



Data protection regulations and international data flows: **Implications for trade and development**





Data protection regulations and international data flows: **Implications for trade and development**



NOTE

Within the UNCTAD Division on Technology and Logistics, the ICT Analysis Section carries out policy-oriented analytical work on the development implications of information and communication technologies (ICTs). It is responsible for the preparation of the *Information Economy Report* as well thematic reports on ICT for development such as this study. The ICT Analysis Section promotes international dialogue on issues related to ICTs for development, and contributes to building developing countries' capacities to measure the information economy and to design and implement relevant policies and legal frameworks.

The E-Commerce and Law Reform Programme has supported developing countries in Africa, Asia and Latin America since 2000 in their efforts to establish legal regimes that address the issues raised by the electronic nature of ICTs to ensure trust in online transactions, ease the conduct of domestic and international trade online, and offer legal protection for users and providers of e-commerce and e-government services. UNCTAD helps to build the capacity of policymakers and lawmakers at national and regional levels in understanding the underlying issues underpinning e-commerce. The assistance targets, in particular, ministry officials in charge of law reform who need to learn more about the legal implications of ICTs; parliamentarians who have to examine new cyberlaws; and legal professionals who enforce new legislation.

The views presented in part II of the study are those of the contributors and do not necessarily reflect the views and position of the United Nations or the United Nations Conference on Trade and Development.

This publication has been edited externally.

The material contained in this study may be freely quoted with appropriate acknowledgement.

PREFACE

Increasingly, an ever-wider range of economic, political and social activities are moving online, encompassing various ICTs that are having a transformational impact on the way business is conducted, and the way people interact among themselves, as well as with government, enterprises and other stakeholders. This new landscape gives rise to new business models and a wider scope for innovation. At the same time, it facilitates undesirable activities online, including cybercrime. Against this background, world leaders in 2015 underscored the importance of adopting relevant policy responses to harness the potential of ICTs for all seventeen Sustainable Development Goals (SDGs).

Creating trust online is a fundamental challenge to ensuring that the opportunities emerging in the information economy can be fully leveraged. The handling of data is a central component in this context. In today's digital world, personal data are the fuel that drives much commercial activity online. However, how this data is used has raised concerns regarding privacy and the security of information.

The present regulatory environment on protection of data is far from ideal. In fact, some countries do not have rules at all. In other cases, the various pieces of legislation introduced are incompatible with each other. Increased reliance on cloud-computing solutions also raise questions about what jurisdictions apply in specific cases. Such lack of clarity creates uncertainty for consumers and businesses, limits the scope for cross-border exchange and stifles growth.

As the global economy shifts further into a connected information space, the relevance of data protection and the need for controlling privacy will further increase. Understanding different approaches to and potential avenues for establishing more compatible legal frameworks at national, regional and multilateral levels is important for facilitating international trade and online commerce. The rules surrounding data protection and cross-border flows of data affect individuals, businesses and governments alike, making it essential to find approaches that address the concerns of all stakeholders in a balanced manner.

This study is a timely contribution to our understanding of how data protection regulations and international data flows affect international trade. It reviews the experience in different parts of the world and of different stakeholders. The study identifies key concerns that data protection and privacy legislation need to address. It also examines the present patchwork of global, regional and national frameworks to seek common ground and identify areas where different approaches tend to diverge. The last part of the study considers possible future policy options, taking the concerns of all stakeholders into account.

I would like to acknowledge with appreciation the valuable contributions received from various stakeholders. I hope that the findings presented will serve as a basis for a much-needed global dialogue aimed at building consensus in a very important policy field.



Taffere Tesfachew
Acting Director, Division on Technology and Logistics

April 2016

ACKNOWLEDGEMENTS

The study on Data Protection Regulations and International Data Flows: Implications for Trade and Development was prepared by a team comprising Torbjörn Fredriksson (team leader), Cécile Barayre and Olivier Sinoncelli. Chris Connolly was the lead consultant for the study.

