



COMMISSIONER DIDIER REYNDERS

VISIT OF COMMISSIONER REYNDERS

LOCATION: DUBLIN

DATE AND TIME: THURSDAY & FRIDAY 24-25 NOVEMBER 2022

MEMBERS RESPONSIBLE:



Table of Contents

out of scope

out of scope

Meeting with the Parliamentary Committee on EU Affairs 40

Bilateral meeting with Helen McEntee, Minister for Justice** and James Browne, Deputy Minister of Justice (Minister of State at the Department of Justice) 52

out of scope

Meeting with Data Protection Commissioner, Helen Dixon, and then with the staff of the DPA 78

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Figure 1 illustrates the experimental setup. A participant is seated at a table, looking at a screen. The screen displays a target (a small circle) and a starting point (a larger circle). A horizontal line connects the starting point to the target. A vertical line segment is shown below the horizontal line, indicating the distance from the starting point to the target. The diagram is labeled with 'Target' and 'Starting point'.

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- The diagram illustrates a vertical stack of eight rectangular blocks, each representing a different type of data storage or processing unit. The blocks are arranged in a column, with the top block being the largest and the bottom block being the smallest. Each block is labeled with a number from 1 to 8, indicating its position in the hierarchy. The blocks are connected by lines, suggesting a flow or relationship between them.
- Block 1: The topmost block, representing the largest unit.
 - Block 2: The second block from the top, slightly smaller than Block 1.
 - Block 3: The third block from the top, slightly smaller than Block 2.
 - Block 4: The fourth block from the top, slightly smaller than Block 3.
 - Block 5: The fifth block from the top, slightly smaller than Block 4.
 - Block 6: The sixth block from the top, slightly smaller than Block 5.
 - Block 7: The seventh block from the top, slightly smaller than Block 6.
 - Block 8: The bottommost block, representing the smallest unit.

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Meeting with the Parliamentary Committee on EU Affairs

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Data protection

- Let me now address a field which I know is a great importance in Ireland, namely data protection. Since the General Data Protection Regulation (the ‘GDPR’) came into force, **cooperation** in cross-border **cases between the Data Protection Authorities** (the DPAs) has become daily practice.
- DPAs are working closely, providing mutual assistance to each other in many cases. Strong and swift enforcement is crucial for ensuring a consistent interpretation of the GDPR all over Europe.
- Ireland plays a pivotal role as **lead supervisory authority** for the enforcement of EU data protection rules as regards big tech multinationals, as many of them have their European headquarters established in your country.
- Concerning **big tech multinationals**, several decisions have been taken in 2021 and 2022 resulting in **fines of around 1.5 billion EUR**.
- We have consistently called on the data protection authorities to step up their enforcement efforts. We welcome that **several enforcement actions** by the Irish Data Protection Authority against big tech multinationals are being **finalised**. We encourage the DPC to continue making progress to dispel the negative narrative about the enforcement model of the GDPR, which gives the wrong impression that the GDPR is not properly enforced.
- In this context, we welcome the **additional resources** allocated to the DPC, notably the increase in the staff and funding.

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Bilateral meeting with Helen McEntee, Minister for Justice
and James Browne, Deputy Minister of Justice (Minister of
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[Data protection]

- The Commission attaches utmost **importance** to the **enforcement of the GDPR**. As you know, the governance system put in place by the GDPR is based on independent data protection authorities, with strong and harmonised enforcement powers.
- When monitoring the implementation of the GDPR, a key task of the Commission is to make sure that Member States enable their data protection authorities to make use of all their powers. **The Commission will act against any Member State in case of a systemic failure to act by its independent authorities.**
- The Commission **welcomes** the **additional resources allocated to the Data Protection Commission (DPC)**, notably the increase in staff and funding. This is of particular importance given the **pivot role** of the DPC as lead supervisory authority for the **enforcement of GDRP by big tech multinationals**.

- The **European Data Protection Board** has transmitted to the Commission a **list of administrative procedural aspects** that could be further harmonised at EU level. We will work on a targeted legislative initiative to address the request of the EDPB to ensure a better and smoother cooperation between DPAs.
- This should improve the handling of cases and be beneficial for citizens.
- The Commission has announced in its Work Programme for **next year** that we will come with **legislative initiative** concerning the **procedural aspects** of handling of **cross-border cases**. In this context, the EDPB “wish list” will feed into the Commission reflection on how to support DPAs in dealing with cross-border cases, notably concerning big tech multinationals.

