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PREFACE

The contradictions of the privacy law

The volume is a special issue of the European Journal of Privacy Law & Technologies (EJPLT) and constitutes an ambitious collection of the proceedings of the international conference on data protection organised by Professor Massimo Foglia at the University of Bergamo (Italy), at the end of 2019.

The conference was characterized by significant talks on the evolution of the data protection law in Europe after the entering in force of Reg. (EU) 2016/679 (well known as GDPR). The collection of papers of renowned professors, researchers and lawyers with a solid experience on data protection issues, coming from the different European Member States, has been made by Prof. Foglia, who brilliantly put together the works, systematically organising them: from general principles to liability rules, through some practical applications of data protection law (e.g.: minors, consumers, health, public and private institutions).

The collection of the contributions finds its natural place as a special volume of EJPLT which, indeed, is a European Law Scientific Journal, specifically focused on privacy, with particular regard to the ever-important relationship between, law and innovation, humanities and technologies.

In this light, the special volume of the EJPLT is dedicated to the private enforcement of general data protection regulation, underlining the chances as well as the new challenges arising from this reform of data protection law.

The GDPR represents the European Union's attempt to acquire leadership in the privacy field and present itself as a safe place for the circulation of personal data both offline and online (given the absence of the so-called e-privacy Regulation). The GDPR is the origin of the concept of the natural person as *vulnerable* subject [1] regardless of disability, age and other but in himself/herself as sub-

[1] G Malgieri and J Niklas, 'Vulnerable Data Subjects' (Forthcoming 2020) Special Issue on Data Protection and Research, Computer Law and Security Review, 1 ff.. Available at SSRN: https://ssrn.com/abstract=3569808: Abstract '[…]*the starting point for this reflection is wide-ranging development, deployment and use of data-driven technologies that may pose substantial risks to human rights, the rule of law and social justice. Application of such technologies area*

ject interested in the processing of personal data most of all when he/she acts in a digital environment.

However, a careful reading of the regulatory text highlights the double soul of European legislation. In many cases it allows exceptions to the mandatory consent to data processing and, in particular, allows the voluntary transfer of data in exchange for services (almost always provided in a digital environment), making personal data an asset object to exchange even under certain (mainly formal) conditions.

In other words, the GDPR is long and complex and presents numerous antinomies and logical contradictions which, considering also the detailed national regulations, are translated into interpretative issues such as to make its practical application very difficult and diverging not only from one State to another State in the EU but also, within same State, between public and private entities, between natural and legal persons, public administrations and businesses etc.

Think, for example, of the difficulty of taking a clear position on the position (internal or external) of the DPO with respect to the data controller. The relationship between the national Data Protection Authorities (DPAs) and the two European bodies (the European Data Protection Supervisors (EDPS) and the European Data Protection Board (EDPB)) is equally critical. The latter appear overlying and not very dialoguing with the former. At the end, the level of disciplinary uniformity achieved is not high, considering also the breakthrough occurred with *Brexit* of the United Kingdom.

Precisely for these reasons, the volume opens with the uniform interpretation of GDPR concepts as a new challenge for European and national courts in the field of data protection. Contemporary, in the volume are analysed the major international implications of the GDPR both in the private international law and in the administrative international law.

Moving on to the application of the GDPR to some specific areas, reference was made in the first place to minors, and their data protection, with particular regard to the analysis of the effectiveness of consent to the processing of personal data as a regulatory tool to protect the best interest of the child. As a matter of fact, consent is one of the leading lawful bases of data processing, but this regulatory tool often does not guarantee an effective protection of data subjects,

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can significantly contribute to systematically disadvantage marginalised communities, exploit people in particularly sensitive life situations and lead to discrimination. Considering those problems, we recognise the special role of personal data protection and call for its vulnerability-aware interpretation. However, to better delineate and contextualise the general understanding of human vulnerability we first review the theories of vulnerability and the use of the concept in international human rights law and European law'.

who are often unaware of multiple aspects of the processing of his or her personal data. This happens especially when the data subjects are the weak subjects in a contractual relationship, such as consumers, and it is necessary to avoid unlawful processing of their data, including the commercial use of personal data without that data subject's aware consent.

Secondly, the impact of the new regulation on data protection in the healthcare sector was taken into consideration, comparing different national legal systems of the European Union. In particular, the issues of patient rights understood as data subjects were studied in depth, including them in the wider context of the dignity of the natural person. In addition, the responsibilities and tasks of the healthcare organisations were observed, as well as the conduct of medical research in compliance with GDPR.

Finally, the study of data protection in institutions and bodies was extremely important. More in detail, were specifically investigated the main actions undertaken in order to ensure compliance with the GDPR and some differences regarding the application of this EU legal framework in comparison with private entities and public authorities of the EU Member States.

Moving on to the *ex post* protection, provided for in articles 82 and following of the GDPR, it was deemed necessary to deepen the liability for unlawful processing of personal data by investigating the subjective and objective requirements of this liability (in particular the fault).

This analysis is particularly important because it highlights the ambiguity of the formulation of the rules of the Data Protection Regulation on this topic and, above all, opens the reflection on possible scenarios in which it will be possible to exclude the liability of the data controller or other subjects involved in the processing of personal data in the absence of a lawful basis, simply by introducing a contractual clause with which the interested party consciously consents to the exemption from any liability that could be charged to the subjects mentioned above.

From the perspective of compensation for damages, moreover, it has been verified whether the compensation of non-material damage can be an effective means to ensure legal protection also in the field of data protection.

In conclusion, the horizon of the editor and all the authors of the volume is wide, but the studies are exposed in a precise and coherent way, establishing themselves on a solid basis of scientific depth and mastery of data protection matter. The issue is addressed from the point of view of new technologies because they have completely changed the world we were used to living in, involving many benefits but also numerous risks, first of all in the field of data protection.

The volume represents a valid scientific contribution on the private enforcement of the GDPR that of course should be read by scholars and legal practitioners who deal with data protection issues in the 21st century.

Naples, 18th June 2020

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