

# The objectives of enforcement co-operation and the PHAEDRA project



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at the APEC workshop  
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# Outline

- Need for enforcement co-operation
- The PHAEDRA project
- Survey results
- Next steps

# Need for enforcement co-operation

- DPAs are constrained by a shortage of resources
- But they may investigate the same privacy issues, e.g., Google Street View, hacking of Sony Playstation, Facebook's selling of personal data
- All DPAs surveyed and/or interviewed emphasise importance and need for co-operation in enforcing privacy
- OECD initiatives, 2007 Recommendations, GPEN, etc.
- ICDPPC Resolution in International Co-operation in Montreal 2007, Mexico City Resolution re cross-border investigation and enforcement
- Article 45 of the proposed EU Data Protection Regulation concerns international co-operation for the protection of personal data

# Article 45 – International co-operation for protection of personal data

In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

- (a) develop international co-operation mechanisms ...;
- (b) provide international mutual assistance ..., including through (...), complaint referral, investigative assistance and information exchange...;
- (c) engage relevant stakeholders in discussion and activities ...;
- (d) promote the exchange and documentation of personal data protection legislation and practice.

# PHAEDRA

- Improving Practical and Helpful co-operAtion bEtween Data pRotected Authorities
- Two-year project
- Started mid-Jan 2013
- Funded by the European Commission (DG Justice)
- Consortium comprises four partners:
  - Vrije Universiteit Brussel (Belgium),
  - Trilateral (UK),
  - GIODO (Polish DPA),
  - Universidad Jaume I (Spain)

# PHAEDRA work streams

WS 0 – Project management

WS1 – Setting the scene

WS2 – Legislative review

WS3 – Workshops and collaboration with GPEN  
and/or ICDPPC WG

WS4 – Findings and recommendations

WS5 – Dissemination activities

# PHAEDRA WS1

- 10 case studies, e.g., Google Buzz, Street View, WhatsApp, Google's one privacy policy, SWIFT, Facebook, Sony Playstation hack
- Co-operation, co-ordination mechanisms in Europe and globally – Art 29 WP, Council of Europe, ICDPPC, GPEN, APEC, APPA, Ibero-American network, etc
- Survey of DPAs
- Interviews
- Benefits for Europe of international co-operation
- Findings and recommendations

# PHAEDRA WS2

- Identify and review enabling legislation.
- Measures adopted so far to reduce barriers to co-operation. Instruments and networks that contain specific soft-law measures to enhance co-operation between DPAs.
- Measures to reduce barriers to co-operation. Analyse the findings of the foregoing activities and identify measures that could be taken to reduce such barriers.

# PHaedra WS3

- Convene three workshops – or panel sessions within existing conferences of DPAs:
- Panel session at ICDPPC, Warsaw, Sept 2013
- Ibero-American network of DPAs in Colombia in Feb 2014
- Conference of east European DPAs in Skopje, Macedonia
- Participation in other workshops and conferences (e.g., APPA, APEC)
- See how we might support efforts of the GPEN and/or ICDPPC WG re improved co-operation and co-ordination [to be discussed in Warsaw]

# 10 case studies

- Google Buzz
- Google Street View
- CNIL's investigation of Google's combined privacy policy
- WhatsApp investigation by Dutch & Canadian DPAs
- SWIFT
- Irish DPA audit of Facebook Ireland
- Sony Playstation hacks
- World Anti-Doping Association
- Data retention
- “Sweep” by DPAs in mid-May 2013

