

COMPARING COUNCIL OF EUROPE AND OECD RULES

Council of Europe Convention

OECD Guidelines

MECHANISM

Treaty will have the force of law among Contracting Parties

Voluntary

Requires Parties to enact reciprocal though not identical national privacy laws incorporating Convention principles (Article 4)

Recommends members adopt "appropriate domestic legislation," also that they encourage and support self-regulation (Paragraph 19)

Calls for Parties to designate national authorities to render each other mutual assistance to implement the Convention (Article 13)

Members should establish procedures or institutions to protect privacy. (Paragraph 19)

SCOPE

Applies only to automated data processing, (Article 1) although a Party may extend the Convention to manual files (Article 3.2.c)

Not restricted to automated processing (Paragraph 2,3)

Applies to personal data (Article 1)

Applies to personal data which because of the manner in which processed, the nature or the context in which used, "pose a danger to privacy or individual liabilities" (Paragraph 3)

Specifically permits Parties to "also apply this convention to...associations, foundations, companies, corporations... and other bodies" whether or not they "possess legal personality" (Article 3)

Mention of legal persons was deliberately omitted.

TRANSBORDER DATA FLOW

Calls for free flow of data among parties (Preamble, Article 12)

Calls for "uninterrupted and secure" flows (Paragraph 16)

A Party may prohibit the flow of data to another Party or require special authorization where

A member may restrict the flow of data to another member where

(a) its domestic privacy legislation includes specific regulations for certain categories of data unless the other party provides equivalent protection

(a) the latter "does not yet substantially observe the guidelines"

(b) data would be re-exported to a non-contracting state resulting in circumvention of its privacy legislation (Article 12)

(b) its domestic privacy legislation includes specific regulations for which the other member provides no equivalent protection

(c) re-export of data would circumvent privacy legislation (Paragraph 17)

PROTECTION OF PRIVACY

These two documents contain similar principles concerning collection, processing, storage, access and dissemination of personal data. (Articles 5-11, Paragraphs 7-14)