

# The European Dimension of Data Protection: set law, case law and future perspectives

1

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## 1946: ENIAC I (Electronic Numerical Integrator And Computer)

- the first ever electronic computer, ordered during WWII
- unveiled to the public the evening of 14 February 1946
- kept in operation until 2 October 1955.

## 1948: Universal Declaration of Human Rights (UDHR)

- ▶ United Nations Human Rights Commission - presided by Eleanor Roosevelt, proposed in 1948 the declaration which was adopted by the UN General Assembly on December 10, 1948 in Paris.
- ▶ Article 12 of the UDHR provides: *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”*

# 1950: Convention for the Protection of Human Rights and Fundamental Freedoms

- ▶ Council of Europe.
- ▶ also known as the European Convention on Human Rights (ECHR)
- ▶ adopted in Rome in 1950
- ▶ article 8 – Right to respect for private and family life :
  - ▶ *“1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
  - ▶ *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.”*
- ▶ Later case law of the European Court of Human Rights in Strasbourg refined the concepts involved.

# 12 November 1969 – Stauder v. Ulm

Judgment of the Court of 12 November 1969. Erich Stauder v City of Ulm - Sozialamt.

- Reference for a preliminary ruling: Verwaltungsgericht Stuttgart - Germany.
- Case 29-69. ECLI identifier: ECLI:EU:C:1969:57
- <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029>
- **First case on privacy**

## '70s: Council of Europe

- Resolution (73) 22 on the protection of privacy of individuals vis-à-vis electronic data banks in the private sector :
- Resolution (74) 29 on the protection of individuals vis-à-vis electronic data banks in the public sector:  
<https://wcd.coe.int/ViewDoc.jsp?id=660013&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

## 23 September 1980, OECD - recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data

- ▶ International approach because of membership, US inter alia
- ▶ Catering both for computerised data collections but also for any type of handling of personal data.
- ▶ traced the basic principles that have subsequently influenced all data protection initiatives especially in the European context: lawful collection of data, limitations to the collection methods, conservation of relevant data in guaranteed data quality, consent of the individuals concerned, handling and use limited to the purpose specified at the collection time unless consent or order by legal authorities obtained, safeguards against risks such as loss/unauthorized access/destruction/modification, accountability of designated data controller, possibility for the subject to access, rectify, complete or erase data concerning him, “safe harbour” principle.

11 July 2013, the [first revision](#) to the OECD Privacy Guidelines focusing mainly on a risk management approach, improved interoperability National privacy strategies, Privacy management programs and Data security breach notification.

## 28 January 1981 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

- ▶ Follows the OECD approach of 1981: guarantees for individual protection and in counterpart efforts to eliminate obstacles to the transborder flows of personal data - unless the nature of the data imposes them or in lack of safe harbour equivalences.
- ▶ Usually called Convention for Data Protection better known as Convention 108.
- ▶ The date of the signature of the Convention – 28 January – was in 2006 established as the “Data Protection Day” – this year the 10th anniversary of this event was celebrated.
- ▶ open for accession to non-member states of the CoE, including non-European countries.
  - ▶ 46 Contracting Parties
  - ▶ Uruguay, the first non-European country, acceded in August 2013
  - ▶ Morocco has been invited to accede to Convention

## 28 January 1981 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

provisions of the Convention are not directly applicable

European Court of Human Rights in Strasbourg (to be distinguished from the Court of Justice of the EU in Luxembourg) has contributed a number of useful interpretations of Article 8 of ECHR and provided guidance for the Convention as well [first case linking article 8 to Convention 108) *Z v Finland*, Application 22009/93, ECHR 1997-I, other cases: *Malone v United Kingdom*, ECHR (1984), A-82; *Leander v Sweden*, ECHR (1987), A-116; *Gaskin v United Kingdom*, ECHR (1989), A-160; *Niemietz v Germany*, ECHR (1992), A-251-B; *Halford v United Kingdom*, ECHR 1997-IV; *Amann v Switzerland*, ECHR 2000-II, and *Rotaru v Romania*, ECHR 2000-V. and more recently *Delfi* – the latter having made extensive references to EU law and caselaw]

An Additional Protocol No.181 – in reality an international Treaty annexed to the original Convention :

- was opened for signature by the Signatories of the Convention and by the European Union and entered into force on the 1st of July 2004.
- Added provisions for the establishment of independent national supervisory authorities and introduced the “Safe Harbour” principle

