

European and International cooperation in enforcing privacy – expectations and solutions for a reinforced co-operation

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Ladies and Gentlemen,

Speaking at the final conference of the PHAEDRA project which united practicing lawyers, regulators and the people from academia to discuss how to improve practical and helpful co-operation between data protection authorities, I would like to discuss two important subjects. One of them I will address from academic point of view and the other comes to basics of the coordination of the real work of the data protection authorities.

Let me start wearing my “academic hat”. What the academia should expect from the cooperation of data protection authorities. And what we should expect from the people coming from the academia in this work. First of all, bearing in mind that people in the universities, the people in the academia are very keen on discussing the problems which “may” arise or “will” arise on the market, and they have a tendency to correct data protection authorities, governmental officers and all other stakeholders who prepares the scheme of cooperation on international level, I would like to say ...

- we do a great job for academia!
- they have more and more to write about!

Moreover, they are prepared to that. I remember Paul Nemitz from the European Commission talking at the meeting with the members of academia a year ago. He said he knew that professors had already have the commentaries to the regulation and they just waited until the regulation is on to publish it. Just the last corrections are necessary to finish the last things which changed in the last moment and commentaries will be published with professors’ critical opinion on what the regulation is.

At this very moment I would like to recall the story from early 90 from my native Poland. The story of one of the professors from Poland, who – as a new minister at this time - was one of the founding fathers of the new law about stock exchange market enacted in Poland after the fall of communism. He was drafting the new law actually from the scratch,

as there was no stock exchange market in this part of Europe before 1989. He had to create something which would work on the Polish soil. He prepared the draft of the new law and he sent it to all the professors he knew and who could say something about the subject, just asking them for comments. He has never received any. The draft law went to the typical legislative process and once the law was passed, suddenly all these professors who had these draft laws law before, published critical commentaries. The professor/minister was shocked, not only the behavior of his friends from academia itself, but also by the saddest fact that all critical commentaries were right. The professors knew what were the problems but they simply decided not to publish it during the legislation process, because it left them more space for being critical, being important in the scientific field at the time the law is already on.

So, saying to the governments and saying to the DPAs that you are preparing something that the scientific society will have a lot of to do about, I would like to ask also the people from the academia to be active NOW.

Because that's the time when we – as data protection authorities – and we – as the representatives of the government – actually need this kind of help.

And this is why GIODO joined the consortium that is preparing PHAEDRA project that we finalize today. Because Polish DPA wants to have these knowledge as soon as possible. We have to have the access to the studies that were done in academia at the time we are preparing the regulation – not after that. After that it will be extremely important to the science itself but maybe not that much from practical point of view.

It leads me to the second part of my presentation today, which is the my point of view one the cooperation between the data protection authorities, especially those data protection authorities that come from my continent, that come from Europe.

I have to say that the next object of my studies will be Jacob Kohnstamm. Because when I joined this society more 4 years ago and I went to the first meeting of the Working Party of Article 29 in 2010, I found the person who is the chairman of that Group (Jacob Kohnstamm was the chairman of the Working Party of of Article 29 by February 2014) as being very European oriented. I do not mean European as European Union` institution perspective. He was “European oriented” when chairing the meetings, remembering that there are the

representatives of 27 countries at this time plus observers, but trying to give some European perspective to what is going on and what should be an outcome of the Working Party of Article 29.

Jacob is not the chairman anymore, now he is just one of the members of the data protection society as the data protection commissioner in the Netherlands. We have the saying in Poland, I don't know if it exists in English culture, but the Poles say that the point of view depends on the point you seat. And this actually I would like to study as far as Jacob is concerned. How does it change the attitude of the person and the attitude of the data protection authority to be in the position of the national data protection authority – not forced to be “European oriented”. I hope he is European oriented. But now he is not to be forced to be European oriented and dealing with it also with the national perspective.

In Mauritius, during the International Conference of the Data Protection Authorities, we have prepared the declaration which is dealing with the international cooperation in enforcement activities. Last days of discussion about this declaration were very vital, I may say. There was a lot of discussions, and actually everybody who took part in this discussion found out if he is looking at this declaration from his national perspective. Everybody is thinking how the new scheme would work in his national procedural environment. That is of course a good approach of a DPA. But on the other hand we were preparing something about the international cooperation.

It is probably be a little bit selfish, saying that the only one who was giving the European perspective was the European Data Protection Supervisor, Peter Hunstinx. He was the one who looked at the cooperation of the different stakeholders in Europe, not being forced to filtrate it to the national law. And actually, even the Polish data protection authority, when he starts to think about this kinds of cooperation, he looks from the national perspective. Spanish authority looks from the Spanish perspective and I guess Dutch authority also mainly looks from the Dutch perspective. So, I would like to call for this international perspective in this approach. I like very much what you said a while ago about the idea to have one stop shop decisions as a common decisions of all the data protection authorities who are gathered in the European Data Protection Board.

Thinking about EDPB, consensus or unanimity in its decision I want to go to final message. Being a scientist and being in love with the history, I have to remind you something which is history of my home country. This system where everybody has to agree was called in 17th and 18th century in my country "*liberum veto*". *Liberum veto* meant that at the meeting of the Parliament (Sejm) of the Noble Republic of Poland. One and single person who was against the draft law could say: "I`m against" – "*Liberum veto*", free voice. It actually ended the discussion. Such law for a long time existed only in theory, but it was not in use. When you look at the Royal Castle here in Cracow, when you look at the Cracow as the city you can see it was very prosperous. It was prosperous as long as *liberum veto* was just in the law. When they just started to use it this country, Poland actually went to total ruin and lost its independence in the end of 18th century. The reasons for that was actually "*iberum veto*" was used to kill all improvements. It meant that no decision could be taken by the Parliament for a long time because everybody to the very end tried to discuss his own position.