

The PHAEDRA project – first results



David Wright
Managing Partner
Trilateral Research & Consulting
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Outline

- Need for enforcement co-operation
- The PHAEDRA project
- Survey results
- Interview results

Need for enforcement co-operation

- DPAs are constrained by a shortage of resources
- But they have investigated the same privacy issues, e.g., Google Street View, hacking of Sony PlayStation, Facebook's selling of personal data
- All DPAs surveyed and/or interviewed emphasise importance and need for co-operation in enforcing privacy
- OECD initiatives, 2007 Recommendations, GPEN, etc.
- ICDPPC Resolution on International Co-operation in Montreal 2007, Mexico City Resolution re cross-border investigation and enforcement
- Article 45 of the proposed EU Data Protection Regulation concerns international co-operation for the protection of personal data

Article 45 – International co-operation for protection of personal data

In relation to third countries and international organisations, the Commission and supervisory authorities **shall take** appropriate steps to:

- (a) develop international co-operation mechanisms ...;
- (b) provide international mutual assistance ..., including through (...) , complaint referral, investigative assistance and information exchange...;
- (c) engage relevant stakeholders in discussion and activities ...;
- (d) promote the exchange and documentation of personal data protection legislation and practice.

PHAEDRA

- Improving Practical and Helpful co-operation between Data Protection Authorities
- Two-year project
- Started mid-Jan 2013
- Funded by the European Commission (DG Justice)
- Consortium comprises four partners:
 - Vrije Universiteit Brussel (Belgium),
 - Trilateral Research (UK),
 - GIODO (Polish DPA),
 - Universidad Jaume I (Spain)

PHAEDRA objectives

- help improve practical co-operation and co-ordination between DPAs, PCs and PEAs, especially in regard to the enforcement of privacy laws
- build upon recent efforts to improve co-operation and co-ordination in the enforcement of privacy laws
- offer our services in investigating two key issues of concern to DPAs as "real life" case studies in how co-operation and co-ordination works or could work -- or two other initiatives that the GPEN and/or the ICDPPC WG might find more useful
- prepare a final report of our findings and recommendations

PHAEDRA work streams

WS 0 – Project management

WS1 – Setting the scene

WS2 – Legislative review

WS3 – Workshops and collaboration with GPEN and/
or ICDPPC WG

WS4 – Findings and recommendations

WS5 – Dissemination activities

PHAEDRA WS1

- 10 case studies
- Co-operation, co-ordination mechanisms in Europe and globally – Art 29 WP, Council of Europe, ICDPPC, GPEN, APEC, APPA, Ibero-American network, etc.
- Survey of DPAs
- Interviews
- Benefits for Europe of international co-operation
- Findings and recommendations

PHAEDRA WS3

- Convene three workshops – or panel sessions within existing conferences of DPAs:
 - Panel session at ICDPPC, Warsaw, Sept 2013
 - Ibero-American network of DPAs in Colombia in 2014
 - Conference of east European DPAs in Skopje, Macedonia
- Participation in other workshops and conferences (e.g., APPA, APEC)
- See how we might support efforts of the GPEN and/or the Working Group of the ICDPPC re improved co-operation and co-ordination

10 case studies

- Google Buzz
- Google Street View
- CNIL's investigation of Google's combined privacy policy
- WhatsApp investigation by Dutch & Canadian DPAs
- SWIFT
- Irish DPA audit of Facebook Ireland
- Sony PlayStation hacks
- World Anti-Doping Association
- Data retention
- "Sweep" by DPAs in mid-May 2013

Horizontal analysis of case studies

- Increasing mechanisms of collaboration between DPAs and evidence of information sharing and awareness of international issues.
- Decentralisation and co-ordination adopted as a response to different national jurisdictions, legal frameworks and particular contexts, and to data protection issues that are large and cross multiple jurisdictions.
- Need for collaboration driven by international data protection incidents and uneven responses to these.
- Collaboration easier when planned rather than responsive.
- Collaboration typically involves:
 - Identifying data protection authority who has local jurisdiction, then delegating to them.
 - Decentralised information gathering then central reporting or sharing appears to be an effective response to multi-national issues
 - Strong central role of the Article 29 WP in Europe

