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Global Data Privacy 2023: DPA Networks Almost Everywhere

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Global data privacy 2023: DPA networks almost everywhere

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The networks of Data Protection Authorities (DPAs) and (as they are sometimes called) Privacy Enforcement Agencies (PEAs) have continued to expand their membership, and in 2022 started a post-Covid revival of their activities, particularly international in-person meetings. This article continues the analysis of global data privacy laws in 2021-22,¹ emphasising the creation of DPAs/PEAs, and analysing the networks of which most of them are members. There is a focus on the 17 countries that have enacted new data privacy laws in 2021-22, and updates to laws creating DPAs, such as in Indonesia.² The article is complemented by the details of the networks set out in the 2023 Global Tables of Data Privacy Laws and Bills³.

Laws without DPAs, or without appointments

Enacted data privacy laws can be made ineffective by various means, and this needs to be made public. Laws which have not been brought into force for more than two years after enactment, or where a Data Protection Authority has not been appointed to make the law operative two years after enactment are considered in this analysis to bring data privacy laws into disrepute. Others fail to meet international standards simply by having no provision for at least a specialised DPA, and by most standards, an independent one.

No DPA provided for (the 'Ministerial enforcement model')

Although the existence of a separate, specialised, and preferably independent, data protection authority is widely regarded as essential for an effective data

¹ G. Greenleaf 'Global data privacy laws 2023: 162 national laws and 20 Bills' (February 2023) 181 163 *Privacy Laws & Business International Report* p..

² The 17 countries are Rwanda; Zimbabwe; Zambia ; eSwatini, Swaziland and Tanzania (in Africa); Sri Lanka, Lao PDR and Mongolia (in Asia); Belize, Cuba and British Virgin Islands (in the Caribbean); Ecuador (in Latin America); Saudi Arabia; United Arab Emirates (Federal); and Oman (in the Mid East); and Belarus (in Europe). Indonesia updated its existing law.

³ 2023 Global Tables of Data Privacy Laws and Bills <<https://ssrn.com/abstract=4405514>> The last two columns of that Table identify the DPA/PEA, where one exists (and whether yet appointed), in each of the 162 countries with data privacy laws and each network of which they are a member or observer.

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protection law, legislation in 10⁴ of the 162 countries does not create any specialised DPA⁵ at all, but leaves data privacy enforcement up to a mix of other State institutions, often the Ministries responsible for each business sector (the ‘Ministerial enforcement model’). Of the 17 new countries with laws, only Cuba and the Lao PDR do not propose a separate body to administer the law.

The result is that 6% (10/162) of countries with data protection laws do not provide for specialised DPAs (a fall from 10% in earlier surveys). Important new laws (Sri Lanka,) and revised laws (Indonesia, Vietnam) have moved to a DPA model. Some proposed revisions will move to a DPA (India) but other proposed revisions (China) persist with the ‘Ministerial enforcement model’ and no DPA. The trend is consistently toward the DPA model, most requiring independence of the DPA, but not so for a minority.

No appointment of a DPA

In some countries, the law purports to create a DPA, but no such appointments have been made within two years of enactment and so the law is unable to come into effective operation. Recent appointments of DPAs include Algeria,⁶ Belarus,⁷ Botswana, Chad,⁸ Kazakhstan, Mauritania,⁹ Madagascar,¹⁰ Thailand,¹¹ Jamaica¹² and Barbados.¹³ As a result of these appointments, only eight countries with data privacy laws have failed to appoint a DPA,¹⁴ as required by their law (after allowing ‘two years grace’). These eight are only 6% of the 148 countries that should have appointed a DPA by now.

⁴ Countries with laws not providing for a specialised DPA: Azerbaijan; China; Dominican Republic; India; Paraguay; Lebanon; St Vincent & Grenadines; Tajikistan, Taiwan; and Turkmenistan.

⁵ In some cases, agencies with other functions also act as specialised DPAs, and where these bodies are accepted as members of DPA networks (e.g. Colombia), they are regarded as having a DPA.

