

LAW & DATA

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University of Padova

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RIGHT TO PRIVACY

➤ **Nice Charter (2009)** → **EU Charter of Fundamental Rights (2009)**

Article 7 – Respect for private and family life

1. *Everyone has the right to respect for his or her private and family life, home and communications.*

2. **There shall be no interference by a public authority** with the exercise of this right **except** such as is in accordance with the law and is **necessary** in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

Article 8 – Protection of personal data

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *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**.*
3. *Compliance with these rules shall be subject to control by an **independent authority**.*

RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

Article 52 – Scope and interpretation

1. **Any limitation** on the exercise of the rights and freedoms recognised by this Charter must be **provided for by law** and respect the essence of those rights and freedoms. Subject to the principle of **proportionality**, limitations may be made only if they are **necessary** and genuinely meet objectives of **general interest** recognised by the Union or the **need to protect the rights and freedoms of others**.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

(...)

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 – **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