



Council of Europe
Conseil de l'Europe



Webinar series
The governance of data flows and trade



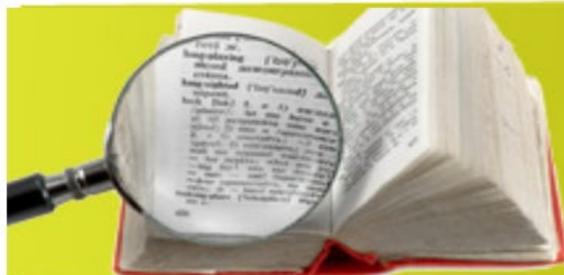
Privacy across borders: how do we ensure it in a globalized trading system?

Facilitating transborder data flows: Convention 108 and Convention 108+

Council of Europe
Conseil de l'Europe

Sophie Kwasny, 10 November 2020

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.

The European Convention on Human Rights and the European Court of Human Rights



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)



Privacy and Trade: a win-win

Data flows

Require...

Mutual trust and cooperation

Based on the commitment to respect
common principles // creation of a
common legal space

Rationale of Convention 108

Preamble

- Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the **increasing flow across frontiers** of personal data undergoing automatic processing;
- Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the **free flow of information between peoples**,

Rationale of Convention 108

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Rationale of Convention 108

Explanatory report

- "Information power" brings with it a corresponding social responsibility of the data users.
- The question has arisen to what extent national data protection laws afford adequate protection to individuals when data concerning them flow across borders.
- In principle, it should make no difference for data users or data subjects whether data processing operations take place in one or in several countries.

Convention 108 today

55 countries bound by the Convention

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

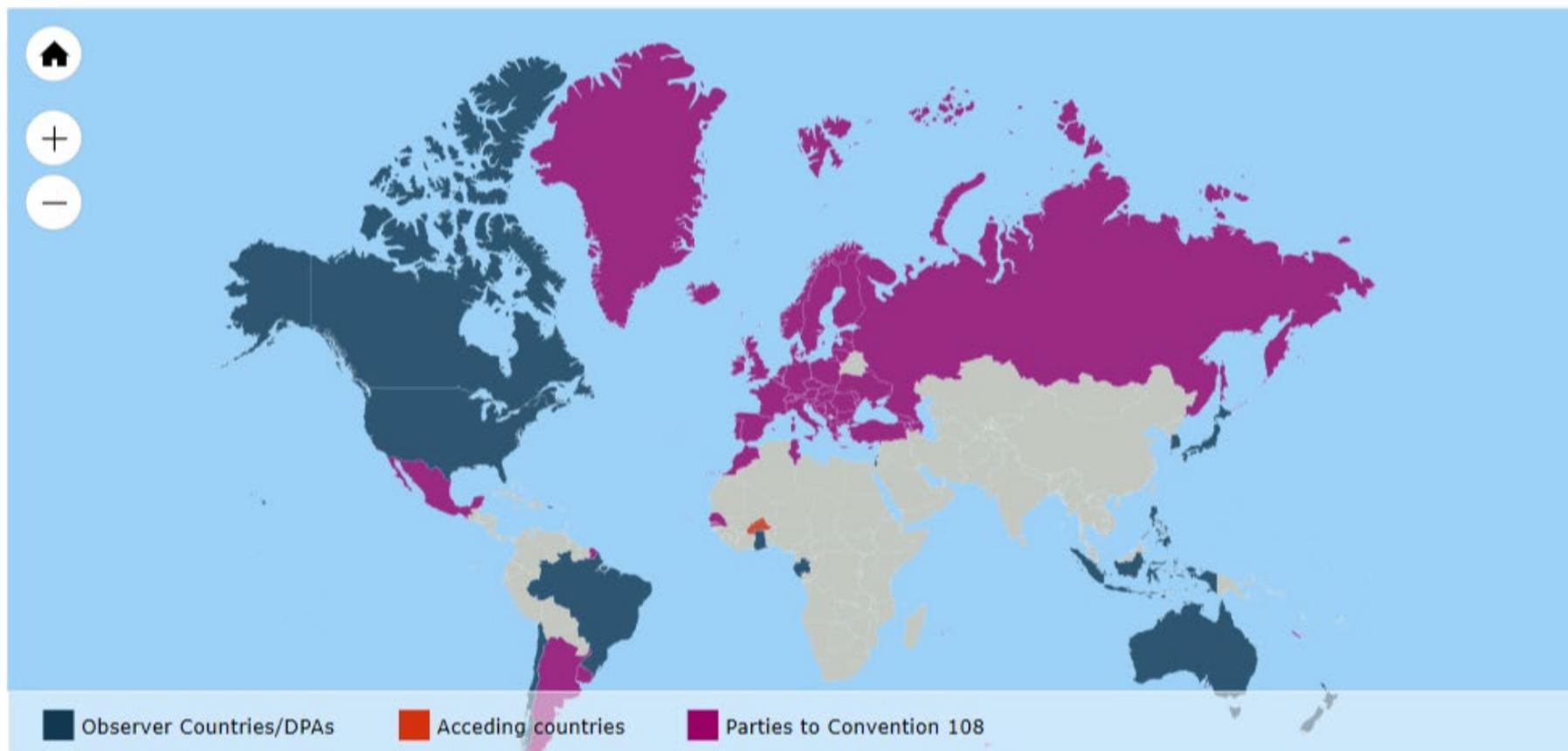
pending: Burkina-Faso

+ **Observers** (Australia, Brazil, Canada, Chile,
Gabon, Ghana, Indonesia, Israel, Japan, São
Tomé and Príncipe South Korea, Philippines,
USA, New Zealand)

= 70 COUNTRIES



CONVENTION 108



Convention 108 - Modernisation

January 2011 18 May 2018





Convention 108+

Transborder dataflows (Article 14.1)

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+

Transborder dataflows (article 14.3 and 14.4)

- Means to secure an appropriate level of protection (*ad hoc* or approved standardised safeguards provided by legally binding instruments)
- Possibilities to transfer where consent, specific interests of the data subject, prevailing legitimate interests provided for by law and are necessary

Convention 108 and the EU

“It [Convention 108+] 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.”



Brussels, 10.1.2017
COM(2017) 7 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL

Exchanging and Protecting Personal Data in a Globalised World

EU member states



Police and
Justice
Directive

E-privacy

Convention 108

GDPR

ECHR

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.

One element of response to “Schrems II” ?

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

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