Introduction to the EU GDPR

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Course of Law and Data 2022-23
learning objectives

• what the GDPR is
• the material scope of the GDPR
• the territorial scope of the GDPR
1. Introduction to the EU GDPR
Towards the **GDPR**

- **European Data Protection Directive** into force until May 27\(^{th}\), 2018
- **European General Data Protection Regulation**
  - approved on **April 27\(^{th}\), 2016**
  - applied since **May 28\(^{th}\), 2018**

A transition of 2 years to adapt the previous system to the new provisions
CHARTER III - Rights of the data subject
ross on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,
and repealing Directive 95/46/EC (General Data Protection Regulation)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.

(2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.

(3) Directive 95/46/EC of the European Parliament and of the Council (4) seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

(4) The execution of an order to the competent data protection authority in one Member State shall not be deemed to preclude the exercise of any other rights and remedies available before the courts and tribunals of the Member State concerned.

The present Regulation shall apply without prejudice to the use of personal data to the extent that it is necessary for the purpose of public security, subject to the conditions laid down in the Charter.
CHAPTER III - Rights of the data subject

Section 1 - Transparency and modalities
Section 2 - Information and access to personal data
Section 3 - Rectification and erasure
Section 4 - Right to object and automated individual decision-making

CHAPTER IV - Controller and processor
Section 1 - General obligations
Section 2 - Security of personal data
Section 3 - Data protection impact assessment and prior consultation
Section 4 - Data protection officer
Section 5 - Codes of conduct and certification

CHAPTER V - Transfers of personal data to third countries or international organisations

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Section 2 - Information and access to personal data
Section 3 - Rectification and erasure
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(3) Directive 95/46/EC of the European Parliament and of the Council (4) seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

(4) The assertion of one right should lead to the assertion of another; the right to the protection of personal data is not an isolated right but rather part of a more complete, integrated human rights system; the right to the protection of personal data is not a guarantee of effective predictability, but it is an instrument for enhancing the right to privacy; the right to the protection of personal data is an essential part of the right to be in control of one's own information.

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

(Text with EEA relevance)
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Whereas: recitals (not binding)

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(3) Directive 95/46/EC of the European Parliament and of the Council (4) seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

(4) The exercise of any right to the protection of personal data is not free of charge. The right to the protection of personal data is not an absolute right.
(173) This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms vis-à-vis the processing of personal data which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council (19), including the obligations on the controller and the rights of natural persons. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, that Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation,

HAVE ADOPTED THIS REGULATION: articles (binding)

CHAPTER I
General provisions

Article 1
Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.

3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 2
Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

(a) in the course of a activity which falls outside the scope of Union law
GDPR – Art. 1
Subject-matter and objectives

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3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.
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2. gdpr material scope
material scope

• Article 2
  • Material scope
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exceptions

• 2. This Regulation **does not apply** to the processing of personal data:

• (a) in the course of an activity which falls **outside the scope of Union law**;

• (c) by a **natural person** in the course of a **purely personal or household activity**;

• (d) by competent authorities for the purposes of the **prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties**, including the safeguarding against and the prevention of threats to public security
Areas of EU action

The European Union can only act in those areas to do so, via the EU treaties. The treaties specify national governments or both.

outside the scope of the eu law
purely personal or household activity
prevention, investigation, detection or prosecution of criminal offences [and] public security
3. the territorial scope of the gdpr
Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
   a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
   b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.
**territorial scope**

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  - regardless of whether the processing takes place in the Union or not.

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- applies to the processing of personal data by a controller not established in the Union, but in a place where **Member State law applies by virtue of public international law**.
Scherms (the beginning)