# Horizontal analysis of case studies - 1

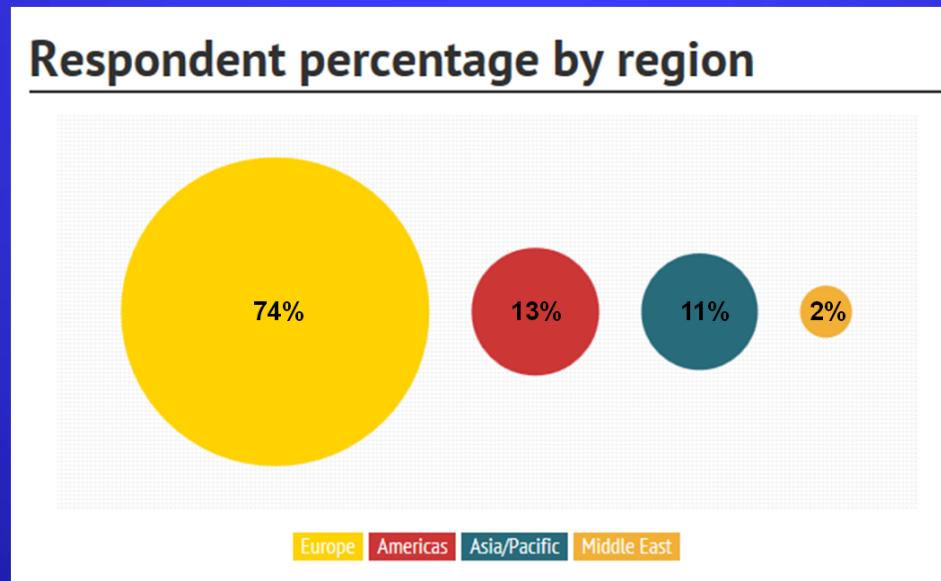
- Increasing mechanisms of collaboration between DPAs
  - GPEN
  - Evidence of information sharing even on unrelated cases (learning from experiences of other DPAs)
  - Informal ad-hoc consultation and “watching with interest”.
- Strong central role of the Article 29 WP in Europe
  - Also some co-operation (information sharing and parallel investigations) outside Europe
  - Opinions referenced in other European documents.
- Easier collaboration in active rather than reactive modes (when co-ordination can be planned and agreed in advance, rather than in response to a complaint).
  - “reactive” mode collaboration does, however, seem to fit to a pattern (see next point).

# Horizontal analysis of case studies - 2

- Decentralisation and co-ordination adopted as a response to different national jurisdictions, legal frameworks and particular contexts, and to data protection issues that are large and cross multiple jurisdictions
  - Process of identifying the data protection authority who has local jurisdiction then delegating to them seems common response.
  - Also decentralised information gathering then central reporting/sharing appears an effective response to multi-national issues (e.g. national DPAs contacting national central banks for information in the SWIFT case).
  - A problem arises when individual DPAs do not have investigation/audit powers, or have weaker sanctions than other DPAs. They may not be able to carry their ‘weight’ in a delegated, multi-national investigation.
- Perceived need for collaboration driven by international data-protection incidents and uneven responses to these.

# Survey of DPAs

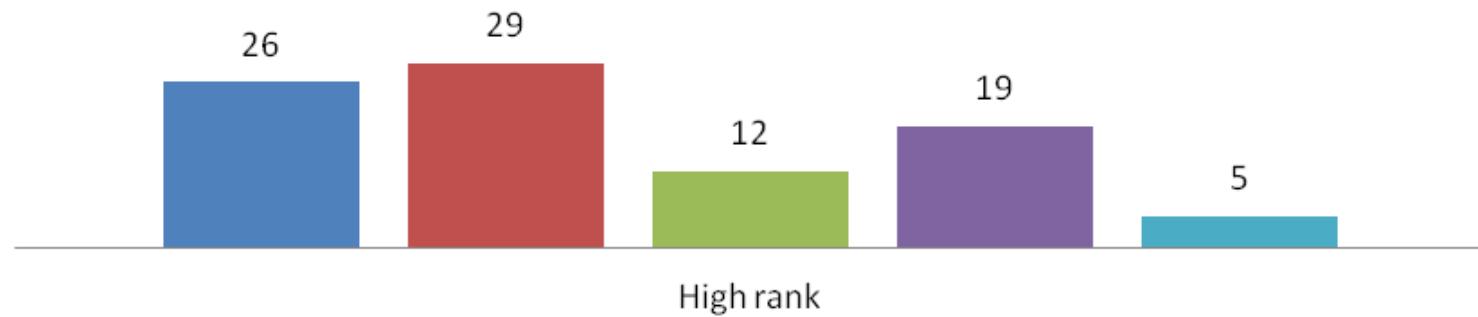
- We compiled a list of 79 DPAs
- Sent out a questionnaire (10 questions, 2 pages) on 12 Feb 2013, and reminders in mid-March and mid-April
- As of early July, we had responses from 48 DPAs



