



Briefing | EP LIBE - Implementation of the GDPR with a special focus on the role and the means of the Data Protection Authorities

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Subject: Implementation of the GDPR with a special focus on the role and the means of the DPAs (follow-up of the LIBE session in May 2018) - Exchange of views with Andrea Jelinek, Chair of the European Data Protection Board (EDPB) and Willem Debeuckelaere, President of the Belgian Data Protection Authority and Deputy Chair of the EDPB and Emmanuel Crabit, DG JUST, European Commission

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Documents: [Meeting documents](#) (Item 9)

On February 26, the EP LIBE discussed the implementation of the GDPR with Andrea Jelinek, Chair of the European Data Protection Board (EDPB), Willem Debeuckelaere, President of the Belgian Data Protection Authority and Deputy Chair of the EDPB, and Emmanuel Crabit, DG JUST, European Commission. Please find below the summary of the debate.

Barbara Kudrycka (EPP, PL), Vice-Chair, introduced the debate and welcomed the guests.

Andrea Jelinek, Chair of the European Data Protection Board (EDPB), thanked for the opportunity to address LIBE on the implementation and enforcement of GDPR that came into force 9 months ago.

They can say that GDPR works well and the cooperation procedures are effective. People are more aware of their data protection rights than ever before, and a significant increase of the complaints was reported. From the first day, complaints started to come in. The GDPR introduced a new level of cooperation between EEA supervisory authorities. In comparison with the Data Protection Directive, the GDPR created a duty and legal opportunity to cooperate on cross border cases.

She wanted to highlight the key aspects of this cooperation. Firstly, on cooperation and consistency procedures, she said that for organisations active in multiple EU countries, the GDPR provides a central point of contact through a "one stop shop" mechanism. This mechanism intends to ensure that organisations and individuals can deal with the cross-border issues from their home country. So far, 45 procedures have been initiated and they are in different phases of the procedure. Ms Jelinek then described the one stop shop mechanism procedure. The relatively small number of initiated procedures can be explained by the length of the procedure as the GDPR does not offer a "quick-fix" mechanism for a complaint. However, they are confident that the current mechanism is robust and sufficient. The EDPB expects many other cases to come up. The mutual assistance procedure is also an alternative – 444 mutual assistance requests were triggered from 18 different EEA countries, and the feedback from the authorities is positive.

The Internal Market Information System (IMI) is designed to support the cooperation and consistency procedures, and an expert subgroup ensures the continuous enhancement of this system. In addition, a dedicated IT helpdesk run by the EDPB provides support to the EDPB members. Some supervisory authorities made the following comments on the cooperation procedures in general:

- They are time-intensive;
- They create extra workload;
- They create an increase in costs, especially regarding the need of translation;
- The deadlines provided by GDPR are tight.
- Furthermore, the supervisory authorities also identify the need for further harmonisation developed at the EDPB level.

On general guidance, she said that the EDPB organised since May many meetings and adopted many guidelines. She pointed out that more publications will come as outlined in the 2019 work plan. In addition, the EDPB conducted its first consistency exercise. The purpose of the consistency opinions is to examine the consistency of the GDPR application – so far, 28 opinions were adopted by EDPB and three more consistency opinions are in making.

In conclusion, from the information they have gathered, they can say that the GDPR works well, however, there is a room for improvement. Finally, as the procedures are very lengthy, it is too soon to draft any conclusions on the resolution of the cross-border cases.

Willem Debeuckelaere, President of the Belgian Data Protection Authority, said that for the moment, he did not have anything to add except they have to stay very alert before the evaluation in 2020, and they should take the opportunity of evaluation to make the necessary improvements.

Emmanuel Crabit, DG JUST, European Commission, spoke on the implementation by the member states and the issues identified by the Commission, as well as the measures taken to address them.

The Commission has developed an implementation strategy which goes beyond what is usually done. This approach consists of not working only with the national authorities but also with stakeholders and data protection authorities. The work on implementation started before May 2018, and they had a special expert group working on the issue. Since May 2018, the Commission has started putting pressure on those member states that were late in adopting their national legislation necessary to implement the GDPR. So far, 24 member states have adopted national legislation, but the Czech Republic, Greece, Portugal and Slovenia are still not there. As regards the law enforcement directive, which is also an important part of data protection framework, letters of formal notice of non-notification of the transposition have been sent to 19 member states in July 2018, and reasoned opinions were sent to 9 member states on 24 January 2019. The Commission is now in the process of analysing the national legislation adopted by member states to implement the GDPR. He pointed out that this is a process that will go through 2019 and a complete analysis is only possible when they understand the full national data protection state of play and also the relation with other pieces of national data protection legislation. Therefore, the Commission is engaging in bilateral discussions with a number of member states.

