



Council of Europe  
Conseil de l'Europe



# Convention 108 and Convention 108+: Instruments of universal vocation

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Conseil de l'Europe

# Council of Europe ≠ EU



Do not get confused

## Council of Europe

An international organisation in Strasbourg which comprises 47 countries of Europe. It was set up to promote democracy and protect human rights and the rule of law in Europe.



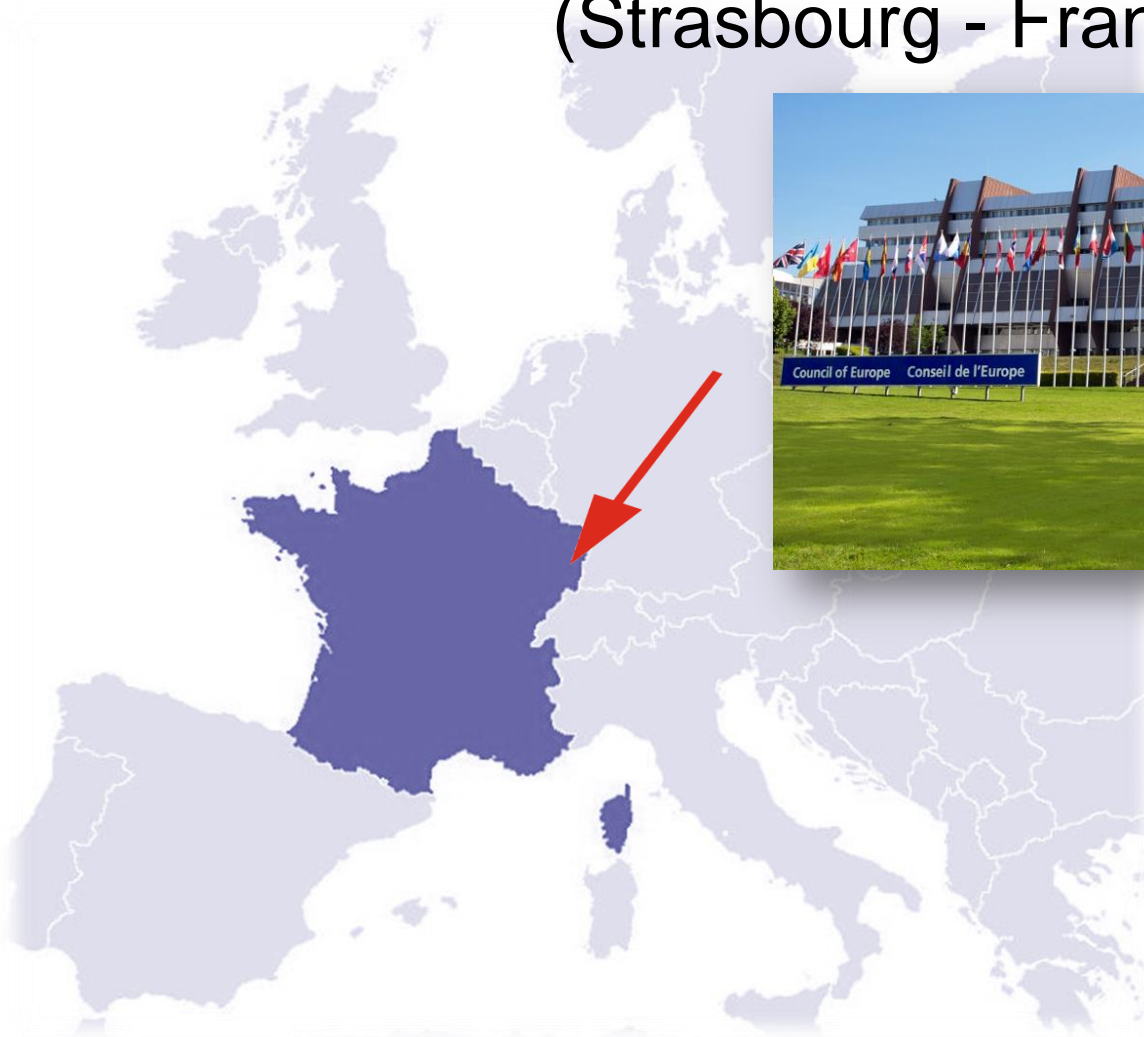
## European Council

Institution of the European Union, consisting of the heads of state or government from the member states together with the President of the European Commission, for the purpose of planning Union policy.

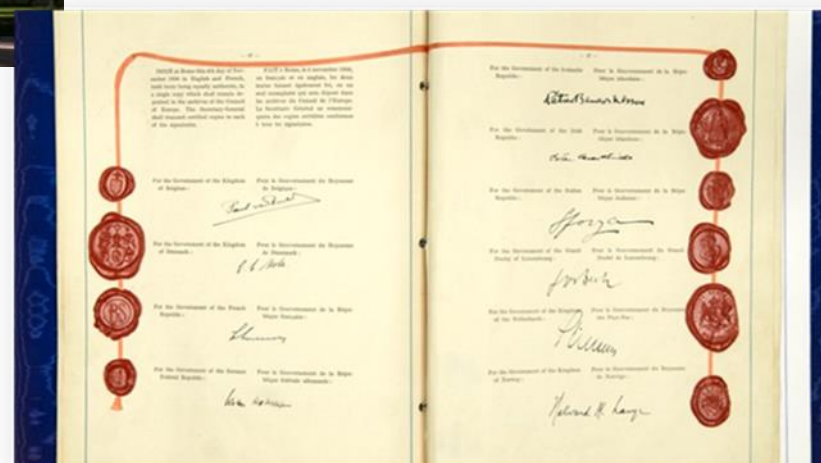
## European Union (EU)

The EU currently has 28 members that have delegated some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level. No country has ever joined the EU without first belonging to the Council of Europe.

