

An Operational Role for WP29?

PHAEDRA FIRST WORKSHOP

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Art. 28.6 Directive

- *“Each authority may be requested to exercise its powers by an authority of another Member State.”*
- *“The supervisory authorities shall cooperate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information”*

Art. 29 Working Party independent advisory body whose role is described by Art. 30 of Directive

- **Examine any question covering the application of the national measures transposing Directive** in order to contribute to uniform application
- Give the Commission an opinion on the level of protection in the EU and in third countries
- Advise the Commission on amendments of the Directive or other measures
- Give an opinion on codes of conduct drawn up at Community level
- Inform the Commission of divergences in the laws or practices of Member States likely to affect the equivalence of protection
- **Make recommendations on all matters relating to data protection in the EU**

- **Cooperation among DPAs mandatory, but difficult to enforce in practice**
- **WP29 has advisory role on “substance”, but**
 - opinions not binding
 - no direct reference to enforcement
- **Declaration of enforcement 2004**
 - exchange of best practices,
 - discuss enforcement strategies that can be applied nationally and across countries,
 - investigate possibilities for the preparation of EU wide, synchronized national enforcement actions in the Member States
- **Some specific examples of coordination or cooperation (see PHAEDRA report)**

- **Legal framework**
- **Criteria to determine competent/s DPA/s**
- **DPAS' powers**
- **DPAs' ressources**

Exchange of information

- **Crucial to cooperation**
- **WP29 as manager of exchange of information system?**
- **What is to be shared?**
 - **Opening of investigations**
 - **Information concerning investigations**
 - **Envisaged decisions...**
- **When?**
- **Support to exchange**

- **Interpretation of substantive elements of DP law with impact on enforcement possible in all scenarios**
 - **Ex officio / Upon request**
 - **EU wide cases / only some affected DPAs**
- **Limitations**
 - **Non bindingness**
 - **Effect of national legal frameworks**
 - **Time constraints**
 - **Workload...**

- **Scenario with limited number of DPAs**
 - **Correction of “uncooperative” behaviour?**
- **Scenario with EU wide cases**
 - **Decision on joint coordinated intervention?**
- **Limitations**
 - **Bindingness of decisions**
 - **What about independence of DPAs?**
 - **Absence of powers of WP29**

- **More effective role is desirable**
- **Remaining national legal specificities an obstacle**
- **Main issue → binding nature of decisions**
 - **Moral personality**
 - **Voting rules**
 - **Specific procedure**
 - **Possibility of appeals**

**Thanks for your
attention!**

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