

**CPDP LatAm
Opening Plenary Session:
“The Rise of Data Protection in Latin America”
14 July 2021**

**Patrick Penninckx on Convention 108
and its value as unique tool of regulatory harmonization and convergence**

First of all, I would like to thank the organisers for inviting me to present Convention 108 and its value as a unique tool of regulatory harmonisation and convergence.

This gives me the opportunity to stress the **unique, long-standing, specific, precursor and standard-setting role of the Council of Europe** in the digital agenda and more specifically the protection of personal data:

- A **long-standing, precursor and standard-setting role** as the Council of Europe was the first international organisation to establish a data protection convention, and it was exactly 40 years ago in 1981. And to date, Convention 108 remains the only binding international legal instrument in this field, the global reference with a worldwide scope of application;
- it is **unique and specific** because the Council of Europe approach is through human rights, democracy and Rule of Law;

It is with these principles in mind and looking towards the future that the Council of Europe developed **universal reference standards** in the field of data protection which have contributed to the evolution and use of digital technology. One of the reasons for Convention 108's success is that it is a high-level, principle-based system easy to be translated into national legal systems and that is why it attracted many interested Parties, outside the original geographical scope of the Organisation.

In this respect, the Council of Europe has taken a special interest in Latin America, where it has developed a fruitful co-operation.

The basis for this cooperation is Convention 108 as a **legally binding multilateral instrument**. This protection tool has influenced various international (OECD Directives on transborder flows of personal data), regional (in the EU or the OAU) and national privacy laws. The principles of Convention 108 aim at facilitating the free flow of data between Parties, through the convergence of different national data protection systems.

Convention 108 currently gathers 55 States, including Uruguay, Mexico and Argentina. It also has 32 observers, including Brazil, and institutions such as the Ibero-American Data Protection Network, the Chilean Transparency Council and the Inter-American Institute of Human Rights.

The Council of Europe modernized this Convention in 2018 to keep it relevant to the many changes in our increasingly connected world and to respond to new challenges and the growing use of new technologies. Convention 108+ addresses the current and future challenges of the protection of personal data.

The Committee thus wanted to provide a legal response to these new challenges and to strengthen the effective implementation of the Convention. The Modernised Protocol, opened for signature on 10 October 2018 in Strasbourg, has already been signed by 43 States, of which 12 have ratified it.

The mobilisation of all stakeholders is a must to build the future of this protocol, already considered as the international standard for the protection of privacy in the digital era. Whether at the regional level (with the European Commission's strategic communication - 2017) or at the international level (with the statement adopted by the UN Special Rapporteur on the right to privacy), the way toward the entry into force remains long but the objective is clear and common. And the Council of Europe stands ready to develop cooperation with all countries in the region to this end.

The Convention 108 Committee, whose Bureau includes a Uruguayan member, has already elaborated several documents whose influence is international. I stand ready to come back to this, should you have any questions in this respect.

At the same time, Costa Rica, the first State invited to join Convention 108+, is benefiting from the Committee's assistance. Since 2019, an important legislative process is underway for Costa Rica to become a member of modernised Convention 108. This future accession contributes to the convergence towards high-level standards for the protection of individuals, which is key in view of the increasing number of international transfers of personal data.

And with this, **comes numerous challenges**. We are living in a world where there's an ever-increasing acceleration of digital transformation, a world which is increasingly dependent on technology. There is a need to find a **balance between technological agility and privacy**. So, there is a strong need for **ensuring the responsible use of technology**, and this is why relevant actors must mobilise to ensure proper governance, as with great powers, come great responsibilities.

We all live in a digital society, and we would like to **build a world without dividing lines**. The technological revolution unites, but technology can also divide... as fake news proliferates, as well as hate speech and disinformation campaigns. Fake news distorts reality. Disinformation breeds mistrust.

Machines are getting smarter, we are always watched, our personal data are public, AI selects our content, big data becomes a commodity, cybercrime proliferates, surveillance becomes ubiquitous, privacy and public safety collide.

It is important to understand that personal data are inalienable parts of an individual, in direct connection with one person's very identity, personality, therefore **their processing shall be done in a respectful way**.

Never only see "data" behind processing operations but always see the "person", "human beings", "individuals" whose autonomy needs to be preserved.

I now wish You all fruitful debates and a very successful plenary session of the Latin American CPDP.

EVENT 27 MAY, URCDP COFFEE TALK

The Uruguayan Parliament has voted in favour of the law ratifying the Protocol, i.e. Convention 108+, and I would like to express the immense satisfaction of the Council of Europe in this respect. I had the privilege to attend this event on 27 May through videoconference organized by the URCDP (Regulatory and Control Unit for Personal Data).

Documents from Convention 108 Committee:

- artificial intelligence,
- facial recognition,
- data processing in education,
- big data,
- health-related data,
- profiling,
- Covid-related regulation¹⁹,
- media and privacy,
- internet governance,
- data processing by law enforcement agencies,
- data processing in an education setting.

Current work :

- drafting standards in the field of political campaigning,
- digital identity,
- the exchange of data in tax matters,
- the manipulation of sporting events and the lawful use of exceptions to data protection rules in the context of national security or defence.