



ICDPPC Closed session: Agenda Item 12 Future Size and membership of Conference

Personal Note by ICDPPC Executive Committee Chair to assist discussion

In the October newsletter I wrote that during this year's closed session we would open a discussion on the future size and membership of the Conference. I asked delegates to come prepared to express a view as to whether the Conference should be open and inclusive, accepting all independent authorities with a data protection privacy mandate, or should the criteria be more exclusive? Should authorities with regional rather than national mandates be admitted? What about authorities with a sectoral mandate only? And if we tighten the current criteria, should some current members be excluded in the future?

We have allocated 30 minutes for discussion and I look forward to engaging in a fruitful and respectful discussion that draws out the thinking of delegates about the basis of participation and the purpose of the Conference. This note includes a few questions that the discussion might touch upon and offers some statistics and facts that might be relevant.

Conference membership criteria

The Conference rules and procedures adopted in 2010 set out 5 substantive membership criteria:

- A public entity, created by an appropriate legal instrument.
- Has the supervision of the implementation of data protection or privacy law as one of its principal regulatory mandates.
- The law under which it operates is compatible with the principal international data protection or privacy instruments.
- An appropriate range of legal powers to perform its functions.
- Appropriate autonomy and independence.

Q: Do current membership remain appropriate? Are they too restrictive or too broad?

Remember that:

- *If additional membership criteria are added to:* membership entitlement is *restricted* meaning that newly created authorities around the world may become ineligible to be members and the entitlement of some existing members will come into question.
- *If the membership criteria are left as they are:* existing members will be *unaffected* and it is expected that a few new members will continue to join the Conference each year.
- *If the membership criteria are relaxed:* the Conference membership will likely *expand* more quickly as additional types of privacy enforcement authority join.

Examples of more relaxed membership criteria include those networks applying the OECD's definition of 'Privacy Enforcement Authority' which is, in essence, any public body that:

- (1) is responsible for enforcing laws or regulations the enforcement of which has the effect of protecting personal information; and
- (2) has powers to conduct investigations or pursue enforcement proceedings.

These more relaxed membership criteria are applied by, for example:

- Global Privacy Enforcement Network (GPEN);
- APEC Cross-border Privacy Enforcement Network (CPEA);
- Asia Pacific Privacy Authorities Forum (APPA).

Objectives of membership criteria or any change to the criteria

Delegates should reflect upon, and express during the discussion, the reasons for the current membership criteria or for changing those criteria.

Q: What do we seek to achieve by the current membership criteria or by any change to the criteria?

The current criteria are derived from accreditation principles adopted by the 23rd Conference in 2001. Those principles sought to reflect the Conference participants as they then were and were also informed by similar principles earlier developed by the UN for National Human Rights Institutions.

The criteria help to describe and define who we are. They connect the members and are thereby inclusive. However, they also operate to differentiate members from those that do not fulfil the criteria and are thus also exclusionary.

Is it important to strictly define who we are in this way? Is there important value in connecting the members in this way? Does this value outweigh any disadvantage in excluding not qualifying authorities?

If a delegate proposes to restrict or expand entitlements for membership they should seek to articulate the benefits to the Conference in doing so. They should also recognise and be open about any adverse consequences and explain why they are justified.

Conference size

In the 14 years since 2002, when membership was first established, the Conference has grown from 54 to 115 members. In other words it has more than doubled in size reflecting an expansion in data protection laws around the world.

While that may be encouraging for anyone that values the idea of more universal data protection law, the growth should be seen in perspective. Not, for example:

- That is on average only 4.4 new members each year.
- Three federal states have multiple members making up about 30% of the membership total.
- Only 3 of the 20 most populous countries have authorities that are members of the Conference.

- Some 2/3 of the Conference membership is from one region.
- Only about 1/3 of the 193 UN member states are represented in the Conference.

If the Conference seeks truly to be global it has a long way to grow yet.

Q: Does the Conference wish to grow larger. If so, why? If, not why not?

If the Conference remains with the status quo or applies more restrictive membership criteria, it may be expected to grow for some time yet. Members will continue to look like the current DPA members.

If more relaxed membership criteria are applied the membership might be expected to grow faster and become more dynamic and diverse. Many members will continue to look like the current DPA members while one might also expect authorities having other regulatory forms to join as has been the case for GPEN, APPA and CPEA.

The doubling of the Conference size in the last 14 years may have seen the meeting become somewhat less intimate and collegial that was formerly the case. However, this has been compensated by a broadening and deepening of the experience and global reach of the membership.

The increasing size does require the Conference to become more effective in its management. Steps have already begun in that regard through, for example, the establishment of the Executive Committee. More needs to be done even if the modest growth of the status quo is maintained but I am confident that the Conference should be able to manage and benefit from that growth.

John Edwards

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