

## Report of Activity 2016-2017 (Report to the Conference)

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### **ICDPPC Group of Experts on Legal and Practical Solutions for Cooperation**

#### **BACKGROUND**

International enforcement cooperation has been a key priority for the International Conference of Data Protection and Privacy Commissioners ("ICDPPC" or "the Conference") for more than a decade. Great strides have been made by the Conference with the development of a set of practical tools and initiatives to improve such cooperation as the pressure has intensified on regulatory agencies to maintain pace with new data protection developments that are increasingly of a global nature and relevance.

In Marrakesh in 2016, the Conference adopted a Resolution on International Enforcement Cooperation (the "Resolution"). The Resolution, as proposed by the lead sponsor, the Information Commissioner's Office, UK, and co-sponsored by eight other authorities from around the globe, set out, the parameters for the work of a new working group (since named the "ICDPPC Group of Experts on Legal and Practical Solutions for Cooperation" or herein "Group"):

*'1) To mandate a new Working Group of Experts comprised of interested International Conference members and ideally, representative of the Conference membership from across the different global regions to develop a proposal for key principles in legislation that facilitates greater enforcement cooperation between members. The principles could be adapted by individual members to their national, regional and local needs. The principles would be accompanied by an explanatory memorandum that can be presented to national governments by individual members and where appropriate, observers. In addition, the Working Group is encouraged to suggest other measures that it feels may improve effective cross-border cooperation in the short or long term. The Working Group is encouraged to work in cooperation with other networks of privacy enforcement authorities active in cross-border enforcement cooperation, and to consult with networks of enforcement bodies from other sectors where appropriate, and is directed to report back to the 39th Conference on the product of its work.'*

#### **OVERVIEW OF THE GROUP AND ITS WORK**

The call for members of the Group was issued in late November 2016. A regionally diverse selection of ICDPPC members expressed an interest in designating an Expert from their Authority to form a part of the Group. The Group's initial teleconference call took place on 21 December. The Information

Commissioner's Office (UK) and the Dutch Data Protection Authority were elected as Co-chairs of the Group overall. The Office of the Privacy Commissioner of Canada (OPC-Canada) volunteered to take a lead role in the Group's work related to other measures that may improve cooperation (see workstream two below). Ultimately, the Group gathered an excellent cross-section of experience and expertise to optimize its work output, with participants ranging from the level of Heads or Deputy Heads of Authority, to senior legal, policy and enforcement experts. Individual members of the Conference from the following countries participated: Argentina, Belgium, France, Germany (Federal), Germany (Laender – Rhineland Palatinate), Hungary, Hong Kong, Ivory Coast, Mali, Mexico and USA.

The ICO, as Sponsor Authority for the 2016 Resolution was designated by the Experts as the Administration Team for the project. In that capacity, the ICO worked with GPEN to set up a dedicated Online Space on the GPEN restricted-access web platform to share information between the Group's members, and convened all meetings on behalf of the Co-chairs. The Group also adopted a dedicated Terms of Reference to help steer the work.

In order to effectively manage the work envisaged in the Resolution, the Co-chairs convened two workstreams, one to develop the key principles, and the other to focus on other measures that may improve effective cross-border cooperation in the short or long term. A survey was conducted among the experts to inform the work in each workstream. The co-chairs collated the survey results, which in turn formed the basis of the first drafts of the documentation in each workstream.

Based on the survey results, workstream two was also split into three sub-streams:

- 2.1 - Draft Alternative Wording to the Global Cross Border Enforcement Cooperation Arrangement (the "Arrangement");
- 2.2 - List of Enforcement Cooperation Tools/Initiatives available within the ICDPPC and other relevant networks, and a list of tools/initiatives for potential future development; and
- 2.3 – Additional Cooperation Frameworks (e.g. international treaties or other bilateral agreements) – conduct a preliminary overview of various frameworks used for, or relevant to, enforcement cooperation, with a view to determining whether further work is warranted to evaluate the feasibility/desirability of implementing a new framework to facilitate more broad-based (both functionally and geographically) privacy and data protection enforcement cooperation.

The workstreams each convened a series of teleconferences which culminated in a face-to-face meeting in Toronto where the Principles and a proposed amendment to the Arrangement were discussed and advanced.

After the meeting in Toronto, an Explanatory Memorandum was developed to accompany the Principles, and two more rounds of Expert consultation took place on this. Fine-tuning of the texts took place to ensure the consistency and continuity with past work of the ICDPPC and other frameworks such as OECD.

For Workstream 2.1, the twelve current signatories to the Arrangement were approached for their support to the proposed amended wording of the Arrangement. All current signatories supported the amendment and its implementation via a Hong Kong ICDPPC resolution.

Concurrently, during the months of April and May, experts prepared a number of research reports which formed the basis of draft reports in respect of workstreams 2.2 and 2.3, which were amended via several rounds of consultation with the Experts in June and July.

On 23 June, in Manchester, on the margins of the GPEN Enforcement Practitioners Workshop, the Co-chairs and OPC-Canada (as lead for Workstream Two), met to draw up a plan for the final submission of documents to the Hong Kong ICDPPC. A full review of all workstream one and two outputs was also conducted, and subsequently, revised documentation was shared with Experts for final comment. A final Group teleconference was held for both workstreams on 12 July to comment on the latest revisions. The Experts were invited to send final written comments, and the ICO as Administrative Team was tasked with finalizing the text of the Principles and their Explanatory Memorandum.

The Co-chairs also consulted with the Experts on a draft resolution to be sent to the ICDPPC in Hong Kong, and issued a call for co-sponsors.

The Co-chairs finalized the work in August. This included proactive work to ensure the different viewpoints of the Experts were accommodated as far as possible.

## **DOCUMENTATION PRESENTED TO THE CONFERENCE**

In addition to this report, the following Annexes are presented to the Conference as output from this project for future use by Conference members:

### **1) Draft Resolution on exploring future options for International Enforcement Cooperation (2017)**

Members of the ICDPPC can see that the Resolution to the Conference recommends follow-up to work in workstream 2.3 on treaties and other legal frameworks.

### **2) Workstream 1 - Key Principles and Explanatory Memorandum (explaining the principles)**

To be used, individually or as a full collection, as each Member finds appropriate to encourage their governments to implement legislation that facilitates enforcement cooperation.

- 3) Workstream 2 – three separate tasks:
- a. **Proposed Amendment to the Arrangement** (supported by all current Arrangement signatories) and **Summary Report** (explaining the amendments)
  - b. **Report on Enforcement Cooperation Tools and Initiatives** (including a list of tools/initiatives: (i) available to Conference members; and (ii) recommended for future consideration)
  - c. **Report on Additional Enforcement Cooperation Frameworks** (providing an overview of various potential cooperation frameworks and recommending further evaluation of those via a new working group)

With this report, the Heads of Authority of the Co-chairs/Lead for Workstream Two recommend the Resolution and the Group of Experts documents to the Conference in Hong Kong at its 39<sup>th</sup> edition in September 2017.

**Elizabeth Denham**, ICO (Co-chair of the Group of Experts)

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