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# EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

**Devising a trajectory towards a just and fair  
future: the identity of data protection in times  
of AI**

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# Devising a trajectory towards a just and fair future: the identity of data protection in times of AI

Good afternoon. It is a tradition for the EDPS to conclude this event, and an undeniable emotion for me to be on this stage for the fifth year as European Data Protection *Supervisor*.

## On CPDP and its topic (AI)

I want to start by congratulating Paul, Thierry, and the other terrific organisers, for this year's insightful discussions. CPDP is "THE" Brussels conference on data protection. A point of reference for the new generations of experts, practitioners and scholars, with their vibrant and fresh ideas, as well as for the not-so-young with their crucial experience. CPDP bridges generations, ideas, cultures, and regions of the world like very few others are capable to.

CPDP has turned into CPDP.ai. When I first heard about it, I had a sort of inner crisis, and I realised there are three core questions which I would like to address with you today. First, what is that supposed to mean? Has personal data protection become just a subset of AI? Second, have ethics discussions been revamped? Third, what will be the future of privacy and data protection?

Thanks a lot to Paul and the others, who by only changing the name of the event; have set the basis for an interesting debate. As it happened in the past, they might be anticipating the future and giving us a preview of what is yet to happen anyway in a few years, or what is already happening now.



## **Artificial Intelligence ≠ Data Protection**

Data protection and AI are heavily interlinked. However, I am here today with a clear message.

**Data protection and privacy will not merge, nor will disperse into Artificial Intelligence.**

I am here today to defend data protection and privacy against the risk to confuse them with the AI hype, as this could mean the end of this fundamental right. I am not naive, and you are not a naive community either. Of course, Artificial Intelligence is fuelled by data, much data that some operators refuse to recognise as 'personal' because (they claim) this data has been aggregated or anonymised. But, Artificial intelligence and data protection are different.

The AI Act is conceived and framed as an internal market legislation for commercialising AI systems, something qualitatively and completely different from a tool to 'protecting fundamental rights'. And, in this act, we will not find any serious answers on how to protect fundamental rights. In addition, the enforcement of AI rules will not be accompanied by all the safeguards that come with enforcement of data protection ones. For example, the independence of the supervisory authority, which is paramount to protecting citizens' rights.

Data protection has not turned into "everything AI". **Respect for data protection and privacy is the essential prerequisite to put people at the centre *and ahead* of technology. We must defend the identity of data protection in protecting humanity.**

## **Revamping Ethics**

There is a renewed importance of ethics in the AI context. For as much as the law can provide for regarding permitted vs. banned uses of a certain technology, the law will not always draw a specific line of 'what is right' from 'what is wrong'.



We need more of this in our broken digital ecosystems. [Maria Farrell and Robin Berjon](#) recently wrote that “our online spaces are not ecosystems (...) they’re plantations; highly concentrated and controlled environments, closer kin to the industrial farming or battery chicken farms”.

The world of Artificial Intelligence is controlled, like many others in the digital realms, by a very limited number of large firms, the only ones having the ability to develop and deploy AI at scale. These companies make decisions with a crucial societal impact on humanity; however, humanity is not part of any relevant decision-making.

We must embark on a **profound rethinking** of technologies’ market structure and the accumulation of power that comes with it, as these have a direct impact on people’s fundamental rights including the right to privacy and data protection. EU acts, such as the DMA, DSA, will certainly help. They are already advancing the cause of protecting rights of people. But there is no fundamental rethinking of our Digital World that they can achieve. **We must devise the trajectory for a future that can be just and fair to everyone. This trajectory shall pass through privacy and data protection.**

### **[The past and] the future of privacy**

To imagine the future, we shall reflect about the past. How did we get here and what will the years to come hold for us? First, the Treaty of Lisbon and its Article 16 enshrined the protection of personal data in the EU’s primary law. Then, the GDPR has defined the scope of application of data protection in secondary law. Third, came the so-called Digital Rulebook, through which the EU aimed to tame specific harmful effects of business models and unfair behaviours of digital players, and in which data protection rules are coupled with provisions of interest for competition/market regulation/consumer protection/platforms responsibility. This is the regulatory reality, as we know it until now. Fourth and finally, there will be the realisation of the so-called “Common European Data Spaces” rolled out across 14 different domains, from



agriculture to science, culture and mobility. There is a high danger that they will contain multiple exceptions from the general rules for data protection enshrined in the GDPR, working as a *lex specialis* - one could argue- to the GDPR. An example: the European Health Data Spaces provides individuals with the right to opt-out from the processing of their personal electronic health data for secondary use. However, EU Member States may provide for exceptions to such right and eliminate by national law opt-out rights, meaning that individuals could end up losing control on what happens to their health data.

One of the biggest challenges for the future will certainly be to keep all these efforts concise and harmonised, AND aligned with the words and spirit of the GDPR. Because the **GDPR must remain, especially in terms of principles, our beacon for the protection of our rights**. The GDPR is not a perfect instrument and was not destined to remain forever. But, if ever, it will be decided that we can make something better than GDPR, or that we can make the GDPR better, the legislation will have to explicitly name it. Not a millions exceptions arguing 'not to prejudice GDPR', which is running the risk of to turn it into dead branch. Many of these acts, with their multiple exceptions, are encroaching on the territory of the GDPR.

What is the future of data protection, then? I see three possible scenarios.

1. First scenario: nothing changes; GDPR remains untouched including its enforcement. In this scenario, data protection authorities do not evolve, they defend their territory, they step up enforcement to avoid that data protection is outsourced to other authorities in the Digital Rulebook.
2. Second scenario: the GDPR remains untouched on substance, but data protection changes and evolves in its enforcement. We engage into an open and equal discussion amongst regulators to ensure that data protection, AI, and competition rules are for the many and not the few, including the vulnerable ones.



3. Third scenario: data protection rules are revised on enforcement and on substance, through a transparent and consistent revision process. The constellation of EU data acts is systematised and put into a coherent set of rules with GDPR. While there could be the opportunity to update rules to the challenges of the “digital plantations”, there could be also the risk of further diluting essential protections for our people.

Whatever the future holds for us, evolution and change will eventually come. To say it with the words of one of the greatest Polish poets, Wislawa Szymborska, “Even if we were the dullest pupils in the school in the world, we would not repeat any winter or summer” ([Nic dwa razy](#), *Nothing happens twice*).

### **20th Anniversary of the EDPS**

I want to conclude with what 2024 will mean for the EDPS, the Institution I have had the honour to serve first as a deputy Supervisor and since then as Supervisor. 20 years ago several developments dear to my heart took place.

- The EDPS was created
- Poland, my country of origin, joined the European Union
- Interestingly, 2004 was also the year when the EU merger control saw the light, a sector with which data protection crucially interplays.

We are celebrating our anniversary through a series of key initiative and projects, and our Summit “Rethinking Data in a Democratic Society” on 20 June. You are all warmly invited to join what we think we will be a great series of out - of - the - box discussions and projections for the future.

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A final word *to you*, dear privacy community of CPDP.

I have always been amazed by the passion you bring to this domain. To quote Czeslaw Milosz, Polish Nobel Prize: “the voice of passion is better than the voice of reason. The passionless cannot change history”. This was his “Child of Europe”, a masterpiece I especially recommend in these challenging times for our democracy.

I believe that with your passion you will contribute to changing this word for the better.

Thank you.

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