

# ENFORCING DATA PROTECTION LEARNING LESSONS

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# How it started

*(2002)*

- Clear and firm decision of the commissioners
- Establishment enforcement department: new people
- Penalty policy
- Announcements in the media

Lesson: embedding of enforcement activities within the authority needs permanent attention

# Selection of investigation objects

- Clear-defined norm: in our case notification
- Compliance analysis; comparison of file of notifications so far with sector knowledge
- Last warning to underrepresented sectors and governmental organisations
- Random selection of 50 data controllers operating in 4 sectors

Lessons: when compliance is low and you take samples a neutral statistical method is required; everyone asks “why me”; keep a good record of your considerations for any court cases

# Counter-attacks

- Incomplete answers or not answering at all
- Asking for sympathy and pardon
- Threatening with lawsuits (liability and against penalties)

Lessons: use a standard mode of operation; you will certainly meet interpretation problems (in our case: exemptions and combined data processing for several purposes)

# Communication as multiplier

- Publicity was used as incentive to comply (press releases, newsletters and interviews)
- Naming and shaming (governmental organisations only)
- Publicity was used as means to transparency and to account for the investigation policy (regular reports on the website)

Lesson: small investigation samples can have a great impact (the number of notifications increased from 5.000 to 20.000 within 2 years)

# How it went on

- Fines for 29 data controllers (administrative sanction ranging from 3.000 up to 15.000 euro)
- 13 lawsuits against the fine by governmental organisations only
- Decision to repeat notification investigation by taking samples each year

Lesson: regard the lawsuits as an envitable reaction; be prepared to it

# An extreme case of non-compliance

*(2003/2004)*

- A simple complaint about a trade information agency inspired to an inspection on the spot
- Spectacular outcome of non-compliance by the agency
- Also non-compliance by clients (lawyers, banks and insurance companies)
- Also non-compliance by data suppliers (Tax authority, public prosecutor, social security authorities, chamber of commerce)
- Penal cases against the trade information agency; written warnings to all other parties; good publicity

Lesson: a well-chosen investigation promotes the issue of data protection; brings the watchdog also political and public support

# How it (almost) ended

*(2005)*

- Highest administrative court decided that our administrative fines for non-notification were against the law (due to a mistake in the Data Protection Act; rectified by now)
- Loss of know-how (too many experienced people left the organisation over a short period)
- Loss of spirit
- Want of investigation skills

Lesson: establishment of enforcement activities is a long term project

# New method: repeated investigation

*(2005/2006)*

- Investigation in one sector; private investigation agencies (license obligatory, code of conduct applicable; total 300)
- Questionnaires sent to 30 agencies; 3 inspections on the spot
- Outcome: extreme low compliance of the obligation to inform
- First action: letter of explanation to all agencies and sharp warning
- Second action (2007): inspections on the spot and if necessary penalties
- Same method applied to a black list in the retail trade sector and to the mode of operation of fraud teams

Lesson: data protection norms are not always clear to the data controllers; investigations in two rounds can be used to elaborate the norms per sector or activity;

# Plans for 2007/2008

- New method: electronic questionnaires
- Temporarily complaints service/ black paper on one or two topics
- Elaboration of norms by soft law/guidelines (e.g. internet)
- Political lobby for publication as penalty in the Data Protection Act
- Further development of system for compliance and risk analysis
- Combined investigation with Health inspection
- Strong interaction between enforcement and communication (enforcement targets to enhance the social basis for data protection)

Lessons: Enforcement in the Netherlands is still under development; experiencing with several methods seems to be fruitful