## 28 January 1981 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

- ▶ The convention entered into force the 1<sup>st</sup> of October 1985
- ▶ The Committee of Ministers adapted the context to evolving technologies through a number of recommendations  
([http://www.coe.int/t/dghl/standardsetting/dataprotection/Legal\\_instruments\\_en.asp](http://www.coe.int/t/dghl/standardsetting/dataprotection/Legal_instruments_en.asp)) e.g.
  - ▶ Recommendation No.R(99) 5 for the protection of privacy on the Internet in 1999
  - ▶ Recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment, revisiting the question of profiling through collection of data on the different platforms available

## 28 January 1981 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

- ▶ In view of modernising the Convention 108, a public consultation was carried out in 2011
- ▶ modernisation proposals were adopted by the 29th Plenary meeting (T-PD(2012)4Rev4 - 27-30 11 2012):  
[https://www.coe.int/t/dghl/standardsetting/dataprotection/TPD\\_documents/T-PD\(2012\)04Rev4\\_E\\_Convention%20108%20modernised%20version.pdf](https://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/T-PD(2012)04Rev4_E_Convention%20108%20modernised%20version.pdf)

12

12 August 1981 the first IBM PC, was launched in the market

➤ Client server architecture



## Article 288 of the Treaty on the Functioning of the European Union (formerly Article 249 TEC).

- To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
- A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
- *A decision shall be binding in its entirety upon those to whom it is addressed.*
- *Recommendations and opinions shall have no binding force.*

*A European directive is a peculiar legal instrument, devised for the particularities of the European legal order where a supranational legal entity supervises the legal framework of Member states that participate to the EU.*

# October 24, 1995 in the name of Internet

the Federal Networking Council (FNC) unanimously passed a resolution defining the term Internet :

- ▶ *RESOLUTION: The Federal Networking Council (FNC) agrees that the following language reflects our definition of the term "Internet". "Internet" refers to the global information system that –*
- ▶ *(i) is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons;*
- ▶ *(ii) is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP-compatible protocols; and*
- ▶ *(iii) provides, uses or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described herein.*

## 24 October 1995: European Parliament and Council 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

- ▶ applies to data processed by automated means or non automated filing systems;
- ▶ It does not apply to the processing of data;
- ▶ by a natural person in the course of purely personal or household activities;
- ▶ in the course of an activity which falls outside the scope of Community law, such as operations concerning public security, defence or State security;
- ▶ **notification** of processing to a supervisory authority;

## 24 October 1995: European Parliament and Council 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

- **Transfers to a third country** with an adequate level of protection
- one or more independent public authorities per Member State
- art 29 Working Party on the Protection of Individuals composed of national supervisory authorities, Data protection delegates of the EU institutions and European Data Protection Officer.
- **Entry into force** 13.12.1995
- **consolidated version**
- **National Implementing Measures** : what **happened** to Belgium? Judgment n° 84/2015 of 11 June 2015

## 24 October 1995: European Parliament and Council 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

### Data processing lawful if:

- consent given;
- processing is necessary for:
  - the performance of a contract to which the data subject is party;
  - compliance with a legal obligation of controller
  - the protection of vital interests of the data subject;
  - the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party; or
  - for the purposes of the legitimate interest pursued by the controller or by the third party, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection.

## 24 October 1995: European Parliament and Council 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

### ➤ data quality principle:

- processing must be **fair and lawful**, collected for specified, explicit and legitimate purposes, adequate, relevant and not excessive, accurate and, where necessary, kept up to date, must not be stored for longer than necessary and solely for the purposes for which they were collected;
- forbidden: processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

**24 October 1995: European Parliament and Council 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**

- **rights of data subject:**
  - **right to obtain information**
  - **access** to data
  - **right to object**
  - right to a **judicial remedy**
  - **compensation for damage** as a result of unlawful processing

# 18/11/1999 C-209/97 Judgment ECLI:EU:C:1999:559 Commission v Council

- ▶ Free movement of goods - Customs union - Provisions governing the institutions - Acts of the institutions
- ▶ 'Customs Information System'
- ▶ 36. While, in accordance with the 15th recital in the preamble to the contested regulation, the Member States must, in order to take part in the CIS, adopt legislation on the rights and freedoms of individuals with regard to the processing of personal data and are required, pending the national measures transposing **Directive 95/46/EC** of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), to guarantee a level of protection based on the principles of that directive, it is also clear, as the French Government has pointed out and the Commission has acknowledged, that the CIS does not itself harmonise national laws.
- ▶ 37. The mere fact that the CIS cannot be established unless principles harmonised at Community level concerning the protection of personal data are in force at national level and that the Member States and the Commission must guarantee a level of protection based on the principles contained in Directive 95/46 is not a sufficient basis for Article 100a of the Treaty to apply, since such harmonisation of national laws was only an incidental effect of the legislation.

