



**UiO** : **Institutt for privatrett**  
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# **GDPR etter ett og halvt år: betydning for private aktørers atferd?**

**[Privatrettssymposiet 2020]**



## TØI rapport 800/2005

- De fleste virksomheter virket positive til personvern og personopplysningsloven fra 2000 
- Om kjennskap til loven: hele 82 % av virksomhetene svarte «lite kjennskap» eller «verken eller» 
- Kun 4 % av respondentene opplyste at de oppfylte fem sentrale krav som følger av loven 

# Hovedkilder

- Multistakeholder Expert Group rapport (13. juni 2019, med representanter fra bl.a.
  - European Banking Federation (EBF) - DIGITAL-EUROPE - E-Commerce Europe - European Federation of Pharmaceutical Industries and Associations (EFPIA) - European Telecommunications Network Operators' Association (ETNO) – GSMA Europe - Federation of European Direct and Interactive Marketing (FEDMA) - Insurance Europe - SMEunited

## Hovedkilder (II)

- Rådet: «Council position and findings on the application of the General Data Protection Regulation (GDPR)» (19. desember 2019)
- Eurobarometer 487a (mars 2019)
- EDPB: «First overview on the implementation of the GDPR and the roles and means of the national supervisory authorities» (feb. 2019)
- ICO: «GDPR: One Year On» (mai 2019)

# Beistet!



# **Fines, fines, fines ... penger, penger, penger ... bunnlinje, bunnlinje, bunnlinje ...**

- Nesten EUR 56 millioner i gebyrer for perioden mai 2018 til januar 2019

- EDPB: «First overview on the implementation of the GDPR and the roles and means of the national supervisory authorities» (februar 2019)

# Rådets oppsummering så langt

‘«In the view of the Council, the GDPR has been a success. It is undoubtedly an important milestone and an instrument that strengthens the right to the protection of personal data and fosters trust-enabling innovation in the EU. The GDPR has also further increased awareness of the importance of data protection both in the EU and abroad»

- Council position and findings on the application of the General Data Protection Regulation (19. des. 2019) s. 5

# Eurobarometer 487a (mars 2019)



## AWARENESS OF THE GENERAL DATA PROTECTION REGULATION – ONE YEAR ON

### Awareness



67% of Europeans have heard of the GDPR

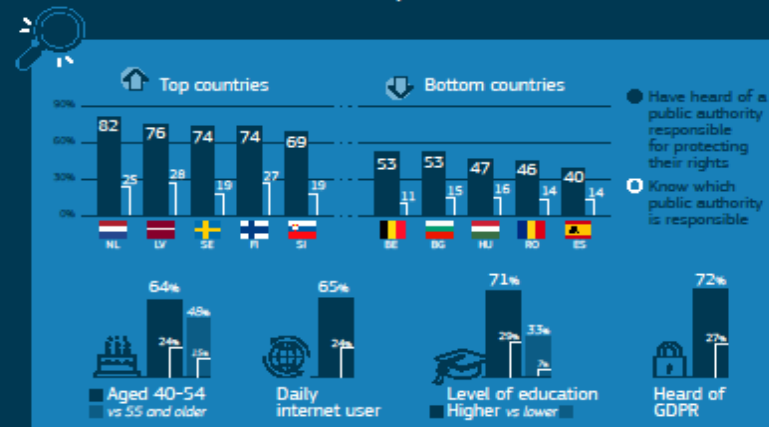
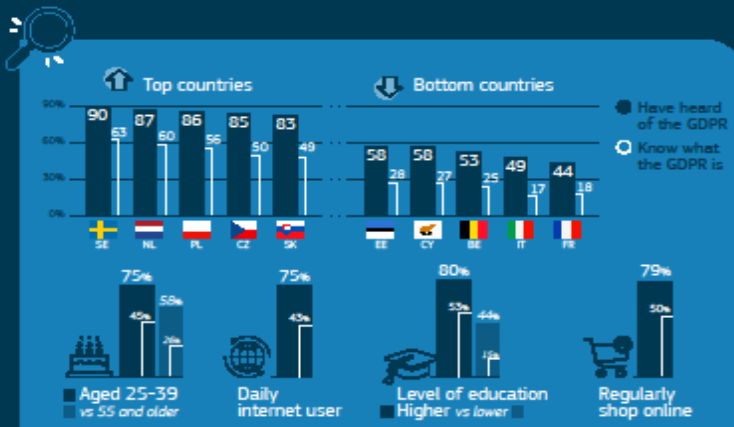
### Public authorities



57% of Europeans know of the existence of a public authority in their country responsible for protecting their rights about personal data

+20 pp since February / March 2015

20% know which public authority is responsible



Source: Special Eurobarometer 487a – "The General Data Protection Regulation" Fieldwork: March 2019



# Eurobarometer 487a (forts.)

MEN ...

- SE har lavest prosent av respondenter som har hørt om alle hovedrettigheter til registrerte i GDPR
- «No consistent relationship between awareness of GDPR and level of control respondents feel ...» (s. 35)

# Erfaringer fra UK

- ICO melder om økninger i
  - tillitt fra registrerte
  - registrertes bruk av sine pv-rettigheter
  - rapporter om sikkerhetsbrudd (fra 3.300 for 2017-18 til **14.000** for 2018-2019)
  - antall ansatte i ICO (**tredobling** ila siste tre år!)
  
