

Global data privacy laws 2015: Data privacy authorities and their organisations

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Most but not all countries with data privacy laws have one or more enforcement and policy bodies with a specialised focus on data privacy – often called ‘data protection authorities’ (DPAs). There are now numerous associations and agreements linking these DPAs (and sometimes other non-specialist enforcement bodies). In the last few years there has developed a divergence between DPA associations that are primarily policy-oriented, and those that focus on cooperation in enforcement of data privacy laws (called ‘privacy enforcement authorities’ or PEAs), though some are involved in both. These global and regional associations of DPAs and PEAs are of increasing significance. Their purposes and origins are discussed in the background paper to this article.¹

This article analyses the growth of DPAs to January 2015, the extent to which they are engaged in associations of DPAs and PEAs, and those that are not. While there are many overlaps in these memberships, there are also surprising omissions. This article follows one in the previous issue analysing the spread of data privacy laws to 109 countries by January 2015, and accompanying Tables². The Tables document the existence and overlapping memberships of DPAs in the 109 countries.

Growth of specialised DPAs

Of the 109 countries with data privacy laws, 97 laws (89%) create specialised ‘data protection authorities’ (DPAs) of some type, with some enforcement powers and separate from the normal prosecutorial and judicial systems of the country. Whether each can be classed as ‘independent’ is a more complex question. Twelve laws do not provide for any separate DPA.³ In six countries the DPA provided for in the law has not yet been appointed (discussed further below), so 91 national DPAs have in fact been created. The DPAs in each category are named in the Table, or the absence of a DPA noted.

Policy-oriented DPA associations

The global networks of DPAs are complex, overlapping and confusing. While ‘policy-oriented’ is a convenient label, the extent of joint policy development varies greatly between DPA associations, being very high (for example) in the EU Article 29 Working Party and the global ICDPPC, but very low in the Asia-Pacific’s APPA, the function of which is more to share good practices. Developments since 2013 in the main DPA associations are as follows:

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¹ G Greenleaf ‘Sheherezade and the 101 data privacy laws’ (2014) 23(1) *Journal of Law and Information Science* <<http://ssrn.com/abstract=2280877>>

² Graham Greenleaf ‘Global data privacy laws 2015: 109 countries, with European laws now in a minority’ (2015) 133 *Privacy Laws & Business International Report*, 14-17, and accompanying *Global Tables of Data Privacy Laws*, 18-28.

³ Japan does not have a DPA of general scope, only one for its tax and welfare ID system. It may introduce legislation in 2015 to create a DPA of more general scope, but the details are as yet uncertain. See Greenleaf, G ‘Japan’s Proposed Changes: Weaken Privacy to Foster ‘Big Data’ (2014) 130 *Privacy Laws & Business International Report*, 23-25, <<http://ssrn.com/abstract=2517193>>

