

# Reports

This part of the EDPL hosts reports in which our correspondents keep readers abreast of various national data protection developments in Europe, as well as on the most recent questions in different privacy policy areas. The Reports are organised in cooperation with the Institute of European Media Law (EMR) in Saarbrücken ([www.emr-sb.de](http://www.emr-sb.de)) of which the Reports Editor Mark D. Cole is Director for Academic Affairs. If you are interested in contributing or would like to comment, please contact him at [mark.cole@uni.lu](mailto:mark.cole@uni.lu).

## Introduction

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### Recent Developments and Overview of the Country Reports

*Mark D Cole\**

The introduction to the Reports section of the current edition would normally have started with this: It is now two years that the EU General Data Protection Regulation is applicable and has in many ways reformed, reshaped and even revolutionized in some respects the way personal data are protected, within and well beyond the EU – as we have shown in numerous country reports in the past two years, notably with the ‘GDPR Implementation Series’. And then it would have gone on presenting in some more details the achievements, but also the current discussion around its evaluation and the potential impact of forthcoming judgments of the Court of Justice of the European Union that are now taking into consideration GDPR provisions.

But then came the Corona virus and its fast and immense spread across Europe and the world. And that changed everything. Everything also in the data protection context. When I say ‘everything’, I do not want to engage in a much-debated controversy about whether ‘the world after Covid-19 will never be the same again as before’ or whether really everything will change due to lockdown of offices, schools, social meeting places. But ‘everything’ is intended to show the dimension and at the very least that there can be no ‘business as usual’ or – in our case maybe more precise: ‘business as planned’. So instead of giv-

ing an overview of the GDPR two years after or running the originally foreseen reports, we will focus in this overview and the reports on developments that came with the pandemic. And indeed, in data protection terms it really changes a whole lot. Although there is no debate yet sparked about suitability (or unsuitability) of certain GDPR provisions, just about all measures taken in the context of the Covid-19 situation resound on data processing and data protection questions: the treatment of medical data in order to assess the pandemic dimension as well as possibly individually concerned persons; the organisation of (unplanned) home office situations and employers’ and employees’ rights and obligations including matters of monitoring; the shutdown of schools and quick (and sometimes unreflected) resort to commercially (seemingly freely) available video conferencing systems for communication or even e-learning; the collection of data of persons gathering (now in the relaxation phase also concerning in many States not only hotels but also restaurant visits as well as for cultural events); and obviously foremost the idea of tracking or tracing the movement of individuals or the potential interaction of individuals in order to be able to track back (or: trace) the potential (re-)spreading of the virus.

All of these matters and measures taken by States need a reflection in terms of compatibility with GDPR and other data protection legislation. It cannot be overlooked that due to the emergency situation, measures had to or were put in place that in some cases did not sufficiently take these aspects in-

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to consideration. However, they call for all of us interested in data protection but also data processing questions, to continue to discuss how rights and other legitimate interests should be balanced and whether our legal frameworks both specifically for data processing but also concerning emergency legislation more generally are suited to respond effectively but also in respect of the rule of law to such situations. It would be a surprise if this debate would not continue for a lengthy period of time and I am convinced that it will re-surface in many country and topical reports to come in the future editions of EDPL.

Having said that and considering that an extraordinary situation as the one we have witnessed in the past couple of weeks also affects a publisher like Lexxion that is the 'home' of GDPR, I am very grateful that the journal could continue to function during this time. It was shortly before lockdown gripped Germany (and thereby also Berlin as the seat of the publisher) when edition 1/2020 of EDPL was delivered to the subscribers, so possibly the one or other of you has not actually seen the printed copy of that edition yet, because you could not return to your offices. In order to react quickly also in a content-related sense to the development of the pandemic, *Christina Etteldorf* of the Institute of European Media Law (EMR) authored an overview piece of statements by all national data protection authorities (DPA) commenting on reactions to the pandemic. This report, in order to make it as widely accessible as possible, was published open access on Lexxion's website already at the end of March.<sup>1</sup> In this printed edition you will now find an updated and significantly enlarged version of the report **EU Member State Data Protection Authorities Deal with Covid-19: An Overview**, in which *Christina Etteldorf* has taken into consideration the most recent positioning and guidelines issued by the national DPAs. The overview shows that although the matters that they had to deal with are essentially the same, there are quite some differences in the way they were approached or the focus that was put on certain issues. This even relates to the more fundamental question of understanding the role of data protection in crisis situations. Due to being an overview of all States, the report exceeds the usual length of country reports and is placed in connection with the first report of this edition by *Sergio Guida* who gives a brief supplementing overview of **The European Data Protection Board's Position**

**on the Processing of Personal Data in the Context of Covid-19**. Some Member State reactions have been questionable in the sense that they quite clearly disrespected some data protection rules or were and are very broad and far-reaching. One such example is certainly Poland, and in her very important contribution **The Polish Government's Actions to Fight Covid-19: A Critical Look at the 'Selfie App' and Direct Access to Location Data** *Magdalena Brewczyńska* enlightens us especially about the mobile phone- and location data-related rules and why they need a re-assessment. Also, her report clearly supports the argument of finding EU-wide solutions and answers to some of the challenges created by the pandemic, not last as far as technological solutions are concerned.

