The Role and Future of Tax Governance in a Digital Tax Environment

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Institutional Framework Taxation/Digitalisation

- **International organizations**
- OECD (developed countries) – Committee of Fiscal Affairs
- UN (developing countries)/ UNDESA (UN Tax Committee), UNDP (technical assistance)
- IMF and WB (technical assistance)
- Platform for collaboration on tax: IMF, OECD, UN, WB.
- Tax Inspectors Without Borders cooperation OECD/UNDP
- **Political fora**
- Developed/emerging countries: G7, G20
- Developing countries: G24, G77
- **Supranational organization**
- European Union
- **Regional tax organizations/cooperation**
- African Tax Administration Forum ATAF
- Inter-American center of Tax Administrations CIAT
- Study Group on Asia Tax Administration and Research SGATAR
- Belt Road Initiative Tax Administration Cooperation Mechanism BRITACOM
- Asia-Europe Meeting Interregional cooperation (21 countries)

Digitalisation

Need for digital connectivity through trust and confidence in the information and communications technology (ICT) environment.

Digitalisation/new technologies: Opportunities for tax administrations to "better manage compliance, tackle non-compliance and protect their tax base.

Objective: Tax Administrations to benefit from new information and communication technologies (e.g. artificial intelligence and data analytics methods).

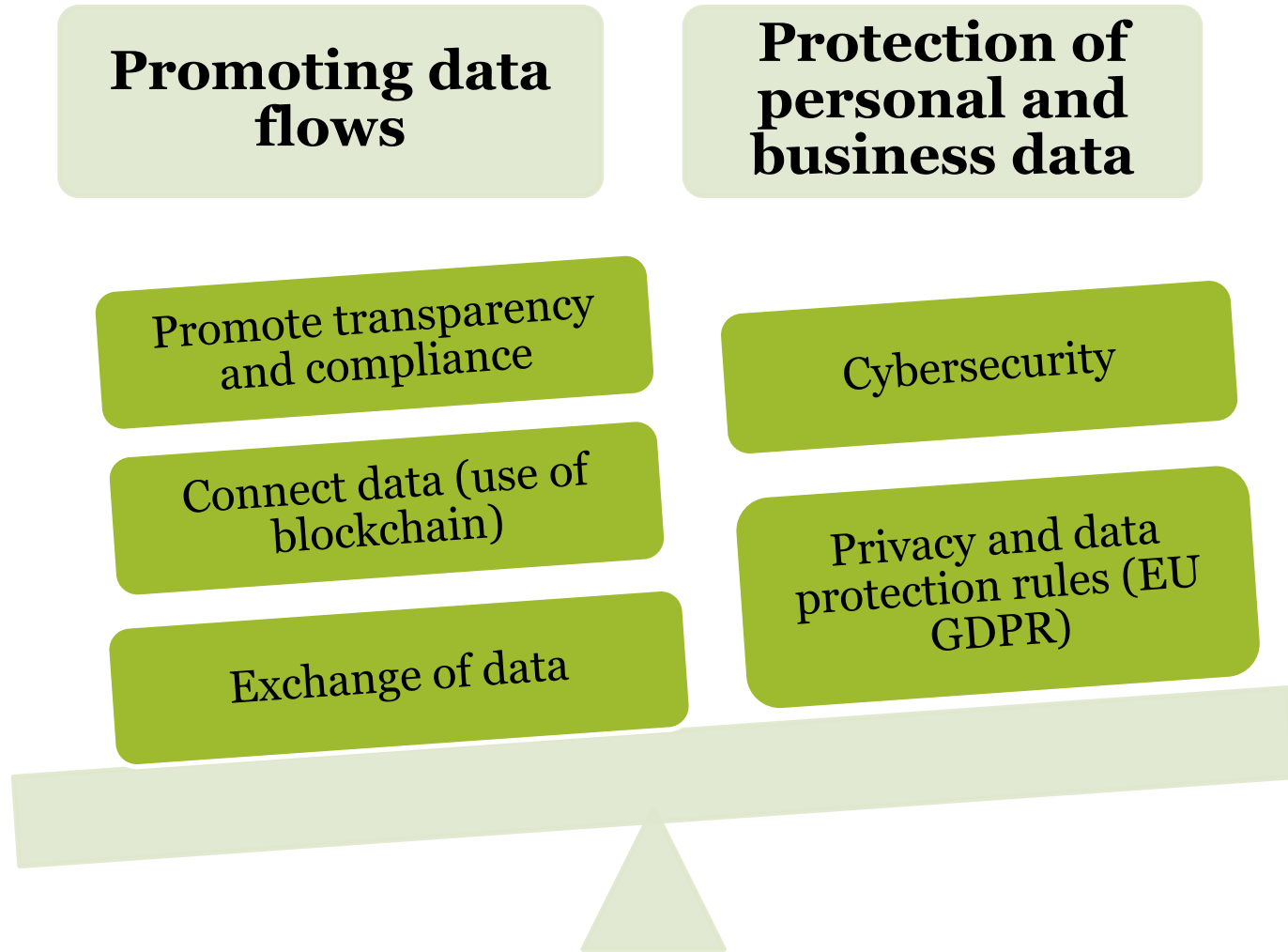Exchange of views and experiences between tax administrations.

