Meeting with Microsoft

24 May 2023, 11:00

MEETING WITH

at Microsoft

Scene setter

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LTT

EU-US Data Privacy Framework

- We are currently finalising a revised draft decision before moving to the next step in the adoption procedure (seeking the approval from a committee of EU Member States representatives).

- In this context, it is essential that also the US goes ahead swiftly with the implementation of the Executive Order.

- This concerns in particular the designation of the EU for the new redress mechanism, which is a pre-condition for the adoption of the adequacy decision and important to inject trust in the decision-making process, including when Member States will consider the draft decision during the comitology process.

- It would be important that you also pass this message in your contacts with US interlocutors, as it should be in the interest of businesses to move forward with the adequacy decision, including in light of ongoing enforcement action in the EU.

The EU-US e-evidence agreement negotiations

- One of the main objectives of a EU-US agreement on e-evidence is to provide legal certainty to internet service providers by reducing conflicts of laws. The negotiations just recently have been relaunched and that we are still at early stages.

- The first round was constructive and it showed to both sides that the negotiations will not be easy as both sides of the Atlantic have opted for different solutions to the same issue.

- The next negotiating round will be in June and after the summer the timeline could be more clear.

AI

- The use of AI with its specific characteristics can adversely affect a number of
fundamental rights.

- New tools can make existing practices - such as surveillance - more effective and therefore more invasive.

- Automated decision-making is often considered discriminatory. Gender biases or other biases that exist in datasets reflect the biases in our societies. In other cases, the use of automation might fall short of procedural safeguards such as the individual examination of for instance loan applications. Well-known examples include the Dutch child benefit scandal where fraud-detection software used by the State flagged innocent people as fraudsters in a discriminatory way. Another example are decisions on consumer credits in Finland that did not respect procedural safeguards.

- These examples show that the use of automation can affect many fundamental rights of individuals – including non-discrimination, privacy and data-protection which are the most common examples.

- We already have rules in those areas. But certain ‘black box’ AI applications pose a challenge to those who must respect or enforce these rights when they are very complex and opaque.

- On 21 April 2021, the Commission presented the AI Act. The objective is to ensure the protection of fundamental rights and safety of people where AI is used. The proposal follows a risk-based approach.

- Of course generative AI now raises a number of questions, including on the privacy front. For generative AI to work effectively a large amount of data is necessary. It would be interesting to have your views on how to address possible privacy concerns related to such vast amount of data collection and processing.

- The future regulatory framework aims to support innovation and enhance the uptakes of AI:
  - by increasing users’ trust, and thus increase the demand for AI;
  - by increasing legal certainty, allowing AI providers to access bigger markets and ensuring a future proof and innovation friendly legal framework designed to intervene only when it is strictly needed.
  - by enabling responsible innovation, with new regulatory tools such as AI regulatory sandboxes.

- Providers who are designing/developing AI systems should also take into account the need for legal compliance by design and be responsible for conformity checks and risk management before they supply the system to the user. The new obligations for providers are complementary to all existing obligations regarding fundamental rights and good administration on public authorities and users.

- The AI Act aims to create a comprehensive system along the value chain without repeating existing obligations.

- Now the Commission is following closely the work of the Council, which adopted its General Approach in December 2022, and the European Parliament, which is about to adopt its position in Plenary (June 2023), to start to negotiate the final text of the regulation.
Procedural Regulation under the GDPR

- In October 2022, the EDPB sent the Commission its so-called “wish-list” of procedural issues that could be harmonised at EU level. The wish-list follows a two-year reflection by the EDPB on how to improve cooperation in cross-border cases.

- This is an unprecedented situation, where DPAs, the enforcers of the GDPR, have unanimously called on the Commission to adopt harmonised rules to improve their work. We have responded with speed – and we intend to present a proposal in the coming weeks.

- Let me be clear about the aim of this initiative. We are not reopening the GDPR. Nor are we changing the fundamentals of the One Stop Shop mechanism. We are laying down detailed procedural rules to support smooth cooperation between DPAs in cross-border cases.

- Currently, DPAs take varying approaches to issues such as the form of a complaint, procedural rights, and information sharing between DPAs during cooperation. These differences hinder the smooth functioning of cooperation and delay the delivery of a remedy for the individual.

- Our proposal equips DPAs with the tools to achieve a consensus during cross-border cooperation. It establishes a framework for all DPAs to meaningfully impact a cross-border case early in the investigation procedure, reducing the likelihood of disagreements later in the procedure, which would require the use of dispute resolution.

- It will harmonise the involvement of complainants in cross-border cases, so that no matter where a complaint is submitted, complainants will have the same opportunity to express their views. It will also harmonise due process rights, so that parties under investigation are afforded procedural guarantees akin to those in criminal proceedings, in line with the case law of the Court of Justice. Finally, it will lay down deadlines for certain procedural steps, so that investigations are progressed without delay.

- All of these changes will help DPAs to deliver a quick remedy for individuals, and robust final decisions.

- In preparing this proposal, we have made sure that all voices are heard. We have listened especially to:
  - individuals and civil society, who provide insight on their experiences as complainants;
  - businesses and industry associations, who provide the views of entities that may be investigated for breach of the GDPR;

- and of course DPAs, who enforce the GDPR in their daily work.

- In our proposal, we take a balanced approach that accounts for the views of all actors.

- We look forward to discussing this proposal with the co-legislators, and we hope to make as much progress as possible regarding its adoption before the end of the European Parliament’s current mandate.
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