- ICO: «GDPR: One Year On» (mai 2019)

# Økt investeringer og fornyelse

«Many organisations welcomed the spur of GDPR in obtaining funding and management buy-in for finally updating IT systems that have for some time needed to be upgraded ...»

- M/stakeholder Expert Gp (s. 4)

# Bransjevise forskjeller

- «Ecommerce Europe indicates that the vast majority of its members in Germany needed to establish a completely new data management system»
- ... til forskjell fra forsikringsbransjen
  - M/stakeholder Expert Gp (s. 16)

## Problemer for SMEer

«SMEs report having spent considerable resources to adapt to GDPR obligations, such as documentation or establishing data processing policies, which they perceive as an increase in administrative duties. Many SMEs mention they had to seek advice from external consultants to understand the rules and set up systems to comply with the GDPR (including the implementation of technical and organisational measures), and that **they usually lack the necessary human and economic resources to implement the obligations in GDPR»**

- M/stakeholder Expert Gp (s. 4)

# Reelle endringer i teknologiske prosesser?

- Vanskelig å bedømme ...
- Noen tegn på at app'er er blitt mer pv-vennlige:
  - Jf. Momen m.fl., «Did App Privacy Improve After the GDPR?» (doi: 10.1109/MSEC.2019.2938445): «Overall we conclude that app privacy has moderately improved since the GDPR was implemented», men anerkjenner betydelige metodologiske svakheter ved studiet
- Også en del studier som tyder på «business as usual» eller «pv-teater» (i alle fall for nettgigantene)
  - Jf. f.eks. Forbrukerrådet, «Deceived by design» (2018)

# Betydelig usikkerhet de lege lata

«While the EDPB guidelines are generally welcomed, several members regret that it was not delivered earlier in the process .... Several members would also welcome more guidance from EDPB on new complex principles and rules of GDPR, including on the safeguards to be applied in further processing for scientific purposes or on anonymisation (following a risk-based methodology). Furthermore, SMEs would welcome the development of concrete, simple and user friendly tools to help them apply the guidelines in practice»

- M/stakeholder Expert Gp (s. 4-5)

## Betydelig usikkerhet de lege lata (II)

«the Council deems that controllers and processors need more clarification and guidance from the supervisory authorities and the EDPB. The Commission's upcoming evaluation report should also highlight the broad need for practical guidelines and other suitable means to meet this need» (s. 6)

- Council position and findings on the application of the General Data Protection Regulation (19. des. 2019) s. 6



# Vanskeligheter ved implementering

Eksempelvis krav til opplysningsplikt:

«On the one hand the controller should use “clear and plain language”, on the other hand data processes are often highly technical and very complex. Companies and organisations therefore find it unclear how to inform about such data processes in an easily comprehensible way. Several members report that the EDPB guidelines on transparency provide recommendations that make it difficult in being both concise and comprehensive»

- M/stakeholder Expert Gp (s. 4-5)

# Samtykke som behandlingsgrunnlag

«Many organisations indicate that they would now choose where possible to rely on another legal basis for their processing, such as performance of a contract or a .. legitimate interest. For these organisations, consent is used for specific types of processing where no other legal basis is available ... [T]his is partly because of the additional requirements for a valid consent but also because of the threat of withdrawal»

- M/stakeholder Expert Gp (s. 9)

# Flere vil ha bha status

- ... men også større klarhet om rollene bha og db
    - dette til tross for EU-domstolens avgjørelser i sak C-210/16 *Wirtschaftsakademie* og sak C-40/17 *Fashion ID*
- M/stakeholder Expert Gp (s. 17)

# Nye avtalevilkår

- forsøk på å inkludere nye vilkår i avtaler mellom bha og db utover det som er påkrevd ihht. art 28; eksempelvis ...
  - «Controllers trying to add clauses about financial indemnification on which Article 28 is silent ...
  - Controllers trying to transfer their obligations to processors, such as carrying out a DPIA, data breach notification to the DPA or the data subject ...
  - Processor's obligations about breach notification, in particular when the processor obligation is triggered and what the notification should be ...
  - Processors seeking indemnities from controllers in relation to any GDPR liability the processor might incur»
    - M/stakeholder Expert Gp (s. 18)

# Klager

- ujevn økning i klager til tilsynsmyndigheter (noen forretningsområder opplever en økning (f.eks. DIGITALEUROPE medlemmer); andre ikke (f.eks. EBF, Insurance Europe og ETNO))
- ingen nevneverdig økning i rettsaker på nasjonalt nivå

- M/stakeholder Expert Gp (s. 11)

## Det store oppgjøret?

- Vi venter fremdeles på det store oppgjøret mellom EU-personvernrett og nettgigantene
- Saken mellom NOYB.eu og FB som nå foregå ved Wien Landesgericht vil kanskje føre til et slikt oppgjør

# Fremtidige vurderinger

- Første evalueringsrapport fra Kommisjonen skal leveres innen 25. mai 2020