



## **European Conference of Data Protection Authorities**

**Strasbourg, 5 June 2014**

### **Resolution on the revision of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)**

The European data protection authorities have on several occasions, at their previous Spring Conferences, clearly stated their intention to contribute actively to the development of data protection in Europe and beyond, and to promote high standards in this area.<sup>1</sup>

Aware of the major challenges and the risks posed by technological developments, and by the increasing tendency on the part of governments to carry out mass surveillance of individuals, the Conference confirms the need to modernise and strengthen the various legal frameworks for data protection, drawing on existing principles.

The globalisation of data processing and exchanges of data also demands a comprehensive approach, taking into account not only the European but also the international framework.<sup>2</sup>

In the light of the above, the Conference supports the Council of Europe's efforts to modernise the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) and its additional protocol, both of which affirm universal principles.

While the Conference commends the Council of Europe for encouraging countries which are not parties to Convention 108 and its additional protocol to accede thereto, it emphasises that this willingness to open up must not lead to a reduction in the high standard of data protection currently provided by these instruments.

In this context, the Conference notes that any reduction in the level of protection currently afforded by Convention 108 and its protocol would be a step backwards.

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<sup>1</sup> Declaration on leadership and the future of data protection in Europe adopted on 23-24 April 2009 in Edinburgh, Resolution on the future development of data protection and privacy adopted on 30 April 2010 in Prague.

<sup>2</sup> Resolution on the need for a comprehensive data protection framework adopted on 5 April 2011 in Brussels.

In the light of the above, the Conference calls on Council of Europe member states and the States Parties to Convention 108 to preserve and, where possible, increase the current level of protection afforded by the Convention and, in particular, as proposed by the Consultative Committee (T-PD), to :

- **Maintain a broad scope**, covering all personal data processing operations in the public and private sectors which are within the jurisdiction of the States Parties so as to secure for every individual, whatever their nationality or residence, the right to the protection of personal data;
- **Limit the exemptions** from the principles of data protection, any such exemptions having to be **regulated by law, proportionate and necessary in a democratic society**;
- **Place genetic data and biometric data in the sensitive data category**;
- **Introduce**, in the context of compliance with the principle of proportionality, **a data minimisation principle**;
- **Provide that where consent is required for processing, it must be specific, freely given, informed and be an express indication of will**;
- **Reiterate the importance of the principle of transparency**, which requires controllers to inform the persons whose data are processed at least of the identity of the controller and the purposes of the processing, but also of the recipients of the data and means of exercising their rights;
- **Improve the rights granted to individuals**, in particular the right of access, of rectification and the right to object;
- **Include** provisions designed to regulate **decisions based solely on an automated processing of data**;
- **Include obligations of accountability**, requiring controllers and processors, at all stages of the processing, to take appropriate measures to ensure and demonstrate compliance with the Convention, and to take into account data protection from the processing design phase;
- **Introduce an obligation to notify security breaches**;
- **Maintain the high level of personal data protection and supervision of international data transfers**, in the interests of consistency and compliance with the legal framework of the European Union;
- **Ensure an evaluation prior to ratification or accession to the Convention, but also afterwards**, in order to verify the existence, compliance with and effectiveness of the measures taken to give effect to the provisions of the Convention.

Furthermore, States Parties should ensure the **representation of the data protection authorities in the Consultative Committee** of Convention 108.

Lastly, the Conference **notes that effective data protection requires the establishment of independent supervisory authorities**. In this respect, it considers in particular that data protection authorities must at the very least:

- have powers of investigation and intervention, as well as the power to issue decisions and impose sanctions;
- be able to issue opinions on any matter relating to data protection and in particular to be consulted about any legislative or administrative proposal concerning data protection;

- be able to engage in effective co-operation, by exchanging all useful information and co-ordinating their activities through a network.

Through this Resolution, the Conference welcomes the proposals made by the Consultative Committee and invites the Council of Europe to take them on board in its work. It emphasises that the revision of the legal frameworks for data protection is an opportunity to make a real improvement to data protection and to ensure more effective protection for everyone. In this respect, it reiterates the determination of the data protection authorities to work with one another and with the Council of Europe on these objectives, in a spirit of co-operation.