Co-operation & co-ordination within Europe

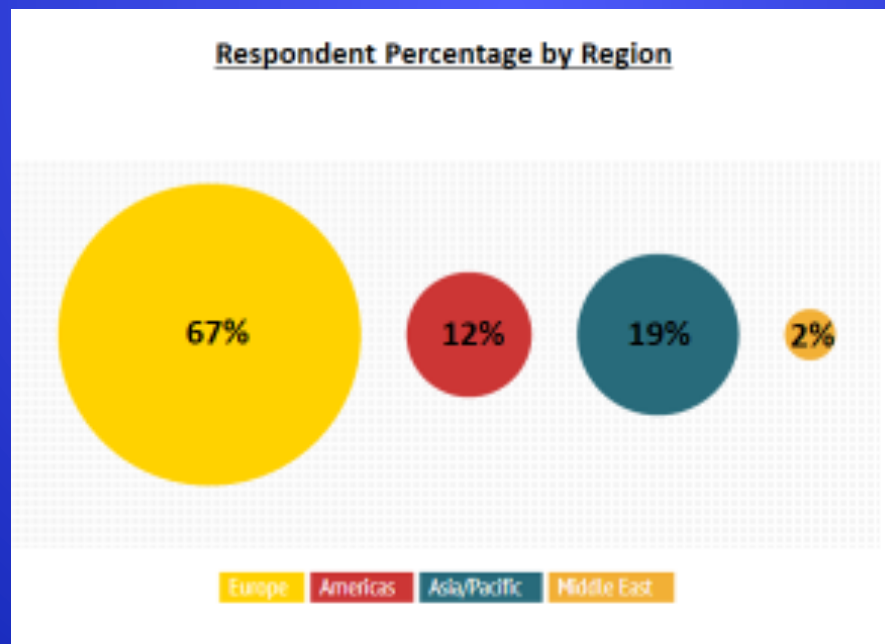
- European Conference of Data Protection Commissioners ("Spring Conference")
 - Case-Handling Workshop
- Article 29 Working Party
 - Article 29 WP subgroups
- Council of Europe T-PD
- International Working Group on Data Protection in Telecoms
- Central and Eastern Europe Data Protection Authorities
- Conference of Balkan Data Protection Authorities
- Coordinated Data Protection Supervision Group of Eurodac
- Coordinated Data Protection Supervision Group of the European Visa Information System (VIS)
- Joint Supervisory Board Europol
- Joint Supervisory Authority of the Schengen Information System
- Joint Supervisory Authority of the European Customs Information System

Co-operation & co-ordination globally

- International Conference of Data Protection and Privacy Commissioners
- OECD Working Party on Information Security and Privacy (WPISP)
- Global Privacy Enforcement Network (GPEN)
- Asia-Pacific Economic Co-operation
 - APEC Cross-border Privacy Enforcement Arrangement (CPEA)
- Asia Pacific Privacy Authorities (APPA)
- Ibero-American Data Protection Network
- Association of Francophone Data Protection Authorities
- APEC – Art 29 WP Promoting Co-operation on Data Transfer Systems
- EU-US ad hoc working group on data protection
- Memoranda of Understanding (MOUs)

Survey of DPAs

- We compiled a list of 79 DPAs
- We sent out a questionnaire (10 questions, 2 pages) on 12 Feb 2013, and reminders in mid-March and mid-April
- As of September, we had responses from 53 DPAs

