

Observations & Hopes regarding the General Data Protection Regulation

– Input Statement from a DPA Perspective –

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My comparison: “Back to the last base”



- EU tool
“regulation”:
one for all
(sort of)
- Common
legal **starting
point**
- Now (again)
**pioneering
work**
(interpreting
abstract text)

Photo: Matt Murphy

GDPR – let’s unwrap the gift

Potential content of the **GDPR black box**:

- rights and freedoms of natural persons
- incentives for appropriate system design and operation
- game changer in & beyond Europe



GDPR: Tools & methods to be employed



- Opening clauses
- **Data protection by design**
- **Data protection by default**
- Better transparency
- Better control (intervenability)
- Data protection impact assessment
- Codes of conduct
- Certification
- **Sanctions**
- **Courts**

Art. 57 GDPR – Tasks of DPAs

A – V

Art. 57 (1)

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- ...
- v)

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Article 57

Tasks

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall in its territory:
 - (a) monitor and enforce the application of this Regulation;
 - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing of personal data and specifically to children (this refers to specific sessions);
 - (c) advise, in accordance with Member State law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - (d) promote the awareness of controllers and processors of their obligations under this Regulation;
 - (e) upon request, provide information on any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States on this end;
 - (f) handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or consultation with another supervisory authority is necessary;
 - (g) cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
 - (h) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
 - (i) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
 - (j) adopt standard contractual clauses referred to in Article 28(3) and in point (d) of Article 46(2);
 - (k) establish and maintain a list in relation to the requirements for data protection impact assessments pursuant to Article 35(1);
 - (l) give advice on the processing operations referred to in Article 16(2);
 - (m) encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards pursuant to Article 40(3);
 - (n) encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 42(3), and approve the criteria of certification pursuant to Article 42(3);
 - (o) where applicable, carry out a periodic review of certifications issued in accordance with Article 42(7);

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- (p) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (q) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (r) authorise contractual clauses and provisions referred to in Article 46(2);
- (s) approve binding corporate rules pursuant to Article 47;
- (t) contribute to the activities of the Board;
- (u) keep internal records of infringements of this Regulation and of measures taken in accordance with Article 18(2); and
- (v) fulfil any other tasks related to the protection of personal data.

2. Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by means of a complaint submission form which can also be completed electronically, without excluding other means of communication.
3. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer.
4. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

“ [a) ... – u) ...]
v) fulfil any other tasks related to the protection of personal data”

Art. 57 GDPR – Tasks of DPAs



DPAs, controllers, processors, courts need to

L E A R N

What do we need (from the DPA perspective)

- **Consensus among European DPAs** how to interpret the GDPR
Will the consistency mechanism work? Rights and freedoms of natural persons > data protection
- **Good work from data controllers and data processors and producers**
Sufficient incentives? Producers not directly addressed: "[...] should be encouraged" (Recital 78)
- **Knowledgeable, brave, strong, diligent, tireless DPAs**
With sufficient resources and integration of multiple disciplines
- **Quick and clear case handling by courts**
Fast Track at the European Court of Justice?
- **Cooperation between consumer protection and data protection**
Intertwining different cultures and legal mechanisms
- **Bridging the gap between data protection research and practice**
Upper & lower bound "state-of-the-art"! Scientific metrics and ignorance of communities not helpful

**Thank you
for your attention**

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