



Notes from the fourth PHAEDRA workshop on further cooperation between DPAs, PCs and PEAs, held in Mauritius – Report, November 2014

The fourth PHAEDRA workshop took place in Mauritius, 14 October 2014, in conjunction with the 36th International Conference of Data Protection and Privacy Commissioners, an event hosted by the Data Protection Commission of Mauritius. About 70 people, mainly DPAs, participated in the workshop.

PHAEDRA partner David Wright from London-based Trilateral Research & Consulting introduced the workshop. Beata Batorowicz from GIODO, the Polish DPA, presented an overview of the PHAEDRA project to date.

David Wright, taking the floor again, presented the results of a recent survey of data protection authorities regarding how DPAs learn about enforcement actions taken by other DPAs. In addition, he asked five questions of the DPAs in the audience:

1. Do you think it would help you to know about the investigations and/or enforcement actions undertaken by others? Most DPAs in the audience responded yes, nobody said no.
2. Would you be able to participate in investigations or enforcement actions led by others? There were nine yeses, no noes. One said: it depends on the issue at stake.
3. Given your existing resource constraints and domestic priorities, do you think you would benefit in collaborating with others in investigations or enforcement actions? 14 raised their hand to signal yes, nobody said no. One said collaboration produced synergy.
4. If someone expressed an interest in collaborating with you on an investigation or enforcement action, would you be willing or able (legislatively) to involve them? 12 regulators said yes.
5. Do DPAs think they ought to be co-ordinating investigations and enforcement actions more regularly? 15 regulators raised their hands to signal yes.

A third PHAEDRA partner, Artemi Rallo from the Universidad Jaume I in Spain, moderated a panel session on international cross border enforcement. The panel had several presenters, as follows:

- Drudeisha Madhub, Data Protection Commissioner, Mauritius, spoke on the subject of “Shaping the future landscape for effective privacy enforcement – the challenges ahead”. Among other things, she said that we need to

regularly confront and test new technologies against privacy principles. She said that accountability is becoming more important and that privacy impact assessments were an important instrument for protecting privacy. She favoured strengthened co-operation between DPAs.

- Florence Raynal, CNIL, France, spoke about the recent decision of the European Court of Justice on the so-called right to be forgotten. She said we need a common understanding and common approach towards data protection across all EU Member States. She spoke about the one-stop-shop provision in the proposed EU Data Protection Regulation and the need to define the scope of co-operation between DPAs in the context of this new governance model.
- Christopher Graham, the UK Information Commissioner, and Daniel Therrien, the Privacy Commissioner of Canada, both spoke about the Resolution on enforcement co-operation and the Global Cross Border Enforcement Co-operation Agreement that had been adopted by the International Conference in the morning, just hours before the PHAEDRA workshop. Chris Graham described agreement on the resolution as “significant” and “tremendous” for better enforcement co-operation. The Agreement had taken three years to produce and went through 15 drafts. He emphasised that the Agreement was not mandatory, but if it would help improve enforcement co-ordination, that was a good thing. Daniel Therrien initially spoke about co-operation between the federal government and provinces and lessons learned that might be applicable at the global level. He said that one needs to know one’s partner well before co-operation is possible. He described the new Agreement, not as a treaty but as a best effort arrangement. He noted various principles in the Agreement, such as confidentiality.
- Edith Ramirez, chairperson of the US Federal Trade Commission, described the FTC as an independent federal agency and cited examples of US laws for enforcing privacy. She cited three ingredients for successful cross-border enforcement co-operation: (1) sharing complaints, (2) the need for concrete examples of co-operation and the need to just start co-operating and (3) staff exchanges. The FTC can host people for up to six months and has hosted about 100 professionals so far.
- Julie Brill, also from the Federal Trade Commission, said the FTC would work with anyone, wherever legally possible. She pointed out that the FTC was a member of GPEN, that it has been involved in two sweeps by privacy enforcement agencies, that it participates in monthly conference calls of GPEN members, that it is developing a secure data exchange platform for GPEN based on its Sentinel platform. She also noted the FTC has Memoranda of Understanding with other countries.
- Wojciech Wiewiórowski, the Inspector General for the Protection of Personal Data (GIODO), the Polish data protection authority, used a slide that depicted overlapping spheres of co-operation between DPAs. He said that DPAs in Europe co-operate in a variety of fora, including the Spring Conference of European DPAs, the Article 29 Working Party, the Council of Europe and the Berlin Group, among others.

- Masao Horibe, chairman of the Specific Personal Information Protection Commission of Japan, described the mandate and scope of the Commission and provided some background on how the right of privacy has developed in his country. He said the right to privacy was recognised by the District Court as long ago as 1964. He said new bills were likely to be adopted by the Diet in 2015 that will establish a new DPA.
- Said Ihrai, President of Commission Nationale de Contrôle de la Protection des Données à Caractère Personnel of Morocco, said the Moroccan DPA was established in 2010 and that the constitution adopted in his country in 2011 contains a provision that everyone has a right to privacy. A legal provision also exists for co-operation with other countries in regard to transborder data flows and that Morocco can transfer to data countries if they have adequacy.
- Dariusz Kloza, from Vrije Universiteit Brussel (VUB), also a partner in the PHAEDRA consortium, inspired by the European Competition Network (ECN), discussed conditions for and the means of effective enforcement co-operation between DPAs. An efficient network should have a firm legal basis, comprehensively addressing forms and procedures for the co-operation of enforcement authorities, including the rules on sharing confidential or otherwise privileged information. Such an enforcement network should have as broad geographical reach as possible and could be based on an international legal instrument, a model law, etc. A network can be called upon each time the substantive law converges. He argued that Art 12bis(8) of the Council of Europe's modernised Convention 108 points towards this direction of development.

Following their presentations, the panellists further exchanged views on co-operation. Chris Graham made the point that DPAs have to have confidence in others that they will treat data confidentially. Edith Ramirez made the point that the FTC has strict provisions regarding confidentiality. She said that the FTC has had 63 requests to collaborate with other countries. Bojana Bellamy asked if one could use the term a risk-based approach in regard to rights.

In the final session of the workshop, Artemi Rallo gave a brief overview of the PHAEDRA II project, which is expected to start in January 2015.