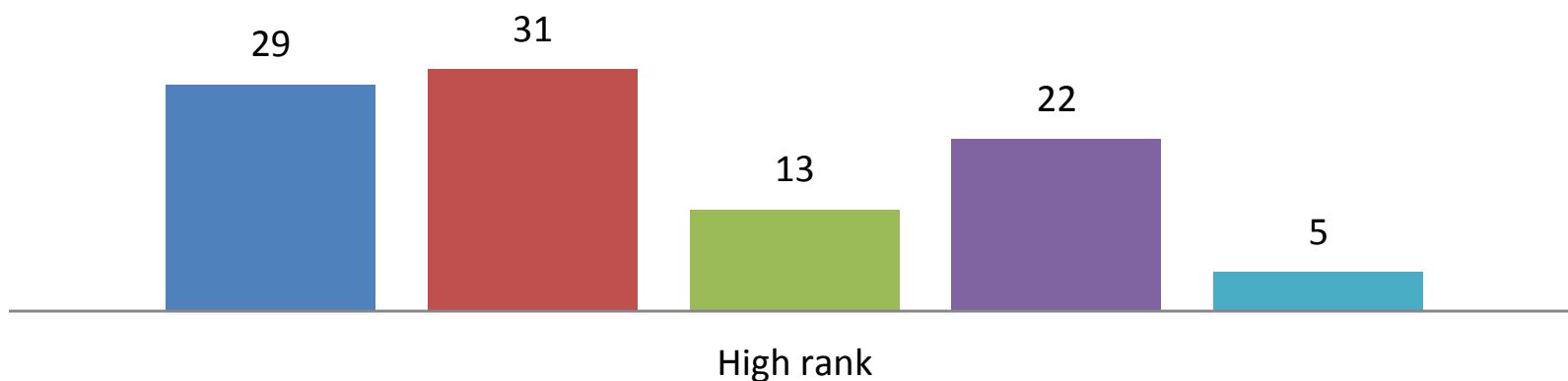


Findings from the survey

1. In what areas, would you like to see improved co-operation and co-ordination with other DPAs and privacy commissioners?

Frequency with which each area is ranked as of high importance (1 or 2)

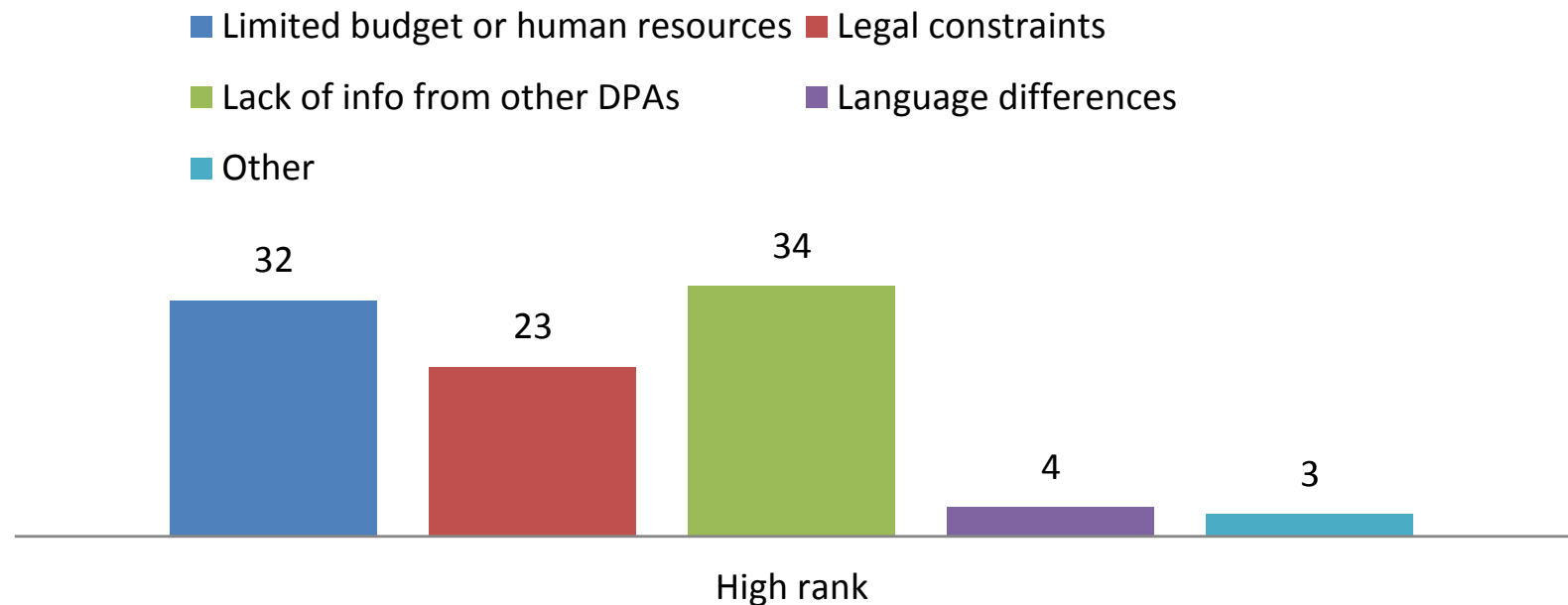
- Exchange of knowledge
- Co-ordination in enforcement
- Converging powers of DPAs
- Consistency of criteria in enforcement
- Other factors



