

**31ST INTERNATIONAL CONFERENCE OF DATA PROTECTION AND PRIVACY
COMMISSIONERS**

MADRID, 5 NOVEMBER 2009

**RESOLUTION ON ACCREDITATION OF SECTORAL DATA PROTECTION
AUTHORITIES**

Proposer: Privacy Commissioner, New Zealand

Co-sponsors:

- **Privacy Commissioner of Canada**
- **Privacy Commissioner, Australia**
- **Data Protection Agency, Spain**
- **Privacy Commissioner for Personal Data, Hong Kong**
- **Information and Privacy Commissioner, British Columbia**

Resolution

The 31st International Conference of Data Protection and Privacy Commissioners **resolves** to:

1. 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; and
2. Accordingly amend:
 - a. The Criteria and Rules for the Credentials Committee in the manner set out in Annex A to enable the accreditation of 'sectoral data protection authorities'; and
 - b. The Guidelines and Procedures for Conference Resolutions by adding the addendum set out in Annex B recording the entitlement of accredited sectoral data protection authorities to propose, vote upon, and be consulted in relation to, Conference resolutions.

Annex A

Clause 4 of the [Criteria and Rules for the Credentials Committee](#) is amended to read as follows (with new text underlined):

4. Applications for accreditation

Any authority that wishes to be accredited must write to the committee explaining its case in terms of the accreditation principles. Applications should be made at least 3 months before the annual Conference.

The committee will offer a recommendation to the Conference in respect of each application received and will propose a resolution to recognise the credentials of each approved authority within a national, sub-national, international/supra-national or sectoral category.

Comment: Authorities would have to meet one of the following criteria, be:

- *a national authority;*
- *an authority operating within a limited sub-national territory (typically a state, province, canton or land in a federal country);*
- *an authority within an international or supra-national body;*
- *an authority with jurisdiction over a sector of the public or private sectors (which must include oversight of more than a single organisation).*

Annex B

At the 22nd Conference, commissioners adopted [Guidelines and Procedures for Conference Resolutions](#). The following addendum shall follow paragraph 3 in the addendum adopted at the 23rd Conference:

4. Accredited sectoral data protection authorities shall have the same entitlement as sub-national authorities to propose and vote upon resolutions and to be consulted by national authorities in relation to the casting of a national vote.

Explanatory note

The 23rd Conference established a [framework](#) for accrediting authorities. That framework set up the Credentials Committee and established four principles reflecting core attributes of Data Protection Commissioners, namely:

- an appropriate legal basis,
- autonomy and independence,
- consistency with the international approaches to data protection, and
- an appropriate range of functions.

The accreditation framework has given the Conference a clearer form. It has enabled the Conference to adopt resolutions and move forward collectively on collaborative initiatives. The community of data protection authorities is now seen as a meaningful player at international level.

While the credentials framework has been successful, it excludes authorities that do not have a mandate “across a wide sphere of activity”. It comments, for instance, that authorities “operating within a specific sphere of activity (such as medical privacy)” should not be accredited but instead might attend at the host’s discretion as observers.

The resolution proposes that the framework be modified to enable authorities to become accredited where that would not currently be possible because their sphere of activity is restricted to a specific sphere or narrow sector. Through this change, authorities within countries taking a sectoral approach to regulation will be able to become fully involved in the Conference. Sectoral authorities would still need to meet the rigorous requirements of the accreditation principles in terms of legal basis, autonomy and independence, consistency with international instruments and appropriate functions.

The resolution seeks to strengthen the Conference by encouraging participation of sectoral authorities, especially from countries that are not otherwise represented.

Frequently Asked Questions

Q. Will the resolution fundamentally change the accreditation principles?

A. No. The four accreditation principles are not changed at all.

Q. Will the resolution allow authorities that are not fully independent to be accredited?

A. No. The second accreditation principle requires authorities to have guarantees of independence to obtain accreditation.

Q. Are there examples of countries taking a sectoral approach to privacy regulation?

A. Two well known examples of countries taking a sectoral approach are Japan and the USA. A less well known example is Dubai which has created a Commissioner of Data Protection covering the Dubai International Financial Centre.

Q. Are there typical areas of sectoral regulation?

A. Sectoral authorities may exist at national or sub-national level. If the resolution is adopted, the Conference might be joined by specialist data protection authorities covering sectors such as financial or health services or on-line businesses.

Q. Is the resolution consistent with previous Conference resolutions?

A. The change will enable the Conference to encompass a greater diversity of authorities than is currently the case in keeping with the [Montreux Declaration](#) and other resolutions. The [London Declaration](#) emphasised the need to involve other stakeholders to achieve our goals. The [resolution on international cooperation](#) encouraged commissioners to further their efforts to support international cooperation while recognising that countries have adopted different approaches to protecting personal information.

Q. Will the proposal allow City Commissioners to be accredited?

A. The sectoral category will not permit the accreditation of an authority that has jurisdiction over a single organisation. Accordingly, a City Commissioner having jurisdiction merely over a single local government institution, such as a City Council, would not be. However, a City Commissioner having jurisdiction over all the data controllers in a geographical area (such as a 'city state') could be accredited as a sub-national authority as is the case at present.

Q. Would the change enable an authority to be accredited if its jurisdiction only covers a single government department?

A. No.

Q. Would it be possible for a sectoral authority to be accredited where there is already a national DPA accredited?

A. Yes, although we do not expect this to be common. An example might be where the national or state DPA does not have jurisdiction over hospitals where a specialised Health Privacy Commissioner covers the sector.

Q. How would voting rights work?

A. The position will be the same as currently applies in relation to sub-national authorities. If there is a sectoral authority accredited, but no other DPA accredited for that country, then the sectoral authority can exercise the national vote. If there is a national DPA, and a sectoral DPA, it is the national DPA that casts the vote. As with sub-national authorities, the national authority will be expected to consult the sectoral authority. The rule continues that there is only one vote per country.

Q. Will sectoral authorities be able to propose resolutions?

A. Yes.

Q. Is this resolution intended to assist any particular applicant for accreditation?

A. No. This proposal was developed as a general response to a perceived problem. It was prompted in part by an article criticising the Conference's accreditation approach as being

unduly exclusionary. This resolution stands on its own merits and does not focus solely on the case of any one applicant or country.

Q. How might the resolution strengthen the Conference?

A. The resolution will signal to countries taking a sectoral approach to regulation that they are welcome to join the Conference if they subscribe to the fundamental accreditation principles. Authorities accredited as a result of this change will broaden the global reach of the Conference and the range of regulatory experiences. Furthermore, the future of the Conference depends upon DPAs being willing to step forward to host the Conference. Some authorities in countries taking a sectoral approach may well have the resources and inclination to offer to host the Conference in future years thus helping to ensure its viability.