EDPS CONFERENCE REPORT

THE FUTURE OF
DATA PROTECTION

Effective enforcement in the digital world

16 & 17 JUNE 2022

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About the EDPS

The European Data Protection Supervisor (EDPS) is the European Union's independent data protection authority responsible for supervising the processing of personal data by the EU institutions, bodies, offices and agencies.

We advise EU institutions, bodies, offices and agencies on new legislative proposals and initiatives related to the protection of personal data.

We monitor the impact of new technologies on data protection and cooperate with supervisory authorities to ensure the consistent enforcement of EU data protection rules.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

For more information please consult: edps.europa.eu/about-edps

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Foreword

Dear Friends,

It is with great satisfaction that I present to you the official report of the EDPS Conference *"The Future of Data Protection: Effective Enforcement in the Digital World"*, which took place both in Brussels and online, on 16 & 17 June 2022.

In my welcoming letter to the participants of the conference (see page 73 of this report), I shared that the aim of the conference was to engage in a meaningful discussion about the future of the digital sphere to significantly bring forward the debate on the enforcement of the General Data Protection Regulation (GDPR). To be able to say in 2025 or in 2030 that, back in 2022, we had already began to do our best to seek constant improvement; to find answers to questions, which we can build on in the coming years.

Whilst I cannot predict the future, and whilst I leave you to assess the importance of the conference, I can honestly say that I am proud of this conference. I am proud of the EDPS team who prepared it, and more broadly, of the whole data protection community who came together to engage in an open, and admittedly sometimes difficult, conversation about the future of data protection. There was one common objective shared by everybody who joined the conference in Brussels or virtually: to see how we can better deliver the promises of the GDPR. How we can all work together to better protect people and how we can shape a safer digital future that everybody deserves.

In my welcome letter, I had presented the philosophy that we had worked hard to integrate into the conference programme, in order to bring our participants on a journey of connecting the dots within our vast, yet incredibly interconnected, digital world. I take the liberty of sharing with you the outlines of this narrative again, in the hopes that as you read through the pages of this report, you will notice how this narrative managed to take on a life of its own, ebbing and flowing into its own undefined creeks, all equally filled with their own richness of ideas and exploration.

We chose to start our conference with the simple yet crucial question of what effective enforcement is. From there, we discussed whether effective enforcement is important for the GDPR to be successful; how enforcement works in practice; and to what extent structural limitations of the current “One-Stop-Shop” governance model present a barrier to the effective enforcement of European Union data protection laws. We then moved the discussion to potential solutions to the identified problems with enforcement, where I also delivered my own remarks, sharing ideas for the future and potential ways forward. It was important for us to construct our conference programme in a way that allowed participants to both explore a common path of key topics and ideas in main sessions, and also venture individually into a diverse set of interconnected topics through the breakout panels.

With this report, I would like to share with you not just a summary of these conversations, keynotes, workshops, and events - all of which serve as a testament to the abundance of intellect and creativity that the data protection community has to offer - but also a trip down memory lane to the wonderful summer days we spent in Brussels in June 2022.

It is my sincere hope that with this report, we have managed to capture the essence of a conversation on the future of data protection and effective enforcement, which has only just began to unfold.

Yours,
Wojciech Wiewiórowski

Overview of conference

The idea of hosting a conference by the European Data Protection Supervisor (EDPS) was born out of the EDPS 2020-2024 Strategy, where the wheels were set in motion for the EDPS to host a conference discussing how to safeguard effectively individuals' rights to privacy and data protection, as enshrined in the European Union Charter of Fundamental Rights.

With this conference, the EDPS planned to create a platform to bring the world's best practices together, and steer meaningful discussions about the digital regulatory sphere, seeking to acknowledge that there is scope for discussions on potential improvements of the enforcement of data protection rules.

On 16 & 17 June 2022, this conference became a reality. Titled *"The Future of Data Protection: Effective Enforcement in the Digital World"*, the conference brought together over 2,000 participants, both in Brussels and online. Featuring over one-hundred speakers; three main sessions; sixteen breakout sessions; nine individual keynote remarks; and five side events, the two-day event fostered crucial conversations on the future of data protection, with a particular focus on the enforcement of the General Data Protection Regulation (GDPR).

Leading by example

Introduction

As the data protection authority competent for supervising the EU institutions, bodies, offices and agencies (EUIs), the EDPS needs to demonstrate exemplary compliance with data protection rules for its own processing of personal data. We know from our supervision experience how complex it can be in some circumstances. Therefore, in the context of this conference, the EDPS dedicated additional efforts to finding innovative solutions to lead by example in three main domains: videoconferencing tools, livestreaming, and environmental sustainability.

A data-protection friendly videoconferencing tool

To provide an opportunity to participate in the conference virtually, we wanted to ensure that all conference panels were livestreamed and recorded. The EDPS sought to design and put in place a videoconferencing and livestreaming service that provided not only a high-quality service, but also a service that fully respects data protection law, particularly regarding data transfers to countries outside the European Union (EU) and the European Economic Area (EEA).

In the lead-up to the conference, the EDPS partnered with Slash9 Productions (Slash9), a livestream production company based in Belgium. Slash9's previous experience with streaming via open-source tools allowed them to build and operate an infrastructure meeting the needs of the EDPS.

The setup built by Slash9 allowed remote speakers to participate in the conference via video call without needing to sign up to third-party services. Slash9 livestreamed the event in "TV-style" from five simultaneous conference rooms to an online audience of over 1,000 people.

To connect virtual speakers to the event, Slash9 used 'VDO.Ninja', an open-source video call service, which can be used via web browser. 'VDO.Ninja' uses innovative peer-to-peer forwarding technology and offers ultra-low-latency. In order to ensure that data remained within the EU/EEA, Slash9 hosted 'VDO.Ninja' on a server located in the EU/EEA, provided by an EU/EEA-based company, 'Cherry Servers'. All online speakers were briefed prior to the conference by a call manager, who first conducted technical checks with them, and then transferred them to a room on 'VDO.Ninja', allowing them to connect to the EDPS conference in real-time.

Slash9 then used Jet-Stream's 'Privacy Player', a video player designed to protect privacy by not using trackers, cookies, or requiring logins, to deliver the livestream to online participants. Privacy Player did not collect, store, or share any data and was hosted within the EU. Together with Slash9, the EDPS integrated the stream from Privacy Player onto its conference website, where video feed was hosted.

Slash9 used 'vMix', a proprietary software that acts as a vision mixer, as the production software to glue all these services together. It allowed Slash9 to switch inputs, mix audio, record outputs and livestream cameras and visuals from the event onto the conference website.

The technical solution provided by Slash9 made it possible to avoid any transfer of personal data towards countries located outside the EU/EEA. Another advantage of this solution was that it avoided a 'vendor lock-in' situation, which in turn allowed Slash9 and the EDPS to customise the overall setup of the platform to ensure a more technically efficient and data protection friendly approach. By considering these and other data protection concerns, we were confident in designating Slash9 as data processor, with the knowledge that their solution complied with Regulation EU No. 2018/1725, the data protection law applicable to EUIs.

Offering an alternative livestream on EU platforms

Recognising that over the course of the pandemic an increasing number of organisations offered their online conferences and online engagements on social media platforms operated by big technology actors, often without providing users with an alternative, the EDPS decided to offer an additional livestream of the conference on an alternative platform set up by the EDPS.

In April 2022, the EDPS launched a pilot on alternative social media, EU Voice, to provide a microblogging service where participating EUIs could inform the public about their activities, and share videos on a platform known as EU Video. The EDPS pilot relies on the work of the open source community behind the project Mastodon for EU Voice, and Peertube for EU Video.

In the context of the EDPS conference, we were determined to take our pilot project one step further and use EU Video and EU Voice to offer a livestreaming of the conference with simultaneous user engagement. The EDPS operates both platforms from within the EU, according to its own terms, without any third parties involved, and without user profiling. The EDPS successfully livestreamed all of its conference panels on EU Video, and provided online participants with the opportunity to engage with panel discussions on EU Voice. Offering such an alternative livestream allowed the EDPS to achieve one of the goals of its 2020-2024 Strategy, where we pledged to tackle vendor lock-in and IT dependencies, and work towards the digital sovereignty of EUIs.

Environmental sustainability

The EDPS also took seriously greening efforts for event organisation, with the aim to make our conference more modern, accessible and sustainable.

The decision to set up a hybrid event meant that we could reduce carbon emissions from travelling arrangements by allowing participants to join us online, from both near and afar. By reducing also the amount of personal data that was processed and stored online during the event, we also reduced our online energy consumption.

Several other actions were put in place to improve the sustainability of the EDPS conference. We chose a venue easily accessible by bike and public transport, and with a waste-recycling system in place. We also opted for limited customisation of the location, by using a pre-set layout and relying mostly on digital signage or reusable signs.

The EDPS worked to reduce to a minimum the waste of plastic, by eliminating plastic glasses and bottles. We also reduced to a minimum the creation and distribution of printed materials. Instead, we provided participants with a digital version of the event programme, brochures and other documents. We also worked on reducing the environmental impact of our brand material by selecting useful and long-lasting merchandise, produced by sustainable providers based in the EU.

THURSDAY JUNE 16

Programme

08:45 - 09:45	**Registration + Welcome coffee**
09:45 - 10:00	**Opening speech** LEONARDO CERVERA NAVAS, EUROPEAN DATA PROTECTION SUPERVISOR DIRECTOR
10:00 - 11:00	**Main session 1** WHAT DOES EFFECTIVE ENFORCEMENT MEAN?
11:00 - 11:15	**Keynote speech** MARGARETHE VESTAGER, EUROPEAN COMMISSION EXECUTIVE VICE-PRESIDENT FOR A EUROPE FIT FOR THE DIGITAL AGE AND COMPETITION
11:15 - 11:45	**Coffee break**
11:45 - 12:45	**Breakout sessions** 1 - ENFORCEMENT: THE KEY TO A GOLDEN STANDARD? 2 - WHAT CAN THE GDPR LEARN FROM THE WORLD? 3 - LESS OSS? LEARNING FROM THE RECENT COMMISSION PROPOSALS 4 - LET'S COMPLAIN: THE UPS AND DOWNS OF COMPLAINTS HANDLING
12:45 - 14:00	**Lunch break**
14:00 - 17:00	**Workshop on anticipatory enforcement**
14:00 - 15:00	**Main session 2** HOW SHOULD WE SHARE THE BURDEN OF ENFORCEMENT?
15:15 - 15:30	**Keynote speech** DIDIER REYNDERS, EUROPEAN COMMISSIONER FOR JUSTICE IN CHARGE OF RULE OF LAW AND CONSUMER PROTECTION
15:30 - 16:00	**Coffee break**
16:00 - 17:00	**Breakout sessions** 5 - THE ELEPHANT IN THE ROOM. EMPOWERING THE EDPB 6 - POWER TO THE PEOPLE! JUDICIAL REMEDIES & ENFORCEMENT OF DATA PROTECTION 7 - IS DIGITAL SOVEREIGNTY THE NEW GDPR? 8 - IS THE GRASS ALWAYS GREENER? ENFORCEMENT MODELS IN EU LAW
17:00 - 17:30	**Fireside chat** ANNA COLAPS IN CONVERSATION WITH SHOSHANA ZUBOFF
17:30 - 17:45	**Keynote speech** VERA JOUROVA, EUROPEAN COMMISSION VICE-PRESIDENT FOR VALUES AND TRANSPARENCY
17:45 - 19:00	**Networking drinks + Speed networking**
20:30 - 23:30	**Evening Events**