However, irrespective of the Covid-19-situation, it still is a fact that since two years GDPR is now applicable and before reviews might take place of national laws that were adapted in order to meet the GDPR requirements, we hope to conclude the first round of our GDPR Implementation Series. In this edition, we have two such reports. First, *Juraj Sajfert* presents his overview on **Croatia: Minimum Service for the Implementation, Big Service to the Public Sector**. The report shows how 'reduced' the national legislation now is in comparison to the previous law. Several gaps remain in his view, as the national law does not deal in more detail with the opening clauses of the Regulation. His report also turns out to be very timely, not only because the first fines were only recently decided by the Croatian DPA, the Agencija za zaštitu osobnih podataka, AZOP, but more importantly because of the appointment of the new Director of the AZOP. This took place as one of the last decisions of the Croatian Parliament on 18 May 2020 before it dissolved itself and raises a number of serious concerns as is detailed in the report. It is important that the independence and functionality of national DPAs is ensured in the interest of efficient enforcement of the GDPR and it would not be the first time that the appointment or status of a DPA raises EU law concerns, as the report reminds us of. This again shows the value of EDPL – and the goal of the reports section – being able to present national de-

1 *Christina Etteldorf*, 'EU Member State Data Protection Authorities Deal with Covid-19: An Overview' <<https://www.lexxion.eu/wp-content/uploads/2020/03/COVID-19-Special-Data-Protection-Authorities-Deal-with-COVID-19.pdf>> accessed 15 June 2020.

velopments in light of the legislative framework of the EU, which might otherwise not have been noticed in much detail by observers in other Member States.

The second implementation report covers the **Czech Republic: Personal Data Protection Law** and was authored by *Jakub Míšek, František Kasl and Pavel Loutocký*. It explains to the delay in enacting the new framework nearly a year after GDPR applicability. It also assesses critically the provisions concerning the data processing by public administration bodies and similarly as the Croatian report points out the problematic of excluding this sector from sanctioning powers by the national DPA, which in the view of the authors goes even beyond the possibility foreseen in the GDPR. The report shows the need of resolving some tensions by an EU-friendly interpretation – which seems possible – that considers EU law conditions, but hopes for a reconsideration of the law by the Czech legislator.

In another country report *Paloma Krõõt Tupay* looks at **Estonia, the Digital Nation: Reflections on a Digital Citizen's Rights in the European Union**. Estonia is often referred to as 'E-Estonia', as the first digital State in the EU (and beyond), because of its success story concerning the establishment of IT companies and the early adoption of e-solutions eg in administration services. The report demonstrates how widespread such instruments are and informs about the digital identity of every citizen and foreign person resident in form of the individual ID code that is created with birth or registration and used eg for electronic tax declarations. Also, Estonia puts a lot of weight on being an 'accessible' administration in the sense of making data available to individuals. Especially interesting in the current context is the part of the report on the use and sharing of health data. As we have not had an overall view on the Estonian situation in the journal so far, our author has also created a long version of her report, in which she comprehensively covers numerous other areas of data-related aspects of the national legislative framework. That would have been too long to publish in its entirety in the print version which is why this shorter version here is complemented by an online longer version.<sup>2</sup>

Finally, as in the past, we look beyond the borders of the EU Member States. As mentioned above and in the context of many non-EU-country reports in the past years, GDPR is not only a Regulation with direct effect in the EU, it is also a piece of legislation that is setting standards in third countries when these are adapting their data protection rules. This is obvious for States that are hoping to achieve membership in the EU in future enlargements. As *Njomëza Zejnulahu* shows in the report on **Personal Data Protection in Kosovo, Three Years of Failure**, the existence of GDPR helps to set urgently needed standards in this State that has signed a Stabilisation and Association Agreement with the EU in 2015. The reporting of the European Commission about such candidate countries helps highlighting existing failures and achievements. The new data protection law of 2019 has helped move Kosovo further in the direction of compliance with EU standards, but the report shows that there are still serious concerns and that especially the current lack of functioning of the competent body makes the new law ineffective in its enforcement. The report calls for an enhanced respect of the rule of law and the urgent need for the appointment of an expert for the position of Commissioner of the DPA in an independent process.

On a personal note, and returning to what I said above about the role of the publisher Lexxion, I would like to seize this opportunity to thank our executive editor *Nelly Stratieva*, who will change to another position within Lexxion and hand over the responsibility for EDPL to a colleague: she has worked very hard and been instrumental for the quality of the output in the reports section in the past years. It has been a pleasure for me as Associate Editor of this section to see not only that part of the journal flourish due to her support work, but to also see the journal thrive under her stewardship. The Covid-19-situation and all the data protection related questions prove once more and maybe even more than before how important it is to have this forum for an academic and practitioner's debate. In that sense: We, the editors together with the Institute of European Media Law (EMR), hope to have provided you with interesting reports in this edition that are useful to you and invite you to continue to suggest reports on future national and European updates. If you have any feedback or would like to contribute to this section, please contact me at <mark.cole@uni.lu>.

2 Accessible at <<https://www.lexxion.eu/en/journals/edpl/#access>>.