

Session V - Implementation of Data Protection law: Ensuring consistency and efficiency

Peter Hustinx, European Data Protection Supervisor

The focus in this session is on "ensuring an effective and consistent implementation of data protection rights and obligations". This means that data subjects should be better able to exercise their rights *in practice*, that data controllers and processors should be better held to comply with their obligations *in practice*, and that the outcomes of both should be more consistent across the European Union. This involves the proposed arrangements for supervision and enforcement, and for cooperation and consistency among data protection authorities.

Main elements¹ in my presentation in this context will be:

- Strong support for the provisions on independence, powers and resources of DPA, but national parliaments should play a systematic role in the appointment of members, and more objective criteria are needed to ensure adequate resources.
- Role of 'lead authority' is welcome, but definition of 'main establishment' should be clarified. Moreover, this role should not be seen as exclusive competence, but as a structured way of cooperation with other competent supervisory authorities, since it will depend heavily on input and support of those other authorities.
- More flexibility is needed in the provisions on administrative sanctions to better ensure proportionality of fines and effective use of remedial powers. Both powers are essential and will often be exercised together. Guidelines for the appropriate use of these powers should be developed in the context of the EDPB.
- Also strong support for the cooperation and consistency mechanisms developed in Chapter VII of the Regulation, subject to some important comments.
- First, there is a need to clarify the conditions which will trigger the consistency mechanism, and to provide more flexible and realistic deadlines for the adoption of EDPB opinions. Both are key success factors for the EDPB.
- Secondly, the powers of the Commission in the mechanism should be limited. The role of the Commission should be limited to triggering the seizure of the EDPB and the power to submit opinions. The Commission should not be able to overrule decisions in individual cases through the use of implementing powers. The ECJ should be involved, where necessary, in the context of an infringement procedure or a request for interim measures such as a suspension order.
- The current assessment of the impact of the EDPB secretariat in terms of financial and human resources should be reconsidered.

¹ See further EDPS Opinion of 7 March 2012 on the data protection reform package, points 234-280, available at: www.edps.europa.eu