

Global data privacy laws 2015: 109 countries, with European laws now a minority

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(2015) 133 *Privacy Laws & Business International Report*, February 2015

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Accompanying *Global Tables of Data Privacy Laws and Bills (4rd Ed, January 2015)* (2015) 133 *Privacy Laws & Business International Report*, 18-28 are at <<http://ssrn.com/abstract=2603502>>

* The assistance of Alex Boniface Makulilo, Pablo Palazzi, Blair Stewart, Vanya Vide, Maria Michaelidou, Marie Georges, David Banisar and Charles Raab is gratefully acknowledged. Responsibility for all content remains with the author. Separate acknowledgments accompany the Tables.

This is the fourth in a series of articles which has documented the increasing number of countries with data privacy laws, initially assessed in mid-2011¹ to be an (unexpectedly high) 76, expanding through new laws and further research to 89 by early 2012,² and then by mid-2013 to 99.³ The number of countries which have now enacted data privacy laws has risen to 109 over the past eighteen months.

This article updates the assessments given in the previous article in the series of each aspect of the expansion of data privacy laws, and international agreements. An article in the following issue will update assessments of the related developments concerning data protection authorities and (DPAs) and their associations. The articles are accompanied by an updated *Global Table of Data Privacy Laws*. It lists for all 109 countries which have enacted data privacy laws, as defined for this purpose:⁴ the principal law; when enacted; its sectoral coverage (private sector; public sector; or both); the international data privacy commitments of the country, or the international recognition its laws have received; whether it has a data protection authority (DPA named if so); and the international associations in which that DPA is involved. A separate Table details the 20 known official Bills in additional countries awaiting enactment. The full background to this analysis is available online.⁵

The constant expansion of data privacy laws

By January 2015 the total number of countries with data privacy laws has increased by over 10% to 109. Information access laws have a somewhat similar trajectory to data privacy laws, having reached the 'significant landmark' of laws in 100 countries in mid-2014.⁶

New data privacy laws in 2013-14

The expansion in the number of global data privacy laws in the last eighteen months continues the previous rate of growth. Since the mid-2013 analysis listing 99 countries, there have been ten new data privacy laws enacted in the Dominican Republic, Kazakhstan,⁷ South Africa,⁸ Mali, Cote d'Ivoire, Lesotho, Madagascar and in each of three former Netherlands territories in the Caribbean

¹ Greenleaf, G 'Global data privacy laws: 40 years of acceleration' (2011) 112 *Privacy Laws & Business International Report*, 11-17, September 2011.

² Greenleaf, G 'Global Data Privacy Laws: 89 Countries, and Accelerating', (2012) 115 *Privacy Laws & Business International Report*, Special Supplement, February 2012, at <<http://ssrn.com/abstract=2000034>>.

³ Greenleaf, G 'Global data privacy laws 2013: 99 countries and counting' (2013) 123 *Privacy Laws & Business International Report*, 10-13, June 2013, <<http://ssrn.com/abstract=2305882>>

⁴ For the purposes of this article and the Tables, a country (including any independent legal jurisdiction) is considered to have a 'data privacy law' if it has one or more laws covering the most important parts of its private sector, or its national public sector, or both, and if that law provides a set of basic data privacy principles, to a standard at least approximating the minimum provided for by the OECD Guidelines or Council of Europe (CoE) Convention 108, plus some methods of officially-backed enforcement (i.e. not only self-regulation). To approximate the OECD/CoE standards, a law must provide individual participation (right to access and correction), finality (additional uses and disclosures limited by the purpose of collection), security and at least 11 of the 15 OECD/CoE 'content principles' overall. However, this categorisation only requires a 'law on the books', it says nothing about the extent to which a law is or is not effective. Assessing the effectiveness or value of data privacy laws and regimes is a far more complex task. [As Colin and I showed in our 2006 book, chapter 9.]

⁵ G Greenleaf 'Sheherezade and the 101 data privacy laws' (2014) 23(1) *Journal of Law and Information Science* <<http://ssrn.com/abstract=2280877>>

⁶ Information access laws (also called freedom of information (FOI) or 'right to information' (RTI) laws) reached the 'significant landmark' of laws in 100 countries in mid-2014: Media release 'Hitting a Hundred Access to Information Laws Globally - Need for Better Data on Transparency in Practice' (Access !Nfo, 27 August 2014).

