



Vrije
Universiteit
Brussel

PHAEDRA

IMPROVING **P**RACTICAL AND **H**ELPFUL COOPERATION
BETWEEN **D**ATA **P**ROTECTION **A**UTHORITIES

Workshop 1

Legislative review: overview & preliminary results

Prof. Dr. Paul De Hert

Warsaw, Tuesday, 24 September 2013, 14:00 – 17:00

Grzybowska 63, Warsaw, Poland 00-844

Hilton Hotel, room MR2



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
VRIJE UNIVERSITEIT BRUSSEL
BELGIUM

DEPARTMENT
INTERDISCIPLINARY
LEGAL STUDIES
[DILS-JURI]
VRIJE UNIVERSITEIT BRUSSEL



September 23, 2013

1



The structure of the project

five workstreams

- ✓ W0: management & coordination
- ✓ W1: setting the scene
- ✓ **W2: legislative review**
- ✓ W3: workshop & collaboration with GPEN & ICDPPC
- ✓ W4: findings & recommendations
- ✓ **W5: dissemination activities**





W2: Legislative review

Deliverable in 3 parts

- Part 1: Review DPA legislation
- Part 2: Measures adopted so far to reduce barriers to cooperation
- Part 3: Wish list of measures to reduce barriers to cooperation





Vrije
Universiteit
Brussel

W2: Legislative review

Part 1: Review DPA legislation



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
VRIJE UNIVERSITEIT BRUSSEL
BELGIUM

DEPARTMENT
INTERDISCIPLINARY
LEGAL STUDIES
[DILS-JURI]
VRIJE UNIVERSITEIT BRUSSEL



September 23, 2013



W2, part 1: Review DPA legislation

Identification and the review of the enabling legislation, i.e. establishing and empowering DPAs and creating a legal basis for cooperation

1. International organisations that offer binding rules: the EU and Council of Europe
2. Jurisdictional profile for countries
3. Conclusions





W2, part 1: Review DPA legislation

1. International organisations that offer binding rules: EU

- Cooperation in the Directive 95/46/EC & Regulation 45/2001
- Cooperation in the proposal for a Data Protection Regulation
 - Intra-EU (Arts 54-68)
 - Outside EU (Art 45)
- Cooperation in the former 3rd pillar e.g. Schengen





W2, part 1: Review DPA legislation

1. International organisations that offer binding rules: COE

- Cooperation in the Convention 108
and its additional protocol
- Cooperation in the modernisation of
the Convention 108





W2, part 1: Review DPA legislation

2. **jurisdiction profile** for

- both EU and non-EU countries
- part thereof e.g. federal states such as Canada or Germany





W2, part 1: Review DPA legislation

2. Jurisdiction profile

- Constitutional & statutory provisions on privacy and data protection
- Establishing legislation of a DPA
- Participation in international arrangements
- Local legal provisions on cooperation
- Experience of the impact of legislation e.g. how does it work? What problems did they encounter? Etc.
- Observations





W2, part 1: Review DPA legislation

2. Jurisdiction profile

Questionnaire, question 2: What are the chief constraints on you in achieving more co-operation and better co-ordination? Please rank in order of importance, with 1 as most serious and 6 as least serious.

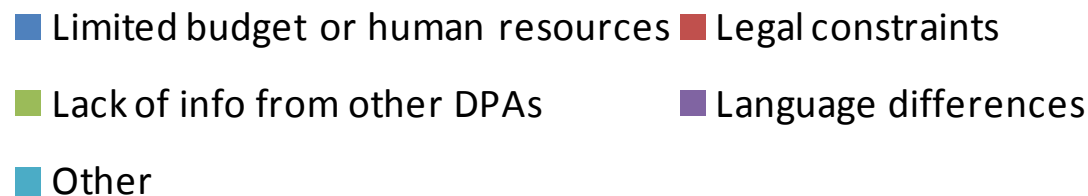
- Limited budgetary and/or human resources
- Legal constraints
- Lack of information from other privacy commissioners and DPAs about co-operation and co-ordination activities
- Language differences
- Other (please specify).





W2, part 1: Review DPA legislation

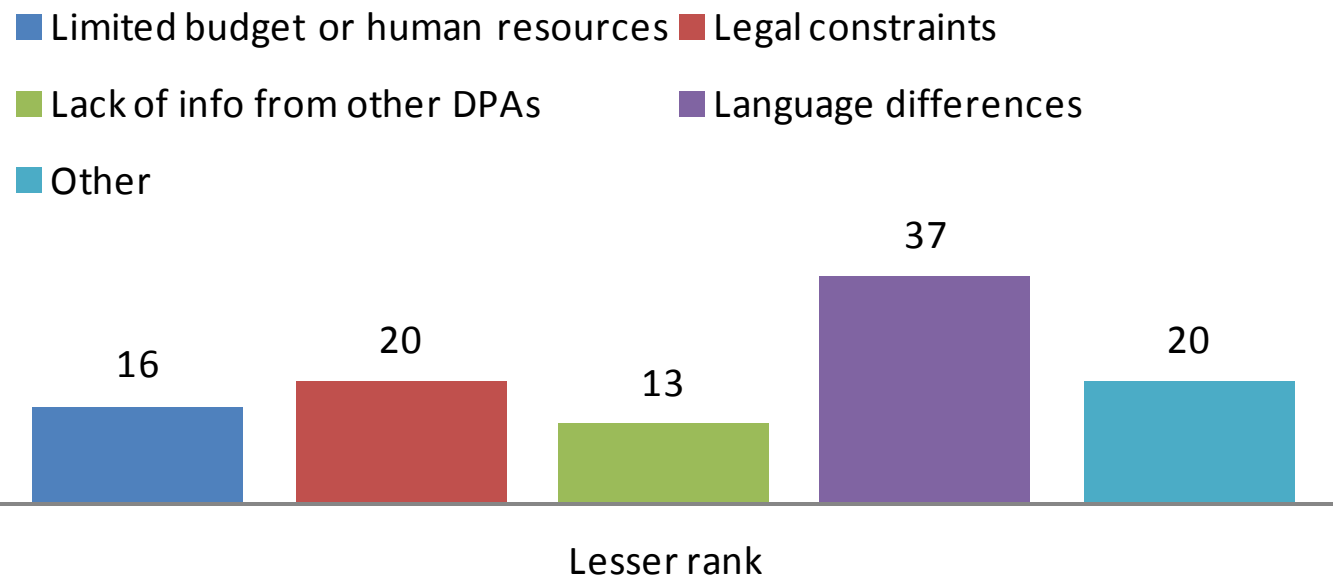
Frequency with which each constraint is ranked as of high importance (1 or 2)





