



Protection of Personal Data



European Commission
Justice

Overview

1. Directive 95/46/EC
2. Transfer of personal data to third countries
3. Council Framework Decision 2008/977/JHA
4. European Court of Justice
5. Protection of Personal Data in European institutions and the European Data Protection Supervisor

A fundamental right

- EU Charter of Fundamental Rights:
Article 8
- Treaty on the Functioning of the European Union (TFEU): Article 16
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Article 8

EU Charter of Fundamental Rights

- **Article 8 - Protection of personal data**

Everyone has the right to the protection of personal data concerning him or her.

Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

Compliance with these rules shall be subject to control by an independent authority.

Council of Europe I

- Convention 108/81 for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108) (Strasbourg, 28 January 1981)
 - + Additional Protocol to the Convention regarding supervisory authorities and transborder data flows (CETS 181) (Strasbourg, 4 November 2001).

UN and OECD

- **United Nations (UN):**
- **Guidelines concerning computerized personal data files**
(adopted by the General Assembly on 14 December 1990)
- **Organisation for Economic Co-operation and Development (OECD):**
- **Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data**
(adopted by the Council 23 September 1980)

Data protection in the EU

- Article 16 Treaty on the Functioning of the EU (TFEU)
- 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, OJ L 281, 23.11.1995, p. 31.
- Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (30.12.2008) OJ L 350 30/12/2008 P. 0060 - 0071

Implementation of the Directive

- Report from the Commission - First report on the implementation of the Data Protection Directive (95/46/EC) COM/2003/0265 final
- Communication from the Commission on the follow-up of the Work Programme for better implementation of the Data Protection Directive - Second report on the implementation of the Data Protection Directive (95/46/EC) COM/2007/087 final

Data protection in the EU

Other data protection rules and areas:

- **COMMISSION STAFF WORKING DOCUMENT-** *Report from the Commission to the European Parliament, the Council, the European and Economic and Social Committee and the Committee of the Regions based on Article 29 (2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (COM(2012) 12 final)*
- **Electronic communication (e-privacy):**
EU Directive 2002/58/EC
EU Directive 2009/136/EC
- **Data retention**
EU Directive 2006/24/EC
- **Texts:** http://ec.europa.eu/justice/data-protection/index_en.htm
- **Schengen Convention and rules**
- **Europol**
- **Eurojust**



Data Protection Directive 95/46/EC:

- **high level of protection** of personal data
- **free movement** of data within EU/EEA
- Applies to **public and private** sectors
- Relation data subject - controller
- Personal data: identified or identifiable person
- Processing: broad definition

Personal Data

- ***“Personal data“ means much more than “name and surname“:***
- **Definition:**
- **'personal data': shall mean any information relating to an identified or identifiable natural person ('data subject');**
- **an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;**

(Art. 2 Directive 95/46/EC)

Processing

- ***“Processing“ means more than “collection”:***
- Definition:
'processing of personal data' ('processing'):

shall mean **any operation** or set of operations **which is performed upon personal data**, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(Art. 2 Directive 95/46/EC)

Legitimacy

- (Unambiguous) Consent
- Necessary for performance of a contract
- Necessary for compliance with a legal obligation of the controller
- Necessary to protect the vital interest of the data subject
- Necessary for the performance of a task of public interest or official authority
- Legitimate interests of the controller (balance of interest)

Quality of data

- Adequate, relevant and not excessive (in relation to purpose)
- Accurate and kept up to date
- Kept in a form which permits identification for no longer than necessary

Finality principle

- Personal data must be collected for a specified, explicit and legitimate purpose
- Not further processed in a way incompatible with those purposes

Sensitive data

- **Processing of sensitive data is prohibited**
- Data revealing race or ethnic origin, political opinions, religious or philosophical belief, trade-union membership, health or sexual life
- **Exceptions:**
 - consent (unless forbidden),
 - obligations of controller in employment field,
 - vital interests data subject or another person,
 - legitimate activities of non-profit organisation,
 - data manifestly made public or legal claims

Rights of the individual

- Data protection rights
- Information for the data subject:
 - clear and understandable language
 - sufficient information
- Access to own data
- Rectification
- Objection
- Complaint to Data Protection Authority

