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Supervisory Authorities: From awareness programs to enforcement

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Introduction & Research questions

Introduction

- Part of dissertation “The Right of Access to Personal Data in the EU”
- Research on enforcement continued at Open University
- Developing supervision and enforcement strategy at Autoriteit Persoonsgegevens

Research questions

- In what way do the authorities use their **enforcement** powers?
- Can their use of enforcement powers be expected to lead to increased compliance?

Method

- Looking at UK, **France**, Germany, Netherlands
- EDPB One-Stop-Shop decisions register



History of data protection law in EU

Same principles – strengthened enforcement

- Data protection law since the 1970s
 - Principles introduced
 - Weak enforcement powers
- Introduction of the Data Protection Directive 1995
 - Principles unchanged
 - Stronger enforcement powers
- GDPR 2016
 - Principles unchanged
 - Enforcement at the center of the legislative process
 - Much stronger enforcement powers



History of Supervisory Authorities Practices

- 1970s:
 - focus on awareness raising -- Example mister Access
 - Request for stronger enforcement powers
- 2020s – Still focus on awareness raising and informal enforcement



Mountain of complaints – few fines

- The number of complaints is rising
- The number of enforcement actions remains low
- There is a preference for soft and informal measures

Country	year	Nr of complaints p/y	Nr of fines p/y
France	1981 (pre-DPD)	144	0
	2006 (DPD)	3,572	11
	2020 (GDPR)	13,585	14
Netherlands	1994 (Pre-DPD)	138	0
	2004 (DPD)	409	0
	2020 (GDPR)	25,590	7
UK	1987 (Pre-DPD)	225	0
	2000 (DPD)	7,154	15
	2020 (GDPR)	36,607	3



Use of corrective powers in practice

Type of Decision	Nr of cases
No violation	9
Dismissal	1
No sanction	9
Reprimand	8
Compliance order	7
Administrative fine	2

Use of corrective powers for complaints about the right of access to personal data in the One Stop Shop mechanism.



A low level of compliance

Empirical research

- Many incomplete responses
- Lack of detail
- No response to request for specific information

Conversations with Civil Society

Complaints

- **The number of complaints**
- **The type of complaints**



Probable cause: lack of enforcement

Why this cause?

- Interviews with DPOs
- 'Deterrence theory'

"Deterrence theory"

- Expected cost of compliance have to be lower than expected costs of non-compliance
- Article 83 GDPR: Fines should be effective, proportionate and dissuasive
- EDPB Guidelines "a dissuasive fine is one that has a genuine deterrent effect"
- General and specific deterrence

Current enforcement practice

- Minimal deterrent effect
 - Informal contact with controllers
 - reprimands
- No consequences / costs



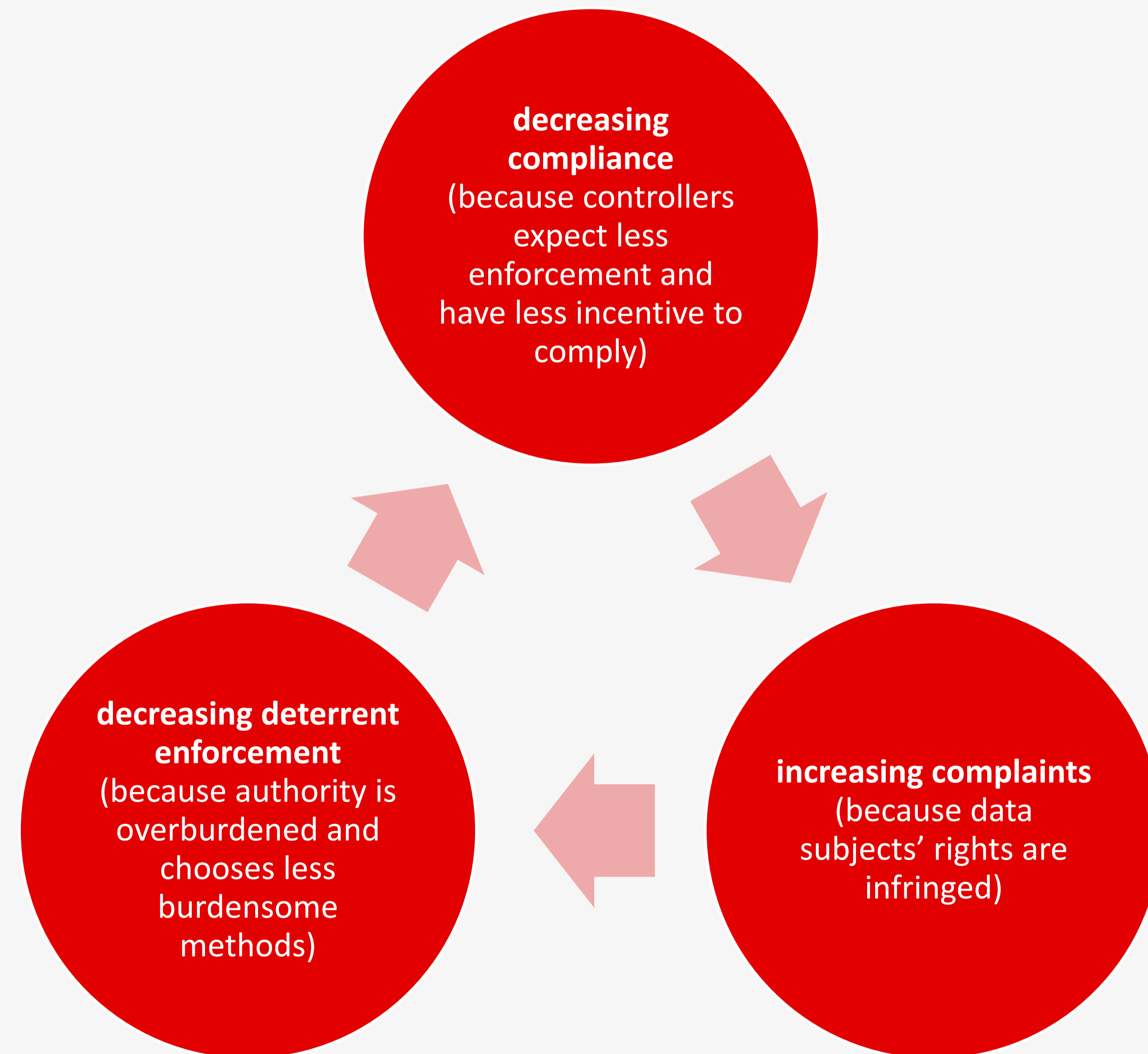
General deterrence in practice

- Example doctor in France

“Since the €10,000 penalty imposed on a health professional in 2017, an improvement in practices is noticeable as the number of complaints relating to the right to access medical records has fallen by almost 30% compared to 2017.”



Vicious cycle





Problem Analysis

1. Continued low compliance
2. Deterrence theory: It should pay off to comply
3. However, it currently pays off not to comply

Solution: More Deterrent Enforcement

- In order to improve compliance, supervisory authorities should apply more deterrent corrective powers (administrative fines) to increase the expected cost of non-compliance for controllers. It should pay off to comply.



Future Research

- Effectiveness of different enforcement strategies
 - E.g. Spain, Malta (more fines)
 - E.g. Case studies CNIL and AP Cookie projects
 - E.g. Case studies small fines projects
- Obstacles experienced by supervisory authorities
- More detailed application of insights from deterrence theory to data protection
- Designing strategies that work for different jurisdictions