- The *International Conference of Data Protection and Privacy Commissioners (ICDPPC)* has the broadest international scope and greatest longevity of DPA associations (36 annual conferences since 1979). Since 2013 the national DPAs of Ghana, Senegal, Mauritius, and Kosovo have been admitted to membership. Neither Singapore nor Malaysia have yet applied, so the question of whether independence of a DPA is required has not been further tested. Of the 90 national data protection authorities appointed under countries' data privacy laws, only 63 national DPAs are accredited to ICDPPC (as shown in the Table), plus 35 sub-national State and Provincial DPAs (not shown). ICDPPC therefore only has 70% of national data protection authorities as its members. Notable non-members include Russia, Singapore, Malaysia or Macau SAR (all possibly due to lack of independence), any Caribbean DPAs, or many African DPAs. Many of those 'missing' from ICDPPC are also newly-established DPAs, or those from very small jurisdictions. While ICDPPC membership is therefore significantly short of global coverage, it does include the DPAs from almost all of the economically most significant countries. 'The ICDPPC's lack of capacity to achieve its practical and strategic goals has concerned many Commissioners over the years.'⁴ ICDPPC has in the past not had any significant presence in between its annual conferences, but is now starting to develop more continuity, with its post-2014 Executive Committee starting a Newsletter and website,⁵ and the NZ Commissioner's Office providing an Executive Committee Secretariat.
- The *International Working Group on Data Protection in Telecommunications (IWGDPT or 'Berlin Group')* is one of longest-established and most active DPA groups. It was established in 1983 within the framework of the ICDPPC at the initiative of the Berlin Commissioner, who has since then been chaired it. The Group has in 30 years adopted over 60 recommendations.⁶ All ICDPPC members, and other expert bodies and individuals, are invited to attend its biennial meetings.
- The *EU's Article 29 Working Party (A29WP)* is the world's most important DPA policy-making body, with membership comprising the DPAs of all 28 EU Member States, and various formal roles under EU privacy Directives. Since 1997 it has issued a continuous stream of significant joint policy documents, including in 2014 nine Opinions, five Statements and four other important Guidelines or Working Documents. A29WP also acts as an enforcement-oriented organisation in some situations.
- There is *no equivalent CoE Convention 108 DPA organisation*, even though the Additional Protocol requires a DPA. However, the (*Conference of) European Data Protection Authorities (EDPA or 'Spring Conference')* has the same potential membership scope as Convention 108, and makes influential policy resolutions at its annual conference. Georgia has been admitted since 2013, so that Armenia, Andorra (an Observer), Russia and Ukraine are the only CoE Member States with DPAs that have not joined EDPA.
- Another DPA network in Europe, the *Central and Eastern Europe Data Protection Authorities (CEEDPA)* has 19 members.⁷ Russia and Slovenia are new members⁸ (though

⁴ John Edwards, NZ Commissioner, 'Message from the Chair' (2015) 1(3) *ICDPPC Executive Committee Communique*.

⁵ Executive Committee Chair from October 2014 John Edwards, NZ Privacy Commissioner; Newsletter entitled 'Communique'; website at <<http://icdppc.org/>>.

⁶ IWGDPT Common Positions and Working Papers <<http://www.datenschutz-berlin.de/content/europa-international/international-working-group-on-data-protection-in-telecommunications-iwgdpt/working-papers-and-common-positions-adopted-by-the-working-group>>

⁷ 'Members of the CEE DPA website' <<http://www.ceecprivacy.org/main.php?s=2>>

⁸ CEE DPA 'News and Events' <<http://www.ceecprivacy.org/main.php?s=5>> - see 2013 and 2014 resolutions.

not listed there), but Estonia is not. Membership overlaps with the Article 29 Working Party, and even more so with EDPA/CoE members. It held its 16th annual meeting in 2014. It is active in mutual support activities and developing policy positions such as approval of reforms of European data protection instruments.⁹ Its secretariat is provided by Poland's Data Protection Authority, GIODO.¹⁰

- In Europe, there are also the *Nordic DPA group* that has been meeting at least once a year since at least the 1980's, and the '*British, Irish and Islands*' *DPA group* which includes the UK, Ireland, Jersey, Guernsey, the Isle of Man, Gibraltar, Malta, Cyprus and Bermuda.
- There is *no OECD DPA organisation*, although the 2013 revised OECD Guidelines do recognise the value of international cooperation, and GPEN (see below) is of OECD origin.
- The *Francophone Association of Data Protection Authorities (AFAPDP)*¹¹ is an active organisation that is influential in francophone countries that have not yet adopted data protection laws. AFAPDP has 18 full members with voting rights (jurisdictions with DPAs, and fees paid – as listed in the Table), plus many representatives of countries that have not yet adopted a data protection law or set up an independent DPA. Its influence is therefore broader than its full membership, particularly in relation to promotion and assistance in those countries that have not yet adopted data protection laws.
- The membership of La Red Iberoamericana de Protección de Datos, also called the Red Iberoamericana or *Latin American Network (RIDP or RedIPD)*,¹² has 22 members and consists of all the Latin American countries, plus Spain, Portugal and Andorra. There is no separate network for the Portuguese-speaking countries around the world, five of which have data privacy laws.¹³
- Seven Commonwealth countries became the initial members of the *Common Thread Network (CTN)*, formed at the 2014 ICDPPC meeting.
- The *Asia-Pacific Privacy Authorities (APPA)* now has 18 members from Australia (federal and four States/Territories), Canada (federal and British Columbia), Hong Kong SAR, Macau SAR, South Korea (two authorities), Mexico, New Zealand and the USA, plus new members since 2013 from Singapore, Columbia and Peru.¹⁴ Malaysia's DPA has not joined, as it will need to join GPEN or APEC CPEA first due to its lack of independence. Neither Japan nor Taiwan are members, probably because of lack of a DPA.
- There is *no Caribbean DPA association*, although three countries now have data protection authorities (plus the Dutch territories). Nor are any of them members of ICDPPC or GPEN.
- There is also *no pan-African association of DPAs*, despite there now being ten DPAs in African countries, although not all are yet operative. Five are however members of ICDPPC, and eight are members of AFAPDP.