⁶ Algeria <<https://www.aps.dz/algerie/143720-autorite-de-protection-des-donnees-a-caractere-personnel-parachever-la-construction-institutionnelle>>

⁷ Belarus <<https://cpd.by/en/about-center/>>

⁸ Chad: website of Agence Nationale de Sécurité Informatique et de Certification Électronique (‘ANSICE’) <<https://ansice.td/mot-du-directeur-general/>>

⁹ For members of the Mauritania authority, see <https://ms-my.facebook.com/story.php?story_fbid=5356331274436450&id=880566588679630&m_entstream_source=permalink>

¹⁰ Madagascar <http://www.lagazette-dgi.com/?p=66052>

¹¹ Thailand < <https://www.mdes.go.th/mission/82>> (Thai only)

¹² Jamaica < <https://jis.gov.jm/office-of-the-information-commissioner-being-operationalised/>>

¹³ Barbados < <https://www.bartlettmorgan.com/2021/10/18/barbados-has-appointed-its-first-privacy-regulator/>>

¹⁴ Failure to appoint: Aruba, Bahrain, Curacao, Equatorial Guinea, Seychelles, St Lucia, Trinidad and Tobago.

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The Caribbean is the most under-performing region. Of the 13 jurisdictions requiring DPA appointments, 8 have done so,¹⁵ but 5 have not, often despite the lapse of many years.

Independence

A small number of laws do create a specialised DPA, but explicitly provide that it is not independent and must follow government instructions when and if issued. These include Malaysia and Singapore (which do not have public sector jurisdiction) and Macau (which does). There is considerable evidence of independent action by at least Singapore's and Macau's DPAs. Kazakhstan's Office for the Protection of Personal Data and the Kyrzyg Republic's State Agency for the Protection of Personal Data are other examples of non-independent DPAs.

Laws not brought into effect

In addition to the above countries whose laws are ineffective because of failure to appoint a DPA, a few other countries have failed to bring their laws into force for at least two years after enactment, including St Vincent & Grenadines (2003), Seychelles (2004) and Trinidad & Tobago (2011). After seven years, South Africa finally brought into force the rest of its 2013 *Protection of Personal Information Act* (POPI) on 1 July 2021. It appointed its Information Regulator in December 2016¹⁶.

Conclusions

Only 6% of national data privacy laws do not create specialised DPAs, and only very rarely are they explicitly subject to government control. Another 6% have not appointed a DPA within a reasonable time, and a couple have not brought their laws into force. The result is better than in 2021 and earlier surveys: 85% of the 162 countries with data privacy laws now have them administered by appointed and functioning, specialised DPAs (almost always independent). How well they are structured organisationally to do their job as regulators, and how well they do it, are other questions, but specialist, functioning DPAs continue to be the rule, not the exception.

Networks: Associations of DPAs and PEAs

There are three types of associations of data protection bodies: (i) those created by international treaties, agreements or legislation; (ii) informal networks oriented to policy development; and (iii) informal networks oriented toward enforcement actions. There are overlaps between the three types. Background on each of the DPA/PEA associations in (ii) and (iii) discussed in this article can

¹⁵ Caribbean DPAs appointed: Antigua & Barbuda; Bahamas; Bermuda; BES Islands; Cayman Islands; Saint Kitts & Nevis.

¹⁶ Information Regulator (South Africa) < <http://www.justice.gov.za/inforeg/index.html> >

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be obtained from earlier analyses.¹⁷ As there are no new associations, this article focuses on updating membership details.

Bodies created by international treaties, agreements or legislation

The most important associations of DPAs are those created by international treaties, agreements or legislation, because they are usually given some formal powers under those instruments, and sometimes a separate legal identity. These powers may become increasingly important as data privacy issues become more important to multi-national blocs with economic and political power. Three such bodies are significant at present.

The EDPB (European Data Protection Board) – The Board is comprised of the 27 post-Brexit national DPAs (EU’s GDPR art. 68).¹⁸ The European Data Protection Supervisor (EDPS) also has voting rights in almost all EDPB decisions¹⁹ and also provides the secretariat. The European Commission participates without voting rights. European Economic Area Members, Norway, Iceland and Liechtenstein, have permanent seats on the European Data Protection Board (EDPB). These three countries may speak at meetings, and may vote on issues but their votes are recorded separately from those of the 28 voting members of the EDPB. Switzerland, which has a separate treaty with the EU, has no right to attend EDPB meetings, but may be invited to attend as an observer for meetings, *for example*, covering Schengen-related matters.

