



Keynote speech to Spring Conference of European DPAs

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Dear friends,

My sincere thanks to Attila for the kind introduction. And thank to you and to your good colleagues at NAIH for putting together an excellent programme for this year's Spring Conference of European Data Protection Commissioners.

We have already enjoyed the fruits of your professionalism, efficiency and warm hospitality at your recent international conference on drones. I am now sure we will have an enlightening couple of days discussing oversight of national security bodies, implementation of the GDPR and two important resolutions on cooperation and data transfers.

This is an exciting time to be in data protection.

We are entering a new era.

A Copernican revolution –paradigm shift– new deal for data protection – data protection 2.0 ... All the superlatives and clichés are very familiar to us now.

But what I want to stress this morning is that this is a revolution with Europe in the vanguard.

That's Europe in the broader sense, not only the EU, in the vanguard - not the United States, not the BRICS, not the G7.

The Council of Europe and the EU have led the way in renewing the rulebook for a new generation.

According to the newspaper headlines, the big question is whether companies in the private sector are ready for the changes – to the new 'big data protection rights' on consent, profiling, data portability and the right to be forgotten.

But the really big question is – are we ready? **Are Europe’s data protection authorities sufficiently**

- aware

- equipped and

- cooperative

to face this brave new world?

Like all of you, my small institution has been bombarded this year with requests from industry groups, NGOs and think tanks for insights into what will happen next. How will the regulatory reforms be implemented in practice?

Will DPAs within and outside the EU be more transparent and responsive to stakeholders’ questions?

Will the EDPB be more accessible than the Article 29 Working Party in listening to external views, including those of DPAs from European countries outside the EU? In the EU, we should work more closely with you and better cooperate and not just during our conference.

Will we all be able to provide timely and relevant guidance on the areas of data protection which, despite the changes this year, remain less than 100% certain?

So now, friends, now is the time to take a long, honest, look at ourselves.

What are we here for this week? (Apart, that is, from enjoying a beautiful old imperial city in the heart of Europe in the Spring!)

In the EU DPAs have been entrusted with greater powers, and we all know that with more power comes more responsibility. Something similar will happen for DPAs in the European Economic Area, for DPAs of contracting countries of the modernised Convention 108/1981. And that applies irrespective of the outcome of the Brexit referendum in UK.

I have been arguing that the biggest policy and legal innovation in the GDPR is the notion of accountability. That notion, now transcribed into Article 24 of the new EU Regulation 2016/679, requires controllers to comply and to demonstrate compliance with the new rules. The notion of accountability will expand soon outside the EU.

However - as Chris Graham and others have said many times in the last few years – the biggest practical innovation in the EU is the introduction of serious sanctioning powers.

The possibility of fines in the EU of up to 4% of annual global revenue – this is the provision which should make an impact in executive board rooms around the world.

It should make an impact – but whether it will make an impact depends on many authorities in this conference.

Taken together three factors create a potentially robust regime for safeguarding digital rights:

accountability

enhanced powers of independent authorities and

several substantive articles requiring and prescribing cooperation between those authorities.

These factors are present also in the draft text of a modernised Convention 108.

Make no mistake, the success of the modernised Convention 108 and the GDPR depends, more than anything else, on our integrity and on our passion for the rights of individuals in the new digital age.

But how can we demonstrate that the Spring Conference of European DPAs is more than just a tour des *capitales*? That, I propose, is the key question for the next two days.

Because, in my view, this event should be **the definitive data protection event of the year** for regulators in Europe.

It should be the “go-to” event for DPAs and their staff. We spend a lot of time in conferences, organised by corporate events companies, by law firms, by international organisations – some of them we even organise ourselves.

But let’s be honest – we don’t go to the conferences to learn new things from the formal sessions. We go to show our support, to network and to gossip.

I personally want to go to fewer conferences and spend more time learning from my fellow DPAs.

The Spring Conference should be a forum where we can, together, in a spirit of informed honesty and openness, really take stock of the events of the previous year – review our successes and failures and lessons learned – and consider what the big priorities will be in the year to come, and how we should respond collectively.

So why should we not try to develop this Spring Conference, to focus on substance, the day to day challenges which we face – the complaints, the legal challenges, the inspections, the breach notifications.

How much of our limited budgets are spent on training provided by external bodies, many of whom contain no experience whatsoever of being a regulator in a complex digital environment?

The best and most efficient form of learning is from each other – and from impartial outside experts.

Clearly we need to be much more aware of technological development and its implications for human rights.

So why don’t we aim to turn the conference into **a training centre for our staff, a sort of high-quality, high-intensity data protection boot camp?**

But we can be even more ambitious than that.

As an exercise in transparency and accountability, we could aim to host, as part of the Spring Conference, an open session with experts from the wider data protection community – civil society, academics, government officials, industry representatives. And of course the tens of thousands (according to IAPP) new Data Protection Officers who will be needed as a result of the GDPR.

John Edwards and the Executive Committee of the International Conference have been doing an excellent job with raising the profile of that event.

