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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*EDPS speech at the “Future of Data
Protection: Effective Enforcement in the
Digital World” conference, 16 & 17 June
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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.

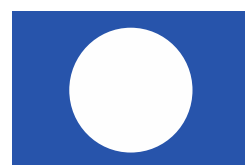
Because as the European Data Protection Supervisor (EDPS), I feel personally responsible for this.

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 the 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 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 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.



The discussions held so far at this conference showed that what we all share here is **one common objective: to protect people**. Where do we go from here? How do we achieve an overarching standard of compliance across all EU Member States?

As 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, such as, 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.

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 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 bring 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.**

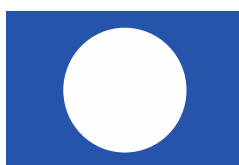
Yesterday, we discussed whether a model that assigns responsibility for the success of EU law on a few national authorities is fair. Does it ensure the effectiveness of EU law? Is it optimal to design it this way and then to expect results from one or two authorities when others remain less involved?

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 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.



Such 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** - 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.

