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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*“Privacy in the resilient state of human
condition”*

Closing remarks at the Computers, Privacy and
Data Protection conference

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Protection Supervisor.

Dear esteemed friends, colleagues, dear participants from near and afar,

I greet you online today, for I cannot be with you in person.

It is funny how quickly times change. A year ago, it was normal to be participating online. At the time, little else was possible. Today, times are changing again, and online participation is going back to being the exception, rather than the rule.

While it is magnificent to be able to interact and share moments with people in person again, a part of me is struck by how quickly our norms and etiquettes in our daily lives can actually change. It makes me realise how much our reality and paradigms are in fact transitory.

This truth for me is perfectly reflected in this year's theme of the CPDP conference: "Data Protection and Privacy in Transitional Times".

The last two years have brought with them many transitions. So many of our environments have been reimagined and redefined, and together with them our approaches to data protection and privacy.

Life, as we know it, has changed. It has transitioned; it is transitional.

Yet, throughout the course of the pandemic, and, also throughout the course of the ongoing war in Ukraine, there has been one large constant.

This constant has been, and still is, the resilient state of the human condition.

In our papers and conferences, we talk a lot about enforcement; about the powers of data protection authorities; about the impact of data transfers on current business models; about the use of algorithms in innovation. But, sometimes we get caught up in this noise. **Sometimes we lose sight of what we are fundamentally protecting at the end of the day: the rights of people.**

In many ways, this recognition of the individual is thankfully embedded in the structure of the current data protection framework. But, sometimes we forget that as people we are not static. Instead, we are dynamic. We can be vulnerable, we can be weak, but we can also be resilient; strong; united.



But, what recent times have shown us is that people can also be influenced, or deprived of choices and opportunities.

Insights from behavioural economics and behavioural science have shown us that just as easily as nudge theory or subconscious bias can be used to promote good; they can also be used to promote alternative interests.

One must think of the growing use of **dark patterns** on the internet; the **cunning design of certain cookie banners** that **subconsciously influence** users to act in one way or another.

Or, one can think of the effects of **targeted advertising**, and how the use of **pervasive profiling** can lead to an **asymmetry of power** between the **data subject and the data controller**, who can infer things about the data subject that the data subject may not even be able to infer about themselves.

One thing that life has reminded us of over the last few years is that the human condition is vulnerable in so many ways.

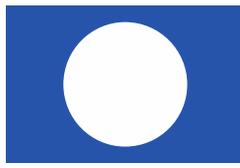
But, for me, vulnerability can often simply mean a lack of choice. Whether this concerns people who have to flee war and civil unrest, or women who are striving for education in oppressive regimes, it is often the lack of choice that turns vulnerability into something that is paralysing.

Which brings me to the realisation that in fast-changing times, where we have competing priorities and exponential levels of technological development; there is an even greater need to address the vulnerability of people.

To address vulnerability means to give people real choices, real opportunities and sincere opinions. Because this in itself builds the resilience of people.

At the same time, I believe the ability to adapt and reflect in such changing conditions is what makes the human mind unique.

Some have said that the human mind is nothing but a form of computation; an information processing system that can be replicated by a machine. Indeed, such was the reasoning of Alan Turing, who argued that any symbolic algorithm executed by a human can be replicated by what is called a “Turing machine”. Wiener’s “Cybernetics” also attempts to explain a systematic



functioning of the brain.

But, I believe that the cognition and consciousness that humans have is unique. Many philosophers actually make great cases for why computers will never achieve such consciousness and cognition.

Of course, there might come a day where we are confronted with 'super - intelligent AI', whose intellect exceeds our ability to cognitively perform in all domains. And then, we might philosophically analyse whether such AI would have the same vulnerability or resilience that humans have, or whether such AI would be 'moral' at all.

But, I think these days are yet to come. Amidst all of the technological innovations, humankind is still unique. It contains in it something not replicable in machines or AI - a consciousness otherwise unfound.

It is this consciousness that I draw your focus to today. Because when we speak about data protection, we speak about protecting the data of *people*, whose vulnerabilities, their ebbs and flows, are in so many ways non-replicable.

I think we have a duty to ensure that people are provided with choices during moments of vulnerability, and that our societies are structured in a way that protect the most vulnerable in times when they cannot protect themselves.

Privacy in the resilient state of the human condition means providing people with choices and opportunities about their own information. I believe it is our moral duty during such transitional times to maintain sight of the human-centric approach to fundamental rights. This also means the ways in which we give effect to their enforcement.

I am saying these words to you on the fourth anniversary of the GDPR, a landmark piece of legislation, which was crafted with one main objective: to ensure real, consistent, and effective implementation of the fundamental rights to data protection and privacy.

This task has not been completed yet. The choices that data protection is meant to give to people are still too often made elsewhere. We owe it to each other to have these choices. Data protection authorities, in particular, have a critical role to play in this.



Because through choice we can turn vulnerability into resilience. And we need the resilience in ourselves in order to build the resilience in our communities.

Thank you very much. I am happy to be with you at this conference, and I am happy to present to you the position of the EDPS. But, this is conference has only been possible because of the incredible work of all of the people who organise CPDP, despite the problems that we had in January, and made it such a great conference now in May. Thank you very much.

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