## 7 December 2000: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

- The Charter was solemnly proclaimed at the Nice European Council on 7 December 2000.
- At that time, it did not have any binding legal effect.

# 26 July 2000 – Safe Harbor

- ▶ [Commission Decision](#) pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce

# 14/09/2000 C-369/98 Judgment ECLI:EU:C:2000:443 14/09/2000 Fisher

- Agriculture and Fisheries - Agricultural structures
- 33. In that connection, the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281 p. 31) ('the Directive') provide criteria that are suitable for application by the competent authority in making that assessment.
- 34. Even though the Directive had not yet entered into force at the material time in the case in the main proceedings, it is clear from the 10th and 11th recitals in its preamble that it adopts, at Community level, the general principles which already formed part of the law of the Member States in the area in question.
- 35. With regard, in particular, to the disclosure of data, Article 7(f) of the Directive authorises such disclosure if it is necessary for the purposes of the legitimate interests pursued by a third party to whom personal data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection.

# 18/12/2000 : Regulation (EC) No 45/2001

 [32001R0045: Regulation \(EC\) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data](#)

protection of personal data within the institutions and bodies of the European Union.

establishment of an independent supervisory body to monitor the application of these provisions.

- [02001R0045-20010201](#)

# 12 July 2002 : Directive 2002/58/EC (e-Privacy Directive)

Directive [2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [Official Journal L 201 of 31.07.2002] [02002L0058-20091219](#)

- ▶ Member States keeping connection data for the purposes of police surveillance (the retention of data), the sending of unsolicited e-mail, the use of cookies and the inclusion of personal data in public directories. Where a personal data breach occurs and personal data are compromised, providers are required by Directive 2002/58/EC to notify the competent national data protection authority (DPA) and also, in certain cases, the affected subscribers and individuals about the breach.
- ▶ Regulation (EU) No [611/2013](#) contains rules on the notification of personal data breaches by providers of publicly available electronic communications services in the event that their customers' personal data are lost, stolen or otherwise compromised. Regulation (EU) 611/2013 introduces 'technical implementing measures' to clarify how notifications obligations should be met.

# Caselaw 2003

- ▶ 6/3/2003 C-41/00 P Interporc Im- und Export GmbH v. Commission of the European Communities [Access to documents]
- ▶ -----
- ▶ 20/5/2003 Joined cases C-465/00 C-138/01 and C-139/01 Rechnungshof v. Österreichischer Rundfunk and Others and Neukomm and Lauermann v. Österreichischer Rundfunk [Proportionality of legal obligation to publish personal data about salaries of employees - Directive has a broader scope than just internal market 41-43]
- ▶ 6/11/2003 C-101/01 Bodil Lindqvist (Directive 95/46/EC - Scope - Publication of personal data on the internet - Place of publication - Definition of transfer of personal data to third countries - Freedom of expression - Compatibility with Directive 95/46 of greater protection for personal data under the national legislation of a Member State) - Directive has a broader scope than just internal market 39-41 - Directive applies to the Internet - 24-27 and 56-71.

## 30 May 2006 - Joined cases C-317/04 and C-318/04.

- ▶ Judgment of the Court (Grand Chamber) of 30 May 2006.
- ▶ European Parliament v Council of the European Union (C-317/04) and Commission of the European Communities (C-318/04).
- ▶ Protection of individuals with regard to the processing of personal data - Air transport - Decision 2004/496/EC - Agreement between the European Community and the United States of America - Passenger Name Records of air passengers transferred to the United States Bureau of Customs and Border Protection - Directive 95/46/EC - Article 25 - Third countries - Decision 2004/535/EC - Adequate level of protection.
- ▶ ECLI:EU:C:2006:346
- ▶ <http://curia.europa.eu/juris/celex.jsf?celex=62004CJ0317&lang1=en&type=TXT&ancre=>

## 1st December 2009: entry into force of the Treaty of Lisbon

Restructuring the basic legal texts:

- Treaty on European Union (originally signed in Maastricht in 1992)
- Treaty on the Functioning of the European Union (originally signed in Rome in 1958 as the Treaty establishing the European Economic Community),
- the Charter of Fundamental Rights of the European Union became legally binding having the same value as the EU Treaties

# Treaty on the Functioning of the European Union (TFEU), Article 16

- Everyone has the right to the protection of personal data concerning them.
- 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.
- 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.

