

The GDPR: from inception, to today's application and beyond

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General Introduction

- ▶ Rewind: 2012-2016; 2016-2018;
- ▶ State of Play: 2018-2021;
- ▶ Way forward: 2021-2024;

The EU Data Protection Reform Package: timeline

➤ General Data Protection Regulation (GDPR)

- ❑ 2012-2016: Negotiations;
- ❑ 2016-2018 Transition period; 'Entry into force'
- ❑ Since 25 May 2018- GDPR applies; 'Entry into application'



Why a new European framework for Data Protection?

- **Technology developments and globalisation:**
addressing the challenges and seizing the opportunities of the digital economy
- ▶ **Constitutionalisation of the fundamental right to data protection** (Lisbon Treaty)
- ▶ **Fragmentation of legislative framework**
(different transposition of Directive 95/46/EC into national laws)

Outcome: A harmonised and simplified framework

- **One single set of data protection rules for the EU** (Regulation)
- ▶ **One interlocutor and one interpretation** (one-stop-shop and consistency mechanism)
- ▶ **Creating a level playing field** (territorial scope)
- ▶ **Cutting red tape** (abolishment of most prior notification and authorisation requirement), including as regards international transfers

Main Findings from 2018 till today

- ▶ **Data Subject Rights (Chapter III)**
- ▶ **Data Controllers, in particular SMEs (Chapter IV)**
- ▶ **International Transfers (Chapter V)**
- ▶ **One Stop-Shop (Chapter VI & VII)**
- ▶ **Fragmentation (horizontal issue)**
- ▶ **GDPR and new technologies (horizontal issue)**

Data Subject Rights

- ▶ **FRA Survey:** 69% of the EU population heard of the GDPR; 71% of people in the EU know about their national data protection authority
- ▶ The GDPR **strengthened procedural rights**, encompassing the right to lodge a complaint with a data protection authority, including through **representative actions**, and to **judicial redress**
- ▶ **Data Portability:** more can be done

Data Controllers, in particular SMEs

- ▶ The GDPR is fostering competition and innovation, ensures the free flow of data within the Union and creates a level playing field with companies not established in the EU.
- ▶ SMEs and GDPR: (i) evolution not revolution; (ii) accountability principles, (iii) risk based approach; (iv) Fines
- ▶ Toolbox within the GDPR: Codes of Conduct, certification mechanism, SCC,
- ▶ Surveys (e.g. in Germany): it is more a burden than a success

International Transfers

- ▶ The GDPR offers a modernised toolbox to **facilitate the transfer of personal data from the EU to a third country** or international organisation, while ensuring that the data continues to benefit from a high level of protection.
- ▶ Adequacy decisions: review and new ones - Japan; UK;
- ▶ transfers subject to appropriate safeguards;
- ▶ derogations for specific situations;
- ▶ Upward convergence: gold standard, copied by other third countries.
- ▶ Schrems II

One stop shop

- ▶ The GDPR established an **innovative governance system**, based on independent data protection authorities in the Member States and their cooperation in cross-border cases and within the Board.
- ▶ The one-stop-shop mechanism, which is a key asset of the internal market, is used to decide many cross-border cases, and will allow to **solve in an efficient and effective way other important cases affecting individuals' rights in many Member States.**
- ▶ DPAs - not a fining machine, but a **balanced approach.**
- ▶ Improvement: (i) national procedures; not all tools being used by DPA, in particular joint investigations.
- ▶ the development of a truly common data protection culture between data protection authorities is **still an on-going process**
- ▶ **Boiling point?**

Fragmentation

- ▶ Issues in the following sectors: insurance, health, research,
- ▶ While being a Regulation, it allows MS to:
 - ▶ (i) introduce more specific data protection provisions; (finance, health, automobile);
 - ▶ (ii) regulatory choices- examples: Art 8, on child consent; Art 85 on balancing freedom of expression with the right to data protection;

Main Conclusion

- ▶ The general view is that three years after its entry into application,:
- ▶ (i) the GDPR has been **an overall success, meeting many of the expectations**, even if a number of areas for future improvement have also been identified.
- ▶ **Premature to draw definite conclusions** as to the application of the Regulation and to consider proposals for its **revision**.
- ▶ It is likely that most of the issues identified by Member States will benefit from **more experience in the application of the Regulation** in the coming years.
- ▶ GDPR- horizontal application in different sectors: AI, Blockchain, health, political campaigning. Here to stay: **enabler not an obstacle**.
- ▶ A number of legislations which are important: AI, Open Banking, COVID-19.

Possible way forward: 2021 till 2024

- ▶ Data Subject Rights : (i) Improve right to data portability by encouraging industry to establish common protocols; (ii) more awareness; (iii) collective action Directive;
- ▶ SMEs- deeper reflection on relaxing the conditions in Article 30(5) on record keeping of processing activities;
- ▶ International Transfers: (i) Schrems II; (ii) updating of 11 of the adequacy decisions;
- ▶ DPAs/one stop shop: foster a truly EU data protection culture; COM and MS to provide funding to DPAs;
- ▶ Fragmentation: COM to further pursue dialogue with MS; COM may also use all its tools given by the Treaty;
- ▶ CJEU judgments in the pipeline;

Conclusion

- ▶ **THANK YOU FOR YOUR ATTENTION**
- ▶ **Feel free to contact me on**
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