

***University of New South Wales Law Research Series***

**GLOBAL CONVERGENCE OF DATA PRIVACY  
STANDARDS AND LAWS (SPEAKING NOTES  
FOR THE EUROPEAN COMMISSION EVENTS  
ON THE LAUNCH OF THE GENERAL DATA  
PROTECTION REGULATION (GDPR),  
BRUSSELS AND NEW DELHI, 25 MAY 2018)**

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# Global convergence of data privacy standards and laws

*Speaking notes for the European Commission events on the launch of the General Data Protection Regulation (GDPR) in Brussels & New Delhi, 25 May 2018*

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*[Note: These are my Speaking Notes for my presentation and discussion contributions at the European Commission's General Data Protection Regulation (GDPR) launch events in Brussels (in person) and in New Delhi (by video) on 25 May 2018. The programmes for the two events are attached. The format of the two events allowed presentation of part of this content as an opening statement, and the rest was used as the basis of participation in subsequent discussion between Panelists. Powerpoints of maps were used in New Delhi but not in Brussels. The References at the end of these notes provide support for points made in the notes.]*

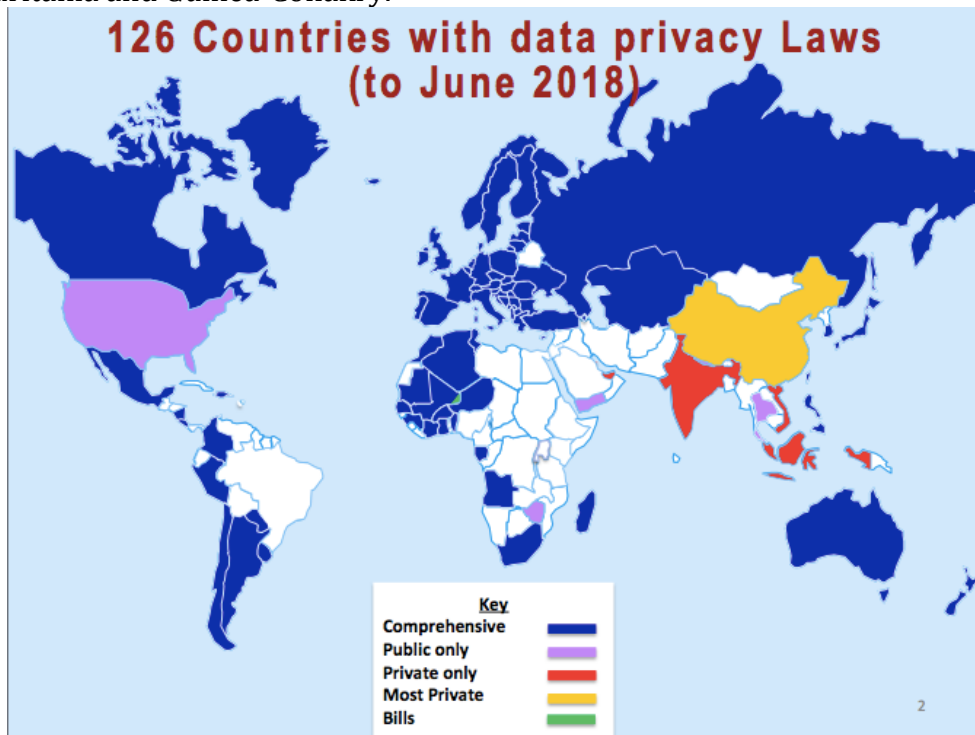
Commissioner Vera Jourova and distinguished guests,

My role is to give an overview of the relationship between new data protection standards such as the General Data Protection Regulation (GDPR) and what is being enacted in the rest of the world.

