



Strasbourg, 18 October 2012

T-PD(2012)09rev

**CONSULTATIVE COMMITTEE OF THE CONVENTION  
FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC  
PROCESSING OF PERSONAL DATA  
(T-PD)**

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Kingdom of Morocco - request to be invited to accede to Convention 108

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DG I – Human Rights and Rule of Law

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## Introduction

On 2 July 2012 the Secretary General of the Council of Europe has received a letter from the Minister of Foreign Affairs and Cooperation of the Kingdom of Morocco expressing the Kingdom of Morocco's wish to accede to the Convention for the protection of individuals with regard to automatic processing of personal data (hereafter "Convention 108").

The Consultative Committee of Convention 108 (T-PD) recalls that, in 2008, it invited the Committee of Ministers to take note of its recommendation to allow non-member States with data protection legislation in accordance with Convention 108 to accede to this Convention. The Ministers' deputies took note of this recommendation and agreed to examine any accession request in light of this recommendation (1031st meeting - 2 July 2008).

## Opinion<sup>1</sup>

In accordance with Article 4 of Convention 108, each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in the Convention (Chapter II).

Having examined the Constitution and relevant law (Act 09-08 on the protection of individuals with regard the processing of personal data) of the Kingdom of Morocco, the T-PD notes the following:

1. **The Constitution** of the Kingdom of Morocco guarantees the right to private life in its Article 24 which States that :

"Any person has the right to the protection of their private life.

The domicile is inviolable. Searches may only intervene in the conditions and

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<sup>1</sup> The present opinion was adopted by written procedure, with 17 positive votes and 27 abstentions.

the forms provided by the law.

Private communications, under whatever form that may be, are secret. Only justice can authorize, under the conditions and following the forms provided by the law, the access to their content, their total or partial divulcation or their summons [invocation] at the demand [charge] of whosoever.

The freedom to circulate and to establish oneself on the national territory, to leave it and to return, in accordance with the law[,] is guaranteed to all.”

## 2. Definitions

- a) **Personal data** (article 2.a of Convention 108): the Moroccan act defines in its Article 1 personal data as any information relating to an identified or identifiable natural person (a “data subject”), independently of the materiality [“support” in French] of the data, and including sound and images (article 1 point 1), which reflects article 2.a of Convention 108.
- b) **Special categories of data** (article 6 of Convention 108): the Moroccan act defines in its Article 1.3 ‘sensitive data’ as data revealing the data subject’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or which relate to health (including genetic data). Personal data concerning the data subject’s sexual life and criminal convictions are thus not considered as ‘sensitive data’ in the Moroccan legislation, on the contrary to Article 6 of Convention 108.
- c) **Processing** (article 2.c of Convention 108): it is defined in Article 1.2 as “any operation or set of operations performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction”, which while being more detailed than the wording of Convention 108 fully corresponds to it.
- d) **Controller** (2.d of Convention 108): the definition of the controller is provided in Article 1.5 of the Moroccan Act. It is the “natural or legal person, public authority or service or any other body who, alone or jointly with others, determines the purposes and means of the processing of personal data”. This definition

reflects the notion of the “controller of the file” contained in Article 2.d of Convention 108.

3. **Scope of the data protection regime** (Articles 1 and 3 of Convention 108): Morocco’s legislation has a comprehensive scope which covers all types of data processing concerning natural persons performed by a controller (natural or legal person) in the public and private sectors, with the exception of those carried out for strictly personal or domestic purposes. The scope of application also excludes (Article 2.4) processing connected with public safety, defence, national security and law enforcement activities, together with that of files governed by specific legislation (personal data collected and processed for the prevention of crimes). Concerning those exclusions, the T-PD recommends that specific legislation covering those types of processing be enacted, if such is not the case.
  
4. **Duties** (Article 4 of Convention 108) : The Constitution of Morocco foresees in its Preamble that the Kingdom of Morocco commits itself to “comply with the international conventions duly ratified by it, within the framework of the provisions of the Constitution and of the laws of the Kingdom, within respect for its immutable national identity, and on the publication of these conventions, [their] primacy over the internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation.” The adoption of Act 09-08 together with the Decree 02-09-165 instituting a supervisory authority (“Commission nationale de contrôle de la protection des données à caractère personnel“ - CNPD) will contribute to the realisation of this commitment.
  