# Council of Europe (Strasbourg - France)



# The European Convention on Human Rights and the European Court of Human Rights



## Convention 108 (28 January 1981)

**UNIQUE** (no other international legally binding instrument in the field)

**OPEN** (any country in the world with a complying data protection legislation can request invitation to accede)

**INFLUENTIAL** (its principles = data protection principles taken up in all regions of the world)

## Convention 108

Drafting Committee in the late 70ies: OECD, as well as 4 of its non-European member countries (Australia, Canada, Japan and the United States) were represented as observers.

Preamble: “the increasing flow across frontiers of personal data”

“Freedom of information regardless of frontiers”

“Free flow of information between peoples”

## Convention 108

### **Article 23 – Accession by non-member States**

“1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention [...]”.

## Convention 108

### **Chapter V – Consultative Committee**

### **Article 18 – Composition of the committee**

“3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the Convention to be represented by an observer at a given meeting.”



## Convention 108 today\*

**53 countries bound by the Convention**

= 47 + Cabo Verde, Mexico, Mauritius,  
Senegal, Tunisia, Uruguay

pending: Argentina, Burkina-Faso, Morocco

+ observers (Australia, Brazil, Canada,  
Chile, Gabon, Ghana, Indonesia, Israel,  
Japan, South Korea, Philippines, USA,  
New Zealand)

**= NEARLY 70 COUNTRIES !**

## Convention 108 - Modernisation

- reinforce the individuals' protection
  - strengthen the implementation
- 
- **promote** as a universal standard
  - **preserve** general, simple, flexible and pragmatic character
  - **ensure coherence and even convergence** with other relevant legal frameworks

## Convention 108 - Modernisation

January 2011 ..... 18 May 2018



Opening for Signature:  
10 October 2018 - 21 countries

## Convention 108+ : the future...

Globalisation of data flows

Require...

Mutual trust

Based on the commitment to respect  
common principles



## Convention 108+

### Preamble

“Recognising that it is necessary to **promote at the global level** the fundamental values of respect for privacy and protection of personal data, **thereby contributing to the free flow of information between people;**  
Recognising the interest of a reinforcement of **international co-operation** between the Parties to the Convention,”

## Convention 108+

### **Article 27 – Accession by non-member States or international organisations**

1. [...] the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous agreement, and in light of the opinion prepared by the Convention Committee in accordance with Article 23.e, invite any State not a member of the Council of Europe or an international organisation to accede [...].”

## Convention 108+

### **Article 3 – Scope**

1. Each Party undertakes to apply this Convention to data processing subject to its jurisdiction in **the public and private sectors**, thereby securing every individual's right to protection of his or her personal data.

## Convention 108+

- Article 5 - legitimacy of data processing and quality of data

“... on the basis of the free, specific, informed and unambiguous **consent** of the data subject or of some **other legitimate basis laid down by law**”.



## Convention 108+

### **Additional obligations** (article 10)

- “... take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate (subject to exceptions)...compliance ”
- “examine the likely impact ... prior to the commencement ... and design the processing to prevent or minimise the risk”.
- “ implement technical and organisational measures at all stages of the processing.
- Adapted, according to ...

## Convention 108+

**Exception:** provided for by law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for:

the protection of national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest;

the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.

## Convention 108+

### **Exceptions and restrictions (Article 11.3)**

processing activities for national security and defence purposes

“  
...

This is without prejudice to the requirement that processing activities for national security and defence purposes are subject to independent and effective review and supervision.”

## Convention 108+

### **Transborder dataflows (Article 14.1)**

Limitation to free flow between Parties where

- real and serious risk that the transfer would lead to circumventing the provisions of the Convention
- Party bound by harmonised rules of protection shared by States belonging to a regional international organisation.

## Convention 108+

### **Transborder dataflows** (article 14.3 and 14.4)

- Means to secure and appropriate level of protection (*ad hoc* or approved standardised safeguards provided by legally binding instruments)
  
- Possibilities to transfer where consent, specific interests of the data subject, prevailing legitimate interests provided for by law and are necessary

## Convention 108+

### **Supervisory authorities (article 15)**

#### Cooperation (article 17)

“shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in particular by:

co-ordinating their investigations or interventions, or conducting joint actions;”

## Convention 108 Committee

Open Forum of cooperation between 70  
countries and non State actors.



## Current work of the Committee

Recommendation on Health-related data

ICANN and data protection

Study on AI

Work programme 2018-2019





## Universal ? What about the UN ?

**Joseph A. Cannataci, Special Rapporteur  
on the right to privacy**



## Call for UN member countries to accede

### **Annual report - UN General Assembly**

Report A/73/45712

Key Big Data – Open Data

Recommendations

“As an interim minimum response to agreeing to detailed privacy rules harmonised at the global level, ALL UN Member States be encouraged to ratify data protection Convention 108+ using CETS 223 and implement the principles contained there through domestic law without undue delay [...].”

Thank you for your attention

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