



INFORMATION SOCIETY FOCUS 2020

The fast pace of technological change and the cross-border nature of internet services present opportunities, but also challenges for users.

To address these challenges the council of Europe has assumed a leading role in policy making on data protection, on safeguarding freedom of expression, including from threats of algorithmic decision making and artificial intelligence, and on action against cybercrime.

Brief overview of major Council
of Europe activities in the field
of information society

Strategic
Focus

Information
Society

www.coe.int/freedomofexpression

Safeguarding privacy

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (more commonly known as “Convention 108”) is the only legally binding multilateral instrument on the protection of privacy and personal data and has 55 parties and 25+ observers. Beside the work related to the implementation of the Convention itself, its conventional committee has produced reference documents in important areas such as Artificial Intelligence, Big data, health related data, media and privacy, internet governance, data processing by law enforcement, etc.

Convention 108 was modernised in 2018 to adapt this landmark instrument to the new realities of an increasingly connected world, and to strengthen its effective implementation. The Protocol amending Convention 108 (CETS No. 223) was opened for signature on 10 October 2018 in Strasbourg and was already signed by 33 States, and should enter into force in the coming years. It remains based on two objectives: free flow of data and respect for human dignity. Convention 108+ (as amended by the protocol) is seen to become the international standard on privacy in the digital age.

Recognising its unique potential to become the international standard on the matter, the UN special Rapporteur on the right to privacy has recommended “to all UN Member States to accede to Convention 108+” in two of his reports already. Cognizant of these developments the EU Commission in its strategic communication of 2017 has already stated that the EU wishes to join Convention 108+. The amending protocol is fully consistent with the EU GDPR and the Police Directive and will contribute to the convergence towards a set of high data protection standards while enabling an even better environment for innovation and inclusive economic growth.

Artificial Intelligence and Data Protection

The Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (Committee of Convention 108) adopted on 25 January 2019 Guidelines on Artificial Intelligence and Data Protection. In this, the Committee of Convention 108 recognises that AI may be a useful tool for decision making in particular for supporting evidence-based and inclusive policies and stresses the need for AI to be developed and used in respect of the rights to privacy and data protection.

The document is based on the conviction that no AI application should undermine the human dignity and the human rights and fundamental freedoms of individuals, in particular with regard to the right to data protection, as these are enshrined in the European Convention on Human Rights and in modernised Convention 108.

To achieve this, the Guidelines contain a set of high-level General guidance, Guidance for developers, manufacturers and service providers and Guidance for legislators and policy makers. Some of the most important ones invite stakeholders to implement a risk-based approach and to design their data processing in a way that can mitigate potential risks for individuals, notably the risk of discrimination. They urge data controllers to take into account a wider area of possible consequences, including with regard to

societal and ethical considerations, and recommend measures to ensure individuals’ control over their data in this complex and often very technical type of data processing.

Algorithms and Human Rights

In 2017, the Council of Europe published the Study on Algorithms and Human Rights DGI(2017)12, pointing out that public awareness on the multiple human rights dimensions of automated processes is lagging behind ongoing technological evolution and calling on member States to monitor closely all technological development and initiate and support research into human rights, ethical and legal implications of algorithmic decision-making.

In February 2019, the Council of Europe adopted the Declaration on the manipulative capabilities of algorithmic processes Decl (13/02/3019)1, which warns of the growing capacity of machine learning tools to not only predict economic choices but to influence emotions and thoughts – with ramifications for social and political behaviours.

In 2018 and 2019, an interdisciplinary Expert Committee of the Council of Europe has been preparing the draft recommendation on the human rights impacts of algorithmic systems, providing to member States and private sector actors guidance on data management, data analysis and modelling, transparency, accountability and effective remedies, precautionary measures as well as research, innovation and public awareness in the field.

Combating Cybercrime

The Budapest Convention of the Council of Europe, is the only binding international treaty on cybercrime and electronic evidence that provides a framework to States regarding:

- ✓ criminalisation of conduct (that is, offences against and by means of computers)
- ✓ procedural powers for criminal justice authorities to secure electronic evidence in relation to any crime and subject to rule of law safeguards, and
- ✓ international cooperation on cybercrime and electronic evidence.

It is supplemented by an additional Protocol on Xenophobia and Racism committed via computer systems.

With 64 States Parties, and another 8 States that had signed it or been invited to accede, the Budapest Convention remains the most relevant global standard in this field that continues to evolve in light of the challenges we face.

For example, in July 2019 the Guidance Note on Election Interference was adopted, helping to apply the Convention’s provisions to computer-based electoral interference, including through international co-operation.

Work is also underway on a second additional protocol to the Convention, aiming to provide additional solutions to address the problem of access to electronic evidence in the cloud. This concerns in particular the context of cloud computing where data is distributed over multiple services, providers, locations and jurisdictions, and where powers of law enforcement are limited by territorial boundaries.

The matters to be resolved are complex and the expectations set for the new Protocol are high: the 2nd Additional Protocol – like the Budapest Convention – will need to stand the test of time in order to make a difference in terms of an effective criminal justice response with human rights and rule of law safeguards.