



Global Advisory Board

**Are we moving towards
Global GDPR?**

Are we moving towards Global GDPR?



**Shane Carrick FIP (CIPP/E, CIPT, CIPM),
FCCA, PMP.**

Director, Digital Risk, Grant Thornton
Head of Data Protection Client Services
shane.carrick@ie.gt.com

Agenda

- ① Global Privacy Landscape
- ② GDPR Divergence Risk
- ③ Current Transfer Mechanisms

The Importance of Data Protection

In the EU, the right to a private life and associated freedoms are considered **fundamental human rights**. Art 12 of the Human Rights Declaration states. *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”*

WikiLeaks:

NSA & FBI: PRISM

CIA: “Weeping Angel”

DARK
PATTERNS

Profiling:



Cookies



Marketing to Elections

Data Protection Regimes Worldwide

Prime Focus

Europe: Protecting the Data Subject

US: Facilitating Business and Consumers

Russia / China: Protecting the State

- EU GDPR; UK GDPR
- The Law Enforcement Data Protection Directive
- ECHR
- Convention 108 plus
- CLOUD Act
- ePrivacy directive
- OECD guidelines
- EDPB (guidelines and opinions)
- DPAs (guidelines, opinions and fines)
- Court decisions

Over 120 countries across a globe have their own data protection laws e.g.:

- The Irish Data Protection Act
- CCPA – California Consumer Protection Act
- The UK Data Protection Act
- The Bahrain Personal Data Protection Law
- LGPD – Brazil
- FTC – USA

