

## Context

An awareness of the challenge thrown up by steady progress in means of communication and changes in the nature and volume of personal data flows made it necessary to establish a legal framework to reconcile transborder data flows with fundamental rights.

It was for this reason that the Council of Europe prepared Convention No. 108, which came into force in 1985, and was subsequently supplemented by an Additional Protocol, which entered into force in 2004.

Although the Convention was drafted and came into force before the emergence of the Internet and other forms of communication technology, the fact that its provisions are couched in **technologically neutral** terms means that the standards it sets out are still relevant and topical.

These two legal instruments now seek to protect people across 40 European countries against infringements of their privacy and the misuse of personal data concerning them. They also set out a number of principles concerning transborder flows of personal data.

The instruments are perfectly in keeping with the standard-setting framework established by the OECD (for instance, the *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*) and the work of the UN (for example, the *Guidelines for the Regulation of Computerized Personal Data Files*), while having the considerable advantage of being **binding legal instruments**.

The Convention and Protocol are also compatible with the European Union's legal instruments on personal data protection, while having a **broader geographical and material scope**.

The cross-sectoral, technologically neutral provisions of the Convention and the possibility for States that are not members of the Council of Europe to accede to it make

the Convention an instrument with a universal vocation, and one that is essential to data protection at international level.

## Scope

The Convention applies to all sectors of society: employment, banking, insurance, medicine, the police, the judicial system, administrative departments, and so on. Article 3 of the Convention determines its scope, specifying that the Convention applies to automated personal data files and automatic processing of personal data in the public and private sectors. States have a degree of flexibility and may modulate the scope of the Convention: they may, in certain circumstances, choose to exclude certain matters from its scope or, on the contrary, extend its scope. For example, States may decide to apply the Convention to data that are not processed automatically, in order to improve personal data protection safeguards.

## Accession

Article 23 of Convention No. 108 expressly allows States that are not members of the Council of Europe to accede. A State that has legislation guaranteeing the required level of data protection may therefore apply to do so. According to the established procedure, a non-member State sends the Secretary General of the Council of Europe a letter requesting to accede, signed by the Ministry of Foreign Affairs or a diplomatic representative acting on government instructions. The Committee of Ministers considers the request in the light of the recommendations of the Convention's Consultative Committee, after consulting other non-member States that are Parties to the Convention.

By acceding to Convention No. 108 and the Additional Protocol, a State that is not a member of the Council of Europe:

- **Will obtain a guarantee that the reciprocal transfer of personal data may take place**

The principle set out in the Convention is that data transfers may take place freely to and from countries that have ratified the Convention, i.e. 41 Council of Europe member States, including all the European Union countries.

- **Will receive assistance and benefit from co-operation**

The Council of Europe is in a position to provide technical support to countries applying to accede, in particular, in the form of legislative expertise and help with bringing national legislation into line with international personal data protection standards. Furthermore, once it has become a Party to the Convention, a State may, in accordance with Chapter IV, receive assistance from another Party with the implementation of the Convention.

- **Will enjoy the benefits of the Council of Europe's work**

In order to adapt the general principles set out in the Convention to specific requirements in different sectors of society and technological progress, the Council of Europe has adopted 13 sectoral recommendations concerning, *inter alia*, direct marketing, social security, the police, telecommunications, medical data and the protection of privacy on the Internet. These have been supplemented by other texts, such as the Guide to the preparation of contractual clauses, guiding principles on video surveillance and on smart cards and a progress report on biometric data.

- **Will take part in the work of the Consultative Committee**

The Convention's Consultative Committee, whose remit is defined in Chapter V of the Convention, is a body that makes proposals with a view to facilitating or improving the application of the Convention, and also engages in standard-setting work, drafting documents that are generally applicable. By acceding to the Convention, a state that is not a member of the Council of Europe may become a fully-fledged member of the committee and thus benefit from the forum it provides for sharing information. It is also possible, without formally acceding to the Convention, to apply for observers status with the committee, as Australia and Canada, for example, have already done.

For further information:

**[www.coe.int/dataprotection](http://www.coe.int/dataprotection)**

or from the Consultative Committee Secretariat:

Data Protection

Council of Europe

F-67075 Strasbourg Cedex

E-mail: [data.protection@coe.int](mailto:data.protection@coe.int)

## Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108)

The benefits for States  
that are not members  
of the Council of Europe