



Strasbourg, 17 October 2013

T-PD(2013)12

**CONSULTATIVE COMMITTEE OF THE CONVENTION  
FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC  
PROCESSING OF PERSONAL DATA**

**(T-PD)**

**OPINION ON THE RECOMMENDATION 2024 (2013) ON  
NATIONAL SECURITY AND ACCESS TO INFORMATION**

DG I – Human Rights and Rule of Law

1. The Ministers' Deputies agreed at their 1181<sup>st</sup> meeting of 16 October 2013 to communicate Recommendation (2024)2013 on "National Security and Access to Information"<sup>1</sup> 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 29 November 2013.
2. The T-PD welcomes the adoption by the Parliamentary Assembly on 2 October 2013 of Recommendation (2024)2013.
3. The T-PD has examined the Recommendation from the perspective of Council of Europe standards on data protection, in particular the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter "Convention 108") and its additional protocol on supervisory authorities and transborder data flows (ETS No. 181, hereafter the "additional protocol").
4. The T-PD welcomes this initiative of promotion of the principle of transparency, including access to information held by public authorities and reliance on the Global Principles on National Security and the Right to Information (hereafter "Global Principles") adopted on 12 June 2013 by an assembly of experts from international organisations, civil society, academia and national security practitioners, in particular concerning the points highlighted in the above-mentioned resolution, in modernising their legislation and practice.
5. The right to access to information held by public authorities is enshrined in the Council of Europe Convention on Access to Official Documents (CETS No. 205) and derives from Article 10 of the European Convention on Human Rights. In its recent judgement dealing with access to information held by a national security authority the European Court on Human Rights reaffirmed the right to access official documents protected under Article 10 of the ECHR (Youth Initiative for Human Rights v. Serbia, Application no. 48135/06, judgement of 25 June 2013).
6. The right to privacy and personal data protection often comes as the other side of the coin and a counter balance to the right to access to information as well as to national security interests. While the right to access to official documents containing personal data should accommodate the exercise of both rights, national security interests should not automatically prevail over the right to privacy and protection of personal data. As acknowledged in the Global Principles that certain information that should not be withheld on national security grounds may potentially nonetheless be withheld on various other grounds recognised in international law — including, personal privacy.

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<sup>1</sup> [Recommendation 2024 \(2013\)](#), which refers to Resolution refers to [Resolution 1954 \(2013\)](#) on national security and access to information.

7. The T-PD takes note of the importance given in the Global Principles to the protection of privacy and personal data, most notably the obligation of public authorities to balance between the right to access to documents and the right to privacy.
8. In the context of the modernisation of Convention 108, the T-PD has agreed to highlight in the preamble of the draft modernised Convention the fact that the Convention “permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of public access to official documents”.
9. The TP-D furthermore welcomes the balancing of interests and rights incorporated in Article 9 of Resolution 1954(2013) and the reference in Article 10 regarding invasive wiretapping technologies by public authorities, internet providers and others, as well as in Article 11 regarding the protection of journalists communication and source. Illegitimate, invasive or excessive use of communication technologies by public authorities, internet providers as well as any other unavoidably will jeopardise the right to privacy, private communication and personal data protection.
10. The T-PD welcomes the principle emphasised in Resolution 1954(2013) regarding the protection of those who disclose wrongdoings in the public interest (whistle-blower) from any type of retaliation.
11. Finally, the T-PD wishes to emphasise that it is currently revising Recommendation (89)2 on the protection of personal data used for employment purposes, touching upon provisions pertaining to internal reporting mechanisms implemented by employees and which need to meet personal data standards including the protection of personal data and securing of the confidentiality of whistleblowers.