⁷ Graham Greenleaf 'Kazakhstan enacts Central Asia's second data privacy law' (2013) 124 *Privacy Laws & Business International Report*, 23-24.

⁸ Pamela Stein 'South Africa adopts comprehensive privacy law' (2013) 126 *Privacy Laws & Business International Report*, 1-4.

(Curaçao, the BES Islands, and St Maarten).⁹ The last four were in fact enacted prior to 2013, but have only since come to light. South Africa's law is from Africa's most economically significant country.

Many countries have laws covering parts of their private sector (e.g. credit reporting, e-commerce, consumer transactions, or medical records), or requiring their private sectors to comply with a particular data protection principle (e.g. aspects of data security), but these laws do not meet the criteria for this study and the Table. Examples are e-commerce laws from Indonesia and Turkey, both limited to e-commerce. Similarly, while the data privacy principles in Brazil's 2014 Marco Civil law¹⁰ may meet the minimum requirements for a data privacy law, its scope is limited to the Internet. Other examples of significant private sector laws that do not meet the criteria for this study are from the USA and China. The many sectoral privacy laws in the US which deal with parts of the US private sector, do not do so even if aggregated,¹¹ and probably will not do so even if President Obama's 2015 legislative proposals are enacted. The scope of China's growing private sector laws increasingly approaches 'the most important parts of the private sector', but almost all of these laws still lack the crucial rights of individual access and correction.¹²

Many countries also have sub-national laws data privacy laws (for States, Provinces, local governments etc), in addition to national data privacy laws. These are not included in the tables or these assessments, but are often significant and deserve separate assessment.

Geographical expansion: A majority outside Europe

The geographical distribution of the 109 laws by region is: EU (28); Other European (25); Africa (17);¹³ Asia (12); Latin America (10); Caribbean (7); Middle East (4); North America (2); Australasia (2); Central Asia (2); Pacific Islands (0). So there are now 53 laws in European countries, but (for the first time) a majority of 56 data privacy laws are outside Europe, over 51% of the total. Because there is little room for increase within Europe, the majority of the world's data privacy laws will now continue to be from outside Europe, and increasingly so. During this 18 month period, the fastest 'growth area' has been Africa, with five new laws, including a new Act in Madagascar in January 2015. Data privacy laws are clearly no longer 'a European thing,' though the influence of 'European standards' remains paramount.¹⁴

⁹ All of these laws are in the National Data Privacy Legislation database <<http://www.worldlii.org/int/other/NDPrivLegis/>> in the International Privacy Law Library.

¹⁰ Julia de Oliveira 'Signed, sealed and delivered: Brazil's Marco Civil Internet law' (2014) 129 *Privacy Laws & Business International Report*, 9-11. This law meets the requirements for a data privacy law, but a further law is also proposed.

¹¹ For details of such laws see Swire, P and Ahmad K *US Private Sector Privacy: Law and Practice for Privacy Professionals*, IAPP, 2012; Smith RE *Compilation of State and Federal Privacy Laws*, Privacy Journal, 2013. On aggregation, see Hoofnagle, C 'Country Studies B.1 – United States of America' in Korff, D (Ed.) 'Comparative study on different Approaches to new privacy challenges, in particular in the light of technological developments' European Commission, 2010 – at <http://ec.europa.eu/justice/policies/privacy/docs/studies/new_privacy_challenges/final_report_country_report_B1_usa.pdf>, particularly '6. Data protection principles'; see also Greenleaf, G and Waters, N 'Obama's Privacy Framework: An Offer to be Left on the Table' *Privacy Laws & Business International Report*, No. 119, pp. 6-9, October 2012

¹² See Greenleaf, G, Chapter 7. 'China – From Warring States to Convergence?' in *Asian Data Privacy Laws: Trade and Human Rights Perspectives* (OUP, 2014).

¹³ Because there is now an African Union data protection Convention, the previous division between North Africa (grouped with Middle East) and (sub-Saharan) African has been dropped. The new division is between Africa and Middle East.

¹⁴ See Greenleaf, G 'The Influence of European Data Privacy Standards Outside Europe: Implications for Globalisation of Convention 108' (2012) 2(2) *International Data Privacy Law* <<http://ssrn.com/abstract=1960299>>

Countries without data privacy laws now in a minority

A tabulation of countries with data privacy laws requires the complement to be determined: how many countries have no such laws? The total number of independent jurisdictions globally is about 211.¹⁵ Eighteen months ago from a total of 208,¹⁶ there were 109 countries with no laws yet enacted, and a minority of 99 with laws enacted, and it was predicted that countries with laws would become a majority in 2014. This has in fact occurred, as there are now 109 countries with laws, and 102 without such laws.

