From digitilisation to development: the need for data protection

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THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS

3. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to express his opinions freely, either orally, in writing or in any other manner.

4. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either individually or in community with others and in public or private, to manifest his宗教, to exhibit his ways of life, to observe his religious and belief community rites and to maintain or break off marital and family relations.

5. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and shall be free. No one shall be denied economic, social or cultural educational opportunities on account of race, colour, sex, language, political or other opinions, membership of a national ethnic, religious, or social group, property, birth or other status.

6. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

7. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the enjoyment of them. Parents have a right to ensure to their children the conditions of life required for their health and development.

8. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be realized.

9. The States Parties to this Declaration undertake to respect and ensure to all individuals in their territories the rights set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

10. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to be treated equally by all public authorities and to equal protection against any discrimination in respect of all the rights and freedoms set forth in this Declaration.
The European Convention/Court on Human Rights
Data protection in eCommerce

PROTECT

GROW

TRANSBORDER DATA FLOWS
Convention 108 (28 January 1981)

**UNIQUE** (no other international legally binding instrument in the field)

**OPEN** (any country in the world with a complying data protection legislation can request invitation to accede)

**INFLUENTIAL** (its principles = data protection principles taken up in all regions of the world)
Convention 108 today

54 countries bound by the Convention
= Argentina, Cabo Verde, Mexico, Mauritius, Senegal, Tunisia, Uruguay
+ 47 CoE
pending: Burkina-Faso and Morocco

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

= NEARLY 70 COUNTRIES
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 ............ 18 May 2018

Opening for signature on 10 October 2018
Convention 108+

Transborder dataflows (Article 14.1)

FREE FLOW OF DATA BETWEEN PARTIES

Limitation to free flow between Parties only 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. (/EU)
GDPR

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
Convention 108 of @coe is "mother" of the #GDPR, the EU's directly applicable common data protection law as of 25/5/2018 #dataprotectionday
COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Exchanging and Protecting Personal Data in a Globalised World

Brussels, 10.1.2017
COM(2017) 7 final
2. The EU Data Protection Reform Package – A Modern Legislative Framework That Supports International Data Flows With High Protection

The reform of EU data protection legislation adopted in April 2016 puts in place a system that both ensures a strong level of protection and is open to the opportunities of the global information society. In giving individuals more control over their personal data, the reform strengthens consumer trust in the digital economy. In harmonising and simplifying the legal environment it makes it easier and less burdensome for companies, both domestic and foreign, to conduct their business activities in the EU, including through international data exchanges. The EU today combines openness for international data flows with the highest level of protection for individuals. It has the potential to become a hub for data services which require both free flows and trust.
3. INTERNATIONAL DATA TRANSFERS IN THE COMMERCIAL SECTOR: FACILITATING TRADE BY PROTECTING PRIVACY

Respecting privacy is a condition for stable, secure and competitive global commercial flows. Privacy is not a commodity to be traded. The internet and digitization of goods and services has transformed the global economy and the transfer of data, including personal data, across borders is part of the daily operations of European companies of all sizes, across all sectors. As commercial exchanges rely increasingly on personal data flows, the privacy and security of such data has become a central factor of consumer trust. For instance, two-thirds of Europeans say that they are worried about having no control over the information they provide online while half of the respondents are concerned about becoming a victim of fraud. At the same time, European companies operating in some third countries are increasingly faced with protectionist restrictions that cannot be justified with legitimate privacy considerations.

In the digital era, promoting high standards of data protection and facilitating international trade must thus necessarily go hand in hand. Whereas the protection of personal data is non-negotiable in trade agreements, the EU regime on international data transfers, as outlined above, provides a broad and varied toolkit to enable data flows in different situations while ensuring a high level of protection.
International dimension of data protection

Rules on international data transfers
EU-US data transfers
Adequacy decisions
Binding Corporate Rules (BCR)
Standard Contractual Clauses (SCC)
**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.
Article 3

Territorial scope

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b) the monitoring of their behaviour as far as their behaviour takes place within the Union.
Joseph A. Cannataci, Special Rapporteur on the right to privacy
Call for UN member countries to accede


Annual report - UN General Assembly (2018)
Report A/73/45712

“As an interim minimum response to agreeing to detailed privacy rules harmonised at the global level, ALL UN Member States be encouraged to ratify data protection Convention 108+ [...].”
Handbook on European Data Protection Law

Handbook on European data protection law

2018 edition
Thank you for your attention

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