

Discussion paper on the criteria for membership and observer status and on the strategic orientations of the International Conference of Data Protection and Privacy

Commissioners

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1. Membership and observer status at the International Conference

The international Conference is facing increasing demands of memberships or observers status. It is clearly a sign of success but it also invites us to clarify the scope of Conference we want in the future.

The Executive Committee of the International conference is in charge of assessing the membership and observer status applications and making recommendations. During this process, the discussion was broadened to consider the question of the future of the International Conference. In fact, the orientations taken by the Conference will necessarily differ depending on the nature of its members. For instance, for independent data protection/privacy authorities, the presence of a governmental organization might appear problematic and the discussions could be affected. Another example is that the multiplication of different sectorial regulators, not dealing first with data protection, might make it more difficult to reach common harmonized position on specific matters.

We believe that these discussions are to be shared with all the members of the Conference and the present paper aims at doing so.

The name of the Conference is a first answer. It principally aims at gathering data protection and privacy commissioners. Depending on the national legal traditions and culture, the data protection and privacy commissioner can take different forms. However, it is clear that the main intention was to gather authorities whose main focus is data protection and privacy.

Some will consider that it is important to stick to a **tighter group of core data protection and privacy supervisory authorities** in order to have a **clearer message** and a **stronger impact**. Such model allows for more harmonized positions and can focus on substantial and even practical issues.

Others however will be in favor of a **more open and inclusive 'all comers' model**. Such model might make it more difficult to reach consensus on difficult issues and, depending on the subject, the relevance of certain authorities to discuss and vote might appear problematic.

Depending on the model **the direction of the Conference will necessarily differ**, it is **thus a strategic question which is put forward for debate**.

To date, the International Conference is composed of 111 accredited members. Among them, 102 are national or regional data protection/privacy authorities, 4 members are European institutions sectorial data protection bodies¹, 1 is an international sectorial data protection body² and 4 have a less traditional scope: public access to information, city data protection authority, security agency, consumer body.³ The direction of the Conference so far has been to concentrate on core data protection and privacy authorities.

Originally, when criteria for membership were adopted in 2001, members were accredited by virtue of their “broad functions and depth experience” as well as their “wide range of activity”. It was then specified that authorities “having narrower functions [...] may be entitled to attend as observers”. However over time the criteria have been blurred and the current Rules of Procedures, adopted in 2010 do not make any reference to these principles.

Concerning Observers, the same question applies, does the Conference want to evolve in a community broader than the data protection and privacy community or does it want to keep this identity?

A possible way to clarify these issues would be to amend the Rules of Procedure as follows:

- **Possible Amendment to rule 5.1 on the Member status**

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:

- a. A public entity, created by an appropriate legal instrument based upon legal traditions of the country or international organisation which it belongs to;*
- b. Has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates;*
- c. The legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy;*
- d. **Has a wide range of activity** and an appropriate range of legal powers to perform its functions; and*
- e. Has appropriate autonomy and independence.*

The fact that, according to the principles specified above, a country is represented by more than one Member, shall not affect the principle that only one vote is cast on behalf of any country.

- **Possible Amendment to rule 5.3 on the Observer status**

¹ Customs Information System joint Supervisory Authority, European Data Protection Supervisor, joint Supervisory Body of Europol, Joint Supervisory Body of Eurojust

² Interpol

³ Institute For Access to Public Information of the Federal District (Mexico), State of Mexico Transparency, Public Information Access and Personal Data Protection (Mexico), Korea Information Security Agency (Korea), Federal Trade Commission (South Korea)

The following entities and organisations can take part in the Conference, with an Observer status:

a. Public entities -with an appropriate degree of autonomy, that do not meet the criteria provided for in the first article, but are, as a principal task, involved in dealing with the protection of personal data and/or privacy.

b. International organisations whose activity is related to the protection of personal data or privacy.

c. Any other organisation that has granted Observer status to the Conference, under the principle of reciprocity.

Entities and organisations applying to the observer status shall justify a direct interest in taking part in the closed session Conference either because of their expertise in the topics selected for the closed conference or their participation in working groups of the conference.

Observer status is granted once an entity or organisation has successfully completed the application process provided for in the next section of these Rules.

2. Strategic orientation of the International Conference

Besides the previous consideration on the size of the Conference, it appears legitimate, after almost 40 years of existence (Bonn 1979), to ask ourselves what our role is, what are our main objectives, what is our production and what is our added value?

Here is a non-exhaustive list of issues calling for collective reflection.

The production of the Conference

In the last 10 years, a great number of resolutions, declarations and reports have been adopted by the International Conference. However, it seems hard to really assess the impact of all these documents and the overall message of the Conference tends to be unclear. Point D of the Action plan 2016-2018 precisely concerns this question.⁴ Such review should be considered as a priority.

In general it can be said that a too heavy workload can hinder the quality of the work. Some recommendations could then be:

- To limit the number of resolutions presented;
- To focus on in-depth analysis of substantial issues;
- To prioritize long-term projects that enable a follow-up of the impact;

⁴ D. Assessing Our Effectiveness

a. Review resolutions adopted since 2003 to better understand whether resolution - making has been effective to date and to identify room for improvement.

b. Develop and execute a plan for making conference resolutions more effective

- To involve all delegations in the work of the conference.

The right balance between open and closed sessions

Over the years the distinction between the open and closed session have become unclear. Nowadays, it could even appear that they are in fact two separate events and that the focus is more set on the open session, which involves third parties, rather than on the practical cooperation and exchanges between the accredited members of the Conference.

In order to clarify the coherency of the conference a reflection on the link between the closed and open sessions could be launched.

The relation between the Conference and the private sector

This question of balance between the closed and open session is also linked to what we want to ultimately achieve with the Conference: Is it mainly a forum for cooperation among experts? In this case, should the closed session be given a more prominent role? Or is it more a meeting place between regulators, companies and civil society? And with what outcome?

Organization of the conference: human and financial resources

Since a few years the International Conference has become more and more demanding in terms of organization and finance. In fact, the event can gather several hundred of participants for nearly a week and thus require a very important budget. De facto, this makes it extremely difficult for smaller authorities to be in position of hosting the Conference (for financial and human resources reasons).

It is also demanding in terms of budget and human resources for authorities participating to the conference: travel and accommodation costs, preparation of documents and interventions etc. in a time where all these authorities are very busy. Lastly all our authorities are under public scrutiny for their expenses.

Therefore, do we want to carry on the present track or do we want to limit the duration of the Conference. And if yes, what should be our focus?

3. Next steps

All these issues are open questions. On all these aspects we believe that it is for all the members to contribute to the debate. It is also important that our discussions turn into concrete proposals, concrete improvements and within a reasonable timeframe.

Possible ways forward:

- Having members to express their views on the orientation of the conference through **a questionnaire**. The questionnaire could be composed of closed-ended questions on

such as: “Do you agree that the Conference should be shortened from 1 week to 3 days?”. The compilations of the answers would provide guidance on the general direction to take.

- Creation of working group mandated to organize all the discussions and involve all members into the debate.