**39th International Conference of Data Protection and Privacy Commissioners
Closed Session, 26 - 27 September 2017, Hong Kong**

**FRAMEWORK FOR THE DISCUSSION ON
THE FUTURE SIZE AND MEMBERSHIP OF THE CONFERENCE
Discussion paper prepared by the Office of the Privacy Commissioner of Canada**

The present paper provides an overview of the results of the survey of members conducted as part of the Project on the Future Size and Membership of the Conference. Based on these results, we propose a framework for the discussion to be held during the 38th International Conference in Hong Kong, including options to meet identified objectives. The discussion will guide the work on the Project over the next year, as well as in the development of the Conference's Strategic Plan for 2018-2020.

SURVEY RESULTS

Questions 2 and 3: The Conference's purposes

Below are the results to questions 2 and 3 of the survey, which measured the importance members give to the Conference's current purposes, and how well these purposes are being achieved. In the assessment below we assign a higher value to stronger sentiments.[1] We note that "neutral/no opinion" answers were more frequent in responses to question 3 on the Conference's achievement of its purposes – suggesting less certitude from members when it came to judging the Conference's ability to achieve its stated purposes.

	Stated Purpose	Q2 Importance (Rank)	Q3 Achievement (Rank)	Achievement Gap Q3 minus Q2
A.	To provide leadership at an international level in data protection and privacy.	+81 (4)	+42 (4)	-39
B.	To improve data protection and privacy by providing an outstanding global forum that encourages dialogue, cooperation and information sharing.	+109 (1)	+64 (2)	-45
C.	To adopt and to promote the implementation of joint resolutions on subjects that warrant the common attention or action of members and to promote their implementation.	+80 (5)	+55 (3)	-25
D.	To be a meeting point between members and international organisations that share common objectives.	+87 (3)	+95 (1)	+8
E.	To promote the development of international standards in the field of protection of personal data.	+99 (2)	+16 (7)	-83
F.	To disseminate knowledge, and provide practical assistance, to help members more effectively to perform their mandates.	+79 (6)	+29 (5)	-50

---

[1] Answers were permitted on a scale from "very unimportant" to "very important." To measure intensity, we have given answers of "Very unimportant" a score of -2; "Unimportant" as -1; "Neutral/No opinion" as 0; "Important" as +1; and, "Very important" as +2.

Stated Purpose	Q2 Importance (Rank)	Q3 Achievement (Rank)	Achievement Gap Q3 minus Q2
G. To connect and support efforts at the domestic and regional level, and in other international fora, to enable members better to protect and promote privacy and data protection.	+68 (7)	+19 (6)	-49

The above helps determine that only statement D is being achieved to a level comparable to the importance members gave that statement. All other statements have, to some degree, an achievement gap; that is, the importance members ascribed to the purpose is not being currently met.

Questions 4 and 5: Members' Suggestions

Survey questions 4 and 5 allowed members to provide their views on whether there are any important purposes that the Conference currently serves that are not reflected in the stated purposes, and if there are any new purposes the Conference should serve.

The answers to these questions suggest members place a premium on the opportunities to cooperate, network, share information and develop joint projects. Statements to this effect include:

- To "encourage the exchange of information on such issues among DPAs not only during the conference, but in the course of the whole year" (stated multiple times)
- To "reduce gaps between data protection authorities through cooperation and assistance."
- To "facilitate cooperation between data protection authorities."
- To allow for "more room for practical 'getting to know each other' [opportunities] with the aim of supporting each other and establishing effective and close cooperation."
- To build connections and a place for discussion with other regulators/oversight agencies/ organizations that overlap in the data protection space.

There are also several statements suggesting that the Conference exert more policy influence and that it take more practical steps. These include:

- To give more direction and guidance to policy makers striving to influence the public debate.
- To provide expertise/input/opinion in international bodies and on international political initiatives (stated multiple times).
- To raise awareness for both private and public sector data controllers.
- To provide support to smaller countries and model best practices to countries that do not yet have sufficient data/privacy protection for their citizens. (stated multiple times)
- To better communicate with the business community, including thru guidance for common understanding and harmonized application of international data protection standards.

There were also statements suggesting how the Conference could improve its current practices:

- To follow up on the adopted resolutions (stated multiple times)
- To "reach consensus on more stringent and specific resolutions, avoiding broad and general declarations."
- To be "a forum of guided controversial discussions."

- To "more closely intertwine the closed session and the open session…keeping the closed session exclusively for DPAs or Conference members" and moving "discussions on matters of general interest to the open session"
- To have more diverse representation in the Executive and the working groups and recognize the validity of different approaches to data protection regulation.
- To establish "a permanent working group to respond to incidents or notifications sent to countries."

