

CDL-INF(2023)013

Or. En.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in cooperation with

**THE MINISTRY OF DIGITAL TRANSITION AND ADMINISTRATIVE
REFORM OF THE KINGDOM OF MOROCCO**

Regional seminar for senior civil servants

17th UniDem Med

**" DIGITAL TRANSFORMATION AND ARTIFICIAL
INTELLIGENCE: RULES AND APPLICATIONS "**

hybrid format (online and in Rabat, Morocco)

21-22 November 2023

**RESPECT FOR PRIVACY AND DATA PROTECTION: THE EUROPEAN LEGAL
FRAMEWORK AND IN THE SOUTHERN MEDITERRANEAN REGION**

by Ms Elsa MEIN

(Chair of the Committee of the Convention 108, Council of Europe)

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

The UniDem Med project is implemented in the framework of the joint European Union/Council of Europe programme
"Protecting human rights, the rule of law and democracy through shared standards in the Southern Mediterranean"
(South Programme V)



Council of Europe
Conseil de l'Europe

Digital Transformation and Artificial Intelligence: Rules and Applications

Respect for Privacy and Data Protection: Convention 108+

Council of Europe
Conseil de l'Europe

Elsa Mein
Chair of the Committee of Convention 108



- Do the EU GDPR and Council of Europe Convention 108+ provide a legal framework for the use of AI and new technologies in order to respect the fundamental rights of citizens?
- What are the limits?

What is Convention 108 +?

Convention for the Protection of
Individuals with Regard to the
Processing of Personal Data

La Convention 108+



Convention 108 today

55 countries bound by the Convention

= Argentina, Cabo Verde, Mauritius,
Mexico, Morocco, Senegal, Tunisia,
Uruguay **+ 46 CoE**

+ 34 observers (Australia, Brazil, Canada, Chile,
Gabon, Ghana, Indonesia, Israel, Japan, South
Korea, Philippines, USA, New Zealand)

Convention 108 - Modernisation

- Reinforce the protection of individuals
- 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 (including with the EU)



Preamble

*“Considering that it is necessary to secure the **human dignity** and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, **personal autonomy based on a person’s right to control of his or her personal data** and the processing of such data;”*

Convention 108 +

Article 1:

“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”

Preamble

Chapter I – General provisions

Article 1 – Object and purpose

Article 2 – Definitions

Article 3 – Scope

Chapter II – Basic principles for the protection of personal data

Article 4 – Duties of the Parties

**Article 5 – Legitimacy of data
processing and quality of data**

**Article 6 – Special categories of
data**

Article 7 – Data security

**Article 8 – Transparency of
processing**

**Article 9 – Rights of the data
subject**

Article 10 – Additional obligations

**Article 11 – Exceptions and
restrictions**

**Article 12 – Sanctions and
remedies**

Article 13 – Extended protection

Convention 108 +

- Article 3 – scope
 - "data processing ... **in the public and private sectors...**

Convention 108 +

- Article 5 - legitimacy of data processing and quality of data

*“... 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.”*

Convention 108 +

Data **Security** (Article 7)

1. Each Party shall provide that the controller, and, where applicable the processor, takes appropriate security measures against risks such as accidental or unauthorised access to, destruction, loss, use, modification or disclosure of personal data.

Convention 108 +

Transparency (Article 8)

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

Convention 108 +

Rights of the data subject (article 9)

"... 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"

"...to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her"

Convention 108 +

Additional obligations (Article 10)

- “... take all appropriate measures to comply with the obligations of this Convention and be able to demonstrate (subject to exceptions)...compliance ”
- “examine the likely impact ... prior to the commencement (PIA)... and design the processing to prevent or minimise the risk” (**PbD**).
- “ implement **technical and organisational** measures at all stages of the processing. (DPO, etc..)
- Adapted according to the context of the data processing



Guidelines on Artificial Intelligence and Data Protection

<https://rm.coe.int/2018-lignes-directrices-sur-l-intelligence-artificielle-et-la-protecti/168098e1b7>



Things to take into account:

- *Data protection is not an obstacle: It is the basis for the trust of citizens in a good and efficient administration*
- *Data protection works on the basis of “privacy by design” – it needs to be thought of from the very beginning when developing (→ “in house developing”)*

Conclusions

1. The right to privacy, data protection and artificial intelligence cannot be thought of separately
2. Data protection rules are not the answer to all questions - but with regard to artificial intelligence they lay down a solid foundation
3. The modernized Convention 108 + gives the "tools" to lay down the foundation to build upon

Thank you for your attention
Merci pour votre attention



www.coe.int/dataprotection
dataprotection@coe.int