General data protection legislation

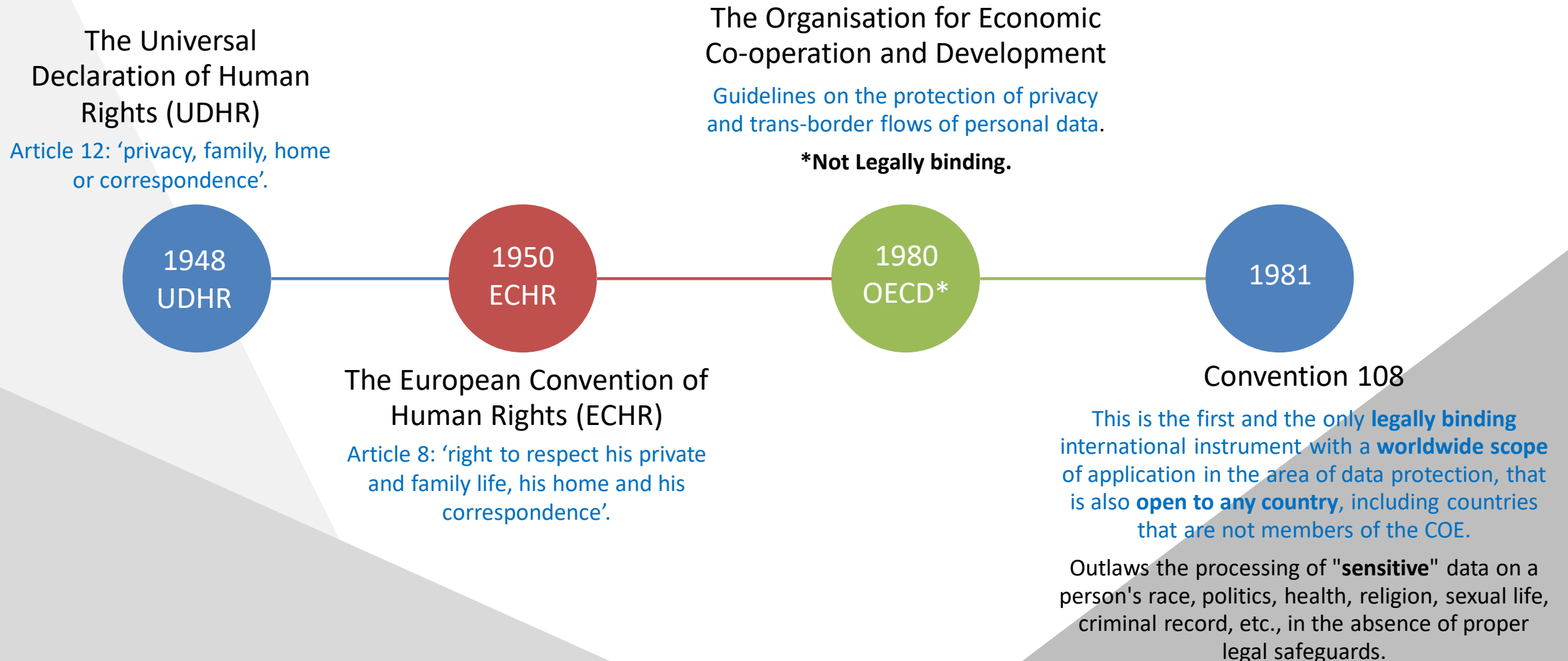
Data protection laws across the globe

Legislation in development stage

- AI Regulation
- Digital Governance Act
- ePrivacy Regulation
- Australian Privacy Act
- AI Act (AIA)
- Whistleblower Dir.
- Database Directive
- Open Data Directive

GDPR and Convention 108 Globally

In the European Union, the right to a private life and associated freedoms are considered **fundamental human rights**.



GDPR and Convention 108 Globally

In the European Union, the right to a private life and associated freedoms are considered **fundamental human rights**.

The Data Protection Directive

The aim of the Directive was to further reconcile protecting individuals' fundamental privacy rights with the free flow of data from one member state to another, maintaining consistency with the ECHR

1995
DPD

2000
CFR

The Charter of Fundamental Rights

Binding legal affect within EU

Article 8:

- The processing must be fair and carried out for specific purposes;
- There must be legitimate basis for the processing;
- Individuals must have the right to access and rectify personal data;
- There must be a supervisory authority to oversee compliance.

The Lisbon Treaty

Amends the TEU and TFEU

Article 8 of the Charter and Article 16(1) provides that that everyone has the right to the protection of personal data concerning him or her.