If the 21¹⁷ current Bills known (see the annexed *Global Table of Official Data Privacy Bills*) are taken into account, there are 89 countries¹⁸ with no Acts or Bills. The global distribution of 211 countries is therefore: 91 with no Acts or Bills; 21 with Bills; 109 with Acts. It is clear from the list of countries with Bills that the numbers are likely to change further in favour of the ‘data privacy majority’. Of course, numbers of countries with laws is not the only indicator of significance, and other measures based on the populations or economic significance of countries could be used. The strength of the principles in the laws, and the effectiveness of their enforcement, are further questions beyond the scope of this article.¹⁹

Future growth: Heading toward ubiquity

The rate of growth over 4 decades

The rate of expansion has averaged approximately 2.6 new laws per year over 42 years, but it has not been a linear growth. The number of new data privacy laws globally, viewed by decade, has grown as follows: 9 (1970s), +12 (1980s), +20 (1990s), +39 (2000s) and +29 (5 years of the 2010s), giving the total of 109. So far, the 2010s are the most intensive period of data protection development in its 40-year history, with an average of nearly 6 new laws per year, far higher than the average of 2.6 laws per year over the whole period.

For over two decades the rate of adoption of new data privacy laws per year has been steadily increasing, and the regions of the globe that have such laws has been steadily broadening. If the current rate of expansion for 2010-14 continues in a linear fashion, about 60 new laws will result in this decade, bringing the total to 140 by 2020. On the other hand, continued acceleration would make the total somewhere between 150 and 160 (i.e. 70 to 80 new laws this decade). Growth of data privacy laws is certainly not yet ‘flattening off’, in fact it is the opposite, still accelerating.

By the end of this decade, in five years, the number of countries with data privacy laws, all of which have a strong ‘family resemblance’ will be between 66% and 80% of all 211 independent

¹⁵ This number is obtained by starting with all UN member States and observers, and adding known independent jurisdictions. It is possible that some territorial jurisdictions with independent legal systems are not yet included.

¹⁶ The different total is because the three Netherlands territories were not then counted as independent countries.

¹⁷ The Thai Bill is ignored because there is already a public sector Act.

¹⁸ Countries with no Acts or Bills: Afghanistan; Algeria; Bahrain; Bangladesh; Belarus; Belize; Bermuda***; Bhutan**; Bolivia; Botswana; British Virgin Islands***; Brunei Darussalam; Burundi; Cambodia; Cameroon; Central African Republic; China; Comoros; Congo, Republic; Congo Democratic Republic; Cuba; Djibouti; Ecuador; Egypt; El Salvador; Equatorial Guinea; Eritrea; Ethiopia; Fiji; Gambia; Guatemala; Guinea; Guinea-Bissau; Guyana; Haiti; Indonesia; Iran; Iraq; Jordan; Kiribati; Korea, North; Kuwait; Lao PDR; Lebanon; Liberia; Libya; Malawi; Maldives; Marshall Islands; Micronesia; Mongolia; Mozambique; Myanmar; Namibia; Nauru; Oman; Pakistan; Palau; Palestine*; Panama; Papua New Guinea; Rwanda; Samoa; Sao Tome and Principe; Saudi Arabia; Sierra Leone; Solomon Islands; Somalia; Sri Lanka; Sudan; Suriname; Syria; Tajikistan; Timor Leste; Togo; Tonga; Turkmenistan; Tuvalu; United Arab Emirates; Uzbekistan; Vanuatu; Vatican (Holy See)*; Venezuela; Zambia (* = UN Observer States; ** = Not UN member; ***= UK territory). This list is constructed by removing countries with Acts or Bills from the total of 211.

¹⁹ For an evaluation of such questions in relation to Asian countries, see chapters 17 and 18 of G Greenleaf *Asian Data Privacy Laws* (OUP, 2014).

jurisdictions globally. Global growth is likely to continue beyond 2020. By 2023, 50 years after enactment of the first such national data privacy law in Sweden, by far the majority of countries (but not all) are likely to have such laws, as are most of their neighbours and most of those with whom they trade: this will be global ubiquity.