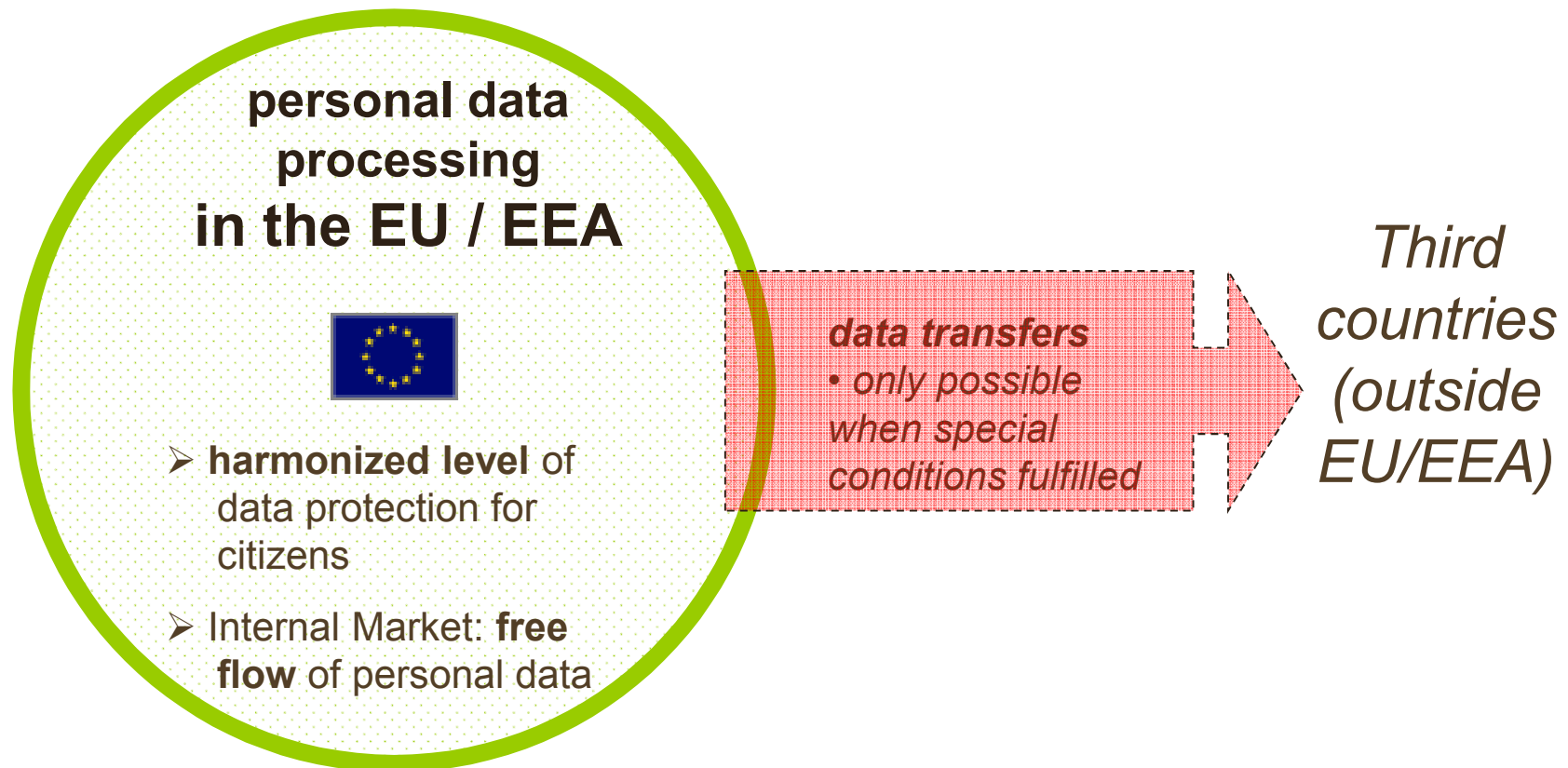
Obligations

- Controller obligations
- Responsible for exercise of data subjects' rights
- Confidentiality of the processing
- Security of the processing
- Notification to the data protection authority
- Liability

Data Protection Supervisory Authority

- Fully independent bodies
 - Responsible for enforcing national legislation
 - Organization to be decided by Member States
 - Decisions can be appealed on courts of law
 - Criteria + powers: EC Directive 95/46/EC (Art. 28)
cf. Council of Europe: Additional protocol to Convention 108 regarding
supervisory authorities and transborder data flows (ETS No. 181)
- 'Full independence' means:
no government control or supervision.

