



30th Council of Europe Conference of
Ministers of Justice
Istanbul 2010



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30TH COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Istanbul, Turkey, 24 - 26 November 2010)

RESOLUTION No. 3 on data protection and privacy in the third millennium

THE MINISTERS participating in the 30th Council of Europe Conference of Ministers of Justice (Istanbul, Turkey, 24 - 26 November 2010),

1. Recalling that it is the aim of the Council of Europe to preserve, strengthen and promote democracy, human rights and the rule of law;
2. Having regard to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "ECHR") on the right to respect for private and family life and to the relevant case-law of the European Court of Human Rights;
3. Having regard to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter "Convention 108") and to its additional Protocol (ETS No. 181) and acknowledging their unique potential as global instruments;
4. Noting that modern information and communication technologies (hereafter "ICTs") enable observation, storage and analysis of most day-to-day human activities, more easily, rapidly and invisibly than ever before, thereby potentially creating a feeling of being permanently watched, which may impair the free exercise of human rights and fundamental freedoms unless robust standards of data protection are effectively enforced worldwide;
5. Noting with concern the challenges presented by the use of ICTs to the application of data protection principles, in particular with regard to transparency and the effective exercise and protection of rights;
6. Noting with concern the challenges to the enforcement of data protection principles resulting from unresolved issues of jurisdiction and applicable law in respect of virtual and transborder relationships (e.g. cloud-computing tools, social networks);

7. Acknowledging the need to adapt to new challenges the existing safeguards for data and privacy protection and to complement them, in particular through the use of "privacy enhancing technologies" and having regard to the concept of "privacy by design";
8. Convinced that it is essential to establish an efficient system for transborder data flows and access to data over the Internet, for private, commercial and law enforcement purposes, which fully complies to the right to respect for private and family life and data protection principles, and provides appropriate safeguards;
9. Noting the resolutions of the 27th and 30th International Conferences of Data Protection and Privacy Commissioners calling in particular for the development of a universal binding instrument for the protection of individuals with regard to the processing of personal data, and referring to the resolution of the 31st International Conference of Data Protection and Privacy Commissioners on International Standards on Privacy;
10. Recalling that Convention 108 and its additional Protocol are currently the only potentially universally binding legal instruments in the field of data protection and that these instruments provide for basic data protection principles which are embodied in other international instruments, notably the United Nations Guidelines for the regulation of computerised personal data files and the Organisation for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data;
11. Recalling the Ministers' Deputies decision (1079th meeting, 10 March 2010) to encourage the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereafter "T-PD") "to start preparing [...] a draft additional protocol" to Convention 108;
12. Welcoming the initiative by the Secretary General of the Council of Europe and the European Commission for the joint celebration of the forthcoming Data Protection Day on 28 January 2011, which will coincide with the 30th anniversary of Convention 108 and thus constitute an ideal opportunity to raise awareness among citizens, public officials, the business community and civil society about the importance and necessity of the protection of personal data;
13. Acknowledging the importance of fostering the development of the information society and of the Internet to secure the exercise of human rights and fundamental freedoms in the context of the use of ICTs, and noting the results of EuroDIG (European dialogue on Internet governance) and the Internet Governance Forum (IGF);
14. Welcoming the adoption by the Committee of Ministers on 23 November 2010 of Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling;

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15. SUPPORT the modernisation of Convention 108 in order to find appropriate solutions to the new challenges posed by technology and globalisation of information to guarantee effective protection of human rights and fundamental freedoms as well as the exercise of these rights, in particular the right to respect for private and family life while processing personal data, and the enforcement of basic data protection principles, in particular to resolve issues of transparency, data security breaches, jurisdiction, applicable law and liability arising from the use of ICTs;

16. ENCOURAGE the observer States to the Council of Europe, other interested non-member States, the European Union, international organisations, NGOs and the private sector to participate actively in this process;
17. URGE the Council of Europe member States that have not yet ratified Convention 108 and/or its additional Protocol to do so as expeditiously as possible;
18. ENCOURAGE other States having data protection legislation in compliance with Convention 108 and its additional Protocol to accede to these instruments;
19. INVITE the Committee of Ministers of the Council of Europe to consider data protection as a priority for the Council of Europe's future work;
20. ASK the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.