



**PHAEDRA II - IMPROVING PRACTICAL AND HELPFUL CO-OPERATION BETWEEN DATA PROTECTION AUTHORITIES**

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**Joint Workshop of the WP29 Cooperation Subgroup & PHAEDRA II Project**

## **Cooperation between DPAs under the GDPR: the issue of the diversity of national legal systems**

**25 May 2016, Budapest, Hungary  
Hotel Mercure Budapest Corona, Kecskeméti u. 14**

### **AGENDA**

**Chairman:** Endre Győző Szabó, NAIH, Hungary  
Paweł Makowski, GODO, Poland

- 14:30 – 15:45 **Panel I. Criminal justice and police cooperation – national differences.**  
Lessons to be drawn for DPAs cooperation. What practical instruments can serve as examples for enhanced cooperation?  
*Introduction: **Wilbert Tomesen** (Dutch DPA), vice-chair of the JSB Europol and chair of the JSB Eurojust*  
*Discussion ([see discussion paper](#))*
- 15:45 – 16:15 **Lunch break**
- 16:15 – 17:30 **Panel II. The challenges of a consistent application. How level the playing field would be?**  
Common rules and national law – the effect of Member State law to the co-operation of DPAs  
*Introduction: **Tamás Bendik**, legal adviser, Hungarian Ministry of Justice, Department of Constitutional Law*  
*Discussion ([see discussion paper](#))*

## **Panel I: Criminal justice and police cooperation – national differences.**

There are different levels of cooperation between DPA's.

The most basic level is cooperation purely on a case-by-case level. For this kind of cooperation to be initiated, there are several conditions to be met. For instance, DPA's need to become comfortable with each other. This means that we have to take time to establish trust and positive communication on a human level and between operational counterparts. Furthermore, DPA's should recognize each other's strengths and weaknesses, and make the most of each party's strengths.

Once cooperation on a case-by-case basis is successful and when there are sufficient common interests, cooperation on a case-by-case basis may be followed by a next level of cooperation: structural cooperation. This is the case in the European Union, for instance in the Article 29 Working Party, where EU DPA's jointly work on large projects, such as the recent Opinion on the Privacy Shield.

Structural cooperation may in the end be followed by a third of cooperation: a truly common responsibility. As a result of the General Data Protection Regulation, this kind of cooperation – a shared responsibility – needs to be achieved by the European DPA's. In order to do this, our mind-set however needs to change: cooperation needs to be our starting point, if we are to achieve a consistent application of the Regulation.

The Article 29 Working Party is currently working on implementing the Regulation. This is however not without obstacles. Although it is obvious that European DPA's highly value cooperation, both on a case-by-case basis as well as on a structural basis, a truly common responsibility may be difficult to achieve, because of legal, practical and cultural differences and – ultimately – resistance to the actual transfer or sharing of competences. However, with an eye on the consistent application of the Regulation and the thorough protection of the fundamental right to privacy and data protection, this is not only necessary, but inevitable. EU DPA's therefore need to truly commit themselves to enhance further cooperation. Naturally, this will also have consequences for non-EU DPA's, who cooperate with their EU counterparts. This will take both time and resources, but this will also be an exciting new project for all DPA's.

*Can we achieve a fully shared responsibility with regard to the protection of the fundamental rights to privacy and data protection, as separate European DPA's?*

## **Panel II: The challenges of a consistent application. How level the playing field would be?**

Common rules and national law – the effect of Member State law to the co-operation of DPAs

According to the European Commission “[t]he Reform package will put an end to the patchwork of data protection rules that currently exists in the EU”.<sup>1</sup> As a matter of fact, however, the General Data Protection Regulation provides Member State legislators with a leeway to introduce and maintain national data protection rules.

The DPAs currently play and pursuant to the new regulatory framework will keep on playing a key role in ensuring the uniform application of European data protection norms. It seems obvious that the set of applicable rules, including both Union and Member State law, fundamentally affects DPAs’ co-operation, in particular with regard to cross-border processing situations.

Against this background one of the targets of the workshop is to map the provisions of the GDPR in order to define the room for manoeuvre national lawmakers may make use of when implementing the Regulation in their respective legal systems.

In addition, the workshop endeavours to explore the potential impact of national data protection legal norms to the co-operation of the DPAs.

As a result of such an exercise practical tools and techniques with a potential to facilitate the application of the Regulation and relevant Member State law in a consistent manner are expected to be identified.

*Participants of the workshop are invited to share their thoughts on the subject-matter and are encouraged to contribute to its goals with any suggestions for best practices.*

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<sup>1</sup> Press release of the European Commission, published on 15 December 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-6321\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6321_en.htm)