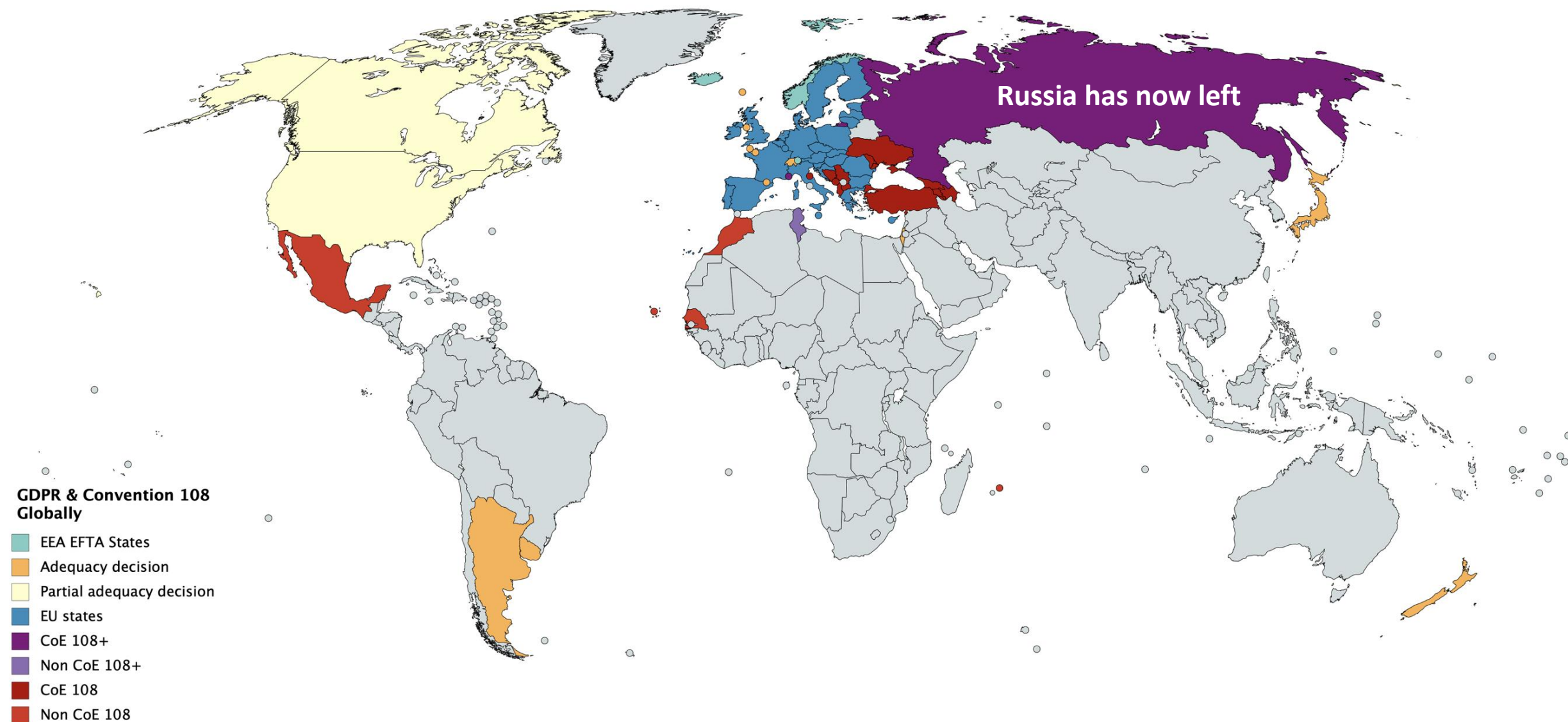
2007

2016 -
2018

GDPR & Convention 108+
GDPR entered into force, and became fully enforceable by Data Protection Authorities in May 2018.

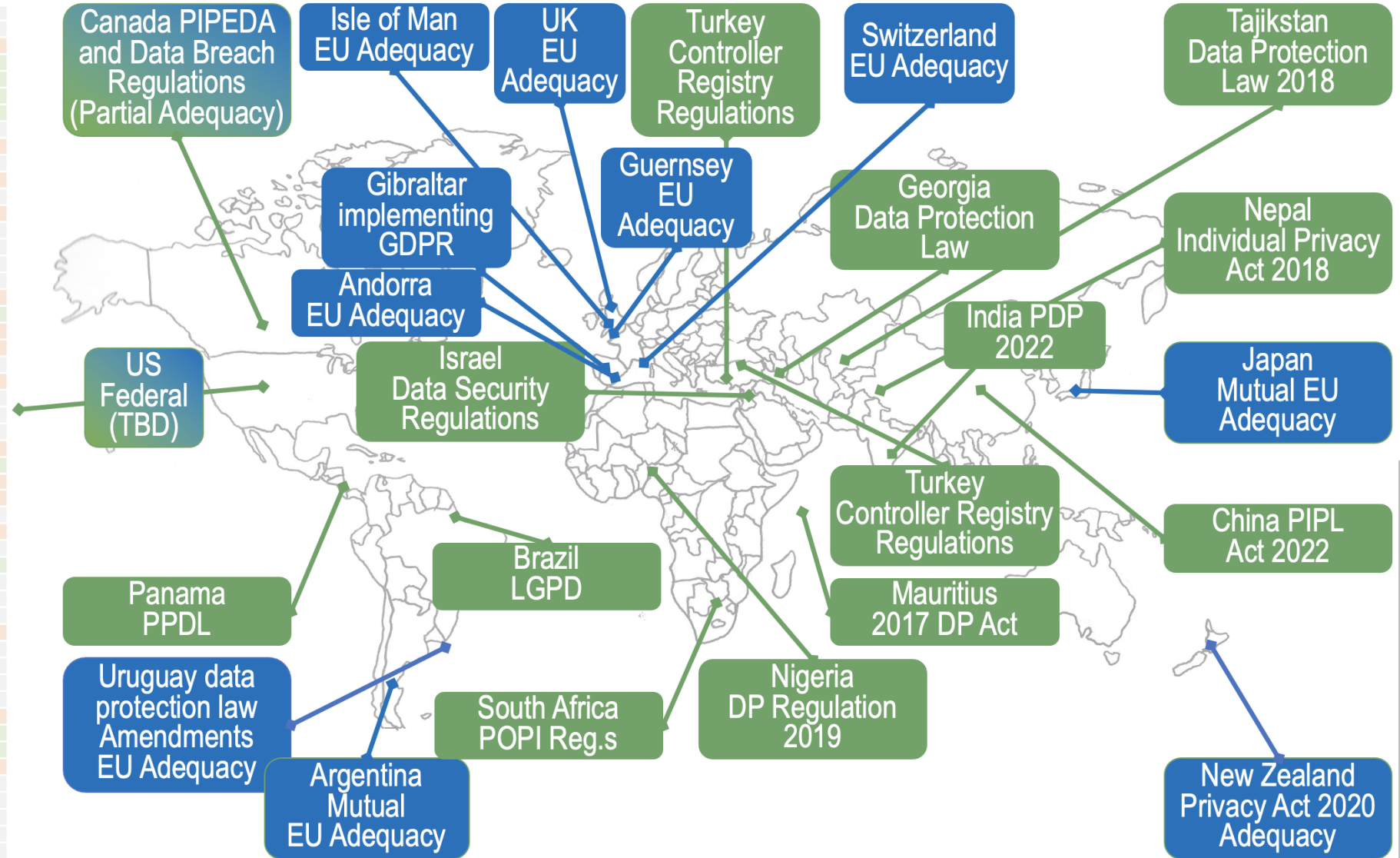
- Replaces the Directive 95/46/EC.
- Convention 108 modernised