Friday June 17

Programme

08:30 - 09:15	**Welcome coffee**
09:15 - 9:30	**Remarks from the EDPB** ALEID WOLFSEN, EUROPEAN DATA PROTECTION BOARD DEPUTY-CHAIR
9:30 - 9:45	**Keynote speech** MARIE-LAURE DENIS, PRESIDENT OF CNIL
9:45 - 10:45	**Breakout sessions** 9 - INDEPENDENT TOGETHER: COMBINING NATIONAL AND EU DECISION-MAKING 10 - IS IT ALL ABOUT BIG TECH? ENFORCEMENT IN THE PUBLIC SECTOR 11 - ENFORCING EPRIVACY. A WAY TO COMPLEMENT AND REINFORCE THE GDPR? OR NOT? 12 - WHERE ENFORCEMENT IS JUST A PIECE OF THE PUZZLE: GDPR AND THE JOURNALISTIC EXEMPTION
10:45 - 11:30	**One-Stop-Shot of coffee**
11:30 - 12:00	**EDPS keynote - "Now What?"** WOJCIECH WIEWIÓROWSKI, EUROPEAN DATA PROTECTION SUPERVISOR
12:00 - 13:30	**Lunch break**
13:30 - 14:30	**Breakout sessions** 13 - WHAT IS UP IN COURT? GDPR CASES BEFORE CJEU AND THEIR POTENTIAL IMPACT 14 - ANTICIPATING RISKS – HOW FORESIGHT CAN SUPPORT DATA PROTECTION 15 - A QUEST FOR RESOURCE: EFFICIENT ENFORCEMENT THROUGH INNOVATION 16 - THE PATH TO COHERENT ENFORCEMENT IN THE DIGITAL ECOSYSTEM: PROTECTING MARKETS, SOCIETIES, AND DEMOCRACY
14:30 - 15:00	**Coffee break**
15:00 - 15:15	**Introduction of the New California Privacy Protection Agency** ASHKAN SOLTANI, CALIFORNIA PRIVACY PROTECTION AGENCY EXECUTIVE DIRECTOR
15:15 - 16:15	**Main session 3** GDPR 25/30 - WHAT ARE WE GOING TO BE DISCUSSING IN A FEW YEARS?
16:15 - 16:30	**Closing of the conference**

OPENING SPEECH

Leonardo Cervera Navas

European Data Protection Supervisor, Director

The conference was opened by the Director of the EDPS, Leonardo Cervera Navas. In his welcoming speech, he explained the main motivation behind the EDPS' initiative: *"Since the entry into force of the GDPR four years ago, we are firmly of the view that an open and genuine reflection on the functioning and efficiency of the GDPR is very necessary at this stage."*

Mr Cervera Navas briefly presented the philosophy behind the conference programme, which is based on three pillars: (1) the exploration of enforcement models under EU law and beyond to identify their respective challenges and opportunities; (2) a critical reflection on the enforcement mechanism provided under the GDPR to identify challenges and necessary improvements; and (3) foresight: the identification of emerging trends aimed at achieving effective protection of the fundamental rights to privacy and data protection.

Moreover, Mr Cervera Navas reminded that this conference forms a key part of the EDPS Strategy 2020-2024: *"Our hope is that by the end of this conference, our conversations will have gone beyond the walls of the conference rooms, hopefully directly to the ears of those who have the competence and the power to change things".*

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The following section includes the descriptions and summaries of both the Main Sessions and Breakout Sessions of the EDPS Conference, as well as its Side Events. The description of both the Main Sessions and Breakout Sessions were taken directly from the EDPS Conference Programme.

MAIN SESSION 1

What does effective enforcement mean?

MODERATOR

ISABEL HAHN
EUROPEAN DATA PROTECTION SUPERVISOR, CABINET OF THE SUPERVISOR

PANELLISTS

ULRICH KELBER
FEDERAL COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION (BFDI), FEDERAL COMMISSIONER

URSULA PACHL
BEUC - THE EUROPEAN CONSUMER ORGANISATION, DEPUTY DIRECTOR GENERAL

MAX SCHREMS
NOYB - EUROPEAN CENTRE FOR DIGITAL RIGHTS, HONORARY CHAIRMAN

PAUL NEMITZ
EUROPEAN COMMISSION, PRINCIPAL ADVISOR IN THE DIRECTORATE GENERAL FOR JUSTICE AND CONSUMERS

Panel Description:

Before we discuss effective enforcement, we need to reflect on what it means. Enforcement is not an objective in itself, but a means to achieve compliance. How much of the puzzle is enforcement really? Could one foresee compliance without enforcement in place? What are the standards by which we judge whether enforcement is effective, and how are these standards set? Is there a consensus around them? This panel will discuss what we consider as a benchmark for 'effective' enforcement, and how to operationalise this across different governance models.

Summary of discussion:

The panel began with the opening question of what effective enforcement means to the panellists. Quickly, consensus was built around the notion that enforcement and compliance go hand in hand, with them even being labelled as "two sides of the same coin". This led to an acknowledgment that there is an overarching lack of a culture of compliance.

"*Effective enforcement means that legislative objectives become reality*", one of the panellists stated, *"and if that is not the case, there is no credibility in the legislation, and this is a worry for democracy",* added the panellist. This stance was echoed by other panellists, who also emphasised the role that compliance plays in democratic societies.

The discussion then turned to the observation that for a culture of compliance to be encouraged, there must be consequences enforced in cases of non-compliance. It was agreed that the GDPR provides tools for effective enforcement, but that there is some justified criticism of how it is put in practice. This brought the dialogue towards a recognition of difficulties that present an obstacle to cross-border enforcement, such as differences in national procedural laws. In identifying potential ways forward, references were made to the European Data Protection Board (EDPB) Vienna Summit and the need for closer paths of cooperation, in order to improve enforcement. Yet the discussion acknowledged that such initiatives may not be a silver bullet in themselves; that there may be a need for a clear and objective regulation that could help to clarify procedural differences.

Lastly, the discussion focused on what more can be done to improve effective enforcement. An integrated approach to enforcement via multiple channels was mentioned as a way of involving different actors in the process of enforcement, especially civil society. At the end of the panel, participants agreed that the best route to a democratic digital society with strong data protection is through cooperation and unity.

KEYNOTE SPEECH

Margrethe Vestager

European Commission Executive Vice-President for A Europe Fit for the Digital Age and Competition

Executive Vice-President for A Europe Fit for the Digital Age and Competition Margrethe Vestager opened her remarks by praising the EDPS and the national data protection authorities for their continuous efforts, which are crucial in building a safer digital ecosystem. "*Data protection inspired the European Commission in its Proposals for the Digital Services Act (DSA) and Digital Markets Act (DMA)*", she continued. Ms Vestager underlined that the centralised model of the DSA and DMA will need a functioning dialogue with the EDPS and the national data protection authorities to be successful. Data plays such an important part in the assessment of competition cases, as proved by the Google / Fitbit merger case.

Data protection cannot lead to an increasing gap between small and medium-sized enterprises (SMEs) and big players, Executive Vice-President Vestager stated. On the contrary, effective enforcement of data protection laws will improve the level playing field and improve competition. Referring to the recent proposals of the European Commission, Ms Vestager believes that a transparent and harmonised system provides EU citizens with equal levels of protection. Trust is key in the digital world, and data protection authorities should play a crucial role in ensuring that this trust is instilled in individuals, through their actions and cooperation with regulatory authorities from other fields.

BREAKOUT SESSION 1

Enforcement: the key to a gold standard?

MODERATOR

GABRIELA ZANFIR-FORTUNA
FUTURE OF PRIVACY FORUM, VICE-PRESIDENT FOR GLOBAL PRIVACY

PANELLISTS

HIELKE HIJMANS
BELGIAN DATA PROTECTION AUTHORITY, PRESIDENT OF THE LITIGATION CHAMBER AND MEMBER EXECUTIVE BOARD

TEKI AKUETTEH
NSIAH AKUETTEH & CO, SENIOR PARTNER

ANU BRADFORD
COLUMBIA LAW SCHOOL, PROFESSOR OF LAW AND INTERNATIONAL ORGANISATIONS

THOMAS ZERDICK
EUROPEAN DATA PROTECTION SUPERVISOR, HEAD OF UNIT "SUPERVISION AND ENFORCEMENT"

Panel Description:

The "Brussels effect" of the GDPR is unquestionable, but is the EU at risk of losing its global impact? The GDPR has been seen as a "gold standard" worldwide, but can this be maintained if enforcement is not stepped up? The panel aims to answer the following questions: Are cooperation and consistency procedures also part of the GDPR model? Has there been any influence beyond the EU? Are the strengths of the GDPR contingent on its successful enforcement? Conversely, does the success story of the GDPR depend on enforcement, or not?

Summary of discussion:

The panel first aimed to clarify a foundational issue, i.e. what is the "Brussels effect"? The discussion also focused on the manifestation of the Brussels effect in non-EU jurisdictions, in order to analyse European influence on regulating personal data processing.

The discussion then focused on the notion of effective enforcement in data protection law, pondering whether effectiveness should be measured in terms of fines, number of completed investigations, or by the dissuasive effect of specific enforcement action. The discussion also considered the key parameters and criteria for effective enforcement. It was highlighted that data protection laws cannot be unenforced. Unenforced laws are dead letter laws, symbolic and irrelevant.

Panellists also addressed the specificities of the One-Stop-Shop mechanism and to what extent it was possible or even advisable to replicate this exact model outside the EU.

In a second round of discussion, panellists focused on the effectiveness of enforcement as an element influencing the "Brussels effect" and explored the difference that can be made between "'paper tiger" laws, and laws that have been successfully enforced. It was recalled that we still have a tremendous amount of data protection breaches, examples when we feel that the enforcement of the GDPR is falling short. This poses a risk of limiting the Brussels effect.

"We need to show it is possible to have a democratic governance model that is also effective"- agreed the panellists. *"The stakes are very high: we need to protect privacy, but we also need to show the world that there is an effective democratic way to govern the digital world"*, they concluded.

BREAKOUT SESSION 2

What can the GDPR learn from the world?

MODERATOR

ISABELLE ROCCIA
INTERNATIONAL ASSOCIATION OF PRIVACY PROFESSIONALS, MANAGING DIRECTOR, EUROPE

PANELLISTS

MIRIAM WIMMER
BRAZILIAN DATA PROTECTION AUTHORITY (ANPD), DIRECTOR

BRUNO GENCARELLI
EUROPEAN COMMISSION, HEAD OF INTERNATIONAL DATA FLOWS AND PROTECTION, DIRECTORATE GENERAL FOR JUSTICE AND CONSUMERS

JANE HORVATH
APPLE, CHIEF PRIVACY OFFICER

BRENT HOMAN
OFFICE OF THE PRIVACY COMMISSIONER OF CANADA, DEPUTY COMMISSIONER

JAMES DIPPLE-JOHNSTONE
UK INFORMATION COMMISSIONER'S OFFICE (ICO), CHIEF REGULATORY OFFICER AND DEPUTY COMMISSIONER

Panel Description:

The world is learning from the GDPR, but what can the GDPR learn from the world? This panel aims to identify various approaches to ensuring compliance with respective privacy and data protection laws and the effective protection of these rights through the means of enforcement beyond the EU. Looking at best practices from the world, panellists will explore whether, and to what extent, such patterns could be applied in the EU regulatory framework, both now and in the future.

Summary of discussion:

The discussion first evolved around the distinction between compliance and enforcement, and how enforcement is one of the necessary actions to ensure the correct application of laws in practice. Against this background, panellists touched on compliance and enforcement as "two sides of the same coin" and shared different perspectives on the interplay between enforcement and other forms of promoting compliance.

Emerging from the discussion was a belief that there is no one-size-fits-all system of ensuring compliance, as mechanisms at the disposal of regulatory authorities should be used according to specific circumstances, such as market maturity. Raising awareness or preventive measures are often more effective to avoid the materialisation of risks to privacy and data protection. At the same time, no measure is workable if there is no threat of strong enforcement behind them. For instance, sandboxing can only be encouraged if the risks it aims to mitigate can result in a punishment from data protection authorities.

Thereon out, the conversation developed into a reflection on the need for strong cooperation globally, between authorities, including regulators from different fields - both existing fields, such as competition or consumer protection, or emerging fields, like the Digital Services Act and the Digital Markets Act. This is necessary to avoid duplication of work in a fragmented enforcement regulatory framework. To this end, joint investigations were mentioned as a potentially very efficient, and yet not fully explored, form of achieving synergy through cooperation.

