

38th INTERNATIONAL CONFERENCE
OF DATA PROTECTION AND PRIVACY COMMISSIONERS

Marrakesh, 18 October 2016

Resolution on International Enforcement Cooperation (2016)

The 38th International Conference of Data Protection and Privacy Commissioners:

Recognising that international enforcement cooperation can produce a greater level of effectiveness in the regulatory landscape which can improve both the level of compliance by organisations processing data as well as those organisations' competitiveness which in turn produces positive outcomes for individuals;

Recognising that the international enforcement regulatory community has made great strides in forging new connections, sharing knowledge and developing new tools to reinforce cooperation with each other in the last decade, but that more can be done. Current cases with a cross-border dimension still sometimes suffer from legal restrictions impeding effective progress on investigations, and therefore authorities need all possible avenues to help them uphold individuals' rights in relation to data protection and privacy. Members of the International Conference of Data Protection and Privacy Commissioners need a variety of ways available to allow them to cooperate and they are obliged to do this in a way compatible with the laws applicable to their activities;

Recalling the resolutions from the 29th, 31st, 33rd, 34th, 35th and 36th Conferences relating to actions to improve cross-border enforcement cooperation;

Further recalling that the 33rd Conference resolved to seek to ensure that there is at least one opportunity each year for those interested in issues of international privacy enforcement and coordination to meet; further highlighting the success of the subsequent meetings arranged in Canada, the United States of America and the United Kingdom over the past five years in exchanging and developing experiences in investigation and enforcement techniques building on tools developed by the members of the Conference such as a Handbook on International Enforcement Cooperation;

Recalling the concrete examples of the success of the Global Cross Border Enforcement Cooperation Arrangement so far as shared between participants at the 2016 Annual International Enforcement Event in the United Kingdom;

Recalling that while the Conference has called in its past resolutions for a globally applicable standard for data protection, some Conference members are meanwhile still unable to share case-related data with one another, due to limitations imposed by their national or regional laws, and in view of this situation, the Conference should support members in their work at national level with commonly agreed materials on international enforcement cooperation that members can adapt as

they see fit to national, regional and local needs, including to help support their calls for a change to national laws;

Recalling that the 36th Conference accepted the Global Cross Border Enforcement Cooperation Arrangement as a possible way for each conference Participant in the Arrangement to adopt a common approach to facilitating enforcement cooperation with other Participants, also providing Participants with an optional Annex to this Arrangement, which allows those Participants to declare whether they intend to share personal data relating to cross-border investigations, where national or regional law permits this;

Recognising that the Executive Committee of the 37th International Conference of Data Protection and Privacy Commissioners delivered the mechanisms needed to operationalise the Global Cross Border Enforcement Cooperation Arrangement according to sections 12-15 of that Arrangement including an update of the Conference's Rules of Procedure to accommodate this new tool;

Recalling that the OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws Protecting Privacy recommends member countries take steps to improve the ability of their privacy enforcement authorities to co-operate, including by providing authorities with mechanisms to share information with foreign authorities, and enabling authorities to provide assistance to foreign authorities, in particular with regard to obtaining information from persons; obtaining documents or records; or locating or identifying organisations or persons involved or things;

Recalling that the 36th Conference further mandated the Executive Committee to initiate discussions with GPEN and other networks with a view to exploring practical options and opportunities for better coordinating their efforts to improve enforcement cooperation and reported back on progress to the 37th conference;

Noting that the Global Privacy Enforcement Network (GPEN) launched the new confidential and secure GPEN Alert system on the margins of the 37th Conference, which enables participating authorities to notify other participating authorities of their privacy investigations and enforcement actions, particularly those that have cross-border aspects, for purposes of potential coordination and cooperation; further noting that the Conference, GPEN and other networks have kept each other informed of such projects advancing cross-border cooperation and have started to discuss future projects;

Noting that there have been efforts by several other networks dedicated to data protection and privacy to encourage participation in international enforcement coordination actions of privacy enforcement authorities from countries with less developed privacy and data protection regimes across the globe.

The 38th International Conference of Data Protection and Privacy Commissioners resolves to continue to encourage efforts to bring about more effective cooperation in cross-border investigation and enforcement in appropriate cases and:

- 1) To mandate a new Working Group of experts comprised of interested International Conference members and ideally, representative of the Conference membership from across the different global regions to develop a proposal for key principles in legislation that facilitates greater

enforcement cooperation between members. The principles could be adapted by individual members to their national, regional and local needs. The principles would be accompanied by an explanatory memorandum that can be presented to national governments by individual members and where appropriate, observers. In addition, the Working Group is encouraged to suggest other measures that it feels may improve effective cross-border cooperation in the short or long term. The Working Group is encouraged to work in cooperation with other networks of privacy enforcement authorities active in cross-border enforcement cooperation, and to consult with networks of enforcement bodies from other sectors where appropriate, and is directed to report back to the 39th Conference on the product of its work.

- 2) To mandate the Executive Committee of the International Conference of Data Protection and Privacy Commissioners to nominate leader Participant authorities in each of the global regions to act as a contact point for promoting International Conference members' participation in the Global Cross Border Enforcement Cooperation Arrangement;
- 3) To mandate the Executive Committee of the International Conference of Data Protection and Privacy Commissioners to further discuss with GPEN and other relevant networks with a view to creating practical projects that better coordinate the efforts towards global enforcement cooperation, in particular following up on the conclusions of the 2016 Annual International Enforcement Cooperation event which recommended exploring the feasibility of networks' cooperation on population of a database of each authority's legal powers to cooperate, evidence-gathering requirements, definitions of personal data and confidential data, which can help Conference members to easily identify partner authorities in a case.