⁹ See CEEDPA 'News and Events' page at <<http://www.ceedprivacy.org/main.php?s=5>>

¹⁰ See www.ceedprivacy.org/main.php

¹¹ AFAPDP website <<http://www.afapdp.org/>>

¹² RedIPD website, list of members <http://www.redipd.org/la_red/Miembros/index-iden-idphp.php>

¹³ Including Angola, Brazil, Cape Verde, Macau SAR, plus Portugal.

¹⁴ APPA list of members <<http://www.appaforum.org/members/>>.

Enforcement-oriented PEA associations

‘Privacy enforcement agencies’ (PEAs) have established a number of networks for cooperation in enforcement where multi-national issues are involved. The members of all of these PEA networks are shown in the Table.

- In 2014 the potentially most important¹⁵ long-term development was that the ICDPPC, the global association of DPAs, by a resolution at its 2014 conference in Mauritius,¹⁶ adopted the *Global Cross Border Enforcement Cooperation Arrangement (GCBECA)*¹⁷. It is intended as a standard form of agreement between any two or more DPAs, to replace many differing forms of bilateral agreements. Participation by DPAs is voluntary. The ICDPPC’s Executive Committee will administer the Arrangement, and will accept notices of intent from the date of the 37th Conference (2015) and the Arrangement will commence once there are at least two Participants. The ICDPPC rules of procedure will be amended to reflect this at its 2015 Conference. ICDPPC is also organising an annual conference on enforcement cooperation and methods.¹⁸
- The *Global Privacy Enforcement Network (GPEN)* originated in a 2007 OECD recommendation.¹⁹ GPEN membership has increased 50% in 18 months to 39 countries (up from 26 in 2013), all of which have data privacy laws of one form or other, plus supra-national bodies (EDPS), and nine regional DPAs from various federations. OECD members initially predominated in GPEN, but that is now declining as it becomes more genuinely global, though still lacking many members in Africa or Latin America. GPEN members commit to working together to tackle data protection law enforcement in a co-ordinated way. For example, in May 2013 and December 2014 GPEN ran coordinated reviews (‘sweeps’) of the most popular websites’ privacy policies. It is governed by a GPEN Committee,²⁰ has regular teleconference meetings (18 in 2014), and issues an Annual Report.²¹
- *APEC’s Cross-border Privacy Enforcement Arrangement (APEC-CPEA)* commenced in 2010 and has members from 9 APEC member countries, including the national DPAs from seven countries, two Korean authorities (the relevant Ministry, MOGAHA, and its Communications Commission, but not its national DPA), and 16 Japanese Ministries (in the absence of a national DPA). New members since 2013 include Singapore.
- According to a two year EU-funded study, it is ‘undoubtedly’ the *EU’s Article 29 Working Party (A29WP)* which provides ‘the best example of co-operation and co-ordination between DPAs’.²² In recent years it has extended its primary policy orientation into joint

¹⁵ It has been described as ‘a major achievement’: PHAEDRA Project Workstream 4 / *Deliverable 4: Findings and Recommendations*, at p 27 (January 2015) <<http://www.phaedra-project.eu/>>

¹⁶ 36th ICDPPC *Resolution on Enforcement Cooperation* (Oct 2014, Mauritius) <<http://www.privacyconference2014.org/media/16605/Resolution-International-cooperation.pdf>>, Resolution 1.

