



Strasbourg, 4 June 2014

T-PD (2014)06

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

**OPINION ON THE RECOMMENDATION 2041 (2014) OF THE PARLIAMENTARY
ASSEMBLY OF THE COUNCIL OF EUROPE**

“Improving user protection and security in cyberspace”

Directorate General Human Rights and Rule of Law

1. The Ministers' Deputies agreed at their 1198th meeting (29-30 April and 2 May 2014) to communicate Recommendation (2041)2014¹ on "Improving user protection and security in cyberspace²" to the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) for information and possible comments by 30 June 2014.
2. The T-PD welcomes the adoption by the Parliamentary Assembly on of Recommendation (2041)2014 which emphasises the importance of increasing intergovernmental action by the Council of Europe in order to improve the protection of internet users. Securing the effectivity of human rights in the cyberspace notably includes the promotion of data protection global principles and recalling the positive obligation of Member States to ensure adequate legal protection against the interception, surveillance, profiling and storage of users' data.
3. In relation to paragraph 2.1 regarding the feasibility of drafting an additional protocol to the Convention on Cybercrime (ETS No. 185) regarding serious violations of fundamental rights of users of online services, the T-PD recalls that the fundamental right to respect for private life is protected under Article 8 of the European Convention on Human rights, as well as under Convention 108 and its Additional Protocol. It should be noted in this respect that, similar to the Convention on Cybercrime, Convention 108 is open to third States and is to be considered a key instrument in the protection of the rights of users of online services. In this respect, T-PD recommends that States Parties to the Convention on Cybercrime also accede to Convention 108, if such is not already the case.
4. Moreover, the T-PD recalls that in order to ensure respect for the rights of the persons concerned, Convention 108 and its Additional Protocol provide for the establishment of a national independent supervisory authority, with powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of the domestic law in relation to the protection of personal data. Parties, according to the Convention, further undertake to establish appropriate sanctions and remedies for violations of the provisions of domestic law giving effect to the basic principles of data protection.
5. Regarding the recommendation made under paragraph 2.4, the T-PD considers that the complete implementation of the Convention at national level is fundamental. The Secretariat General is working closely with State Parties to improve the framework of data protection at national level, underlining that to initiate a cooperation project, a request should be made by the country concerned and that such project is further subject to availability of financial resources.
6. In this respect, the T-PD welcomes the actions listed in the "Action Plan for Georgia 2013 - 2015" of the Council of Europe, aiming at the reinforcement of the right to data protection. In addition, in the framework of the joint programme "Strengthening Information Society in Ukraine", co-financed by the European Union, a reinforcement of capacities will be aimed at in respect of data protection in particular.

¹ Recommendation 2041 (2014), adopted on 9 April 2014 and which refers to Resolution 1986(2014) on improving user protection and security in cyberspace.

² By connecting to communication and information services users create a kind of common space, called "cyber-space" (paragraph 8 of the Explanatory Report of the Convention on Cybercrime).

7. Furthermore, it should be emphasised that one of the main objectives of the modernisation of the Convention is to establish a follow-up mechanism. The purpose of this mechanism is to ensure the effective implementation of the Convention by the Parties.
8. Regarding paragraph 2.5 the T-PD fully supports the call of the Parliamentary Assembly for a completion, as a matter of urgency, of the modernisation exercise of Convention 108.
9. The T-PD recalls that the modernisation work is now under the responsibility of the ad hoc committee on data protection (CAHDATA) and that the third and final meeting of this Committee is scheduled in December 2014. It expresses the hope that the modernisation proposals will ensure a high level of protection, as the level that the T-PD aimed at in adopting the modernisation proposals in 2012 and notes that it would be regrettable that the level of protection provided for by the T-PD proposals be weakened, noting that the revelations of mass surveillance, which occurred between the adoption of the modernisation proposals and the continuation of the work by the CAHDATA, should on the contrary lead to the reinforcement of the rights of data subjects.
10. As for the invitation made to observer States to work actively with the Council of Europe in order to improve user protection and security in cyberspace, the T-PD considers that these States should seek accession to Convention 108 as quickly as possible, recalling that Canada and the United States already participate as observers in the T-PD.
11. Regarding paragraph 2.8, it recalls that the accession of the European Union to the Convention is one of the elements included in the modernisation exercise.
12. Finally, it should be noted that the T-PD addressed a letter to the chair of the Ministries' Deputies in December 2013, denouncing the use of mass surveillance techniques and suggesting that a line of action based on Convention 108 be defined in the field.