Data Protection Regulations and International Data Flows: Implications for Trade and Development

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Why do the study?

- To map global landscape of data protection and privacy laws

Primary objectives:

- Have a single source of information on the global landscape
  - Contributions: AUC, APEC, Commonwealth Secretariat, CoE, EAC, ECOWAS, the EU; Consumer International, CCIA, ICC; Benin, Ghana, Mauritius, Niger, Uganda, United States

- Explore relationship between trade and data protection laws

- Consider policy options for international/regional organizations and countries that are developing data protection laws

- Serve as a basis for continued global dialogue prioritizing compatibility between divergent frameworks
Who are the Stakeholders?

- Civil Society; Individuals
  - Consumer protection, individual rights
    
    ‘Perhaps the most significant challenge to privacy is that the right can be compromised without the individual being aware’ - Privacy International

- Private Sector
  - Business opportunities, trade, innovation

- Government
  - eGovernment, national security, protection of privacy

- International organizations
  - Formulation of rules
  - Capacity building
Why is Data Protection Important?

• Many social and cultural norms around the world include a respect for privacy; for some it is a fundamental right.

• In the information economy, large quantities of digitized information and data move across national borders
  – International flow of goods, services, and finance has increased global GDP by approximately 10 percent, or $7.8 trillion in 2014.
  – Data flows represent an estimated $2.8 trillion of this added value.

Source: UNCTAD and McKinsey Global Institute
Why Talk About it Now?

- New technological developments add urgency
  - Internet of Things: Value-added services will grow from around $50 billion in 2012 to approximately $120 billion in 2018
  - Cloud computing: Estimated global market value of the industry by 2017, from $107 to $127 billion.
  - Big Data and Data Analytics
  - 5G Networks

- Many opportunities, but also potential drawbacks and concerns

*Source: UNCTAD, Woodside Capital Partners, U.S. Dept. of Commerce; Global Industry Analysts*
Implications for International Trade

• Data protection is directly related to trade in goods and services in the digital economy
  – Too little protection can create negative market effects through affecting consumer confidence
  – Too much can overly restrict business activities and trade
• Ensuring that laws consider the global nature and scope of their application, and foster compatibility with other frameworks, is of importance for global trade

Getting the balance wrong between data protection and data flows can have serious consequences for either the protection of fundamental rights or for international trade and development.
Global map of data protection laws 2016

Number of countries

- Total: 194
- No data: 25
- No law or draft: 27
- With draft law: 34
- With data protection law: 108

Source: UNCTAD Global Cyberlaw Tracker
Observations in the study

- Core principles present in many frameworks
- Diverging implementation practices
- Global compatibility is a common goal
  - Reflecting the global nature of data flows and the Internet
Issues Concerning Global Compatibility

• Gaps in coverage
  – Significant “real world” impact to date of the CoE Convention 108
  – National gaps: no laws, partial laws or that contain broad exemptions

• Impact of new technologies

• Cross-border data transfers
  – Data localization requirements

• Balancing surveillance and data protection

• Enforcement of data protection laws

• Determining jurisdiction

• Compliance burdens
CoE Convention 108 as the most promising international development

- Comprehensive coverage
- Core principles widely accepted
- Ability for any country can join
- Convention works through a collaborative open process
- Binding nature drives harmonization
- Has strong support from the other initiatives
- Faces possible challenges in accommodating very different national schemes (most importantly the U.S.)
Selected Policy Options

- Adopt baseline legislation based on common principles
- Address gaps in global coverage and avoid fragmentation
- Adopt protection that does not unnecessarily hamper trade and innovation
- Give special attention to cross-border transfers
- Consider compliance burdens
- Establish a regulatory structure that ensures adequate enforcement
- Improve capacity building
- Multi-stakeholder involvement
Thank you!

unctad.org/Data-Protection-Study