# Treaty on European Union (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.

# 1st December 2009: Treaty of Lisbon and the Charter

## PROTOCOL ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION TO POLAND AND TO THE UNITED KINGDOM

### Article 1 :

- 1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
- 2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

### Article 2

- To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

In *NS v Home Secretary*, the [European Court of Justice](#) ruled that Article 1(1) of Protocol "explains Article 51 of the Charter with regard to the scope thereof and does not intend to exempt the Republic of Poland or the United Kingdom from the obligation to comply with the provisions of the Charter or to prevent a court of one of those Member States from ensuring compliance with those provisions."<sup>[20]</sup>

# CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

## 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.

# CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

## *Article 52*

- **Scope and interpretation of rights and principles**
- 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.

# Caselaw 2008-2009

- ▶ 29/1/2008 C-275/06 Productores de Música de España (Promusicae) v. Telefónica de España SAU [Obligation of internet access providers to disclose identity of users of KaZaA file exchange programmes to intellectual property protection association]
- ▶ 16/12/2008 C-524/06 Huber v. Bundesrepublik Deutschland [Legitimacy of holding data on foreigners in a statistical register]
- ▶ 16/12/2008 C-73/07 Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy Concept of 'journalistic activities' within the meaning of Article 9 Data Protection
- ▶ 7/5/2009 C-553/07 College van burgemeester en wethouders van Rotterdam v. M.E.E. Rijkeboer [Right of access of the data subject]

# Case C-28/08 P

62008CJ0028: Judgment of the Court (Grand Chamber) of 29 June 2010.

European Commission v The Bavarian Lager Co. Ltd.

Appeal - Access to the documents of the institutions - Document concerning a meeting held in the context of a procedure for failure to fulfil obligations -

Protection of personal data - Regulation (EC) No 45/2001 - Regulation (EC) No 1049/2001.

Case C-28/08 P.

**European Court Reports 2010 I-06055ECLI identifier: ECLI:EU:C:2010:378**

# Caselaw 2010-2011

- 9/3/2010 C-518/07 European Commission v. Federal Republic of Germany [Independence of a national supervisory authority] Member State with the longest experience in this area: Germany. In March 2010 the Court of Justice ruled that the requirement of 'complete independence' for a supervisory authority means that it should be free from any external influence.<sup>51</sup>, at 30
- 15/6/2010 F-35/08 Dimitrios Pachtitis v. European Commission [Use of personal data in the context of employment in EU institutions]
- 29/6/2010 C-28/08 P European Commission v. The Bavarian Lager Co. Ltd. [Access to documents]  
[62008CJ0028: Judgment of the Court \(Grand Chamber\) of 29 June 2010.](#)  
[European Commission v The Bavarian Lager Co. Ltd.](#)  
[Appeal - Access to the documents of the institutions - Document concerning a meeting held in the context of a procedure for failure to fulfil obligations - Protection of personal data - Regulation \(EC\) No 45/2001 - Regulation \(EC\) No 1049/2001.](#)  
[Case C-28/08 P.](#)
- 9/11/2010 Joined cases C-92/09 and C-93/09 Volker and Markus Schecke GbR and Hartmut Eifert v. Land Hessen [Proportionality of the legal obligation to publish personal data about the beneficiaries of certain EU agricultural funds]
- 5/5/2011 C-543/09 Deutsche Telekom AG v. Bundesrepublik Deutschland [Necessity of renewed consent]
- 5/7/2011 F-46/09 V v. European Parliament [Use of personal data in the context of employment in EU institutions]
- 5/7/2011 Case F-46/09. V v European Parliament.
- 24/11/2011 Joined cases C-468/10 and C-469/10 Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) and Federación de Comercio Electrónico y Marketing Directo (FECEMD) v. Administración del Estado [Correct implementation of Article 7 (f) of the Data Protection Directive – “legitimate interests of others” – in national law] article 7(f) has direct effect. at 51-54.

