

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 10 March 2015

T-PD-BUR(2015)02

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

**DRAFT OPINION OF THE BUREAU OF THE T-PD ON THE JOINT STATEMENT
OF THE EUROPEAN DATA PROTECTION AUTHORITIES ASSEMBLED IN THE
ARTICLE 29 WORKING PARTY, OF 25 NOVEMBER 2014**

Draft opinion of the Bureau of the T-PD on the joint statement of the European data protection authorities assembled in the Article 29 Working Party, of 25 November 2014

Further to the invitation from the Article 29 Working Party (WP29) to comment on the statement of 25 November 2014, the Bureau of the T-PD considered the said statement and adopted the opinion below at its 35th meeting held in Paris from 25 to 27 March 2015.

The Bureau of the T-PD welcomes the adoption of the statement and supports the call:

- By the European data protection authorities assembled in the WP29 for the adoption in 2015 of the draft European data protection regulations and directive;
- For respect for the high level of data protection enshrined in Council of Europe Convention No. 108, this level being specified in the EU rules;
- For respect for European values concerning human rights and fundamental freedoms, in particular the need for proper regulation of surveillance activities, which must be provided for by law and be limited to what is strictly necessary and proportionate in a democratic society.

While noting the points made by the WP29 in the preamble to the statement, the Bureau of the T-PD would have appreciated the statement focusing on seeking broad convergence regarding its objectives, rather than referring solely to the EU's legal framework, which it rightly defends. The Bureau of the T-PD underlines that European data protection law has a broader basis which should not be neglected and that its foundations lie in Article 8 of the European Convention on Human Rights and in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). While EU law does implement and flesh out the provisions of these benchmark texts, it does not, however, cover some areas which do not fall within EU competences, such as domestic security. With a view to ensuring an ambitious level of data protection both in Europe and elsewhere, the Bureau of the T-PD believes that Convention No. 108 and the additional protocol thereto regarding supervisory authorities and transborder data flows, which, as instruments open to accession by non-member states of the Council of Europe and, ultimately, the EU, offer a broader basis of reference values and the necessary safeguards for preserving individual freedoms and rights. The Convention helps to strengthen the European legal framework aimed at establishing a high level of data protection in all the states parties. The Bureau of the T-PD accordingly suggests that the statement be supplemented with:

- A call for the prompt adoption, also in 2015, of the modernised text of Convention No. 108 adopted by the Ad Hoc Committee on Data Protection (CAHDATA) on 3 December 2014, and
- Explicit recognition of the importance of the efforts to promote Convention No. 108 and secure the accession of third states.

With regard to the various paragraphs in the statement, the Bureau of the T-PD would make the following proposals:

- In paragraph 2, data protection rights must clearly be balanced with other fundamental rights. It would, however, seem appropriate to point out that the right to data protection is the precondition for exercising other rights and fundamental freedoms in the context of the processing of personal data;
- In paragraph 6, it would be appropriate also to mention the Council of Europe's texts, notably the European Convention on Human Rights, in particular Article 8;

- In paragraph 7, it would be useful to indicate that one of the requirements to be met is the need for a legal basis: the processing of personal data for security purposes must be provided for by law;
- In paragraph 8, it would be appropriate to add a reference to Article 8 of the European Convention on Human Rights, Convention No. 108 and the additional protocol thereto, at least for those areas which do not fall within the competence of the EU;
- In paragraph 9, it should be noted that the exchanging of or access to data may be based not only on the application of a mutual legal assistance treaty but also on the application of association agreements such as the Schengen Agreements and the rules on the Schengen Information System (SIS);
- In paragraph 11, when the data are stored in a state which has adopted legislation ensuring a high level of data protection recognised as adequate and, in particular, setting up an independent supervisory authority, the checks do not necessarily have to be performed by a European authority.