So far, the Commission has identified some possible issues such as restriction of data subjects' rights, or provisions where some member state are going further than what they are allowed to do under the GDPR. On the law enforcement directive, the possible issue that the Commission has identified includes too broad grounds for restrictions to data subjects' rights, or deficiencies in the system of remedies.

Another important aspect of the implementation strategy is to work with stakeholders. To foster awareness among the different actors, the Commission issued in January 2018 a guidance on GDPR and, in parallel, a new online tool with Q&A and other guidance materials. The Commission will pursue awareness raising activities in 2019. Also, to get feedback on the GDPR implementation, the Commission established a multi-stakeholder group with representatives of the civil society, practitioners, industry and academia. The next meeting will be held in March.

In September 2018, in view of the upcoming EU elections, the Commission issued a guidance on the application of the EU data protection law in the electoral context. This guidance is for the national authorities and parties to apply data protection obligations in light of the Cambridge Analytica case. In this respect, it is important to acknowledge that on February 19, the Council adopted conclusions on the securing free and fair European elections package welcoming the guidance provided by the Commission.

Finally, he spoke about the functioning of the new governance model established by the GDPR. DPAs under newly established EDPB play a key role under the new data protection regime. The DPAs are the main enforcers of the GDPR, and it is crucial to ensure effective functioning of this governance model. The GDPR require member states to take number of actions: to establish fully independent data protection authorities (which should be already in place according to the previous legislation), to set up national procedures to allow DPAs to exercise their powers, and to equip the DPAs with adequate human and financial resources. The Commission has constantly reminded member states to provide the adequate resources to the DPAs, several of them have been reinforced. It is positive that the Council conclusions from February 19 acknowledge that data protection authorities require appropriate resources. The first wave of the Commission grants in this regard have been launched in 2017, and in 2018 already 9 DPAs received grants which are in total around 2 million euro. New grants will be available in 2019 and a call for proposal has been published and is open until April 11.

It is crucial for the DPAs to forge a common EU approach. The Commission is committed to monitor the functioning of the EDPS and EDPB, including the effectiveness of the new cooperation mechanism. The Commission will pay particular attention to this in its implementation report on GDPR which is to be published in 2020, Mr Crabit said. As announced by Commissioner Jourová, the Commission will organise an event in June 2019 which will be nourished by the input received by the multi-stakeholder group, feedback by the civil society, industry, data protection authorities and the European Parliament. In addition, the Commission will provide the results of the Eurobarometer survey and the FRA will also conduct its survey.

Barbara Kudrycka (EPP, PL) said that the primary principle of the GDPR is that it views the personal data as a property of an individual, not data controller's or the processors'. It applies to all EU citizens, wherever there may be situated. They should have a really specific wording to ensure a good implementation of the Directive. In contrary, in the GDPR one can read terms such as "undue delay" or "likelihood of risk to rights and freedoms" and "disproportionate effort". What has the Commission done to clarify such undefined wording to the national authorities to help them understand the regulation better, she asked? Furthermore, according to Ms Kudrycka, some Android applications collect some kind of personal information and most of these developers are too small to manage the GDPR requirements. In consequence, these applications will not be available to the European residents – does not this mean that the GDPR is restricting access to technology for the EU citizens?

Axel Voss (EPP, DE) thanked for the presentations. This is an interesting phase when it comes to GDPR as there is already a bit of experience on how the GDPR works. The procedures that need to be established are the main challenge at start. The Cambridge Analytica was something that happened prior to GDPR coming into force and he was sure that the new bodies will be dealing with this subject. Do the procedures work appropriately? When it comes to Facebook, many member states are checking the developments, but he wondered how it would be possible to enhance this and have more flexible and rapid procedures? In Germany, there is a federal system of data protection authorities – there are 16 regional data protection authorities. Here the GDPR is not very clear and some things could even be contradictory. Is there a single way of dealing with data protection? He held discussions on GDPR and for many people the GDPR is seen as opportunity to complain against excessive bureaucracy and people have different conclusions on it. They share the intentions of GDPR, but they end up being critical of the EU as a result of the procedures.

Birgit Sippel (S&D, DE) said that MEP Voss is right – if everyone would comply with the data protection rules, then they could slim down the bureaucracy, however, this is not the case. She asked how the EDPB is dealing with different views of national data protection authorities on GDPR and different interpretations? Are there already necessary resources in place for the national DPAs to do their work

and deal with the complaints? What is the EDPB experience as regards whether there are national DPAs that are more charged with work, or if it is possible to share the responsibilities with other DPAs? If one DPA has the lead and the decision is taken, is it automatically accepted by others? She also asked about the link between the GDPR and the current different implementations at the national level of the e-privacy directive – does this already lead to some open questions, especially with regard to the definition of "consent" and "cookies", and also to the processing of meta and content data. MEP Sippel also asked about the Belgian experience with GDPR and about the resources and the timeframe for answering to the complaints.