# Caselaw 2012-2013

- ▶ 16/2/2012 C-360/10 SABAM v. Netlog N.V. [Obligation of social network providers to prevent unlawful use of musical and audiovisual works by network users]
- ▶ 16/10/2012 C-614/10 European Commission v. Republic of Austria [Independence of a national supervisory authority] supervisory authority means that it should be free from any external influence
- ▶ 30/5/2013 C-270/11 European Commission v. Kingdom of Sweden [Fine for not implementing a directive]
- ▶ 13/6/2013 C-291/12 Michael Schwarz v. Stadt Bochum Violation of EU primary law by Regulation (EC) 2252/2004 providing that fingerprints have to be stored in passports]

# Caselaw 2014

- ▶ 8/4/2014 C-288/12 European Commission v. Hungary [Legitimacy of removal of office of the national data protection supervisor]
- ▶ 8/4/2014 Joined cases C-293/12 and C-594/12 Digital Rights Ireland and Seitling and Others v. Ireland [Violation of EU primary law by the Data Retention Directive]
- ▶ 8/4/2014 Case C-288/12. European Commission v Hungary. Failure of a Member State to fulfil obligations - Directive 95/46/EC - Protection of individuals with regard to the processing of personal data and the free movement of such data - Article 28(1) - National supervisory authorities - Independence - National legislation prematurely bringing to an end the term served by the supervisory authority - Creation of a new supervisory authority and appointment of another person as head of that authority.

# Caselaw 2014

- ▶ 8/04/2014 C-293/12 Judgment ECLI:EU:C:2014:238 08/04/2014 Digital Rights Ireland Approximation of laws Approximation of laws Telecommunications Principles, objectives and tasks of the Treaties Citizenship of the Union Fundamental rights - Charter of Fundamental Rights Data protection
- ▶ 13/05/2014 C-131/12 Judgment ECLI:EU:C:2014:317 13/05/2014 Google Spain and Google Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights Data protection
- ▶ 17/07/2014 C-141/12 Judgment ECLI:EU:C:2014:2081 17/07/2014 Y.S. Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights
- ▶ 11/12/2014 C-212/13 Judgment ECLI:EU:C:2014:2428 11/12/2014 Ryneš Approximation of laws Approximation of laws Fundamental rights

# Caselaw 2014

- ▶ 13/05/2014 C-131/12 Judgment ECLI:EU:C:2014:317 13/05/2014 **Google Spain** and Google Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights Data protection
  - ▶ a) On the territoriality of EU rules : Even if the physical server of a company processing data is located outside Europe, EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State which promotes the selling of advertising space offered by the search engine;
  - ▶ b) On the applicability of EU data protection rules to a search engine : Search engines are controllers of personal data. Google can therefore not escape its responsibilities before European law when handling personal data by saying it is a search engine. EU data protection law applies and so does the right to be forgotten.
  - ▶ c) On the “Right to be Forgotten” : Individuals have the right - under certain conditions - to ask search engines to remove links with personal information about them.

# Caselaw 2015

- ▶ 16/04/2015 C-446/12 Judgment ECLI:EU:C:2015:238 16/04/2015 Willems area of freedom, security and justice area of freedom, security and justice Fundamental rights - Charter of Fundamental Rights Data protection summary French summary French
- ▶ 15/07/2015 T-115/13 Judgment ECLI:EU:T:2015:497 15/07/2015 Dennekamp v Parliament Provisions governing the institutions - Access to documents Provisions governing the institutions - Access to documents
- ▶ 16/07/2015 C-580/13 Judgment ECLI:EU:C:2015:485 16/07/2015 Coty Germany Approximation of laws Approximation of laws Intellectual, industrial and commercial property
- ▶ 1/10/2015 C-201/14 Judgment ECLI:EU:C:2015:638 01/10/2015 Bara and Others Economic and monetary policy Economic and monetary policy Approximation of laws
- ▶ 01/10/2015 C-230/14 Judgment ECLI:EU:C:2015:639 01/10/2015 Weltimmo Approximation of laws Approximation of laws Data protection
- ▶ 6/10/2015 C-362/14 Judgment ECLI:EU:C:2015:650 06/10/2015 **Schrems** Approximation of laws Approximation of laws Data protection

# General Data Protection Regulation

- <http://www.consilium.europa.eu/en/policies/data-protection-reform/data-protection-regulation-infographics/>
- <http://www.consilium.europa.eu/en/policies/data-protection-reform/data-protection-regulation/>
- <http://eur-lex.europa.eu/procedure/EN/201286>
- [http://ec.europa.eu/justice/data-protection/reform/index\\_en.htm](http://ec.europa.eu/justice/data-protection/reform/index_en.htm)

# 28/01/2016 : Proposal for a General Data Protection Regulation

- Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

# The General Data Protection Regulation main points

- ▶ Protected: natural persons, whatever their nationality or place of residence.

