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The DPO and Accountability

DPO meeting
08 May 2015

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What is meant by "Accountability"

- Shift from formal "responsibility" in current rules to enhanced responsibility

- **Article 29 WP 173,** Opinion 3/2010 of 13.7.10

➢ expressly embed principle of accountability in the law, to ensure that data protection requirements translate **into effective mechanisms** that deliver **real protection**

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Essential elements

- **To whom**? Accountability is towards DPAs, but also towards individuals
- **How?** Current system of prior notification & prior checking will be replaced by **ex-post control.** In parallel, DPAs powers to enforce & to impose sanctions for non-compliance would be increased.
- **When**? Does not come only at the end. **A proactive obligation to develop adequate data management in practice, considering entire life cycle.**

➢ Towards better data management in practice

➢ Part of good administration

Accountability under the Reform

Draft Regulation, Article 22

*1. The controller shall adopt policies and implement appropriate measures to **ensure** and be able to **demonstrate** that the processing of personal data is performed in compliance with this Regulation.*

2. The measures provided for in paragraph 1 shall in particular include: (….)

*3. The controller shall implement mechanisms to ensure **the verification of the effectiveness** of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors.*

Examples of appropriate measures

- Internal procedures and written policies & procedures to be communicated to DS (Art. 11 & 12)
- Documentation (art 28)
- Implement security requirements (art 30)
- DPIA impact assessment (art 33)
- Designation of a DPO (art 35.1)
- Data protection by Design / Default (art 23)
- Verification procedures by internal or external audits (Art. 22(3))

➢ **Develop a culture of data protection**

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Benefits of Accountability

- More effective compliance in practice
- Proactive data protection
- Reallocation of DPA resources
- Forward planning, risk management
- Removal of costs, especially notifications

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DPO Network proposals on accountability

(in relation to the review of Regulation 45/2001)

- Obligations of the controller to be more specified in relation to the different layers of controllership:
  - Controller= institution
  - Delegated controller= HoU
  - Delegates of delegated controllers= person actually carrying out the processing operation
- Are these specifications needed in a Regulation?

Role of the DPO

Existing powers:

- Investigation (also on own initiative)
- Access to personal data in all premises and on all carriers

Role of the DPO

Institution's best partner in accountability

- Ensure
  - Help define a data protection strategy
  - Train key players in-house
  - Raise awareness of higher management
- Demonstrate
  - Keep the register (but simplified?)
  - Keep a repository of data protection complaints, transfers
- Verify
  - Set up mechanisms to keep register/policies/procedures/ repository up to date
  - Conduct internal data protection audits

Role of the DPO

Need for enforcement powers?

- Pros
  - Proximity
  - Autonomy
- Cons
  - Concentrated responsibility
  - Independence

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In sum:

- Accountability = bureaucracy?
- Less work for DPA/ more for DPOs?
- Ready to jump now/ or need more time?

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Your turn!

Share your concerns or ideas:

- Identify topics
- Split in groups
- Report
- What's next?

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Thank you!

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