Sophie in 't Veld (ALDE, NL) said that last year they congratulated themselves for having the best privacy law in the world, however, the strength of law lies in the application. She was worried about the enforcement. She had concerns about the means available to the national data protection authorities, arguing that, overall, they are insufficient. In some countries, the resources were even reduced. In The Netherlands, the resources are one third of what is estimated as necessary. How are they going to deal with companies such as Facebook? She asked the Commission to ensure proper application by the member state since "constantly reminding the member states" is not enough. If the response of the Commission is weak then how credible is the Commission as an enforcer? When it comes to the EDPB, the system with the lead authority is that the lead authority is the key for action – what means the EDPB has to act? She had several examples for concerns: the new Spanish electoral law violating, in her view, the GDPR; or the situation in Romania where the Romanian DPA is abusing GDPR to pressure journalists to disclose their sources. When is the EDPB going to act against these violations and enforce the European law?

Romeo Franz (Greens/EFA, DE) had questions along the same line – the DPAs are understaffed, and is the increasing burden being taken into consideration? To what extent can the authorities deal with the technical developments – computer programmers are highly paid experts, so the question is to get more computer experts working for the DPAs, he wondered? As regards the implementation of the rules, to what extent have the DPAs levied fines? The French authorities fined Google in 50 million euros recently, which is much less than the 4 % turnover, he pointed out. When it comes to the cooperation in Europe, the new EDPB is very active and issued guidelines. Still, he had questions regarding the law implementation in tangible cases and computer systems.

Andrea Jelinek, Chair of the European Data Protection Board (EDPB) , with regard to Cambridge Analytica, said it was a national case dealt with by the UK's data protection authority and they used a great deal of manpower. They informed the EDPB, however, not under the cooperation mechanism. Furthermore, there are many national and cross-border complaints, relating to Facebook for example – where the Irish data protection authority has the lead. There was a complaint launched and the lead authority is going to investigate all the complaints and send the draft decision to the other national data protection authorities affected, who could make objections and then the lead authority takes or does not take those objections into consideration. If this does not happen, other national data protection authorities can call on the EDPB to take a decision. Until now, no such cases have reached the EDPB.

On the German federal system "16+1", she said that it is up to the member states to decide how many data protection authorities they wish to have. She heard that there are complaints about bureaucracy, and one of the ideas behind GDPR was to reduce it. Now, the authorities have been put at the appropriate level. It is important to note that there is data processing that goes on and the impact assessment is carried out by the DPAs.

The DPAs work together with the mechanisms mentioned. These systems allow them to work on a secure basis on cross-border cases and work together with different subgroups. On resources, she said that no DPA is sufficiently equipped and all of the authorities are applying for more staff at the national level. Commissioner Jourová has already expressed her support for the DPAs in these efforts. It is the responsibility of the national governments to provide reasonable resources. There are countries facing more complains and it is up to the national authorities to apply for more staff when they see that there is a need for it, she argued. On the relationship between GDPR and e-privacy, the EDPB is providing an

opinion on it. To conclude, she reiterated that it is important to have committed staff but that it is also crucial to remind the governments what is needed to carry out the work responsibly.

On the issue of enforcement, she argued that enforcement is part of the duties and obligations of the national authorities. It is also written in the report what challenges they are facing, for instance, since there are different procedural rules in different countries, including deadlines and time limits for national cases. Regarding the situation when the national authority is not acting, she said that there is a possibility to have provisional measures and urgent measures. In the case of Romania, this is a national case and the EDPB needs to act based on its legal mandate and they must respect the independence of the national authorities. It is a similar case to the Spanish law.

Lastly, regarding the equipment of the authorities and technical staff – as she already mentioned – they face the same difficulties as with the regular staff.

Willem Debeuckelaere, President of the Belgian Data Protection Authority said that, since May 2018, they had a feeling of frustration because it was a fundamental change of a situation. They have to cooperate more at the international level, but this also means increasing difficulty. They should not forget that GDPR talks about national authorities, it is a national instrument, fundamentally, it is not an international instrument. What is missing is the idea of community level organisation that would insure harmonisation. It is still an assembling of 27 national authorities, which is a difficulty. They are asked to act as a board, but they have their hands tight as they are in principle national authorities. It is the lead authority that is the most important and has to act and, if they fail to do so, the committee cannot do anything. It is a major gap that needs to be fixed in the future – the board needs to be allowed to initiate the opening of a file. There is a procedure that would need to be created for it. The best protection of data is carried out by the actions of individuals and civil associations. Looking at the cases at the Court of Justice, there are serious limitations to the data protection that had been highlighted by the consumer organisations mainly.