Are subject to the Regulation:

- ▶ **Data processors** as well as data controllers are directly liable under the Regulation.
- ▶ Companies :
  - ▶ Established in the EU regardless of where they process personal data.
  - ▶ Monitoring the behavior of data subjects who are located within the European Union.
  - ▶ based outside the EU that provide services or goods to the EU

# The General Data Protection Regulation main points

Article 4 'personal data' means any information relating to an identified or identifiable natural person 'data subject'; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, **location data, online identifier** or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

- ▶ Directive: 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- ▶ Two new categories of sensitive data: genetic and biometric
- ▶ Pseudonymised data considered personal data
- ▶ does not apply to fully anonymized data

# The General Data Protection Regulation main points

- ▶ one-stop shop
- ▶ when nationals of several Member states involved DPAs to be consulted by the lead DPA
- ▶ Transforms the Article 29 Working Party to a regulating body, the European Data Protection Board.
  - ▶ Consisting of representative of each national DPA + the European Data Protection Supervisor
  - ▶ Will provide guidance and resolve disputes among the national DPAs.
- ▶ Quasi class-action by Public Interest Groups

# The General Data Protection Regulation novelties

- ▶ Transparency
- ▶ Technological neutrality
- ▶ Notification of breaches
- ▶ Traceability
- ▶ Accountability and focus on compliance
- ▶ requirement to document data processing activities.
- ▶ Privacy by design & Privacy by default
- ▶ Risk assessments
- ▶ Privacy Impact Assessments
- ▶ European Data Protection Seal

# The General Data Protection Regulation novelties

- Right to be forgotten
- Right to object to profiling
- Right to data portability
- Substantial Fines for non-compliance on the basis of “single economic entity” and the global turnover.

The regulation should enter into force in mid 2016 and will be applicable as of beginning of 2018

## European data protection for the digital era

### Better protection for personal data

- Clear consent required to process data
- Limits on the use of automated processing of data to make decisions, for example in the case of profiling
- Right to rectify and remove data, including the 'right to be forgotten' for data collected as a child
- Right to notification if data is compromised
- More and clearer information about processing
- Right to move data from one service provider to another
- Easier access to personal data
- Stricter safeguards for transfers of personal data outside the EU

### More opportunities for business

- Level playing field for all EU and non-EU businesses offering goods and services to persons in the EU
- One set of rules for the whole EU
- Rules that allow businesses, especially SMEs, to get the most out of the Digital Single Market
- Risk-based approach, matching obligations of controllers to the level of risk of the processing

### More consistent application and effective enforcement

- Individuals and businesses can have their cases dealt with by a data protection authority and a court close to them
- A one-stop shop for individuals and businesses in cross-border cases thanks to the cooperation of national data protection authorities

**Fines** € up to €20 million **OR** 4% of global annual turnover

Council of the European Union  
General Secretariat

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# Parallel text



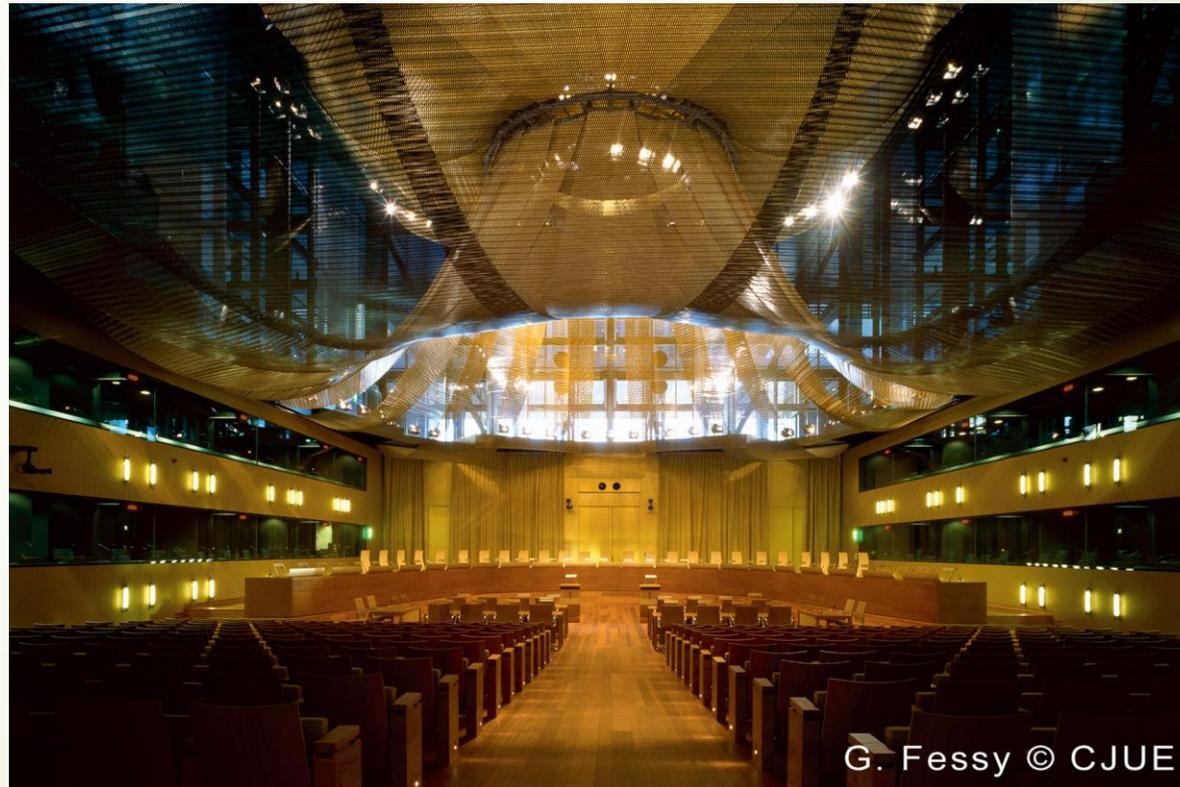
Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