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Meeting with Data Protection Commissioner, Helen Dixon, and then with the staff of the DPA

Bilateral with Helen Dixon

- I welcome the **recent progress in the enforcement** by the DPC, in particular:
 - the €405 million **fine** imposed on **Instagram** in September, following the €225 million fine imposed on **WhatsApp** in 2021;
 - the submission to the **EDPB** of 4 **draft decisions** under the **cooperation mechanism** concerning TikTok, Meta Platforms and Yahoo;
 - the submission to the EDPB of 3 **draft decisions** to the **dispute resolution mechanism** on the legal basis for processing, regarding respectively Facebook, WhatsApp and Instagram.
- We are **aware of the challenges faced** by the DPC as regards enforcement of the GDPR as regards **big tech multinationals**, in particular the **complexity** of the investigations regarding big tech multinational companies and that they take **time**, especially since most of them will be **attacked in courts**.

- **It is essential** for the DPC to **sustain its efforts**, given the particular situation of the DPC as lead supervisory authority for a large number of big tech multinational companies in the EU. It is key to **ensure proper enforcement and to show tangible results**, if we want to preserve the **credibility of the enforcement model** provided for the GDPR, which relies on national independent authorities, and if Ireland wants to preserve its **credibility as hosting Member State of the main tech companies** in Europe.
- Recently the Commission announced that we will propose a **legislative initiative in 2023** (before summer in principle) concerning a targeted **harmonisation of procedural aspects of handling cross-border cases**. In this context, the Commission will take inspiration from the “**wish list**” of procedural issues adopted by the **EDPB** in October.
- I would be interested to receive an **update on pending investigations** by the DPC, especially against big tech multinationals. And more generally on **your work**, also as regards cooperation with other DPAs, within the EDPB, and your contacts with other stakeholders, including the European Parliament.
- I welcome your efforts to regularly inform the Commission, in particular on large scale inquiries.
- You can count on my support to ensure enforcement of the GDPR vi-à-vis big tech companies. I followed in particular with great interest the Twitter recent developments. When I met them, I stressed them the need to comply with EU rules and to cooperate with you.
- You can ask Ms Dixon to update you on this recent case and their findings.

Fireside **chat** between DP Commissioner Helen Dixon and Commissioner Reynders with audience of **30 senior staff** from DPC

1. **Helen Dixon (HD):** *Commissioner Reynders – we’ve now passed the 4-year mark in terms of application of the **GDPR** and the EU Commission will be gearing itself up for the evaluation and review it must report to Parliament and Council on in 2024 under Article 97 GDPR in terms of the functioning of the GDPR. What is your own sense of how the **first 4 years** have gone?*

- There is more and more evidence of the benefits that the GDPR brought to people. **Citizens are more aware of their rights.**
- Many **important cases** have been **decided by national Data Protection Authorities**. And we see an **increase of GDPR enforcement against the big tech**, with a rise in terms of number of cases and of effective sanctions. The Luxembourg DPA 746 EUR million fine on Amazon; the **DPC fines: 225 EUR million on WhatsApp** and **405 EUR million on Instagram**. And I know that other enforcement actions by the DPC against big techs are in the process of being finalised.
- Nevertheless, the enforcement against the big tech **continues to be criticised**, even if it has increased. It often refers to the alleged inaction of Data Protection Authorities (DPAs), including the DPC. We know that investigations of **complex cases**, notably involving big tech, **require time**. We have seen this also in other fields **like competition**.
- There is some time needed to get the system up and running. There is of course **still margin for improvement**, but we are certainly **moving in the good direction**.
- The **cooperation between DPAs** needs to be improved. The **lack of harmonisation** of the **national procedures in cross-border cases** was identified by the DPAs themselves as one of the main challenges.

- This is why we will present a **legislative initiative** on this **next year**, to facilitate cooperation among DPAs and speed up the process.
- The **independence and ability of the DPAs** to make effective use of their powers is important for enforcement. The Commission monitors this closely and **launched several infringements** against Member States.
- I am glad to see that some Member States, like **Ireland**, have **increased the staff and funding for their DPAs** and hope that other Member States will do the same.
- The Court of Justice of the EU is looking at key concepts of the GDPR in the context of preliminary rulings. The decisions of the Court will bring further clarification on the interpretation of the GDPR.
- Last, but not least, let me briefly mention the **international dimension**. There is a growing number of countries across the world, from Latin America to South Korea, who look at the **GDPR as a model** for their privacy legislation. Recently I met the **Kenyan Commissioner for Data Protection** who came to Brussels with her staff to join our Data Protection Academy. She told me how important data protection is for their society and their economy and that this is a key interest also for other African countries.
- To sum up, I would say that the **GDPR is a success story overall**, but with **still some margin of improvement**. In addition, **we should not lower our attention to ensure compliance**. We should not take anything for granted as your intervention in the Twitter's case shows.

