Resolution of the European Data Protection Authorities' Conference
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Meeting data protection expectations in the digital future

Proposer:

The Information Commissioner's Office, United Kingdom

Co-sponsors:

Garante per la Protezione dei Dati Personali, Italy
Comissão Nacional de Protecção de Dados, Portugal

Preamble
The world has changed greatly since Convention 108 of the Council of Europe and the current European Data Protection Directive 95/46 were adopted. Individuals rightly expect Data Protection Authorities to respond to these changes. New technologies and digital services are constantly evolving.

More and more personal data is being collected, shared and analysed in more sophisticated and potentially intrusive ways. Individuals rely more and more on the internet to carry out transactions with public and private entities, to access information and to interact with others.

It is in the context of this ever changing digital world, its global challenges, the updating of Convention 108 and the advent of the EU data protection reform package that European Data Protection Authorities are being confronted with many new challenges, with implications for the way in which they deliver their functions of promoting and upholding data protection rights.

Where privacy and data protection sit in the public's agenda is a complex issue. Some citizens may have accepted that disclosing their personal data has become simply part of modern life but that doesn't mean that they have given up on privacy. There is convincing evidence that in practice many citizens are becoming increasingly concerned about losing control of their personal

information as systems become more complex and use of these systems becomes unavoidable in today's society.

Despite high levels of public concern about privacy and the protection of personal information, especially in a digital context, there is a relatively low level of public awareness either of the existence of Data Protection Authorities and their key role in protecting individuals' right to data protection. This means that there is a need not just to raise citizens' awareness of their data protection rights but also to raise public awareness of the important role of Data Protection Authorities in the protection of personal information.

However, Data Protection Authorities are increasingly facing financial and other resource constraints whilst at the same time the demands on them are increasing. Not only does the law need to keep pace with the ever changing digital world but so does the capacity of the Data Protection Authorities for effective supervision at national, EU and the wider European level. If individuals are to have the trust and confidence necessary for a successful digital future the powers and resources available to Data Protection Authorities must be sufficient to enable them to properly uphold the fundamental rights and freedoms of individuals in the digital age.

It is not though just a question of resources. It is also necessary for Data Protection Authorities to adopt a sustainable approach at national, EU and the wider European level to carrying out their functions, targeting their activities where the need to protect privacy is greatest and having a thorough understanding of the privacy impacts of new and existing technologies.

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The European Conference of Data Protection Authorities

- *Noting that* the Additional Protocol to Convention No 108 of the Council of Europe recognises that supervisory authorities are a necessary element of the effective protection of individuals with regard to the processing of personal data and that to be effective such authorities shall act in complete independence and must have the necessary powers and resources to fulfil their duties.

- *Also noting that* Article 8 of the Charter of Fundamental Rights of the European Union provides for a right to the protection of personal data and that this right includes control of compliance with the data protection rules by an independent supervisory authority.

- *Further noting that* the recently revised OECD Guidelines governing the protection of privacy and transborder flows of personal data include a provision that member countries should establish and maintain privacy enforcement authorities with the governance, resources and technical expertise necessary to exercise their powers effectively.

- *Mindful accordingly* of the vital role that strong, independent Data Protection Authorities are expected to play as guardians in upholding the fundamental rights and freedoms of individuals in the digital age.

- *Mindful that* without the necessary powers and sufficient resources Data Protection Authorities will be unable to fulfil their vital role which includes better understanding individuals' concerns and expectations in order to provide them with effective privacy protection.

- *Acknowledging that* this will inevitably leave individuals without sufficient safeguards and thereby put at risk public trust and confidence in a digital future.

- *Recalling that* the importance of Data Protection Authorities' funding and independence has been addressed previously by the Court of Justice of the European Union[1].

- *Aware that* rights and obligations on paper must always be enforceable and deliverable or they are at best a delusion and at worst a deception on citizens.

1. **Calls upon the governments of European countries[2]** to ensure that the funding of Data Protection Authorities is sufficient to meet the ever increasing demands on them and to ensure that the requirements set by the law makers are duly followed in practice. This must take account of the need for mutual cooperation and be achieved in a way that respects and maintains their essential independence.

2. **Calls upon law makers throughout Europe** to ensure that, as far as possible, the next generation of data protection laws are drafted in clear and simple terms and that they can be easily understood and applied by organisations, individuals and Data Protection Authorities so that they are as effective as possible in delivering in practice the high standard of data protection that they are aiming to achieve.

3. **Reminds European data protection authorities'** of the need to:

- **renew their efforts** to raise public awareness of data protection rights and visibility of the work of Data Protection Authorities whilst recognising the challenges increased demand will bring;

[1] European Commission v. Federal Republic of Germany (C-518/07 of 9 March 2010); European Commission v. Republic of Austria (C-614/10 of 16 October 2012); European Commission v. Hungary (C-288/12 of 8 April 2014).
[2] The term 'European countries' not only includes European Union/EEA countries but also Council of Europe Member States.

- **adopt** appropriate methodologies to best target their finite resources in order to achieve genuinely privacy protective outcomes for individuals and in particular to promote the development of a privacy friendly digital future via technology-embedded privacy safeguards;

- **work with** third parties, including partnerships between European Data Protection Authorities, the International Conference and with other third parties – such as other regulatory bodies to ensure that data protection messages are, as far as possible, promoted and amplified through the work of others;

- **encourage** the development of data protection and privacy enhancing mechanisms, such as privacy seals and codes of conduct, for the promotion of compliance and good practice - enabling a "race to the top" and providing incentives for data protection compliance;

- **develop** a systematic and proactive approach to tackling the non-compliant behaviour of data controllers whose activities pose the greatest threat to citizens' data protection rights;

- **be ever more responsive** to new technologies and the data protection implications of these. This includes continuing to develop and share in-house technical expertise;

- **be assertive** in making the case for the resources Data Protection Authorities need to ensure a high level of protection for individuals in an effective manner. This includes continuing to influence discussion of the EU data protection reform package as well as discussions on the updating of Council of Europe's Convention 108 on the basis that law makers should not commit new tasks to Data Protection Authorities in upholding the fundamental rights to privacy and data protection without, at the same time, enabling them to fully discharge these tasks through the provision of the necessary powers and resources; and

- **continue to develop** initiatives, such as the Article 29 Working Party sub-group on co-operation and the Spring Conference Working Group on European Cooperation, that enable the sharing of information, knowledge and research about practical approaches to help Data Protection Authorities meet the many challenges that they face.