

LAW & DATA

2024/2025

University of Padova

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RIGHT TO PERSONAL DATA PROTECTION

- **OECD Privacy Guidelines (1980)**
Soft law universal standards
 - ✓ Collection Limitation Principle
 - ✓ Data Quality Principle
 - ✓ Purpose Specification Principle
 - ✓ Use Limitation Principle
 - ✓ Security Safeguards Principle
 - ✓ Openness Principle
 - ✓ Individual Participation Principle
 - ✓ Accountability Principle

RIGHT TO PERSONAL DATA PROTECTION

- **CoE Convention 108** (28 January 1981 – Data Privacy Day)
Convention for the protection of individuals with regard to automated processing of personal data

first legally binding instrument
at the international level
on data protection

UNIVERSAL STANDARDS

- **CoE Convention 108+** (adopted on 18 May 2018)

RIGHT TO PERSONAL DATA PROTECTION

➤ CoE Convention 108

Main principles:

- Protection of the individuals against PD abuses
- Regulation of transborder data flows
- Fair and lawful collection
- Legitimate purposes
- Processing for the same purposes for which data were collected
- Storage duration (no longer than necessary)
- Quality of data: adequate, relevant not excessive (proportionality)
- Sensitive data (special categories of data)
- Right to know information stored and to have it rectified
- Possible overriding interests for different processing activities

Applicable EU Legislation (Primary law)

RIGHT TO PERSONAL DATA PROTECTION

➤ TEU

Article 39

*In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the **Council** shall adopt a **decision laying down the rules** relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which **fall within the scope of this Chapter**, and the rules relating to the **free movement** of such data. Compliance with these rules shall be subject to the control of independent authorities.*

Applicable EU Legislation – **RIGHT TO PERSONAL DATA PROTECTION**

➤ TFEU

Article 16

1. *Everyone has the right to the protection of personal data concerning them.*
2. **The European Parliament and the Council**, acting in accordance with the ordinary legislative procedure, **shall lay down the rules** relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the **free movement of such data**. Compliance with these rules shall be subject to the control of **independent authorities**.
3. *The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 39 of the Treaty on European Union.*

History – EU DATA PROTECTION DIRECTIVES

Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

limited harmonization → GDPR

Directive 2006/24/EC – Data Retention Directive
on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC

repealed by ECJ in *Digital Rights Ireland* | C-293/12 + C-594/12

Applicable – EU DATA PROTECTION DIRECTIVES

Directive 2002/58/EC

Directive on privacy and electronic communications

Directive 2016/680/EU

on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

Directive 2002/58/EC | E-PRIVACY DIRECTIVE

USER

any **natural person** using a **publicly available electronic communications service**, for private or business purposes, without necessarily having subscribed to this service (**SUBSCRIBER**)

TRAFFIC DATA

any data **processed** for the purpose of **the conveyance of a communication** on an electronic communications network or **for the billing** thereof

LOCATION DATA

any data processed in an electronic communications network, **indicating the geographic position of the terminal equipment of a user** of a publicly available electronic communications service

COMMUNICATION

any information exchanged or conveyed between a **finite number of parties** by means of a **publicly available electronic communications service**. This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information

Directive 2002/58/EC | E-PRIVACY DIRECTIVE

- **Scope of application** *‘services concerned’
processing of PD in connection with the provision of **publicly available electronic communications services** in **public communications networks** within the EU*
- **Service Provider** *required to take **appropriate technical and organizational measures** to ensure **security** of its services*
- **Objective** *require MS to ensure **confidentiality** of communications and related PD (i.e. traffic data) processed through public communication networks/publicly available electronic communications services*

Directive 2002/58/EC | E-PRIVACY DIRECTIVE

X **AUTOMATIC CALL FORWARDING**

by third parties to the subscriber's terminal, unless stopped

X **DIRECTORIES OF SUBSCRIBERS**

possible, but based on consent (express or implied)

X **UNSOLICITED COMMUNICATIONS**

automated calling systems without human intervention / fax
/ e-mail / direct marketing

possible, but with clear, distinct and prior consent
possibility to object free of charge & easily