



Council of Europe
Conseil de l'Europe



Our Convention (108), Mother of the GDPR, in the Global Data Protection Landscape

Council of Europe
Conseil de l'Europe

Sophie Kwasny, Cannes, 26 November 2019

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.



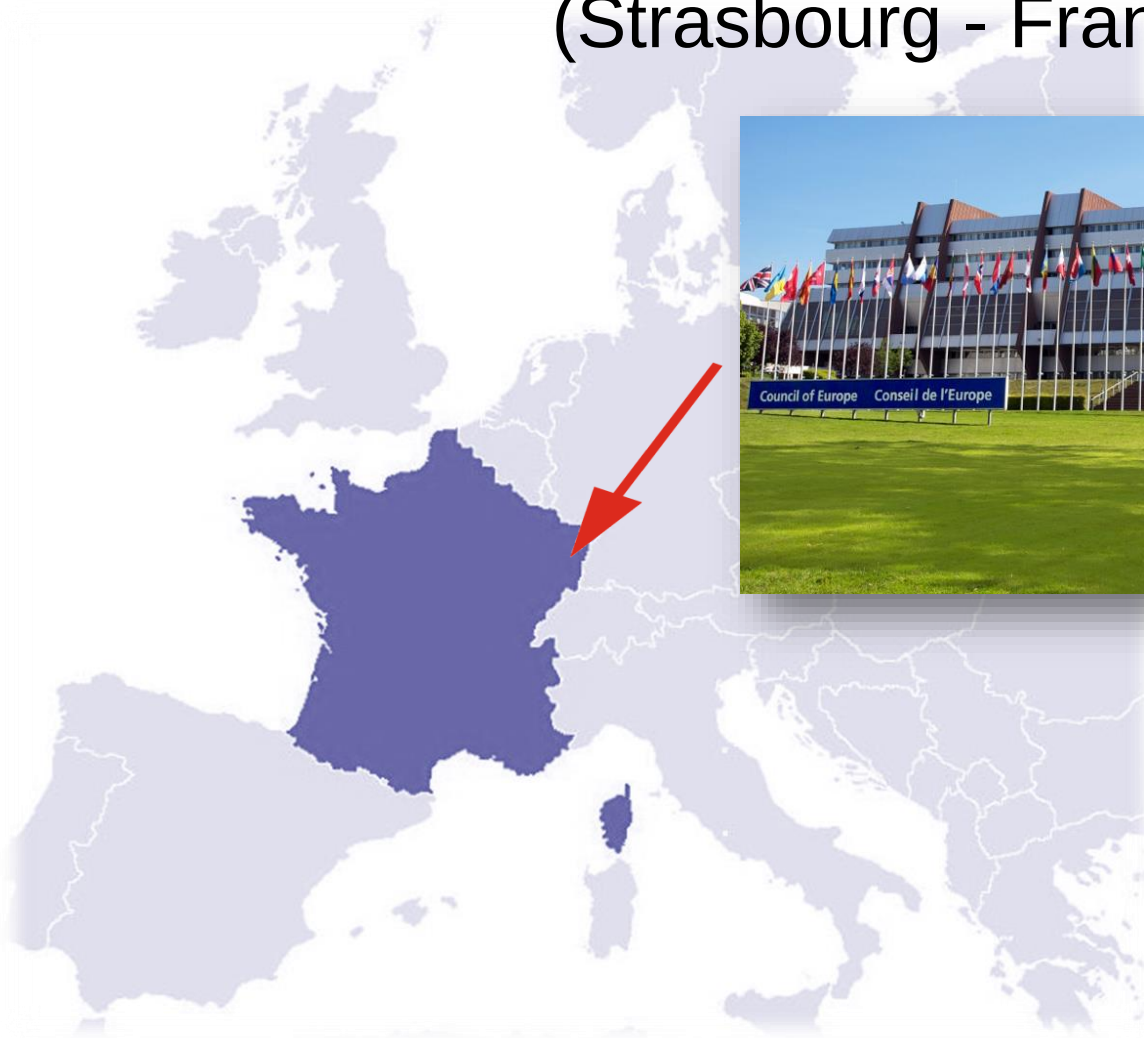
European Council

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)