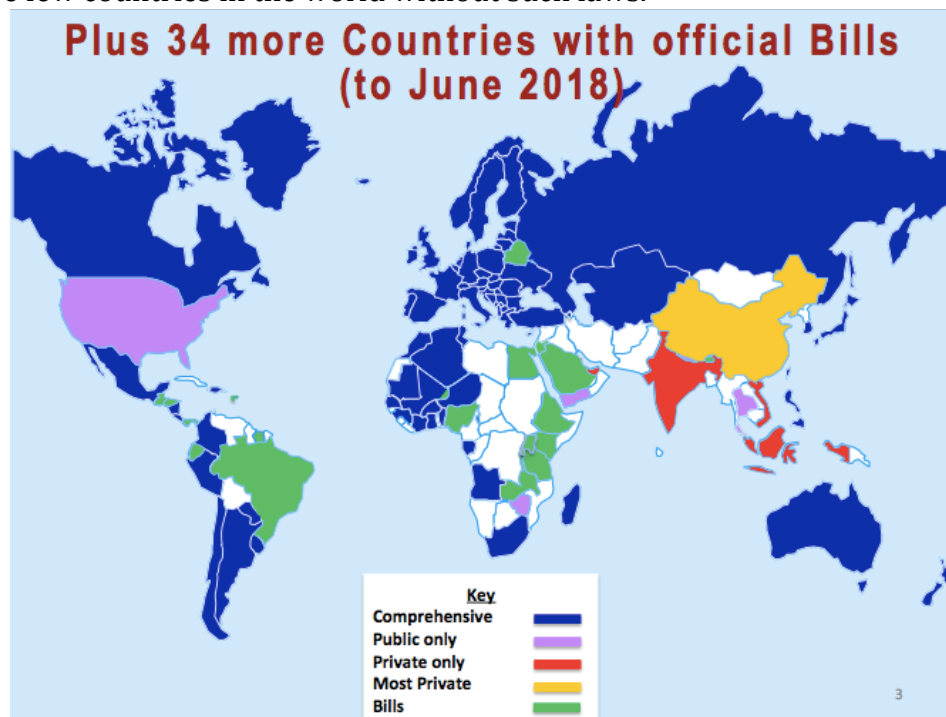
## The global diffusion of data privacy laws

The idea of data privacy laws first found fertile soil in Europe in the 1970s, with the first such law in the Lander of Hesse (Germany) in 1970. Almost 50 years later the twenty-first century reality is data privacy laws are now an ever-expanding global phenomena. Five facts tell this story concisely:

- (1) 126 countries now have data privacy laws which at least meet the **ten minimum standards** set by international agreements as early as 1980. The six most recent, enacted in the last twelve months, are from Algeria, St Kitts & Nevis and Cayman Islands, and Niger, Mauritania and Guinea-Conakry.



- (2) 60% of these laws (75) are from **outside Europe** and 75% outside the EU (& EEA). European laws have been in the **minority** since 2015, and will increasingly be in the minority because all 47 countries in the Council of Europe now have such laws.
- (3) 45 of the 126 laws have been enacted this decade, **an average of 5 new laws per annum**. Growth is not slowing down.
- (4) At least 34 further countries have **official Bills** in the legislative process. By next decade there will be few countries in the world without such laws.



- (5) Many countries are now enacting, or have already enacted, **new laws to strengthen** their original DP laws, not only in the EU, but in every corner of the world where the GDPR is having an impact as the recognized ‘gold standard’ of data protection.

Important recently updated laws, and Bills likely to be enacted soon, include those from Tunisia, Thailand, Indonesia, Chile, Brazil, Canada and New Zealand. Benin, whose 2017 updated law is almost a replica of the GDPR, should get the prize for the most successful GDPR ‘early adopter’.

### Global convergence on higher standards

It is remarkable that this global profusion of laws has not led to chaotic differences in standards: in fact, it has resulted in a **high level of global convergence** of standards. First, all of these 126 laws **share the 10 core elements** established in 1980 by the original version of Council of Europe Convention 108 and the OECD’s privacy Guidelines.

However, the convergence goes much further. The EU Directive of 1995 marked a second stage in the evolution of data privacy laws. In the two decades since, there has been a remarkable degree of global convergence around those higher standards. This has not involved a wholesale adoption of all 10 distinctive principles in the Directive, but widespread enactment of **those principles regarded as most important and desirable** by particular countries. My estimate is that the average enactment across **all 75 non-European laws is at least 7/10 of those principles**. Within European jurisdictions it is closer to 10/10.

