the 28” Programme
Coordinator in the Council of Europe*
- T-PD(2016)14 CoE cooperation projects in the data protection field
Information Document

15. DATA PROTECTION COMMISSIONER

Required action: The Committee will take note of the information provided by the Council of Europe Data Protection Commissioner.

- Activity report
- Secretary General’s Regulation

16. OBSERVERS

Required action: The Committee will take note of the information provided by the observers, will take note of the document relating to the participation of the observers and will decide on the follow-up.

- T-PD(2016)05 Observers - State of play and admission criteria

17. DATA PROTECTION DAY

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

- DPD(2016)compilation_mos Compilation of Data Protection Day forms 2016

18. ELECTIONS

Required action: The Committee will proceed to the elections.

- T-PD(2016)16 Memorandum concerning elections

19. NEXT MEETINGS

Required action: The Committee will take note of the proposed dates for the next meetings.

20. ANY OTHER BUSINESS

APPENDIX II.



Strasbourg, 29 June / juin 2016

T-PD(2016)LP

CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS 108]

COMITE CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES PERSONNES A L'EGARD DU TRAITEMENT AUTOMATISE DES DONNEES A CARACTERE PERSONNEL [STE 108] (T-PD)

33rd meeting / 33^{ème} réunion

Strasbourg, 29 June / juin – 1 July / juillet 2016
Palais de l'Europe, Room / salle 7.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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**Directorate of Information Society and Action against Crime / Direction de la société de
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Jan Kleijssen, Director / Directeur

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Pastor Sergiu,

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