ENFORCEABLE SELF-REGULATION AND THE COMING REGULATION

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THE TRANSITION TO TRUE DATA PROTECTION

• European law has contained references to both privacy and data protection law

• The Working Party 29 reminded us that while privacy is linked to individual autonomy data protection facilitates the full range of fundamental human rights

• The proposed regulation moves us closer to full data governance with accountability provisions that run from privacy-by-design to codes of conduct

• I believe this betters meets the challenges of an observational world
ENFORCEABLE CODES OF CONDUCT ARE A FOUNDATION OF THIS TREND

• Self regulation is not the same as past concepts

• Instead, it is based on corporate or industry codes of conduct that are enforceable by regulators

• Those codes of conduct must adhere to the essential elements of accountability that rest on the foundation of data protection law
ESSENTIAL ELEMENTS OF ACCOUNTABILITY

1. Corporate commitment to internal policies (maybe codes of conduct) that link to external criteria – data protection law

2. Mechanisms to put those policies into effect, including identifying risk to individuals and mitigating those risks (privacy-by-design)

3. Internal monitoring to assure mechanisms work

4. Individual participation (transparency and consent where appropriate)

5. Standing ready to demonstrate to a regulator on request, and remediation where necessary

Global Accountability Dialogue
THIS APPROACH FACILITATES EUROPE’S DIGITAL AGENDA

• The individual’s full fundamental rights are the keystone of the approach
  • Autonomy and family life
  • Health and opportunity
  • Shared benefits of technology

• However, they go further by also respecting society’s broader interests, as well as those of responsible organisations

• The legal mechanisms for this transition will be part of the journey to a fully effective regulation
THE FOUNDATION BIG DATA ETHICS PROJECT

• It is being developed now

• The assessment tools will be customized for many sectors and industries, marketing is only one

• Concept testing with FEDMA is part of the plan
A Unified Ethical Frame for Big Data

Big Data provides *unprecedented opportunities* to drive innovation in economies, healthcare, public safety, education, transportation, and almost every human endeavor.

Big Data also *creates risk* to both individuals and society unless effective governance is in place.

Governance must be sensitive to the full range of fundamental rights. *Ethics must form the basis of decisions* that balance the incentives that come with free enterprise and the breadth of human rights impacted by Big Data.
Interrogating the Application of Big Data

- Category/Type of Data
- Use/Application
- Motivation/Objective
- Risk Assessment
- Ethics/Values Balancing Test

Mitigations
- Transparency
- Choice/Preference
- Messaging
- Accountability

Requirements
- Context
- Laws/Norms
- Harms/Rights
- Fairness
- Anti-Discrimination
- Non-Predatory
Big Data Code of Ethics – Structure

- **Part A**
  - Description of the unified ethical framework.
  - Creates a basis for the interrogation guidance.

- **Part B**
  - Interrogation guidance for implementing the code.
  - Illuminates the key issues that must be considered in making a judgment on whether a Big Data project is fair, responsible and ethical.

- **Part C**
  - Mechanisms for enforceability.
  - Ensures compliance with code.

- **Part D**
  - Contextual interrogation questionnaire.
  - Customized for organizations, industries, mediums.
Big Data Enforceable Code of Conduct

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Mechanism for Receiving Attestation
Mechanism for Receiving Complaints
Mechanism for Spot Checks
Big Data Code of Ethics – Part A

• Big Data requires an assessment against a variety of factors, including existing laws as well as the ethical frames of the stakeholders impacted by the processing.

• This requires an assessment of the intersection between the various ethical frames; resulting in a more united ethical frame (an approximation).

• To create that approximation, the Foundation adopted five key values that when taken as a whole assist in assessing this approximation.

• The unified ethical code makes use of the full range of fundamental rights as recognized by data protection law.
FIVE VALUES FOR ASSESSING

1. **Beneficial** – Who gains benefit from the processing, who bares the risk, is mitigation possible, are the risks balanced by the benefits?

2. **Progressive** – Does the processing create significant benefits not achievable by less robust processing?

3. **Sustainable** – Will the data be available when insights are used? Will the insights still be predictive when used?

4. **Respectful** – Is the processing respectful of all obligations and conditions related to the data?

5. **Fairness** – Is this processing fair to individuals or groups of individuals when all factors are considered?
Guidance must be provided to ensure an organization follows a standard approach when developing robust interrogation questions and assessing the ethics of a Big Data Project, including:

- Characterizing the Project
- Interrogating Beneficial
- Interrogating Progressive
- Interrogating Sustainable
- Interrogating Respectful
- Interrogating Fair
Big Data Enforceable Code of Conduct

Current Status and Next Steps

• Finalize Part A & B Guidance

• Discussions with Regulators on options for enforceability

• Development of frameworks/models for organizational implementation and interrogation questionnaires

• Vet the entire process with the broader data protection community and relevant stakeholder groups
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