



*The General Data Protection Regulation: Making the world a better place?*

*Keynote speech at 'EU Data Protection 2015 Regulation Meets Innovation' event*

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Ladies and gentlemen,

Greetings from a rather wet and windy Brussels.

Thank you to Chris and Eleanor for the opportunity to be with you – albeit remotely, via technology developed in Silicon Valley.

I have the task of trying to persuade you in 10 minutes that the EU's General Data Protection Regulation will, to use the unofficial motto of Silicon Valley, 'make the world a better place'.

I visited San Francisco and Silicon Valley just under three months ago. It was an inspiring trip and I met many inspiring people, several of whom are in the room now.

I was struck by the irrepressible optimism, whether among startups, 'Unicorns', SMEs or tech giants - even regulators, state and federal!

I am also optimistic about the future of data protection and privacy as human rights. So please let me make three simple suggestions to you.

**First, with or without the GDPR, for all sectors of society and the economy, data protection has become more serious than ever before.**

**Second, with or without the GDPR, data protection has gone, is going, and will continue to go truly global.**

**But – my third point, the GDPR *will* be a game changer, and you hold the key role in making it a success.**

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First, if I may, a disclaimer.

I am not an uncritical champion or apologist for EU laws. Neither am I a party to the EU's legislation procedure, in which, in a nutshell, the European Commission proposes a

law, and the European Parliament and the Council of Ministers negotiate an agreement based on that proposal.

My role is to ensure that European institutions and policy makers observe the fundamental rights of the EU, in particular the rights to privacy and to data protection.

That is why, in July this year, we produced detailed, article-by-article, recommendations on the GDPR. And we did this in the form of an app, free-of-charge, which for the first time in the EU allows you to compare the various versions of the draft law.

You may be aware that the GDPR is part of a wider package, including a proposed directive on how personal data should be processed for police and justice purposes. And yesterday, we updated our app, including recommendations for the directive.

At every stage, my institution has argued passionately for a simpler law which serves the real interests of individuals; for a law that eliminates useless bureaucracy and invests companies and data protection regulators with trust and accountability to apply the law effectively.

Next week - just in time for Christmas - we expect the Parliament and Council to reach a political agreement on the GDPR (progress on agreeing the directive is taking a bit longer).

Final adoption of the regulation will take a few more months – April or May 2016 would be a good guess, and it will become fully applicable in about two years - around Spring 2018.

That will have been *47 months* since the Commission tabled its proposal in January 2011. To give you a sense of scale, the average time it takes to adopt most legislation<sup>1</sup> in the EU is around 15 months.

So the GDPR will be one of the longest negotiated EU laws ever.

And, with 139 recitals and 91 articles, it is also going to be one of the longest EU laws on the statute book.

No wonder that this instrument elicits, in the hearts of entrepreneurs around the world, what a famous Danish existentialist called 'fear and trembling'.

Or perhaps the better cultural analogy would be to paraphrase the title Hunter S Thomson's surreal novel - *Fear and Loathing in Los Altos: a Savage Journey to the Heart of the European Ideal!*

But this timely conference today is about embracing this reform, and turning it into an opportunity to show real thought leadership in the emerging European single digital market, and elsewhere

*Unlike* Christmas, data protection reform does not come around every year – mercifully! It comes around, rather, every 20-30 years.

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<sup>1</sup> I.e. at First Reading. Source: [http://www.ey.com/Publication/vwLUAssets/EY\\_Guide\\_to\\_EU\\_legislative\\_process/\\$FILE/EU%20legislative\\_process.pdf](http://www.ey.com/Publication/vwLUAssets/EY_Guide_to_EU_legislative_process/$FILE/EU%20legislative_process.pdf)

But, even without the GDPR, this time data protection is really in the mainstream of public policy.

The European Court of Justice is enforcing the Charter of Fundamental Rights – a document which in Europe has the equivalent legal status to the Constitution in the US – very rigorously. There have been a series of very important rulings this year.

The big takeaway from the most famous of those rulings – *Schrems v Facebook* – is that ‘essentially equivalent standards’ of data protection are a condition for processing data in Europe.

Protecting privacy is not about choosing which ads you see:

- it means giving people a choice about whether their behaviour online is secretly monitored
- it means being open and honest to individuals about the data which is being collected and why
- it means taking the principle of data minimisation seriously in an era where anonymity is becoming an anachronism, and cybersecurity can never be completely assured – as a lot of companies in Silicon Valley are realising more and more.

Data protection has truly gone global. 109 countries now have data privacy laws - more than half of all the countries in the world. They are increasingly looking to Europe for models, and several are waiting for the GDPR before adopting their own new or revised rules.

This brings me to my third point.

The GDPR will, nevertheless, be a game changer. I can highlight just a few of it the biggest changes.

1. You, as companies, **should only need one phone number to talk to the regulator** in the EU. The European Data Protection Board will have its own legal personality and have binding powers. It will be up to us, as independent data protection authorities, to coordinate our positions on questions which affect more than one country in the EU.
2. **Data security will no longer be an ‘optional add-on’**. Applying data protection by design in product development will be obligation. From my discussions in the Bay Area in the autumn, this seems entirely in keeping with the trends in tech innovation, where venture capitalists as well as regulators are expecting companies to invest in solid, robust safeguards against compromising client data.
3. There will be **‘big data’ protection** – There should be more emphasis on controllers being accountable and taking responsibility for the decisions they take, on the basis of their legitimate business interests, in collecting and using personal information for compatible purposes. There should be less recourse to ‘box ticking’ where ordinary customers are expected to ‘consent’ to terms of data processing which they cannot be expected to understand. But the law should

allow for data to be used for wider purposes where there is a genuine public interest, in the areas of health and statistics and research.

We have been comparing data protection with tools for enforcing antitrust rules, and I believe one of the reasons antitrust is so effective is that it assumes that you are complying with the law, unless there is evidence to the contrary.

I believe that the GDPR should treat companies like adults, give them the responsibility to understand the spirit and letter of the law, and to get on with complying with it. But with strong sanctions and enforcement powers for failure to respect the rules meant to protect individuals.

I agree with those who say that data protection will become the new antitrust – fostering a culture of compliance with strong regulators.

Privacy and data protection can no longer be ‘window dressing’. Privacy policies, user control ‘dashboards’, chief privacy officers etc. are good in themselves, but they are not enough.

The notions of fairness, transparency and respect for individuals have to be integrated into decision making, especially with rapid spread of cloud storage, connected devices and machine learning.

I would love to talk to you in one year and see how you, as some of the world’s leading innovators, have implemented these new rules - how you have ensured that consumers of digital services enjoy the same degree of privacy as they expect in the analogue, physical environment.

This week a far more important set of discussions are due to conclude in Paris at the climate change summit.

Our experience of burning of fossil fuels has taught us that technological innovation can produce extraordinary benefits for individuals and economic growth, but also extraordinarily dangerous externalities.

You don’t have to be a prophet of ‘datageddon’ to realise that now is the time to take action: action which puts in place responsible data practices which will respect the needs of this and future generations.

Thank you for listening, I look forward to any questions