In the **20 highest GDP** countries from the 75 outside Europe, there is an enactment on average of 6/10 of the Directive's principles. Therefore, we can conclude that data protection laws outside Europe already converge on **more than ½ of the higher standards** that have been required in Europe since the 1990s.

There is a **lower standard** but it is a failure. The APEC Framework and its Cross-border Privacy Rules (CBPRs), and the OECD Guidelines from which they derive, are largely **frozen in 1980**. There are **no APEC member countries whose national laws are as low** as APEC's own low standards. Companies are also unable to find a business case for CBPRs certification, with no Japanese companies, and only 20 US companies, becoming certified. [I note that Microsoft is not one of those US companies.]

### GDPR: Already influencing a higher level of legislative convergence

The GDPR adds many important new principles. There is already a surprisingly high amount of enactment of such principles **outside** Europe, influenced by the GDPR's development since 2011. Early **examples just from Asia** included Malaysia (data portability); Korea (4% administrative fines); Indonesia ('right to be forgotten'); and mandatory data breach notification (DBN) in six countries.

An incomplete study, by me and Prof Bertil Cottier, of **over 30 countries outside Europe** (in Africa, Asia and elsewhere), shows the following 'GDPR principles' enacted by **at least 10 countries**:

- *DPA's enabled to make binding decisions and issue administrative sanctions including fines;*
- *Right to object to processing based on controller or public interests;*
- *Data breach notification to DPA and to data subjects (**also adopted in the US**);*
- *Stronger consent requirements;*
- *'Sensitive data' to include biometrics and/or genetic data;*
- *Mandatory Data Protection Officers (DPOs) for some processing.*

All other new GDPR principles had at least one, and as many as nine enactments. These include the right to be forgotten, data portability, and privacy by design and default.

Bills still being enacted show high GDPR influences (including Thailand, Indonesia, Tunisia, Algeria and Brazil). Thailand's Cabinet this week adopted a heavily GPPR-influenced Bill.

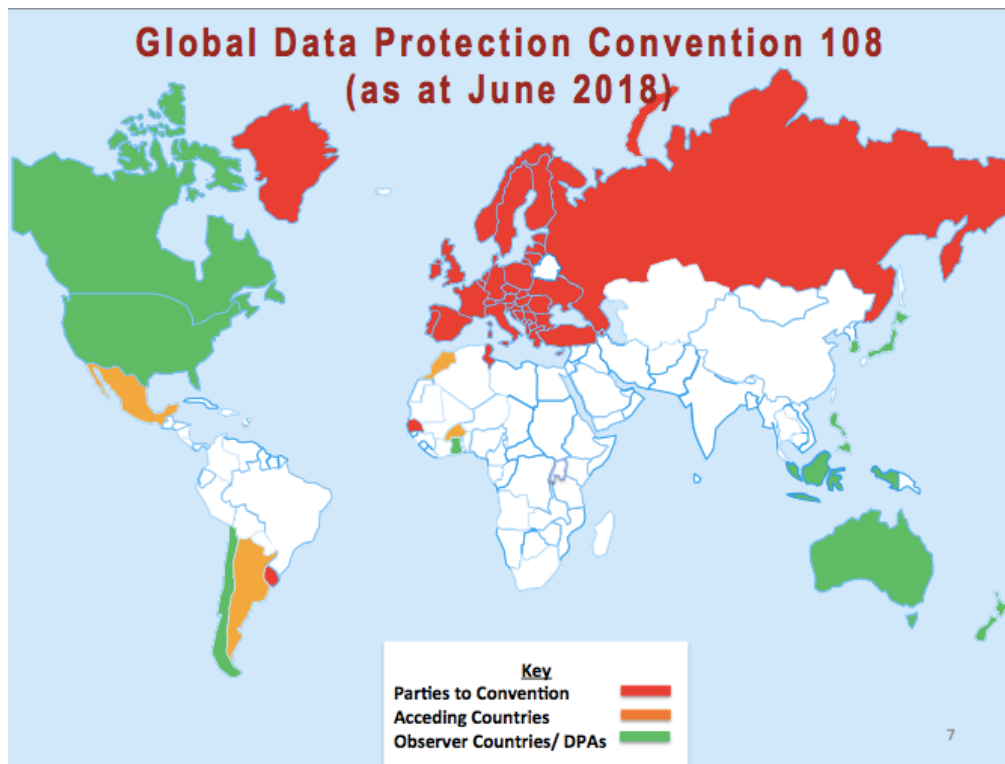
### 'GDPR creep': voluntary convergence by businesses