# Findings from the survey

## Frequency with which each area is ranked as of high importance (1 or 2)

- Exchange of knowledge
- Co-ordination in enforcement
- Converging powers of DPAs
- Consistency of criteria in enforcement
- Other factors



# Findings from the survey

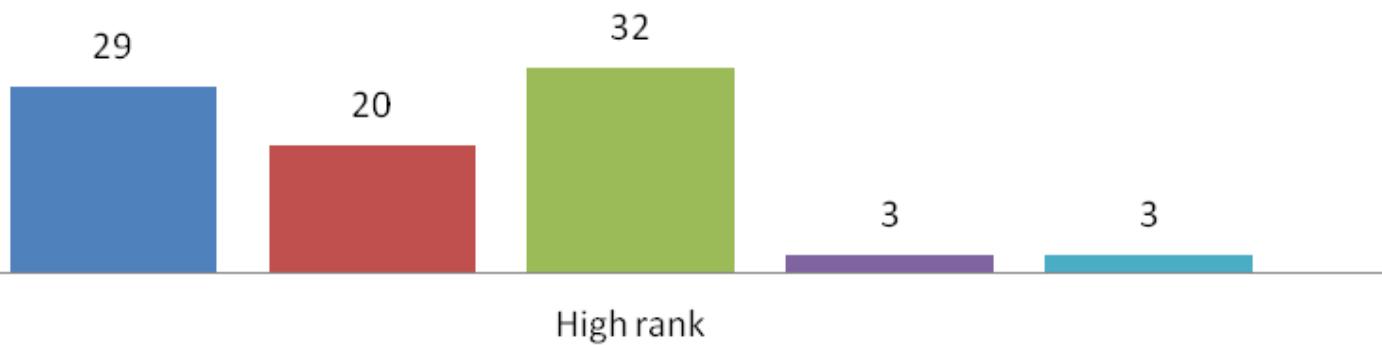
## Frequency with which each constraint is ranked as of high importance (1 or 2)

