

**REPORT
TO THE 38th INTERNATIONAL CONFERENCE OF DATA PROTECTION
AND PRIVACY COMMISSIONERS - MOROCCO, OCTOBER 2016
ON THE
5th ANNUAL INTERNATIONAL ENFORCEMENT COOPERATION
MEETING HELD IN MANCHESTER, UK, IN MARCH 2016**

This report was prepared by the Information Commissioner's Office, United Kingdom (hereafter 'UK ICO').

The UK ICO hosted the fifth Annual International Enforcement Cooperation event in Manchester on 21 and 22 March 2016. The event reflected on the recent initiatives taken within the International Conference framework to improve cross-border enforcement cooperation. It also explored areas where further work may be needed for a more effective cooperation.

**The 2016 International Enforcement Cooperation event –
Manchester, 21-22 March 2016**

The 2016 international coordination event took place in Manchester Airport and Alderley Park on 21-22 March 2016. It principally considered how the recent tools developed to facilitate cross-border enforcement cooperation can enable the international enforcement community to 'move on up' to an efficient form of cooperation among law enforcement authorities.

The event consisted of break-out workshops on the practical aspects and implications of cross border enforcement activities. The workshops were followed by discussion on the practical usefulness of the enforcement cooperation tools which authorities now have at their disposal.

Using case studies based on real-life examples, the workshops provided participants with the opportunity to evaluate potential models, approaches and solutions that data protection and privacy authorities can consider when addressing cross border data privacy infringements, from identifying threats and gathering intelligence through to the possibility and constraints to engaging in enforcement cooperation, depending on

legal powers, investigation capabilities and other factors influencing how collaboration will work in practice.

The scenarios also gave participants the chance to explore the various ways authorities gather intelligence, make use of investigative techniques and technical expertise and engage with international colleagues. Participants' discussion on the case studies also emphasised how tools such as the Global Cross-border Enforcement Cooperation Arrangement and the Enforcement Cooperation Handbook may be complementary to authorities' thinking in developing their cross border enforcement strategies, coordinating specific investigations and identifying threats, challenges and opportunities.

Among the key discussion points arising out of the workshop were:

- Checking that your authority has completed a thorough legal analysis before sharing any information.
- Including points in the Handbook in relation to considering the most appropriate jurisdiction for consumers to seek redress in and choosing the form and partners for cooperation.
- The possibility of proceeding with one-way sharing (ie sharing information with a country that cannot share back).
- Importance of timeliness of responses and investigations – including how to develop detailed mutually-acceptable milestones.
- Details on how to establish agreement between parties – terms of reference/investigative scope.
- Ability for a Data Protection or Privacy Authority to request a response sent to another authority from a Data Controller.
- Procedural fairness considerations, particularly in relation to procedures pursuant to which shared evidence was gathered.

The second day of the event was dedicated to assess the usefulness and the specific purposes of the Arrangement and the Enforcement Handbook, looking at the experience of authorities who have already implemented or integrated these tools into their day-to-day operations. Participants largely agreed that the Handbook steered in the right direction by signposting information that case investigators would need to have at hand when considering possible actions under a cross-border enforcement framework, be it the Global Arrangement or another form of cooperation.

Suggestions received from participants have provided opportunities to expand existing sections of the handbook or clarify points about data subjects' access to information, and access to redress, as well as integrating the points outlined in the key discussion outcomes listed above.

GPEN Side-meeting

Continuing the engagement that the International Conference has had with the Global Privacy Enforcement Network (GPEN) over the years, and considering the clear overlap in membership between the two networks, an invitation had also been sent to GPEN members to meet up in Manchester in the margins of the International Enforcement Cooperation event. The side-meeting took place in the early afternoon of Monday 21 March, with an update from the GPEN Committee covering the network's activities over the previous twelve months and a conversation with participants regarding the work that the network should consider doing in the near future.

Privacy Bridges workshop

There was also a special session on Tuesday 22 March afternoon which followed up the Privacy Bridges report from the 2015 Amsterdam International Conference. This workshop, which was presided by the chair of the Dutch data protection authority (*Persoonsgegevens Autoriteit*) with a panel of US and European policy and technology experts, focused on two related privacy bridges these being User Control on the one hand and Transparency on the other. This led to discussions on the challenge posed by new technologies and the complex digital environment in which individuals' control over their personal data is clearly eroding. A recording of the workshop is available [online](#).

