



Council of Europe
Conseil de l'Europe



Convention 108 – an update

Sophie Kwasny, 14 December 2016, Tbilisi

Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

Funded
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Implemented
by the Council of Europe

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Convention 108

35 years old: **50 Parties** (including Uruguay, Mauritius, Senegal) + observers (USA, Canada, Mexico, Indonesia and non-state actors)

Pending : Morocco, Tunisia, Cape Verde
Burkina Faso ?

Next ?

Convention 108 - Modernisation

Current modernisation to:

- reinforce the individuals' protection
- strengthen the follow-up mechanism

Modernisation trends :

- **promote** as a universal standard
- **preserve** general, simple, flexible and pragmatic character
- **ensure coherence** with other relevant frameworks (EU, OECD, APEC)

Convention 108 modernised

- Article 5 - legitimacy of data processing and quality of data

“... shall be **proportionate** in relation to the legitimate purpose pursued and reflect at all stages of the processing a **fair balance** between all interests concerned and the rights and freedoms at stake.”

Convention 108 modernised

- Article 5 - legitimacy of data processing and quality of data

“... on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law”.

Convention 108 modernised

- **Sensitive** data: genetic data, biometric data uniquely identifying a person, “for the information they reveal” – only allowed where appropriate safeguards are enshrined in law, complementing those of the Convention.
- notification of data **breaches** which may seriously interfere with the rights and fundamental freedoms of data subjects
- **Transparency**

Convention 108 modernised

Rights of the data subject

“... not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration”

“...to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her”

Convention 108 modernised

Additional obligations

- “... take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate...compliance”
- “examine the likely impact ... prior to the commencement ... and design the processing to prevent or minimise the risk”.
- “ implement technical and organisational measures at all stages of the processing.
- Adapt, according to ...

Convention 108 modernised

Exception, provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for:

the protection of national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest.

Convention 108 modernised

Exception : processing activities for national security and defence purposes
exceptions to Article 12.5 and 12.6 and
Article 12bis.2 a, b, c and d.

This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision.

Convention 108 modernised

- **transborder flows of data :**

No prohibition of transfers to a recipient in a Party to the Convention.

Except if bound by “harmonised rules of protection shared by States belonging to a regional international organisation”.

Non-Parties: appropriate level of protection secured by law or *ad hoc* or approved standardised safeguards provided by legally binding and enforceable instruments.

Convention 108 modernised

- **Supervisory authorities:**

“shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in particular by:

co-ordinating their investigations or interventions, or conducting joint actions;”

Convention 108 modernised

- **Convention Committee :**

Article 4 – Duties of the Parties

Each Party undertakes:

to allow the Convention Committee to evaluate the effectiveness of the measures it has taken in its law to give effect to the provisions of the Convention; and to contribute actively to this evaluation process.

Convention 108 - Modernisation

CAHDATA meeting (15-16 June)

 **Committee of Ministers
Group of Rapporteurs on Legal
Co-operation (GR-J) meetings of 13/09,
2/11, 1/12...31/01/2017**

**Consultation of the Parliamentary
Assembly**

Other work

Committee of Convention 108

- Big Data
- Health data
- Data in the police sector



Thank you for your attention

www.coe.int/dataprotection

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