BREAKOUT SESSION 3

Less OSS? Learning from recent Commission Proposals

MODERATOR

VINCENT MANANCOURT
POLITICO, TECHNOLOGY REPORTER

PANELLISTS

PIETER VAN CLEYNENBREUGEL
UNIVERSITY OF LIÈGE, PROFESSOR OF LAW

ALEXANDRA GEESE
EUROPEAN PARLIAMENT,
MEMBER OF PARLIAMENT

OLIVIER MICOL
EUROPEAN COMMISSION, HEAD OF DATA PROTECTION UNIT, DIRECTORATE GENERAL FOR JUSTICE AND CONSUMERS

JULIE BRILL
MICROSOFT, CHIEF PRIVACY OFFICER AND CORPORATE VICE PRESIDENT, GLOBAL PRIVACY AND REGULATORY AFFAIRS

Panel Description:

This panel aims to explore different approaches to enforcement in recent proposals from the European Commission, such as the Digital Services Act, the Digital Market Act, the Digital Green Act, the Artificial Intelligence Act, and Data Act. As provided by these proposals, specific new EU bodies would be involved in the governance and/or enforcement of the respective proposed legislative acts. However, such EU bodies would mostly have advisory functions, and none would have powers to adopt binding decisions or impose sanctions. On the other hand, more powers are being assigned to the European Commission, including in certain cases concerning persistent infringements by very large online platforms (VLOPs). In these cases, the European Commission would have powers to impose fines in case of infringements. What is the direction the proposals are providing in terms of enforcement mechanisms?

The aim of this panel is to compare and contrast the approaches to enforcement in the proposed acts of the European Commission and to understand the trend that enforcement is developing through such proposals. The panel also aims at discussing whether the data protection enforcement may take any sort of 'inspiration' from these proposed models.

Summary of discussion:

The discussion firstly underlined that, in light of recent legislative proposals, there is a tendency to move towards more centralised enforcement. In relation to this point, observations made during the panel concerned the long-term solutions of the enforcement of these proposals, for instance the possibility of an independent oversight agency for platforms and/or digital policy to avoid concentrating both legislative and executive powers within the European Commission itself.

The discussion also focused on the enforcement model of the GDPR, outlining how, despite the GDPR being a product of its time, an evolution has taken place in the enforcement models proposed in the so-called Digital Rulebook that could potentially result in an alteration of the GDPR enforcement model itself, by possibly complementing it with a European independent structure.

BREAKOUT SESSION 4

Let's complain: the ups and downs of complaints handling

MODERATOR

KAROLINA IWAŃSKA
EUROPEAN CENTER FOR NOT-FOR-PROFIT LAW, DIGITAL CIVIC SPACE ADVISOR

PANELLISTS

ANU TALUS
OFFICE OF THE DATA PROTECTION OMBUDSMAN FINLAND, DATA PROTECTION OMBUDSMAN

BASTIEN LE QUERREC
LA QUADRATURE DU NET, MEMBER

MARIA MAGIERSKA
EUROPEAN UNIVERISTY INSTITUTE, PHD RESEARCHER

Panel Description:

The GDPR offers a clear path for individuals to remedy the perceived infringements of their personal data via complaints with a competent supervisory authority. However, complaint mechanisms for individuals, and hence their access to the supervisory authorities, is challenging for multiple reasons. Amongst these reasons, the national procedural laws applicable to a complaint before supervisory authorities remain unclear, and the differences between these national procedural laws impede the cooperation between supervisory authorities and limit legal certainty for individuals and their privacy and data protection rights.

In addition, the volume of work for supervisory authorities varies, their strategic approach to handling complaints and their resources are factors that create differences in how enforcement is delivered in practice. What is more, in cross-border cases, the difficulty of identifying the lead supervisory authority as well as the reliance on the lead supervisory authority to lead the process often puts effective and coordinated enforcement at risk. In view of these limitations of the current systems, non-governmental organisations are increasingly calling for improvements in the GDPR itself and in how supervisory authorities make use of their enforcement powers.

This panel seeks to explore the successful aspects of the current complaints handing mechanism under the GDPR, by zooming in on the One-Stop-Shop mechanism and its functioning, and proposes to assess critically the aspects that remain a challenge and make the access for individuals to supervisory authorities a paper tiger. By taking stock of what the complaints handling landscape has been over the past four years, this panel proposes to discuss its areas for improvement in a concrete way. Discussions will focus on how to improve the complaints handling mechanism in a way that benefits individuals.

Summary of discussion:

Starting from a recent Access Now report on the empirical study of complaint practices in the EU, the discussion revolved around three main issues: fragmentation resulting from the differences between EU Member States' administrative laws, a lack of information provided to individuals about pending complaints, and a lack of transparency of certain processes.

The panellists acknowledged that data protection authorities face several challenges since the entry into application of the GDPR. For instance, they experienced an explosion of complaint cases whilst having to adapt their internal procedures. At EU level, data protection authorities started to deal with the One-Stop-Shop mechanism, and had to manoeuvre a plethora of variations in national administrative rules.

On the side of the individual, complaints handling is equally as complex. Examples were mentioned of complainants being sometimes left in the dark as to the state of play of their complaint, and not hearing from data protection authorities for years, at times only to receive a closure letter with a summary of the decision for their case once the procedure has ended. Regarding the enhancement of cross-border case handling, the EDPB Vienna Summit was mentioned, while it was mentioned that it is probably premature to envisage setting up an entirely different mechanism to enhance complaint handling.

MAIN SESSION 2:

How should we share the burden of enforcement?

MODERATOR

KAZIMIERZ UJAZDOWSKI
EUROPEAN DATA PROTECTION SUPERVISOR, MEMBER OF THE CABINET

PANELLISTS

ORLA LYNSKEY
THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, ASSOCIATE PROFESSOR OF LAW

TOBIAS JUDIN
NORWEGIAN DATA PROTECTION AUTHORITY, HEAD OF INTERNATIONAL

FANNY HIDVEGI
ACCESS NOW, EUROPEAN POLICY AND ADVOCACY DIRECTOR

JUAN FERNANDO LÓPEZ AGUILAR
EUROPEAN PARLIAMENT, CHAIR OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Panel Description:

Amongst the many issues raised in the public debate concerning the functioning of the GDPR enforcement model, the risk of an unfair burden on the authorities of a few EU Member States is often mentioned. The issue of discrepancies between national laws, for example in administrative procedures, also seems to emerge as a main obstacle to the efficient functioning of the One-Stop-Shop, linked to limited possibilities for the EDPB to be involved in the earlier stages of investigations at national level.

Whilst these problems are legal, their consequences are political. As such, this panel will first look at these issues through the perspective of basic principles of EU law. Is the One-Stop-Shop model fair? How can fairness be achieved? Is the GDPR meeting the principle of effectiveness of EU law? Is there more room within the principle of subsidiarity of EU law? Is empowering the EDPB a way to overcome the problem of a lack of coherence of domestic laws and overcome the Herculean task of harmonising them?

Panellists will share their views on the politics of it all: should the burden of putting in place EU legislation be put more heavily on some EU Member States than on others? Does the current model give EU citizens sufficient certainty that their rights can be exercised and enforced? What political responsibility exists around this problem? And, who should do more?

Summary of discussion:

During this session, panellists focused on the identification of the most prominent structural obstacles behind effective enforcement, building on the conclusions of Main Session 1, which pointed to the existence of such systemic limitations.

The panellists also aimed to identify the main difficulties that prevent effective burden sharing, such as differences between national procedural laws, which make cooperation between authorities lengthy, complicated, and sometimes even unworkable. The role of the EDPB and its constraints in terms of when it can get involved, due to its legal framework, was also debated. Particular weight was given to the discussion on whether the One-Stop-Shop model of allocating responsibility to one country is optimal and fair, given that there is a clear pan-European dimension adopted for certain cases.

Whilst the opinions of the panellists differed to an extent, in particular concerning the specific aspects of these obstacles, there was a consensus that data protection authorities are acting within a framework that is not optimal, which in itself causes significant problems and challenges that might seem difficult, if not impossible, to overcome without legislative measures.

In this respect, the idea for a legislative initiative aimed at harmonising certain aspects of procedural laws was discussed. Panellists agreed it would improve certain aspects of cooperation, although some shared doubts as to what extent such an initiative would be a silver bullet. To this end, the idea of elevating certain pan-European cases to a central authority, such as the EDPB, was considered and debated, with the conclusion being reached that this too might not be without its own risks, politically, constitutionally, or even practically.

KEYNOTE SPEECH

Didier Reynders

European Commissioner for Justice in charge of rule of law and consumer protection

European Commissioner for Justice Didier Reynders opened his keynote speech, the second keynote of the conference, by stating the following: "*We all share the same goal: how to ensure the strong protection of fundamental rights of EU citizens. The question for today is rather: What can we do more? What can we do better?*"

His remarks focused on the importance of preserving the GDPR as a key enabler for EU citizens. To this end, and in the context of the discussions about enforcement models, Commissioner Reynders is convinced that we should consider proximity and availability of a national authority for citizens as an important factor to take into account in discussions on potential reforms.

He also reiterated the European Commission's commitment to ensuring that the GDPR is put in place correctly at national level, including through the use of infringement procedures, when necessary. His remarks touched on the possibility of having more targeted initiatives that enable more harmonisation and consistency in the procedures. At the same time, Commissioner Reynders highlighted that our focus should be on using margins and potentialities for improvements to ameliorate the system.

BREAKOUT SESSION 5

The elephant in the room: empowering the EDPB?

MODERATOR

PAUL DE HERT
VRIJE UNIVERSITEIT BRUSSEL (VUB), VICE-DEAN OF THE FACULTY OF LAW & CRIMINOLOGY

PANELLISTS

GWENDAL LE GRAND
EUROPEAN DATA PROTECTION BOARD, HEAD OF ACTIVITY FOR ENFORCEMENT SUPPORT AND COORDINATION

BOJANA BELLAMY
CENTRE FOR INFORMATION POLICY LEADERSHIP, PRESIDENT

ESTELLE MASSÉ
ACCESS NOW, EUROPEAN LEGISLATIVE MANAGER AND GLOBAL DATA PROTECTION LEAD

FLORENCE RAYNAL
COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS (CNIL), DEPUTY DIRECTOR, HEAD OF DEPARTMENT OF EUROPEAN AND INTERNATIONAL AFFAIRS

Panel Description:

Some procedural and systemic issues may be identified in the way the One-Stop-Shop works. Some of these issues affect cooperation amongst national supervisory authorities, whilst other issues affect the consistency of procedures and the powers of the EDPB. In essence, this panel seeks to describe these issues. The panel will also explore the possibilities to improve the functioning of the enforcement of data protection law through new mechanisms and tools at the disposal of the EDPB and its members.

In this panel, specific attention will be paid to cooperation mechanisms that have not yet been widely used, such as the Support Pool of Experts, joint operations, common inspection standards, coherent handling of complaint procedures, and an EU-wide holistic approach to enforcement strategies and planning.

In addition, this panel aims to analyse the role and powers of the EDPB in consistency procedures, in particular in dispute resolution or urgency cases. Are these powers well-enough designed to enable a meaningful discussion and arbitration at European level? How much can we improve the current system? Would a more coordinated governance system bring better results? If so, under which conditions? Would empowering the EDPB further be one way of addressing the identified issues?

Summary of discussion:

"Rome was not built in a day" - said one of the panellists when explaining the challenges data protection authorities face as part of their natural process of putting in place a legislation as revolutionary as the GDPR. In this spirit, examples were given of various initiatives aiming at improving the functioning of the One-Stop-Shop without re-opening the GDPR, following the Olympic motto: "faster, higher, stronger together".

In light of the title of the panel, concerns were raised, namely about insufficient enforcement and lack of EDPB powers. Common procedures, for example on the right to be heard, need to be fixed - either from the perspective of a data protection authority, a complainant or a controller. Some speakers advocated for a greater role for the EDPB.

At the same time, calls for caution were made, by referring to the Pandora box argument for example. A lot can still be done, even in terms of transparency in the way the EDPB is working, to improve individuals' trust in the processes. At the same time, examples of non-compliance with the EDPB's own guidance by some data protection authorities are worrying and might be a sign of broader structural limitations of the current framework.

