

IPEN Workshop

'State of the art' in data protection by design – current state and future trends

LUISS Guido Carli, Rome, 12 June 2019

By design approach in large-scale smart city projects

Alessandro Mantelero

Polytechnic University of Turin



< 0 >

SCENARIO



DPbD

- From PETs to DPbD (technical and organisational measures)
 - From disclosure prevention to data management (free movement of personal data)
 - Broad interpretation: Limitations in coding DP-requirements, law is not carved in stone
 - Narrow interpretation: Contextual DP-oriented approach in product/service development
- A significant gap between theoretical analysis, regulatory framework and practice: Lack of awareness and lack of skills
- Focus on data protection strategy : A preliminary analysis



< | >

ORGANISATIONAL MEASURES: DATA MANAGEMENT



Data protection as a goal of project management

- The exit strategy : Overestimation of the use of anonymous/anonymised data
 - *Detailed information about the measures adopted to anonymise the different categories of data*
 - *Re-identification: Risk assessment*
- Project development should be designed in a manner consistent with data protection by design and by default principles



An *ex ante* approach: The role of the Data Management Plan

- The main tool to plan a data strategy
- A plan focused on the ongoing project applications (periodically updated)

DMP

- A map of data flows and processed data (categories, nature)
- Data protection tasks assignment (consortium members, third parties)
- Common DPIA procedures (e.g. data breach procedures) and security measures
- Transborder data flows management
- Analysis of further obligations under national data protection laws
- General templates (GDPR obligations)



< || >

DATA PROTECTION (BY-DESIGN)



Awareness of data protection legal requirements

- Preliminary analysis of GDPR compliance issues
- Overview of legal obligations and task distribution (DMP)
 - *This reduces the risk of extending GDPR requirements to information, entities or persons not included in the scope of the Regulation*

Contextual analysis ("appropriate" measures)

- The overview of legal requirements should be completed with a contextual analysis of the pilots and the applicable provisions, guidance or mandatory practices existing at local level



< III >

THE STATE OF THE ART: A RISK-BASED APPROACH



Nature of the risks

- Impact on fundamental rights and freedoms (scale of the projects, nature of data, purposes of processing operations)
 - *Risks concerning data processing cannot be addressed only or mainly from a data security perspective*
- Considering the broader consequences of data processing on individuals and society
 - *Potential role of independent experts (e.g. ethics committees)*
 - *Participatory approach*



State of the art and liability

- Potential adverse consequences of lack of compliance
- Negative impact on projects and the members of the consortia



< IV >

"AN EFFECTIVE MANNER": DATA STRATEGY



Data processing organization

- Analysis and description of the categories of processed data and data flows generated by the projects
- Appointing DPOs when required by the law and, if possible, develop a form of coordination among the DPOs at project level
- Set up ethical or expert boards to address the issues concerning data use not strictly related to data protection (fundamental rights and freedoms, ethical values)
- Coordinate DPOs' activities with the guidance provided by this board



A common data strategy

- Data sharing policies and data re-use practices
- Adequate and detailed data storage policies
- Adequate strategies and tools for transborder data flows towards non-EU/EEA countries
- User-friendly solutions regarding notices and the exercise of data subjects' rights



< V >

RISK ASSESSMENT AND BY-DESIGN APPROACH



Procedures

- DPIA as the basis for an effective DPbD approach : Challenges of defining risk scenarios
- An integrated DPIA for the entire project
- Policies and templates consistent with the specific data processing operations performed in the project and in the project pilots
- Accountability and circular approach
- Enhancing DP through data subjects' engagement: Participation and transparency in risk assessment



From DPbD to Ethics-by design

- The boundaries between ethics and law should be correctly drawn
- The added value of ethical assessment
- Ethics by-design and freedom
- The nature of the ethical committees



Alessandro Mantelero

alessandro.mantelero@polito.it

@mantelero

