



Geneva, IoT Week 2017

Convention 108 of the Council of Europe for the Protection of Individuals with regard to Processing of Personal Data

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of Convention 108



Convention 108

Sole legally binding international instrument

36 years old: 50 Parties (including Uruguay, Mauritius, Senegal)

Pending accession: Morocco, Tunisia, Cabo Verde, Burkina Faso

Other interested countries

USA, Canada, Mexico, Indonesia, Japan, and non state actors are observers to the work of the Consulative Committee 108



Convention 108 - Modernisation

Current modernisation to:

- Reinforce the individual's protection
- Strengthen the follow-up mechanism

Modernisation trends:

- Promote as a universal standards
- Preserve general, simple, flexible and pragmatic character
- Ensure coherence with relevant frameworks (EU, OECD, APEC):

It will reflect the same principles as those enshrined in the new EU data protection rules and thus contribute to the convergence towards a set of high data protection standards.

Modernisation draft should be adopted during this year and then opened to signature



Content of the Convention

- Object and Purpose
- Basic Principles
- Legitimacy of Processing
- Sensitive Data
- Right of the Data Subjects
- Obligation of the Controller, Processor
- Transborder Data Flows
- Supervision
- Convention Committee



Object and Purpose

Protect every individual, whatever his or her nationality or residence, with regard to the processing of their personal data, thereby contributing to respect for his or her human rights and fundamental freedoms, and in particular their right to privacy (Article 1)



Basic Principles for Data Protection

- Processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned and the rights and freedoms at stake
- Fairness
- Lawfulness
- Purpose Limitation
- Adequate, relevant and not excessive (minimisation)
- Limited Conservation
- Accuracy
- Security



Legitimacy of Data Processing

Data should only be processed if:

- free, specific, informed and unambiguous consent, or
- Other legitimate basis laid down by law.



Sensitive Data

- Only allowed where appropriate safeguards are enshrined in law, complementing those of the Convention
- **Sensitive** data:
 - genetic data, biometric data uniquely identifying a person, ...
 - “for the information they reveal relating to racial or ethnic origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life”



Right of the Data Subjects

- Right of Access;
- Right not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration;
- Right to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her.



Obligations of the data controller

- Transparency

Obligation for the controller to provide a detailed list of information, as well as any necessary additional information in order to ensure fair and transparent processing

- Notification of data breaches
- Accountability

Take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate compliance

- Data protection impact assessment
- Design the processing to prevent or minimise the risks (privacy by design, privacy by default)
- Implement technical and organisational measures at all stages of the processing



Conclusion

- Modernised Convention will be more consistent with European Union law
- Convention contains basic data protection principles that are already universally recognized
- Data protection will become more effective
- In a globalised and digitalised world, a universal framework for data protection is an **absolute necessity**.