

'Privacy should become an automatic reflex'

Businesses should make respect for privacy and the protection of personal data an integral part of their way of thinking and their development process. Anyone who does not do so may expect severe penalties, asserts European Data Protection Supervisor Peter Hustinx.

Interview by Wim De Preter, 22 February 2013, Source: De Tijd (original language Dutch)

Twenty years ago, anyone who called for attention to be paid to respect for privacy was at best regarded as someone who had nothing better to occupy their time. In an age of search engines, cookies, internet profiles and ubiquitous social media, the situation is now somewhat different. Data leaks on the internet and the misuse of personal information by both private enterprises and public authorities make the news on a regular basis, and policy-makers have also become much more sensitive to this issue. At least this is the case in Europe: over the coming months, the European Commission, the European Parliament and the national ministers have to reach agreement on radical legislation that meets the needs of the internet age.

Nobody has lived through the developments in regulation more personally than the Dutchman Peter Hustinx, the European Data Protection Supervisor (EDPS). After a career as a Dutch privacy supervisor stretching back more than 12 years, he embarked on this European role in 2004. 'On my first day, I did nothing but drink coffee, because I had absolutely nothing. Just an empty floor in a building with no employees and an inadequate budget', he recalls.

But the 'toothless watchdog' has since grown into an authoritative European body, with 50 staff and an annual budget of more than 7 million euros. 'We have gone from nothing to something, and so I'm not at all unhappy', explains Hustinx, who will retire next year. 'We are now at a stage where we need to enforce the obligations and principles we have formulated in the last few years as effectively as possible in practice. Up to now, we have been a bit too busy with the general picture. Because though there are rules, the parties we give our data to sometimes still cut corners. They have a lot of catching up to do.'

Because the legislation is not rigorous enough, or because monitoring is deficient?

Peter Hustinx: "Both, and that is nobody's fault. Current legislation arose at a time when things were not evolving so quickly as today. We need to get away from the idea that as an organisation you can simply get the necessary approval and then just carry on in the same old way. The most important part of Ms Reding's proposals is that the obligations of those

responsible – in both the private and the public sector – are very well defined. How they should manage personal data, what they need to have done before they come to the market, and concepts such as ‘accountability’ or ‘privacy by design’ (the incorporation of privacy protection in the development phase of new products or services, Ed.). The proposal also provides for enforcement powers, and indeed sanctions – for example fines that could run into millions of euros. That puts everything into a quite different perspective."

"Even the smallest app developers now know about such things as copyright and patent and trade mark law, because they need them to market their product. And in future they'll also need to realise that they have to meet some basic rules on personal data, otherwise their product will not be good enough. A lot of these apps are nowadays free, but in practice you pay for them because they never stop pestering you. Well, my idea is for us to bring in a bit of balance in the coming years."

Is there sufficient such awareness at a giant like Facebook?

Hustinx: "Not yet, but it is growing prodigiously. Look, Facebook is an American company, with a Silicon Valley mentality. Someone as creative as Mark Zuckerberg launches something fantastic in no time at all and says ‘guys, I’m coming, out of the way!’. But the reality is that now, for the first time, they are having to deal with privacy resistance and government supervision. The Irish supervisor is taking the lead on this, but that merely marks the beginning of a much stricter involvement on the part of the European supervisors."

"Facebook is terribly busy working out how to sharpen up its profits model and become more relevant in the mobile market. I certainly don’t want to belittle such creativity, but the big question is whether the users themselves have enough of a handle on this. All these creative innovations often lead to considerable confusion, and a number of things have later been withdrawn. Think about facial recognition, which at first seemed so cool ... I’m really sceptical about that. I don’t want to preach, but this temptation of ease of use, the siren call of ‘cool, you have to join in, you just can’t get left behind ...’ No! Just think it over a bit beforehand."

But can you trust people to think it over?

Hustinx: "That’s what I think is the dubious part of the whole thing: often the people concerned are naïve or have a very limited view of the problem. ‘I’ve got nothing to hide’ is pretty much the standard line they trot out. But if you then tell them what exactly is involved, many will say, ‘I find that pretty scary, I thought it was all much safer’. So this means that the market mechanism is not working so well. You therefore need to make sure that the choices are made more explicit. Make sure that the provider of a service is always responsible for A,

B and C, but that the user must indicate his preference for D, E or F. At the moment, the range is far too big, and I actually consider it a form of manipulation, of systematically abusing the customer's naivety."

"We all know about the services that offer free, unlimited email. But to use them, you must approve general conditions which mean that the service provider becomes the owner of all your information and is allowed to do what he likes with it. You would never give such consent so lightly if someone on the street asked you for it."

"Are these general conditions binding? Is this a legitimate offer? I have real problems with this. I think that, on the basis of the reform of the law, we will have to decide that this is not the case, that this actually largely involves abuse."

Does Europe have the strength to set the standard for global enterprises?

Hustinx: "Certainly. Both Facebook and Google are now subject to a special investigation. At some point, Google had the bright idea of writing a single privacy policy for all their different products and services. That also means that they will increase their elbow room. And so we are first going to check whether that is OK. So Google is under the microscope and it is not out of the question that in a few months the answer will be: 'this is not good enough'."

"But in the US too Google and Facebook are under the special supervision of the FTC (Federal Trade Commission, a government body entrusted with, among other things, consumer protection, Ed.). Last year, this body took the momentous decision of putting Google and Facebook under closer supervision for 20 years, which will entail regular audits and the possibility of heavy fines if they do anything wrong. And so if we in Europe get our house in order, we can do a sort of strategic one-two with the US supervisor."

You started your career in the 1970s with a period studying in the US, when privacy was a bigger issue there than here. Now the roles are reversed.

Hustinx: "In the 1970s, the USA had the Watergate scandal, and we were then actually very close. Only in later years – under Ronald Reagan – was there a lack of political weight in the USA, while Europe continued to work on the principle that privacy and data protection are actually both fundamental rights. And in the past ten years we have of course had a great deal of trouble from 'post 9/11' and the Bush era. But despite the differences between the US and Europe, we also have enough in common. Consultation has grown hugely over the last few years. The idea that everyone is entitled to a certain level of data protection is also gaining traction in the US, although they do not yet talk about this as a fundamental right. At

the end of his first term President Obama issued a white paper in which he launched concepts such as a 'consumer bill of rights' and a 'privacy bill of rights'. If he is given sufficient scope, we will see progress in the US."