¹⁷ ICDPPC *Global Cross Border Enforcement Cooperation Arrangement* (2014) <https://www.priv.gc.ca/information/conf2014/arrangement_e.asp>.

¹⁸ 36th ICDPPC ‘Resolution on Enforcement Cooperation’ (Mauritius, October 2014), Resolutions 3 and 4.

¹⁹ OECD *Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy* <http://www.oecd.org/document/60/0,3343,en_2649_34255_38771516_1_1_1_1,00.html> (2007).

²⁰ Current GPEN Committee members are the authorities from Canada, Israel, New Zealand, the UK and the USA.

²¹ *GPEN Annual Report 2014* <<https://www.privacyenforcement.net>>

²² PHAEDRA Project Workstream 4 / *Deliverable 4: Findings and Recommendations*, January 2015 <<http://www.phaedra-project.eu/>>

enforcement operations. The point here is only that it should not be ignored in discussions of enforcement organisations.

DPAs ‘missing in action’

There are six countries that have not appointed a DPA for at least a year after their Act creating one has been enacted, so the legislation is not yet effective: Seychelles (2003); Angola (2011); Philippines (2012), Lesotho (2012), Mali (2013) and South Africa (2013).²³ Failures by governments to implement legislation need critical attention, but in three of the instances above the legislation is still only recently enacted (2013). Cape Verde (2001) and Malaysia (2010) graduated from this list in 2014, with the appointment of DPAs.

There are a further group of ten countries whose DPAs, though existing, have been appointed for more than a year (sometimes for more than a decade) but are not participants in any of the more than a dozen global networks of DPAs listed above.²⁴ This lack of engagement is also worth questioning, though there may be good reasons for it.

Conclusions: Cooperation, competition, or both?

Associations of data protection authorities are likely to increase in importance as venues both for the contesting of influence between major political entities such as the USA (through FTC and FCC) and the EU, and for developing cooperation in cross-border enforcement. In terms of policy influence the position of the EU’s Article 29 Working Party (A29WP) is unchallenged, and not likely to be challenged by APEC-oriented institutions, which are incapable of taking any joint positions for fear of ‘interfering’ in each other’s domestic politics. From the enforcement perspective, what relationship – cooperation, competition or both – will develop between GPEN and the ICDPPC’s enforcement initiative (and ICDPPC itself) is too early to assess, but is an important question for studies of the future direction of global data protection. At present, there is an intention to attempt to cooperate, embodied in a resolution of the 2014 ICDPPC which mandates its Executive Committee to ‘initiate discussions with GPEN and other relevant networks with a view to exploring practical options and opportunities for better coordinating their efforts to improve enforcement cooperation and to report on these options for the 37th Conference’.²⁵ However, the Conference’s encouragement to all DPAs and PEAs to participate in the GCBECA is a clear signal that they do not regard GPEN as ‘the only show in town’ when it comes to enforcement.

The lack of any permanent secretariat for either ICDPPC or GPEN limits the effectiveness of each of them, but in recent years the ongoing activities of GPEN, have contrasted with ICDPPC concentration on an annual conference, and appeared to give GPEN a longer-term advantage. Of course, if GCBECA succeeds, it may change this. In 2015, as discussed, ICDPPC is developing a various elements of a continuous secretariat, but its success will depend upon transmission from the office of one Executive Committee Chair to the next.

Other enforcement bodies may also become relevant. Once its ‘modernisation’ process is complete, DPAs in countries which are parties to CoE Convention 108 will also have a cooperative enforcement role, including powers to exchange personal data for enforcement purposes. The successful expansion of the APEC CBPRs will also expand the APEC CPEA.

²³ It has not been confirmed whether the three Dutch Caribbean territories should be added to this list.

²⁴ Namely those from the Bahamas (2003), Faroe Islands (2010), Greenland (1979), Nepal (2007), Qatar Financial Centre (2008), San Marino (1983), Trinidad & Tobago (2011), Thailand (1997), Yemen (2012) and Zimbabwe (2002).

²⁵ 36th ICDPPC ‘Resolution on Enforcement Cooperation’ (Mauritius, October 2014), Resolution 5.