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

19 November 2019

Christian Pauletto, IUG
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

cpauletto@iun.ch