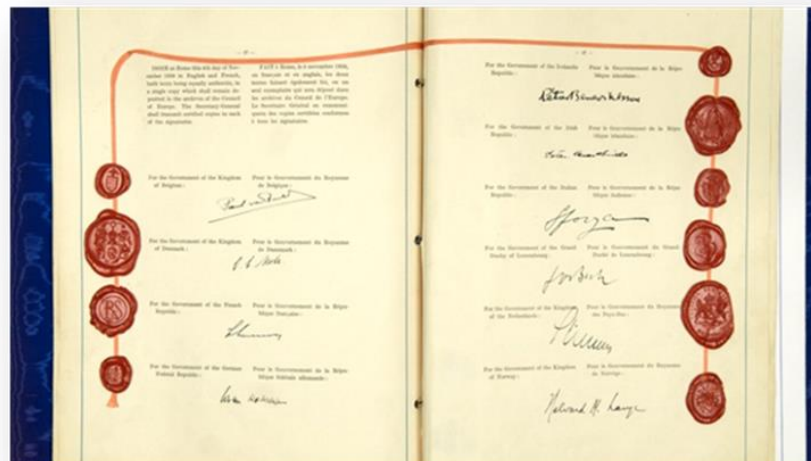
The EU currently has 28 members that have delegated some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level. No country has ever joined the EU without first belonging to the Council of Europe.

Conseil de l'Europe (Strasbourg - France)



Convention for the protection of individuals with regard to the processing of personal data

