Introduction

Paul De Hert*, Dariusz Kloza*, Paweł Makowski**

** Biuro Generalnego Inspektora Ochrony Danych Osobowych

1. It will be a truism to state that globalisation and recent rapid development of information and communications technologies have resulted in increased trans-border personal data transfers and – at the same time – in the elevation of corresponding risks.1 This phenomenon both has placed the governance of privacy and personal data protection at the international level and has made data privacy violations with cross-border implications much more frequent. As a result, there grew a critical need for stronger, more enhanced and more efficient cross-border cooperation between relevant supervisory authorities, i.e. between those public bodies that are tasked with “the day-to-day protection of data privacy”, on whose shoulders “lies the main burden of effective protection”.2

The status quo of such cooperation leaves much to be desired. Nowadays – to ensure an appropriate level of protection of privacy and personal data and to investigate and prosecute violations, should they occur – these supervisory authorities face constraints by way of human and/or budgetary shortages, practical, institutional and legislative set-ups and similar factors. Often, due to the lack of cooperation and coordination, these resource-constrained authorities may also investigate the same privacy issue, which is, in effect, a duplication of effort.

For these reasons, policy-makers, authorities themselves and academics – since as early as 2000s – became preoccupied with diagnosing the problem

---


2 D. Kloza and A. Galetta, Towards efficient cooperation between supervisory authorities in the area of data privacy law, in this volume.
and with the quest for solutions. This is particularly acute with the pending reform process of the European Union (EU) data protection framework, where the proposed regulation would make cooperation a legally binding obligation and would set forth the conditions and procedures therefor. In that regard, the reform pays the biggest attention to the one-stop-shop mechanism, designed to work within the borders of the EU and to facilitate and simplify the enforcement process for all actors involved: supervisory authorities, data controllers, data processors and – especially – data subjects.

The PHAEDRA research project, or “Improving Practical and Helpful cooperation between Data Protection Authorities” (2013–2015), co-funded by the EU under its Fundamental Right and Citizenship Programme, has been aimed precisely to contribute to this debate. Its principal objective – realised by a consortium comprising four institutional partners from Belgium, the United Kingdom, Spain and Poland – was, therefore, to help improving practical cooperation and coordination between data protection authorities (DPAs), privacy commissioners (PCs) and privacy enforcement authorities (PEAs). Having recognized the critical need for more efficient international cooperation of these supervisory authorities, the two-year research analysed the state-of-the-art thereof, interacted with these authorities (via, among others, interviews, surveys and workshops) with a view to improve their practical cooperation and – finally – advised policy-makers and supervisory authorities themselves in that regard, in parallel raising awareness about the problem at stake. The results of the project strengthen the belief of the consortium that its work has achieved notable successes.

2. This book is composed of selected interventions made at the final conference of the PHAEDRA project, held on 12 December 2014 in Kraków, Poland. These contributions are preceded by invited comments written by the experts in the field. Each of these papers – in one way or another touching upon various aspects of cooperation between supervisory authorities – contributes to the unambiguous conclusion that the efficiency of such cooperation is an essential element of the effective protection of the fundamental rights to privacy and personal data protection.

The book is opened by a letter of Dr Edyta Bielak-Jomaa, Inspector General for Personal Data Protection of Poland and by a foreword of Dr Wojciech R. Wiewiórowski, Assistant European Data Protection Supervisor and former Inspector General of Poland, discussing expectations and solutions for reinforced European and international cooperation. We thank them both for their interventions.

The various contributions to the present volume are split into two parts, the first gathering invited comments. In the first chapter, Blair Stewart, Assistant Commissioner in the Office of the Privacy Commissioner of New Zealand, building on PHAEDRA final results, provides a few further recommendations for helpful and practical cooperation from the global perspective. David Wright and Kush Wadhwa – representing one the PHAEDRA partners – Trilateral Research & Consulting LLP – report in the second chapter how supervisory authorities themselves view cooperation and coordination and what barriers thereto they have identified. Two subsequent chapters were written in Brussels, at the premises of Vrije Universiteit Brussel, coordinator of the PHAEDRA project. Paul De Hert and Auke Willems deal with the challenges posed by overlapping jurisdictions and requests for mutual legal assistance to fundamental rights. Finally, Dariusz Kloza and Antonella Galietta offer twenty-three recommendations towards the efficiency of cooperation between supervisory authorities.

The second part comprises selected interventions from the final conference of the PHAEDRA project. Endre Győző Szabó of Hungarian DPA highlights the Weltimmo case, especially the question of jurisdiction and applicable law, in light of the future EU one-stop-shop regime. Marek Máčka of Slovak DPA advocates for a unified approach towards the legal qualification of biometric data. Dimitar Gjeorgievski of Macedonian DPA, having discussed their own experience of international cooperation, suggests the establishment of a regional secretariat for “South East” DPAs to foster “development and integration of data protection and privacy principles in the region”.

In a similar vein, Lahoussine Aniss of Moroccan DPA, argues for a more robust exchange of expertise between “mature” and “new” supervisory authorities. All the authors to this collection of papers have done an excellent and outstanding job and deserve our applause.

3. At the end, we wish to draw the attention of the reader to the fact that the PHAEDRA project turned out to be only the beginning of more comprehensive work on the question of cooperation of supervisory authorities. Recognizing the need arising from the reform of the EU data protection framework, the consortium decided to bid for a follow-up project, PHAEDRA II. Having won, the new project started in January 2015 and focuses on the cooperation of European DPAs (solely), examining in particular the impact of EU data protection reform on the notion of cooperation. The new project tackles three of the biggest challenges facing European DPAs: ensuring

D. Gjeorgievski, Institutional experience from international cooperation and joint investigation, in this volume.
consistency, sharing information (including confidential or otherwise privileged information) and practical coordination of enforcement actions.

The reader is kindly invited to stay in touch with the PHAEDRA consortium, especially by consulting the project's website at http://www.phaedra-project.eu. This website already offers the legacy of the first PHAEDRA project and is meant to become one of the main sources of information on DPAs cooperation.

Warsaw–Brussels, June 2015