

DECLARATION

Various initiatives at EU level aim to establish the European Union's objective of an area of freedom, security and justice. In its new multi annual programme - The Hague Programme - the Union reiterates the need to fight organised cross-border crime and to repress the threat of terrorism.

The 2005 Spring Conference of European Data Protection Authorities is well aware of the need for closer co-operation between law enforcement authorities, within the EU and with third States. At the same time it is evident that the 1981 Council of Europe Convention on data protection (Convention 108) applicable in the Union and in Member States is too general to effectively safeguard data protection in the area of law enforcement. Given the Union's obligation to respect human rights and fundamental freedoms, initiatives to improve law enforcement in the EU, such as the availability principle, should only be introduced on the basis of an adequate system of data protection arrangements guaranteeing a high and equivalent standard of data protection.

The Conference noted with satisfaction that The Hague Programme subjects the availability principle to strict conditions of respect for data protection principles.

The Conference also welcomes the approach of the Commission in advocating a core set of guiding principles for the treatment of personal data under the Third Pillar, to be developed in close co-operation with data protection authorities. Furthermore, the Conference is encouraged by the steps taken by the Commission towards developing a new legal framework for data protection in the Third Pillar which, it is hoped, will provide an appropriate set of rules applicable to law enforcement activities consistent with the current level of data protection in the First Pillar. When developing these detailed data protection rules, the standard of data protection found in Directive 95/46/EC should serve as a basis.

The need to develop a harmonised data protection approach in the Union would suggest that when the Treaty establishing a Constitution for Europe enters into force there should be a comprehensive European Law on data protection covering all areas of processing personal data.

The new legal instrument would present the most important evolution in data protection law since the adoption of the Data Protection Directive 95/46/EC and it would have large impact on the future architecture of data protection in Europe. In order to avoid a divergence between the First and the Third Pillars which would have a negative impact on enforcement and transparency and in view of the Charter of Fundamental Rights and the forthcoming Constitution for Europe which will abolish the Pillars, the Conference calls to preserve - and where necessary to regain - the coherence, the consistency and the unity of data protection. The principles of Directive 95/46 should form the common core of a comprehensive European data protection law. In particular, as regards its legal provisions, the principle of lawfulness, the data subject's rights, and the principle of enforcement must be emphasised, and as regards its institutional provisions, stress must be put on the need for a EU Working Party composed of representatives of the national and the EU Data Protection supervisory authorities acting independently, entrusted with co-operation, monitoring and advisory missions .

The Conference has adopted the attached position paper on Law Enforcement & Information Exchange in the EU. This paper is addressed specifically to the EU institutions as a constructive contribution to current initiatives, particularly the Commission's work on developing a Third Pillar instrument on data protection. The Conference of EU Data Protection Authorities is, of course, willing to contribute further to ensure that the process results in a practical framework, which also respects fundamental rights.