DPA: European Data Protection Supervisor (EDPS)
TITLE: “Opinion 3/2015 – Europe’s big opportunity. EDPS recommendations on the EU’s options for data protection reform”
DATE: 27 July 2015
KEY WORDS: EDPS, data protection reform, GDPR

ABSTRACT:
Further to the European Commission’s proposal on the EU data protection reform (January 2012), the resolution of the European Parliament (12 March 2014) and the vote of the Council of the EU on the General Data Protection Regulation (GDPR) (15 June 2015), these three EU institutions entered the so-called “trialogue” on 24 June 2015. The EDPS opinion 3/2015 provides recommendations on the EU data protection reform and in particular on the GDPR, and suggests amendments to the proposed text. Moreover, apart from illustrating the position of the EDPS on the proposed GDPR and its provisions, opinion 3/2015 presents possible solutions towards the best possible compromise on the reform, and so on the best possible text of the GDPR.

ASSESSMENT:
Opinion 3/2015 is not the first official document in which the EDPS provides recommendations on the proposed data protection reform. Yet in March 2012 the EDPS

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released a comprehensive opinion on the reform package proposed by the Commission, \(^2\) which was followed by additional comments one year later.\(^3\) Moreover, the EDPS expressed its general views on the reform in its “Strategy 2015-2019”, published in March 2015.\(^4\) However, this opinion represents the “first milestone in the EDPS strategy”.\(^5\) Released on 27 July 2015, opinion 3/2015 was published together with an annex comparing article-by-article the text of the GDPR as passed by the Commission, the Parliament and the Council, alongside the EDPS recommendations.

The main argument stressed by the EDPS in this opinion is that the data protection reform represents a unique opportunity for the EU legislator to revise the rules on personal information in the EU. According to the EDPS, in order to get the best of this tremendous change and to achieve the best possible outcome, the reform should reach the following targets:

1. a better deal for citizens;
2. rules which will work in practice;
3. rules which will last a generation.

**A better deal for citizens**

The EDPS recalls that the EU data protection reform was proposed firstly as a vehicle to strengthen the protection of personal data especially in the online world, to increase EU citizens’ awareness for their rights and to allow them to take control over their personal data.


Hence, the reform process should respond to these intentions and should not water them down. Moreover, the principles and norms laid down in the Charter of Fundamental Rights of the EU, and in Art. 8 in particular, should not be undermined. Accordingly:

- “Individuals should be able to exercise more effectively their rights with regard to any information which is able to identify or single them out, even if the information is considered ‘pseudonymised’”;
- “All data processing must be both lawful and justified”;
- Consent to the processing of personal data should be more specific.
- “Any request for transfer issued by authorities in a third country should only be recognised where it respects the norms established in Mutual Legal Assistance Treaties, international agreements or other legal channels for international cooperation”;
- EU DPAs “should be ready to exercise their roles the moment the GDPR enters into force, with the European Data Protection Board fully operational as soon as the Regulation becomes applicable”;
- “Authorities should be able to hear and to investigate complaints and claims brought by data subjects or bodies, organisations and associations”;
- “Individuals should be able to be represented by bodies, organisations and associations in legal proceedings” in order to obtain redress for data protection violations.6

Rules which will work in practice

The EDPS stresses that it is necessary to enhance clarity and simplicity of the texts proposed by the three EU institutions in order for the new data protection norms to be applied in practice.7 Similarly, technical obligations must be concise and easily-understood by data controllers who should implement them. Accordingly:

7 The EDPS proposes to cut the text of the GDPR by 30%.
The EDPS recommends “a scalable approach which reduces documentation obligations on controllers into single policy on how it will comply with the regulation”;  
- Notification of data breaches to DPAs and data protection impact assessments should be required “only where the rights and freedoms of data subjects are at risk”;  
- “Industry initiatives, whether through Binding Corporate Rules or privacy seals, should be actively encouraged”;  
- “Data protection rules should not hamper historical, statistical and scientific research which is genuinely in the public interest”;  
- “Researchers and archivists should be able to store data for as long as needed”;  
- DPAs should “issue guidance to data controllers” and “develop their own internal rules of procedure in the spirit of a simplified, easier application of the GDPR by one single supervisory authority (the ‘One Stop Shop’) close to the citizen (‘proximity’)”;  
- DPAs “should be able to determine effective, proportionate and dissuasive remedial and administrative sanctions”.

Rules which will last a generation

The EDPS underlines that the proposed reform will apply to data processing operations for a generation which “has no memory of living without the internet”.  
8 Hence it has to be up to the challenges posed by new technologies in the contemporary world. As a consequence:

- Fuller transparency from data controllers is needed as regards profiling practices and in particular the lack of meaningful information about the algorithmic logic on the basis of which they are developed;  
- The EDPS “supports the introduction of the principles of data protection by design and by default as a means of kickstarting market-driven solutions in the digital economy”;  
- The EDPS considers data portability as the gateway in the digital environment to the user control over personal data;

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Finally, “language and practices that are likely to become outdated or disputable” should be avoided.⁹

Although the EDPS does not participate in the trialogue, opinion 3/2015 is meant and will certainly contribute to the inter-institutional dialogue within the trialogue and to reach consensus on the reform package by due time.

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