GDPR and Convention 108 Globally



Data Protection Regimes Worldwide

Alabama	None
Alaska	None
Arizona	Proposed
Arkansas	In Force
California	In Force
Colorado	In Force
Connecticut	In Force
Delaware	None
Florida	Proposed
Georgia	None
Hawaii	Proposed
Idaho	None
Illinois	Proposed
Indiana	None
Iowa	None
Kansas	None
Kentucky	None
Louisiana	Proposed
Maine	Passed
Maryland	Proposed
Massachusetts	Proposed
Michigan	None
Minnesota	Proposed
Mississippi	None
Missouri	None
Montana	None
Nebraska	Proposed
Nevada	In Force
New Hampshire	Proposed
New Jersey	Proposed
New Mexico	None
New York	Proposed
North Carolina	None
North Dakota	In Force
Ohio	None
Oklahoma	None
Oregon	None
Pennsylvania	Proposed
Rhode Island	None
South Carolina	None
South Dakota	None
Tennessee	None
Texas	Proposed
Utah	In Force
Vermont	Passed
Virginia	Proposed
Washington	Died
Washington DC	None
West Virginia	None
Wisconsin	Died
Wyoming	None



Alabama	None
Alaska	None
Arizona	Proposed
Arkansas	In Force

Canada PIPEDA
and Data Breach

Isle of Man
EU Adequacy

UK
EU

Turkey
Controller

Switzerland
EU Adequacy

Tajikistan
Data Protection
2010

**GDPR is the standard of choice for many
Global Privacy Programmes**

- Meet GDPR, meet most privacy obligations.**

Pennsylvania	Proposed
Rhode Island	None
South Carolina	None
South Dakota	None
Tennessee	None
Texas	Proposed
Utah	In Force
Vermont	Passed
Virginia	Proposed
Washington	Died
Washington DC	None
West Virginia	None
Wisconsin	Died
Wyoming	None

