

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW

CYBERCRIME CONVENTION COMMITTEE (T-CY)

Please quote: JC/AS/TCY

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Ms. Isabelle Falque-Pierrotin
Chair
Article 29 Data Protection Working Party

Cc: Mr. Jean-Philippe Walter
Chairman T-PD

Strasbourg, 9 February 2015

Dear Ms. Falque-Pierrotin,

On behalf of the Bureau of the Cybercrime Convention Committee (T-CY) I would like to thank you for your letter dated 28 November 2014 regarding the Cybercrime@Octopus Conference on Article 15 safeguards and law enforcement access to data, held in Strasbourg in June 2014.

Your offer to prepare an in-depth analysis of the scenarios presented during the above conference is very much welcome. It would provide criminal justice authorities with concrete examples of how to apply the principles referred to in your letter in specific circumstances.

The T-CY at its 12th Plenary (2-3 December 2014) came to the conclusion that, while an additional Protocol on transborder access to data would be necessary and while the absence of international solutions carried risks to human rights and the rule of law in cyberspace, such a Protocol was not feasible in the current political context. The reasons are summarised in the report of the T-CY working group on transborder access and jurisdiction as presented in December 2014.¹

The T-CY, however, established a new "working group on criminal justice access to evidence stored in the cloud, including through mutual legal assistance (Cloud Evidence Group)". This group will take up the work on transborder access to data as well as the results of the T-CY assessment of the mutual legal assistance provisions of the Convention on Cybercrime adopted in December.²

The T-CY invites the Working Party 29 to engage in a constructive dialogue in view of seeking solutions to strengthen the rule of law while respecting data protection requirements. In this connection, it would be most helpful if your analysis of the scenarios were already available by mid-April 2015 in order to inform the work of the Cloud Evidence Group.

¹ [http://www.coe.int/t/dghl/cooperation/economiccrime/Source/Cybercrime/TCY/2014/T-CY\(2014\)16_TBGroupReport_v17adopted.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/Source/Cybercrime/TCY/2014/T-CY(2014)16_TBGroupReport_v17adopted.pdf)

² [http://www.coe.int/t/dghl/cooperation/economiccrime/Source/Cybercrime/TCY/2014/T-CY\(2013\)17_Assess_report_v50adopted.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/Source/Cybercrime/TCY/2014/T-CY(2013)17_Assess_report_v50adopted.pdf)

Furthermore, I would like to invite the Working Party 29 to participate in the forthcoming Octopus Conference (Strasbourg, 17 to 19 June 2015) which will focus on "evidence in the cloud: criminal justice access to data".³

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line that ends in a slight curve.

Alexander Seger
Executive Secretary
Cybercrime Convention Committee