

## **Enforcement Cooperation – Connecting with other networks**

Email exchange between the ICDPPC Secretariat and GPEN Committee in relation to a proposal to document the relationship between ICDPPC and GPEN together with extract from ExCo minutes and copy draft MOU.

### **30 June 2016: Message from ICDDPC Secretariat to GPEN Committee**

I write on behalf of John Edwards, Chair of the Executive Committee of the International Conference of Data Protection and Privacy Commissioners, to explore with your Committee the potential usefulness of documenting the relationship between our two networks.

As you will be aware, the 36th Conference adopted a Resolution on Enforcement Cooperation that mandated the Executive Committee to "... initiate discussions with GPEN and other relevant networks with a view to exploring practical options and opportunities for better coordinating their efforts to improve enforcement cooperation ...". That mandate has been delegated to the Chair who commenced informal discussions with relevant networks in the margins of the 37th Conference In Amsterdam including, of course, during the GPEN side meeting.

The Chair suggests that a further practical step might be to create a document, such as a memorandum of understanding, that records the relationship. It would also express a commitment to close cooperation and to identify opportunities to coordinate enforcement cooperation efforts. In the course of developing that document, or following from its mutual adoption, concrete ideas for deepening the relationship to mutual benefit might emerge.

I would be grateful to hear your response in principle to this proposal. It would be particularly helpful if you could get back to me fairly quickly – ideally by 8 July if feasible - as we have an Executive Committee meeting in Singapore in mid-July at which this mandate will be discussed. If our respective Committees are supportive of taking this step I would undertake to prepare a first draft of the document by early August to begin discussions on the substance.

### **13 July 2016: Message from GPEN Committee to ICDDPC Secretariat**

Thank you (and Cr Edwards) for your note. As you know, GPEN shares the ICDPPC's desire to enhance cooperation between our networks, and others, via Network of Networks. The GPEN Committee is, therefore, open to exploring avenues for more clearly documenting the nature of our relationship with the Conference, with a view to assisting our organizations in achieving our respective mandates.

To that end, we would be pleased to receive further information from the ICDPPC, which would ideally provide: (i) a more detailed explanation of the objectives the Conference would hope to achieve via such a document – including whether there are any common provisions that the Conference would be seeking from all networks in an eventual document; and (ii) a list of specific substantive elements (e.g., specific practical opportunities for coordinating cooperation efforts) it would like to see addressed therein.

With that information, we would be in a better position to consider the Conference's proposal, as well as the form of documentation (e.g., within our Network of Networks relationship) via which we might best achieve our objectives.

We would also like to share that during the GPEN Committee's preliminary consideration on this matter, we discussed one potential solution that would involve enhancement to Network of Networks documentation: to further explain various practical matters regarding the initiative, ensure clearer understanding between Network partners, and aid with continuity through changes in network leadership. We would certainly appreciate your thoughts on this strategy.

### **15 July 2016: Message from ICDDPC Secretariat to GPEN Committee**

Thanks for your response which I will share with the ICDPPC Executive Committee.

I will seek some instructions from the Chair in relation to the questions you raised and, as already signalled, we will be discussing the idea also with the Executive Committee next week in Singapore. I guess I can take your reply as signalling a willingness in principle further to explore the proposal?

I briefly comment on your two numbered points from my own perspective:

- i. I understand the Chair's proposal for an MOU was specific to ICDPPC-GPEN. We had not at this stage anticipated any need for such a document in relation to other networks (although I do not mean by that comment to preclude the possibility of developing further documents if that were to be thought useful). At least part of the motivation for proposing documenting the relationship was the level of confusion that seems to exist in some quarters about these two networks operating at global level - no comparable confusion seems ever to have arisen between the ICDPPC and the other regional or linguistic-based networks.
- ii. We meant by our initial approach to the GPEN Committee to raise the matter at a fairly high level and have no pre-prepared list of particular content in mind. At a fairly general level I imagined the document to cover three types of areas:
  - a. Record the relationship – ideally this largely descriptive material will dispel any lingering confusion that may exist in some quarters.
  - b. Express some aspirations – essentially a commitment to cooperation between the networks.
  - c. Identify opportunities for cooperation or coordination between the networks – this would need to emerge from discussions, but I'm confident there would be scope for some good ideas to come from both sides.

