



**CEDPO side event at the 40th ICDPPC:
DPOs : navigators for implementing the GPDR
- Summary -**

CEDPO's side event at the 40th International Conference of Data Protection and Privacy Commissioners took place on the 25th of October. This event was attended by more than 50 persons with members of the EDPS, of the European Parliament and of the Belgian Data Protection Authority. The panel included Albine Vincent (Head of the DPO Service, CNIL), Gabriela Krader (Corporate Data Protection Officer - Deutsche Post DHL Group), George Ataya (Academic Director and Professor, Solvay Brussels School of Economics and Management) and Paul Van Den Bulck (McGuireWoods), and was moderated by Steffen Weiss (GDD).

Paul Olivier Gibert (President of the AFCDP) made the introductory speech, presenting CEDPO, the Confederation of European Data Protection Organisations, and announcing the publication of the Brussels Declaration, which calls for clarification and unification on the appointment of DPOs in Europe. Five months after the GDPR, indeed, issues have been reported to CEDPO regarding unlawful requirements for the appointment of DPOs in some European countries.¹

The panel included several « hot topics » for the DPO :

1. The DPO : A new management function?

The panelists took a look back into the past few months after the application of the GDPR. It could be noticed that there was a big raise of awareness for data protection in organisations. Leveraging the DPO into a position where he/she can advice effectively had to be seen as key for the organisational success in regulatory compliance.

¹ http://www.cedpo.eu/wp-content/uploads/2015/01/CEDPO-Brussels_Declaration_20181025.pdf.

Gabriela Krader, Group Data Protection Officer at Deutsche Post DHL stressed that

« under the accountability principle of the GDPR data protection finally became a comprehensive management matter putting the DPO in the position to get engaged on eye level with other management functions »

In view of positioning the DPO, the panelists agreed that they had to be considered as advisors, not policy makers. In order to advise properly they needed to be proactive and especially be present at the beginning of the processes, which required the implementation of internal policies.

Paul Van den Bulck (Partner and DPO at McGuireWoods) expressed mixed emotions concerning the new legal framework and the benefits for DPOs and the data subject :

“The DPOs are now helped by a very strong legal framework (GDPR but also opinions and decisions of EU and national institutions) and by some very strong GDPR management tools and software. This is a huge step forward. What is cruelly missing is IT operational products that are GDPR friendly as, for example, ERP and CRM software that automatically manage data protection requirements. “

2. DPO certification

While the GDPR offers the possibility to certify the compliance of a data processing, it lacks harmonization in view of personal certification such as for the DPO.

The French national implementation law enables the supervisory authority (CNIL) to develop a certification scheme for DPOs. Albine Vincent (Head of Data Protection Officers Department, CNIL) indicated during the panel that

« certification is a compliance tool which helps organisation in choosing their DPOs ».

Privileging controllers or processors when breaching data protection law due to a certified DPO, i.e. by reducing fines, though would not be an option according to the CNIL. Certifications help in choosing the right person and help to demonstrate that the person in charge is qualified.

3. The three lines of defence vs. DPO responsibilities

The notion of “lines of defence” has gained prominence for many years when it comes to managing operational risks. Whereas latter model addresses the operational management, risk management and audit functions, it does not involve the DPO.

According to Georges Attaya (Academic Director and Professor, Solvay Brussels School of Economics and Management)

« the DPO is a second line of defence and not the first line of defence. Support and advise, no accountability for business compliance. »

Recommendation from the audience was given in order avoid accountability for the DPO: Even though a DPO could give guidance on how to implement the GDPR, he/she should refrain from being perceived as a responsible stakeholder for the execution of required tasks.

If such behaviour was connected to the absence of « over-notifying » the DPAs regarding a data breach remained unclear to the panelists. For DPAs it would be too early to judge if organisations were right in refraining from notifying.

Conflicts between a third and second line of defence could arise when an internal audit function would try to assess the DPO's expertise. The panelists concluded that such an audit could examine if the processes put in place were efficient and a tool to raise problems to the management level. The DPO's knowledge had to be considered prerogative.

CEDPO wants to thank all panelists for attending the lively panel and is looking forward to future discussions.

www.cedpo.eu