With an attractive website and regular newsletters, they are providing resources to data protection specialists on a global level.

EDPS is of course happy to make available publicly the various resolutions, declarations and position papers which have been adopted by this conference over the years – we do that on our website.

But the Spring Conference of European DPAs deserves its own dedicated and permanent website, a resource for our staff, for DPOs and the press to see how much work we are doing to make the fundamental rights to data protection and privacy a reality on the ground.

Because – and this may not remain the case for much longer – **the centre of gravity for data protection is Europe.**

In almost every speech I have delivered in the past 12 months, I have referred to the excellent work of Professor Graham Greenleaf, who in his most recent study found 109 countries around the world with a data protection or privacy law in place or under negotiation. 109 countries is more than half the officially recognised countries on the planet. 109 countries – making European countries with data protection laws a minority for the first time.

But, according to Professor Greenleaf, almost all of these countries have broadly followed the European approach to data protection, founded in the Convention 108, the old Data Protection Directive and the Charter of Fundamental Rights of the EU.

Europe is the centre of gravity of data protection in the world.

So let's make the European Spring conference the centre of gravity for data protection gatherings.

The judgment in *Schrems* received global attention – and rightly so.

The Court reaffirmed the independence of DPAs under EU primary law which could not be curtailed by politics, national or European laws or by EU decisions.

But with the *Schrems* judgment, the court built on three cases since 2010 concerning Germany, Austria and finally Hungary which should now establish better criteria for functional independence of DPAs as an 'essential component' of the right to data protection.

To summarise this trio of judgments, independent DPAs must be:

- independent directly and indirectly from government influence which may affect decisions
- above suspicion of any influence from outside bodies in their decisions; and
- building on the case law of the European Court of Human Rights on judicial independence [Baka v Hungary], they must be free of any threat of replacement by a Member State during term of office in violation of applicable rules and safeguards.

We need to consider that means for us all operationally.

The Austrian case I just mentioned actually cited EU Regulation 45/2001 applicable to EU institutions and the EDPS as supervisor as a model statute in terms of how it established the institution I have the honour to lead as independent DPA, with clear remit for supervision, policy advice and cooperation with national DPAs.

Later this year, the European Commission will present its proposals for updating this regulation to bring it into line with the GDPR.

Therefore, accountability is coming to the EU institutions too.

So Wojciech Wiewiórowski and I have just begun a round of visits to EU bodies at the highest level – to the European Central Bank, the Court of Auditors, the European Medicines Agency etc. – to talk to them about how they can integrate data protection into the fabric of how they operate.

Our ambition is to change the culture of the EU institutions and regulators, starting from the EU institutions themselves – starting in fact with ourselves in EDPS, where we have developed our own accountability tool which challenges our own managers to review and improve the way that we process personal information.

That is why I am so encouraged by the resolution, proposed by the NAIH and co-sponsored by the Netherlands and Finland, on new frameworks for cooperation.

Data protection is now firmly in the mainstream of politics and business compliance.

When this conference first met, and even 5 or 6 year years ago, data protection was on the fringes.

Our institutions are no longer to be considered obscure compliance officers, sanctums of recondite technical knowledge about the correct way to manage filing cabinets.

We are supposed to be at the frontline of the hyper-connected society - a digital ecosystem

- whose lifeblood is personal data, where at least 4 of the 40 biggest companies in the world by market capitalisation [Google, Facebook, Tencent, Amazon] owe most or all of their success to collection and manipulation of big personal data.
- where the millennial generation are spending 18 hours a day consuming digital media, and probably dropping digital deposits of personal information 24 hours a day.

So our actions matter.

But we can only act if we are fully independent.

We can only act if we are seen to be fully independent.

And we can only act if we are sufficiently resourced to tackle the daily challenges which become every day more and more complex.

The proposed resolution is therefore a timely and eloquent expression of this imperative.

It talks also about the need for 'a practical and innovative approach' So I have suggested a small addition to the resolution, to reflect the fact that we do not operate in a silo, and that the digital world – platforms for example – requires joined-up coherent and efficient regulation.

The fact is that authorities from other legal disciplines – in particular antitrust and consumer protection – also have expertise and tools which we can learn from, and vice versa.

So I hope that we can use this resolution to encourage much more dialogue and information sharing not only between data protection authorities, but also between data protection authorities and competition regulators and consumer enforcers – and may be also sectoral regulators, looking ahead to the complex negotiations on the reform of the ePrivacy directive.

Friends,

This conference is also a moment for saying thank you and good luck to two of our dear colleagues who are soon stepping down – Jacob Kohstamm and Christopher Graham.

I would like to add my personal tribute to them both. They are stalwarts of data protection. They have each be completely committed to international cooperation through the Working Party, through this conference and through the international conference. They have each brought a wonderful sense of humour and perspective to all of our deliberations. And they will be sorely missed.

They leave a great legacy for their successors.

Let's make this a conference which they will never forget – the best spring conference we have ever had so far.

But let's make the next spring conference even better.