Future work

These follow-up activities emerged from the discussion among delegates:

- The U.K. ICO and Canada OPC promised to bring relevant amendments to the Handbook in line with recommendations to expand certain sections, as raised at the workshops, and the updated Handbook would be presented ready in time for the 2016

International Conference in Morocco;

- Participant authorities were encouraged to continue to share, via available platforms or fora, their experiences of how they are operationalising the Global Cross Border Enforcement Arrangement at their Authority, including staff awareness and training, procedures.
- Acknowledgement that regional and thematic networks of data protection/privacy enforcement authorities still need to do more to improve the exchange of information between them to avoid silos of valuable enforcement expertise.
- Participants also recommended proposing to the International Conference to develop a secure website, with password protected access controls, for authorities to populate with details about their legal powers, evidentiary requirements, definitions of personal data and confidential data, and to propose that GPEN could be used as a potential vehicle to pursue this in view of its operational focus. A separate draft resolution will be prepared for the consideration of the International Data Protection and Privacy Commissioners at the 38th Conference in Morocco.
- In addition to the above, suggestion was made that organising a yearly grassroots enforcement practitioner (case officer level) event for all authorities around the globe would be beneficial to authorities as a concrete means to enhance operational enforcement capacity and relationships. As a test pilot, the GPEN Committee would look into the possibility of organising such an event alongside the European Case Handling workshop in 2017.
- Enforcement cooperation with enforcement authorities in those countries outside Europe will become even more relevant for European data protection and privacy authorities to address as they will be confronted with the implementation of the European General Data Protection Regulation and the requirement to provide, under its Article 50, "*international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange*".
- The International Conference 2016 needs to nominate a Host for the International Enforcement Cooperation event in 2017.

BACKGROUND

Since the 33rd International Conference in Mexico in 2011, significant progress has been made by members to enhance arrangements for cross-border enforcement cooperation.

While efforts had already been undertaken prior to the 33rd International Conference, the resolution on Privacy Enforcement Co-ordination at International Level adopted by the Conference in 2011 stepped up the engagement of participants in committing resources to facilitate cross-border enforcement activities:

- The resolution mandated creation of an international enforcement coordination working group (IECWG) to come up with concrete international enforcement coordination mechanisms;
- the Conference agreed on the organisation of a global annual event to discuss international enforcement coordination. The 2016 International coordination and cooperation event was the fifth meeting of its kind. The inaugural international meeting was held in Montreal in 2012 and subsequent meetings were held in Washington (2013), Manchester (2014) and Ottawa (2015);
- the resolution encouraged all data protection and privacy enforcement authorities to undertake some work internally to understand any legal, technical or political barriers they may have to engaging in international enforcement coordination.

An international enforcement coordination mechanism

Fulfilling the mandate that it had received at the 33rd and 35th International Conferences, the IECWG developed a common approach to cross-border case-handling and enforcement coordination which was embodied in a multilateral framework document, the "Global Cross Border Enforcement Cooperation Arrangement". This mechanism was later adopted at the 36th International Conference in 2014 for data protection and privacy authorities to use on a voluntary basis to facilitate enforcement cooperation between members and the first intentions to participate in the Arrangement were confirmed during the 37th International Conference in The Netherlands, in October 2015 once the mechanisms inside the Arrangement had been established.

A number of additional authorities have signed up to the Arrangement since then, emphasising the importance they are attaching to improving international enforcement cooperation and common practices.

Elaborated to address the gaps in international cooperation activities, the Arrangement encourages authorities participating in this mechanism to

- share information, including the treatment of confidential enforcement-related information about potential or on-going investigations;
- promote common understandings and approaches to cross-border enforcement cooperation; and
- coordinate cross-border cooperation and assistance in the most efficient manner;

without creating legally binding obligations, overriding other competing legal obligations that authorities might be subject to or compelling participants to share any information.

Enforcement Cooperation Handbook

In addition to the Arrangement, the 37th International Conference in 2015 was also presented with the Enforcement Cooperation Handbook, a document prepared by the UK ICO and the Canada OPC, acting as co-chairs of the IECWG, to serve as guidance to authorities participating or who wish to participate in the Arrangement in relation to the practical implementation of enforcement cooperation by providing

- (i) a non-exhaustive list of issues an authority may face in preparing for, and engaging in, enforcement cooperation,
- (ii) potential models, approaches and solutions that authorities can consider implementing to address such issues and,
- (iii) factors to consider in determining what, if any, proposed strategies may be appropriate in specific circumstances.

The Guidance was also designed as a 'living document' to be updated from time to time as the global privacy enforcement community gains further experience with enforcement cooperation.



Further details:

For further information about this event, please contact international.team@ico.org.uk