Uruguay data
protection law
Amendments
EU Adequacy

Argentina
Mutual
EU Adequacy

South Africa
POPI Reg.s

Nigeria
DP Regulation
2019

New Zealand
Privacy Act 2020
Adequacy

UK GDPR Divergence

IDTA came into force on 21 March 2022

Replaces GDPR Standard Contractual Clauses (SCC) for international transfers

Exporters to use IDTA as a transfer tool to comply with Article 46 of UK-GDPR when making restricted transfers

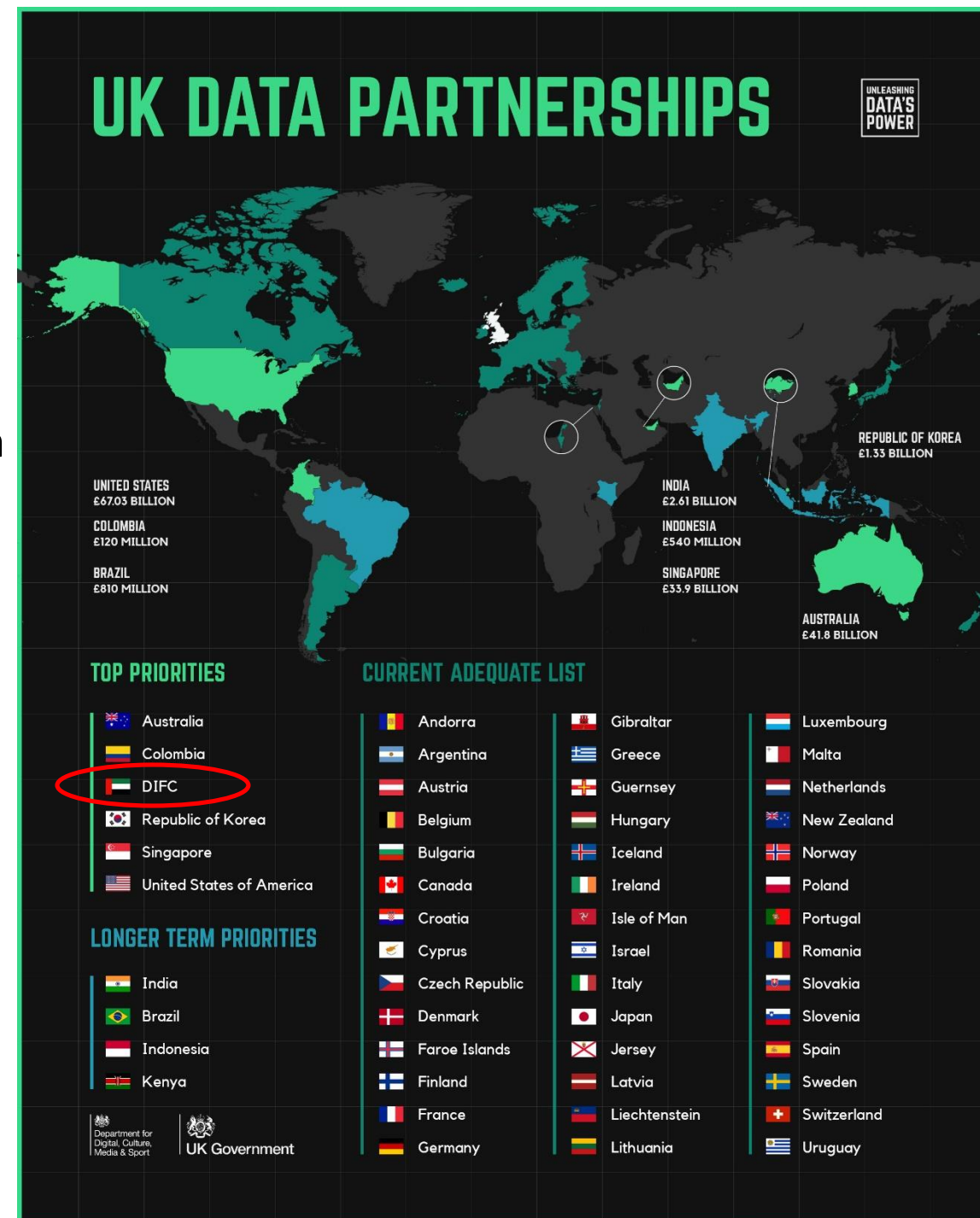
Watch out:

