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Council of Europe response to privacy challenges Modernisation of Convention 108

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 is being celebrated this year. 28 January was chosen to mark data protection Day for this reason and this year's data protection Day was particularly significant for the Council of Europe.

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.

An non-European State has recently requested to accede to the Convention and its additional Protocol, which is the first step towards a formal global outreach of the Convention.

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.

At the end of last year, a comprehensive report on the lacunae of Convention 108 resulting from technological developments was prepared by the *Centre de Recherche Informatique et Droit* (CRID) of Namur, which identifies several issues to discuss in the context of the modernisation of Convention 108.

On the occasion of the 5th data protection day (28 January 2011), the Council of Europe launched a public consultation aimed at allowing interested persons and institutions to send to the Secretariat their comments, thoughts and ideas on the modernisation of Convention 108.

A consultation paper was published on the Council of Europe website and advertised in press releases. Over 50 replies were received for a total compiled content of over 400 pages, originating from state actors (including non-European ones) as well as other stakeholders (NGOs, academia and private firms) and individuals. A compilation has been prepared and the comments' synthesis is currently being drafted and will be available in June, in view of its examination by the Bureau of the Consultative Committee.

The process is interacting with the preparation by the Parliamentary Assembly of the Council of Europe of a report on “Respect for privacy and personal data on the Internet and other online media”, ensuring thus participation of parliamentarians from member and observer states.

The Council of Europe will ensure active participation in various events and conferences in order to present its modernisation work and seize those opportunities, such as the International Conference of Data Protection and Privacy Commissioners, to consult various stakeholders throughout the modernisation process.

2011 and the coming years mark important progress in the protection of personal data, as a result of processes initiated in several international fora to review their respective legal frameworks. In this connection, the Council of Europe seeks to ensure synergy and coordination of activities between the concerned organisations.

All reports, meetings’ minutes and other news are regularly being published on its website www.coe.int/dataprotection.

Data protection and respect for privacy are core business for the Council of Europe.