



Council of Europe
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The European vision of personal data protection : Convention 108+

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Convention 108 and the European Union data protection legal framework: a long-standing relation

...From the origin: Directive 95/46/EC **was founded** on Convention 108 (see Recital 11 of Directive 95/46)

... And in further developments: (successful) effort to ensure **consistency between Convention 108 + and GDPR**



Convention 108 + and the European Union

CoE and EU data protection legal frameworks are «**good friends**» who respect their **differences**:

Convention 108+ ensures **coherence** with GDPR but preserves its **peculiarities**: **general**, high level **principles**, sufficiently **flexible** to ensure its **global nature**

Convention 108 + and GDPR

Overview of common features

- Definitions
- Proportionality
- Consent (and other legal basis, see EM of Convention 108 +)
- Sensitive data (including biometric and genetic data)
- Data security (including data breach notification «at least» to DPA)
- Transparency
- Data subject's rights (including not to be subject to purely automated decisions)
- Accountability
- DPIA
- Privacy by design/by default
- Sanctions and remedies
- Transfers of data (free circulation among Parties with some limitations (UE) + «appropriate level of protection» of third countries)
- DPAs powers and tasks
- Review of Parties' legal framework + evaluation of candidates for accession



EC Communication on protecting data in a globalised world (1)



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

EC Communication (2)

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**”.

EC Communication (3)

“Convention 108+ 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 EU

The EU as a Party to the Convention

Article 26 – Entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and by the European Union

The role of Convention 108 in the GDPR(1)

Recital 105 of GDPR

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.**



The role of Convention 108 in the GDPR(2)

Article 29 Working Party ('WP29' then become the European Data Protection Board - EDPB) documents on adequacy consider accession to Convention 108 as a significant element:

- WP29 document (WP12) on adequacy
- more recent 'Adequacy referential' adopted by the WP29 in its final version on 6 February 2018 and endorsed by the EDPB

WP29 Adequacy referential

“...any meaningful analysis of adequate protection must comprise two basic elements: the content of the rules applicable and **the means for ensuring their effective application.** The core of data protection content principles and procedural/enforcement requirements, which could be seen as a minimum requirement for protection to be adequate, are derived from the EU Charter of Fundamental Rights and the GDPR. In addition, **consideration should be given** to other international agreements **such as Convention 108**”



Convention 108+ and follow up mechanism

Strengthened role given to the future Convention Committee

The new Committee will:

- prepare, **before any new accession** to the Convention, an **opinion** for the Committee of Ministers relating to the level of personal data protection
- **review the implementation of this Convention by the Parties** and recommend measures to take where a Party is not in compliance with this Convention.

The Committee will be therefore called upon to exercise a crucial assessment of the ***real and effective implementation*** of the principles of the Convention.

Thank you for your attention

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