

24th International Conference of Data Protection and Privacy Commissioners
Cardiff, Wales

Minutes of the Closed Session held on 9th September 2002

1. Welcome and adoption of agenda

Elizabeth France, as Chair, welcomed delegates to the closed session of the 24th Conference on behalf of the co-hosts. The previously circulated agenda was adopted without amendment.

2. Report of the Accreditation Committee

Michel Gentot introduced the written report of the Accreditation Committee and proceeded to outline the work of the Committee in considering 52 applications for accreditation. He stated that the principles used for processing the applications for accreditation was that established at the 23rd Conference held in Paris. The Committee had applied these criteria and had submitted a resolution for adoption by the 24th Conference specifying the accreditation status of those applicants eligible for accreditation.

3. Resolution 1 (Authorities to be accredited- copy attached to minutes)

The Resolution was proposed by the Accreditation Committee. Elizabeth France clarified that the reference to Lithuania should read 'Lithuania: State Data Protection Inspectorate' in the English language version and this amendment would be incorporated into the final version.

Queries were raised on why no bodies featured in the category 'Authorities within an international or supranational body' It was explained that the Accreditation Committee had not received any applications from such Authorities.

An amendment to Resolution 1 was proposed by the Authorities from Guernsey, Jersey and the Isle of Man. The amendment being intended to reclassify the proposers and Hong Kong as 'National Authorities' rather than sub-national and to amend the description of this category to 'Authorities from National Bodies and Independent Territories' Guernsey in proposing the amendment, explained that the amendment centred on voting rights and that the lack of a national authority effectively disenfranchised UK Crown Dependencies when any votes are taken. Jersey further explained that they had no wish to be seen in as being in the second division of authorities when they enjoyed full independent status. Hong Kong explained that the situation facing it was not as problematic as the procedural amendments agreed during the Venice Conference provided it with a vote in the absence of any national authority. A number of delegations expressed concern at the consequences of adopting the amendment as it may allow federal states to outvote single national authorities. It was also pointed out that the taking of a vote would be exceptional as it had always been the tradition of the Conference to try to proceed by way of consensus.

After some discussion it was agreed that the resolution should be adopted unamended but that the issue of voting rights for authorities from territories such as Jersey, Guernsey and the Isle

of Man was worthy of further consideration before the 25th Conference and that the matter should be referred back to the Accreditation Committee for further consideration.

4. Resolution 2 (Review of Accreditation- copy attached)

The Resolution was proposed by the Accreditation Committee and Michel Gentot explained, on behalf of the Committee, that a mechanism for reconsidering accreditation was necessary to account for circumstances where there are substantial changes to the nature of a previously accredited authority that may put its continued accreditation in to doubt. The Resolution was agreed without debate.

5. Composition of Accreditation Committee

The composition of the Credentials Committee was then discussed. With both Elizabeth France and Bruce Slane leaving their posts prior to the 25th Conference it was felt that their successors should take their place. This would also allow for continuity of the work already undertaken. It was also agreed that in future consideration should be given to the appointment of Commissioners to the Credentials Committee mirroring the hosting of the International Conference.

6. Matters arising from the Paris Conference

Michel Gentot gave a brief report on the feedback received about the Conference. A great deal of media interest had been generated and this had led to a welcome increase in the profile of the event and the work of Commissioners. He also reported that many observers had been struck by the quality of the work undertaken.

7. Future Conferences

Mr Radwanski proposed that the Federal Authority in Canada host the 26th Conference in Ottawa as 2004 would coincide with the new privacy laws applying fully to both the public and private sectors. The Federal Commissioner for Switzerland proposed hosting the conference in 2005 subject to budgetary issues. Both these proposals received the support of the meeting. As a prelude to the next conference, Malcolm Crompton provided information, including a video presentation, about the 25th Conference to be held in Sydney between the 10th and 12th September 2003.

8. Delegate Reports

Copies of delegate reports were circulated with the conference documents. The omitted reports from Belgium and Germany were tabled and circulated. Consideration of the delegate reports commenced with Herr Garstka giving a verbal report on the work of the International Working Group on Data Protection in Telecommunications (Berlin Group).

In the past year this Group finalised 2 formal papers:

- E-Voting
- Digital Certification (PKI)

At the spring meeting in New Zealand 4 working papers were considered:

- Interception of Telecommunications
- A proposal from New Zealand and the UK in relation to children and the Internet
- A paper on the new IPV.6 including the work of the Article 29 Working Party in this area.
- Telemedicine applications

The venues for the next Group meetings were confirmed as Berlin in November and Zurich on the 17th and 18th March 2003

Elizabeth France then gave an overview of the issues raised in the submitted delegate reports and called upon delegations to provide further details in the areas of common concern.

