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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

“Searching for a Mythological Global Standard in Data Protection”

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1. Opening remarks

- Ladies and gentlemen, thank you for having me here today. My name is Wojciech Wiewiórowski, and I am the European Data Protection Supervisor.
- I am very pleased to be giving an opening keynote speech today at the Berlin Data Protection Congress, which, over the next two days, will deliver a program of speeches and panels across a variety of topics. If I count correctly, this is my 5th visit to the Congress which I treat as one of the main privacy events not only on the national scale but also on the European one. I am very happy in particular to see the participation of several of my German DPA colleagues, who I have no doubt will share many insights of great use.
- Today, I will not focus my remarks on a specific data protection practical challenge. I will instead speak about a broader topic that, as a data protection authority, I often discuss with fellow DPAs: the lack of a 'global standard' in data protection and the need for greater convergence based on common values and shared principles.
- I think Germany is a great example of how complex and interconnected the data protection landscape can be, with its 17 different data protection authorities and one federal authority. On a European level, and before the European Data Protection Board (EDPB), this number grows from 18 authorities, to 31 authorities: the 27 authorities of the EU, plus the 3 of the European Economic Area (EEA), plus the EDPS. This is excluding the fact that in numerous EU Member States – including Germany – other regulators – for example media authorities – also play a role in data protection and the freedom of speech landscape.
- I am proud that the EDPS collaborates on a daily basis with German colleagues both from the Federal and land level. Commissioner Ulrich Kelbers' voice is one of the leading voices in EDPB discussions. My institution also works closely with German lands' Supervisory Authorities. Commissioner Marit Hansen's of Land Schleswig-Holstein, for instance, plays a vital role in the context of the Internet Privacy Engineering Network (IPEN) – a platform led by the EDPS.
- But, even within a Union that is already united, challenges emerging from cooperation and collaboration can still emerge. And, when we zoom out from the EU and EEA to a more global level, we begin to see that these challenges only become amplified as a result of the different legal norms and principles underpinning the different frameworks dealing with data protection and privacy.



- And in a time where challenges are increasingly becoming multi-jurisdictional and cross-border, we find ourselves searching for a mythological global standard for data protection, which at this moment still does not exist.
- What does the myth say? Many people believe that the fact that we have more than 160 jurisdictions in the world with comprehensive personal data protection legislation forms an incredible opportunity to find a global solution for data flows. They believe we can *already* speak one language and share the same principles. That the only “missing elements” are a global “agreement” followed by “certification schemes” and standardisation commitments in “an interoperable environment”. But, this is not the case.
- Even four years ago in this room, I showed you a map of the 140 (at that time) countries comprehensive privacy legislation. At that point in time already, I was already seeing the difficulties with constructing a quick and easy “global solution”. And, such a mythological standard is still not fully on the horizon. Not in times of real crisis of multilateralism, not in times of war in Europe.
- Which is why a common vocabulary is increasingly important to tackling our common challenges despite differences in jurisdictions and legal regime. And, I am pleased that we are beginning to see such initiatives emerging world-wide, which will have the potential to begin to bridge such a gap in a global data protection and privacy landscape.
- The OECD Declaration on Government Access to Personal Data Held by Private Sector Entities, for instance, would be the first intergovernmental declaration setting out common approaches to providing privacy and data protection safeguards for governmental access to personal data held by private sector. In an era where we see around the world more walls between States than bridges, such an outcome would be positively welcomed.
- But, the Declaration is not binding and should be seen as a first step only. From a European perspective, this set of agreed principles is not self-sufficient and should not incite States to turn away from binding international instruments, such as Convention 108+.
- The modernised Convention 108, also known as Convention 108+, has the potential to serve as a global tool for regulatory harmonisation and convergence. The EDPS has worked closely with the Council of Europe and continues to do so to promote the creation of a global standard for data protection.



