



International Data Protection Conference

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**Modernisation of the Council of
Europe Convention for the protection
of individuals with regard to
automatic processing of
personal data:**

**from a European to a Universal
standard of data protection ?**

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Introduction

The 30th anniversary of Convention 108: An opportunity to review and look to the future

- **IT Revolution:** from big computers to micro-, nano-multifunctional-, and ubiquitous- computer systems
- **Disparity:** in the protection of rights and fundamental freedoms of citizens
- **Object and purpose:** the increasing relevance of the Convention



Introduction

What we need to do now:

- **analyse** if the Convention and its additional Protocol meet the expectations of up-to-date data protection legislation
- **examine** if the Convention and its additional Protocol could form the basis for a binding universal standard



Strengths of Convention 108

- Reference text
- First international legally binding treaty
- Universal basic principles of data protection
- Drafted in a simple, general and technologically-neutral way
- Cross-cutting scope of application covering all data processing in the public and private sector



Strengths of Convention 108

- Provides a high level of protection and free flow of information between the Parties + requirement of ensuring an adequate level of protection for data transfers to non-parties
- Framework for multilateral co-operation through a conventional consultative committee
- Not a purely « European » instrument
- Open to the accession of non-member states of the Council of Europe



Modernisation of Convention 108

3 main objectives:

- **To deal with challenges** to the right to data and privacy protection resulting from the use of ICTs
- **To strengthen** the Convention's implementation and follow-up mechanisms
- **To promote** working methods favouring an open and multi-party approach



Modernisation of Convention 108

4 general trends

- **Preservation** of its general, simple, flexible and pragmatic character
- **Consistency** with the legal framework of the European Union
- **Retention** of its technologically-neutral provisions
- **Preservation and promotion** of its open character and potential as a universal standard



Necessary changes to Convention 108?

- **Object and purpose:** strengthen the right to data protection
- **Definitions:** update some concepts, for example « automated data files », « automatic processing », « controller of the file »
- **Scope:** retain its cross-cutting nature - except for household data processing
- **Basic principles:**
 - incorporate the principle of proportionality and data minimisation
 - focus on privacy by design and accountability
- **Lawfulness** of data processing (in particular, consent)



Necessary changes to Convention 108?

- Sensitive data: the present definition should be retained
- Data security: obligation to report security breaches, obligation to design processing systems that minimise risks of violation to data and privacy protection
- Strengthen the rights of data subjects:
 - access to the origin of the data
 - right to be forgotten
 - right of opposition
 - right not to be subject to an automated individual decision
 - strengthen sanctions and remedies



Necessary changes to Convention 108?

- **International co-operation:**
 - strengthen the competence and independence of DPAs
 - strengthen the Consultative Committee's functions and powers

- **Transborder data flows**
 - find an effective balance between the free flow of data and a sufficiently high level of protection



Convention 108 - Conclusions

- **Modernisation** : a Council of Europe priority
- **Promotion**: accession of third countries
- **Amendments**: updated recommendations that are more user-friendly and universally-applicable
- **Dialogue**: open, wide-reaching and holistic
- **Follow-up mechanisms**: reinforcement



Result

Convention 108:

Unique potential to become **the**
major standard
in universal data protection
legislation