The EDPB has extensive powers under the GDPR – article 70 lists 23 tasks of the Board, of which the most significant may be its opinions and (in some cases) binding decisions under the consistency mechanism (art. 70(1)(t)). The Board replaces the former Article 29 Working Party under the previous 1995 Directive.

The Council of Europe Convention 108 Consultative Committee – The Committee is not comprised directly of DPAs from the 54 Parties to Convention 108, but consists of representatives of those Parties. However, a country may choose to appoint its DPA to represent it on the Committee, and often does so. It is nevertheless included in the ‘DPA Associations’ column in the Table, including where there are non-party countries or DPAs accredited as Observers to the Committee. The Consultative Committee prepares reports on the laws of countries applying for accession to the Convention. Under the new Convention 108+, when it comes into force, the new Convention Committee has reinforced powers, including that of monitoring the compliance of parties to the Convention. The current Committee, with membership from 54 Parties

¹⁷ G. Greenleaf ‘Data Privacy Authorities (DPAs) 2017: Growing Significance of Global Networks’ (2017) 146 *Privacy Laws & Business International Report*, 14-17; G Greenleaf ‘Global Data Privacy Laws 2015: Data Privacy Authorities and Their Organisations’ (2015) 134 *Privacy Laws & Business International Report*, 16-19.

¹⁸ EDPB membership <https://edpb.europa.eu/about-edpb/about-edpb_en>

¹⁹ For minor exceptions, see GDPR art. 68(6)

Global data privacy 2023: DPA networks almost everywhere (including 7 non-European), plus 17 Observer countries (including their DPAs),²⁰ is the most global data privacy ‘treaty body’.

The **Joint Oversight Panel (JOP) of the APEC Cross-border Privacy Rules system (CBPRs)** consists of three members of the APEC Privacy Sub-group appointed for a two-year term.²¹ Technically, these are representative of APEC member economies, but governments sometimes appoint their DPAs or PEAs. APEC is not a treaty, and nor is the CBPRs, but the JOP makes findings about which economies are entitled to participate in CBPRs, and which companies are qualified to act as ‘Accountability Agents’ (AAs) under CBPRs.

Policy-oriented networks

The changes to membership status in 2019-20 in the policy-oriented networks are as follows (only considering national authorities / representatives):

- **Global Privacy Assembly (GPA),²² previously known as the ICDPPC** (International Conference of Data Protection and Privacy Commissioners) has over 130 members from privacy authorities (national, sub-national and supra-national). A member must be created by an appropriate legal instrument, and must have ‘appropriate autonomy and independence’.²³ This excludes some DPAs that are legally separate but not independent. In 2021-22 GPA’s membership did not gain any new national members, except the Abu Dhabi Global Market Commissioner.²⁴ California was accepted as a member in 2022; the most important of many sub-national members.
- The **African DPA Network (Réseau Africain des Autorités de Protection des Données Personnelles or RAPDP)²⁵** established in 2016 during the second African Data Protection Forum, held its first separate Conference in Accra, Ghana in June 2019. According to its articles of

²⁰ 108 Consultative Committee Observers (countries and DPAs) as of February 2023: **Countries:** Australia; Brazil; Canada; Chile; Gabon; Ghana; Indonesia; Israel; Japan; Korea; New Zealand; Philippines; Sao Tome & Principe; US. **DPAs:** Abu Dhabi Global Market; Benin; Bermuda; Burkina Faso; Gabon; Ghana; New Zealand; Philippines; Sao Tome and Principe.

²¹ Appointed from the APEC Privacy Sub-group of the Electronic Commerce Steering Group (ECSG) of the Asia-Pacific Economic Cooperation (APEC).

²² GPA <<https://globalprivacyassembly.org/>>

²³ GPA Rules and Procedures <<https://globalprivacyassembly.org/wp-content/uploads/2019/11/GPA-Rules-and-Procedures-November-2019.pdf>>

²⁴ 2022 accreditation resolution is not available; 2021 Accreditation Resolution <<https://globalprivacyassembly.org/wp-content/uploads/2021/10/GPA-2021-Accreditation-Resolution-Final-Adopted.pdf>>

²⁵ RAPDP <<https://www.rapdp.org/en>>.

