

38th INTERNATIONAL CONFERENCE OF
DATA PROTECTION AND PRIVACY COMMISSIONERS

Marrakesh, 18 October 2016

Resolution on developing new metrics of data protection regulation

Proposer: Executive Committee: New Zealand (Chair), Canada France, Morocco, Netherlands

Co-sponsors: [to be inserted if we seek any]

The 38th International Conference of Data Protection and Privacy Commissioners:

Noting that:

- (a) In 2013, the Organisation of Economic Cooperation and Development observed that “the evidence base which is currently available in the area of privacy is uneven”¹:
- (b) Building upon this insight, the OECD recommended that countries should “encourage the development of internationally comparable metrics to inform the policy making process related to privacy and the transborder flows of personal data”²:
- (c) In 2016 OECD Ministers declared an intent, in close co-operation with all stakeholders, to share experiences and work collaboratively “to contribute to developing new metrics for the digital economy, such as on trust, skills and global data flows”³:
- (d) The ability to measure is often seen as a precondition to effective management and improvement:
- (e) The Conference’s mission “to disseminate knowledge, and provide practical assistance, to help authorities more effectively to perform their mandates” will be advanced by closing the gaps in the available measures of data protection and privacy regulation:

Therefore resolves to:

1. Play a part in helping to develop internationally comparable metrics in relation to data protection and privacy and to support the efforts of other international partners to make progress in this area:
2. Direct the Executive Committee to identify ways in which the Conference can encourage the development of internationally comparable metrics:

¹ OECD, Supplementary Explanatory Memorandum to the Revised OECD Guidelines (2013).

² OECD Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013), article 22.

³ OECD Ministerial Declaration on the Digital Economy (“the Cancun Declaration”), June 2016.

3. As a first step, the Executive Committee is authorised to establish processes to:
 - a. encourage member authorities to include certain common core questions in their regular community attitude surveys touching upon awareness levels of DPAs and applicable privacy and data protection law;
 - b. Centrally receive the results, make them available and calculate benchmarks;
 4. Authorise the Executive Committee to convene working groups to assist with the task if necessary.
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EXPLANATORY NOTE

Modern public policy making seeks to adopt a rational scientific approach wherever possible. One aspect is the attempt to measure things. Measurement is seen as useful to understand the existing situation, how it has changed from the past and to predict how it may change in the future. Measurement is also useful in problem definition and in evaluating the effects of public policy interventions.

For example, it might be useful to be able to quantify aspects of the state of privacy in the past, to compare that to the present and to measure the significance of various changes or trends with some authority. Ideally, the effect of data protection laws could be evaluated or the success of various interventions, such as breach notification, could be measured.

The OECD has a particular interest in both privacy regulation and economic measurement. It found substantial gaps in the statistical information available on which to base privacy and data protection policy making. The OECD encourages the development of internationally comparable metrics to inform the policy making process related to privacy.

Data protection authorities are likely to be key beneficiaries of any internationally comparable metrics that might be developed. DPAs might also likely be sources of data that could help develop such metrics. The Conference brings together more than 110 member authorities from around the world and thus sees a special value in development of useful privacy metrics.

This resolution reflects the importance of this topic and acknowledges the OECD's intention to provide leadership in this area. The OECD undoubtedly has a depth of statistical expertise. The Conference stands ready to play a part in helping to develop internationally comparable metrics in relation to data protection and privacy.

As a small first step the resolution proposes to create a Conference process to encourage member authorities to include certain common core questions in their regular community attitude surveys. This idea is based upon the success of coordination of survey questions across a range of jurisdictions in the development of revised EU data protection law (through a special "Eurobarometer" survey⁴). The Asia Pacific Privacy Authorities (APPA) Forum has also recommended the adoption of Common Core Questions for Community attitude surveys and this has been used as a model for this aspect of the resolution.⁵

The development of internationally comparable privacy questions in community attitude surveys is offered as a simple starting point for a meaningful contribution by the Conference to the challenge of developing useful and internationally comparable privacy metrics. In future DPAs may want to turn their attention to other challenging areas in the administrative data they already hold such as in the areas of complaints, enquiries, policy advice and enforcement and seek to derive useful international metrics.

The resolution proposes that the Executive Committee undertake some preliminary work to identify promising avenues to pursue. If need be a working group may be established to assist.

⁴ Special Eurobarometer 431, Data protection:
http://ec.europa.eu/public_opinion/archives/eb_special_439_420_en.htm#431.

⁵ APPA Forum, Statement of Common Administrative Practice on Recommended Common Core Questions for Community attitude surveys, June 2014:
http://www.appaforum.org/resources/common_practice.html#surveys