The internet was an issue raised by Spain, Sweden and other countries. Spain reported that there had been an increased number of complaints about processing personal data on the internet and that as a result they had produced guidance on such processing activities. Further, there were also issues raised in relation to territoriality, 3rd countries and international law.

Italy reported that in a recent study they had undertaken only 14% of websites complied with their data protection laws. As a result they are looking to impose sanctions on transgressors and would set in place systems for monitoring compliance.

France reported that they had commenced an investigation into ‘spamming’ and since mid July had received 150,000 pieces of mail forwarded on to them by concerned individuals.

Sweden reported that they had a case where a credit rating agency had opened a website posting individuals credit records pertaining to their last 3 months transactions. The matter was taken before the courts who held that a credit rating agency was not a media company entitled to publish such information by law or rely on freedom of expression. The matter is now pending in the Supreme Court

Portugal reported that they were concerned over establishing the controller of video images that were recorded in Portugal, sent to a third country via the internet and then back to Portugal.

This led to a general discussion of the use of video surveillance with contributions from many delegations. The issues raised included the apparent acceptance of the general public in the UK of such surveillance, the posting of video surveillance images on websites in a social context (i.e. people in bars and museums) and the capturing of images without the “consent” of individuals or the posting of inadequate notices.

9. The After-effects of 11th September 2001

Joe Meade chaired the discussion and called upon George Radwanski to provide an overview of the written reports of delegates on the response within their jurisdiction. With the exception of Greece and Ireland all had reported measures by their governments in response to the terrorist attacks. A number of common features had emerged ranging from initiatives to deal with money laundering through to provisions to extend the retention and interception of telecommunications data. Different countries had adopted different approaches with some implementing omnibus anti-terrorism legislation and others very specific legislative provisions.

There was a general concern that whilst these measures have been brought forward in the name of countering terrorism, the provisions often addressed other forms of more usual criminality and as such they are disproportionate. George Radwanski concluded his overview by proposing that any proposals to introduce measures should meet a four part test showing that they are:

- Demonstrably necessary to address a specific problem
- Demonstrably likely to address the problem
- Proportionate to the security benefit
- Demonstrably less privacy invasive than alternative options

Substantial discussion then took place with contributions from numerous delegations. Australia reported that although the political climate had delayed the implementation of measures the law enforcement community had proposals waiting for such an opportunity. There was a real danger that by giving powers to national security bodies this reduced the level of scrutiny of new developments. Europol Joint Supervisory Body reported on plans for increased cooperation with US authorities. Quebec stated that there had been a noticeable shift in public acceptance of developments in relation to national security. France stated that increased use was now being made of biometric data in many applications. Germany believed that the plans by the executive to use such data highlighted the important role of Commissioners in ensuring a proportionate approach. Italy identified problems of identity theft allied to biometric data, the technical deficiencies of automatic facial recognition systems and the concern that many developments may lead to social exclusion.

Ontario believed that biometric data had an important roll to play in enhancing privacy by avoiding central retention of data. Netherlands reported on the safeguards surrounding the use of biometrics at Schipol Airport and stressed the role of Commissioners in demanding evidence of the need for new proposals. The United Kingdom explained that its domestic law provided for retention of telecommunications data for national security purposes but that access was available for a wide range of investigatory activities.

A number of delegations reported on the retention periods in their jurisdictions. Germany explained that whilst such data is only held for 6 months proposals were that this should be a minimum period with no upper limit. Spain stated that retention was permitted for 1 year but that access is restricted to judicial authority and to taxation matters. Brandenburg stated that if the logic applied to retention of telecommunications data was accepted then the law enforcement community could seek continued retention of many other sets of data potentially relevant to criminal investigations. France reported that 1 year was the current period but that the issue was under debate.

Austria said that it was making the point to its government that citizens should not tolerate retention of data about their behaviour when they have done nothing wrong. Italy stated that during the EU Article 29 Working Group visit to Washington DC it had been made clear to them that the US Patriot Act did not include measures in relation to identification cards or

retention of telecommunications data as such measures represented a risk to individual freedom. Italy proposed that the Sydney Conference should devote time to the further consideration of the issues relating to the retention of telecommunications traffic data and also biometrics.

10. Closing Remarks

Joe Meade suggested that a communiqué be issued outlining the discussions in the closed session. He read out a proposed text mentioning the discussions regarding websites and video surveillance but drawing particular attention to the Commissioners concerns at the disproportionate response to the events of 11th September 2001. The text was accepted without amendment (copy attached).

Joe Meade also took the opportunity to pay tribute to those Commissioners whose terms of office would cease before the next conference. He mentioned the particular contributions of Henrik Waaben, Lynn Keig, Joachim Jacob, Bruce Slane and Elizabeth France and the meeting recorded a general vote of thanks to these and other colleagues leaving office before the next conference.

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20/09/02