

Privacy: a Thinnest Line between Privacy and Cybersecurity, and Ideology of Eastern and Western

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Charter of fundamental rights in the European Union

- Art. 1: Human dignity
- Art. 7: Respect for private and family life
- Art. 8: Protection of personal data

Personal data protection

Main principles

- Right to privacy
- Right to control personal data
- Right to be forgotten

Directive on personal data protection

- 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

Directive on personal data protection

- The choice of a Directive
- The goal: protecting fundamental rights and freedoms of natural persons and in particular their right to privacy

Directive on personal data protection Definitions

- Personal data
- Processing of personal data

Directive on personal data protection Subjects

- Data subject: exclusion of legal persons
- Controller
- Processor

Directive on personal data protection

Freedom of expression

- Balance between protection of personal data and freedom of expression (art. 9)
- Exceptions to the consent rule can be provided by Member States for journalistic purposes and purposes of artistic or literary expression

Directive on personal data protection

Rights of the data subject

- Right of access to data being processed
- Right to object to the processing

Directive on personal data protection Notification

- Obligation of the controller to notify to the supervisory authority wholly or partly automatic processing operations
- Member States can provide for exemptions

Directive on personal data protection

Transfer to a third country

- Transfer of personal data to a third country may take place only if the third country ensures an adequate level of protection

Directive on personal data protection

Transfer to a third country

- Level of protection is considered adequate in light of all the circumstances surrounding a data transfer operation:
 - Nature of the data
 - Purpose of the processing
 - Country of origin and destination

Directive on personal data protection

Transfer to a third country

- In relation to the country of destination, consideration shall be given to
 - Rules of law
 - Professional rules
 - Security measures

Directive on personal data protection

Transfer to a third country

- If the third country does not ensure an adequate level of protection, Member States take the necessary measures to prevent the transfer of personal data

Directive on personal data protection

Transfer to a third country

- Derogations:
 - Consent of the data subject
 - Transfer is necessary for the performance of a contract in the interest of the data subject
 - Public interest
 - Protection of the vital interest of the data

Proposal for a Regulation on general data protection

- Proposal of 25 January 2012 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)

Proposal for a Regulation on general data protection

- Proposal presented on 25 January 2012
- Soon to be adopted
- When adopted, Directive 95/46/CE on personal data protection will be repealed

Proposal for a Regulation on general data protection Main innovations

- From a Directive to a Regulation
- Right to be forgotten, right to data portability, principle of accountability, privacy by design

Right to be forgotten

- Right to obtain the erasure of personal data:
 - Data are no longer necessary
 - Withdraw of the consent or storage period has expired
 - Exercise of the right to object
 - Processing not in compliance with the Regulation

Right to data portability

- Right to obtain a copy of data undergoing processing in an electronic and structured format commonly used and allowing for further use by the data subject

Principle of accountability

- Obligation of the controller to adopt appropriate measures to ensure and demonstrate the compliance with the Regulation
- E.g.: keeping documentation, implementing, security requirements, performing impact assessments

Privacy by design

- Obligation of the controller to implement appropriate technical and organizational measures to meet the requirements of the Regulation, both at the
 - Time of determining the means for processing
 - Time of the processing

Privacy by default

- Obligation of the controller to implement mechanisms for ensuring that only personal data necessary to the purpose are processed, in terms of
 - Amount of data
 - Time of storage

The European Court of Justice's decisions

Google Spain

- Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (Case C-131/12)

Google Spain

- European law is applicable to the service provider
- Data subject can take legal actions against the service provider
- Obligation to remove from the list of results displayed following a search made on the basis of a person's name links to web pages published by third parties

Facebook

- Maximillian Schrems v Data Protection Commissioner (Case C-362/14)

Facebook

- European law is applicable to European subjects' personal data
- Invalidation of the Safe Harbour
- Transmission of data: consent or pre-approved rules

The end

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