BREAKOUT SESSION 6

Power to the People! Judicial remedies & enforcement of data protection

MODERATOR

GLORIA GONZÁLEZ FUSTER
VRIJE UNIVERSITEIT BRUSSEL (VUB), RESEARCH PROFESSOR AND CO-DIRECTOR OF THE LAW, SCIENCE, TECHNOLOGY & SOCIETY (LSTS) RESEARCH GROUP

PANELLISTS

ROMAIN ROBERT
NOYB - EUROPEAN CENTRE FOR DIGITAL RIGHTS, PROGRAMME DIRECTOR

JOHNNY RYAN
IRISH COUNCIL FOR CIVIL LIBERTIES, SENIOR FELLOW

JUDITH RAUHOFER
UNIVERSITY OF EDINBURGH, SENIOR LECTURER IN IT LAW

PAUL-OLIVIER DEHAYE
HESTIA.AI, CEO

Panel Description:

The enforcement of the GDPR is a complicated feat, whereas the GDPR's infringements concern many individuals. By pulling resources together, collective action has a higher chance of remedying legal violations. However, is it the case in data protection? This panel seeks to explore judicial remedies under the GDPR, focusing especially on how collective actions can ensure effective enforcement via civil actions before the courts. As such, this panel analyses the remedies of Chapter VIII of the GDPR in a holistic manner, reflecting for example on whether judicial remedies might complement complaints before data protection authorities.

The panel discusses why and how individuals and their representatives can bring actions before the courts, individually or in a group, under Articles 79 and 80 GDPR. In this context, the panel will seek to explore the potential and the limitations of compensatory actions before courts. The panel will also touch upon how Article 80 GDPR is implemented across the EU and with what diverging effects. The panel seeks to tackle questions about the practical aspects of class actions: what is the cost and who is to foot the bill? Could strategic litigation be a game changer, and does the upcoming Collective Redress Directive herald making class actions easy and accessible for all?

Crucially, the panel will attempt to conceptualise the interaction between enforcement mechanisms by addressing certain questions: what is the impact of judicial remedies, especially collective actions, on the handling of complaints by data protection authorities? Do collective actions replace or complement complaints before data protection authorities?

Summary of discussion:

The panel started with explaining the importance of Article 79 GDPR, the right to an effective judicial remedy against a controller or processor. The collective dimension of defending special groups of individuals that suffer the same violations can have a beneficial impact collectively. Risks and limitations of collective actions were raised, for example difficulties in terms of damage definition or calculation. At the same time, class action, in particular in the context of the so-called Collective Redress Directive, has the potential to be a game changer, albeit different under U.S. law.

A complementary role between the redress to data protection authorities and to the courts was therefore at the core of the discussion. To this end, alternative measures, such as arbitration mechanisms, could be better explored according to the discussions.

Additionally, participants made the point that investigations into certain practices are too often a result of whistle blowing, instead of data protection authorities' proactivity.

BREAKOUT SESSION 7

Is digital sovereignty the new GDPR?

MODERATOR

PRZEMYSŁAW PAŁKA
JAGIELLONIAN UNIVERSITY,
ASSISTANT PROFESSOR

PANELLISTS

CHLOÉ BERTHÉLÉMY
EUROPEAN DIGITAL RIGHTS (EDRI),
POLICY ADVISOR

XAVIER BARRIERE
OVHCLOUD, LEGAL DIRECTOR

KAREN MELCHIOR
EUROPEAN PARLIAMENT, MEMBER
OF THE EUROPEAN PARLIAMENT

CHRISTIAN D'CUNHA
EUROPEAN COMMISSION, HEAD OF
DG CONNECT INTERNAL TASK FORCE,
CYBER CRISIS TASK FORCE

Panel Description:

Recent discussions have been centred on promoting "digital sovereignty" to achieve strategic autonomy over how and where personal data is processed in Europe. Whilst the context of digital sovereignty is broader than data protection, having in fact a geopolitical dimension, is it, however, somehow also a consequence of insufficient enforcement of the GDPR? Or, is it a way of reframing a solution to our current issues? Why is it that we are striving for digital sovereignty as a norm that we should promote in our online data processing environment? Is digital sovereignty based on the same hope that existed when the GDPR Proposal was drafted: to bring big tech into compliance and ensure a level playing field in the European Union?

The panel will also explore what lies at the heart of promoting digital sovereignty: is it issues associated with technological dependency on certain infrastructure and services, does it perhaps have to do with vendor lock-in? In other words, why are we turning to digital sovereignty as something to promote, and what are we implicitly hoping it will bring? Who benefits from 'achieving' digital sovereignty?

Summary of discussion:

The discussion started from a reflection on the definition of the concept of digital sovereignty, which was initially understood as the legal and practical ability to enforce one's own laws. In the medium and long term however, it means a capability to create one's own technologies to limit the dependency on certain products, infrastructure or services. At the same time, such a capability does not automatically guarantee a high level of respect for privacy and data protection. These fundamental rights are potentially at risk, irrespective of the origin of the controller – the ability of data protection authorities to carry out strong enforcement is therefore crucial.

The conversation further developed into a reflection on whether, and to what extent, digital sovereignty is a fundamental right related concept and/or an economic one, i.e. of a protectionist nature. To this end, it was underlined that ultimately the objective should be to ensure a level playing field between the EU and non-EU actors. Geopolitical considerations, such as those related to China, were also part of these reflections.

Whilst panellists agreed that digital sovereignty is a broader concept than data protection - and from a geopolitical perspective a much older one – the enforcement of the GDPR is a prerequisite for achieving digital sovereignty in the EU. At the same time, when developing policies aimed at reinforcing sovereignty, one should further efforts to empower regulators with strong enforcement tools. It is necessary, although admittedly not sufficient in itself, to achieve digital sovereignty.

BREAKOUT SESSION 8

Is the grass always greener? Enforcement models in EU law

MODERATOR

DANIELE NARDI
EUROPEAN DATA PROTECTION SUPERVISOR, LEGAL SERVICE OFFICER

PANELLISTS

CECILIA DEL BARRIO ARLEO
EUROPEAN CENTRAL BANK, BANKING SUPERVISOR IN THE SINGLE SUPERVISORY MECHANISM

INGE GRAEF
TILBURG UNIVERSITY, ASSOCIATE PROFESSOR OF COMPETITION LAW

HEIKO DUNKEL
FEDERATION OF GERMAN CONSUMER ORGANISATIONS (VZBV), HEAD OF LEGAL ENFORCEMENT TEAM

CHRISTOPHER KUNER
BRUSSELS PRIVACY HUB & VRIJE UNIVERSITEIT BRUSSEL (VUB), CO-DIRECTOR AND PROFESSOR OF LAW

Panel Description:

This panel aims to identify particular characteristics of certain fields of EU law that make their enforcement models effective (or not). Are there any general patterns or trends to be found? If so, can we use them for the benefit of data protection? Amongst other topics, panellists will reflect on the relations between various models of enforcement and national laws, for example administrative procedures. How are such models dealing with discrepancies between EU Member States' legal systems?

Summary of discussion:

The panel started with the presentation of the broad features of enforcement models in the fields of competition law, consumer protection, and banking supervision, to compare the features of such models with the one provided by the GDPR. The discussion revolved in particular around the different degrees of 'centralisation' of the enforcing entities at EU and EU Member States' level, and the driving forces behind the different choices made by the legislator in each field.

Panellists discussed the developments in competition law, i.e. acknowledging that, despite the increasing role and relevance of the European Competition Network, the European Commission as a central authority maintains a pivotal role. From a consumer protection perspective, a first assessment was given on the coordination between competent

authorities at national level, the European Commission, and the role of organisations for consumer protection. The Single Supervision Model established to supervise 'significant' banks in the EU was also presented. During the discussion, emphasis was put on the momentum created by the 2008 financial crisis, which led to a rather complex system, where, however, the European Central Bank, as an EUI, plays a steering role and is able to take strong initiatives, where necessary.

This prompted the discussion to focus on enforcement of data protection rules in the EU. In that regard, the problems of enforcement in the data protection sector - which gave the title to this panel - revealed that, much like banking supervision before the financial crisis, the enforcement model provided by the GDPR does not seem suited to deal with the ongoing 'data crisis'.

The discussion then also touched on the issue of timing - how much time should the GDPR model be given before fully delivering on its required enforcement results? Can the One-Stop-Shop model under the GDPR still be considered as 'relatively young'? Or, does the timescale of the enforcement activities performed so far by data protection authorities and the EDPB correspond, or not, to the challenges of our current digital reality?

FIRESIDE CHAT

Anna Colaps in conversation with Shoshana Zuboff

Anna Colaps, European Data Protection Supervisor, Cabinet of the Supervisor & Shoshana Zuboff, Harvard Business School, Professor Emeritus and author of "The Age of Surveillance Capitalism"

In Professor Shoshana Zuboff's opinion, surveillance capitalism combines two elements of a novel economic logic only existing in the digital world. In capitalism, every aspect of human life tends to be commodified, but at the end of the 20th century, Google identified a new territory of commodification: the human experience. To avoid people understanding and finding a way to escape, the massive extraction of data had to be hidden and conducted through surveillance.

When asked whether the current legal framework is delivering on the promise of protecting people's privacy and data, Shoshana Zuboff referred to research conducted by the Irish Council for Civil Liberties on real-time bidding, which showed that whilst a person in the U.S. has their online activity and location exposed 747 times a day, Europeans' data is exposed 376 times - a significantly lower number. This shows that the legal framework is mitigating the harms of surveillance capitalism, but Shoshana Zuboff questions whether this is sufficient.

When asked whether we need a more coherent approach between privacy and competition to tackle the power of big tech, she remarked - quoting the late European Data Protection Supervisor, Giovanni Buttarelli - that the GDPR is only the beginning. The GDPR will not be able to fight surveillance capitalism alone. It has to be understood as the foundation of what is to follow, such as the Digital Services Act and Digital Markets Act.

Finally, Shoshana Zuboff pointed out that the digital world is an extension of our democratic world. However, as long as it is seen as a separate place, it will continue to enjoy special privileges. Surveillance capitalism is not about technology, but about economic power built by people, and it can be and must be undone to liberate the digital arena for people and democracy.

KEYNOTE SPEECH

Věra Jourová

European Commission Vice-President for Values and Transparency

In her keynote speech, European Commission Vice-President for Values and Transparency Věra Jourová presented her views on the potential developments in the field of data protection, with a particular focus on enforcement mechanisms.

Building on the topic of the conference, she submitted three scenarios for the future; the third one was her preferred option. These scenarios were: (1) maintaining the status quo in the hopes that enforcement will somewhat naturally improve with time; (2) re-opening the GDPR in a targeted manner, with the aim to fix certain structural issues, including through centralisation of the GDPR; (3) a targeted intervention, focusing in particular on the harmonisation of procedural laws amongst EU Member States.

The underlying premise of Ms Jourová's presentation was the belief that *"either we will collectively share the GDPR and its enforcement is effective, or others will do it for us*". She called on the EDPB to exercise a more leading and decisive role. *"There should be no taboo in our discussions. We must not close the doors to regulatory changes just because this would appear uncomfortable"*, she concluded.

REMARKS FROM THE EDPB

Aleid Wolfsen

European Data Protection Board Deputy-Chair

The second day of the conference started with a presentation from Aleid Wolfsen, Chairman of the Board of Directors of the Dutch Data Protection Authority, representing the European Data Protection Board as its Deputy-Chair. In his detailed intervention, Aleid Wolfsen pointed out that the main successes of the EDPB, since the entry into the application of the GDPR four years ago, could be demonstrated by the number of cases resolved, for example.

In his presentation, Aleid Wolfsen also reiterated the EDPB's commitment to fostering cooperation between national data protection authorities, referring in particular to the conclusions reached at the EDPB's Vienna Summit. These included, (1) closer cooperation on cases of strategic importance; (2) alignment of national enforcement strategies; and (3) remedying obstacles created by procedural laws.

Against this background, Deputy-Chair Wolfsen expressed the belief that further harmonisation of EU law as regards to procedural laws will be an essential step for the future of cooperation, since harmonised horizontal provisions in administrative procedural law can help bridge differences in how data protection authorities conduct cross-border proceedings.

KEYNOTE SPEECH

Marie-Laure Denis

President of CNIL

In her keynote, President of la Commission nationale de l'informatique et des libertés (CNIL) – the data protection authority of France, Marie-Laure Denis, underlined that the positive impact of the GPDR for controllers and for individuals, should not be underestimated. The GDPR has also revolutionised the way data protection authorities work, particularly regarding their enforcement actions and how they cooperate with each other. Ms Denis pointed out the main developments of this cooperation and recalled that the strength of the EDPB lays in a certain procedural flexibility and channels of cooperation.

