**ICDPPC 2018**

**Working Group: International Enforcement Cooperation**

**Update**

1. **Background and mandate**

At the 39th International Conference of Data Protection and Privacy Commissioners in Hong Kong, the 2017 Resolution on exploring future options for International Enforcement Cooperation was adopted. In this resolution, the International Conference of Data Protection and Privacy Commissioners (ICDPPC):

* accepted the Key Principles for Cooperation developed by the Group of Experts on Legal and Practical Solutions for Cooperation;
* accepted the amendments to the Global Cross Border Enforcement Cooperation Arrangement as suggested by the Group of Experts on Legal and Practical Solutions for Cooperation, and;
* took note of the Group of Experts’ exploratory work regarding tools and initiatives currently available for privacy enforcement cooperation.

Furthermore, the 39th ICDPPC mandated:

*‘[…] the creation of a new Working Group of the Conference to further explore the feasibility of potential framework options that may facilitate a broader geographic and functional scope of cooperation of privacy enforcement cooperation, and for the Working Group to report back on the progress of their work at the 40th Conference and report back on the results of the work at the 41st Conference, with the recommendation, if it deems appropriate, of the development of any additional cooperation framework(s).[[1]](#footnote-1)’*

The Working Group will present its final recommendations at the 2019 ICDPPC Conference in Tirana, but it will use the 2018 ICDPPC Conference in Brussels to update the members on its progress.

1. **Composition of the Working Group**

The Working Group is a working group of legal experts from data protection and privacy enforcement authorities. Designated legal experts have volunteered their time and expertise to carry out the mandate provided by the ICDPPC Resolution as outlined above. The Working Group explicitly strived for regional diversity in its composition, ensuring that the Working Group’s endeavours will reflect different legal cultures and preferences. After having issued a call for experts in April 2018, the Working Group welcomed experts from the following members:

* Commissioner for Personal Data Protection (**Albania**)
* National Direction for Personal Data Protection (**Argentina**)
* Office of the Australian Information Commissioner (**Australia**)
* Data Protection Authority (**Belgium**)
* Data Processing and Liberties Commission (**Burkina Faso**)
* Privacy Commissioner of Canada (**Canada**)
* European Data Protection Supervisor (**EU**)
* Commission Nationale de l’Informatique et des Libertés (**France**)
* Federal Data Protection Commissioner (**Germany**)
* Privacy Commissioner for Personal Data (**Hong Kong**)
* INAI (**Mexico**)
* National Commission for the control and the protection of Personal Data (**Morocco**)
* National Privacy Commission (**Philippines**)
* Catalan Data Protection Agency (**Spain**)
* Federal Data Protection and Information Commissioner (**Switzerland**)
* Personal Data Protection Authority (**Turkey**)
* Federal Trade Commission (**United States**)
* Regulatory and Control Unit of Personal Data (**Uruguay**)

The Working Group is co-chaired by the Information Commissioner’s Office (**United Kingdom**) and the Dutch Data Protection Authority (**the Netherlands**). The administration team is provided by the latter.

1. **Context: the work of the Group of Experts on Legal and Practical Solutions for Cooperation**

The Working Group is aware that it builds on the work of the *Group of Experts on Legal and Practical Solutions for Cooperation* (hereinafter: the 2017 Group of Experts). The 2017 Group of Experts presented its final documentation at the 39th Conference of the ICDPPC in Hong Kong.[[2]](#footnote-2) This report contained – amongst other things – a list of recommendations for potential future enforcement cooperation projects:

* compiling a comprehensive authorities database;
* creating a repository for sharing best practices;
* devising a cross-sectoral information sharing platform;
* developing a cross-border multi-jurisdictional complaint tool;
* creating teams of case handlers, and, lastly;
* devising model bilateral or multilateral cooperation tools.

The 2017 Group of Experts flagged these initiatives as practical projects for consideration in the short term, in order to give effect to the ICDPPC Executive Committee mandate to better coordinate the efforts towards global enforcement cooperation. Moreover, the 2017 Group of Experts discerned three possible approaches to devising model bilateral or multilateral cooperation tools: developing a Mutual Legal Assistance (MLA-) Treaty, developing a model agreement or set of model clauses, or further encouraging increased participation in the existing ICDPPC Arrangement.[[3]](#footnote-3)

With the latter, the 2017 Group of Experts underlined the relevance of the Key Principles in streamlining cooperation between ICDPPC members. These Key Principles (or key *legislative* principles) can be adapted to national, regional and local needs to reduce uncertainty and facilitate cooperation, and enable the members to protect privacy more effectively. The Key Principles were also accepted at the 39th Conference of the ICDPPC in Hong Kong.[[4]](#footnote-4)

1. **Work plan**

Bearing in mind the efforts of the 2017 project outlined above and the mandate given by the ICDPPC, the Working Group was formulated in early 2018 and held its first teleconference on 26 April 2018. During this call, the Working Group discussed possible workstreams that fit (and give effect to) the mandate. The participants shared oral- and written statements, which – after multiple rounds of feedback – were included in the work plan as presented below. This work plan was adopted on 13 July 2018.

