



Opinion 296 (2017)¹

Draft protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its explanatory report

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 1732 \(2010\)](#) and [Recommendation 1920 \(2010\)](#) on reinforcing the effectiveness of Council of Europe treaty law in which it underlined the Council of Europe's essential role in drawing up human rights standards and its major contribution to the development of international law through its treaties. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter "Convention 108") is one example of a Council of Europe convention focusing on pressing issues and is undoubtedly one of the core Council of Europe treaties.
2. The Assembly emphasises that Convention 108 was the first, and is still the only, binding international legal instrument in the field of data protection. There is no other equivalent instrument in the world, and one of the reasons why it is unique is that it is open to all the countries in the world.
3. The Assembly is convinced of the urgent need to modernise Convention 108 in order to address developments in the constantly evolving field of information and communication technologies and so that the European law developed by the Council of Europe treaties continues to include groundbreaking provisions that supplement existing international law. The Assembly therefore welcomes the preparation of a draft protocol amending Convention 108 and its explanatory report, having as principal aims to provide a response to the challenges arising from developments in new information and communication technologies and to strengthen the implementation in practice of Convention 108.
4. Referring to its [Recommendation 2102 \(2017\)](#) on technological convergence, artificial intelligence and human rights, in which it already called on the Committee of Ministers to finalise without further delay the modernisation of Convention 108, the Assembly observes that, more than six years after the beginning of the revision process, difficulties in reaching a consensus on certain provisions in the draft amending protocol persist. These disagreements, in particular on the arrangements for the entry into force of the amending protocol, jeopardise the whole exercise and risk the Council of Europe losing its role as the lead player in the field of personal data protection.
5. Based on the optimistic assumption that an agreement will be found by the end of 2017, the Assembly recommends that the Committee of Ministers open the amending protocol for signature as quickly as possible and urges member States to ratify it without delay. If the text has to include a conventional ratification clause, this should contain a procedure to assess progress of the ratification process and provide for an alternative solution – namely the adoption of a new convention – if there is no immediate likelihood of the protocol's entry into force on the date of the assessment.
6. Accordingly, the Assembly believes that if disagreements continue beyond the end of 2017, it will be time for the Committee of Ministers to accept that it is impossible to amend Convention 108. In such a situation, the Assembly recommends that the Committee of Ministers initiate without delay negotiations for the prompt adoption of a new convention based on the draft amending protocol already approved by the Ad hoc Committee on Data Protection (CAHDATA).

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 24 November 2017 (see [Doc. 14437](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Raphaël Comte).*