"We do not consider status quo as an option" – pointed out Marie-Laure Denis in response to critical comments about insufficient enforcement, especially concerning big players. Against this background, emergency procedures, and, more broadly, dispute resolution mechanisms should not be seen as a sign of conflict or disagreements, but as a legal way of establishing a common approach and moving procedures forward.

She recalled the conclusions of the EDPB Vienna Summit and the need to step up collective efforts in respect of strategic cases. Intensifying cooperation should take place amongst data protection authorities. Procedural aspects should be further harmonised in EU law to bridge differences and to facilitate cooperation. Regarding centralisation, Marie-Laure Denis underlined that the One-Stop-Shop is already partially centralised, as data protection authorities make decisions collectively. She pointed out that other examples of centralised enforcement models, such as competition law, needed time to develop to become highly effective. However, this should not discourage data protection authorities from further intensifying collaborative efforts under the already existing framework, she concluded.

Concluding her keynote speech, Ms Denis shared four lessons learned from the GDPR: (1) not to be shy of regulating the digital market; 2) to promote the GDPR as a competitive advantage; (3) to act more swiftly to ensure that certain practices are addressed before they become reality; (4) that data protection alone will not address the challenges of digital economy.

BREAKOUT SESSION 9

Independent together: combining national and EU decision-making

MODERATOR

BRENDAN VAN ALSENOY
EUROPEAN DATA PROTECTION SUPERVISOR,
DEPUTY HEAD OF UNIT "POLICY & CONSULTATION"

PANELLISTS

FILIPE BASTOS
NOVA SCHOOL OF LAW, ASSISTANT PROFESSOR

ISABELLE VEREECKEN
EUROPEAN DATA PROTECTION BOARD (EDPB),
HEAD OF THE EDPB SECRETARIAT

JOHANNES CASPAR
BUCERIUS LAW SCHOOL, LECTURER

LISETTE MUSTERT
UNIVERSITY OF LUXEMBOURG, PHD CANDIDATE

Panel description:

The GDPR introduced a mechanism whereby the European Data Protection Board (EDPB) can take binding decisions to resolve disputes between national supervisory authorities. When this mechanism is applied, the final outcome of an enforcement action is characterised by decisional interdependence between national authorities and the EDPB.

The GDPR's dispute resolution mechanism is one of the many examples of a "composite administrative procedure" that can be found in EU law. Composite procedures bring to light differences in administrative rules and practices between EU Member States, and between national and EU bodies.

The panel will explore composite administrative procedures from both a theoretical and practical perspective. What are the main challenges that arise when combining different procedures at national, cross-border and EU level? What are ways to overcome these challenges?

Summary of discussion:

The panel began by exploring the nature of composite administrative procedures, their main characteristics, and the challenges that emerge in practice. Whilst these procedures allow the combination of strengths of EU and national authorities, the involvement of multiple authorities increases procedural complexity and raises rule of law challenges in judicial review.

When discussing the GDPR's consistency mechanism, it was highlighted that dispute resolution can be challenging, given the timing and resource constraints of the EDPB, and the fact that the supervisory authorities involved in the dispute must also decide on its outcome. The EDPB's dispute resolution system can promote consistency, but it is also resource-intensive and increases the length of enforcement proceedings. The panellists underlined that enforcement in cross-border cases very much depends on how lead authorities set the scope of their investigation and the extent to which they exchange information with concerned supervisory authorities.

The panel then considered the interaction between independence and the duty to cooperate. It was highlighted that the combination of independence and the obligation to decide together exists in many other areas in EU law. What is distinctive about Article 65 of the GDPR is the short deadline for the EDPB to decide, the absence of own- investigative powers, and the fact that it is bound to the scope of the dispute. Panellists also drew attention to the fact that dispute resolution is meant as a last resort, and discussed recent initiatives to promote cooperation and consensus among supervisory authorities, as well as increased centralisation as a possible alternative to the current model.

Finally, the panel discussed whether a legislative intervention is necessary in order to address the challenges that arise as a result of the differences in national procedural laws. Some panellists were sceptical about the political feasibility of such an effort and/or whether procedural harmonisation would adequately address the issues identified so far. Others emphasised that centralisation and decentralisation are not binary, and that the nuances should be further explored, including an enhanced role for the EDPB.

BREAKOUT SESSION 10

Is it all about Big Tech? Enforcement in the public sector

MODERATOR

JURAJ SAJFERT
VRIJE UNIVERSITEIT BRUSSEL (VUB), DOCTORAL CANDIDATE

PANELLISTS

SASKIA BRICMONT
EUROPEAN PARLIAMENT, MEMBER OF PARLIAMENT

ALYNA SMITH
PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS (PICUM), DEPUTY DIRECTOR

EVELYN AUSTIN
BITS OF FREEDOM, EXECUTIVE DIRECTOR

FANNY COUDERT
EUROPEAN DATA PROTECTION SUPERVISOR, HEAD OF SECTOR "SUPERVISION OF THE AREA OF FREEDOM, SECURITY AND JUSTICE"

Panel Description:

Public authorities process large amounts of data in a way that poses significant risks to the fundamental rights and freedoms of individuals, for instance by storing data for long periods of time, using AI, processing data for the purpose of border surveillance, or for the purpose of keeping public registers. It is therefore important that discussions about the enforcement of the EU data protection framework are not limited to private companies.

This panel will explore enforcing data protection with reference to public authorities, and the challenges associated with this. Are data protection authorities, as public authorities themselves, at risk of being less keen on enforcing data protection compliance in the public sector? Or is it the opposite - is it easier to ensure the compliance of bodies processing data on the basis of specific domestic legislation? In other words, is compliance of public authorities with data protection gaining less or more attention? Is a change needed here? Is the EDPB's coordinated action on cloud services the necessary push to garner more attention on this topic? What more can, or should be, done?

Summary of discussion:

The panel started with a discussion on the recent developments regarding Europol, to illustrate the role of a data protection authority, in this case the EDPS, when supervising the public sector. The discussion also highlighted the risks that a data protection authority can face, namely when legislative intervention is carried out to counter its actions, which is something that is less likely to happen when supervising private actors.

In the same vein, it was pointed out that the development of interoperable frameworks in the field of migration and asylum policies raises concerns on an axiological level, but is also challenging in the context of supervision.

The panel highlighted the importance of supervising the public sector, which increasingly collects and processes personal data, often in a way and in a context where implications for the fundamental rights of individuals are significant. The Dutch childcare benefits scandal was given as an example to illustrate the risks of data-driven administrations in terms of substantial harms for individuals and the role data protection authorities should play in enforcing in the public sector as well. Cooperation between data protection authorities is fundamental when supervising both public authorities and the private sector, given how interconnected certain databases and processing operations are.

BREAKOUT SESSION 11

Enforcing ePrivacy - a way to complement and reinforce the GDPR. Or not?

MODERATOR

DAVID MARTIN
BEUC, THE EUROPEAN CONSUMER ORGANISATION, SENIOR LEGAL OFFICER

PANELLISTS

KARIN KIEFER
COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS (CNIL), DIRECTOR OF "RIGHTS PROTECTION & SANCTIONS" DIRECTORATE

ARWID MEDNIS
UNIVERSITY WARSAW, HEAD OF THE PUBLIC ADMINISTRATION RESEARCH UNIT AT THE FACULTY OF LAW AND ADMINISTRATION

ALBERTO DI FELICE
DIGITALEUROPE, DIRECTOR FOR INFRASTRUCTURE, PRIVACY & SECURITY POLICY

BIRGIT SIPPEL
EUROPEAN PARLIAMENT, MEMBER OF THE EUROPEAN PARLIAMENT

Panel Description:

The panel aims to describe under which circumstances enforcement under the ePrivacy Directive can be an alternative to enforcement under the GDPR. This panel also aims to look beyond the limitation to cases within the material scope of the ePrivacy Directive, and evaluate what its potential advantages and shortcomings are. Moreover, the panel will also consider how the existing shortcomings could be remedied by the proposed changes foreseen in the draft ePrivacy Regulation, and which shortcomings cannot be remedied.

Summary of discussion:

The first part of the discussion focused on the interplay between the GDPR and the ePrivacy Directive, focusing especially on competences and how these are enforced in different EU Member States. Experiences were shared on cases where the two instruments are enforced together or separately. The panellists discussed the challenges that may arise, especially in areas where the intersection between the GDPR and the ePrivacy Directive is particularly prominent, such as cases involving cookies.

For some panellists, the boundaries that separate the GDPR and the ePrivacy Directive are clear and can be easily distinguished from one and other, including in the context of the One-Stop-Shop. For others, however, they remain obscure.

The discussion on the One-Stop-Shop mechanism was particularly relevant in this area, and the notion that if the e-Privacy Regulation will be *lex specialis* to the GDPR, the enforcement model should be the same. Especially for the industry sector, the One-Stop-Shop mechanism provides more legal certainty than the current patchwork situation with the Directive. Making the same authority competent for both the GDPR and ePrivacy, with the same powers and cooperation mechanism, is likely to enhance consistency and harmonisation.

BREAKOUT SESSION 12

Where enforcement is just a piece of the puzzle: the GDPR and the journalistic exemption

MODERATOR

NATALIJA BITIUKOVA
IKEA RETAIL, GLOBAL PRIVACY LEAD

PANELLISTS

RENATE NIKOLAY
CABINET OF VĚRA JOUROVÁ, EUROPEAN COMMISSION VICE-PRESIDENT FOR VALUES AND TRANSPARENCY, HEAD OF CABINET

DAVID ERDOS
UNIVERSITY OF CAMBRIDGE, CO-DIRECTOR OF THE CENTRE FOR INTELLECTUAL PROPERTY AND INFORMATION LAW

MATTHEW CARUANA GALIZIA
DAPHNE CARUANA GALIZIA FOUNDATION, DIRECTOR

SHARA MONTELEONE
ITALIAN DATA PROTECTION AUTHORITY, LEGAL OFFICER

Panel Description:

Article 85 of the GDPR creates a possibility for EU Member States to exempt those who exercise their freedom of speech for "journalistic purposes" from specific GDPR rules and obligations. The panel aims to identify how the GDPR has been enforced in this specific context and how to reconcile the need for journalistic freedoms. In other words, the panel aims to explore how to protect investigative journalism - especially in the context of a cross-border activity- while still ensuring compliance with data protection legislation. Moreover, the panel will explore the role that supervisory authorities have in the context of enforcement and what the next steps could be, in order to make it effective and efficient. Lastly, the panel aims to assess whether proposals such as the Anti-SLAPP (anti-strategic lawsuit against public participation) proposed by the European Commission, are a possible way to counter these systematic issues.

Summary of discussion:

The panel discussions firstly highlighted that, whilst data protection authorities remain the guardians of data protection rights, including in the journalistic context, they continue to face various challenges, such as interpreting different legal regimes with fundamental differences.

The discussions also underlined the existence of a potential epistemic challenge - data protection authorities may not always have expertise on the right to freedom of expression. The panellists pointed out that whilst an exemption for journalistic activity exists under Article 85 GDPR, certain EU Member States might have been interpreting the GDPR in a way that make sources of information, on which journalists have depended on in the past, less open.

In this regard, the European Commission's representative highlighted that during the GDPR negotiations, a wide margin of manoeuvre was left to EU Member States in the implementation of Article 85 GDPR, in order to specify the reconciliation that is necessary when dealing with different fundamental rights. On the other hand, it was acknowledged that this led to fragmentation and a certain reluctance on the side of the EDPB to engage in specific clarification on the Article's interpretation and implementation.

Lastly, the panel discussions put particular emphasis on the most recent Proposal of the European Commission on protecting individuals who engage in public participation from manifestly unfounded or abusive court proceedings, aimed at creating safeguards throughout the EU in the context of the angle of media pluralism.

