

**Minutes of the Data Protection Workshop within International Organisations – UN
City, Copenhagen, 12-13 July 2018.**

Summary

Many international organisations agreed on the fact that the GDPR is not applicable to them but that they should ensure an alignment. A note from the Commission concluding that the GDPR is not applicable to international organisations raised a lot of attention. Several international organisations have raised the issue of the legal recourses and of the cloud usage. Several organisations underlined the difficulty in making their employees understand that they are not subject to the GDPR. Discussion focussed on how to ensure an effective remedy in compliance with Article 6 of the ECHR. ESA, ICRC and Interpol presented their privacy standards and oversight mechanisms. Europol and Norwegian Data Protection Authority gave guidelines for accountability in practice. ITU presented a project for access management. IOM and ICRC made a presentation on the legal grounds for processing data by International Organisations. The difficult situation where a processor falls under the GDPR but the controller (an IO) falls outside the GDPR was raised as an issue. Professor Kruner explained the need for clarification on the interaction between the GDPR and the privileges and immunities of IOs. The attention of the secretariat of the EDPB will be drawn on these issues. The Commission presented its interpretation on the matter. A debate on Article 49 (derogations) as interpreted by the EDPB guidelines took place. The next workshop will take place in the OECD next year in Paris.

Introduction by the Office of the United Nations High Commissioner for Refugees (Alexander Beck, Senior Data Protection Officer, Division of International Protection) and the European Data Protection Supervisor (Wojciech Wiewiórowski, Assistant Supervisor)

38 international organisations were represented for this 7th Workshop.

Session 1: Recent data protection developments in International Organisations- a critical review of the past year and an outlook to the future

Moderator: Christine Adam, Division Head, Office of the Legal Counsel International Organization for Migration

A tour de table of all participants from International Organisations (“IO”) took place:

Several participants mentioned that the GDPR was not applicable to the IO’s but created the most in line possible rules with the GDPR. Several IOs are finalising principles on data protection, updating them and/or have put in place a Working Party on those issues. Some put in place a DPO and trainings. Some insisted on the importance of implementing an impact assessment on the risks.

The main raised issues were: cloud usage, how to deal with external partners bound by the GDPR who request their national law to be applicable to a contract (how to ensure that data shared outside is dealt with appropriately after) or how to put in place legal remedies.

Session 2: What privacy standards and oversight mechanism for international organisations?

Moderator: Alexander Beck, Senior Data Protection Officer, United Nations High Commissioner for Refugees

Presenters:

- Leena Van der Made, Compliance and Data Protection Officer, and Gisela Süß, Head of the Institutional Law Division, Legal Services Department, European Space Agency presented their new data protection policy and oversight mechanism.
- Gerald Page, Chair of the review board, International Committee of the Red Cross explained the functioning of the review board, in the light of Art. 6 ECHR criteria.
- Florence Audubert, Secretary of the Commission for the Control of Interpol's Files, Interpol gave the main outlines of Interpol data protection policies, including explanation on the functioning of Commission for the Control of Interpol's Files.

Session 3: Accountability in practice: ensuring a dialogue between Data Protection Officers and IT experts

Moderator: Wojciech Wiewiórowski, Assistant Supervisor, EDPS

Presenters:

- Daniel Drewer, DPO, Europol shared his best practices.
- Leonor Vilas Costa, Legal officer, Legal Affairs Unit, International Telecommunication Union presented a project for access to physical location using personal data.

A participant explained that the possibility to log in the system of one entity with the credentials from another entity for global collaboration raises difficulty in relation to GDPR.

- Veronica Jarnskjold Buer, Senior Engineer, Norwegian Data Protection Authority gave some tips on how to ensure privacy by design and by default (Art 25 of the GDPR).

Session 4: The question of legal grounds for processing personal data in the International Organisations context

Moderator: Christopher Kuner, Professor (VUB)

Presenters:

- Christina Vasala Kokkinaki, Legal Officer, International Organization for Migration gave an overview of regional international standard in Data protection matters, other than the GDPR.
- Massimo Marelli, Head of Data Protection Office, International Committee of the Red Cross gave his opinion on the legal basis to use for transfer.

The discussion focussed mainly on the use of public interest as a legal basis as opposed to consent.

A participant recalled the Recommendations on digital risk management on the way to deal with digital security and privacy.

It was referred to the work of Latin American countries on a regional framework following the GDPR on consent with exceptions like in the GDPR when the data are processed in the context of scientific research.

It was underlined that the legal basis used depends on the activity and the extent to which it is linked to the mandate (cf the criteria of necessity).

The difficult situation where a processor falls under the GDPR but the controller (an IO) falls outside the GDPR was raised as an issue.

Session 5: The Impact of the GDPR and transfers from and to International organisations

Moderator: Petra Candellier, Head of Complaints and Litigation, EDPS

Presenters:

- Christopher Kuner, Professor (VUB), recalled the main lines of his publication on the lack of clarity with regard to the interaction between the GDPR and the activities of IOs' and their privileges and immunities.

The need for toolkits and the fact that this problem does not only concern the relationship with vendors were underlined.

It was concluded that the attention of the secretariat of the EDPB should be drawn on these issues.

- Tristan Burnett, Head of the Preparedness and Response Division, Department of Operations and Emergencies, International Organization for Migration presented the main changes in the GDPR compared to the 1995 Directive.
- Anne Schilmoller, Policy Officer, DG JUST, European Commission gave the point of view of the Commission on how best ensuring the interaction between the GDPR and IOs.

On Article 49 of the GDPR, two participants underlined that the DPAs took a restrictive approach of the derogations by extending the limitations based on large scale and frequency to all derogations whereas the GDPR provides for such limitations only when the transfer relies on the compelling obligations of the controller.

A participant mentioned that there is neither the need for adequacy decision nor the need to be GDPR compliant as the derogations are sufficiently broad to cover the transfers so the issue is more a question of educating the partners.

It was underlined that for individual contracts, clauses can be added but that the problem is the data flows of large scale data.

A participant insisted on EU Member States to have guidelines, from the EDPB, EDPS and Commission, to understand on which grounds EU Member States can exchange data with IOs.

A participant requested the Commission to work on a tool for standards specific to IOs (instead of adequacy decision).

Conclusion (Karl Steinacker, head of the Global Service Center, UNHCR and Wojciech Wiewiórowski, Assistant Supervisor).

The next Workshop will be organised by the OECD in 2019 in Paris.