- Yet we must acknowledge that the success or failure of the Convention 108+ will largely depend on the effectiveness of its monitoring mechanism that will enter into force. As shown with the case of Russia, the mere fact that a country is a party to the Convention, does not mean that they are fulfilling its principles, which makes the role of the monitoring mechanism all the more crucial.
- With an effective monitoring mechanism and an effective cooperation by Member States, Convention 108+ can become a real benchmark and be a booster to facilitate data flows, including from and to the EU.
- Both the OECD Declaration on Government Access and Convention 108+ are a testament to the collaborative work undertaken on building convergence and a common language on data protection. The demand for global values in data protection is also gaining more momentum. One of the best examples is the Data Free Flow with Trust initiative, initially launched by Japan, and promoted within the context of the Group of 7 Roundtable of Data Protection Authorities. I am particularly happy to see that the G7 Hiroshima Leaders' Communiqué recognises the importance of this initiative. It does so whilst stressing the need to identify commonalities, complementarities and elements of convergence between existing regulatory approaches as a prerequisite to operationalizing it through specific institutional arrangements.
- But, a global standard for data protection is not yet a reality: it is in many ways still a myth, though I hope not a myth of Sisyphus. I am aware that it is a Herculean task,
 - We have to clean the Augean stables ... fast,
 - obtain the girdle of queen of the Amazon,
 - obtain the cattle of the three-bodied giants,
 - get three of the golden apples,
 - capture and bring back Cerberus,
 - not forget about the "One" who discovered the secret of the Forty Thieves
 - and keep all other genies in the bottles
- At the same time, I am aware that many question whether a global standard will even be possible or if it is even desirable.
- If we do look for a global standard, it is important to remember that such a standard should not be based on the "lowest common denominator" between regional standards.



- The European Union has already shown leadership whilst being at the forefront of the regulation of the digital world with the adoption of the landmark regulation that is the GDPR. But, a new wave of regulations and approaches is now emerging as part of the new EU Data Strategy, and the “Brussels Effect” of these regulations has the potential to be strong.
- We see new notions emerging such as data for “public good”, Open Data, data altruism, and others. We also need to digest new acronyms such as DSA, DMA, DGA, etc. We are witnessing the emergence of High-Level Expert Groups, such as the HLG on the Digital Markets Act, which by the way also includes Commissioner Thomas Fuchs from Hamburg.
- Amongst these novelties, we will need to explore the application of the different governance models of the upcoming Acts, which increasingly bring together different regulators with different scopes of competence over different parts of the same puzzle.
- We will need to make sure above all that data protection does not get lost in the noise of the digital sphere. Amongst the “VLOPs” and “EHDS’s”, there must still be a fundamental respect for the rights of privacy and data protection, as enshrined in the Charter.
- Let me conclude with some final remarks that bring us back to the GDPR. This year marks the five-year anniversary of the entry into force of the GDPR. No doubt this anniversary has already been brought to your attention. Many have started to celebrate it already in January. But, this week will be full of similar festivities in itself.
- Just later today, the EDPS will actually host a celebration of this occasion in Brussels, together with our colleagues from the German Federal data protection authority, and Bavarian data protection authorities.
- This evening, I will speak about how the first five years of the GDPR have brought with it great progress, but how more still remains to be done. Even if enforcement is improved in Europe, even if we manage to streamline cooperation of data protection authorities through certain procedural harmonisations, this will not change the fact that data protection is becoming an increasingly global topic of conversation.
- This conversation will inevitably have multiple participants. Whilst Europe may play a leading role in this conversation as we improve our own approaches to data protection, we will still need a common language and vocabulary through which to share our experience and progresses with the rest of the world. We will still need a framework that allows for the



participation of different global regions in the joint efforts to solve emerging challenges to privacy. This convergence will come. But, it is not yet a given either.

- And, for this reason, I wholeheartedly encourage you over the next two days at this Congress to keep in mind that we will need such an interdisciplinary and multi-faceted approach in the coming years. And, to approach the challenges you will hear about from this perspective, asking the question of what collaborative solutions could further bring to the table.
- Thank you very much again for the opportunity to share my thoughts with you today, and I wish you a good remainder of the conference.

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