Governance and Legitimacy Issues

- Are the instruments in the era of digitalization sufficient to guarantee the privacy and data protection of individuals and business?

- How can **tax administrations** benefit from the amount of data that is being exchanged/collected? Differences between developed vs. less developed countries.

- How can **taxpayers** trust the tax administration/data collectors that the information will be safeguarded?

- Taxpayers need answers to question such as (i) who has my data? (ii) is my data properly collected, stored and monitored? (iii) is the processing of my data allowed? And (iv) who owns my data?

Stakeholders

- Governments mainly tax administrations

- Taxpayer

- Internet/Digital platforms

- Civil society

- Research/Academic Institutions

- International organizations

- Regional organizations

- Other non-tax organizations/academic/research institutions working on data governance/AI, etc.

Balance

Promoting data flows

Protection of personal and business data

Promote transparency and compliance

Cybersecurity

Connect data (use of blockchain)

Privacy and data protection rules (EU GDPR)

Exchange of data

Pillars of a Digital Governance Framework

a) Legitimacy: Sound Institutional Framework

b) Decision Making by tax administration

- Transparency

- Accountability

- Security

c) Digitalization: Challenges taxpayer/tax administration

- Modernization

- Improvement Service

- Implementation Tools

- Transformation to adapt to new changes

Regional? Global? Unilateral?

- Domestic level: Involvement of all stakeholders (Government, Legislative, Judiciary). Oversight and data protection authorities

- Regional: Data protection (e.g. GDPR), but how to ensure that there are also regional models of data protection. Mostly using 1995 Data Protection Directive (out of date). SGATAR, ATAF/AU, CIAT/Pacific Alliance.

- Global: Awareness of the EU Council of Europe Convention for the Automatic Processing of Data including Big Data.

Binding Instrument

- 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

- Protects the individual against abuses which may accompany the collection and processing of personal data and which seeks to regulate at the same time the transfrontier flow of personal data.

- 2001 Protocol: Access to third countries. Ratified by CoE members and also non-members (In force: Argentina, Cabo Verde, Mauritius, Mexico, Morocco, Russian Federation, Senegal, Tunisia and Uruguay). Invited not yet signed (Burkina Faso).

Binding Instrument

Definitions (art. 2)

- Personal data means any information relating to an identified or identifiable individual ("data subject")

- Automated data file means any set of data undergoing automatic processing; "automatic processing" includes the following operations if carried out wholly or partially by automated means: data storage, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination and controller of the file means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.
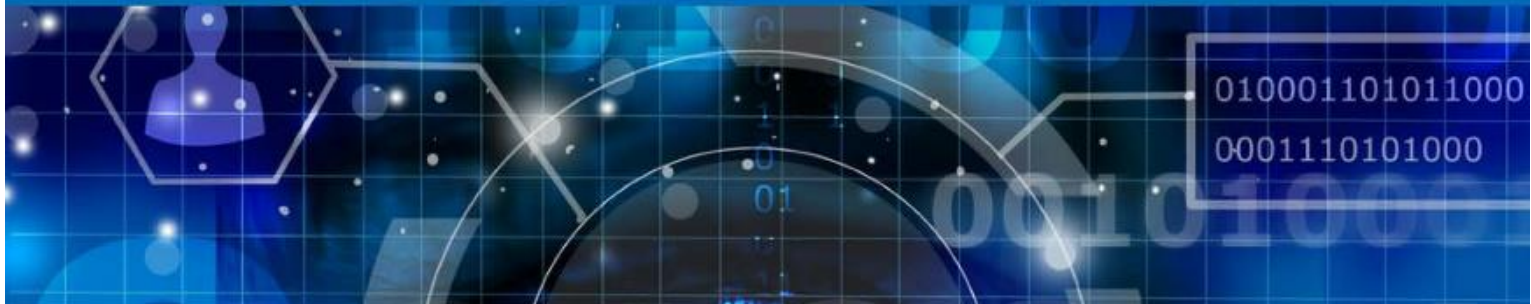
Binding Instrument