In addition, there is a continuing strengthening of both the principles and enforcement mechanisms in existing laws in the 2010s. Considering only the Asia-Pacific, this has occurred in Hong Kong, South Korea, Australia, Vietnam and Taiwan since 2011, and is in process in New Zealand and Thailand. Other examples in progress are from Europe (Ukraine) and Latin America (Chile).

Bills for new Acts – Where will expansion occur next?

The annexed *Global Table of Official Data Privacy Bills* lists known official Bills for new data privacy Acts, both those that have been introduced into legislatures, and those which are under official consideration by governments. Information is included about the current known state of each Bill. Currently, there are twenty-two such Bills known, based on reliable sources. As shown in the Table they are primarily from Africa (9) and the Caribbean (7), plus three from Latin America (Brazil, Honduras and the Falkland Islands), and one each from the Middle East (Qatar, as distinct from the Qatar Financial Authority sub-region), Europe (Turkey) and Asia (Thai private sector). Further research may reveal more Bills under consideration but not yet listed.

International commitments: Uneven strengthening

International agreements concerning data protection have had a considerable influence on adoption of data privacy laws for over thirty years. Highlights of the continuing strengthening of these instruments and their adoption, over the past 18 months, include:

- The most significant development globally was the adoption of the *African Union Convention on Cyber-security and Personal Data Protection* at the African Union's Summit in Malabo, Equatorial Guinea (27 June 2014).²⁰ It is of great potential significance because the African Union has 54 member states, but its actual significance depends on accessions and ratifications, and as yet there are none.²¹
- The *ECOWAS Supplementary Act*,²² the only binding sub-regional agreement in Africa, now has 7 countries that have enacted legislation in compliance with it.
- No countries received findings from the European Commission since mid-2013 that the data protection they provide is 'adequate' under the *EU data protection Directive*. The revision of the Directive is still continuing, expected to be completed in 2015.
- Forty-five of the forty-seven Council of Europe member States have ratified the *Council of Europe Data Protection Convention of 1981* (Convention 108), and have data privacy laws (Turkey has not; San Marino has neither signed nor ratified).
- Forty-four CoE Member States have signed the *Additional Protocol (ETS 181) to Convention 108*, and 35 have subsequently ratified it.²³ Nine countries that have ratified the

²⁰ Greenleaf, G and Georges, M "The African Union's data privacy Convention: A major step toward global consistency?" (2014) 131 *Privacy Laws & Business International Report*, 18-21 <<http://ssrn.com/abstract=2546652>>.

²¹ OAU/AU Treaties, Conventions, Protocols & Charters <<http://www.au.int/en/treaties>>. Not listed yet.

²² Makulilo, A B *Protection of Personal Data in sub-Saharan Africa, Doctoral Dissertation*, 25.10.2012, Bremen, part 4.4.1.3 African Union Convention on Cyber Security 2011

²³ CETS No. 181 Status as at 16/1/2015 <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=181&CM=2&DF=&CL=ENG>>.

Convention (plus three territories on whose behalf the UK acceded to the Convention) have not yet ratified the Additional Protocol. Since 2013, Georgia has signed and ratified the Protocol. Some countries that have not ratified are in any event compliant (eg they have DPAs). Upon completion of the ‘modernisation’ process there will be no separate Protocol.

- Uruguay is still the only non-European state to have acceded to and ratified (in 2013) the Convention²⁴ and the Additional Protocol²⁵. The second CoE ‘globalisation’ invitation was issued to Morocco in 2013, but it has neither signed nor ratified. In mid-2014 Mauritius requested an invitation to accede, and an invitation may be issued by April 2015. ‘Globalisation’ is not rapid.
- The CoE ‘modernisation’ of Convention 108 is not complete but the CAHDATA committee of State representatives completed its consideration of the draft revision in December 2014.
- The OECD adopted revised privacy Guidelines in 2013, which allow non-OECD countries to ‘adhere’ to the Guidelines. No non-OECD country is known to have yet done so.
- Turkey and the US (in relation to its private sector) are the only countries of the 34 OECD (Organisation for Economic Cooperation and Development) member countries,²⁶ not to have a data privacy law implementing the OECD’s privacy Guidelines of 1981. Turkey’s new January 2015 e-commerce law does not qualify as a data privacy law because of its limited scope, and the same is likely to be the case for the new laws proposed for the USA by President Obama in January 2015.
- Four-fifths (17) of the 21 APEC (Asia-Pacific Economic Cooperation) member ‘economies’²⁷ have data privacy laws in at least one of their public and private sectors, but only half of these cover both sectors (see the Table). Four still do not have comprehensive laws in either sector (Brunei; Indonesia; China; and Papua New Guinea), but Indonesia and China have significant sub-sectoral laws. These laws are rarely based on the APEC Privacy Framework, and are often stronger than it.
- APEC’s Cross-Border Privacy Rules system (CBPRS) only has one member (the USA) which is fully compliant, including appointment of an Accountability Agent (AA). Mexico and Japan have been assessed as having laws compliant with CBPRs requirements, but have neither appointed an enforcement authority nor nominated an AA for approval.²⁸