When it comes to the work on the data protection in Belgium, the workload has doubled or more so. Lawyers are getting mobilised as well, asking to examine documents, and there are proper court cases with adversarial pleading, for instance. He wondered whether this might be a temporary development and whether the workload would reduce once the guidelines are in place. However, he noted, there are already guidelines adopted but looking at the working programme, they have been very ambitious. It is not going to be easy. His main appeal is to go back to the GDPR and to the lead authority, as there is a systemic issue that should be looked at.

Birgit Sippel (S&D, DE) was concerned when listening to Ms Jelinek as she was giving an impression that everything is fine. Ms Sippel disagreed with this because she was hoping that members of the board would encourage having real European decisions and this is not the case. Ms Jelinek argued that Facebook and Cambridge Analytica is a national case, but Ms Sippel pointed out that certainly more European citizens were affected by it. Maybe they should look at the definitions of what is a national case, she continued. The same applies to the Spanish and Romanian cases. They need to do more to make real European decisions and she would like to see more engagement by the EDPB. Looking at Facebook and Ireland, she questioned whether it is really fine to have only the Irish DPA dealing with all the cases? If the national authority is overburdened by the complexity or number of cases, they should have closer cooperation with other DPAs. MEP Sippel encouraged the EDPB to do more work together and not leave the cases only to national DPAs.

Juan Fernando López Aguilar (S&D, ES) wanted to comment on the Spanish legal development and the GDPR. Firstly, he noted, the Spanish Constitution contains the protection of privacy and data protection as a fundamental right in itself. Spain has an act protecting privacy with regard to data protection (the "Data Protection and Digital Rights Act"), and confidentiality of data in data protection regulation. It is a must that the Spanish parliament would adapt this act to the GDPR. The legal argument is about the article of the new Spanish law which allows political parties to use social media as a source in order to respond to the political demands in all matters but with all due guarantees. He stressed that political parties are by no means entitled to abuse data because they would endure massive penalties. The

independent data protection authority would impose them. All the guarantees are enshrined in the new Spanish law. There is a Constitutional Court in Spain that is ensuring compatibility of the new laws with the Constitution, he continued. This point has been raised through the legal debate and there has been a clarification that by no means that this article may imply any violation of the right of privacy and confidentiality.

Sophie in 't Veld (ALDE, NL) wondered why the supervisory authorities do not act and do not enforce European law. Article 64.2 of the GDPR reads that any supervisory authority, the Chair of the Board or the Commission may request that any matter of general application or producing effect in more than one member state is examined by the board. In particular, where the competent supervisory authority does not comply. They have the powers. Romania and Spain have adopted laws that are contrary to the recital 56 of the GDPR because the interpretation is far too wide. In all the areas, not only data protection, whenever under pressure of the member states the EU accepted that the enforcement of the European law would be done by the national authorities, they do not do it. They have the "dieseltgate" scandal, Cambridge Analytica – all the cases where the national authorities did not enforce European law, and this is a massive weakness in the system, which also weakens the GDPR. In the first year, precedence is being set, so they should make full use of the powers.

Romeo Franz (Greens/EFA, DE) wanted to ask again the question regarding the fines. Much higher fines could have been applied to Google and they could use this money to finance staff and other areas where they lack the means. Why this is not being done?

Andrea Jelinek, Chair of the European Data Protection Board (EDPB), to Ms Sippel, said that there must be a misunderstanding with the draft of the one stop shop cases. There is a clear system given in the GDPR, there is nothing else to do with that. On Ireland, it was also a choice of the legislator to make certain rules in the GDPR.

Emmanuel Crabit, DG JUST, European Commission, on clarification, recalled that they are not starting from scratch and there was previous legislation on data protection and there are also the judgements of the European Court of Justice. There are a lot of elements that enable full clarity. They also have a number of guidelines provided by the EDPB. The current review that is being carried out also includes the detections of gaps, he noted.

On the innovative services, Mr Crabit said that a clear legal framework is a good driver for innovation. The Commission does not believe that the new regulation is holding back innovative services. The GDPR has been established to reduce the burdens on the companies. He recalled that the protection of data is a fundamental right.

Regarding the resources and the concerns about effectiveness of the EDPS and the EDPB, he believed that the core of effectiveness of the GDPR lies on the work of the EDPS and EDPB. This is part of the qualitative assessment being made now. The governance system is crucial, he underlined. They should not only look at static data, but also look at the quality and the capacities of the data protection authorities. There is already case law of the Court of Justice, especially related to the independence and resources for the authorities. If there is a problem in a particular member state, the Commission will not hesitate to act if necessary, he underlined.

On the need for a European approach, he said that there is a genuine will in the EDPB and the DPAs to work together. There is a cooperation among the DPAs, and he was optimistic about the awareness of the responsibility to act in a European spirit.

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