

ICDPPC meeting paper for July 2016 Executive Committee meeting

Email exchange between Canada and the Chair in relation to the enforcement cooperation arrangement's compatibility with Convention 108

The Executive Committee Chair, John Edwards, wrote to the Canadian and UK Commissioners on 7 June 2016 regarding the International Enforcement Cooperation Arrangement:

From: John Edwards
Sent: Tuesday, June 7, 2016 4:50 PM
To: 'Christopher Graham'; Daniel Therrien
Cc: Blair Stewart
Subject: International Enforcement Cooperation Agreement

Dear Christopher and Daniel

I am writing to you as authors and champions of the Mauritius agreement, in my capacity of Chair of the Executive Committee. I wanted to get in touch with you Christopher prior to your leaving office, so I could wish you my best, and extend the gratitude of the Executive Committee, and the wider conference community for your dedicated work on the Agreement and its implementation.

The other reason for getting in touch now, is to seek an update on the issues raised in Amsterdam by the Council of Europe, and specific European DPAs about their ability sign up to the Agreement.

You will recall that further legal analysis was to be undertaken to determine whether the compatibility between the Conference, the Agreement and Convention 108 was sufficient to enable European DPAs to sign up to the Agreement.

I asked that if such analysis was to be undertaken, that it should also address the question of what amendments would be required in order to resolve any legal issues.

Although I have had no formal notice, I have heard through the grapevine that European DPAs are being advised that they are precluded from signing up to the agreement, but I have heard nothing about any remedial amendments to resolve the concerns.

Are either of you aware of any such work? It would be a shame for such a significant bloc to disengage from a promising framework without any steps being taken to address the underlying issues.

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John Edwards
Privacy Commissioner

In response, a reply was received on 11 June 2016 from Brent Homan, Office of the Privacy Commissioner of Canada:

From: Brent Homan
Sent: Saturday, 11 June 2016 7:10 a.m.
To: John Edwards; [REDACTED]

Subject: RE: International Enforcement Cooperation Agreement

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Dear Commissioner Edwards,

Commissioner Therrien has requested that we provide a brief update in response to your question regarding European views on the Arrangement. Of course, we remain very interested in encouraging broader adoption of the Arrangement within the EU.

We have been in contact with the UK-ICO (specifically, [REDACTED] whom we have copied on this note) and the Hungarian DPA (current chair of A29 sub-WG on Enforcement Cooperation), to obtain more information. They confirm that there remains some reticence amongst certain (not all) EU DPAs to participate in the Arrangement, based in part on each country's unique interpretation and implementation of Convention 108 in its own legislation (i.e., more or less restrictive with respect to sharing outside Europe). They further indicate that the matter has not yet been formally discussed by the A29 sub-WG this year.

To this end, they are proposing to raise the matter at the next sub-group meeting, on July 6th, to gain a better understanding of: (i) the level of support for, or intent to sign-on to, the Arrangement; and (ii) any potential barriers to more broad-based adoption. They would then report back to our Office on what they have learned so that I can debrief the ExComm in Singapore. With that updated information, we may then be in a better position to discuss potential strategies for increasing participation in the Arrangement.

Please let us know if you have any questions, or concerns, with respect to the proposed approach.

Kind regards,
Brent