CONVENTION 108

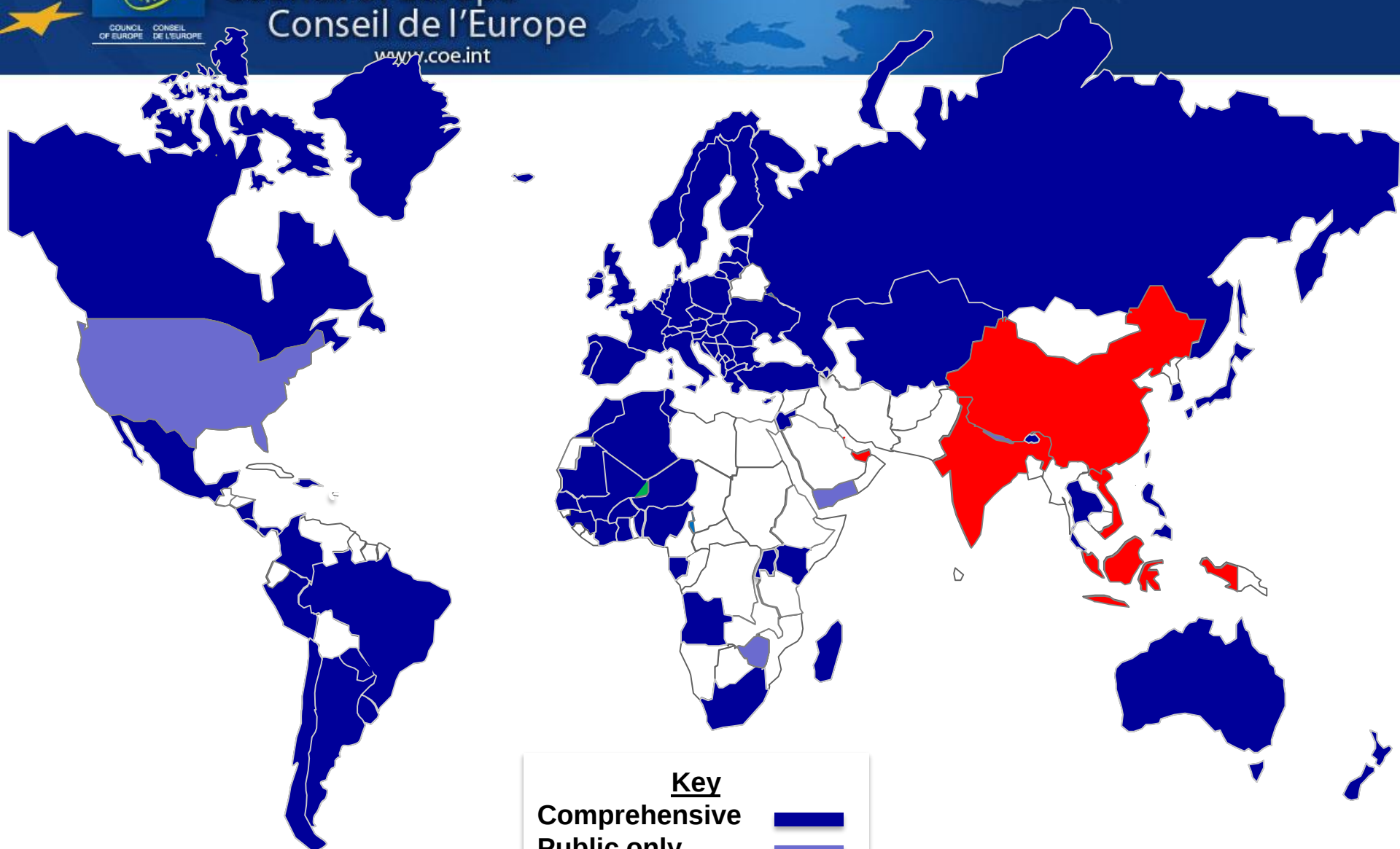




Council of Europe
Conseil de l'Europe

www.coe.int

Data Protection



137 Countries with
data privacy Laws
(November 2019)

Key	
Comprehensive	
Public only	
Private only	
Most Private	
Bills	

Courtesy

Pr Graham Greenleaf

Convention 108 (28 January 1981)

UNIQUE (no other international legally binding instrument in the field open to any country)

with a complying data protection legislation

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

Convention 108 today

55 countries bound by the Convention

= Argentina, Cabo Verde, Mauritius,
Mexico, Morocco, Senegal, Tunisia,
Uruguay + **47 CoE**

pending: Burkina-Faso

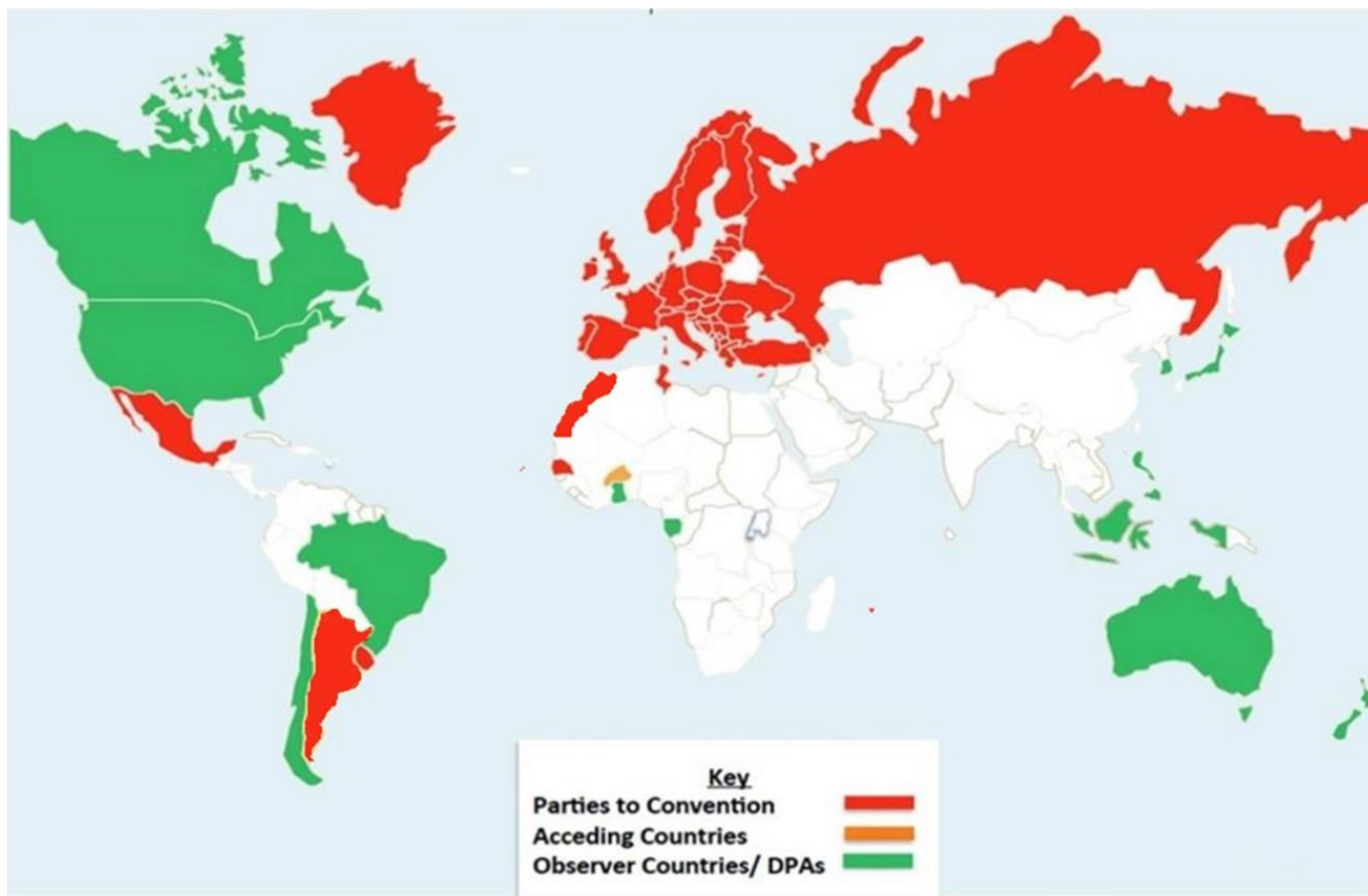
+ observers (Australia, Brazil, Canada, Chile,
Gabon, Ghana, Indonesia, Israel, Japan, South
Korea, Philippines, USA, New Zealand)