Because data protection is a global issue, it was important for UNCTAD to consult with a wide range of stakeholders to identify their concerns and issues they face. UNCTAD would like to thank all those countries and organizations that contributed inputs for the study: Adjaïgbe S. Rodolphe (Benin), Rafael Zanatta (Brazilian Institute of Consumer), Denis Kibirige and Barbarah Imaryo (Uganda), Danièle Chatelois (Asia-Pacific Economic Cooperation), Elizabeth Bakibinga-Gaswaga (Commonwealth Secretariat), Atte Boeyi and Ado Salifou Mahamane Laoualy (Niger), Robert Achieng (East African Community), Liz Coll and Richard Bates (Consumers International), Joseph Alhadeff (International Chamber of Commerce), Raphael Koffi and Isaias Barreto Da Rosa (Economic Community Of West African States), Maria Michaelidou (Council of Europe), Lukasz Rozanski (European Commission), Moctar Yedaly, Amazouz Souhila and Auguste K. Yankey (African Union Commission), Albert Antwi-Boasiako (e-Crime Bureau, Ghana), Bijan Madhani and Jordan Harriman (Computer and Communications Industry Association), Melinda Claybaugh and Hugh Stevenson (United States Federal Trade Commission) and Ammar Oozeer (Mauritius). Additional substantive inputs were provided by Eduardo Ustaran (International Association of Privacy Professionals), Olanrewaju Fagbohun (Nigerian Institute of Advanced Legal Studies), Yasin Beceni (BTS & Partners), Ussal Sahbaz (Economic Policy Research Foundation of Turkey), Geff Brown, Marie Charlotte Roques Bonnet, Ed Britan and Heba Ramzy (Microsoft).

Comments on a draft version of the study were provided by Anupam Chander, Graham Greenleaf and Ian Walden. The data shared by Galexia for this study is greatly appreciated.

The cover was prepared by Nadège Hadjemian. Desktop publishing was completed by Ion Dinca. The document was edited by Nancy Biersteker.

Financial support from the Governments of Finland and the Republic of Korea is greatly appreciated.

CONTENTS

| | |
|---|-----------|
| PART I | 1 |
| Executive Summary | xi |
| Introduction | 1 |
| Objectives of this study | 1 |
| The growing importance of data protection | 1 |
| Trade implications of data protection | 3 |
| Outline of this study | 4 |
| CHAPTER I KEY CHALLENGES IN THE DEVELOPMENT AND IMPLEMENTATION OF DATA PROTECTION LAWS | 7 |
| A. Addressing gaps in coverage | 8 |
| B. Addressing new technologies | 10 |
| C. Managing cross-border data transfers | 12 |
| D. Balancing surveillance and data protection | 15 |
| E. Strengthening enforcement | 16 |
| F. Determining jurisdiction | 18 |
| G. Managing the compliance burden for business | 20 |
| CHAPTER II GLOBAL DEVELOPMENTS AND LESSONS LEARNED | 23 |
| A. The United Nations | 24 |
| B. The Council of Europe Convention 108 | 25 |
| C. The OECD | 26 |
| D. International Data Protection Commissioner's initiatives | 27 |
| Lessons learned from the global initiatives | 27 |
| CHAPTER III REGIONAL INITIATIVES | 31 |
| A. The European Union (EU) | 32 |
| B. Asia-Pacific Economic Cooperation (APEC) | 34 |
| C. African Union (AU) | 35 |
| D. The Commonwealth | 35 |
| E. Trade agreements | 36 |
| Lessons learned from the regional initiatives | 37 |
| CHAPTER IV SELECT NATIONAL INITIATIVES AND EXPERIENCES | 41 |
| Country snapshots | 43 |
| Lessons learned from national data protection laws | 47 |
| CHAPTER V PRIVATE SECTOR AND CIVIL SOCIETY PERSPECTIVES | 49 |
| A. The private sector | 50 |
| B. Civil society | 51 |
| CHAPTER VI CONCLUSIONS | 55 |
| CHAPTER VII POLICY OPTIONS | 60 |

| | |
|--|-----------|
| Policy options for international and regional organizations..... | 62 |
| Policy options for countries..... | 64 |
| Part II | 69 |
| International and Regional Organizations | 71 |
| Private Sector and NGOs | 95 |
| Governments..... | 115 |

International and Regional Organizations

African Union Convention on Cyber-security and Personal Data Protection (AU CCPDP). Moutar Yedaly, Head, Information Society Division, Infrastructure and Energy Department, AU Commission.

Privacy Policy Developments in the Asia Pacific Economic Cooperation (APEC) Forum. Danièle Chatelois, Former Chair of the APEC Data Privacy Subgroup (2012-February 2016).

Data Protection in the Commonwealth. Elizabeth Bakibinga-Gaswaga, Legal Advisor, International Development Law, Commonwealth Secretariat.

The Council of Europe Convention 108. Maria Michaelidou, Programme Advisor, Data Protection Unit, Council of Europe.

Data Protection in the East African Community. Robert Achieng, Senior Communications Engineer, EAC Secretariat.