We remain open to additional ideas about the direction the document might take.

On your other point, the Secretariat remains available to contribute through your network of networks initiative. Thus far I don't believe that anything has been asked of us in that capacity. Beyond those observations, I confess not fully to understand your point about a new 'strategy' regarding your network of networks initiative.

Finally, I might mention that we have just added a new part to our website referring to 'Other networks', see <https://icdppc.org/other-networks/>. In it we have included some material describing GPEN and highlighted the many resources it provides to its members.

[Extract from ExCo minutes: 20 July 2016

Connection between GPEN and the Conference:

Action: Chair/Secretariat to advance discussion with GPEN Committee and prepare a draft MoU for consideration at the next Committee meeting.]

#### **24 August 2016: Message from ICDDPC Secretariat to GPEN Committee**

Since we last corresponded the ICDPPC Executive Committee had an opportunity at its meeting on 20 July 2016 to hear of the approach that the ICDPPC Chair had made to the GPEN Committee and to read your encouraging reply.

The ICDPPC Executive Committee agreed that the Chair/Secretariat should advance discussion with the GPEN Committee and prepare a draft MoU for consideration at the next Executive Committee meeting (which is on 21 September).

Accordingly, please find attached a draft MOU approved by the Chair which we hope will serve as a useful basis for discussion with the GPEN Committee. This draft has not yet been shared with the ICDPPC Executive Committee members themselves and so should be treated as simply a starting point with room for movement and it should be understood that the ICDPPC Executive Committee itself is, as yet, not committed to any particular portion of the draft.

Nonetheless from the perspective of the Chair it would seem to offer a promising place to start in our attempt to give effect to the Resolution adopted 2 years ago at the Mauritius Conference that mandated the Executive Committee to "... initiate discussions with GPEN ... with a view to exploring practical options and opportunities for better coordinating ... efforts to improve enforcement cooperation ...". In this draft we have made a concerted attempt to go beyond platitudes and aspirations to list some concrete steps that might be possible – although expressed as specific commitments by each committee we realise that thus far neither committee has yet given those commitments.

It is the Chair's hope that we can be in a position to demonstrate real progress at this year's conference in Morocco in October and therefore we offer the challenge of finalising the document for signature at a ceremony on the fringes of the 38th Conference. That is a tall order given the limited time available but I hope that both Committees can rise to the challenge believe that it should be achievable. Despite heavy demands on our time in the run up to the Conference, the ICDPPC Secretariat undertakes to prioritise this project to completion so long as we can get the necessary feedback from both committees and there is a mutual willingness to see it through.

I therefore look forward to your response to the document at the earliest opportunity.

I will also welcome suggestions about a process to negotiate a mutually satisfactory document in the time available e.g. by appointing a single negotiator on the GPEN side, to schedule a teleconference, or whatever the preferred route might be.

**20 September 2016: Message from GPEN Committee to ICDDPC Secretariat**

We would like to thank the ICDDPC Executive Committee Secretariat for its proposal to promote coordination between our respective organizations to improve enforcement cooperation. We understand the ICDDPC Chair has a mandate to promote these relations with various networks, including GPEN.

In respect of the draft MOU that you shared for our consideration, unfortunately the GPEN Committee does not currently have the mandate to enter into a such a formal arrangement on behalf of all GPEN members. Even if the GPEN Committee had such a mandate, we would not have had sufficient time to consult our membership and finalise the document prior to the 38th Conference in Marrakesh.

At the same time, we are happy to continue the relationship between GPEN and the International Conference, which we have been working towards via the existing Network of Networks initiative. While we are not sure how the proposed MOU would further this objective, there is a potential to find concrete opportunities for cooperation. With that in mind, we plan to give the GPEN membership a chance to discuss, at the 38th Conference in Marrakesh, concrete options, particularly in the short term, for collaboration between networks. We would welcome a representative from the ICDDPC Executive Committee to join that meeting .