**Workstream 1: Practical solutions for better cooperation**

Following the broad support for a practical focus in this Working Group, as well as the concrete recommendations made by the Group of Experts, it is suggested that the first workstream focuses on practical solutions for better cooperation. Such solutions could encompass, for instance, the creation of an authority database (including relevant information about the different authorities, clarification of the legal frameworks and legal room for cooperation) and a separate repository for sharing best practices (in particular, examples of Memorandums of Understanding (MOUs) used in the past). Under this workstream it could also be explored to what extent a cross-sectoral information sharing platform and complaint-handling tool could be beneficial for increased cooperation in enforcement cases. In the first place, this workstream will be dedicated to researching the feasibility of these options, and secondly, will work towards practical implementation of several of the most viable options. The members involved in this workstream intend to cooperate closely with the Executive Committee Secretariat (web administrator), in order to prepare the practical possibilities for the tools suggested.

**Workstream 2: Arrangement / Agreements / MLA Treaty**

As the ICDPPC is well aware, the current Global Cross Border Cooperation Arrangement is not a tool for providing a legal basis for international transfer of personal data, but rather sets forth participants’ commitment to cross-border privacy enforcement cooperation, based on their commitments in national law. For the **short term goal** under this workstream, the Working Group could focus on potential amendments to the Arrangement (including the potential to add additional clauses via a ‘Schedule 2’). For the **medium term goal** under this workstream, the Working Group could work on potential model clauses or a model bi- or multi-lateral agreement, which could be employed by authorities wishing to cooperate but requiring a separate legally enforceable agreement to do so. Lastly, the **proposed long term goal** of the Working Group is to research the feasibility of an MLA Treaty and/or the use of Joint Investigation Teams. This option was supported broadly by the members to the Working Group and can build upon the work undertaken by the 2017 Group of Experts. If possible, the Working Group could – by way of this workstream – make first recommendations to governments/legislators as to the content of such a Treaty, leveraging ideas related to work on clauses similar to those proposed for a ‘Schedule 2’ or model agreement.

The following members will be primarily involved in the different work streams, noting that the final results will be discussed and supported by the entire Working Group.

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| **Workstream 1** | **Workstream 2** |
| Canada CataloniaEDPS FranceGermany Ghana Hong Kong The NetherlandsSwitzerland United KingdomUnited States | Argentina Belgium Canada Catalonia EDPS FranceMexico The NetherlandsTurkeyUnited KingdomUnited States |

1. **Planning and next steps**

***Workstream One:*** Participants to this workstream agreed to pursue two elements first: 1)development of options for content for an authority database, 2) a repository sharing best practices. Participants from member authorities in Hong Kong & Canada (Federal level) will work together as Co-Rapporteurs on this workstream and will also look at the pros & cons of technical requirements for delivering these products.

A third option will be analysed for its feasibility later in 2019, which involves a cross sectoral information sharing (platform & complaint handling). Synergies will also be discussed with the Future of the Conference Working Group. First ideas will be shared in Brussels during the Closed Session and any Conference member will be invited to provide feedback by email on those ideas to the Working Group.

***Workstream Two:*** Participants to this workstream considered various options to nominate two Co-Rapporteurs from member authorities of **Belgium and Mexico** to work on a proposal for the **short term-goal** identified as a potential Annex Two to the ICDPPC Global Cross-border Cooperation Arrangement. This would draw on the conclusions from the recent work of the Council of Europe and the Article 29 Working Party to assess the Arrangement, to enable more European authorities to be able to participate in the Arrangement. The full package of documents would be submitted to the 41st conference in Tirana to consider.

The **UK ICO** agreed to volunteer as Rapporteur to develop a scoping proposal for the attainment of the **medium term goal** under this workstream, i.e. potential model clauses or a model bi- or multi-lateral agreement.

The **Canadian (Federal)** member authority agreed to volunteer as Rapporteur to provide the next steps scoping of the long-term goal analysing the feasibility of an MLA Treaty and/or the use of Joint Investigation Teams.

Proposals from the second workstream are due for a first review among workstream participants ahead of the 2018 Conference. Conference member will be invited to provide feedback on those proposals to the Working Group.

Both workstreams envisage a face-to-face meeting as well as a teleconference/email contact work programme in 2018 and 2019.

Contacts for the Working Group:

Secretariat: Dutch DPA – international@autoriteitpersoonsgegevens.nl

1. 39th International Conference of Data Protection and Privacy Commissioners, Hong Kong, 25-29 September 2017, Resolution on exploring future options for International Enforcement Cooperation (2017), para. 5. [↑](#footnote-ref-1)
2. ICDPPC, Group of Experts on Legal and Practical Solutions for Cooperation, Final documentation presented to the 39th Conference of the ICDPPC in Hong Kong (full unabridged version), October 2017, pp. 52-55. [↑](#footnote-ref-2)
3. Ibid., p. 96 in particular. [↑](#footnote-ref-3)
4. Ibid., pp. 14-16. [↑](#footnote-ref-4)