

## **Council of Europe response to privacy challenges Modernisation of Convention 108**

*This position paper was distributed at 32nd International Conference of Data Protection and Privacy Commissioners, 27-29 October 2010, Jerusalem, Israel.*

**The Council of Europe** is an intergovernmental Organisation which aims to promote human rights, democracy and the rule of law with a particular emphasis on the elaboration of legal standards in these fields. Hundreds of recommendations and almost two hundred international treaties have been adopted during its sixty years of existence.

47 of its member states, as well as those having observer status (Israel, Canada, Japan, Mexico, the United States of America) are actively involved in different Council of Europe activities whether on the ministerial (Committee of Ministers) or parliamentary level (Parliamentary Assembly).

Several Council of Europe conventions are achievements common to European and non-European states such as *the Convention on Cybercrime* ("Budapest Convention") or *the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* ("Convention 108").

**Convention 108** was opened for signature on 28 January 1981 and its 30th anniversary will be celebrated next year.

The Convention defines a series of core principles that have become universally recognised. Its legally binding standards are consistent with non-binding texts adopted by the Organisation for Economic Co-Operation Development (Guidelines on the Protection of Privacy and Transborder Flows of Personal Data) and the United Nations.

While being drafted in a **simple** and **technologically-neutral** way, the fundamental legal standards contained in Convention 108 remain valid. Its strengths are:

- its legally binding force;
- its cross-cutting scope of application. Convention 108 protects against privacy intrusions by public and private authorities;
- a comprehensive legal framework for the transfer of personal data among countries that have ratified Convention 108;
- a platform for multilateral co-operation through a Consultative Committee, where all states parties are working together on an equal footing, exchanging ideas and best practices, as well as developing new standards.

In 2001, Convention 108 was supplemented by **an additional Protocol** regarding supervisory authorities and transborder data flow.

Convention 108 and its additional Protocol are already benchmarks for more than 40 states in Europe. Being drafted with the clear intention to associate non-European states, the Convention is the only existing international legally binding instrument which has the potential to be applied worldwide.

Recognising that an international data protection framework has become crucial for the development and sustainability of democratic society and the effective exercise of fundamental rights and freedoms, the governments of member states of the Council of Europe called for accession to Convention 108 by states from all over the world with the required data protection legislation. This decision followed similar calls from European and international privacy and data protection authorities.

The call for global standards was repeatedly expressed by business and civil society communities, most forcefully in the Madrid privacy declaration “Global Privacy Standards for a Global World” of 3 November 2009 (<http://thepublicvoice.org/madrid-declaration/>).

**What are our immediate common challenges?** Data protection principles must be upheld in light of the impetuous technological development in our globalised world and their effective implementation reconsidered.

Convention 108 constitutes an excellent basis with a possibility to further develop the existing requirements in line with current realities.

On 10 March 2010 the Council of Europe Committee of Ministers encouraged the modernisation of Convention 108, which would deal with challenges for privacy resulting from the use of new information and communication technologies, as well as strengthen the Convention’s follow-up mechanism.

This process, driven by the Consultative Committee of Convention 108 (T-PD), has to be inclusive and global. A thorough and balanced instrument can only emerge if everyone - civil society and the private sector as well as countries outside Europe - contributes to the discussion bringing in their concerns and specific experience. Furthermore, it is also important for the states willing to sign the Convention to be involved in the revision process from an early stage.

We value a multi-stakeholder approach encompassing different regions of the world to ensure that the modernised standards will continue to reflect the core requirements which every system should strive to meet. Governmental policy makers exchanges with the private sector would help to avoid the revised standards being inefficient and obsolete by identifying what needs to be regulated legally and what should be the subject of self regulation, taking into account the constantly evolving technologies and different business models. It is needless to underline the important input from civil society, which is necessary to anticipate the future threats to fundamental rights and freedoms.

The process has just begun. Several reports regarding possible improvements of Convention 108 will be released in November 2010. The process is interacting with the preparation by the Parliamentary Assembly of the Council of Europe of the report on “Privacy and the management of private information on the Internet and other online media”, ensuring thus participation of parliamentarians from member and observer states.

The Council of Europe Secretariat, which will be accompanying the modernisation process, stands ready to co-ordinate the interested stakeholders and will, together with the Consultative Committee, reflect upon the possibility to ensure the best participation of stakeholders in the process. All reports, meetings’ minutes and other news will be regularly published on its website [www.coe.int/dataprotection](http://www.coe.int/dataprotection).

Data protection and respect for privacy are core business for the Council of Europe. We invite in particular the International Conference of Data Protection and Privacy Commissioners to participate actively in the process of modernisation of Convention 108. The Conference already obtained observer status with the T-PD in 2009.