

# **NGO Observers & Convention 108+**

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# Importance to NGO Observers

1. To ensure that NGO's home country *meets all requirements* of 108+ before accession
  - Use accession requirements as leverage for reform
2. Any NGO has an interest in *maximising strength* of laws of both existing & proposed Parties
  - 'free flow' obligations affect all other States
3. Existing State Parties may be *reluctant* to 'blow the whistle' because of diplomatic caution
  - NGOs do not have diplomatic constraints
4. All NGOs wanting 108+ to become the *global* privacy treaty have an interest in *high standards*

# NGO attempts to strengthen the accession/follow-up mechanisms

- August 2019: APF, EPIC & PI *joint submission* on May 2019 draft of mechanism *achieved*:
  1. Observer access to E&F Groups preparatory reports [4.1; 8.1, step 5; 8.2, step 5]
  2. Addition of criterion of ‘significant non-compliance with Convention obligations’ [5]
  3. E&F Groups to take into account ‘NGO reports and submissions’ [6]
  4. Evaluation criteria must give ‘particular attention to democracy, democratic institutions and the rule of law’ effects on data protection’ [7.1]

## NGO attempts to strengthen the accession/follow-up mechanisms (cont.)

5. NGOs can submit on evaluation Questionnaire sent out by an E&F Group [4.1, step 1]
  6. E&F Group report must include 'details of the levels of implementation, sanctions applied, and remedial measures obtained' [4.1, step 1]
- NGO suggestions not accepted:
    - that an Observer should be included as one of the members in each E&F Group [3.1]
    - emphasis that exemptions for defence, national security etc must comply with the conditions of Article 11 [6.1] (but covered in Questionnaire)

# Conclusions

1. NGOs can have greater confidence that evaluations will result in high level of compliance
2. Open processes of 108/108+ are demonstrated
3. CoE processes compare favourably with APEC, OECD and EU
4. Worth encouraging more privacy-specialist NGOs to apply to be accredited as an Observer
  - States interested in accession and/or their DPAs?