Findings from the survey

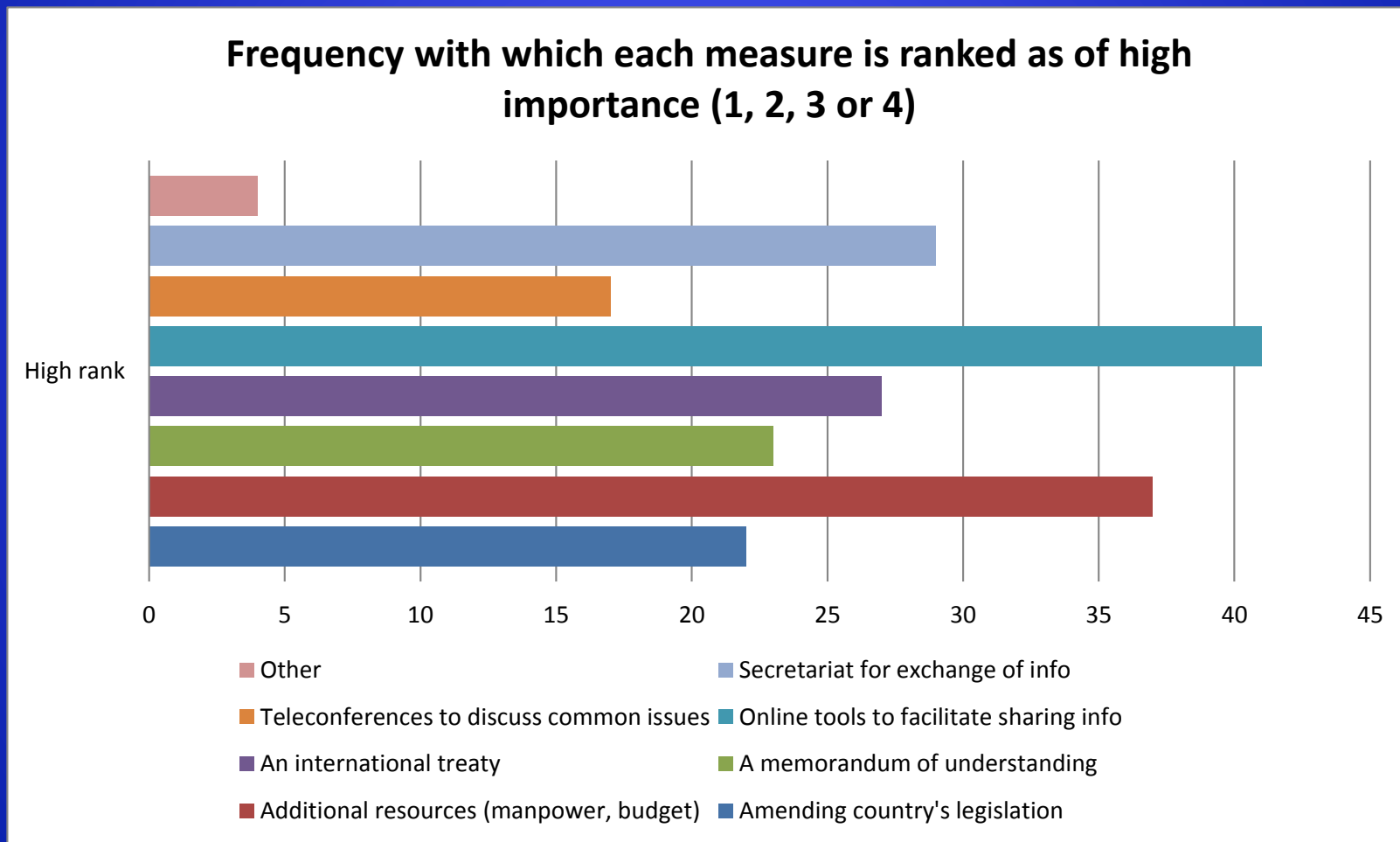
2. What are the chief constraints on you in achieving more co-operation and better co-ordination?