Question 6 on attitudes to conference participation

The survey put forward a number of statements to gauge members' attitudes on membership and size. The answers denote a consensus desire for a broader membership regardless of the authority's size. While members would like the Conference to broaden its global reach, they also want it to remain a selective process that focuses on data protection and privacy authorities regardless of breadth of activities or size of jurisdiction, provided the authorities have independence in their activities.

There is a willingness to admit international organizations as observers, but less consensus on other types of observers (ie those who do not otherwise meet the criteria for admission as members – including governmental officials). The exception would be inviting observers for specific agenda items.

FOR DISCUSSION

Objective A. **The Conference as a policy leader**

Members value the Conference as a venue for in-depth discussion of data protection and privacy issues, as well as its purpose to promote international standards and adopt resolutions. But these latter two objectives – the promotion of international standards, and the adoption and implementation of joint resolutions – are, per the survey results, not being fully met. Some members expressed a desire for the Conference to have a more active role in international policy discussions and exert policy influence. There is currently no formal connection between the Conference's in-depth discussions and its resolutions.

How do we foster a conference that has guided controversial discussions, but that can also achieve consensus positions? How do we ensure the conference key messages, recommendations and resolutions are conveyed to policy-makers and do influence policy discussions at international level?

Suggestion 1. **Strengthening the link between in-depth discussion topics, conference resolutions and practical implementation**
- Topics selected for in-depth discussion benefit from presentations from world-class experts and the follow-up discussion among attendees. However, the knowledge gained and shared does not necessarily translate into any further concrete action by the Conference.
- Topics could be selected based on their appropriateness for further concrete work by the closed session of the Conference.
- Working groups should be established on key subjects of common interest and should develop a road map to be validated by the closed session. The chosen subject of the closed session(eg government sharing) should be dealt by a working group in order to ensure some follow up and practical implementation post conference

- The Conference could also, following one or more of the in depth discussions, designate a working group to be struck with the mandate to continue research and conduct consultations on the topic. Where feasible, a resolution could be developed for discussion and adoption at a future Conference.
- The Working Group would continue to serve as a resource for members to consult in their domestic implementation of such resolutions and any other follow-up to implementation by the Conference.

Suggestion 2.   Holding the open session first and the closed session second
- In-depth discussions benefit from as wide an audience as possible to foment, enrich and deepen discussion. Having the open session first would allow relevant matters emanating from the open discussion to be discussed afterwards, in the closed session, with the benefit of lessons learned during the prior discussion.

Suggestion 3.   Promote the development of practical tools
- Common tools can be of two types: (i) procedural, such as the [Enforcement Cooperation Handbook](#); or (ii) substantive, such as resolutions or frameworks like the [International Competency Framework for School Students on Data Protection and Privacy](#).
- Several members signalled an appetite for practical tools. What do members have in mind?

Suggestion 4.   Influence the development of global privacy and data protection standards
- Members gave high importance to the Conference objective of promoting the development of international standards, but low marks to the Conference's achievement of this objective.
- Do members wish the conference to adopt technical or policy standards? Should they be on specific subjects or be more comprehensive, such as the general statement discussed in the 5th bullet below? Should they take the form of resolutions or are other forms desired?
- One step could be the increased participation of the Conference to its established network of representation at international level, providing an expert and independent contribution to current debates and policy developments.
- Another step could be to rely on the already existing channels of representations towards international organisations (i.e. organisations where the Conference is an observer such as the OECD, the Council of Europe, etc.) and on the development of further representation status at the international level (e.g. UN High Commissioner for Human Rights, UN Special Rapporteur on the Right to Privacy, International Organization for Standardisation (ISO), etc.)
- Yet another step could be for the Conference to aim at developing an international standard on data protection, in the form of a general statement summarizing the main and essential key principles on data protection. Such statement would have no binding value or direct legal effect (e.g. no adequacy or free flow) but would be considered as a general declaration of the essential elements shared by the community/organisation, to be used for example for the further development of specific recommendation.
- Should the Conference explore strengthening its direct liaison with international standards development bodies, such as ISO, with a view to promoting privacy standards and influencing their development?

Suggestion 5.   Increase the Conference's visibility and recognition at the international level through a "rebranding exercise."

- Recognition and visibility are important components to achieving a more active role in international policy discussions and exerting policy influence.
- In this regard, a change of the conference name could serve in making it more explicit to external and policy audiences, while strengthening its global reputation (e.g. International Privacy Commissioners Organisation – IPCO)
- The change of name could also be accompanied by a revamping of the organisation visual identity, logo and other communication tools

Objective B.   A more global conference

Members show a desire to be a more global Conference. How can the conference promote diversity?

Suggestion 1.   Enlarging the size of the Executive Committee to widen its regional representation.

- Make it explicit that every continent/region be represented on the Executive Committee (for example to 5 regions: Europe, Central and South Asia, East Asia and Pacific, Middle East and Africa, and the Americas).
- This would result in a seven member committee – the 5 regional representatives, plus the former and future host.

