



Octopus Conference
Cooperation against Cybercrime

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Strasbourg, France

**Council of Europe Convention for the
protection of individuals with regard
to automatic processing of
personal data**

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Data protection

- Art. 8 and 10 ECHR
- Convention 108, opened for signature on 28 January 1981
- Additional protocol regarding supervisory authorities and transborder data flows, opened to signature on 8 November 2001



Strengths of Convention 108

- Reference text
- First international legally binding treaty
- Universal basic principles of data protection
- Drafted in a simple, general and technologically-neutral way
- Cross-cutting scope of application covering all data processing in the public and private sector

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Strengths of Convention 108

- Provides a high level of protection and free flow of information between the Parties + requirement of ensuring an adequate level of protection for data transfers to non-parties
- Framework for multilateral co-operation through a conventional consultative committee
- Not a purely « European » instrument
- Open to the accession of non-member states of the Council of Europe

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- Convention ratified by 44 of the 47 Council of Europe members states
 - Uruguay will be the first non member state acceding to the Convention

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Object, purpose and scope



- Respect for rights and fundamental freedoms of individuals, with regard to automatic processing of personal data
- Automated personal data files and automatic processing of personal data in the public and private sectors

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Duties of the parties

- Convention is not self-executing
- Parties shall take the necessary measures to give effect to the provisions of the Convention

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Basic principles

- Fairness and lawfulness
- Specified and legitimate purpose
- Data are adequate, relevant and not excessive
- Data are accurate and up to date
- Conservation for no longer than required
- Data security
- Requirement of appropriate safeguards providing in a domestic law to process « sensitive data »

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Rights of the data subjects

- Right of access
- Right of rectification or erasure
- Right to have a remedy

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Transborder Data flows

- In principle, Free flow of informations between parties
- Transfer to third countries: adequacy principle (additional protocol)

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Modernisation

Convention 108's 30th anniversary :
opportunity to modernise and promote

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Objectives

- Respond to challenges to privacy related to the use of new technologies
- Reinforce the right to data protection
- Raise the need to reconcile that right with other fundamental rights and freedoms
- Strengthen the implementation and follow up mechanism of the Convention

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General orientations

- Maintain general and simple principles
- Maintain technologically neutral provisions
- Ensure consistency and compatibility with the legal framework of the European Union and other international frameworks such as the OECD Guidelines
- Reaffirm and promote the Convention's potential as a universal standard and its open character
- Contribute to assure the free flow of information

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Main changes proposed

- **Object and purpose:** strengthen the right to data protection
- **Definitions:** update some concepts, for example « automated data files », « automatic processing », « controller of the file »
- **Scope:** retain its cross-cutting nature, cover all data processings (automated and non automated) - except for household data processing
- **Basic principles:**
 - incorporate the principle of proportionality and data minimisation
- **Lawfulness** of data processing (in particular, consent)

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Main changes proposed (2)

- Sensitive data: extension of the catalogues, distinction between different qualification of sensitive data
- Data security: obligation to report security breaches,
- Strengthen the rights of data subjects:
 - Right to be informed on the collection of data
 - Right of access: access to the origin of the data and to the underlying reasoning of the processing be introduced in the catalogue of informations that the data subject could obtain
 - right of opposition
 - right not to be subject to an automated individual decision
- Introduction of « Data protection » obligations

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Main changes proposed (3)

- **Transborder data flows**
 - find an effective balance between the free flow of data and a sufficiently high level of protection (adequacy principle)
- **International co-operation:**
 - strengthen the competence and independence of DPAs
 - strengthen the Consultative Committee's functions and powers

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Conclusion

- **Modernisation: priority of the CoE**
 - T-PD will endorse the draft at its 28th meeting from 19th to 22nd June
 - Ad hoc committee will examine and finalise the proposals (2nd semester 2012)
 - Committee of Ministers should adopt the text in 2013
- Convention should play a fundamental and central role in developing universal data protection rules
- Convention gives third countries which accede to it an opportunity to obtain the recognition of the adequacy of their laws

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Thank you !

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