

European and National Watchdogs – their Role in Protecting Fundamental Rights

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relevant FRA projects

- FRA data protection study

FRA data protection study

- Data protection study expected for publication in late 2009
- Purpose
 - identification of gaps in EU data protection law
 - conclusions and opinions of FRA for improvement of data protection at EU level

Data protection authorities

- Article 28, §1, sec.1 of the Data Protection Directive: Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.
- These authorities shall act with complete independence in exercising the functions entrusted to them.

Dimensions of Independence

- Appointment of data protection officers:
 - appointment by parliament
 - procedure involving executive, legislative and judiciary
 - need to check that government does not de facto control appointment
- Dismissal of data protection officers:
 - tenure for a certain duration
 - dismissal only on the basis of certain grounds
 - dismissal by same procedure as appointment
 - need to check that government does not de facto control dismissal
- financial independence:
 - separate budget
 - financed by contribution, fees or sanctions (UK, LU, MT)

Powers

- powers of investigation
- powers of intervention
- powers to hear claims and engage in legal proceedings
- advisory powers

Compliance

- data protection registrations
- approval procedures

Deficiencies identified

- lack of independence: exclusive control of appointment by government without involvement of parliamentary opposition
- understaffing and lack of resources: hinders also independence
- limited powers: no full powers of investigation, intervention, legal advise and engagement in legal proceedings
- disregard for registration duties in connection with new technologies (*De facto*, in AT, BG, FR, LT, CZ, SE the vast majority of surveillance cameras is not registered at all)
- weak enforcement: fines with limited dissuasive effect or no fines at all; too much focus on proactive approach, instead of reactive approach
- de facto no possibilities to seek compensation: burden of proof, difficulties relating to quantification of the damage and scarce support by the supervisory bodies

Suggestions

- review the EC data protection directive to address deficiencies
- some deficiencies need to be addressed by Member States in the process of implementation
- identification of good practices and orientation towards these good practices in the setup and practices of data protection authorities

Thank you

- Many thanks for your kind attention