HD: *One of the particular areas the EU Commission must evaluate is the operation of the **one-stop-shop**. Despite the results produced by the Irish DPC, there are many who nonetheless agitate for a **centralised enforcement** of data protection law vis-à-vis the **very large online platforms**. How do you see that all panning out? Do you think direct accountability by the enforcers (LSAs, DPAs) to the **European Parliament** (say via the LIBE committee) form any part of the assessment for potential change to the one-stop-shop?*

- The one-stop-shop mechanism is the **equilibrium** found by the co-legislators between **proximity** and the need to preserve the **functioning of the single market**.
- The **proximity** principle ensures that, in case of problems, citizens can easily address a DPA that speaks their language and knows the context. On the other hand, the digital services and the digital economy is cross-border by definition. Therefore, there is a **need to ensure cross-border enforcement** and coherent enforcement action.
- For this, an **enhanced cooperation between DPAs for cross-border cases** is essential. DPAs have to embrace their differences to the extent necessary and work towards mutually acceptable solutions.
- The Commission supports the **preservation of the one-stop shop mechanism** and does **not** share calls for **centralisation**.
- We consider that our **upcoming proposal on the procedural aspects of cross-border cooperation** will facilitate the cooperation between DPAs and will reinforce the European dimension **without changing the system**.
- We will look again at the functioning of the system again during the **next evaluation of the GDPR**.

*HD: At every conference the DPC speaks at, the issue of EU to USA data transfers is a source of stress for data protection professionals in organisations. What are your expectations for **what will happen next** in this space?*

- As you will remember, **in March an agreement in principle was announced** by the EU and the US to put in place a **successor** arrangement to the **Privacy Shield**.
- Since then, we have worked hard with the US to translate this announcement into legal texts.
- This work led to the **signature by President Biden of an Executive Order** early **October**. On that same day, the **US Attorney General** adopted a **Regulation to implement** certain aspects of that Executive Order.
- On that basis, **we will propose before the end of the year a draft adequacy decision**. As you know well, to be adopted, that decision needs to go through a multi-step process that involves – as a first step – an opinion of the **European Data Protection Board**. As you are on the “font line” of EU-US transfers, the **contribution of the DPC** to that opinion will be very **important**.
- Concerning the **timeline** for this process to be completed, if we look at recent precedents, **6 months** appear a **realistic** forecast. This would mean that the adequacy decision could be adopted **in the course of spring 2023** – **provided** of course that **all the safeguards** would in the meantime have been effectively put **in place by the US**.
- Importantly also for your work, we have negotiated these safeguards on national security access to data so that, once they will be effectively in place on the US side, they will benefit to all EU-US transfers under the GDPR, **regardless of the transfer mechanism used** (so not only those on the basis of the future adequacy decision but also under SCCs, BCRs etc.).

- Finally let me say a very few words on the substance of the agreement we have reached with the US.
- In carrying out these negotiations, I was very clear that for the EU the *Schrems II* judgment was our “mandate”. This is reflected in the outcome which, I think, is not just a further evolution compared to first the Safe Harbour and then the Privacy Shield – it is a **significant improvement of the situation**, a change of paradigm.
- For the first time, we have **binding requirements** on the US side that do not just refer to **necessity and proportionality**, but spell out what is meant by those principles when **intelligence agencies** have to decide whether and to what extent they need to collect data.
- And these **safeguards** will be **invokable before a redress body** which **independence** is protected and which will be equipped with binding investigatory, adjudicative and remedial **powers**. Even the most critical voices admit that this is very **different from the Privacy Shield Ombudsperson**.
- Of course, questions around the balance between national security and privacy are always complex. The Court of Justice will probably have to again pronounce itself on that issue, including in the context of international transfers. I don’t want to speculate on what the Court may decide but we believe that, in case this new arrangement will be challenged, we will be able to credibly defend it against the *Schrems II* requirements.

*HD: The EU Commission has added to its work programme that it will seek to **harmonise procedural aspects of cross-border GDPR regulation**. Can you give us any **insights** as to what this will look like – will it be an EU legal instrument that hangs off GDPR with specific procedural rules pertaining to GDPR and what kind of **timeline** might be involved.*

- We have started our **internal work** on the **procedural aspects of the enforcement of the GDPR in cross-border cases**. This work is inspired by **our own findings** in the **GDPR evaluation report** and by the **work** carried out by the **EDPB**.
- We are **reflecting** which types of procedures can be harmonised at EU level. There are three layers:
 - national procedures (admissibility/handling of complaints);
 - procedures governing pre-EDPB interactions between DPAs (cooperation mechanism) and
 - EU-level procedures in the EDPB (dispute resolution).
- Our objective is to **enhance the harmonisation of national administrative procedures**. We are looking for the most appropriate instrument that can supplement the GDPR to achieve it. **We do not plan to re-open the GDPR itself.**
- It will **be therefore a targeted legislative intervention.**
- We could expect it before summer next year.

