



Doc. 12837

23 January 2012

The need for a global consideration of the human rights implications of biometrics

Reply to Recommendation¹: Recommendation 1960 (2011)
Committee of Ministers

1. The Committee of Ministers has studied Parliamentary Assembly [Recommendation 1960 \(2011\)](#) on “The need for a global consideration of the human rights implications of biometrics” with interest. It has communicated it to the European Committee on Legal Co-operation (CDCJ), the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) (T-PD), the Steering Committee on Bioethics (CDBI) and the Steering Committee for Human Rights (CDDH), for information and possible comments. The comments received have been taken into account in the elaboration of the present reply.

2. The Committee of Ministers is pleased to inform the Parliamentary Assembly that the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) is being modernised (paragraph 2.1 of the Assembly recommendation). In March 2010, the Ministers' Deputies endorsed this work, which has as one of its main objectives to examine the impact of new technologies on the protection of personal data, and covers the implications of biometrics. It should for instance be noted that the consultation document which was published on the occasion of Data Protection Day (28 January) and was intended to allow all key players in data protection to present their opinions on what the modernisation exercise should include, made explicit reference to biometric data. Like the Parliamentary Assembly, the Committee of Ministers considers that it would be useful if consideration was given in this context to the definition of “biometric data”.

3. The Committee of Ministers notes also that the T-PD will review the Progress Report on the implementation of Convention No. 108's principles on the collection and processing of biometric data, which dates from 2005, as well as its Recommendation Rec(97)5 on the protection of medical data. It should be added that the T-PD also takes the implications of biometrics into consideration in its current work on the revision of Committee of Ministers' Recommendation Rec(89)2 on the protection of personal data used for employment purposes.

4. The Parliamentary Assembly also recommends that guidelines be prepared for member States on legislative frameworks that would strike a fair balance between the interests of the parties concerned, including those of security and privacy. The Committee of Ministers shares the view of the Parliamentary Assembly on the need for a legislative framework to regulate the use of biometric data in order to guarantee the protection of an individual's right to privacy and to prevent the misuse of his or her personal data. It proposes that the T-PD considers the feasibility of integrating a regulatory perspective to its work on biometric data, thereby possibly widening the scope of the legal instrument prepared in the framework of the review of Recommendation Rec(97)5 on the protection of medical data, to encompass biometric data.

5. The Committee of Ministers agrees that the Council of Europe should continue to observe the development of biometric technology and its possible impact on the rights and freedoms enshrined in the European Convention on Human Rights and other Council of Europe instruments in the human rights field.

1. Adopted at the 1131st meeting of the Ministers' Deputies (18 January 2012).



The Assembly's concerns regarding the development of biometric technologies, the applications of which are very diverse involving, among others, electronics, computer science, statistics as well as biology and medicine, are shared by the Committee of Ministers. These developments constitute challenges with respect to data protection and the wider issue of privacy. They are also raising ethical concerns with regard to the protection of human dignity and integrity. The challenges are not with the technologies per se but with the way they are applied and how the resulting data are processed, in particular sensitive data such as health related data, including genetic data, which may have been obtained initially for different purposes such as clinical or research purposes.

6. The Committee of Ministers refers in this context to the Additional Protocol to the Oviedo Convention² concerning Genetic Testing for Health Purposes and to its Recommendation Rec(2006)4 on Research on Biological Materials of Human Origin, covering also DNA collections. During the elaboration of these instruments, the sensitivity of the genetic and other health related data and the possible implications of their re-use for other purposes or linkage between databases, was underlined. The Committee notes, furthermore, that in the framework of the Oviedo Convention, the CDBI is currently addressing ethical issues raised by the use of genetic data in the field of insurance.

7. The Committee of Ministers considers that, given the potential interaction and impact of biometric technologies at a global level, co-operation with the UN, the OECD and the European Union is important, in particular with a view to promoting consistency between normative texts (paragraph 3 of the Assembly recommendation). It wishes to underline that fruitful co-operation is already in place in the field of bioethics. Finally, the Committee of Ministers recalls that the Oviedo Convention is open for signature by non-member States to the Council of Europe which have participated in its elaboration and by the European Union (Article 33). The Committee would welcome further signatures and ratifications. It notes that other non-member States may be invited to accede to the Convention (Article 34). For this, they need to make a request to be considered by the Committee of Ministers.

2. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine ("Oviedo Convention", ETS No. 164).