

Council of Europe & Data Protection

Among the Information Society Department of the Council of Europe (CoE), the [Data Protection Unit](#) deals with the ins and outs of the Convention No.108, the protection of personal data and background work on related recommendations and resolutions from the Committee of Ministers (CM). The unit is further lead to treat or collaborate with other institutions on that subject. The Unit also provides Secretariat to the in-house Data Protection Commissioner overseeing processing of personal data by the Council of Europe.

The Unit only consists in one CoE staff + one soon-ending secondment from a member-state, they therefore expressed the need for voluntary contributions and further secondments for a more efficient action on this crucial topic.

1- Treaty No.108 & updates

The [Convention ETS No.108](#) for the **Protection of Individuals with regard to Automatic Processing of Personal Data** (of the 28th January 1981) is the first and only legally binding international instrument with worldwide significance on data protection. Treaty No.108 draws inspiration directly from the European Convention on Human Rights, in particular Article 8 (right to respect for private life) and Article 10 (freedom to receive, seek, and impart information and ideas). [Parties to the Convention](#) are required to take the necessary steps in their domestic legislation to apply the principles it lays down in order to ensure respect for the fundamental human rights of all individuals within their jurisdiction with regard to processing of personal data. In addition to providing guarantees in relation to processing of personal data, it **outlaws the processing of "sensitive" data** on a person's race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. The Convention also enshrines the individual's **right to access and correct personal data**. Restrictions on the rights laid down in the Convention are only possible when overriding interests (e.g. State security, defence, etc.) are at stake. The treaty was drafted in a technologically neutral style, which enables its provisions to be fully valid today, regardless of technological developments.

The **Additional protocol to Convention 108 regarding supervisory authorities and transborder data flows** (ETS No. 181) opened for signature on 8th November 2001 requires Parties to set up **Independent supervisory authorities** (e.g. French "CNIL", Belgian "Privacy Commission") to ensure compliance with data protection principles. It also lays down rules on trans-border data flows to States where legal regulation does not provide equivalent protection, to ensure and extend the effective protection of the treaty's rights.

46 member states of the Council of Europe and Uruguay are state parties, whereas Mauritius, Morocco, Senegal and Tunisia have been invited to accede. Many others have used it as a model for new data protection legislation.

2- The T-PD

The Convention establishes a **Consultative Committee on the Convention No.108 (T-PD)**, consisting of representatives of Parties to the Convention complemented by observers from other States (members or non-members of the Council of Europe) and international organisations, which is responsible for interpreting the provisions and for improving the implementation of the Convention. It is also responsible for drafting reports, guiding principles and drawing up [legal instruments \(Recommendations, Resolutions\)](#) for the CM aimed at applying the general principles set out in the convention on:

- [the processing of personal data in the context of employment](#) (2015);
- [profiling](#) (2010);
- [on the protection of personal data collected and processed for insurance purposes](#) (2002)

The Committee carried out the first technical phase of modernisation of the Convention, then carried out at intergovernmental level by the CAHDATA.

3- The CAHDATA and modernisation of Convention 108

With the recent Court rulings reaffirming the need for a strong protection of individuals with regard to the processing of personal data (such as [Schrems case of the EU](#), and the European Court of Human Rights judgments [Szabo v Hungary](#) and [Zakharov v Russia](#)), the modernisation of Convention 108 and its global promotion is more than ever a striking necessity.

Initiated in 2013 under the authority of the CM, the intergovernmental [Ad Hoc Committee on Data Protection \(CAHDATA\)](#) is tasked to finalise and submit to the CM proposals for the modernisation of the No.108.

This Committee will produce a final proposal that will ensure consistency with the new EU data protection Regulation and Directive and the protocol amending the Convention will be eventually submitted for adoption to the Committee of Ministers in the second semester of 2016.

The revised text:

- Maintains the Convention's provisions at principle-level, to be complemented by more detailed sectorial texts by way of recommendations or guidelines;
- Aims to ensure consistency and compatibility with other legal frameworks, notably the EU one;
- Maintains technologically neutral provisions;
- Reaffirms the Convention's potential as a universal standard.

The main innovations concern the following issues:

- proportionality (so far implicit and concerning only the data), in particular data minimisation;
- accountability, in particular of data controllers and processors;
- privacy by design;
- obligation to declare data breaches;
- transparency of data processing;
- additional safeguards for the data subject such as the right not to be subject to a decision solely based on an automatic processing without having his or her views taken into consideration, the right to obtain knowledge of the logic underlying the processing, and the right to object.

The revised text continues to require an "appropriate level of protection" if data are communicated or disclosed to recipients not subject to the jurisdiction of a Party to the Convention, recognising that this rule has promoted the development of data protection laws around the world.

The role of the T-PD, will be strengthened for a proactive implementation of the convention through the follow-up mechanism.

4- Publishing & event

Data are flowing in a global context where digital borders are mere pipe dream, the CoE therefore kept a coherent approach by cooperating with third international institutions. To that extent was published the [Handbook on European Data Protection Law](#), co-authored with the European Union Agency for Fundamental Rights (FRA). This handbook is a comprehensive guide to European data protection law designed to familiarise people who are not specialised in the field of data protection with this area of law. It provides an overview of the CoE's and the EU's applicable legal frameworks and explains key jurisprudence of both the European Court of Human Rights (ECHR) and the Court of Justice of the European Union.

In 2006 the Council of Europe launched "Data Protection Day" (called Privacy Day outside Europe), which is celebrated every year globally on 28 January – the date on which the data protection convention was opened for signature - in order to raise awareness of data protection issues.

5- Other recent declaration, recommendations

- [recommendation on protection of human rights with regard to social networking services](#) (2013);
- [declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies](#) (2013) ;
- [recommendation on protection of human rights with regard to search engines](#) (2013);

