

LESSONS LEARNED FROM PROMOTING DP OUTSIDE EU (law and practice)

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(Very long DP experiences in France, at EC, with EU MS and Parliament, CoE, OECD, OIF, shorter experiences with Croatia, Poland, before being MS, Albania, Belarus, Ukraine, Benin, Burkina Faso, Madagascar, Morocco, Senegal, South Africa, Tunisia, Brazil, Japan, South Korea; she created the French speaking Association of DPAs)

Remember

- DP is the protection of all human rights with regard to all personal data processing operations;
- The right to protection of personal data is included in the personality right which is inviolable, not a matter of property rights
 - ⇒ An individual cannot sell data related to her/him
 - ⇒ A person who holds personal data related to other is not an owner of personal data, so cannot sell those data

EU DP legal framework inspired all over the world since 2000 - Why and how?

- Digitalisation became less expensive, so grew all over the world
- All head of states are aware of DP since the first World Summit of the Information Society (WSIS) but did not know how to achieve it,
- But the EU DP directive of 95 was “good” (developing the CoE convention 108 connected to the ECHR), simple to understand and
 - **be the only « complete » DP general text in the world** (including the DPA)
 - at world disposal in many languages;
 - **adapted to the different constitutional/legal democratic EU MS systems** (« equivalence » reached in particular between **Anglo, German, Latin legal systems**, which inspired in many continents, since decolonisation in Africa and Asia, or revolutions from authoritarian systems in Latin America and in the east of Europe)

Without EU doing any DP promotion, except in Eastern and central Europe after the Berlin's wall fall with the help of CoE... the DP promotion outside Europe, up to 2/3 years ago because of the GDPR, has been done with good results only by two EU DPAs in their « languish world zone » : the Spanish and Portuguese DPAs mainly in Latin America since 2003, which inspired the French DPA since 2005 which created the francophone DPAs Association including many African countries

Main typical historical opportunities/difficulties (1)

- **In Latin America**, revolutions=> « habeas data » in constitutions of 6 States(right to access to public documents... including the individual's right to access to their personal data). But then huge US business lobbying against DP law for years=> First DP Law Argentina... then Uruguay, Chilli (earlier but no DPA up to 2018/9),..., Brazil a draft DP law since years and years... adopted only recently.
- **In south Sahel Africa**: « privacy » may be a difficult concept (every body knows every one).The « elite » is not large so even if a DP law is adopted it may be difficult for the DPA to apply it.

The most positive political influence for DP has been **outsourcing** from Europe in countries where **the elite has been trained in EU**+ some time huge democratic movement =>one of the poorest country in the world, the **Burkina Faso** was the first in Africa adopting a DP Law, then Senegal, Benin, Gabon, Madagascar....

Main typical historical opportunities/difficulties (2)

. **In North Africa**: difficulties to cover public sector. In particular to cover police is not easy, also the independence of DPA has been difficult. **Here also the outsourcing argument from Europe has been very important.**

. **In Asia**: establishing a DPA (the US concept from 1930, adopted in France only in 1978 and only at first for DP!) is difficult because of institutional context:

The control of the application of laws is classically in the hand of governmental sector departments but with independent commissions to solve complaints (over 200 in South Korea) because being at Court is shameful.

⇒ **In South Korea** sector DP laws with that governance. The third only with an independent type of DPA but with the only mission to give recommendations to government on policies (control power still in the hand of a ministry). **But still powerful NGOs have had DP successes at the Supreme court against bad laws.**

Current possible positive evolution in parallel to the bilateral contact with EU established 2 or 3 years ago. Here again those NGOs play an important role for adopting a kind of EU DP System. I am very confident in the currently review of those DP laws

=> **In Japan**, first time a type of European DPA was suggested at the Parliament was in 2003, not adopted. It is only recently that such a DPA was established....

Today, still difficulties

- **On the side of non EU States, i.e.**

- Democracy and Stability of the State may not yet be achieved.
- NGOs may be more interested in Access to Public documents and may even see DP against it.
- DP Rules on applicable law may be not appropriate, see Japan (the best protection applies only to personal data originated from EU !), and Tunisia (not applying DP law to non national based e-services accessible from the country).
- DP limitations by laws not often yet in line with democratic principles.

And in US ??? All scandals these last years may lead finally (after 50 years !) to a good general DP Law for private sector at federal level ? Several draft laws on the table already... and one including real DPAs the level of states ?

- **On the side of EU:**

- **Quite invisible cooperation with non EU states against illegal migrations, for helping refugees in camps, for helping women to hold money...** by pushing all population biometric files and tools in those situations... **Subjects in which EU DPAs seem not be even informed...**
- **Facing US and Chinese advance, massive investment in research, start ups, for possible very intrusive ICT and massive use such as on AI, Facial recognition...** **Please DPAs, act on basis of any of your powers even at the level of research and tests** on real individuals even with their consent

For good results with non EU countries (1)

- The most important argument for the states is still “Free flow of personal data” including for e commerce and outsourcing (as seen Japan, South Korea, Brazil,..., last spring in Senegal the candidate to the presidency election who won, has in its program to align the DP law with the GDPR, Tunisia signed the modernised COE convention ...)
- It is crucial to know well the cultural, constitutional, legal, ICT context
- It is crucial to organise study meetings with all stakeholders:
 - **the minister in charge of drafting the law, including at the right moment in inter-departments negotiations** “as experts” to answer to questions and to show how it works
 - **The Head of the State and its cabinet, the prime minister, the minister of international affairs,**
 - **The different economic and social representative structures:**
 - By sector/applications of DP...
 - ICT industry
 - Trade unions
 - NGOs
 - The parliament (commissions..)
 - **Main Universities/schools with the perspective of training DPOs (EU helps already ?)**

For good results with non EU countries (2)

.... So, I regret the EC representative could not come today because he is in Indonesia ...because the following concerns him, the EU DPAs and their EU Board :

Who from EU to be involved?

- **At the legislative time**, of course EC representatives and EU MPs, ..., but DPAS must absolutely also be involved and not for only 2 or 3 days ! **EU DPAs are the only who know how to answer in a practical manner to questions and fears.** The best would be a group of representatives of several DPAs to cooperate, each for the task in which it is the best.
- And once a DPA is set up in the non EU country: please offer visit to foreign commissioners AND offer internships (training practice) for several of their staff at EU DPAs for learning the practice , in each DP tasks including in new technologies.. **At least for 4 months**, so a person may be involved in cases from the beginning to the end.

All this is strategic but expensive (travel, board, lodging)
so please, European Commission , promote and help for all that.

Thank you

I wish to all DPOs, DPAs, the EU :

big human rights –DP successes
that all the world needs

in this period of

- new exponential growth in the world of digitalisation including very intrusive ones on which DPAs should be very active for fixing publically pertinent limits on concrete cases.
- while EU has the best DP legal system