We also look forward to working with the Executive Committee Secretariat to explore any collaborative project that may arise in Marrakesh, or through our ongoing engagement.

**22 September 2016: Message from ICDDPC Secretariat to GPEN Committee**

Thank you for your message.

In the light of the GPEN Committee's response, and other soundings, the Chair of the ICDDPC Executive Committee withdraws the offer to enter into an MOU, as earlier proposed.

**[DRAFT] Memorandum of Understanding**  
**between**  
**ICDPPC Executive Committee and GPEN Committee**

October 2016<sup>1</sup>

*A document recording the commitment of the governance bodies of two global privacy and data protection networks to work together to promote common objectives.*

### **1. The Parties**

The parties to this MOU are the respective governance bodies of the International Conference of Data Protection and Privacy Commissioners and the Global Privacy Enforcement Network, namely, the:

- a. ICDPPC Executive Committee; and
- b. GPEN Committee.

Further information on the parties is set out at Annex A.

### **2. Objective of this MOU: Commitment to work together to promote common objectives**

The parties enter into this MOU to further support their Conference or Network's respective missions which are set out at Annex B.

While the ICDPPC and GPEN have different histories, structures, missions, memberships and modes and scope of operation (see Annexes A-C), the parties recognise that in the context of enforcement of data protection law they have common goals of facilitating cooperation amongst authorities and promoting effective privacy protection. Accordingly, the parties formally record their commitment to work together to promote common objectives.

This commitment is a non-binding aspirational goal but the parties are confident that in a spirit of cooperation the MOU commitment can deliver real benefits to the respective membership of the ICDPPC and GPEN.

### **3. Continuation and expansion of existing cooperation**

The parties note that there has already been some cooperation between ICDPPC and GPEN and the parties undertake to continue or expand that cooperation as follows.

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<sup>1</sup> Note: The aim would be to complete the MOU in time to have a signing ceremony on margins of the Marrakesh Conference.

	<b>Existing cooperation</b>	<b>Continuation or expansion</b>
i.	ICDPPC hosts have extended assistance to enable GPEN to hold its meetings alongside the annual conference.	The ICDPPC Executive Committee will continue to encourage hosts to extend such assistance (such as making a room available and publicising the GPEN meeting on the Conference website).
ii.	By resolution ICDPPC has encouraged its members to join GPEN.	The ICDPPC Executive Committee will continue to encourage its members to join GPEN.
iii.	The ICDPPC Secretariat has featured GPEN in its newsletter.	The ICDPPC Executive Committee will continue to report on GPEN news to its members.
iv.	The ICDPPC Secretariat has featured GPEN in the 'Other networks' part of the ICDPPC website.	The ICDPPC Executive Committee will continue to feature GPEN in the 'Other networks' part of the ICDPPC website and update as necessary.
v.	The ICDPPC permits GPEN members to participate in the Global Cross Border Enforcement Cooperation Arrangement	The ICDPPC Executive Committee will continue to accept GPEN members to participate in the Arrangement.
vi.	GPEN has often opened its meetings to non-GPEN member authorities attending the ICDPPC annual conference.	The GPEN Committee will continue to open meetings held alongside the ICDPPC annual conference to ICDPPC where feasible (e.g. space permitting).
vii.	GPEN invited ICDPPC to provide a liaison officer to the GPEN 'Network of Networks' initiative (which ICDPPC Secretariat has provided).	The GPEN Committee will continue to permit ICDPPC to provide a liaison officer to the GPEN 'Network of Networks' initiative. The ICDPPC Executive Committee will continue to provide a liaison officer.