The GDPR's influence is not only through local legislative enactments, or through its extra-territorial application. Companies outside Europe are **adopting 'GDPR compliance'** across their whole business operations, even though there is no legal obligation to do so. This has two forms: **Vertical** (where multi-national companies with some EU operations want global consistency); and **Horizontal** (in business-to-business (B2B) arrangements where companies want their suppliers to be 'GDPR-compliant.'). This extra-legislative 'GDPR-creep' may be just as significant as legislative adoption. Microsoft exemplifies such voluntary adoption of GDPR.

### Convergence on a global treaty: Data Protection Convention 108

Although it originated from the Council of Europe, since 2011 data protection Convention 108 is steadily being **'globalised'**. In addition to its 47 European parties, **four** countries outside Europe are now **Parties**: Uruguay, Mauritius, Senegal, and Tunisia. **Five** more countries have had **Accession requests** accepted: Morocco, Cape Verde, Argentina, Mexico, and Burkina

Faso. Eleven other countries, or their DPAs, are now **Observers** on its Consultative Committee.



With 51 Parties, soon to be 56, it is time to **rename** the Convention as the '**Global Data Protection Convention 108**'. As well as being 'globalised', last week (18 May) the '**Modernisation**' of Convention 108 was finalized. The new version of the Convention, now open to accession by existing and new Parties, includes many but not all of the GDPR's new elements. This '**GDPR lite**' Convention may approximate what the **next decade's global convergence will look like**.

### Potential impediments to adoption of high global standards

There are two potential legal impediments to convergence on higher global standards. First, countries may make commitments to **regional agreements requiring lower standards**, including to allow data exports, and then legislate to implement them. This can make it difficult if not **impossible to achieve compatibility** with higher standards such as the GDPR or Convention 108. APEC-CBPRs is the clearest example. Care is needed.

Second, **Free Trade Agreements** may place stronger prohibitions on personal data export restrictions than does the global GATS agreement, creating clashing standards. The APEC-focused 'Comprehensive and Progressing Trans-Pacific Partnership' (CPTPP) may do this.

### References

- G. Greenleaf, 'The Influence of European Data Privacy Standards Outside Europe: Implications for Globalisation of Convention 108' (2012) 2(2) *International Data Privacy Law*, <https://ssrn.com/abstract=1960299>
- G. Greenleaf 'International Data Privacy Agreements after the GDPR and Schrems' (2016) 139 *PLBIR* 12-15 <https://ssrn.com/abstract=2764864>
- 'Global data privacy laws 2017: 120 national data privacy laws now include Indonesia and Turkey' (2017) 145 *PLBIR*, 10-13 [https://papers.ssrn.com/abstract\\_id=2993035](https://papers.ssrn.com/abstract_id=2993035)
- 'European data privacy standards in laws outside Europe' (2017) 149 *PLBIR*, 21-23 <[https://papers.ssrn.com/abstract\\_id=3096314](https://papers.ssrn.com/abstract_id=3096314)>

- '[Renewing Convention 108: The CoE's 'GDPR Lite' initiatives](https://papers.ssrn.com/abstract_id=2892947)' (2016) 142 *PLBIR*,14-17 <[https://papers.ssrn.com/abstract\\_id=2892947](https://papers.ssrn.com/abstract_id=2892947)>
- '[Data Protection Convention 108 Accession Eligibility: 80 Parties Now Possible](https://papers.ssrn.com/abstract_id=3062415)' (2017) 148 *PLBIR*, 12-16 <[https://papers.ssrn.com/abstract\\_id=3062415](https://papers.ssrn.com/abstract_id=3062415)>



