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Cybercrime Convention Committee (T-CY)

(draft) Opinion of the T-CY on

**Recommendation 2041 (2014) of the Parliamentary Assembly of the Council
of Europe on
“Improving user protection and security in cyberspace”**

Adopted by the T-CY at its 11th Plenary (17-18 June 2014)

Opinion of the T-CY on

Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on "Improving user protection and security in cyberspace"¹

1. The Deputies of the Ministers decided at their 1198th session (29-30 April and 2 May 2014) to communicate Recommendation 2041 (2014) of the Parliamentary Assembly on "improving user protection and security in cyberspace", inter alia, to the Cybercrime Convention Committee (T-CY) for comments.²

2. The T-CY welcomes the efforts of the Parliamentary Assembly to strengthen human rights and the rule of law in cyberspace and the important role that it attributes to the Convention on Cybercrime (ETS 185) in this respect.

3. Regarding the specific recommendation 2.1 (additional protocol to the Convention on Cybercrime (ETS 185) regarding serious violations of fundamental rights of online services), the T-CY has the following comments:

- The Convention on Cybercrime already is aimed at the protection of society and individuals against cybercrime, including against offences against the confidentiality, integrity and availability of computer data and systems.
- The T-CY has adopted a number of Guidance Notes³ – representing the common understanding of the Parties – which are to help apply existing provisions of the Convention on Cybercrime to new cybercrime phenomena.
- An additional protocol on substantive criminal law provisions may, therefore, not be necessary at this point in time.
- The procedural law provisions of the Convention are subject to the conditions and safeguards of Article 15.

4. Regarding the specific recommendation 2.2 (possible update of the European Convention on Mutual Legal Assistance in Criminal Matters (ETS 30) in order to deal with legal assistance in matters concerning transnational cybercrime and cyber evidence), although this is rather a matter for the CDPS to consider, the T-CY has the following comments:

- Chapter III of the Convention on Cybercrime is aimed at international cooperation in matters related to electronic evidence.
- Given the transnational nature of electronic evidence, this Convention would seem the most suitable instrument to deal with this matter given that Parties, signatories and States invited to accede include an increasing number of non-member States of the Council of Europe.
- The T-CY is currently assessing the effectiveness of the international cooperation provisions of the Convention on Cybercrime. This assessment is expected to result in a range of proposals to render mutual legal assistance regarding electronic evidence more efficient.

¹ http://assembly.coe.int/ASP/Doc/XrefATDetails_E.asp?FileID=20869

²

<https://wcd.coe.int/ViewDoc.jsp?id=2184085&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

³

[http://www.coe.int/t/dqhl/cooperation/economiccrime/Source/Cybercrime/TCY/Guidance_Notes/TCY\(2013\)29_GNcompilation_en_V2.pdf](http://www.coe.int/t/dqhl/cooperation/economiccrime/Source/Cybercrime/TCY/Guidance_Notes/TCY(2013)29_GNcompilation_en_V2.pdf)

5. Regarding the specific recommendation 2.4 (assist members States, if requested, in the implementation of the Convention on Cybercrime), the T-CY has the following comments:

- Capacity building on the basis of existing treaties – such as the Convention on Cybercrime – is indeed the most effective way ahead to help societies worldwide meet the challenge of cybercrime.
- It is understood that Ordinary Budget resources of the Council of Europe are limited but that considerable extra-budgetary resources have been mobilized by the Council of Europe for programmes funded by voluntary contributions and joint projects with the European Union.
- The Cybercrime Programme Office of the Council of Europe (C-PROC) in Bucharest, Romania, became operational in April 2014. It provides the Council of Europe with the infrastructure to support countries worldwide through capacity building programmes in an effective manner.

6. Regarding the specific recommendation 2.7 (invite its observer States to work actively with the Council of Europe towards improving user protection and security in cyberspace, and ask them to set up joint initiatives with the Council of Europe in this respect), the T-CY has the following comments:

- Japan and the USA are already Parties to the Convention on Cybercrime, are represented in the Bureau of the T-CY, are providing voluntary contributions for capacity building programmes and have engaged in many joint activities with the Council of Europe in different regions of the world.
- Canada is a signatory to the Convention on Cybercrime and Israel and Mexico have been invited to accede to this treaty.

7. Regarding the specific recommendation 2.8 (invite the European Union to accede to the Convention on Cybercrime), the T-CY has the following comments:

- The European Union and its bodies and the Council of Europe and the T-CY already enjoy excellent cooperation in cybercrime matters.
- Accession by the European Union to the Convention on Cybercrime is not foreseen in this treaty in its present form. An amendment to the Convention would, therefore, be required. The feasibility and necessity of such an amendment would require further analysis.