BREAKOUT SESSION 13

What is up in Court? GDPR cases before CJEU and their potential impact

MODERATOR

ANNA BUCHTA
EUROPEAN DATA PROTECTION SUPERVISOR,
HEAD OF UNIT "POLICY AND CONSULTATION"

PANELLISTS

WILLEM DEBEUCKELAERE
BELGIAN FEDERAL INSTITUTION FOR THE DEFENCE OF HUMAN RIGHTS, BOARD MEMBER

HERWIG HOFMANN
UNIVERSITY OF LUXEMBOURG, PROFESSOR OF EUROPEAN AND TRANSNATIONAL PUBLIC LAW

HERKE KRANENBORG
EUROPEAN COMMISSION/ MAASTRICHT UNIVERSITY, MEMBER OF THE LEGAL SERVICE/PROFESSOR EUROPEAN DATA PROTECTION AND PRIVACY

EWA GROMNICKA
EFTA SURVEILLANCE AUTHORITY,
LEGAL AND EXECUTIVE AFFAIRS DEPARTMENT

Panel Description:

The aim of this panel is to deal with the enforcement aspects of the GDPR within the context of the Court of Justice of the European Union (CJEU) case law, with a particular focus on the CJEU Judgment in Case C-645/19 Facebook Ireland and Others. In such a landmark case, the CJEU delivered an important judgment concerning the One-Stop-Shop mechanism. While the CJEU reinforced that the lead supervisory authority is the sole interlocutor in cross-border processing operations, it also underlines the conditions under which the concerned supervisory authority may bring enforcement actions against these processing operations.

Summary of discussion:

During the initial remarks, the panel provided an overview of data protection related cases that are pending before the CJEU. Certain trends were highlighted, such as: (1) the complexity of composite procedures and multi jurisdiction cooperation; (2) the interaction between public and private enforcement and the potential conflicts when they run in parallel; (3) the topic of data transfers and the complexity stemming from jurisdictions of non-EU/EEA countries.

Experiences within the European Free Trade Association (EFTA) surveillance authority were also shared. Panellists touched on the main differences and procedures in relation to data protection that are necessary to adapt per EFTA country. It was highlighted that, although EDPB decisions are binding in these countries, it is not possible to use the preliminary ruling procedure, because there is no reference to the CJEU in their legislation. The EFTA Court cannot assess the validity of EEA legal acts and EDPB decisions.

Finally, part of the discussion was also dedicated to analysing the Facebook case. After an overview of the case, some panellists were of the opinion that the Court has given a strong message not only to the lead supervisory authority, but also to the concerned authorities. Some believed that the Court actually saved the One-Stop-Shop mechanism, being aware that it is still to be seen how and whether it will function; and how should the focus be on the responsibilities between authorities. Nevertheless, some panellists questioned what happens if cooperation, which is based on good will, does not work, as the amount of procedural discretion that the lead authority has can lead to the slowing down, and near impossibility, of enforcement.

BREAKOUT SESSION 14

Anticipating risks – how can foresight support data protection?

MODERATOR

GABRIELE RIZZO
SWISS CENTRE FOR POSITIVE FUTURES - UNIVERSITY OF LAUSANNE, DIRECTOR OF RESEARCH

PANELLISTS

KRIZNA GOMEZ
FORESIGHT PRACTITIONER, INDEPENDENT CONSULTANT

STEPHEN ALMOND
UK INFORMATION COMMISSIONER'S OFFICE (ICO), DIRECTOR OF TECHNOLOGY AND INNOVATION

DAVID BARNARD-WILLS
TRILATERAL RESEARCH LTD, SENIOR RESEARCH MANAGER POLICY, ETHICS AND EMERGING TECHNOLOGY

WILLIAM MALCOLM
GOOGLE, SENIOR DIRECTOR, INTERNATIONAL PRIVACY AND CONSUMER PROTECTION

JEKATERINA MACUKA
DATA STATE INSPECTORATE OF THE REPUBLIC OF LATVIA, DIRECTOR

Panel Description:

Existing enforcement models in the data protection field are mostly reactive, as opposed to proactive. Reacting to an issue can be helpful to correct the immediate problem, but it is not sufficient to remedy the effects that have already spread in the mass market. What is more, reacting to risks might lead to reinforcing the idea that data protection stifles innovations. The panel aims to explore the possibility of adding an ex-ante enforcement model to the already existing ex-post model with foresight instruments in order to be better prepared for the upcoming risks and challenges that might arise from the deployment of new technologies. How can foresight and future studies be used to build a new anticipatory approach in the data protection enforcement field?

Summary of discussion:

Foresight in the world of data protection could prove to be an “information augmentation” tool between those who develop technologies, and those who regulate them. This outcome was the main result of the discussion, which highlighted how foresight is a sleeping muscle that must also be awakened in the world of data protection. The ultimate goal is to look more closely at the parameters to understand the issues that might only be seen as a weak signal today, but may become mainstream in the future overnight.

The speakers also underlined how foresight is essential to develop greater awareness and preparedness in a complex technological and regulatory environment. The idea of developing foresight exercises at European level has been stressed several times, and could become the next tangible outcome to be embedded into consistent EDPB practices.

BREAKOUT SESSION 15

A quest for resource: efficient enforcement through innovation

MODERATOR

SUZANNE VERGNOLLE
SWISS INSTITUTE OF COMPARATIVE LAW AND UNIVERSITY OF LAUSANNE (UNIL), POST-DOCTORAL FELLOW

PANELLISTS

SANTIAGO DÍEZ MARTÍNEZ
AGENCIA ESPAÑOLA DE PROTECCIÓN DE DATOS (AEPD), DEPUTY SECRETARY GENERAL

HRISTO ALAMINOV
COMMISSION FOR PERSONAL DATA PROTECTION OF BULGARIA, HEAD OF THE INTERNATIONAL COOPERATION AND PROJECT MANAGEMENT

MASSIMO ATTORESI
EUROPEAN DATA PROTECTION SUPERVISOR, ACTING HEAD OF UNIT "TECHNOLOGY AND PRIVACY"

MARTIN ABRAMS
THE INFORMATION ACCOUNTABILITY FOUNDATION, CHIEF POLICY INNOVATION OFFICER

KARI LAUMANN
NORWEGIAN DATA PROTECTION AUTHORITY, HEAD OF SECTION FOR RESEARCH, ANALYSIS AND POLITICS

Panel Description:

How budget is allocated to carry out core activities in the field of data protection, and how much is needed to do so effectively has always been a hot topic of conversation. Whilst authorities are equipping themselves with innovative tools to make their enforcement actions more effective, there are still discrepancies in the resources that EU Member States dedicate to their agencies. This panel aims to tackle this quest for resource in a new light: by reframing it to explore whether additional and innovative tools and approaches can help in practice to develop the full potential of supervisory authorities, and by tackling budgetary challenges. Have innovative tools eased the burden on resource expenditure? Or are classical oversight approaches always better? How can this gap between different authorities be supported and supplemented by oversight at European level?

Summary of discussion:

There are many tools that authorities have used to develop their full potential in the field of enforcement. To this end, the discussion sought to find a link between the most important initiatives carried out at European level and overseas.

Examples of excellent results obtained from the use of technological tools to support information collection processes from individuals and controllers were mentioned. Through guided processes, it is possible to succeed in improving the quality of the information collected and the speed of its processing in the context of inspection.

A fundamental point in the discussion concerned the use of artificial intelligence, both in the context of regulatory sandboxes, and to facilitate the task of auditors. Concluding the discussion, panellists shared the view that it is necessary to develop synergies at European level to encourage the re-use and improvement of these good practices.

BREAKOUT SESSION 16

The path to a coherent enforcement in the digital ecosystem: protecting markets, societies, democracy

MODERATOR

NICHOLAS HIRST
MLEX, REPORTER

PANELLISTS

CRISTINA CAFFARRA
CHARLES RIVER ASSOCIATES, SENIOR ASSOCIATE

ALEXANDRE DE STREEL
UNIVERSITY OF NAMUR - CERRE, PROFESSOR OF EUROPEAN LAW

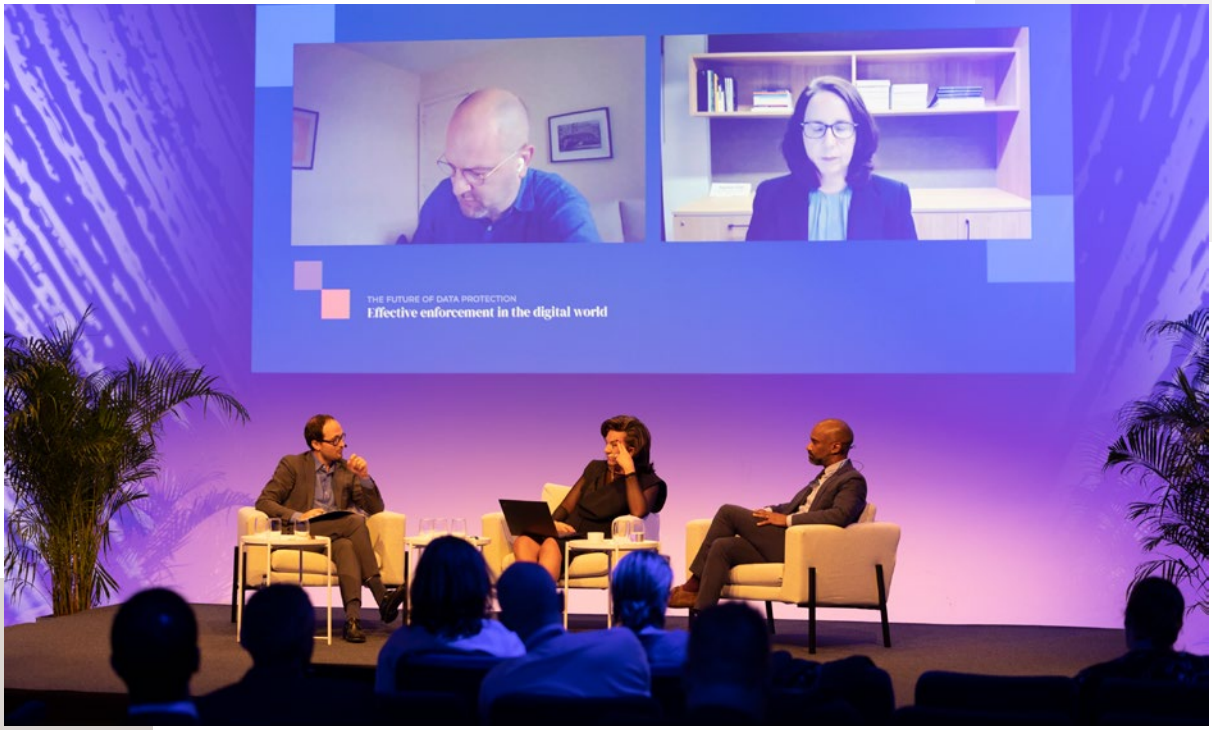
OLIVIER SYLVAIN
FEDERAL TRADE COMMISSION - USA, SENIOR ADVISOR ON TECHNOLOGY TO THE CHAIR

ANGELENE FALK
OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER, INFORMATION COMMISSIONER AND PRIVACY COMMISSIONER

Panel Description:

For a long period of time, authorities responsible for the digital ecosystem applied their respective laws in strict isolation from one another. In order to create an informal forum of discussion and facilitate cooperation and information sharing, a "Digital Clearinghouse" was established in 2016. Yet despite important developments, authorities are still not in a good place when it comes to successfully integrating privacy and data protection considerations into theories of harm in competition law, or to attaching concrete relevance to respecting or valorising privacy and data protection values and rules as competitive advantages for the market. Some invoke the GDPR's under-enforcement, the absence of an institutionalised channel for information sharing, or the *ne bis in idem* principle as the main obstacle to cooperation between authorities. These obstacles are also listed as preventing the mutual integration or improvement of each fields' toolboxes.

This panel aims to tackle the following questions: Are regulators still guarding their own fences, overlooking the benefits of a coordinated and integrated approach? Are the alleged obstacles to cooperation of a legal or political/societal nature? Could we imagine, 30 years from now, the need for a single digital regulator to come into existence for Europe? Do we need stronger enforcement of data protection rules in support of the call for more cooperation, and vice-versa? Finally, what should Europe do with the philosophy behind the Digital Clearinghouse?



Summary of discussion:

The panel discussed the existence of a serious market power crisis and of a data protection crisis, as mutually reinforcing one another. Large market power allows big players to disregard data protection at scale. Similarly, the disregard for data protection serves to reinforce market power. A trade-off between privacy and competition objectives should not be dictated by the big players in the market. More resources and investments should be directed to build a vision that is truly achieving a coherent approach in enforcing rules in digital markets. Panellists remarked that competition and consumer data protection vocabulary are not sufficiently adapted to the phenomena of the "commercial surveillance". They also agreed that there is also the need for a stronger and fully integrated approach.

