

Evidence from Dialogue from Slober

by [slober](#) on April 22, 2014 at 07:26PM

As the consultation paper makes clear the EU's rules have origins in the OECD guidelines and Convention 108. In the early 80s, use of electronic data was limited and relatively exceptional - "small data" data-bases would be typical. Having one system applying regardless of context - perhaps - worked then. In a complex hyper-connected world it has largely broken down.

A simple example - email. No data controller can "control" in an effective way the content of an email...as to its accuracy, relevancy or whether it is up to date. "I can't get to the meeting this morning...my daughter has chicken pox" - sensitive data ...and about a child! How much worse can it get? When the daughter recovers, to keep the sender's explanation accurate, should the sender amend the tense of "has"... and what about the recipients? Millions of similar examples are generated every day.

The "problem" is that the the EU's attempt (and ours) to have one set of rules for all contexts is now unworkable. We now know sufficient about how the digital world has developed to be more subtle in our regulation. Regulation should be context specific.

Similar but different issues apply to a different context "big data" - issues over content rules but also over purposes for processing and the requirement to specify at the point of collection.

The EU should regulate processing of personal data in the EU (it's not a competence to be shelved) - but needs to do it in a sensitive way that takes account of real world context. These examples are not pro or anti business or individual privacy...just an accurate reflection of the un-workability of the current regime. We don't protect privacy by enacting rules which on an every day basis are unworkable.

Why the contribution is important

I am not sure I'd claim "importance" but it's relevant because the EU looks to be running headlong towards enacting a Data Protection Regulation which does not address the different contexts in which data is processed, which sets rules which are in many contexts self-evidently unworkable and does so against a background of large fines. This is bad for the rule of law because in areas where the rules are unworkable, one is left simply with administrative discretion as to whether to take action. It is also bad for individuals and businesses. Unfortunately despite attempting to bring the rules up-to-date, the EU's approach is large one of "more of" - without a proper context-based assessment.

The advantages of a context driven approach is that rules can be made to fit. If the real concern is "big data" (Facebook, Google etc.), the EU can delimit the context and devise rules fit for that context. If the context is employment, one can also have rules for that - that take account of the difficulty of applying many of the DP principles to ordinary businesses every day dealings. (The draft Regulation allows different rules for employment - but not rules that are inconsistent with the Regulation as a whole).

A further advantage of regulating by context is that priority could be given to those contexts where there was a pressing need for reform - and there can be proper debate about how best to protect privacy and personal data in that specific context.