

International cooperation on the protection of personal data: Moroccan practice

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Introduction

- Advanced status granted by the EU to Morocco in 2008
- Adoption of the Moroccan digital strategy 2008-2013
- **Adoption of the Law on the protection of personal data in February 2009**
- **CNDP established on 31/08/2010**
- Constitution adopted in July 2011: article.24: Protection of privacy "Everyone has the right to privacy"
- International cooperation on the protection of personal data: Moroccan practice :
 - I. Cooperation for making Moroccan law
 - II. Cooperation for implementation of the legal framework
 - III. Cooperation for improvement of transborder data flows: pending "adequacy"

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- **I. Cooperation for making Moroccan law**
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- A-The repository of the CNDP
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- 1-Regional data protection
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- a-OECD Recommendation of 23-09-1980 on "Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data," the first text on Personal Data Protection (PDP).
- b-The remarkable contribution of the Council of Europe to consolidate the protection of personal data: the Convention of 28 -01-1981 for the protection of individuals with regard to the processing of personal data, called 108 Agreement, and its Additional Protocol of 2001 regarding supervisory authorities and transborder data flows, are the foundation on which the personal data protection is based in Europe and Worldwide.

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- c- EU Directives: Directives 95/46 / EC of 2-10-1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Directive 2002/58 / EC on "treatment of personal data and the protection of privacy in the voltage of the electronic communications sector".
- d- Protection also affects Africa and Francophonie: Morocco joins the Francophone Association of Data Protection Authorities (AFAPDP) .
- AFAPDP has, at last meeting in Marrakech in November 2013, adopted a common repository for Francophone authorities to facilitate the transfer of data by companies.

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- 2-The attempts to universalize Protection

a-The 45/95 resolution 1990 of the UN General Assembly, on "Guiding principles for the regulation of computerized files containing personal data."

b-The establishment of the International Conference on the protection of personal data and privacy: first Conference in Madrid in 2009 adopted the 10 principles providing international standards for the protection of personal data.

The 33rd conference held on 2 and 3-11-2011 in Mexico, certified **CNDP** . **This accreditation allows it now to be a full member of the International Conference of National control authorities.**

c-Toward the development of an international instrument of the personal data through the use of an intergovernmental conference.

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- B-The transposition of international standards in Moroccan law 09/08 (2009/11/05)
- 1-The constitutional provisions:
Preamble : “(...) gives to duly ratified international conventions, (...) primacy over the law of the country, and therefore harmonizes the relevant provisions of its national legislation.
This preamble is an integral part of this Constitution”.
- Art.24: Everyone has the right to protection of privacy.
Art.27: The right to information may be restricted by law in order to ensure:
 - protection of everything related to the national defense, internal and external security of the State,
 - protection of individual privacy,
 - protection rights and freedoms enshrined in this Constitution
 - protection of sources and areas specifically determined by law.

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2 – Moroccan Law 09/08 on the protection of personal data:

- adopted as part of regulatory convergence recorded in the Euro-Mediterranean Partnership.
- Law 09-08 enacted in 2009, published in May 2009 ; CNDP Rules published the 07.04.2011
- The objectives of the Act:
- ensure adequate protection of personal data by increasing the attractiveness of Morocco in the field of offshoring. (Job provider sector in Morocco, about 100 000 in 2014).
- ensure compliance with the privacy of citizens (Art.24 constitution 2011),
- strengthen the protection of freedoms and human rights in Morocco.

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- **II. International cooperation for implementation of the legal framework**
- **1-CNDP established on 31/08/2010** : A collegiate institution that takes its decisions at the majority of its members. They are appointed for five years, renewable once
- **CNDP Powers** : Under Rule 27 of the Act :
- advises the Government and Parliament on all matters concerning personal data,
- expertise at the request of public authorities
- assists the government in the preparation and definition of the Moroccan position in international negotiations in the field of personal data,
- receives the statements and allocates permits for the treatment of personal data, allows the retention of personal data, lists the non-automated processing, lists the country to appropriate legislation for the protection of personal data, allows data transfers to foreign, maintains the National Register of Data Protection.

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- receives complaints.
- exercising powers of investigation and inquiry
- the power to order providing and making available the documents of any kind regarding the treatment,
- proceeding or making the necessary changes required for a fair data in a file
- blocking, or erasure or destruction of data and that permanently or temporarily, banning the treatment.
- In serious cases, it refers the case to the prosecutor applying the sanctions under Chapter VII of the Act which provides for penalties for certain serious offenses and imprisonment which may extend up to 300 000dh of fine and five years imprisonment.

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- **2-Internationally, the participation of CNDP to :**
- works of the Francophone Association of Supervisors of Personal Data, Paris October 2010, Dakar 2011, Monaco 2012. At Marrakech 2013, adoption of a repository to the transfer of personal data
- the Joint Meeting of the European Commission and Council of Europe, January 2011, Brussels,
- International Conference in Mexico City of Control Authorities in October 2011, in Punta del Este in October 2012, and Warsaw September 2013 : **CNDP “accreditation” on October 2011.**
- the revision of Convention 108 of the Council of Europe: **Accession to the Convention 108 and its Additional Protocol**
- The quest for “Adequation” of the European Commission

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- **III. Cooperation for improvement of transborder data flows:
pending "adequacy"**
- 2009: Morocco demands adequacy
The European Commission is empowered by the European Council and the EU Parliament to appreciate (Article 25 para. 6 of the 95/46 Directive) the "adequate" level of protection of personal data by a non-European third countries.
A lengthy process
- Moroccan practice:
The legislative framework contains a basic principle which is the prohibition of transfers to countries which do not ensure "an adequate level of protection of privacy, freedoms and fundamental rights of individuals with regard to the treatment of these data ... ". (Article 43 of the Law).
This principle is subject to exceptions:

The transfer can be assured:

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1 - If the person agrees

2 If there is a case of necessity related to: the preservation of the public interest, the defense of a legal claim, the need to comply with a contractual obligation of the data controller or data subject, the implementation of a measure of international legal assistance, prevention, diagnosis or treatment of diseases.

3 In the case of the execution of an obligation arising under a bilateral or multilateral agreement to which Morocco is a party.

4 The CNDP may also, by express reasoned decision, authorize the transfer of personal data in case of Contractual Clauses Type (CCT) or the BCR (BCR).

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- The list of countries providing adequate protection as established by the CNDP
 - The list includes:
 - the member countries of the EU,
 - the countries members of the EEA,
 - the countries to which the EU has given the label of "adequacy."
 - List of 37 countries providing adequate protection from the point of view of the CNDP.
 - The EU countries
 - The EEA (European Economic Area: Iceland, Norway and Liechtenstein.
 - The Eleven countries recognized by the EU as providing adequate protection: Andorra, Argentina, Australia, Canada, Switzerland, the Faroe Islands, Guernsey, Jersey, etc.

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- Conclusion
- Pending “adequacy”, CNDP must continue its efforts to ensure effective protection of personal data by :
- Awareness
- The rapid processing of complaints
- The quality and effectiveness of controls
- Strengthening relationships of trust between the CNDP, the controllers of personal data and data subjects