■ Limited budget or human resources ■ Legal constraints

■ Lack of info from other DPAs

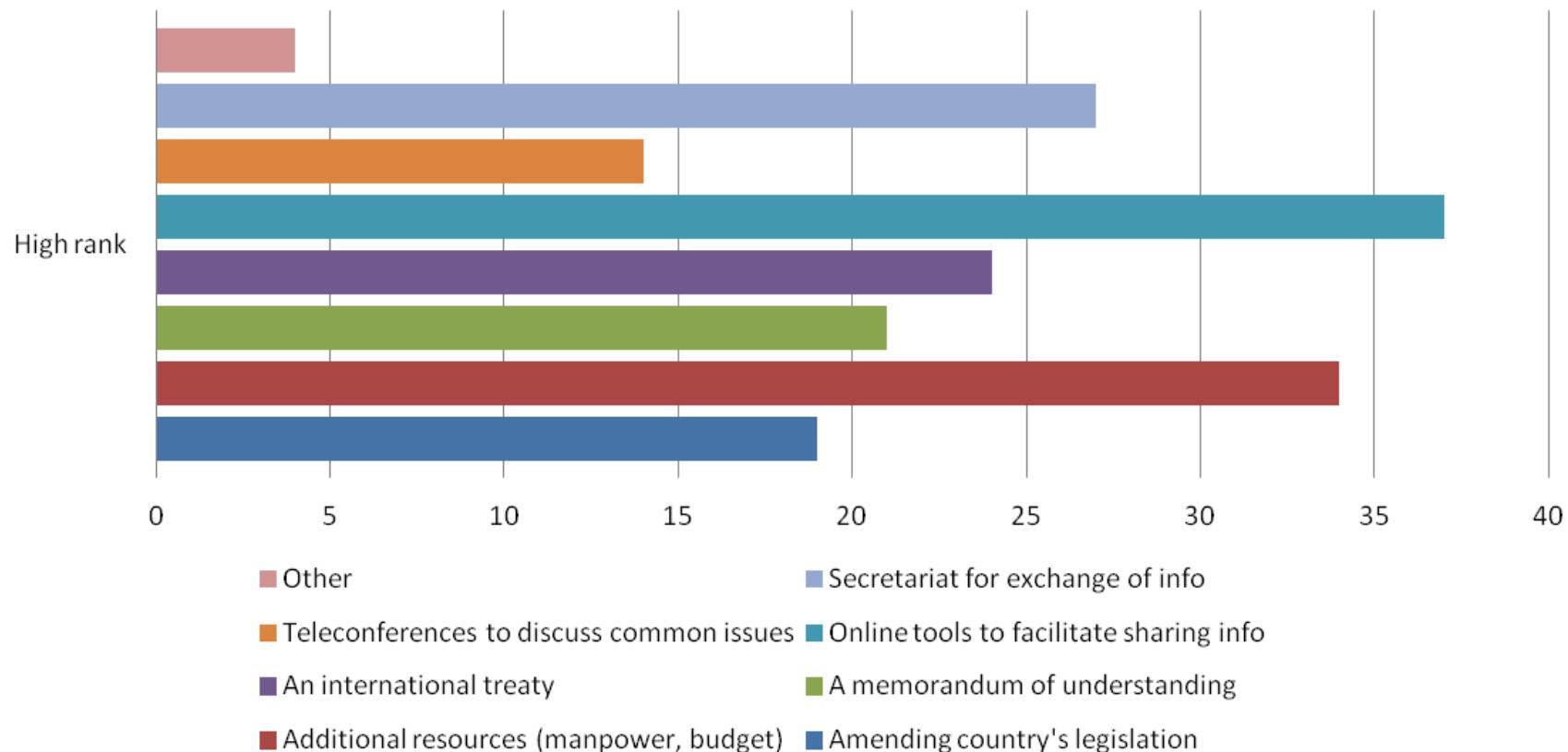
■ Language differences

■ Other



# Findings from the survey

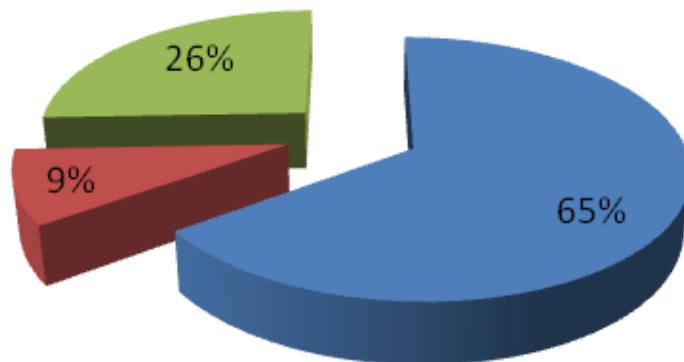
**Frequency with which each measure is ranked as high importance (1, 2, 3, or 4)**



# Findings from the survey

## Able to share information with cross-border DPAs?

■ Yes ■ No ■ Unclear or Conditional



# Interviews with DPAs

- CNIL
- ICO
- OPC of Canada
- FTC
- Dutch DPA
- Irish DPA
- OECD
- EDPS
- ILITA
- Finnish DP Ombudsman
- Garante
- Portugal

# Next steps

- More interviews
- Analysis of DPA legislation: what are the barriers to enforcement co-ordination?
- What instruments do DPAs use to enforce privacy?
- Planning for Warsaw
- Finalising first two PHAEDRA reports
- How can we best support DPAs?

# PHaedra workshop at Warsaw

- 24 Sept 2013 from 14.00 – 17.00
- Workshop is for DPAs, but others can attend
- Agenda:
  - Present the results of Deliverables 1 and 2
  - Panel session of DPAs
  - Discussion of how PHaedra can support DPAs in year 2
  - Closing remarks on future of privacy enforcement co-ordination
- Invitations to DPAs went out in second week of July

# How should PHAEDRA support DPAs

- In year 2, we have 8 person-months which we can use to develop two studies or projects in support of GPEN or the International Conference.
- Three or four possibilities:
- Google privacy policies
- Instruments for enforcing privacy
- Developing a repository for privacy enforcement authorities, e.g., of data protection legislation, best practices, case studies, contact list, etc.

Thank you for your attention

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