



# & R X Q F L O R I ( X U R S H



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.



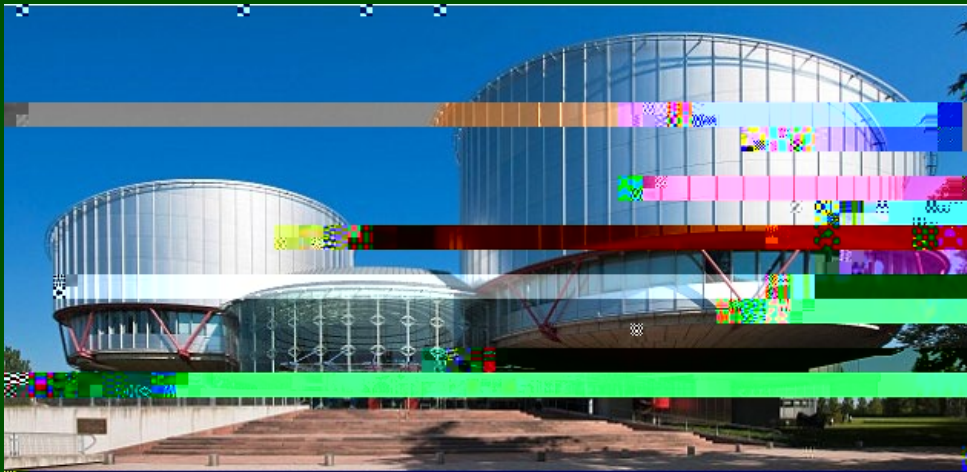
## European Council

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 defining the general policy.

## European Union

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. 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+

### 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.

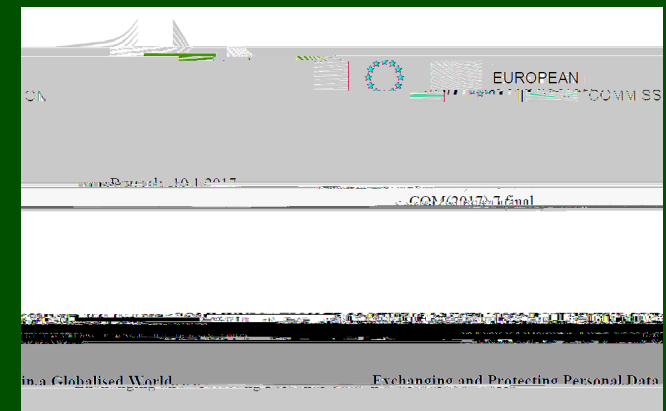
## Convention 108+

### 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

& R Q Y H Q W L R Q D Q G V

“It [Convention 108+] will reflect the same principles as those enshrined in the new (8 data protection rules and thus contribute to the convergence towards a set of high data protection standards.”



( 8 P H P E H U V W D W H V

Police and  
Justice  
Directive



GDPR

## 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.





## 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 helex01 01

## Universal? CALL FOR ANY UN MEMBER STATE TO ACCEDE

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