**GDPR EVENT – 25 MAY 2018, 14:00-18:00**

Residence Palace, Polak Room  
Rue de la Loi 155, 1040 Brussels

*Welcome coffee [13:30-14:15]*

**KEYNOTE SPEECHES [14:15-14:45]**

- Ms **Věra Jourová**, Commissioner for Justice, Consumers and Gender equality
- Ms **Andrea Jelinek**, Head of Austria's data protection authority and Chair of the Article 29 Working Party

**PANEL 1 – DATA SUBJECT RIGHTS [14:45- 15:45]**

- Mr **Felix Braz**, Justice Minister of Luxembourg (to be confirmed)
- Mr **Michael O'Flaherty**, Director of the EU Agency for Fundamental Rights
- Ms **Monique Goyens**, Director General of the European Consumer Organisation (BEUC)

**PANEL 2 - GDPR AND INNOVATION [15:45-16:45]**

- Mr **Antoine Jouteau**, CEO of leboncoin (Paris)
- Mr **Olivier Simonis**, Co-founder & Managing Director of Qualifio (Louvain-la-Neuve)
- Ms **Anna Pouliou**, Head of Privacy at Chanel (Paris)

*Coffee break [16:45-17:00]*

**PANEL 3 - THE GDPR IN THE GLOBAL CONTEXT [17:00-18:00]**

- Mr **Brad Smith**, President and Chief Legal Officer at Microsoft (Redmond)
- Ms **Wafa Ben-Hassine**, MENA Policy Counsel at Access Now (Tunis)
- Mr **Graham Greenleaf**, Professor of Law & Information Systems, University of New South Wales (Sydney)





## Privacy in the digital age: addressing common challenges, seizing opportunities

**Friday 25 May 2018 • Reception to follow**  
**The Lalit Hotel, Barakhamba Avenue, Connaught Place, New Delhi, India**

- 9:00am**      **Registration and welcome coffee**
- 9:20am**      **Welcome** *Vera Jourova, EU Commissioner for Justice and Consumers (by video)*
- 9:30am**      **Opening remarks**
- Justice B.N. Srikrishna, chair of the Committee of Experts on a Data Protection Framework for India*  
*Ajay Prakash Sawhney, Secretary, Ministry of Electronics and Information Technology (TBC)*  
*Tomasz Kozłowski, Ambassador of the European Union to India*
- 10:00am**      **Panel 1 - Setting the scene: India at the crossroads**
- Rajeev Chandrasekhar, Member of Parliament (TBC)*  
*Vinayak Godse, Senior Director – Data Protection, Data Security Council of India*  
*Raman Jit Singh Chima, Policy Director, Access Now, India*  
*Amba Kak, Public Policy Manager, Mozilla, India*
- Moderator: *Sunil Abraham, Executive Director, Centre for Internet and Society, India*
- 11:00am**      **Coffee break**
- 11:15am**      **Panel 2 - Modern data protection laws: towards global convergence**
- Ralf Sauer, Deputy Head of Unit, International data flows and protection, European Commission, Brussels*  
*Malavika Jayaram, Executive Director, Digital Asia Hub, Hong Kong*  
*Graham Greenleaf, Professor of Law & Information Systems, University of New South Wales, Australia (by video)*
- Moderator: *Clarisse Girot, Data Privacy Project Lead, Asian Business Law Institute, Singapore*
- 12:15pm**      **Panel 3 - Privacy and data security: a business opportunity**
- Srinivas Poorsarla, Vice President and Head (Global), Privacy and Data Protection, Infosys, India*  
*Ravi Sogi, Head - Product Security and Privacy, Philips*  
*Riccardo Masucci, Global Director of Privacy Policy, Intel, Washington DC*
- Moderator: *Ralf Sauer, Deputy Head of Unit, International data flows and protection, European Commission, Brussels*
- 1:15pm**      **Reception**