

International Conference
Enhance the Right to Data Protection
in Eastern Partnership Countries

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**The role of data protection
authorities**

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Content

- Operational capacity of Cyprus DPA: structure, legislation, functions, activities
- Independence
- Raising awareness

Supervisory authorities

They are an **essential component** of the data protection supervisory system in a democratic society.

They need to have **effective powers** and functions and enjoy genuine **independence** in the fulfilment of their duties.

Structure of Cyprus DPA

- Commissioner
- Staff (6 legal, 2 IT, 6 assistants)
- Budget – approved by the parliament
- Powers
 - Consultation
 - Investigation
 - Enforcement
 - Education

Legislation applied by the DPA

- Data Protection Law 138(I)/2001 came into force in 2002 – transposing directive 95/46/EC
- Electronic communications law 2004 (part 14 – Spam)
- Freedom of information law (2017)

Scope of the Law

- The DP law applies to the private and public sector (incl. Police/ LEAs)
- Automatic and manual processing
- Living data subjects
- The law does not apply to purely personal and household activities

Key Functions (I)

- Issuing recommendations and suggestions to controllers
- Issuing opinions for the interpretation of the provisions of the DP law
- Conducting audits ex-officio or following a complaint
- Investigating complaints
- Being consulted on any regulation relating to the processing of personal
- Imposing administrative sanctions

Key Functions (II)

- Reporting any contraventions of the provisions of the Law to the police or public prosecutor
- Granting the licenses provided by the Law (transfer of data to third countries and combination of data files)
- Issuing rules and guidance for the regulation of specific, technical matters
- Assisting professional associations and other unions in drawing up codes of conduct
- Co-operating with other Member States of the European Union and the Council of Europe
- Raising public awareness

Powers of investigation and intervention

- Require from the controller and processor information concerning the processing of personal data
- Assist the data subject wishing to exercise their rights
- Oblige the controller to rectify, delete or destroy inaccurate or illegally processed data on its own account or on behalf of the data subject

Administrative sanctions

Cyprus DP Law

- (a) a warning with a specific time-limit for termination of the contravention;
- (b) a fine of up to €30.000
- (c) temporary revocation of a license;
- (d) permanent revocation of a license;
- (e) the destruction of a filing system or the cessation of processing and the destruction of the relevant data.

Amendments of DP law 2012

- Achieve full compliance with the EU directive 95/46
- Facilitate the investigation of complaints and audits: impose sanctions when data controllers do not cooperate, possibility to request the assistance of the police or external experts on technical issues, introduced discretionary powers
- Increase the fines from €8,000 to €30,000

Number of Complaints received

Year	2011	2012	2013	2014	2015
Number of complaints	558	349	465	253	201

Category of complaints

- Spam
- Security measures in hospitals – lost of medical files
- CCTV
- Monitoring at work
- Disclosure of personal data

Independence - Decisions of CJEU

- **C-518/07, COMMISSION V. GERMANY, 9.3.2010 (“GERMANY”)**
- **Infringement procedure** against Germany, which transposed the second paragraph of Article 28(1) of Directive 95/46 (the requirement for an independent data protection Authority (DPA)) by making the authorities responsible for monitoring personal data processing outside the public sector in the different Lander subject to State oversight.
- **Independence of DPA:** Independence normally means a status which ensures that the body concerned can act completely freely, without taking any instructions or being put under any pressure. There is nothing to indicate that the requirement of independence concerns exclusively the relationship between the supervisory authorities and the bodies subject to that supervision. **The adjective "complete" implies a decision-making power independent of any direct or indirect external influence on the supervisory authority.** The guarantee of independence of DPAs is intended to ensure the effectiveness and reliability of the supervision of compliance with data protection provisions, to strengthen the protection of individuals and bodies affected by their decisions. DPAs must act impartially and must remain free from any external influence, including that of the State or Lander. Independence precludes not only any influence exercised by supervised bodies, but also any directions or other external influence which could call into question the performance of those authorities of their task consisting of establishing a fair balance between the protection of the right to private life and the free movement of personal data.
- State scrutiny in principle allows the government of the respective Land to influence the decision of the supervisory authority or cancel and replace those decisions. This is not consistent with the principle of independence.