Frequency with which each constraint is ranked as of high importance (1 or 2)



Findings from the survey

4. What measures could be taken to improve co-operation and enhance co-ordination of investigations with other DPAs?



Improving co-ordination

5. What measures could be taken in the short term?

Sharing information

Non-binding memoranda of co-operation & work-around solutions

A common information platform (website)

GPEN, APPA, ICDPPC

Agreements re who leads an enforcement action

Secure mechanism re who is interested and wishes to collaborate on a particular issue or incident

Task force re enforcement

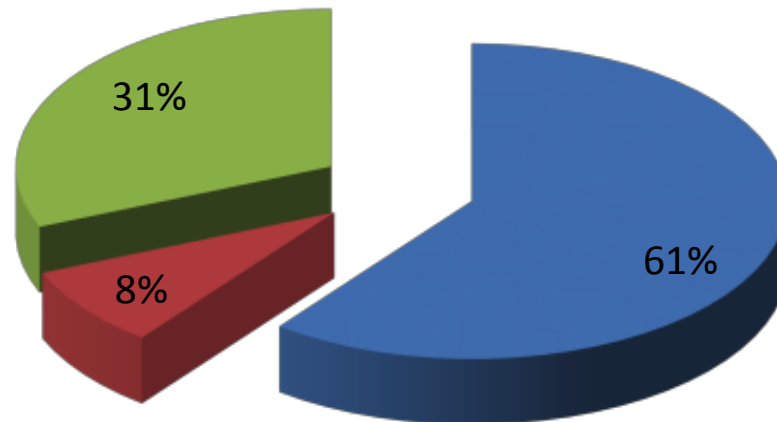
Workshops

More resources and training

Findings from the survey

Able to share information with cross-border DPAs?

■ Yes ■ No ■ Unclear or conditional



Q. 7 How many employees do you have?

- UK has 350, Liechtenstein has 2
- On average, DPAs have about 57 employees
- Number focused on international relations ranges from 0 to 9
- Some employees are focused on international relations on a part-time basis
- Average number of employees focused on international relations is less than one
- About half (27) of respondents have a unit dedicated to international relations

Q.8 Suggestions for case studies

- 47 different suggestions
- Some suggestions were examples of successful co-operation or co-ordination, others not
- Several suggested Google (Street View, privacy policy, Google Glass)
- Microsoft (Office 365, Services Agreement)
- Linked-In
- Big data, cloud computing
- Children's use of the Internet
- Data breaches & losses
- Electronic medical records & health data
- Right to be forgotten
- Smartphone apps
- Spam, etc.

Q. 9 Other examples of co-operation?

- Training provided by other DPAs
- Exchanges, hosting delegations
- APPA Technology Working Group & Comms WG
- Privacy Awareness Week
- APEC CPEA and GPEN
- Berlin Group
- Collaboration on Google Analytics case
- EC TAIEX and “Twinning” programmes
- Meetings of neighbours (Nordic DPAs, Baltic DPAs, UK & Channel Island DPAs)
- Regional and international conferences
- Spring conference & Case-handling workshop

Q. 10 Suggestions for improving co-operation?

- Enforcement in the online environment is a challenge
- Online discussion forum open to all DPAs
- Identifying collective issues, objectives
- Legal database to avoid divergent decisions
- Forensic tools so DPAs have a common technical approach
- Common technical language and standards
- Short-term study visits and seminars
- Links with other policy-making fora such as WTO
- Jurisdictional issues and information-sharing
- More resources
- International co-operation and co-ordination is an urgent need

Interviews

- Canadian OPC
- France – CNIL
- Irish DPA
- Italian Garante
- Netherlands DPA
- OECD
- Portuguese DPA
- US FTC
- UK ICO
- Finland Ombudsman
- Israel (ILITA)
- EDPS
- Singapore
- Australia OAIC
- Japanese Consumer Affairs Agency

Interview issues

- Differences in powers
- Sharing confidential information
- Article 29 WP and APEC
- The International Conference and GPEN
- An ICDPPC website and secretariat
- A lead DPA in investigating issues of concerns to multiple DPAs
- Complaints
- Instruments for enforcing privacy
- Actions to improve co-ordination globally
- Challenges to improve enforcement co-ordination
- Privacy, security and consumer protection

Questions?

david.wright@trilateralresearch.com

www.trilateralresearch.com

www.phaedra-project.eu