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association (art. 5)²⁶, the aim of the network is to create an institutional framework to share privacy practices, to support the implementation of national data protection legislations and to foster mutual cooperation between African DPAs.²⁷

- **CTN** (the Common Thread Network of DPAs of Commonwealth member countries and territories²⁸) now has members from 16 countries (plus 5 sub-national DPAs) but did not expand membership in 2021-22. It also has Observers from Trinidad & Tobago, Seychelles, India, and Uganda. The CTN is still expanding. DPAs in some Commonwealth countries are not yet involved, including Malaysia, Singapore, Antigua & Barbuda and St. Lucia (which are also not GPA members).
- **BIIDPA** (British, Irish and Islands' Data Protection Authorities) has existed since the 1980s, and had 8 members.²⁹ It hosts annual roundtables, the next in Malta (2023).
- **AFAPDP**, the Francophone Association of DPAs,³⁰ has full members from 21 countries, with voting rights, and many other observer members.
- **APPA Forum** (Asia-Pacific Privacy Authorities Forum) has 19 members from 13 countries in Asia and the Americas,³¹ with no expansion since 2019.
- **REDIPD** (La Red Iberoamericana de Protección de Datos, also called the RedIberoamericana or Latin American Network)³² has 23 members (all Latin American countries, plus Spain, Portugal and Andorra).
- The '**Spring Conference**' of European DPAs (**EDPA**),³³ meeting since 1990, postponed its 2020 conference until 2021. It has accreditation requirements of independence and competence to exercise supervision

²⁶ RAPDP articles of association <<http://cnilbenin.bj/statut/>>. So far this constitution is available only in French (though Arabic, English and Spanish are also official languages of the Network).

²⁷ The African Union Convention on Cyber-security and Personal Data Protection 2014 makes it a goal of African DPAs to set up cooperation mechanisms (Art. 12.2(m)), but does not formally establish such a grouping.

²⁸ Common Thread Network <<https://www.commonthreadnetwork.org/>> is 'a forum for data protection and privacy authorities of Commonwealth countries'.

²⁹ BIIDPA members included the UK, Ireland, Cyprus, Jersey, Isle of Man, Malta, Gibraltar and Bermuda, with no new members since 2016. Its previous website at <<https://idpc.org/mt/en/Pages/dp/int/bidpa.aspx>> no longer functions.

³⁰ AFAPDP <<http://www.afapdp.org/>>

³¹ APPA Forum <<https://www.appaforum.org/>>

³² RedIPD <<https://www.redipd.org/en>> .

³³ EDPA / Spring Conference <<https://springconference2020.hr/>>

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under Convention 108 or EU requirements.³⁴ It has 60 national and sub-national members (at least 43 national DPAs) but they do not include Russia, Azerbaijan, or Ukraine. Turkey was approved as a member in 2019.

- **CEEDPA** (Network of Central and Eastern Europe Data Protection Authorities)³⁵ has not expanded beyond its existing 20 members (which include Russia and Ukraine),³⁶ and does not seem to have been active since 2018.
- The **Nordic DPAs' network (NDPA)** is an informal grouping of 5 DPAs in the Nordic/Scandinavian region,³⁷ meeting annually.

There is still no Caribbean organisation of DPAs, but cooperation projects under the auspices of the UN (ECLAC) are ongoing in the region, and it is also possible something may emerge via the CARICOM regional organisation. Nor is there one for Portuguese-speaking countries. In 2021-22 there has been no significant membership expansion of any of these policy networks, even though there are many DPAs which could become members.

