

32nd International Conference of Data Protection and Privacy Commissioners

Jerusalem, 27 - 29 October 2010

Draft Resolution calling for the organisation of an intergovernmental conference with a view to developing a binding international instrument on privacy and the protection of personal data

Proposer : Commission nationale de l'informatique et des libertés (CNIL)

Co-sponsors : Österreichische Datenschutzkommission (Austria)
European Data Protection Supervisor
Irish Data Protection Commissioner (Ireland)
Garante per la Protezione dei Dati Personali (Italy)
New Zealand Privacy Commissioner (New-Zealand)
College Bescherming Persoonsgegevens (Netherlands)
Agencia Española de Protección de Datos (Spain)
Préposé fédéral à la protection des données et à la transparence (Switzerland)
Information Commissioner's Office (United Kingdom)

The Conference recalls that, among other things :

- the Venice Declaration adopted at the 22nd Conference ;
- the Resolution on Data Protection and International Organisations adopted in Sydney at the 25th Conference ;
- the Montreux Declaration adopted at the 27th Conference ;
- the London Initiative presented at the 28th Conference ;
- the Resolution on International Cooperation adopted in Montréal at the 29th Conference ;
- the Resolution on International Standards adopted in Strasbourg at the 30th Conference ;
- the Resolution on International Standards on the Protection of Personal Data and Privacy adopted in Madrid at the 31st Conference ;

tend to reinforce the universal nature of the rights to data protection and privacy and call for the standardisation of the individuals' protection level at a national and international level through the development of an universal convention on the protection of individuals with regard to the processing of personal data.

In particular, in the **Montreux Declaration**, the Conference called on the UN to prepare a binding legal instrument clearly setting out in detail the rights to data protection and privacy as enforceable human rights. The Declaration also encouraged the Heads of State and Governments to develop or reinforce a legal framework intended to guarantee the right to data protection and privacy of all citizens and to extend the adoption of legal instruments on data protection and privacy to their mutual relations. The Conference appealed furthermore to the Council of Europe to invite non member-states of the Council which already have adopted and implemented a data protection legislation, to accede to the Convention for the protection of individuals with regard to automatic

processing of personal data (STE N° 108) and the additional Protocol regarding supervisory authorities and transborder data flows (STE N° 181) ;

The 30th Conference adopted a **Resolution on the urgent need for protecting privacy in a borderless world and for reaching a Joint Proposal for setting International Standards on Privacy and Personal Data Protection**. The Conference has repeatedly supported the efforts of the Council of Europe to promote the accession to Convention 108 and its additional Protocol.

Furthermore, the Conference created a working group, coordinated by the data protection authority from Spain, which presented to the 31st Conference a **Joint Proposal for a Draft of International Standards on the Protection of Privacy with regard to the processing of Personal Data**. This proposal was accepted at the 31st Conference and the data protection authorities organising the 31st and the 32nd Conferences were asked to coordinate a Promotion Group, responsible for circulating and promoting the **Joint Proposal** to relevant private entities, experts, national and international authorities as a basis for future work toward the development of a binding international convention; and to explore and account for other possibilities for using the Joint Proposition as a basis for developing understanding and international cooperation with regard to data protection and privacy.

The Conference considers that :

- The rights to data protection and privacy are fundamental right of every individual and are indispensable conditions in a democratic society to safeguard the respect for the fundamental rights of individuals, a free flow of information and an open market economy ;
- Considering the rapid increase in international processing and transfers of personal data and the increasing dependence of societies upon new technologies, the elaboration of international rules to guarantee in a uniform way the respect for data protection and privacy has become an absolute necessity ;
- In this respect, the actions carried out by different international organisations must be positively welcomed for the realisation of this goal. In particular and among others, the initiatives of the OECD, the European Union, the Council of Europe, APEC, UNESCO, the International Organisation of the Francophonie, the Economic Community of West African States (ECOWAS), the International Organisation for Standardisation (ISO) and the Internet Governance Forum should be welcomed. The work of data protection authorities' groupings such as the Iberian-American Data Protection Network (RIPD), the Association of French-Speaking Data Protection Authorities (AFAPDP), the Asia-Pacific Privacy Authorities Forum (APPA Forum) and the Global Privacy Enforcement Network (GPEN) should also be supported.
- Moreover, the **Joint Proposition** adopted in Madrid at the 31st Conference constitutes a first corpus of shared principles which was developed by the authorities members of the Conference and supported by experts from all over the world.
- The efforts and actions carried out by the Promotion Group have been essential to convey the urgent need for a global instrument for data protection, in particular to the national and international authorities.

- Despite these efforts, and although legislations on data protection have been adopted by States from all continents, sometimes referring explicitly to the **Madrid Resolution**, such as recently in Mexico, many disparities persist between the different legal systems ; moreover there is still a lack of guarantees for data protection in many States.
- Accordingly, governmental authorities and parliaments should work together to confer a legally binding value to the fundamental principles intended to uniformly guarantee the respect for data protection and privacy.
- The accession to the Convention 108 and its additional Protocol should strengthen the universal recognition of the fundamental data protection principles, in particular if, based on the **Madrid Resolution**, those principles are developed to face up to the new challenges and taking into account the different regional situations.
- An intergovernmental conference designed to reach an agreement on a binding international instrument would be another major step that would allow the fundamental breakthrough of the **Madrid Resolution** to become a legal and practical reality.

Accordingly, the Conference **resolves to :**

1. Encourage its members to continue promoting the **Joint Proposal** adopted in Madrid to the relevant national and international authorities, private entities and experts as a basis for future work towards the development of an international convention ;
2. Invite more specifically all data protection authorities, members of the Conference, to promote this **Joint Proposal** to the governments and parliaments of their states so that concrete and effective initiatives may be supported or taken ;
3. Actively support the initiatives aimed at finding appropriate solutions to continually assure the effective protection of fundamental rights and freedoms and the exercise of those rights, in particular the right to privacy with regard to processing of personal data, as well as for answering questions of transparency, enforcement, jurisdiction and responsibility raised by the use of information and communications technologies;
4. Call on the Governments to organise an intergovernmental conference, in 2011, or in 2012 at the latest, in order to reach an agreement on a binding international instrument guaranteeing the respect of data protection and privacy and facilitating international cooperation in the enforcement of those legal rules ;and
5. Encourage national and international organisations and elements of civil society interested in privacy and data protection to support the call for an intergovernmental conference and contribute to its realisation; and
6. Take all necessary measures to encourage the States not represented at the Conference to participate in this intergovernmental conference and so prompt the setting up of an appropriate legal framework in the States devoid of it.