

Rethinking E.U. data protection in the Big Data world

In order to protect the rights of European citizens in a world characterized by technologies that enable to collect, analyse and share an unprecedented amount of data, the new E.U. proposal for a general data protection regulation re-defines the existing legal framework to address the challenges of the digital society.

Although the European proposal shifts the focus of the regulation from users' self-determination to security and risk assessment, the notice and consent are still fundamental aspects of the new framework. Nevertheless, the complexity of data processing and the power of modern analytics drastically limit the awareness of data subjects, their capability to evaluate the various consequences of their choices and their free and informed consent. Moreover, the "transformative" use of personal data makes often impossible to give the description of all the potential uses of the data at the time of their initial collection.

To give an answer to these issues, the paper suggests reconsidering the historical evolution of data protection and the fundamental issues of the related regulations. Starting from the first generation of data protection regulations to the new European proposal, the author suggests a revision of the "notice and consent" model focused on the opt-in. The paper proposes a different approach, based on the opt-out model and on a deeper preventive control by data protection authorities, which should be adopted when the data subject cannot be totally aware of the tools of analysis and their potential effects.