

LAW & DATA

2024/2025

University of Padova

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repealed by ECJ in *Digital Rights Ireland* | C-293/12 + C-594/12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

Directive 2018/1972

European Electronic Communications Code (Recast)

NO PROCESSING OF PERSONAL DATA

Harmonised framework for the regulation of electronic communications networks, electronic communications services, associated facilities and services, and some aspects of terminal equipment

Goals:

- ✓ implement an **internal market** in electronic communications
- ✓ promote **fair competition** between companies
- ✓ ensure equal and fair access to these services
- ✓ promote **connectivity** all across EU

Directive 2016/680/EU

Data Protection Law Enforcement Directive

Repealed **Decision 2008/977/JHA** – protection of PD processed in the framework of police and judicial cooperation in **criminal matters**

Filled the void of **Data Retention Directive**

Adoption in parallel with GDPR → new '**PDP PACKAGE**'

Directive 2016/680/EU | DP Law Enforcement Directive

- data protection by design / by default
- data security
- data breach notifications
- appointment of Data Protection Officers
- emerging tech challenges

- ❖ **NO decisions based solely on automated processing (including profiling)** (in principle)
 - ❖ MUST NOT be based on sensitive data
 - ❖ MUST NOT LEAD to any discrimination against any person