



DRAFT PROPOSAL OF RESOLUTION OF THE ACREDITATION COMMITTEE ON THE IMPROVEMENT OF THE ORGANISATIONAL SET UP OF THE CLOSED SESSION

1. Having regard to some of the Proposals of Resolution submitted to the closed session, it appears that some aspects of the rules of procedure would benefit from an in depth revision.
2. Firstly, the Swiss DPA, for example, calls for an evaluation of “whether the Conference needs a more formal structure”, including the creation of “a permanent secretariat”.
3. For its part, the Steering Group puts forward the advisability of admitting International Organisations as observers, a status that may be granted by the own Group “for any period not exceeding three years”. Furthermore, New Zealand’s Privacy Commissioner proposes to “enable authorities that meet all the accreditation principles, but that have a narrower sphere of activity than would currently be accepted for accreditation”, to become accredited to the Conference as “sectoral data protection authorities”.
4. The relevant rules are incomplete and contained in different texts. That makes it difficult to gain a clear picture and to fully observe all of them. Some have been adopted by means of Resolutions, while others are just a mere product of the way of facts. Moreover, there has been no follow-up of the Resolution of the Working Group on Conference Organisational Arrangements, adopted in Montreal on 2007. Lastly, as shown below, a significant number of situations are not covered by the current framework. Some of the issues which are not properly addressed are the following:

Conference resolutions

- Nowadays, a Resolution can only be adopted when a majority of accredited authorities entitled to vote are present. A quorum, therefore, is necessary. Noting that the number of countries represented in the Conference is growing every year, this rule could become problematic in a not too distant future.
- Where consensus is not reached, Resolutions may be adopted by simple majority. However, no special rule on qualified majority is foreseen for decisions about critical issues, such as the structure or functions of the Conference.
- There are no criteria for ruling voting by proxy.

Credentials Committee

- Experience has shown that having the organising authority of each Conference among the members of the Credentials Committee offers many advantages. Consideration could be given to explicitly establish that the host of each Conference becomes “ipso facto” member of the Credentials Committee.
- The present rules establish that the Credentials Committee will adopt its own internal regulation. This provision gives the Committee a great flexibility, but at the same time creates uncertainty for new members and opens the way to continuous amendments. In particular, the internal rules of decision-making of the Credentials Committee are not properly defined. In fact, it works following mere precedents and almost customary rules.



- According to the present rules, an authority with a limited sub-national territory could be member of the Credentials Committee, even if a national authority from the same country is accredited to the Conference.

Observers and accredited members

- In order to become members of the Conference, candidate DPAs are requested to show that applicable laws in their respective countries implement one or several of a number of international instruments dealing with data protection and privacy. The list was established some years ago and could be updated with the inclusion of new texts, such as the APEC Privacy Framework or the Joint Proposal of International Standards drafted by the Conference.
- It would be necessary to evaluate whether, and under which conditions, sectoral authorities might become members of the Conference.
- The procedure for the revision of the status of an accredited authority is not clear. There is no provision on to what extent the requesting authority must offer evidence to substantiate its claim or on the procedure for allowing the questioned authority to react.
- Authorities that no longer meet the requirements to be entitled to member status must notify this fact to the Credentials Committee. However, this rule is not included in the last version of the resolution on accreditation features, but in a different resolution adopted in Cardiff on 2002 upon a proposal of the, at that time, Verification Committee. This is just an example of to what extent the rules are scattered.
- Admission of observers remains within the discretion of the host. This seems to be contrary to the contents of the Resolution on admitting international observers to the Conference, proposed by the Steering Group. On the other hand, there are practically no criteria for granting observer status.

Miscellaneous

- The present rules do not foresee the figure of president and/or secretary of the Closed Session. Although traditionally these tasks have been performed by the host DPA a more formal regulation could be considered.
- The linguistic regime of the Conference or of the Resolutions is not properly established.

5. It is clear that the Conference continues to grow in size and relevance, to such a degree that its Resolutions are even deemed soft-law in many areas. In this scenario, enhancing the transparency and legal certainty of the activity of the Conference is becoming a necessity.

6. Given the need to take steps to face all these weaknesses and the significant changes that possible amendments could cause, the Credentials Committee submits to the Closed Session of the International Conference the following



RESOLUTION

1. The Conference resolves to suspend consideration of the “Resolution on Accreditation of Sectoral DPAs” and the “Steering Group Resolution on Admission of Observers from International Governmental Organizations to the Closed Session of the International Conference” in order to undertake an in depth assessment of the regulations governing the functioning of the International Conference, with the view to adopt a new Resolution that offers a comprehensive regulatory framework adapted to the current situation.
2. This suspension does not refer to the Resolution submitted by the Swiss DPA in as much as its content is coherent with the proposed revision of the structure and the functioning of the International Conference.
3. This task will be carried out by a Working Group that will be composed by the members of the Credentials Committee, the members of the Steering Group and all other accredited Authorities that wish to join it.
4. In order not to delay the entry into force of the new rules and the evaluation of new applications according with them, the Working Group will submit a proposal before the 30th June 2010. A provisional decision on this proposal will be made through a vote by written procedure before the 30th July 2010.
5. Applications for admission as member or observer of the International Conference lodged in 2010 will be considered according with the contents of the new Resolution mentioned in point 1, after its formal approval by the Closed Session of the 32nd International Conference.