C-614/10, COMMISSION V. AUSTRIA, 16.10.2012 (“AUSTRIA”)

- **Infringement procedure** against Austria, alleging that it incorrectly transposed the second paragraph of Article 28(1) of Directive 95/46 (the requirement for an independent Data Protection Authority (DPA)), insofar as the national legislation does not allow the Data Protection Commission (DSK) to exercise its functions “with complete independence.”
- **Independence of DPA:** The words “with complete independence” must be given an autonomous interpretation. Supervisory authorities must enjoy an independence which allows them to perform their duties **free from external influence**, direct or indirect, which is liable to have an effect on their decisions. The fact that DSK has functional independence insofar as its members are “independent and [are not] bound by instructions of any kind in the performance of their duties” is **an essential, but not sufficient, condition** to protect it from all external influence.

Reasons:

- (1) The managing member of the DSK need not always be an official of the Federal Chancellery (although it always has been), and all day-to-day business is thus *de facto* managed by a federal official, who remains bound by the instructions issued by his employer and is subject to supervision.
- (2) The office of the DSK is structurally integrated with the departments of the Federal Chancellery, and all DSK staff are under the authority of the Federal Chancellery and subject to its supervision. The DSK need not be given a separate budget to satisfy the criterion of independence. They can provide that the DPA comes under a specified ministerial department. However, the attribution of the necessary equipment and staff to DPAs must not prevent them from acting with complete independence. Here, since they are subject to supervision by the Chancellery, it is not compatible with the requirement of independence.
- (3) The Federal Chancellor has the right to be informed of all aspects of the work of the DSK.

C-288/12, COMMISSION V. HUNGARY, 8.4.2014 (“HUNGARY”)

Infringement procedure against Hungary for failure to fulfil obligations under Article 258 TFEU. Mr. J was appointed for 6 years as DPA. However, pursuant to transitional measures related to revision of data protection law, Hungary prematurely ended his term and appointed a new DPA for 9 years.

Independence of DPA: Operational independence of supervisory authorities, in that members are not bound by instructions of any kind in the performance of their duties, is an essential condition that must be met to respect the independence requirement, but this is not sufficient. The mere risk that the state could exercise political influence over decisions of a supervisory authority is enough to hinder independence. **If it were permissible for the Member State to compel the supervisory authority to vacate office before serving his/her full term, even if this comes about as a result of restructuring or changing of the institutional model, the threat of such premature termination could lead the supervisory authority to enter into a form of prior compliance with the political authority.** This is incompatible with the requirement of independence, and the supervisory cannot be regarded as being able to operate above all suspicion of partiality. Member States are free to adopt or amend the institutional model they consider most appropriate for supervisory authorities. However, they must ensure that the independence of the authority is not compromised, which entails the obligation to allow that authority to serve his/her full term.

Appointment of the Commissioner Cyprus DP law

Official

- Appointed by the Council of Ministers on the recommendation of the Minister and after consultation with the Parliamentary Committee of European Matters
- May not be dismissed during his term of office for reasons other than mental or physical incapacity
- Term of office: 4 years and renewed once

Appointment of the Commissioner

Cyprus DP law

In practice:

- Human and technical means
- Staff recruitment
- Budget – subject to the financial condition of the state
- Administrative procedures ⇒ need development and upgrading

Raising awareness

- Information to data controllers and processors about their obligations
- Information to individuals about their rights
- Specifically address children and vulnerable categories of persons through adapted ways and languages

Raising awareness in practice

- Annual reports: Visibility of its activities,
- User friendly website
- Trainings by sectors (health professionals, police, public service, DPOs)
- Digital education for children

Celebrating Data Protection Day

Data Protection Day

- The Council of Europe launched in 2006 the Data Protection Day, to be celebrated each year on **28 January** (opening for signature of Convention 108)
- Data Protection Day is now celebrated globally and is called the "Privacy Day" outside Europe
- Purpose: events organised all over Europe to raise awareness on data protection and inform citizens of their rights and of good practices

Data Protection Day in Cyprus

Events organised in 2016

- In cooperation with Universities two conferences were organised on “Cloud computing” and “social networks” addressed mainly to students
- Information material and gifts were distributed to students
- Posters displayed in Public Service places
- Presentations given in secondary schools addressed to teachers
- Quiz on the Office’s website containing ten multiple choice questions on DP
- Participation of the Commissioner in TV and radio show

International cooperation

- Article 29 working party
- Consultative Committee of Convention 108
- Joint supervisory bodies (Europol, customs, eurodac)
- International conference of privacy and data protection commissioners
- European conference of DPAs

European conference of DPAs 2017

Hosted by the Cypriot DPA

27 – 28 April 2017

Mediterranean hotel - Limassol

European conference of DPAs 2017



Thank you for your attention!

Happy

data protection

year 2017