ETICA Conference on Ethics and Governance of Future and Emerging ICTs
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"IT for a Better Future – How to integrate ethics, politics an innovation"

Panel I: Ethics and Politics - "How should we shape the relationship of ethics, ICT and society?"

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Speaking notes

- Let me say - first of all - that the "recommended reading" in preparation of this conference, as suggested by the organisers, has echoed strongly with me for two reasons: firstly because we are now in the midst of a thorough review of the EU legal framework for data protection, with a view to making it more effective in the light of new technological challenges, and secondly because, not long ago, we have been involved in a similar activity for the "Law of the Future" project\(^1\), requiring some comprehensive "future thinking" about the legal issues for our societies in 2030 and beyond.

- One of the issues discussed in the EDPS contribution\(^2\) is how to deal with increasing complexity, notably allocating responsibility in a complex environment and ensuring accountability of responsible organisations for what happens in chains. This is of course also an important problem in the context of the ETICA project.

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1 See [http://www.lawofthefuture.org](http://www.lawofthefuture.org)
• More on substance, I would like to briefly mention some areas where the outcome of the ETICA project on ethics and governance of emerging ICTs has clear links with the future of privacy and data protection.

• First the concept of "personal data" as an essential element determining the scope of the legal principles of data protection. The definition of this concept in Article 2(a) of the Data Protection Directive – *any information relating to an identified or identifiable natural person* – ensures a wide scope of application. But this is on two conditions: the information should *relate to* an individual and that individual should at least be *identifiable*. The first of these conditions ("relating to") is often overlooked and not always properly understood. It applies when information is "about" someone, but also when information has an "impact" on someone, either intended or resulting\(^3\). This is highly relevant for many emerging technologies that will therefore trigger the application of legal safeguards that may not always be applicable otherwise.

• Secondly: an area of special attention is how to *activate* responsible controllers, so that they take appropriate and effective measures to ensure that data protection principles are *complied with* in practice and are able to *demonstrate* that such measures have been taken. This is referred to as the principle of "Accountability". This could well be combined with the principle of "Privacy by Design" in order to ensure that appropriate technical and organisational means are used to build compliance with data protection principles into all phases of development of relevant systems and projects.

• Thirdly: some of the main data protection principles are designed to ensure that everyone has an appropriate degree of control over the collection and use of his or her personal data. This is certainly the case for the principle of transparency, the need for a specific and legitimate purpose, and the rights of the data subject. Some of the new technologies identified in the ETICA project are quite problematic in this perspective and therefore call for a strengthening of current arrangements for a more responsible use of these and similar technologies. The review of the legal framework for data protection is a real opportunity to provide for such reinforcement.

\(^3\) Such as data about a device which are used to draw conclusions about its user.
• Fourthly: a particular problem is the increasing use of various methods of risk assessment, including the development of indicators or profiles suggesting that someone may qualify for further investigation or other kinds of special treatment (see recent proposal for an EU PNR system). This is problematic because it often results in a reversal of the burden of proof, especially in the context of large scale or systematic use. We need to be much more creative in my view to avoid unacceptable use of such methods.

• Finally, let me express support for more safeguards surrounding certain research projects, especially in the area of security research. It is not enough to evaluate proposals for projects on the basis of ethical standards before their start. There is also a need to think very carefully about the consequences of certain outcomes, before they are implemented or used as pilots for a gradual introduction, without such careful reflection.