W2, part 1: Review DPA legislation

**Frequency with which each constraint is ranked as
less important (3, 4, or 5)**





W2, part 1: Review DPA legislation

Questionnaire, question 6: *If you were to undertake an enforcement action against a data controller suspected of non-compliance with data protection or privacy legislation in your jurisdiction and where the case has cross-border dimensions, would you be able to share information, including confidential information, with other privacy commissioners and DPAs?*





W2, part 1: Review DPA legislation

Questionnaire, question 6: *Or do legislative constraints prevent you from being able to share such information? If so, please could you identify the specific clauses in your legislation and provide us with a copy in your native language and, if possible, in English?*





W2, part 1: Review DPA legislation

Questionnaire, question 6: *If, on the other hand, there are provisions in your enabling legislation that encourage co-operation and/or co-ordination with other privacy commissioners and DPAs, could you please specify those clauses? (In your native language and, if possible, in English.)*





W2, part 1: Review DPA legislation

2. Jurisdiction profile

- In general: just one or two articles on cooperation are sufficient to foster international cooperation.
- BUT: which information can be shared?
- Confidential information, professional secrecy. Yet, exceptions! E.g. Finland: international obligations could justify a derogation from secrecy obligations





W2, part 1: Review DPA legislation

2. Jurisdiction profile

- Problem expressed by Danish DPA:
"the divergence in opinions on what's important and less important is more important than specific legal constraints."
- Lack of a harmonized EU DP legal framework, different national laws & enforcement priorities





W2, part 1: Review DPA legislation

2. Jurisdiction profile

Significance of regional networks of
DPAs and MoUs between DPAs?

- Nordic Countries
- Baltic States
- Central Eastern European DPAs
- ...





W2, part 1: Review DPA legislation

2. Jurisdiction profile

Referral of complaints (cf sharing of operational information between police authorities)





W2, part 1: Review DPA legislation

2. Jurisdiction profile

- 2010: government of New Zealand, amendment to Privacy Act 1993: 72C Referral of complaint to overseas privacy enforcement authority
- 1) Where, on receiving a complaint under this Part, the Commissioner considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of an overseas privacy enforcement authority, the Commissioner may consult with that authority in order to determine the appropriate means of dealing with the complaint. [...]





W2, part 1: Review DPA legislation

3. Conclusions

Identification of legal barriers impeding
and facilitating cooperation (common
elements)





Vrije
Universiteit
Brussel

W2: Legislative review

Part 2: Measures adopted so far to reduce barriers to cooperation



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
VRIJE UNIVERSITEIT BRUSSEL
BELGIUM

DEPARTMENT
INTERDISCIPLINARY
LEGAL STUDIES
[DILS-JURI]
VRIJE UNIVERSITEIT BRUSSEL



September 23, 2013

22



W2, part 2: measures adopted so far

Soft-law measures

Cf Kloza Dariusz, Moscibroda Anna, Boulet Gertjan: “Improving co-operation between data protection authorities: first lessons from competition law.”





W2, part 2: measures adopted so far

- International level: OECD
- Regional level: Europe, Asia-Pacific Region, Latin-America
- Bilateral level: Bilateral and multilateral memoranda of understanding





Vrije
Universiteit
Brussel

W2: Legislative review

Part 3: Wish list of measures to reduce barriers to cooperation



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
VRIJE UNIVERSITEIT BRUSSEL
BELGIUM

DEPARTMENT
INTERDISCIPLINARY
LEGAL STUDIES
[DILS-JURI]
VRIJE UNIVERSITEIT BRUSSEL



September 23, 2013

25



W2, part 3: wish list of measures

- Proposals on the basis of the review of DPA legislation
- Proposals on the basis of int'l measures adopted so far
- Proposals on the basis of comparative analysis, e.g. with competition law





W5: Dissemination

CPDP2014: Panels supported by Phaedra

- DPAs and the Enforcement of Privacy
- Data Transfer Systems Between Europe and the Asia-Pacific
- Ensuring effective compliance and enforcement of data protection laws in Latin America
- Roundtable of DPAs





Vrije
Universiteit
Brussel

Thank you!

paul.de.hert@vub.ac.be



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
VRIJE UNIVERSITEIT BRUSSEL
BELGIUM

DEPARTMENT
INTERDISCIPLINARY
LEGAL STUDIES
[DILS-JURI]
VRIJE UNIVERSITEIT BRUSSEL



September 23, 2013

28