#### **4. Cooperation in new areas**

The parties undertake to seek individually and together to identify additional areas of useful cooperation. Without limitation, but subject to any procedural requirements or the expressed wishes of their respective memberships, the parties commit to the following initiatives:

- i. The ICDPPC Executive Committee will create a process to enable GPEN-organised events to be endorsed as an 'ICDPPC-recognised Enforcement Cooperation Meeting'.<sup>2</sup>
- ii. The ICDPPC Committee will support GPEN obtaining observer status to the closed session of the ICDPPC annual meeting.<sup>3</sup>
- iii. Where time permits, the ICDPPC Committee will permit the GPEN Committee to provide a brief oral update report in the closed session of the ICDPPC annual meeting.<sup>4</sup>
- iv. The GPEN Committee will allow ICDPPC members to participate in the GPEN Atlantic and Pacific Teleconferences.
- v. The GPEN Committee will allow ICDPPC members to participate in the annual GPEN Sweep.
- vi. The ICDPPC Executive Committee and the GPEN Committee will cooperate to develop mechanisms to include appropriate ICDPPC members, not otherwise listed, in the Combined Enforcement Contact Directory and to make the directory available to ICDPPC members.<sup>5</sup>

<sup>2</sup> Note: This related to the ICDPPC objective to have at least one opportunity every year for an enforcement cooperation meeting to share practical experiences, etc.

<sup>3</sup> Note: Under proposed rule changes, the ICDPPC Executive Committee will gain a larger measure of control over admission of observers to the closed session.

<sup>4</sup> Note: This is a privilege not generally accorded to observers currently.

<sup>5</sup> Note: As this directory is held securely on the GPEN website, and the ICDPPC website has no comparable secure facility, such access may need to be on a request and response basis. Not all ICDPPC members (e.g. sub-

The parties further undertake to review this MOU from time to time and consider whether it should be continued or changed.

Executed by:

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On behalf of ICDPPC Executive Committee On behalf of ICDPPC Executive Committee

Date: ..... September 2016

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national authorities) will necessarily be 'appropriate' in that generally it is preferred to have a single national contact point. The arrangements agreed between the parties may also need to be agreed with APEC-COE-OECD as their information will be shared under this cooperation proposal.

## ANNEX A: Details of the Parties

Short title	ICDPPC Executive Committee	GPEN Committee
Full name	Executive Committee of the International Conference of Data Protection and Privacy Commissioners	Global Privacy Enforcement Network Committee
Established under	ICDPPC Rules and Procedures Available: <a href="https://icdppc.org/wp-content/uploads/2015/02/Rules-and-Procedures-including-new-amendments-adopted-at-the-37-Conference.pdf">https://icdppc.org/wp-content/uploads/2015/02/Rules-and-Procedures-including-new-amendments-adopted-at-the-37-Conference.pdf</a>	GPEN Action Plan Available: <a href="https://www.privacyenforcement.net/public/activities">https://www.privacyenforcement.net/public/activities</a>
Principal functions	<p>Rule 3.2 of the ICDPPC Rules and Procedures provides:</p> <p><b>Functions of the Executive Committee</b></p> <p>a. To implement the decisions of the Closed Session.</p> <p>aa. To provide leadership to the Conference in attaining its strategic goals.</p> <p>b. To ensure the application of the resolutions of the Closed Session.</p> <p>c. To seek proposals from member authorities by a specified deadline to host the Annual Meeting; to evaluate such proposals; and to recommend a hosting authority to the members of the Conference with sufficient time to allow the selected hosting authority to execute orderly preparations ...</p> <p>d. To assist the Hosting Authority in organising the next Annual Meeting.</p> <p>e. To draft press releases, statements and any other media resources.</p> <p>f. To appoint delegates representing the Conference to those fora and/or international organisations in which the Conference has observer status.</p> <p>g. Recommend the accreditation of new Members or Observers.</p> <p>h. Consider requests to review the status of Member or Observers.</p> <p>i. To maintain a permanent Conference website as a repository for Conference documentation.</p> <p>j. To keep Members informed of the work of the Executive Committee.</p> <p>k. To ensure that processes are in place to support the operation of the Global Cross Border Enforcement Cooperation Arrangement.</p>	<p>Part E of the GPEN Action Plan provides:</p> <p>GPEN Participants intend periodically to designate a four to five* person Committee to perform the following tasks:</p> <ul style="list-style-type: none"> <li>• Process applications from authorities wishing to participate in GPEN and make recommendations for membership to participating authorities.</li> <li>• Activate user accounts for access to GPEN website.</li> <li>• Edit public pages of the website.</li> <li>• Facilitate arrangements for GPEN teleconferences and meetings.</li> <li>• Liaise with OECD Secretariat over administration of website.</li> </ul> <p>The GPEN Committee may perform other functions that support GPEN’s mission.</p> <p>Wherever possible, the GPEN Committee should include members from different geographic regions of the world.</p> <p>*When a GPEN Internet Sweep is being organised, the designated Sweep Coordinator is to be a 5th member of the Committee.</p>
Other functions	<p>Other functions arise from:</p> <ul style="list-style-type: none"> <li>• The Conference’s strategic plan</li> <li>• Conference Resolutions (including in the area of enforcement cooperation).</li> </ul>	<p>The GPEN Committee has a role in relation to membership activities such as:</p> <ul style="list-style-type: none"> <li>• conference calls and meetings to discuss enforcement issues, trends and experiences;</li> <li>• presentations on effective investigative techniques and enforcement strategies;</li> <li>• exploration of procedural, substantive and evidentiary challenges;</li> <li>• coordination of investigations involving multiple authorities;</li> <li>• cooperation with other networks;</li> </ul>

