

40th International Conference of Data Protection and Privacy Commissioner
Side Event

Find out how Convention 108+ is important for you !

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Question to

J.-Ph. Walter, Deputy Federal Data Protection and Information Commissioner (Switzerland) and Data Protection Commissioner of the Council of Europe

What is your take on those decades of work and what do you hope for the future ?

On a personal level, my collaboration in the various data protection committees of the Council of Europe has brought me a lot and I have met many colleagues from different backgrounds. I have wonderful memories of it. But to return to data protection and Convention 108, I would say that compared to the situation in the 80s when data protection was somewhat intimist, reserved mainly for European States, Convention 108 has gained in visibility and has become a reference text well beyond the borders of the European continent. The Convention was opened for signature on 28 January 1981 and entered into force in 1985 after the first 5 ratifications had been obtained: a somewhat slow start due to the fact that few States had a data protection law at the time. Two committees dealt with data protection issues: the Experts Committee for Data Protection (CJPD), which developed a series of sectoral recommendations, and the Consultative Committee (T-PD), which in its early years focused on providing interpretative opinions and strengthening the expertise of its members. The adoption on 8 November 2011 of the Additional Protocol regarding supervisory authorities and transborder data flows is certainly the first step in the modernisation of Convention 108. Another important shift has occurred, curiously and with regret, some will say, with the suppression of the CJPD at the end of its 41st meeting in November 2003. This restructuring of data protection activities has given greater importance to the work of the T-PD and retrospectively was a good decision.

Another important step is the 27th International Conference of Data Protection Commissioners and the adoption of the Montreux Declaration of 16 September 2005, which was the real starting point for the debate on a universal data protection instrument and, above all, for the invitation to the Council of Europe to open Convention 108 for accession by third countries.

With this declaration, I was already aware that Convention 108 had universal potential and was the most credible alternative to the adoption of a global instrument. Although it was not until 2013 that a first third country, Uruguay, joined the Convention, since Montreux there has been a change in the Council of Europe's policy to promote data protection throughout the world, resulting in 6 accessions and a growing interest in the Convention, illustrated in particular by the number of observers participating in the work of the T-PD.

The adoption of Recommendation R(2010)13 on profiling is also one of the important elements that triggered the committee's reflection on modernisation, which led to the adoption of Convention 108+ on 18 May this year and its opening for signature on 10 October last. The modernisation process was launched on the occasion of the 30th anniversary of the Convention celebrated here in Brussels on 28 January 2011; however, it took 7 years to achieve the result, not that we had any major difficulties in reaching agreement. The text was quickly drafted by the Consultative Committee which adopted it in November 2012, but the European agenda of the GDPR has played a significant role in the progress of the work. In addition, there are the political issues that have slowed down the process. Even if in the end the text adopted differs only slightly from the text taken from the T-PD kitchens, this maturation phase was probably necessary to win the agreement of all parties.

I conclude this brief intervention by recalling the central points of Convention 108+:

First of all, more than ever, because of its open, general, flexible and technology-neutral character, we have an international legally binding instrument setting out the basic principles of data protection that are now universally recognised: it is a data protection convention of universal scope and not /no longer a purely European text.

With the exception of purely personal or household processing, the Convention applies to all processing of personal data in the public and private sectors, without possible reservation. At the level of principles, the Convention specifies the grounds for processing, enshrines the principle of proportionality and minimisation of data

It extends the catalogue of so-called sensitive data, in particular to genetic and biometric data

It strengthens the rights of data subjects by introducing the obligation of transparency of processing operations and by introducing the right not to be subject to automated decisions without having his or her views taken into consideration. It introduces the right to know the reasoning underlying data processing, as well as the right to object.

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It introduces new obligations for data controllers, in particular reporting data breaches, the principle of privacy by design and data protection by default, accountability, data protection impact assessment.

It strengthens the powers and clarifies the tasks of the supervisory authorities, in particular at the level of cooperation

It strengthens the role of the consultative committee, which becomes the Convention's committee.

It introduces a real monitoring mechanism. In particular, a State may not accede to or ratify the Convention without having taken in its domestic law the necessary measures to give effective effect to the provisions of the Convention. The committee will have to evaluate the effectiveness of the measures taken.

The next steps: the entry into force, I hope quickly, of Convention 108+, the accession of new States, the establishment of the monitoring mechanism.

At the legislative level, I propose to include the fundamental right to data protection in the European Convention on Human Rights.

Finally, with regard to my role as CoE Data Protection Commissioner, I call for a rapid adoption of a CoE Regulation in line with the requirements of Convention 108+