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Data Protection in the European Union: the role of National Data Protection Authorities Strengthening the fundamental rights architecture in the EU II

72% of European citizens remain unaware of the existence of their national data protection authority.¹

“People in the European Union are increasingly concerned about the protection of their data. Improvements need to take place concerning the independence, effectiveness, resources and powers of data protection authorities. The data protection system depends on the public trust, and of course knowledge, of these authorities.”

Morten Kjaerum, FRA Director

National Data Protection Authorities

The EU plays a pioneering role in the protection of personal data. The [Charter of Fundamental Rights](#) of the EU enshrines the right to data protection as an **autonomous fundamental right**. In most other international human rights treaties and declarations, data protection is understood only as an extension of the right to privacy.

Despite the underlying importance and centrality of the right to data protection in the EU, many deficiencies are present in the data protection system. This study on data protection identifies deficiencies in the EU Member States.

The data protection study presents a comparative overview and analysis of the national data protection authorities. This comparative report was developed on the basis of the 27 national studies produced by the [FRALEX](#) research network of legal experts.

In the section on rights awareness, results from the [Eurobarometer](#) and other studies/surveys carried out in the Member States are presented to provide an overview of rights awareness among the public with regard to data protection.

KEY RESULTS

Rights Awareness

The [Data Protection Directive](#) regulates the processing of personal data within the European Union. .

Article 8 of the [Charter of Fundamental Rights of the European Union](#) expressly recognises the fundamental right to the protection of personal data.

[Data protection authorities](#) play a crucial role in enabling people within the EU to access their right to data protection.

7 in every 10 respondents to a recent Eurobarometer¹ survey were not aware that there was a data protection authority in their country.

The involvement of the data protection authorities in raising rights awareness was found to be generally positive. In **Estonia** and **Romania**, however, the data protection authorities have been less involved in raising rights awareness.

In **Lithuania**, **Bulgaria** and **Slovakia**, the data protection authorities have not yet set up user-friendly and/or comprehensive and updated web sites where information relating to data protection can be accessed.

Limited powers

Data protection authorities are often not equipped with full powers of investigation and intervention or the capacity to give legal advice or engage in legal proceedings.

In **Austria**, **Hungary** and **Poland** the data protection authorities **cannot enforce their decisions** and compel the data processor/controller to end his or her unlawful conduct.

In **Belgium**, and **Germany**, the data protection authorities **cannot order the blocking, erasure, or destruction of data**, nor can they impose a temporary or definite ban on processing.

In the **UK**, the data protection authority **cannot bring a case directly before court** and/or make a determination itself as to the merits of the claim. Data protection authorities may only negotiate amicable solutions with those found in violation of data protection laws and cannot initiate court proceedings leading to sanctions or compensation.

¹ [Data Protection in the European Union: Citizen's Perceptions, Analytical Report. Flash Eurobarometer No. 225 \(February 2008\)](#), page 34.

Good practice examples

Slovenia: the data protection authority may challenge the constitutionality of legislation in front of the Constitutional court. This serves to stress its independence and importance.

Ireland: domestic legislation gives the national data protection authority the power to propose and prepare sector-specific codes of practice, which if approved by the legislature will have binding effect.

Hungary: in 2004 the staff of the national data protection authority, in cooperation with the Hungarian Civil Liberties Union, tested several public health premises to ascertain whether HIV tests were in fact facilitated anonymously and free of charge as announced.

Figure 1: Powers to hear claims and engage in legal proceedings

Member State	Hear and review claims or complaints	Refer the case to the police or the judicial authority	Bring directly the case in front of the judicial authority	Take directly a decision about the claim	Refer the matter to national Parliaments
Bulgaria	X	X	X	X	
Belgium	X	X	X	X	X
Czech Republic	X	X	X	X	
Denmark	X	X		X	
Germany	X	X	X ²	X ³	X
Estonia	X			X	X
Greece	X	X		X	X
Spain	X	X		X	
France	X	X		X	X
Ireland	X		X		
Italy	X	X		X	X
Cyprus	X	X		X	
Latvia	X		X	X	
Lithuania	X	X		X	X

² This observation does not concern the Federal Commissioner for Data Protection in Germany, but the data protection authorities at Länder level.

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Luxembourg	X	X	X	X	
Hungary	X	X			X
Malta	X	X	X	X	X
Netherlands	X	X		X	
Austria	X		X	X	
Poland	X	X		X	
Portugal	X	X		X	
Romania	X	X	X	X	
Slovenia	X	X	X	X	
Slovakia	X	X		X	X
Finland	X	X	X	X	X
Sweden	X	X	X		
United Kingdom	X	X			

Lack of compliance

In many Member States there is a **widespread disregard for the basic duty to register with the data protection authority prior to engaging in data processing operations.**

In **Austria, Bulgaria, France, Lithuania, the Czech Republic and Sweden** the vast majority of **surveillance cameras are not registered** in practice and thus are not under the supervision and control of data protection authorities.

Lack of independence

The lack of independence from the government of several of the data protection authorities in the EU presents a major problem for their credibility.

In **Lithuania, Latvia, Estonia, Ireland,** and the **United Kingdom** concerns were raised about the capability of the officers of data protection authorities to perform their task autonomously. This was often because of the procedure by which officers are nominated or appointed. In **Ireland**, the government can directly remove the data protection commissioners from office.

Legislative reform **modifying the nomination/appointment procedure** of the data protection officers could rectify the problem of lack of independence.

Lack of financial resources and staff

In **Austria, Bulgaria, Romania, Cyprus, France, Greece, Italy, Latvia, the Netherlands, Portugal, and Slovakia**, data protection authorities are unable to carry out the entirety of their tasks because of the **limited economic and human resources available to them**.

Increased financial and human resources for the data protection authorities is required.

Lack of sanctions and compensation

In **Germany, Latvia, the Netherlands, Poland, the UK, Austria, France and Hungary** prosecutions and sanctions for violations of data protection laws are limited.

Compensation from private entities in data protection cases exists in theory but not in practice in **Finland, Ireland, the Netherlands, the UK, Cyprus, Malta, Poland, Latvia, Estonia, and Sweden**. Factors such as the burden of proof being on the complainant, difficulties relating to quantification of damage and the lack of support from data protection authorities make seeking compensation for the violation of data protection rights very difficult.

Legislative reform is needed to give **data protection authorities an active role in procedures which lead to sanctions and compensation**. Where data protection authorities have the relevant powers, they need the resources to effectively use them. The system of compensation also needs to be simplified to facilitate litigation, by measures such as lump sum compensation (where a litigant does not need to prove the nature and extent of the damage, just the violation of the law)

Notes to editors

Key terms

Data protection authority: authority responsible for monitoring the application of the national legislation transposing the EU Data Protection Directive 95/46/EC

Data controller: the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data.

Data processor: the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

This report is part of a series of reports by the FRA on **Strengthening the Fundamental Rights Architecture in the EU**. This ongoing series looks at the mechanisms available for the redress of human rights violations in the EU, highlighting good practices and recommending areas for improvement.

Other reports in the series include:

[National Human Rights Institutions in the EU Member States
Strengthening the fundamental rights architecture in the EU I](#)

[EU-MIDIS Data in Focus Report: Rights Awareness and Equality Bodies
Strengthening the fundamental rights architecture in the EU III](#)

[The Impact of the Racial Equality Directive: Views of Trade Unions and
Employers in the European Union
Strengthening the fundamental rights architecture in the EU IV](#)

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