		<ul style="list-style-type: none"> <li>maintaining, in cooperation with international organisations, an authoritative contact point directory for enforcement purposes;</li> <li>training on privacy and data security;</li> <li>secondments and office visits between participating authorities.</li> </ul> <p>(List taken from GPEN brochure, 2014.)</p>
Website	<a href="https://icdppc.org">https://icdppc.org</a>	<a href="https://www.privacyenforcement.net">https://www.privacyenforcement.net</a>

## ANNEX B: Missions of ICDPPC and GPEN

ICDPPC	GPEN
<p><i>The Vision:</i></p> <p>An environment in which privacy and data protection authorities around the world are able effectively to act to fulfil their mandates, both individually and in concert, through diffusion of knowledge and supportive connections.</p> <p><i>The Mission:</i></p> <p>The Conference seeks:</p> <ul style="list-style-type: none"> <li>To be an outstanding global forum for privacy and data protection authorities.</li> <li>To disseminate knowledge, and provide practical assistance, to help authorities more effectively to perform their mandates.</li> <li>To provide leadership at international level in data protection and privacy.</li> <li>To connect and support efforts at domestic and regional level, and in other international forums, to enable authorities better to protect and promote privacy and data protection.</li> </ul>	<p><i>Statement of Mission:</i></p> <p>GPEN connects privacy enforcement authorities from around the world to promote and support cooperation in cross-border enforcement of laws protecting privacy.</p> <p>It primarily seeks to promote cooperation by:</p> <ul style="list-style-type: none"> <li>exchanging information about relevant issues, trends and experiences;</li> <li>encouraging training opportunities and sharing of enforcement know-how, expertise and good practice;</li> <li>promoting dialogue with organizations having a role in privacy enforcement;</li> <li>creating, maintaining and supporting processes or mechanisms useful to bilateral or multilateral cooperation; and</li> <li>undertaking or supporting specific activities as outlined below.</li> </ul>

## ANNEX C: Membership criteria of ICDPPC and GPEN

ICDPPC	GPEN
<p>Supervisory Authorities that meet the following criteria and successfully complete the application process provided for in the next section of these Rules, shall be deemed Members of the Conference:</p> <ol style="list-style-type: none"> <li>A public entity, created by an appropriate legal instrument based upon legal traditions of the country or international organisation which it belongs to;</li> <li>Has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates;</li> <li>The legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy;</li> <li>Has an appropriate range of legal powers to perform its functions; and</li> <li>Has appropriate autonomy and independence.</li> </ol> <p>ICDPPC Rules and Procedures, clause 5.1</p>	<p>GPEN seeks to be an inclusive cooperation network, open to any public privacy enforcement authority that:</p> <ol style="list-style-type: none"> <li>is responsible for enforcing laws or regulations the enforcement of which has the effect of protecting personal data; and</li> <li>has powers to conduct investigations or pursue enforcement proceedings.</li> </ol> <p>....</p> <p>More than one privacy enforcement authority from a single country, economy, or jurisdiction may participate in GPEN.</p> <p>GPEN Action Plan, Part B</p>