Articles 40-41 of the EU’s General Data Protection Regulation: Codes of (Mis)conduct?

Carl Vander Maelen
Pacific Telecommunications Council conference 2023
Honolulu, Hawaii (15-18 January 2023)
Part I

What does the European legislator mean by ‘codes of conduct’?
Safety and health in textiles, clothing, leather and footwear
DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 24 October 1995
on the protection of individuals with regard to the processing of personal data and on the free movement of such data

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 April 2016
on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,
and repealing Directive 95/46/EC (General Data Protection Regulation)
Part II

The failure of codes under the EU's data protection policy
2.2.5. Encouraging self-regulatory initiatives and exploring EU certification schemes

The Commission continues to consider that self-regulatory initiatives by data controllers can contribute to a better enforcement of data protection rules. The current provisions on self-regulation in the Data Protection Directive, namely the scope for drawing up Codes of Conduct, have rarely been used so far and are not considered satisfactory by private stakeholders.

European Commission – Communication

‘A comprehensive approach on personal data protection in the European Union’, 2010
Part III

A new course for the GDPR?
REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Codes have a compliance function

Codes help mitigate or avoid fines
Codes implement and specify the GDPR

- GDPR
  - Codes of conduct
  - Certification
Digital Services Act and Digital Markets Act
Stepping stones to a level playing field in Europe
Carl Vander Maelen

Ghent University
Research group Law & Technology

LinkedIn: Carl Vander Maelen
Twitter: @CMaelen