

## Infonote – ITS - Global Cross Border Enforcement Cooperation Arrangement

### *Background*

The Global Cross Border Enforcement Cooperation Arrangement (the Arrangement) was adopted at the 36th International Conference of Data Protection and Privacy Commissioners (ICDPPC) in Mauritius and opened to participation at the 37<sup>th</sup> International Conference in Amsterdam in 2015. The purpose of this instrument is to help facilitate cross-border information sharing and enforcement cooperation between data protection and privacy authorities while not creating any legally binding obligations for its participants in accordance with its section 4. The Arrangement is thus intended to frame the cooperation with other Participants on an individual, voluntary basis based on provisions to be found in its applicable laws.

Because of reservations by some delegations during the negotiating process, the Arrangement was not intended to serve as such as a tool for international transfers of personal data. Nevertheless, specific provisions on confidentiality, privacy and data protection principles (section 6, 7 and Schedule One) relating to the sharing of personal data between data protection and privacy authorities as part of enforcement activities carried out under the Arrangement have been foreseen by referring also to national laws to ensure that additional data protection guarantees could be implemented.

At the Plenary of 3-4 October 2017, the ITS was given mandate to assess whether the Arrangement adopted in the framework of the ICDPPC could be considered as to offer *adequate protection* for the exchange of personal data between EU DPAs and DPAs from non-EU countries.

In light of this mandate, the ITS performed an assessment of whether the Arrangement could be regarded as offering *appropriate safeguards* for the transfer of personal data from EU DPAs to DPAs outside the EU in the meaning of article 46 of the GDPR.

It should be noted that based on the current experience of DPAs, only a very limited number of transfers of personal data to counterparts outside the EU as part of enforcement cooperation activities seem to occur so far, if any. It must nevertheless be recognized that this may change in view of possible enforcement activities and international cooperation that may be triggered in case of controllers and processors established outside of the EU when applying Articles 3 and 50 of the GDPR.

### *Assessment*

According to the subgroup, the non-binding Arrangement as a transfer tool could possibly be assessed under article 46.3.b of the GDPR relating to appropriate safeguards to be provided through “*provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights*”.

Following an assessment in this regard and in particular of Section 7 and Schedule One of the Arrangement relating to Privacy and Data Protection Principles, **the subgroup is of the opinion that at this stage the Arrangement cannot be considered as a tool offering appropriate safeguards for the transfer of personal data from EU DPAs to DPAs outside the EU** under Article 46.3.b of the GDPR for the following reasons mainly:

- Lack of sufficient guarantees for ensuring effective and enforceable rights for the data subjects as well as on effective remedies and redress mechanisms
- Absence of definitions of basic data protection concepts
- Absence of provisions on a data retention principle

- Absence of sufficient guarantees on a supervision mechanism for ensuring that the data protection provisions of the Arrangement are complied with

**Thus, if the Arrangement were to be used as a tool for international enforcement cooperation, its data protection provisions would need to be amended and considerably enhanced accordingly.** However, this would require a common effort with other ICDPPC members. Furthermore, the very limited practical application of the arrangement, at least for the time being, needs to be taken into account.

In addition, it would also need to be assessed how the authorization procedure referred in article 46.3 of the GDPR would have to be implemented considering, in particular, that the EU DPAs transferring the data would as a principle be the same as those granting the authorization.

Finally, the subgroup wishes to highlight that it is currently working on the update of the Working Party's opinion on international transfers between public bodies in light of the GDPR which aims to address the same issue of safeguards for framing transfers between public bodies or authorities in the EU and such bodies/authorities located outside the EU in accordance with the GDPR. The update of this opinion will be helpful in case a further assessment of the Agreement should be intended.

**The ITS therefore proposes to monitor the developments in the field of international enforcement cooperation under the GDPR.** Input from the Enforcement and Cooperation subgroup on these developments would be appreciated. **At a later stage, an assessment could be performed on whether steps should be taken on ICDPPC level to update the Arrangement.**

*Request to the plenary:*

**The Plenary is requested to take note of the assessment performed by the subgroup and discuss the next steps.**