

Note to ICDPPC Executive Committee from ExCo Secretariat, 5 July 2016

Update note on Observers – Progress and issues for future

Conference Strategic Plan: 2016 – 2018

The following goals for 2016 to 2018 will support the strategic priorities:

Strengthening Our Connections, Working With Partners

Improve observer arrangements to ensure we have two way effective connections between international organisations and the Conference.

Introduction

Over the last 18 months the Secretariat has put considerable effort into addressing observer-related administrative challenges and building better arrangements for the future. Good progress has been made as far as the current rules allow.

One driver has been the need to address administrative difficulties (e.g. lack of reliable records and contact points). More positively, the Secretariat has wished to improve arrangements for the benefit of hosts (e.g. so that observer participation can realistically be planned for) and the observers themselves (e.g. so that they know where they stand).

Improving the administrative arrangements is not the final goal. Efficient administrative arrangements are simply a means to support the strategic goal of strengthening the connections between member authorities and the wider international data protection community.

Update

Good progress in improving many administrative issues. Processing of this year's batch of observer applications will be the culmination of efforts to date. Further administrative improvements may depend upon the directions the ExCo wishes to take and may require a rule change. This note explains the point that has been reached and signals some potential issues for the future that the ExCo may want to consider.

The Secretariat is pleased to report that in contrast to this time last year:

- **We have published a reliable [list of entities holding observer status](#)** with each entry confirmed against a record of a formal Conference decision. The list is realistic in that it represents only entities intending to continue as observers: 2 entities are omitted where they have confirmed that they no longer wish to be observers while another 6 entities that have not maintained contact with the Conference and not responded to repeated contact from the Secretariat have been placed on a published dormant list. Dormant entities can activate their observer status if they contact the Secretariat by 18 July. A further 2 observers have been removed from the observer list where they have become entitled to apply to be members. The list gives effect to last year's rule change whereby observer status is to be shown as being for a particular annual meeting or for a period of time covering more than one annual meeting. The approach taken Secretariat was explained in a [report](#) to the May Committee meeting.
- **The online application process is up and running.** This makes applying for observer status a simple process for entities. It also has administrative advantages and will, for example, enable

the Secretariat easily to archive observer application documentation onto the website. (The Secretariat does not hold applications from earlier periods but this arrangement will ensure future Committees have complete documentation from 2016.)

In addition, the Secretariat has sought **systematically to identify regional organisations and national entities on the African Continent that might appropriately become observers** of the Conference and has proactively reached out suggesting they consider applying for observer status or attending the public conference. The Secretariat has been assisted in identifying targets by the hosts of the 36th and 38th Conferences and Canada. These efforts have not yet yielded any concrete results.

Remaining administrative issues

The Secretariat has taken the improvement of observer processes as far as it can within the current rules. However, at least two issues remain that may warrant rule changes if they are effectively to be addressed:

1. Lack of clarity in the expression of the rules – should a clearer rule be written?

Difference of opinion about the interpretation of the existing rule emerged in discussions amongst the previous Committee. Perhaps the rules might be able to be drafted more clearly?

Is the rule intended to describe *entitlement* to observer status (as the equivalent membership rule does) or is it intended that observer status is always a *discretionary* grant?

If the rule is intended to describe an entitlement it would benefit from being more clearly written.

If the grant of observer status is intended simply to be discretionary, it would be helpful if the rule gave more explicit guidance as to its objectives.

The Secretariat makes no recommendation at this time for changing the substantive wording of the observer rule as further work would be required. If desired the Secretariat could take this issue up in 2017.

2. Should the Executive Committee have the role of granting, rather than simply recommending, observer status? At least for single meeting observer status? Or at least adopt an out of session process for approvals?

Under the current rule, the Committee simply has the role of recommending observer status – the closed session itself makes the decision. This is contrast to the approach before the rule came into effect where hosts had the discretion simply to admit observers.

However, difficulties in practice mean that in effect the Committee is forced to act as if it is the decision-maker.

Applicants not recommended by the Committee are essentially told that they have been turned down as if the Committee was taking the decision. Conversely, recommended applicants are either told that they will be admitted (i.e. presenting the Committee in effect as the decision maker) or given confusing advice that the Committee supports their application but they won't know if they will be permitted to attend until the meeting actually starts.

A practical solution would be for the Committee's recommendations to be circulated electronically and approved in advance of the annual meeting.

Recommendation

The Secretariat recommends that the procedural rules be changed so that:

- Observer applications go forward to the Conference for decision only with a positive recommendation from the Committee; and
- Committee recommendations for the grant of observer status are to be circulated to the membership electronically and, after a set comment period, are to be deemed adopted by the Conference unless any member objects in which case the application would be referred to the next closed session for decision.

Issues for the future

At some stage – perhaps next year - it may be useful for the Executive Committee to reflect upon possible future directions for the Observer arrangements, for example:

- Does the Conference engage most productively with its observers? For example should they be invited to participate in working groups?
- Should the classes of observer be widened to take account of other groups of stakeholders such as business and civil society?