



Council of Europe
Conseil de l'Europe



Convention 108+ and the GDPR

Sophie Kwasny
Brussels, 28 March 2019

Council of Europe
Conseil de l'Europe



Tweet



Martin Selmayr
@MartinSelmayr



Convention 108 of @coe is "mother" of the #GDPR, the EU's directly applicable common data protection law as of 25/5/2018 #dataprotectionday

 Traduire depuis : anglais

28/01/2017 09:13

9 RETWEETS 10 J'AIME



Convention 108 and the EU

95/46 EU Directive

Preamble, Recital 11:

“Whereas the principles of the protection of the rights and freedoms of individuals, notably the right to privacy, which are contained in this Directive, **give substance to and amplify** those contained in the Council of Europe Convention”

Convention 108 (28 January 1981)

UNIQUE (no other international legally binding instrument in the field)

OPEN (any country in the world with a complying data protection legislation can request invitation to accede)

INFLUENTIAL (its principles = data protection principles taken up in all regions of the world)

Convention 108 today

54 countries bound by the Convention

= Argentina, Cabo Verde, Mexico,
Mauritius, Senegal, Tunisia, Uruguay

+ 47 CoE

pending: Burkina-Faso and Morocco

+ observers (Australia, Brazil, Canada, Chile,
Gabon, Ghana, Indonesia, Israel, Japan, South
Korea, Philippines, USA, New Zealand)

= NEARLY 70 COUNTRIES

Convention 108+ : the future...

Ubiquitous data flows

Require...

Mutual trust and cooperation

Based on the commitment to respect
common principles and the creation of a
common legal space

Convention 108 - Modernisation

- reinforce the individuals' protection
 - strengthen the implementation
-
- **promote** as a universal standard
 - **preserve** general, simple, flexible and pragmatic character
 - **ensure coherence and even convergence** with other relevant legal frameworks

Convention 108 - Modernisation

January 2011 18 May 2018



Opening for signature on 10 October 2018



News

European Parliament

Headlines ▾ Press room ▾ Agenda ▾ FAQ

Press room / MEPs back modernised Council of Europe data protection convention

MEPs back modernised Council of Europe data protection convention

Press Releases [PLENARY SESSION](#) [LIBE](#) Yesterday



- Changes to the convention aim to respond to challenges in the digital era
- Safer exchange of personal data and flows between the EU and non-EU countries
- The amending protocol opens the possibility for the EU to become a party to the convention

Parliament gives consent to EU countries to ratify the protocol amending the Council of Europe data protection convention to adapt it to the digital era.

The amending protocol intends to modernise and harmonise the Council of Europe data protection convention (Convention 108) in response to emerging privacy challenges, and to ensure it is adequately applied. The recommendation, adopted on Tuesday with 824 votes to 12 and 27 abstentions, underlines that the new protocol will facilitate the exchange of personal data based on appropriate safeguards.

The text will also ease data sharing between the EU and non-EU parties to the convention, MEPs say. Moreover, the amending text introduces the possibility for the EU and other international organisations to join the convention.

Under the current rules only states can be parties to the data protection convention which is why the EU cannot sign or ratify the amending protocol.

Background

The amending protocol was developed in parallel with the European data protection reform package. Consequently, the amended convention is fully consistent with EU relevant instruments such as the EU General Data Protection Regulation (GDPR) and the Police Directive.

Next steps

The Council can now authorise member states to ratify the amending protocol.

12 March 2019

Convention 108 and the EU



Brussels, 10.1.2017
COM(2017) 7 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Exchanging and Protecting Personal Data in a Globalised World

Convention 108 and the EU

Section 3.3.1 (page 11) second paragraph :

“In particular, the Commission **encourages accession** by third countries to Council of Europe Convention 108 and its additional Protocol. [...]

It is currently in the process of being revised and the Commission will actively promote the swift adoption of the modernised text with a view to the **EU becoming a Party**. standards.”

Convention 108 and the EU

It will reflect the same principles as those enshrined in the new EU data protection rules and thus **contribute to the convergence** towards a set of high data protection standards.

Convention 108 and the GDPR

Recital 105

the Commission should take account of obligations arising from the third country's [...] participation in multilateral or regional systems [...]. In particular, the third country's accession to **Convention 108** should be taken into account.

Convention 108 and the GDPR

WP 254 rev.01

Article 29 Working Party

Adequacy Referential

Adopted on 28 November 2017

As last Revised and Adopted on 6 February 2018

Adequacy Referential WP254

This document seeks to update Chapter One of WP12 relating to the central question of adequate level of data protection in a third country [...]. This document will be continuously reviewed and if necessary updated in the coming years, based on the practical experience gained through the application of the GDPR. Chapters 2 (**Applying the approach to countries that have ratified Convention 108**) and 3 (*Applying the approach to industry self-regulation*) of the WP12 document should be updated at a later stage.

Convention 108+ and WP254

Definitions (personal data, processing, controller, etc)

Legitimacy and quality of data

Sensitive data

Security

Transparency

Rights of data subjects

Transborder data flows

= **CONTENT PRINCIPLES**

Convention 108+ and WP254

Additional obligations

Sanctions and remedies

Supervisory authorities

Rights of data subjects

= **PROCEDURAL AND ENFORCEMENT MECHANISMS**

Exceptions

= **ESSENTIAL GUARANTEES (national security and law enforcement)**

Convention 108+ and the public sector processing

- Article 3 – scope

"data processing ... **in the public and private sectors...**"

See bilateral Eurojust-Albania agreement

Convention 108+

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;

the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.

Convention 108+

Exceptions and restrictions (Article 11.3)

Processing activities for national security and defence purposes

...each Party may provide, by law and only to the extent that it constitutes a necessary and proportionate measure in a democratic society to fulfil such aim, exceptions to:

- the review mechanism (Article 4.3)
- DPAs' powers with regard to transborder data flows (Article 14.5 and 14.6)
- DPAs' powers (Article 15.2 a,b,c,d)

Convention 108+

Exceptions and restrictions (Article 11.3)

processing activities for national security and defence purposes

“
...

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+

Transborder dataflows (Article 14.1)

Limitation to free flow between Parties where

- real and serious risk that the transfer would lead to circumventing the provisions of the Convention
- Party bound by harmonised rules of protection shared by States belonging to a regional international organisation.

Convention 108+

Cooperation (article 17)

Supervisory authorities “shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in co-ordinating their investigations or interventions, or conducting joint actions;”

Convention 108+ // GDPR

Article 11 of Convention 108:
extended protection

- «Right to be forgotten»
- Right to data portability
- Representation of data subjects

Universal ? What about the UN ?

**Joseph A. Cannataci, Special Rapporteur
on the right to privacy**



Call for UN member countries to accede

Annual report - UN General Assembly (2018)

Report A/73/45712

“As an interim minimum response to agreeing to detailed privacy rules harmonised at the global level, ALL UN Member States be encouraged to ratify data protection Convention 108+ [...].”

Annual report - UN Human Rights Council (2019)*=

Report A/HRC/40/63

Work of the Committee

Guidelines on AI and data protection

Recommendation on Health-related data





Handbook on European Data Protection Law



Thank you for your attention

www.coe.int/dataprotection

dataprotection@coe.int

 @SophieKwasny