- Date of document: 28/01/2016

# European Data Protection day, 28 January 2016

- [Building on modern and unified rules to strengthen fundamental rights and create a Digital Single Market - Joint Statement by Vice-President Ansip and Commissioner Jourová on the occasion of the 2016 Data Protection day](#)
- **Date: 28/01/2016**
- European Commission - Statement Brussels, 28 January 2016 "Today, 28 January, marks the 10th European Data Protection day. Exactly one year ago, the European Commission committed to reaching an agreement on EU data protection reform. "Today, 28 January, marks the 10th European Data Protection day.
- [http://ec.europa.eu/justice/data-protection/reform/index\\_en.htm](http://ec.europa.eu/justice/data-protection/reform/index_en.htm)

# Thank you



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# Annex: Case law

# 16/12/2008 C-73/07 Judgment ECLI:EU:C:2008:727 Satakunnan Markkinapörssi and Satamedia

- Approximation of laws Approximation of laws Fundamental rights  
appl [English](#) [judg](#) [English](#) [sum](#) [English](#) [OJ](#) [English](#)

10/02/2009 C-301/06 Judgment ECLI:EU:C:2009:68  
Ireland v Parliament and Council

- Approximation of laws Approximation of laws Data protection appl  
[English sum English OJ English](#)

# 21/02/2009 C-524/06 Judgment (OJ) Huber

- Citizenship of the Union - Right of entry and residence Citizenship of the Union - Right of entry and residence Freedom of establishment Approximation of laws Fundamental rights Data protection non-discrimination - Non-discrimination on grounds of nationality

[English](#)

9/03/2010 C-518/07 Judgment

ECLI:EU:C:2010:125 Commission v Germany

- Approximation of laws Approximation of laws Fundamental rights  
[English](#) [sum](#) [English](#)

29/06/2010 C-28/08 P Judgment

ECLI:EU:C:2010:378 Commission v Bavarian Lager

- Free movement of goods - Quantitative restrictions - Measures having equivalent effect Free movement of goods - Quantitative restrictions - Measures having equivalent effect Provisions governing the institutions - Access to documents Data protection appl [English ord ord judg English summary English sum OJ](#)

9/11/2010 C-92/09 Judgment

ECLI:EU:C:2010:662 Volker und Markus Schecke

- Agriculture and Fisheries Agriculture and Fisheries Approximation of laws Fundamental rights - Charter of Fundamental Rights Data protection appl [English](#) [English summary](#) [English](#)

05/05/2011 C-543/09 Judgment

ECLI:EU:C:2011:279 Deutsche Telekom

- Approximation of laws Approximation of laws Freedom of establishment Freedom to provide services Consumer protection Telecommunications Data protection appl [English](#) [English sum](#)  
[English](#)

# 21/07/2011 C-104/10 Judgment ECLI:EU:C:2011:506 Kelly

- Social policy Social policy Data protection [English sum English](#)

# 4/11/2011 C-468/10 Judgment

ECLI:EU:C:2011:777 ASNEF

- Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights Data protection appl [English ord](#)  
[French](#) [English](#) [sum](#) [English](#)