Insights from privacy and data protection experts are essential for the analysis, diagnosis and prediction of how market power can be created built and leveraged, underscored the panellists. There was a call for designing a framework in which the views of the data protection authorities and experts are systematically incorporated into antitrust decision-making, in the form of an official, publically-available opinion, for every single case.

The prospect of a centralised enforcement body for larger platforms was considered. It was highlighted that this is achievable without the need to amend substantial provisions of the GDPR, as it was the case some years ago for the banking regulation. Centralisation would not put enforcement at a distance from individuals, as there would still be complaint handling and monitoring at national level.

Introduction of the New California Privacy Protection Agency

Ashkan Soltani, Executive Director of the California Privacy Protection Agency

Ashkan Soltani, Executive Director of the California Privacy Protection Agency, introduced the new California Privacy Protection Agency (CPPA). In his address, he gave an overview of the California Consumer Privacy Act passed in 2018. Ashkan Soltani explained that California became the first state to provide its citizens with certain rights to privacy, such as the right to access and the right to stop the sale of individuals' information. He then spoke of "Proposition 24", also known as the California Privacy Rights and Enforcement Act, which was approved in 2020 and expands and amends the provisions of the California Consumer Privacy Act, and also establishes the California Privacy Protection Agency.

"The California Privacy Protection Agency is tasked with three key functions: rule-making, providing guidance to consumers and business about the law, and administrative enforcement of the law", Executive Director Soltani shared. The California Privacy Protection Agency has also just released its draft rule-making package, clarifying key aspects of the law, including, for example, an expansion on the definition of dark patterns. Mr Soltani also explained that California Privacy Protection Agency's draft rule-making package also lays out the administrative enforcement process, including the CPPA's audit authority and its process for handling sworn complaints.

"We are effectively the first data protection authority in the United States", stated Executive Director Soltani as he concluded his presentation by sharing his hopes for continued conversations with EU counterparts on the California Privacy Protection Agency s approach to effective enforcement.

MAIN SESSION 3

GDPR 25/30 - What are we going to be discussing in a few years?

MODERATOR

LOKKE MOEREL
MORRISON & FOERSTER, SENIOR OF COUNSEL

PANELLISTS

MICHAEL VEALE
UNIVERSITY COLLEGE LONDON,
ASSOCIATE PROFESSOR

AXEL VOSS
EUROPEAN PARLIAMENT,
MEMBER OF THE PARLIAMENT

ANNA FIELDER
EUROPEAN DIGITAL RIGHTS (EDRI), PRESIDENT

MATTHEW NEWMAN
MLEX, CHIEF CORRESPONDENT

Panel Description:

In this panel, we will try to predict what will be our perception of the GDPR in 2025, what will dominate the seminars, conferences, and political debates. What compliance challenges will we be facing? What will be the public perception of privacy and data protection? What can we expect? What can we already prepare in this regard, and if so, what are we waiting for?

Summary of discussion:

Using the "metaverse" as a metaphor for the direction in which the digital future is heading, this panel explored potential data protection and technological challenges that society will face within the next decade. One of these challenges was the possible emergence of "infrastructural giants", which dominate the digital ecosystem. It was remarked during the panel that one central question for data protection authorities in the future will be how to deal with an orchestration of power in interconnected ecosystems, which data protection is not currently feasibly set up to regulate.

Panellists advocated for an integrated enforcement approach to tackle future challenges, and highlighted the need for data protection authorities to work together with NGOs in order to cooperate for stronger enforcement. Maintaining the GDPR's credibility was also labelled as a challenge for the future, especially if there is no effective enforcement.

The panel discussion then broadened. Exchange of views focused on how to adequately balance data protection with global competition issues becoming more transnational in breadth and scope. "*Europe can provide a lot to the world by combining fundamental rights with technology*", said one panellist, whilst underscoring the importance of regulatory sandboxes to prepare us for the future.

The panel then discussed how to get ahead of the curve when it comes to encouraging compliance. Strategies, such as structuring digital ecosystems with ex-ante approaches, were brought up as examples. "*Data protection authorities need to be more creative with their enforcement*", said a panellist, "*because if they don't, they are going to get stuck in the quagmire of ecosystems not knowing who to point at, and they will be subject to procedural challenges if they try to target ecosystems*."

EDPS keynote - "Now What?"

Wojciech Wiewiórowski, European Data Protection Supervisor

The following text is the keynote speech, titled "Now What?", delivered by Wojciech Wiewiórowski, European Data Protection Supervisor, on 17 June during Day 2 of the conference.

Good morning,

Thank you all for being here for the second and final day of our conference. I am so grateful to have this opportunity to bring so many people together, and I am proud of the EDPS team that has worked around the clock over the last few months to make this conference what it is.

I understand why some of you might ask why is the EDPS organising this conference? Today, I would like to tell you why. Because it is high time to deliver the promise of the landmark EU legislation that the General Data Protection Regulation (GDPR) is. Because as the European Data Protection Supervisor (EDPS), I feel personally responsible for this. Because there is no such thing as standing still and not reacting - either you move forward, or the world moves without you.

But, I see clearly - and this conference has reinforced my belief - **that there is a path we can follow to finally deliver** what was started 10 years ago, in January 2012, when the GDPR Proposal was announced.

Back then, Joe McNamee of European Digital Rights said that there was "**a desperate need for stronger enforcement** in the EU Member States", echoed by the draft GDPR preamble calling for a strong and more coherent data protection framework in the European Union, backed by strong enforcement. During these last few days - today and yesterday, at this conference - we have heard many similar statements.

This is why, at the EDPS, we wanted to come back to the drawing board, to sit down together with all of you and reach conclusions that can inform the public debate. **The public deserves this. Things that can be defined now should be defined now**, not in an unspecified future.

First, let me try to summarise the discussions held so far. I am thankful to everyone who does not shy away from facing difficult questions and who tries, in the spirit of leadership and responsibility, to bring progress.

Listening to the conference discussions, I see a lot of dedication and passion. I see a sense of **pride behind the GDPR** and a sense of **expectation that Europe will continue to lead** in protecting digital rights. I also see hopes that certain promises of the GDPR will be better delivered. I believe **we are still not seeing sufficient enforcement**, in particular against Big Tech.

Structural obstacles were mentioned, such as:

- unequal burden sharing;
- procedural law differences hampering cooperation;
- the involvement of the European Data Protection Board - too late, and probably too little.

Way too often, the GDPR puts its constraints on small entities, but spares the big ones. In a way, instead of achieving level playing field, we observe how big companies, thanks to their resources, can benefit from the lack of strong enforcement and further expand their advantage over small competitors.

We also see **individuals who wait years to obtain justice**, even in what can be seen as a small and simple case. With the plethora of the new legislation, the so-called Digital Rulebook, the data protection framework is at risk of becoming an orphan of EU law: a hope that once was but no longer is.

We can also observe that, when data protection is taken seriously, when it means public authorities cannot, for once, do something they want, attempts are made to either **threaten the independence of data protection authorities**, or attempts of legislative intervention are made to counter the decisions of the regulator.

We have heard yesterday the call for a study on the differences between enforcement in the private sector on one hand, and in the public sector on the other. I can join this call, pointing that even the EU legislator, proud of its rigorous standards for companies or individuals, starts to modify such standards (with retroactive effect), when it was enforced for the first time against an EU agency and the EU Member States. Of course, I mean the recent review of the Europol Regulation.

So, what is the way forward? The coat of arms of my hometown, Gdańsk, says *Nec temere, nec timide*[1]. Without fear, but not too brave. The discussions held so far at this conference shows that what we all share here is **one common objective: to protect people**. Where do we go from there? How do we achieve an overarching standard of compliance across all EU Member States?

At the EDPS, we have a commitment which is twofold. One, to apply and enforce the law in the interest of people it aims to protect. Two, to identify areas for improvement and to propose the way to reach them in the future.

It is with this mind-set that the EDPS approaches its role in respect of the functioning of the GDPR, for example by providing the EDPB Secretariat and fighting for sufficient resources; by proposing initiatives such as the Support Pool of Experts; by actively participating and contributing to numerous actions, like the Coordinated Enforcement Framework. I am glad that the Vienna Statement promises closer cooperation for strategic files. We are confident that the EDPB will play an increasingly decisive role through Opinions and dispute - resolution cases.

We are proud to see that **we are all, as data protection authorities, doing better today than we were doing yesterday**, as illustrated by the number of successful One -Stop- Shop cases.

There is, however, also a tomorrow. The title of the conference has the word “future” in it. We are all gathered here to have a say over what our future will look like. We can define it. Shape it. **So how do we want our tomorrow to look like?**

Let me start by clearly stating that **the EDPS is not proposing to reopen the discussions on the substance of the GDPR** and is not, and will never be, endorsing any attempts to weaken its principles.

I notice, at the same time, new governance models appearing, for instance in the European Commission’s Proposals for a digital rulebook, which very much look like a lesson learned from the GDPR. This shows that a reflection on a governance model can be independent from a debate about its principles, and the aims of the law.

[1] “Nec temere, nec timide” (lat.) - Neither rashly, nor timidly.

For instance, Marie-Laure explained earlier how a fully-centralised model is constitutionally impossible, but expressed the paths to a more coordinated approach. I would like to go one-step further.

I share the views that leaving the procedural laws fully to the domain of EU Member States is causing critical problems for the cooperation between data protection authorities, which leaves individuals without the protection that the GDPR promises. I am glad that **we are now ready to talk legislation**.

In my view, a harmonisation of administrative procedural laws could bring an added value only if it covers a broad range of aspects, which I find very unlikely. For example, harmonising deadlines is hardly advantageous without a common understanding of what constitutes a final complaint decision. Similarly, agreeing on the nature of the decision would most likely have to result in a deep harmonisation of national law, such as the right to be heard, which brings into the equation the principles of EU subsidiarity.

A limited harmonisation will not radically improve the functioning of the One-Stop-Shop, as it will not overcome all the structural differences. In other words, I believe harmonisation **might help, but it is by no means a silver bullet.**

Yesterday, we discussed whether a model that assigns responsibility for the success of EU law on a few national authorities is fair. Does it ensure the effectiveness of EU law? Is it optimal to design it this way and then to expect results from one or two authorities when others remain less involved?

I find the costs of One-Stop-Shop increasing. It is becoming an expensive shop. And, while all EU citizens are expected to pay these costs, they often do not get enough in return. Is this really a luxury we can afford?

Discussions on burden sharing within the EU are as old as the European project itself. The development and **the success of the EU integration can be summarised with two words: Stronger Together**. This success is based on a continuous reflection on how to share tasks between EU Member States and how to be the most effective when assigning competence to EU institutions, bodies, offices and agencies.

This brings us to the role of the European Data Protection Board (EDPB). I share the views expressed by some at the conference that in the current model, the EDPB's interventions come too late and their impact is therefore limited. I believe this needs to change. The commitment of the EDPB Vienna Statement last April is a first step, but many more steps will need to be taken in the future.

I strongly believe that - following the well-known examples from other fields of EU law and new trends, such as the Digital Markets Act - at a certain moment **a pan-European data protection enforcement model is going to be a necessary step** to ensure real and consistent high-level protection of fundamental rights to data protection and privacy across the European Union. An example would be some sort of litigation chamber that divides the political discussions from decisions concerning pan-European cases.

Such a model would not only mitigate the problem of uneven allocation of responsibilities, but would also ensure real consistency across the EU, including through **strong mechanisms of collegiality**. I do not want a case against my local coffee shop in Gdańsk to be analysed by an office in Brussels. But, I would like the serious cross - border cases to be handled on a central level, on the basis of a simple and transparent procedure.

I also see an advantage of such model concerning the issue of specific differences between procedural laws. With full respect to the principle of subsidiarity, **key investigations, based on a certain threshold** - the modalities of which should be discussed further - **would be conducted on a central level**, and subject to direct scrutiny of the Court of Justice of the European Union. Therefore, overcoming potential issues stemming from incompatible national legislations or patchwork harmonisation attempts.

Dear Friends. I will stop here.