Transfer of personal data I



Transfer of personal data II

No transfer of personal data outside the EU/EEA

- Exceptions:
- Adequate protection
- Adequacy decision by European Commission
- Compulsory derogations of Art. 26 (consent, ...)
- Individual Authorization by DP Supervisory Authority
- Use of Commission Model contracts



Transfer of personal data III

- Adequacy decisions

- ARGENTINA: Commission Decision 2003/490/EC of 30 June 2003
- CANADA: Commission Decision 2002/2/EC of 20 December 2001
- GUERNSEY: Commission Decision 2003/821/EC of 21 November 2003
- ISLE OF MAN: Commission Decision 2004/411/EC of 28 April 2004
- SWITZERLAND: Commission Decision 2000/518/EC of 26 July 2000
- UNITED STATES OF AMERICA: Commission Decision 2000/520/EC of 26 July 2000
- GUERNSEY: Commission Decision 2003/821/EC of 21 November 2003
- ISLE OF MAN: Commission Decision 2004/411/EC of 28 April 2004
- JERSEY: Commission Decision C(2008) 1746 of 8 May 2008
- FAROE ISLANDS: Commission Decision C(2010) 1130 of 5 March 2010
- ANDORRA: Commission Decision C(2010) 7084 of 19 October 2010
- ISRAEL: Commission Decision C(2011) 322 of 31 January 2011

Transfer of personal data IV - Adequacy decisions

UNITED STATES OF AMERICA:

“Safe Harbor”:

In order to bridge different privacy approaches and provide a streamlined means for US organizations to comply with the Directive, the European Commission and the US Department of Commerce developed the "Safe Harbor" framework.

Certifying to the Safe Harbor will assure that a US company provides “adequate” privacy protection, as defined by the Directive.

Commission Decision 2000/520/EC of 26.7.2000

Council Framework Decision 2008/977/JHA

- first horizontal data protection instrument in the field of personal data used by police and judicial authorities
- purpose is to establish a common level of privacy protection and a high level of security when exchanging personal data
- applies to cross-border exchanges of personal data within the framework of police and judicial cooperation
- does not apply to Member State domestic data
- generally incorporates the same principles as those set out in Directive 95/46/EC

European Court of Justice

Case law I

- *Rechnungshof*
- Judgment of the European Court of Justice of 20 May 2003, Joint Cases C-465/00, C-138/01 and C-139/01
- *Bodil Lindqvist*
- Judgment of the European Court of Justice of 6 November 2003, Case C-101/01
- *Passenger name records (PNR)*
- Judgment of the European Court of Justice of 30 May 2006 Joined Cases C-317/04 and C-318/04
- *Huber*
- Judgment of the Court of Justice of 16 December 2008 Case C-524/06



European Court of Justice

Case law II

- *Satakunnan*
 - Judgment of the Court of Justice of 16 December 2008 Case C-73/07
- *Commission v. Germany*
 - Judgment of the Court of Justice of 9 March 2010 Case C-518/07
- *Rijkeboer*
 - Judgment of the Court of Justice of 7 May 2009 Case C-553/07
- *Volker und Markus Schecke*
 - Judgment of the Court of Justice of 9 November 2010 Joined Cases C-92/09 and C-93/09



European Data Protection Supervisor

- Regulation (EC) 45/2001
- Decision No 1247/2002/EC on the regulations and general conditions governing the performance of the European Data-protection Supervisor's duties, OJ L 183, 12.7.2002, p. 1
- Decision No. 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty (European Data Protection Supervisor); OJ L 12, 17.1.2004, p. 47.

European Commission

DG Justice Data Protection Unit C3

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- **Website:**
- http://ec.europa.eu/justice/policies/privacy/index_en.htm