



HCLU and Access Now comments to the Hungarian law implementing the General Data Protection Regulation

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The Hungarian Civil Liberties Union (HCLU) is a leading non-governmental organisation in the field of human rights including privacy and data protection in Hungary.¹ For over two decades, the HCLU has been active in protecting the rights of citizens against undue interference by those in position of public power. The HCLU monitors legislation, pursues strategic litigation, conducts public education and launches awareness raising media campaigns. It stands by citizens unable to defend themselves, assisting them in protecting their basic rights. Our lawyers provide free legal aid service in about 2000 cases per year and this number is increasing. The HCLU, with headquarters in Budapest, litigates across the country and all the way to the Hungarian Supreme Court. Currently, our biggest data protection project is to engage with several content provider companies in order to make their transparency reports public.

Access Now is an international organisation that defends and extends the digital rights of users at risk around the world.² We are a team of 40, with local staff in eleven locations around the world. We maintain four legally incorporated entities - Belgium, Costa Rica, Tunisia, and the United States - with our tech, advocacy, policy, granting, and operations teams distributed across all regions. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all. We defend privacy globally. Access Now has been involved in the EU Data Protection Reform process since the tabling of the General Data Protection Regulation (GDPR) by the EU Commission in January 2012.

HCLU and Access Now hereby provides comments to the draft of the GDPR implementation Act introduced by the Hungarian Ministry of Justice.³ We however note that the data protection reform has been one of the most comprehensive legislative process in the EU and the one week deadline for social debate does not mirror the significance and impact of this legislative piece. The GDPR puts users back in control over their personal data and the government must ensure an adequate public discourse in a democratic society.

¹ Hungarian Civil Liberties Union <https://tasz.hu/en>

² Access Now <https://www.accessnow.org/>

³See GDPR implementation Act draft at:

http://ppos.hu/infotv_jogharm_modositas_eloterjesztes_170825_PPOS_Kulcs%C3%A1r_Zolt%C3%A1n.pdf

Hungary and data protection

Hungary used to be a pioneer in protecting personal data. The country obtained an adequacy status from the European Union back in 2000, becoming the first country out of the groups of 10 states accessing the EU in 2004 to do so.⁴ Hungary then continued to upgrade its data protection law with the adoption of a new act in June 2003.⁵ Since its entry in the European Union, Hungary maintains a data protection law in line with the 1995 Directive but significant concerns over the independence of the data protection authority have put into question the country's commitment to safeguard data protection.⁶ The direct application and implementation of the GDPR represents a unique opportunity to restore this commitment. In the draft implementation act, however, Hungary appears to adopt a minimalist approach. The proposed act restricts changes to the bare minimum that is necessary to comply with the requirements of the GDPR. We provide below recommendations to strengthen the implementation act.

Implementation of the GDPR

The GDPR provides harmonised and upgraded data protection rights for users across the EU to put them back in control of their personal information. The legislation also reduces administrative burden for companies offering services across the EU and clarifies their obligations and responsibilities. The full potential and benefits of this legislation, both for users and industry, can only be delivered by robust, effective and harmonised enforcement. This means for instance ensuring users' access to justice and redress mechanisms.

The GDPR provides for a unique opportunity to address the crucial issue of strong and harmonised enforcement. In order for the GDPR to achieve maximum impact of strong data protection safeguards, Hungary should adopt the following components of the GDPR in their implementation act:

Empower and ensure independence of DPA. The GDPR has created the “consistency and cooperation mechanism” and the European Data Protection Board. It has also increased the responsibilities of the DPAs, including the possibility to impose significant fines with a strong deterring effect. To ensure effective enforcement powers, Hungary should guarantee the complete independence of the national authority. In a context of shrinking public space and challenges to the rule of law, the role and independence of the data protection authorities is critical. Any attempt to further undermine this role would be unacceptable. Finally, Hungary should allocate adequate resources to the DPA. This means for instance providing sufficient budget for staff and investigations, as well as promoting transparency of their activities.

⁴ EU Commission decision of 26 July 2000 on the adequate protection of personal data provided in Hungary <http://www.ceecprivacy.org/pdf/hungaria.pdf>

⁵ See EU Commission, Comprehensive monitoring report on Hungary's preparations for membership, 2003. http://ec.europa.eu/development/body/organisation/docs/CMR_HU.pdf

⁶ See, HLCU and Hungarian Helsinki Committee, The independence of the Hungarian Data Protection Authority <http://www.aedh.eu/plugins/fckeditor/userfiles/file/D%C3%A9mocratie%20et%20citoyennet%C3%A9/Data-Pr otection.pdf>

Ensure NGO representation and collective redress. The 2015 EuroBarometer indicated that only 37% of the respondents were aware of the existence of data protection authorities and even most of those respondents did not know how to seek assistance and redress.⁷ Extending avenues for remedies in case of data protection violations through NGO representation can empower users to exercise their rights more effectively. Cases brought by NGOs will strengthen individual complaints and can complement ex officio investigations of the DPAs. In the draft implementation law, Hungary should ensure that NGO can independently launch claim in front of DPAs and court to represent the public interest.

General recommendations for flexibilities under the GDPR. Despite the nature of the instrument, the GDPR gives discretion to member states to implement certain measures. It is crucial to ensure that these flexibilities are implemented in a way which protects the essence of the fundamental right to data protection. To help member states in the process, a group of international NGOs, including Access Now, have prepared a guide which include concrete recommendations ([here](#)).⁸

Conclusion

HCLU and Access Now welcome the opportunity to provide comments to Hungary's draft of the GDPR implementation Act. We trust that Hungary will not only comply with its obligation to properly implement this legislation but also seize the opportunity to regain its pioneer status in the protection of personal data by strengthening the current draft proposal.

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⁷ European Commission, Data Protection EuroBarometer, June 2015.

http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_eurobarometer_240615_en.pdf

⁸ EDRI, FIPR, Access Now, Privacy International, Panoptikon Foundation, Bits of Freedom. Flexibilities under the General Data Protection Regulation.

https://edri.org/files/GDPR_analysis/EDRI_analysis_gdpr_flexibilities_summary.pdf