Enforcement networks

The changes to membership status in the enforcement-oriented networks are as follows (only considering national authorities / representatives):

- The GPA's **Enforcement Cooperation Arrangement**³⁸ (GCBECA), established by resolution of the 2014 ICDPPC Conference in Mauritius, has participants from sixteen countries (both national and sub-national DPAs in some cases), an expansion from eleven in 2020. Dubai IFC, Georgia, Malta and Norway are new members in 2021-22.
- **GPEN**, the Global Privacy Enforcement Network³⁹ has several new members in 2021-22), so that it now has members from at least 55 countries (plus sub-national and supra-national members). GPEN's public activities include its GPEN Sweeps.⁴⁰

³⁴ EDPA accreditation <<https://springconference2020.hr/accreditation> >

³⁵ CEEDPA <<http://www.ceecprivacy.org/main.php>> [meeting since 2001.](#)

³⁶ CEEDPA membership < <http://www.ceecprivacy.org/main.php?s=2>>

³⁷ NDPA members: Sweden, Denmark, Norway, Finland, Iceland, Aland Islands (Finland) and Faroe Islands (Denmark).

³⁸ Enforcement Cooperation Arrangement Participants <<https://globalprivacyassembly.org/participation-in-the-assembly/global-cross-border-enforcement-cooperation-arrangement-list-of-participants/>>

³⁹ GPEN <<https://www.privacyenforcement.net/>>

⁴⁰ See < <https://www.privacyenforcement.net/press-releases> >

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- **GPEN Alert** is a separate network within GPEN, administered by the US Federal Trade Commission (FTC) on behalf of its eleven participants. It facilitates information sharing on individual investigations, and therefore has high security requirements not required for the normal GPEN organisation.
- **APEC-CPEA** (Cross-border Privacy Enforcement Arrangement) is an enforcement cooperation network of which membership is required for countries becoming involved in the APEC-CBPRs system, but is open to other APEC member DPAs/PEAs as well.⁴¹ It has members from eleven countries, and has not expanded since 2018.⁴²
- **UCENet** deals with prevention of spam ('unsolicited commercial email'). Participation is not limited to DPAs,⁴³ but five DPAs are members⁴⁴.

There has been some expansion in the membership of two of these enforcement networks in 2021-22, but they have not been very active.

DPAs with no engagement

If a national Data Protection Authority, once it has been established for a couple of years, has no engagement with other DPAs, by failing to join any of the regional or global policy or enforcement networks, this is one indicator that it is non-functional, for whatever reason. Of the approximately 120 national laws with DPAs or PEAs that fall into that category⁴⁵ there are only 15 that are not part of any DPA networks.⁴⁶ A disproportionate number are from the Caribbean. It is a positive indicator of the vitality of national DPAs that nearly 90% (105/120) of them, once they are established, become involved in at least one DPA network.

Conclusions: DPAs and their networks are the rule

Specialised DPAs are the rule, not the exception, in countries with data privacy laws. These DPAs are usually, but not invariably, independent of government instruction. The 'Ministry enforcement model', with no specialised DPA, continues to be in retreat, though still proposed by a few countries. Although

⁴¹ APEC-CPEA <<https://www.apec.org/Groups/Committee-on-Trade-and-Investment/Digital-Economy-Steering-Group/Cross-border-Privacy-Enforcement-Arrangement>>

⁴² APEC-CPEA members: Australia, NZ, USA, HK SAR China, Canada, Japan, Korea, Mexico, Singapore.

⁴³ See UCENet website <<https://www.ucenet.org/member-organizations/>>.

⁴⁴ DPAs that are UCENet members – Canada, Ireland, Spain, UK, US.

⁴⁵ Because the law is in force, it provides for a DPA, it has been appointed for over 2 years, and it is not sub-national.

⁴⁶ National DPAs not members of networks: Angola; Antigua & Barbuda; Bhutan; BES Islands; Yemen; Bahrain; Lesotho; Niger; Antigua & Barbuda; St Kitts & Nevis; Malawi; Nepal; Malaysia; Qatar; St Lucia; and Uzbekistan.

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there are some unfortunately long-time lags, DPA appointments are almost inevitably made. The record of national DPAs and PEAs, once appointed, in joining networks of DPAs or PEAs is very good but not universal.

Most of the DPA/PEA associations have obtained very modest increases in membership in 2021-22, probably somewhat depressed by the pandemic. While membership of most of them has not yet reached its maximum extent, progress toward this goal continues for most. This is valuable for the future of data protection in that it promotes consistent development of principles in polities with common interests and traditions, and facilitates collective action.

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