Legend: Observer Countries/DPAs · Acceding countries · Parties to Convention 108
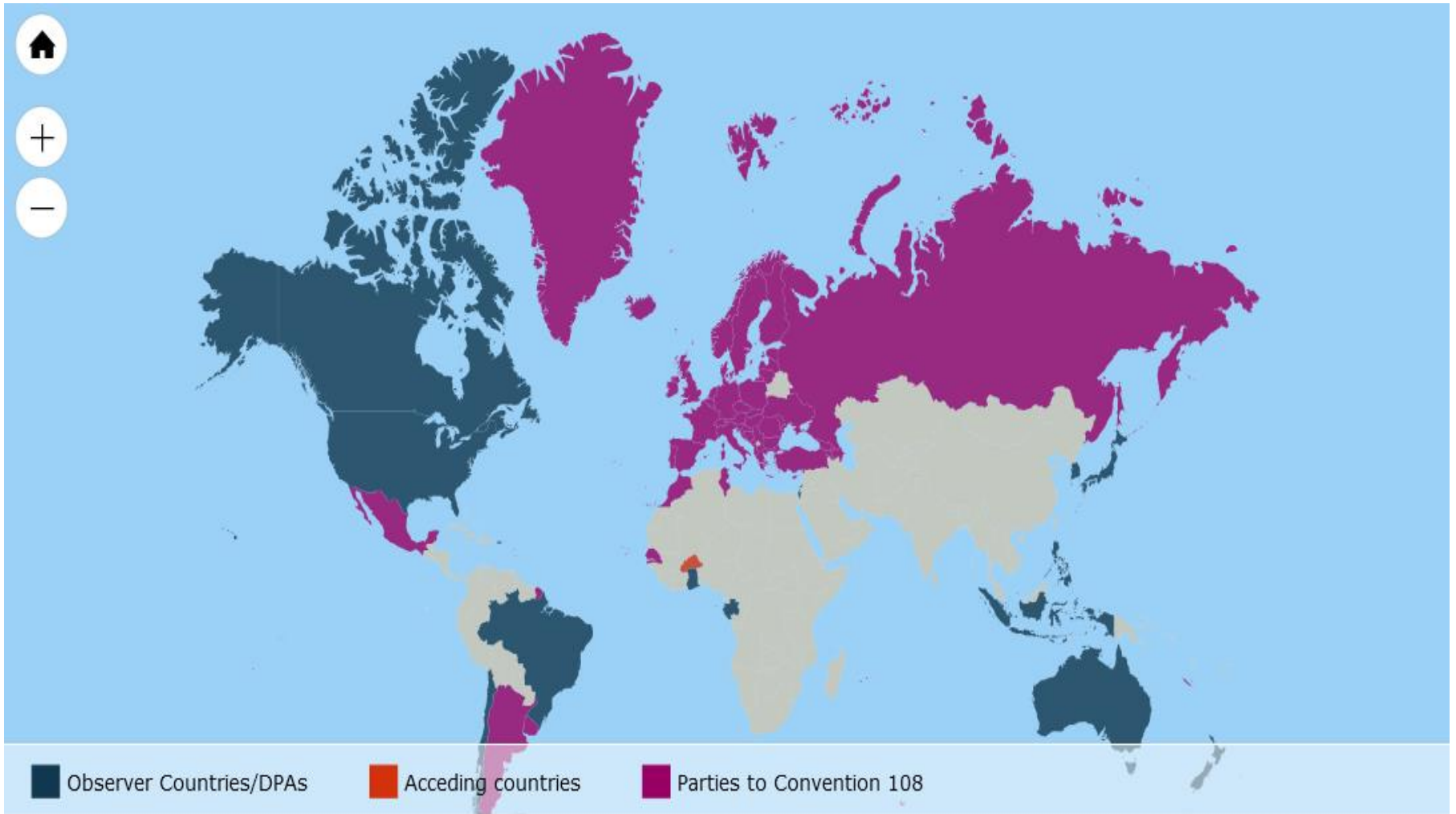
Source: Council of Europe https://www.coe.int/en/web/data-protection/convention108/parties

Guidelines 2017

Guidelines on
the protection of individuals
with regard to the processing
of personal data in a world of Big Data

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Big Data

- ***2017 Guidelines***

  In terms of data protection, the main issues do not only concern the volume, velocity, and variety of processed data, but also the ***analysis of the data using software to extract new and predictive knowledge for decision-making purposes*** regarding individuals and groups.

- ***2018 (October) Protocol: Update***

  The importance "to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, ***given the diversification, intensification and globalisation of data processing and personal data flows***, personal autonomy based on a person's right to control his or her personal data and the processing of such data" Art. 1 modifying 3rd recital 2001 Preamble.

Binding Instrument

- ***2018 (October) Protocol: Update***

  - Reinforced powers and independence of the data protection authorities and enhancing legal basis for international cooperation;

  - Greater transparency of data processing;

  - Obligation to declare data breaches;

  - New rights for the persons in an algorithmic decision making context, which are particularly relevant in connection with the development of artificial intelligence;

  - Stronger accountability of data controllers;

  - Requirement that the "privacy by design" and privacy by default principles are applied.

  See Mosquera Valderrama I.J. chapter 3 The Internet of Things in Tax Law. Framework of EU JEAN MONNET DIGITAX Project

Role of DET network

- To discuss/present how this Council of Europe Convention can be applicable to tax.

- To address the implementation of GDPR regulation in non-EU countries, to replace the data protection rules based on the 1995 EU Data Protection Directive.

- To discuss with stakeholders what is needed to help developing countries in dealing with processing/use of big data, data analytics, while guaranteeing the trust by the taxpayer that there will be safeguards (e.g. in case of algorithmic decision making among others).

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