



## **International and European personal data protection law**

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2 weeks long block seminar on 24 - 28 February and 07 – 11 April (8.00 – 10.00 each day in room A/IV)

### I. International personal data protection law

#### 1. Soft law

- a. Universal Declaration of Human Rights
- b. OECD guidelines
- c. Resolutions and recommendations issued by Council of Europe Committee of Ministers (examples: Resolution 73/22, Resolution 74/29, Recommendation Rec(2010)13 to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling (Profiling Recommendation), 23 November 2010)

#### 2. Hard law

##### a. European Convention on Human Rights:

- i. Description of relevant regulations (e.g. Article 8)
- ii. Case law of European Court of Human Rights – the landmark cases:

1. Axel Springer AG v. Germany (Application no. 39954/08) – balance between the right to data protection and freedom of expression;
2. Mosley v. The United Kingdom (Application no. 48009/08) – balance between the right to data protection and freedom of expression;



3. Biriuk v. Lithuania (Application no. No. 23373/03) - balance between the right to data protection and freedom of expression
  4. Vereinigung Bildender Künstler v. Austria (Application no. 68354/01)– balance between the right to data protection and freedom of arts and sciences;
  5. Társaság a Szabadságjogokért v. Hungary (Application no. 37374/05)– balance between the right to data protection and the right of access to documents.;
  6. Vereinigung bildender Künstler v. Austria (Application no. No. 68345/01) - balance between the right to data protection and the freedom of the arts and sciences
- b. Council of Europe Convention n° 108 and its amendments
- i. History and territorial scope of the convention, it's global character,
  - ii. New draft of amending Protocol (published after the session of Committee of Ministers on 17 – 18 May 2018).

## II. Law of European Union:

### 1. Primary EU law

- a. Treaty on the functioning of European Union – art. 6 (1) with the coming into force of the Lisbon Treaty on 1 December 2009 turned the Charter of Fundamental Rights into EU primary law;
- b. Charter of Fundamental Rights of the EU → art. 7 (respect for private and family life) and art. 8 (right to data protection), art. 52 (limitations of right to data protection).

### 2. Secondary law

- a. Historical sources:
  - i. Directive 95/46/EC National (invalidated 25 May 2018);



ii. Directive 2006/24/EC so called Data Retention Directive  
(invalidated 8 April 2014);

b. Applicable sources:

i. Directives:

1. Directive 2002/58/EC so called Directive on privacy and electronic communications;
2. Directive (EU) 2016/680 so called Police Directive;

ii. Regulations:

1. Regulation (EU) 45/2011;
2. Regulation (EU) 2016/679 so called GDPR;

iii. CJUE case law – landmark cases

1. Joined cases C-92/09 and C-93/09, Volker and Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v. Land Hessen;
2. Case C-131/12 Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González;
3. Case C-582/14 Patrick Breyer v. Bundesrepublik Deutschland;
4. Case C-498/16 Maximilian Schrems v. Facebook Ireland Ltd., judgement of 25 January 2018;
5. Case C-210/16, Wirtschaftsakademie Schleswig-Holstein, judgment of 5 June 2018;
6. C-25/17 - Jehovan todistajat (Jehovah's witnesses), judgement of 10 July 2018;
7. Case C-311/18 Data Protection Commissioner v Facebook Ireland and Maximilian Schrems (called "Schrems II case"), judgement of 16 July 2020;

iv. Soft law:



1. Opinions of Article 29 Working Party (e.g. Opinion 4/2007 on the concept of personal data, WP 136, 20 June 2007);
2. Guidelines of European Data Protection Board (e.g. Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679, Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects).
3. European Data Protection reform:
  - a. Historical background (Directive 95/46/EC – adopted in a completely different environment i.e. different level of internet access, the first attempts of reform 2012 – first official drafts, one of the most heavily lobbied pieces of legislation in the history of EU).
  - b. Current outcome (replacement of Directive 95/46/EC by GDPR, new regulations in the field of police related matters).
  - c. General Data Protection Regulation (GDPR) – specific provisions
    - i. Scope:
      1. Direct result in EU (Article 288 TFEU, comparison between directive and regulation);
      2. Applicability in EEA (incorporation of GDPR into EEA Agreement);
      3. Applicability in the United Kingdom (incorporation of GDPR into internal law of the UK);
      4. Material scope (comparison with convention n° 108, derogations listed in Article 2.2);
      5. extraterritorial effect (establishment in EU, offering goods or services to EU citizens, monitoring the behavior of EU citizens – practical examples);



ii. Key terms:

1. Personal data:

- a. where is the limit of it, indirect identification (example: IP number – is it personal data?);
- b. Special categories of personal data e.g. sensitive data (Article 6 of Convention n° 108, Article 9 GDPR, C-101/01, Bodil Lindqvist, 6 November 2003), personal data relating to criminal convictions (Article 10 GDPR, example of criminal background checks used in recruitment);

2. Data subject;

3. Processing – scope of the definition, case law: C-101/01, Bodil Lindqvist, 6 November 2003;

4. Filing system;

5. Controller and processor:

- a. Guidelines 07/2020 on the concepts of controller and processor in the GDPR, adopted on 7<sup>th</sup> July 2021;
- b. Concept - Article 29 Working Party (2010), Opinion 1/2010 on the concepts of ‘controller’ and ‘processor’, WP 169, Brussels, 16 February 2010;
- c. SWIFT case - Article 29 Working Party (2006), Opinion 10/2006 on the processing of personal data by the Society for Worldwide Interbank Financial Telecommunication (SWIFT), WP 128, Brussels, 22 November 2006;
- d. Comparison of the scope of liability;
- e. Data protection agreement – requirements of Article 28 GDPR.



6. Profiling – context: Big Data, Internet of Things (IoT), behavioral advertising, Article 29 Working Party Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679.
  7. Pseudonymisation.
  8. Supervisory Authority.
  9. Supervisory Authority Concerned.
- iii. The main principles of personal data processing:
1. Fairness and lawfulness;
    - a. Legal bases of processing (art. 6.1 GDPR);
  2. Purpose limitation;
  3. Proportionality;
  4. Accuracy;
  5. Storage limitation;
  6. Integrity and confidentiality.
- iv. Data subject's rights
1. “the old rights” – the rights which had existed before GDPR
    - a. Right of access;
    - b. Right of rectification;
    - c. Right to file a claim with supervisory authority;
  2. “the new rights” – the rights established by GDPR:
    - a. Right to data portability;
    - b. Right to restriction of processing;
    - c. Right to be forgotten;
    - d. Right to object and automated individual decision-making.
- v. Cross-border data transfers:
1. General principle for transfers;



2. Adequacy decision;
3. Transfers subject to appropriate safeguards:
  - a. legally binding and enforceable instrument between public authorities or bodies;
  - b. binding corporate rules;
  - c. standard data protection clauses adopted by the European Commission;
  - d. standard data protection clauses adopted by the European Commission adopted by a supervisory authority and approved by the Commission;
  - e. approved code of conduct;
  - f. approved certification mechanism;
4. Impact of Schrems II case.

## **Assessment**

Written (open book) exam on the last lesson