Global trajectories, research needed

This article and the following Tables update the data available about global trends in enactment of data privacy laws, and adherence to treaties. The increasingly complex memberships of associations of DPAs and PEAs are discussed in the next issue. This more accurate and updated picture should

²⁴ Greenleaf, G ‘Uruguay starts Convention 108’s global journey with accession’ *Privacy Laws & Business International Report*, Issue 122: 20-23, April 2013

²⁵ The 2001 Additional Protocol to Convention 108 added new provisions bringing it closer to the EU data protection Directive, particularly the requirement for a Data Protection Authority, and the requirement to limit data exports to countries which provided ‘adequate’ protection. [which/that here again]

²⁶ List of OECD Member Countries at <<http://www.oecd.org/general/listofoecdmembercountries-ratificationoftheconventionontheoecd.htm>>

²⁷ See APEC Member Economies at <<http://www.apec.org/about-us/about-apec/member-economies.aspx>>;

²⁸ Greenleaf, G and Waters, N ‘APEC’s CBPRs in Operation for Two Years: Low Take-Up, and Credibility Issues’ (2014) 129 *Privacy Laws & Business International Report*, 12-15 <<http://ssrn.com/abstract=2481812>>

suggest and enable further research, as well as allowing some conclusions to be drawn about both current and long-term trends.

Research and evidence

More research is needed on such questions as the implications of the increasingly interlocking data export restrictions in this legislation; on the effectiveness of the enforcement regimes in various countries, and on the various steps being taken toward enforcement cooperation; on the extent of judicial interpretation of these laws, and on other comparative aspects of data privacy laws. All of this requires an accurate account of the incidence, growth and distribution of the world's data privacy laws, plus access to the details of the laws themselves and to evidence of their enforcement.

The International Privacy Law Library

A new development in 2014 provides a simple free access means for anyone to find all the national data privacy laws and international agreements, and many of the decisions of DPAs/PEAs enforcing those laws. The International Privacy Law Library²⁹ includes a database containing all 109 national laws to date (with versions of some from multiple dates), some regional laws, all the international agreements, 26 national case law databases originate from DPAs in eleven jurisdictions, and a considerable amount of scholarship on privacy law. It contains over 15,000 searchable items and is available for free access.³⁰

Conclusions

Some conclusions are apparent from the data presented in this article. The number of data privacy laws embodying at least the minimum set of '1980s-standard' OECD/CoE data protection principles continues to increase, and at an accelerating rate. As of 2015, the majority of countries already have data privacy laws, and the majority of those are in non-European countries. Soon, the majority is also likely to be from developing countries. These are geo-political facts of considerable significance, which have only yet started to play out.

By 2023, the 50th anniversary in of the first data privacy Act in Sweden, we can expect that data privacy laws will be globally ubiquitous. A large proportion of these countries already have laws influenced strongly by 'European standards' similar to those of the current EU data protection Directive, including its data export restrictions. This European 'soft power' may well strengthen as Europe strengthens its standards. These developments build up a considerable global 'legal inertia' that it will be difficult to reverse or (eventually) to ignore. Associations of data protection authorities are also likely to increase in importance as venues both for contesting influence, and for developing cross-border enforcement.

²⁹ International Privacy Law Library <<http://www.worldlii.org/int/special/privacy/>>, located on WorldLII. <<http://ssrn.com/abstract=2502703>>

³⁰ Greenleaf, G, Chung P and Mowbray A 'Influencing Data Privacy Practices Through Global Free Access: The International Privacy Law Library' (2015) *Computer Law & Security Review* (forthcoming), draft at <<http://ssrn.com/abstract=2502703>>.