I shared with you my thoughts on the issues we are discussing at the EDPS conference. I am inspired by discussions held here; by your contributions, views and comments. I am proud of the community gathered here: committed, passionate and able to continuously find ways to improve. I see the consensus on the need to step up enforcement efforts as a clear indication of where we should focus in the near future.

I deeply believe that a closer integration is needed if we are serious about protecting EU citizens' personal data across the EU. We are weaker when divided, and stronger together.

Thank you.

Side events

From the very beginning of the conference's preparations, it was our genuine aim to provide a space for people to come together and meet formally, but also informally, and in a way that fostered genuine interaction and engagement between different stakeholders. Especially in post-pandemic times, we believed that as a data protection community, we needed a forum through which to have conversations - as many as possible - about the challenges we have faced and are facing, as we continue to embark into our new reality. With this mind-set, we made an effort to provide our conference participants with multiple opportunities for such dialogue.

Conference Exhibition Booths

We provided the opportunity for representatives of civil society and academia to set up an interactive exhibition booth at the EDPS conference venue during the conference. Located in the main breakout hall, the exhibition fair served as an opportunity for the data protection community to showcase their work, whilst providing space for informal meetings, discussions, and networking.

For this activity, we had the pleasure of welcoming the following organisations: Young European Federalists; Future of Privacy Forum; the European Data Protection Board; European Digital Rights; European Centre on Privacy and Cybersecurity; Data Protection Law Scholars Network; Privacy Laws and Business; the European Data Protection Supervisor.

Anticipatory Enforcement Workshop

With the support of the Brussels Privacy Hub, the EDPS organised a workshop on anticipatory enforcement on the margins of the conference to build awareness on foresight and anticipatory techniques applied to data protection enforcement practices. During the workshop, participants discussed hypothetical scenarios that may happen in the future, in which enforcement is carried out proactively, without waiting for a risk or a situation of non-compliance to materialise.

The workshop was preceded by a preparation phase, the goal of which was to set up the workshop and prepare it for the participants. The methodology chosen was a reviewed and simplified version of the 4-archetypes method originally developed by Jim Dator at the University of Hawaii. In this phase, two relevant forces of change in the context of data protection enforcement were identified. For the workshop, the chosen forces of change were the level of coordination and the timing of enforcement activities.

Subsequently, the two forces were compared and contrasted. From their intersection, four plausible scenarios were developed and set in 2030. Scenarios prepared aimed to generate uncertainty and other uncomfortable feelings in participants to provoke discussions and reactions. These scenarios were then shared with the selected participants a few days before the workshop.

One scenario was selected by the participants and discussed in one the two slots, with the use of design simulation techniques to foster a more immersive and plural discussion. During the discussion, participants stressed that these scenarios were fully plausible, but also frightening; a sense of urgency emerged amongst participants.

The main outcome of the workshop was that short-term effects of privacy violations might not be visible; therefore, individuals may not be aware of the effects that might materialise in the long term. Foresight and anticipatory techniques can become important tools that contribute to raising awareness amongst individuals about the long-term effects of these privacy violations. What is more, it emerged that a continuous and structured dialogue between the different stakeholders of data protection, especially enforcement agencies and bodies is necessary. This dialogue would allow for greater clarity in the application of data protection rules. Participants agreed that the use of foresight methodology could support this dialogue.

Speed Networking

On the margins of the cocktail reception at the end of Day 1 of the conference, we organised a dedicated networking opportunity called “Speed Networking”. In this informal setting, conference participants had the possibility to meet and connect with speakers and other fellow participants, to introduce themselves, to share thoughts and ideas, and to ask questions. The allocation of places for the speed networking activity was done on a first-come, first-served basis. Participants could use a pre-defined set of questions with which to start the conversation, which varied from table to table, or propose their own topics for short conversations before switching to other participants.

Gala Dinner

All conference speakers were invited to take part in a Gala Dinner, which was held at the Residence Palace in Brussels. The Gala Dinner provided an opportunity for speakers to get to know each other and converse with one another in a more intimate setting. During the evening, friends close to the EDPS gave their remarks and shared stories about the data protection community and its work.

Evening Party

Hosted in Plein Publiek at Mont Des Arts in Brussels, the official conference evening party brought together all conference participants and speakers to enjoy a beautiful summer’s evening together, with some snacks, refreshments and music.

Concluding remarks

With this report, we wanted to share with you a glimpse of what the EDPS conference looked like. What the report cannot capture however, is the atmosphere of the event, the inspiration taken from the conversations, the innovative ideas discovered, and the new friendships found. None of this would have happened without all conference participants - both those that were present in Brussels, and those that joined us online. We would like to thank them for their presence, contributions and support.

We hope that this report will serve not only as a memory, but also as a useful source for years to come for all those who care about data protection and its future. As mentioned by Wojciech Wiewiórowski, the European Data Protection Supervisor, in his farewell letter to the Conference participants (see page 75 of this Report), the conference aimed at sparking certain reflections and stimulating conversations that will help move the debate forward. But, it is now a task for the whole data protection community to continue these reflections. The EDPS will always remain a devoted member of these discussions and of this community.

ANNEX 1

EDPS Conference Announcement Leaflet

In January 2022, ten years will have passed since the first draft of the General Data Protection Regulation (GDPR) emerged. A decade later, and almost four years after the GDPR's entry into application, the EDPS believes it is time to reflect on the functioning and efficiency of the Regulation. This is why, on **16 and 17 June 2022, the EDPS will host a conference** in Brussels bringing together global stakeholders from the digital regulatory sphere to reflect on and discuss current approaches to enforcement models.

The conference, titled **"The future of data protection: effective enforcement in the digital world",** was born out of the EDPS 2020-2024 Strategy, where the wheels were set in motion for the EDPS to host "a conference on how to safeguard individuals' rights in a world that will, hopefully, be recovering from this current crisis". The following summary presents the EDPS' plans for this conference.

With this conference, the EDPS seeks to acknowledge that there is scope for discussion on and potential improvement of the way current governance models are implemented in practice. The EDPS therefore plans to create a platform to bring **the world's best practices together**, and steer meaningful discussions about the digital regulatory sphere.

At the time of the **Conference on the Future of Europe**, the EDPS believes that such a discussion on the future of privacy and data protection can also serve to reinforce the role of the EU as being at the centre of this debate. Under the umbrella term of "discussions about the digital regulatory sphere", the EDPS envisions a dialogue on regulations pertaining to data protection, competition, digital markets and services, and artificial intelligence - both in the EU and beyond. In particular, we aspire to encourage a discussion on the different approaches to enforcement action, and facilitate the sharing of experiences on best practices and systemic challenges in enforcement.

The first years of the GDPR's operation revealed much progress in the way personal data is protected across the digital domain. However, some shortcomings were also brought to light. In cases involving cross-border processing of personal data, enforcement of the GDPR hinges upon the effectiveness of the **One-Stop-Shop mechanism (OSS)**.

1

The OSS stipulates that companies with a main establishment in the EU shall, in principle, only have one interlocutor, namely the authority of the EU Member State where their main establishment is located. At the same time, the GDPR also puts in place a cooperation and consistency mechanism that provides for the involvement of the supervisory authorities of other EU Member States. Despite the important efforts **to enhance enforcement and cooperation**, critics continue to question the efficiency and long-term viability of this enforcement model.

Therefore, the conference will seek to explore both **constructive improvements that exist within the current framework**, but also **alternative models of enforcement of the GDPR**, including a more centralised approach. Foresight – that we define as a disciplined exploration of alternative futures – is key to reach tangible and actionable outputs. The EDPS therefore aims to bring together leading minds that can collectively provide suggestions for optimal approaches to enforcement.

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ANNEX 2

Welcome letter to conference participants by Wojciech Wiewiórowski

Dear Friends,

I see the world around me changing in ways that I do not always comprehend. The past years, and especially the past months have been - I think it is fair to admit it - scary. But they also showed a lot of courage, resilience and leadership. They showed, once more, how much power people have when they deeply care about something.

This feeling of uncertainty, on one hand, and hope and possibility, on the other, has been with me ever since I took on the role of the European Data Protection Supervisor. It made me realise at a certain moment that we need to look more bravely into the future. And it was this thought that birthed the idea of the conference.

When I began building this conference a year ago, I was confronted with many uncertainties. Would it be possible to host an in-presence event in June 2022? Should we already begin discussing the future of data protection? Is there political, legal, or even a general appetite to discuss aspects of the data protection framework that could be improved?

Indeed, such discussions are not easy. Yet, I think we must have the courage to engage in them nonetheless, for they are often the most important. We cannot blindly walk into our future, hoping to stumble onto the path of effective enforcement on the way.

When I first announced this conference, I made a promise to you to engage in a meaningful discussion about the future of the digital sphere. With the conference programme that we have put together for you and with the narrative it sets into motion, I intend to deliver on that promise. Here is how:

We will begin the conference paradoxically where we want it to end: by discussing what effective enforcement means and how to get there. We then move to a consideration of whether we risk diminishing the global impact of the GDPR if compliance is not stepped up. To do this, we will look at what the GDPR can learn from the world in terms of approaches to enforcement and assess whether these could be mirrored in the EU regulatory framework.

Building on the notion of experience from elsewhere, we will discuss the governance models of the so-called Digital Rulebook and whether they may serve as a source of inspiration for data protection

Then, we will turn to practice and talk about the problems on the ground. This will bring us to the larger question of how we should share the burden of enforcement, whether there should be an overarching legal standard of 'fairness', and what procedural issues constitute a barrier to the efficient functioning of the One-Stop-Shop model.

After talking problems, we will talk solutions. We will reflect on empowering the European Data Protection Board, explore judicial remedies, and debate class actions and complaints handling. We will examine whether other fields of EU law have particular characteristics that make them more effective. We will consider these reflections in light of our own challenges, such as those of combining different procedures, or enforcing with reference to public authorities. We will discuss e-Privacy and the journalistic exemption under the GDPR.

We will then hone back in on a discussion on the future of data protection, where we will anticipate our perceptions and debates over the next couple of years. We will deliberate on the current landmark judgments from the Court of Justice of the European Union.

And with this, we will move to a reflection on whether we need to be more innovative, using foresight instruments and tools, or new cooperation mechanisms, to design data protection authorities of the future that are anticipatory and well-suited to the realities of our intertwined world.

In between all of this, we will have keynotes from high-level guests, workshops, and networking events, allowing you to take discussions beyond the four walls of the breakout rooms and bring them to life in animated dialogue.

I hope that by walking you through the programme and connecting the dots of our carefully crafted narrative, you will catch a glimpse of what we have been stringing together for you this past year here at the EDPS.

Yours,
Wojciech Wiewiórowski

ANNEX 3

Farewell letter to conference participants by Wojciech Wiewiórowski

Dear Friends,

The EDPS 2022 conference is over. I have had to pinch myself several times this week to remind myself of this fact. That what we had been working on tirelessly over the last year with so many of our colleagues, managed to come together so beautifully over the span of a mere 48 hours. But equally, the conference doesn't really feel over yet, and this is why I am finding it hard to conclude something which in many ways has only really just begun.

A genuine discussion was sparked over the course of the two days of the conference. A sprouting dialogue that is still very much in its nascent form. Although we may have had conference sessions on what effective enforcement means, how to fairly burden-share, or how to empower the EDPB, a one-hour conversation on these topics can hardly begin to do them justice.

This is why, it is my sincere hope that you will carry with you the thoughts, questions, and ambitions that you have, and continue to explore and fight for them until they become a reality. We are the ones that can make a change. And while I cannot promise you another conference of this magnitude during my term as the EDPS, I can promise you that the EDPS will continue to strive for improvements on how people's fundamental rights are protected.

Finally, I use this opportunity once more to give thanks where thanks is due: first and foremost, to all of you, whose ideas and contributions were essential in making the conference come to life, and to all of you who joined us online. I thank again our speakers, the entire EDPS team, and everyone else, from civil society to academia, who offered their invaluable help along the way. Last but not least, I thank Isabel and Kazimierz from my Cabinet, who formed the backbone of this project from the very beginning and without whom nothing would have happened.

Until we meet again.

Yours,

Wojciech Wiewiórowski

ANNEX 4

List of Speakers and Moderators at the EDPS Conference 2022

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