WHICH OPTIONS TOWARDS A GLOBAL STANDARD FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA?

Conference on Convention 108+ and the future data protection global standard

Council of Europe, Strasbourg

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TWO MAIN PARTS

- The race for a global standard status: Mapping of the global landscape
- Characteristics of a global standard

MAPPING OF THE GLOBAL LANDSCAPE

- UN: UDHR, ICCPR, OHCHR, HCR, SRP
- EU
- OECD
- APEC, CBPRs
- ECHR and other regional HR acts
- Treaties not related to privacy

THE UNITED NATIONS (1)

- UDHR, ICCPR, OHCHR, HCR, SRP
- 1990 Guidelines
- Universal
- Common ground
- Delivers non-binding take-aways
- Synergies:
  - Some interesting developments
  - Gather political support

THE UNITED NATIONS (2)

- Is the cradle of the right to privacy
- "Same rights that people have offline must be protected online"
  - Needs to be operationalised
  - Meaning to be clarified
- Role of a global standard

GDPR

- Is the major recent benefit from Brussels for people in EU
- Binding, prescriptive regulatory approach
- Global role needs to be characterised
- Benchmark, "golden standard"

OECD

- Guidelines on the Protection of Privacy and Transborder Flows of Personal Data
- 2013 update
- Some issues not fully addressed
- Role as intergovernmental think tank
- Inspirational

APEC

- APEC Privacy Framework
- 2016 update
- Focus on e-commerce
- Cross Border Privacy Rules CBPRs
- Interoperability CBPR–BCR

REGIONAL HR INSTRUMENTS

- More explicit formulation of Art. 12 UDHR (active voice)
- If legally binding, development through jurisprudence
- Sets the balance of rights and obligations (ECHR)
- ECOWAS

NON-PRIVACY INSTRUMENTS (1)

- Trade in services
- E-commerce
- Inconsistency with usual DP measures?

NON-PRIVACY INSTRUMENTS (2)

- GATS & GATS-based: likelihood is marginal
- E-commerce: various situations
- Asia: forthcoming RCEP
- Importance to follow RTA/WTO work
- Maintain consistency of systems

CHARACTERISTICS OF STANDARDS

1. Harmonisation *vs*. principles
2. General framework *vs*. specialisation on cyber
3. Eurocentrism *vs*. universalism
4. Monolithic *vs*. modular approach, or which mix
5. Binding rules *vs*. guidelines, or which mix

ACCESSION PROCESS

1. Transparency
2. Objectivity, Impartiality
3. Predictability

ACCESSIONS

- Technical assistance
- Exchange of information, discussion forum
- Link with GDPR adequacy
- Transparency in GDPR adequacy

ADAPTABILITY

- A global standard should adapt to an evolving environment
- Use of Additional Protocols

RECONCILIATION OF SYSTEMS?

○ Is there a way to reconcile all systems?

→ case of Japan

RELATIONSHIP WITH OTHER AGREEMENTS

- Cybercrime Convention
- Other instruments

Conclusion

Thank you for your attention

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