Suggestion 2.   Diversifying hosting locations.

- Ensuring each region hosts the conference at least once and no more than three times per 10-year period.
- This accepts the premise that rotating locations gives the Conference more visibility in that region, and adds to its global appeal.

Suggestion 3.   Mandating Working Groups to have regional representation.

- Working Groups should endeavour to have representation from at least three regions to ensure multiple points of views are reflected in their work and outputs.
- This may also promote engagement from a larger number of Conference members and add to the "ownership" of working group products.

Objective C.   Increase ways and means for cooperating and sharing information

The survey results suggest that the Conference is meeting its purpose of being a meeting point between members and international organisations that share common objectives, but there is room for improvement when it comes to providing a global forum that encourages dialogue, cooperation and information sharing. How do we achieve such practical outcomes?

Suggestion 1.   Providing more ways of interaction between Conferences

- Current tools for interaction may not be seen as two-way communications: the ICDPPC website, the quarterly Newsletter, social media accounts (Twitter, YouTube). Should the

Conference explore ways to ensure members can continue to interact outside the annual meeting?
- Members could allow for the Secretariat to share member's contact details to other members in order to facilitate the direct sharing of information or the issuance of materials of interest to other authorities.
- Members could share research papers or items of interest with the whole membership via the Secretariat's email distribution list.
- Note that this may increase the already high demands on the Secretariat, whose workload is assumed by the Chair authority and not subsidized by the Conference.

Suggestion 2.   Creating a secure virtual space for members to interact
- Creating a private, login space on the ICDPPC website for members to interact would facilitate community-wide sharing of information or items of mutual interest, perhaps providing an opportunity for authorities to leverage the work of other members and avoid duplication of work.
- But would such a solution bring us towards success and higher interactions, or will they only marginally increase conversations between members?

Objective D.   Achieving Change

The survey indicates that members want a more global conference and suggests there is little concern over the number of members – ie. the increasing size of membership. Nevertheless, members would like membership to remain a selective process and there is discomfort regarding the presence of government officials or agencies as observers to the Conference's closed session. To reflect members' preferences vis-à-vis membership and observer status, it may be necessary to change (or at least refine) the Conference's rules.

Suggestion 1.   Revise Conference Rules on Membership
- Achieving a more global conference may require amending the Conference rules as they may be excluding authorities from under-represented jurisdictions that are otherwise eager to join the community of privacy and data protection authorities.
- The results of the survey concerning sectorial regulators is somewhat inconclusive and would require further discussion, within the Executive Committee and the closed conference to agree on further criteria for membership status.
- The survey shows that members value "appropriate autonomy and independence" as a criteria for membership.
- The other criteria for membership (not reflected in the survey statements) are: being a public entity created by legal instrument; having supervision over the protection of personal data or privacy as one of its principal regulatory mandates; having legislation that is compatible with the principal data protection or privacy international instruments; having an appropriate range of legal powers; and, possessing appropriate autonomy and independence. (emphasis added). Should more certainty be added to the criteria for membership? To their interpretation?
- How could the rules be adapted to increase the global outreach of the Conference?
- How do rules for membership, and the corresponding membership composition, impact the Conference's ability to achieve the key goal of being a global policy leader?

Suggestion 2.   Revise Conference Rules on Observers
- Members disagreed with having authorities that do not meet the membership criteria allowed in as Observers. They also expressed concern with the presence of governmental officials in the closed session.
- The current rules allow the granting of Observers status to those "public entities that do not meet [the membership criteria] but are involved in dealing with the protection of personal data and/or privacy."
- There is no distinction regarding governmental authorities, or consideration for potential conflicts of interest between Members and Observers (ie, when a member has supervisory responsibilities over an observer)
- On the basis of the survey results, should the rules be amended to exclude government officials from the closed session?
- Members agreed with having international organisations participate as Observers. They also agreed with inviting Observers restrictively to the closed session and only for specific agenda items.
- Should Observer status be limited to international organisations and to authorities via invitation (ie, to participate in a specific discussion or agenda item)?
- Doing so may encourage authorities with data protection and privacy mandates to become members (and only be admitted into the closed session as members) and, where they do not meet the criteria for membership, seek domestic solutions to meet the criteria.

Suggestion 3.   Adapting the Conference legal status to deliver change
- In order to achieve change and fully deliver on its objectives, the Conference's legal status might need to evolve in order to provide it with the necessary tools from both a practical and legal point of view.
- The Conference could consider changing its status tp that of a private not-for-profit organisation (eg. association established under the legal regime of one of its member's national law), which would allow the setting up of a permanent and dedicated secretariat (1-2 people max) and the establishment of its own resources through membership fees.
- The current Conference rules could be adapted into by-laws that would set up the new organisation internal rules and governance.