5. **Quality of data** (Article 5 of Convention 108): Article 3 of the Moroccan Act gives effect to the fundamental principles of data protection such as limitation of purposes, quality, lawfulness and good faith, proportionality, accuracy of data and limited time of the retention. The data must be accurate and, where necessary, kept up to date, and must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes

for which the data were collected. It complies with the Convention 108. Moreover before collecting and processing any personal data, the data controller must request consent from the data subject. However, Article 4. a to e of Act 09-08 provides a number of exceptions to this general rule including where the processing is necessary for the performance of a “contractual obligation” or to “pursue the legitimate interests of the data controller provided that the fundamental rights and liberties of the data subject are respected”.

6. **Data security** (Article 7 of Convention 108): In accordance with Article 23 of Act 09-08 the controller must implement appropriate technical and organisational measures to protect personal data against accidental destruction or accidental loss, as well as alteration. Consequently, if the data controller uses a sub-contractor for data processing it must ensure that it selects a service provider that can give sufficient guarantees in respect of technical security measures.

7. **Right of information and transparency** (Articles 5.a and 8.a of Convention 108): Morocco’s legislation lays down the general obligation to inform the data subject of the processing. The following information must be provided to the data subject:

- ✓ the identity of the controller and of its representative, if any;
- ✓ the purposes of the processing for which the data are intended;
- ✓ any further information such as the recipients or categories of recipients of the data, whether replies to the questions are obligatory or voluntary, and the possible consequences of a failure to reply;
- ✓ the details of the notice of receipt provided by the data protection authority (CNPD) in the event of a prior notification or the details of the authorisation issued by the CNPD.

This information must be given in an express, precise and unequivocal manner (Article 5 of Act 09-08).

8. **Additional safeguards for the data subject** (Article 8.b to 8.d of Convention 108): Morocco's legislation provides for and implements the right of access, the right of rectification, and deletion where appropriate, the right of objection and the right of the data subject to have legal remedies (Articles 7, 8, 9 of Act 09-08).
  
9. **Exceptions and restrictions** (Article 9 of Convention 108): According to Article 6 of Morocco's legislation there are limits to the right of information.
  - ✓ If the collection and processing is necessary for the national defence, security of the state and the prevention of committing a crime;
  - ✓ If the data is processed for statistical, historical or scientific reasons;
  - ✓ If the registration and the communication of personal data is expressly foreseen by the law;
  - ✓ If the data is processed exclusively for journalistic, artistic or literary purposes.
  
10. **Sanctions and remedies** (Article 10 of Convention 108): Morocco's legislation lays down criminal sanctions in case of violation of the data protection legislation (Article 51 - 66 of the Act).
  
11. **Transborder data flows** (Article 12 of Convention 108 and Article 2 of its additional Protocol): the Moroccan legislation lays down protection of transfers of personal data to foreign countries, in particular when the countries concerned do not provide an adequate level of protection of personal data (Articles 43 and 44 of the Act 09-08).
  
12. **Supervisory authority** (Article 1 of the additional Protocol): Morocco's act provides for a supervisory authority (CNPD), holding real functions of advice and information, as well as powers of authorisation of the processing and powers of supervision. The CNPD may conduct investigation and inquiries, as well as collect all the documents necessary for its mission, and suspend and forbid data processing. The CNPD may also withdraw data processing

authorisations and impose a fine in case of infringement of the relevant legislation (Articles 27 – 42 of Act 09-08).

### **Conclusion**

In light of the above, the T-PD:

- notes the overall conformity of the Moroccan legislation with the principles of Convention 108, with the exception of the scope of application of the protection and the definition of special categories of data;
- requests that complementary information in that regard be provided in order for it to properly assess if the Moroccan data protection regime gives effect to the basic data protection principles of the Convention;
- underlines the importance, with a view to providing a coherent and effective data protection system, for the Kingdom of Morocco to also seek accession to the additional protocol to Convention 108;
- invites Morocco to request observer status and thus be able to participate in the meetings of the T-PD.