# 16/02/2012 C-360/10 Judgment

## ECLI:EU:C:2012:85 SABAM

- Approximation of laws Approximation of laws Freedom of establishment Freedom to provide services Consumer protection Data protection appl [English](#) [English](#) [sum](#) [English](#)

19/04/2012 C-461/10 Judgment

ECLI:EU:C:2012:219 Bonnier Audio and Others

- Approximation of laws Approximation of laws Telecommunications Intellectual, industrial and commercial property - Copyright and related rights [English sum English](#)

# 22/05/2012 T-300/10 Judgment ECLI:EU:T:2012:247 Internationaler Hilfsfonds v Commission

- Provisions governing the institutions - Acts of the institutions  
Provisions governing the institutions - Acts of the institutions -  
Access to documents Data protection appl [English](#) [English sum](#)  
[English OJ](#)

16/10/2012 C-614/10 Judgment

ECLI:EU:C:2012:631 Commission v Austria

- Approximation of laws Approximation of laws Fundamental rights  
Data protection [English sum English](#)

22/11/2012 C-119/12 Judgment

ECLI:EU:C:2012:748 Probst

- Approximation of laws Approximation of laws Telecommunications  
Data protection appl [English](#) [English](#) [sum](#) [English](#)

# 05/05/2013 C-342/12 Judgment ECLI:EU:C:2013:355 Worten

- Approximation of laws Approximation of laws [English sum English](#)

17/10/2013 C-291/12 Judgment

ECLI:EU:C:2013:670 Schwarz

- area of freedom, security and justice area of freedom, security and justice Fundamental rights - Charter of Fundamental Rights appl English English sum English

# 7/11/2013 C-473/12 Judgment

## ECLI:EU:C:2013:715 IPI

- Approximation of laws Approximation of laws Fundamental rights  
appl [English](#) [English](#) [sum](#) [English](#)

12/12/2013 C-486/12 Judgment

ECLI:EU:C:2013:836 X

- Approximation of laws Approximation of laws Fundamental rights  
appl English English sum English

08/04/2014 C-288/12 Judgment

ECLI:EU:C:2014:237 Commission v Hungary

- Approximation of laws Approximation of laws Fundamental rights  
Data protection appl [English sum English](#)

8/04/2014 C-293/12 Judgment

ECLI:EU:C:2014:238 Digital Rights Ireland

Approximation of laws Approximation of laws Telecommunications  
Principles, objectives and tasks of the Treaties Citizenship of the Union  
Fundamental rights - Charter of Fundamental Rights Data protection  
appl [English judg](#) [English sum](#) [English OJ](#) [English](#)

# 13/05/2014 C-131/12 Judgment

## ECLI:EU:C:2014:317 Google Spain and Google

- Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights Data protection appl [English judg](#)  
[English](#) [English](#) [OJ](#) [English](#)

# 17/07/2014 C-141/12 Judgment

## ECLI:EU:C:2014:2081 Y.S.

- Approximation of laws Approximation of laws Fundamental rights - Charter of Fundamental Rights appl [English judg English sum English OJ English](#)

# 11/12/2014 C-212/13 Judgment ECLI:EU:C:2014:2428 Ryneš

- Approximation of laws Approximation of laws Fundamental rights  
appl [English summary English](#)

16/04/2015 C-446/12 Judgment

ECLI:EU:C:2015:238 Willems

area of freedom, security and justice area of freedom, security and  
justice Fundamental rights - Charter of Fundamental Rights Data  
protection appl [English](#) [English summary](#) [French](#) [summary](#) [French](#)

15/07/2015 T-115/13 Judgment

ECLI:EU:T:2015:497 Dennekamp v Parliament

- Provisions governing the institutions - Access to documents  
Provisions governing the institutions - Access to documents [English](#)

# 16/07/2015 C-580/13 Judgment

## ECLI:EU:C:2015:485 Coty Germany

- Approximation of laws Approximation of laws Intellectual, industrial and commercial property appl [English](#) [English](#)

# 1/10/2015 C-201/14 Judgment ECLI:EU:C:2015:638 Bara and Others

- Economic and monetary policy Economic and monetary policy  
Approximation of laws appl [English](#) [English](#)

01/10/2015 C-230/14 Judgment  
ECLI:EU:C:2015:639 Weltimmo

- Approximation of laws Approximation of laws Data protection  
appl English English

6/10/2015 C-362/14 Judgment

ECLI:EU:C:2015:650 06/10/2015 Schrems

- Approximation of laws Approximation of laws Data protection appl  
[English](#) [English](#)