ECOWAS Supplementary Act A/SA. 1/01/10 on Personal Data Protection. Dr. Isias Barreto Da Rosa, Commissioner for Telecommunication and Information Technologies, ECOWAS Commission.

Data Protection in the European Union: Today and Tomorrow. Lukasz Rozanski, European Commission.

Private Sector and NGOs

Personal Data Protection and International Data Flows: The Case of Brazil. Rafael Zanatta, Brazilian Institute of Consumer.

Cross-border e-commerce: building consumer trust in international data flows. Liz Coll, Consumers International.

Comments of the Computer & Communications Industry Association on Data Protection Regulations and International Data Flows: Impact on Enterprises and Consumers. Bijan Madhani, Public Policy & Regulatory Counsel; Jordan Harriman, Policy Fellow, CCIA.

Optimizing Societal Benefit of Emerging Technologies in Policy Development Related to Data Flows, Data Protection and Trade. Joseph Alhadeff, Chair, International Chamber of Commerce Commission on the Digital Economy; Chief Privacy Strategist and Vice President of Global Public Policy, Oracle Corporation.

Middle East and Africa (MEA) Privacy Principles Will Protect Privacy and Advance Trade, The Case for a New Legal Framework. Eduardo Ustaran, IAPP board member, Olanrewaju Fagbohun, Research Professor, Nigerian Institute of Advanced Legal Studies, Yasin Beceni, Managing Partner, BTS & Partners; and Lecturer; Istanbul Bilgi University, Ussal Sahbaz, Director, Think Tank – TEPAV, Geff Brown, Assistant General Counsel, Microsoft Corp., Marie Charlotte Roques Bonnet, Director Microsoft EMEA, Ed Britan, Attorney, Microsoft Corp., Heba Ramzy, Director Corporate Affairs, Microsoft Middle East and Africa.

Governments

The Protection of Data in Benin. Adjaigbe S. Rodolphe, Director, Studies and Research, Ministry of Communication and ICTs, Benin.

Implementation of Data Protection Legislation - The Case of Ghana. Albert Antwi-Boasiako, Founder and Principal Consultant, e-Crime Bureau, Ghana.

The Status of Data Protection in Mauritius. Ammar Oozeer, Juristconsult Chambers, Mauritius.

The Status of Data Protection in Niger. Atte Boeyi, Director of Legislation, General Secretariat; Ado Salifou Mahamane Laoualy, Director of Judicial Affairs and Litigation, Niger.

The Legal and Regulatory Regime for Data Protection and Privacy in Uganda. Denis Kibirige, Senior State Attorney, Ministry of Justice and Constitutional Affairs (MoJCA); Barbarah Imaryo, Manager, Legal Services, National Information Technology Authority (NITA-U), Uganda.

Privacy and Security of Personal Data in the United States. Staff of the Federal Trade Commission Office of International Affairs, United States.

Boxes

| | | |
|--------|--|----|
| Box 1: | Schrems v Facebook (Ireland, Europe, 2014/2015) | 15 |
| Box 2: | Office of the Privacy Commissioner for Personal Data v Octopus (Hong Kong, 2010) | 17 |
| Box 3: | The Benesse data breach (Japan, 2014) | 17 |
| Box 4: | FTC v TRUSTe (United States, 2015) | 17 |
| Box 5: | US v Microsoft (2014-2015, United States) | 18 |
| Box 6: | FTC v Accusearch (2009, United States) | 18 |
| Box 7: | Belgian Commission for the Protection of Privacy v Facebook (Belgium, 2015/2016) | 19 |
| Box 8: | Summary of revisions made to the 1980 OECD Privacy Guidelines in 2013 | 26 |

Tables

| | | |
|----------|--|----|
| Table 1. | Strengths and limitations of the various approaches to ongoing exceptions | 14 |
| Table 2. | Strengths and limitations of the main global initiatives in addressing key challenges in the development and implementation of data protection laws | 28 |
| Table 3. | Strengths and limitations of the main regional frameworks in addressing key challenges in the development and implementation of data protection laws | 38 |
| Table 4. | Summary of the main findings on key challenges in the development and implementation of data protection laws | 58 |

Figures

| | | |
|-----------|--|---|
| Figure 1: | Challenges faced by ASEAN countries and selected countries in the ECOWAS, Latin America and the Caribbean (48 countries) in enacting data protection legislation. | 8 |
| Figure 2: | Challenges faced by ASEAN countries and selected countries in the ECOWAS, Latin America and the Caribbean (48 countries) in enacting data protection legislation. | 8 |

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_9456