*HD: A vast majority of the cases the DPC deals with lodged by **NGOs** relate to issues pertaining to the **advertising technology** sector. The GDPR does not outright ban **targeted advertising**; nor indeed does the new Digital Services Act other than for children. And yet NGOs want the “business model” dismantled. What in your view are the reasons why the EU might not want to explicitly and outright ban this activity that some dub “surveillance capitalism”?*

- The **GDPR acknowledges direct marketing** as a **legitimate activity**.
- **Targeted advertising** is currently the **most common form** of advertising. When a company uses targeted advertising that relays on processing of a large amount of **personal data**, it **must** make sure that the processing is **lawful**. The individuals must be **informed** about the use of their data and must be presented with an **option to object** it, the use of data must also be **fair, transparent** and comply with **data minimisation** (data protection principles). Practices that do not comply with these rules, must be sanctioned. The Commission is following with interest the current discussion at the EDPB and the progress of the cases in front of the Court of the Justice of the EU.
- The Commission is also taking action when there is an identified need to further limit data processing in a specific area. For instance, we **proposed to limit the use of sensitive data for targeted political advertising**, because of the risk for democracy.
- To address online advertising practices by large platforms, we agreed to **limit personal data that can be used for targeted advertising in the DSA**.
- We are also seeing **voluntary initiatives by the industry**. The advertisers have agreed on codes of conduct on how to target individuals. Market participants, such as Google, Mozilla or Brave are exploring alternative advertising practices that soon could replace the most intrusive targeted advertising. We thank the DPC for involving the Commission in their discussion with Google about the Privacy Sandbox.
- The Commission is **considering further engagement with the stakeholders** in a form of **non-legislative initiative**. In particular, the Commission is **exploring the possibility of a pledge** by companies concerning the **use of cookies**.
- The Commission does **not** think that currently we should introduce a **general ban of targeted advertising**.

*HD: The GDPR is frequently and in my mind reasonably referred to now as the “Law of Everything”. It spans to cover all types of processing and it sets no threshold over which a complaint must reach to be lodged with a DPA. Consequently we receive a **lot of complaints where no significant risk** to rights and freedoms is exposed. Former advocate general Bobek of the CJEU called out this almost limitless reach of GDPR and suggested the courts or legislature may have to rein it back in somewhat. What is your view on the expanse of the GDPR as a “Law of Everything”?*

- The GDPR is a **horizontal legislation**. But it does not cover everything and it is **not the only instrument** - for example, for law enforcement we have the data protection **Law Enforcement Directive**. In some cases, the GDPR itself allows to have more specific data protection rules, such as employment.
- It is also important to note that **many EU legislation** are **building on the GDPR** to, for instance, restrict the processing of personal data (such as the **AI Act** for remote biometric identifications, the political advertisement proposal, the **DSA**, etc.).
- We are aware that DPAs receive a **lot of complaints**. This has led several DPAs to put in place administrative practices to cope with the number of complaints. Such practices should not have negative effect on the individuals.
- The GDPR **does not allow the DPAs to choose whether the complaint should be handled** as protection of personal data is a **fundamental right**. However, the **GDPR allows** DPAs, for instance, to **solve some complaints quickly** through the so-called **amicable settlements**.

*HD: How is Belgium doing in the **World Cup**? The DPC moderated and participated in a panel at IAPP in Brussels last week on the issues of collection of large amounts of performance data on soccer players. What's your view on the amount of performance, health and movement data collected on the pro players?*

- If the performance and movement data relate to **individual players**, it constitutes personal data. It could allow for conclusions about their health condition. **Health data merit specific protection** and the processing of such data is prohibited.
- We know that players' health data can be used for different purposes. For example, processed for anti-doping violation. The publication of sanctions for **anti-doping** violations is a common practice. It ensures the awareness of all relevant stakeholders of the fact that a player is banned from sport competitions anywhere in the world.
- However, such practice **must also be in line with the GDPR**. The publication of individual sanctions must be proportionate and necessary. This question is **now with the Court of Justice**. We await its assessment.

HD: Open up Q&A to staff.

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Annex I

Latest political developments in Ireland

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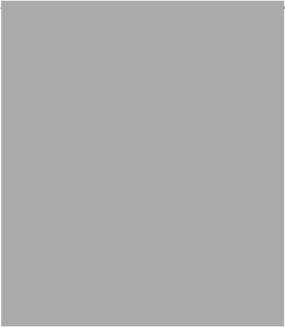









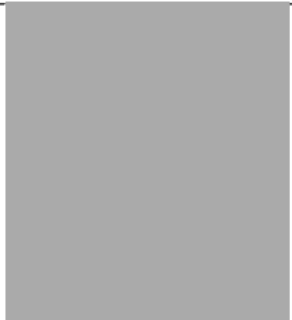






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