Proposed requirements less prescriptive for:

- DPOs & Impact Assessments
- SCCs not like for like with IDTA
- UK Government Digital Announcements, “Reducing Burdens”
- Reclassifying Data Types (e.g. Facebook)

Special Exemptions:

- Domestic purposes
- Law enforcement
- Intelligence services processing

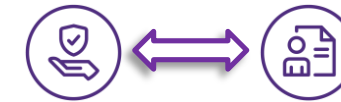


Current Transfer Mechanisms

Mechanisms

- ① Adequacy Decisions
- ② Standard Contractual Clauses (SCCs)
- ③ Binding Corporate Rules
- ④ Competent Authority Authorisation
- ⑤ Derogations

- ① Andorra, Argentina, Canada, Faroe Islands, Guernsey, Isle of Man, Israel, Japan, Jersey, New Zealand, South Korea, Switzerland, the UK and Uruguay.



- ② Controller to Controller Processor to Controller
Controller to Processor Processor to Processor
- ③ Enables multinationals transfer data cross borders internally only and are legally binding
- ④ Typically built on SCCs changing some clauses for operationalisation reasons – be careful not to undermine the SCCs
- ⑤ Very difficult to rely on Derogations (art. 49) for business purposes e.g. Explicit consent

Current Transfer Mechanisms

Mechanisms

- ① Adequacy Decisions
- ② Standard Contractual Clauses (SCCs)
- ③ Binding Corporate Rules
- ④ Competent Authority Authorisation
- ⑤ Derogations

- ✓ Choose the most appropriate mechanism
- ✓ Complete Transfer Impact Assessment(s) / Risk Analysis
- ✓ Document all rationale

YOU ARE ACCOUNTABLE!

EU Data Governance Reform

Name Act / Directive	Why	Status
<u>Digital Markets Act (DMA)</u> The Digital Services Act package	Aims to open digital market by establishing limits to current digital gatekeepers (aka big tech monopolies).	Published: 15 December 2020
<u>Digital Services Act (DSA)</u> The Digital Services Act package	Aims to re-shape the internet by altering the power imbalances between big dominant platforms and people using them. It is an update of the eCommerce Directive.	Published: 15 December 2020
<u>Data Governance Act (DGA)</u>	Aims at fostering the availability of data for use by increasing trust in data intermediaries and by strengthening data sharing mechanisms across the EU.	Published: 25 November 2020
<u>Data Act (DA)</u>	Aims to maximise the value of data in the economy by ensuring that a wider range of stakeholders gain control over their data and that more data is available for innovative use, while preserving incentives to invest in data generation.	Published: 23 February 2022
<u>AI Act (AIA)</u>	Aims to ensure that AI systems placed on the EU market are safe and respect existing law on fundamental rights and EU values. To ensure legal certainty to facilitate investment and innovation in AI. To enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems. To facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation.	Published: 21 April 2021
<u>Whistleblower Directive</u>	Aims to protect and encourage reporting of breaches of EU law. Whistle-blowers will be able to choose between internal and external reporting. Safeguards against reprisals from employers.	Adopted: 16 April 2019
<u>Database Directive</u>	Aims to legally protect databases in any form.	Adopted: 06 June 2019
<u>Open Data Directive</u>	Aims to govern re-use of public sector documents to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information. Public sector bodies collect, produce, reproduce and disseminate documents to fulfil their public tasks.	Adopted: 20 June 2019
<u>ePrivacy Directive</u>	Aims to increase the protection of people's private life and open up new opportunities for business, by modernisation of the data protection framework for all electronic communications.	Published: 10 January 2017

Are we moving towards Global GDPR?



**Shane Carrick FIP (CIPP/E, CIPT, CIPM),
FCCA, PMP.**

Director, Digital Risk, Grant Thornton
Head of Data Protection Client Services
shane.carrick@ie.gt.com

Questions