= NEARLY 70 COUNTRIES

Convention 108 Committee

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





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 2018



108+

Convention 108+

- Article 3 – scope

"data processing ... **in the public and private sectors...**

... shall not apply to data processing carried out by an individual in the course of purely personal or household activities."

Convention 108+

Sensitive data (article 6)

genetic data, biometric data uniquely identifying a person

“for the information they reveal” – only allowed where appropriate safeguards are enshrined in law, complementing those of the Convention.

+ Ethnic origin, trade-union membership

Convention 108+

Data **Security** (article 7)

obligation to notify, without delay, at least the competent supervisory authority, of those data breaches which may seriously interfere with the rights and fundamental freedoms of data subjects.

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+

Transborder dataflows (Article 14.1)

FREE FLOW BETWEEN PARTIES

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+

Cooperation (article 17)

Supervisory authorities “shall co-operate with one another to the extent necessary for the performance of their duties and exercise of their powers, in co-ordinating their investigations or interventions, or conducting joint actions;”



Tweet



Martin Selmayr
@MartinSelmayr



Convention 108 of @coe is "mother" of the #GDPR, the EU's directly applicable common data protection law as of 25/5/2018 #dataprotectionday

 Traduire depuis : anglais

28/01/2017 09:13

9 RETWEETS 10 J'AIME



Convention 108 and the EU

95/46 EU Directive

Preamble, Recital 11:

“Whereas the principles of the protection of the rights and freedoms of individuals, notably the right to privacy, which are contained in this Directive, **give substance to and amplify** those contained in the Council of Europe Convention”

Convention 108 and the GDPR

Recital 105

the Commission should take account of obligations arising from the third country's [...] participation in multilateral or regional systems [...]. In particular, the third country's accession to **Convention 108** should be taken into account.

Convention 108 and the GDPR

WP 254 rev.01

Article 29 Working Party

Adequacy Referential

Adopted on 28 November 2017

As last Revised and Adopted on 6 February 2018

Adequacy Referential WP254

This document seeks to update Chapter One of WP12 relating to the central question of adequate level of data protection in a third country [...]. This document will be continuously reviewed and if necessary updated in the coming years, based on the practical experience gained through the application of the GDPR. Chapters 2 (**Applying the approach to countries that have ratified Convention 108**) and 3 (*Applying the approach to industry self-regulation*) of the WP12 document should be updated at a later stage.

Universal? CALL FOR ANY UN MEMBER STATE TO ACCEDE

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



Thank you for your attention

www.coe.int/dataprotection

dataprotection@coe.int

