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# International data sharing, Privacy and Data Protection: the EU perspective

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# Outline

- Origin of data protection
- International legal framework
- EU legal framework
- Privacy/Data Protection as fundamental rights
- Independent supervision
- Data protection principles



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## Origin of data protection: privacy

- Notions of private life and privacy
- ‘Right to be left alone’. A protected private sphere.
- Private life/Privacy extends to professional activities.



## International Legal Framework (I)

Right to respect of private life (privacy)

- Article 12 Universal Declaration of Human Rights (Paris, 1948)
- Article 17 International Covenant on Civil and Political Rights (New York, 1966)
- Article 8 European Convention on Human Rights (1950)

# International Legal Framework (II)

## Article 8 European Convention on Human Rights

- basic principles: interference only if necessary in a democratic society (proportionality), for a legitimate purpose, laid down by law (foreseeable, precise).
- Case law of Strasbourg Court of Human Rights: processing of personal data may interfere with private life

## International Legal Framework (III)

### Right to protection of personal data

- OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980)
- **Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)**
- United Nations guidelines concerning Computerized personal data files (1990)



# EU Legal Framework (I)

## Primary law

- One of the fundamental rights recognised as general principles of Community law (art. 6.2 EU Treaty)
- Article 286 EC Treaty (Amsterdam Treaty)
- Article 8 of Charter of Fundamental Rights



## EU Legal Framework (II)

### Secondary law

- Directive 95/46/EC: the "privacy directive"
- Sectoral measures: e-privacy directive (97/66, replaced by 2002/58),
- Case law on scope of application
- Regulation 45/2001: rules on protection of personal data by EU institutions



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# Privacy vs. data protection

- Closely linked to right to privacy but not the same
- Narrower and wider than privacy
- Values underlying the right to data protection



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# Privacy/Data protection as fundamental rights

Right to data protection is a fundamental right

- Article 8 Charter of Fundamental Rights
- Exceptions only under restricted circumstances, as laid down by law
- Protection of the right independent of
  - nationality
  - risk
- Effective redress

# Independent supervision (I)

Essential element of data protection, in most western countries

- One or more supervisory authorities
- Proactive enquiries
- Technical skills required
- Judicial control not enough

Concept of independence (infringement case Commission v. Germany)



# Independent supervision (II)

Independent supervision: roles and actors

Roles: supervise (also through Data Protection Officer), advise, cooperate

Actors:

- Data protection authorities in the Member States
- Article 29 Working Party
- European Data Protection Supervisor
- Other Supervisory bodies: Europol, Eurojust, Schengen



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## The EC system: Directive 95/46

- *Regulating* the processing of personal data
- Defining rights and obligations
- Dual purpose:
  - Ensuring free flow of data
  - Ensuring protection of fundamental rights and freedoms



## Basic principles (I)

- Purpose limitation principle
  - Explicit and legitimate purpose, not processed for incompatible purposes
- Proportionality principle
  - Adequate, not excessive, stored no longer than necessary
- Data quality
  - Ensuring that data are accurate and up to date: different degree of accuracy and reliability, quality checks



# Basic principles (II)

- Transparency
  - Informing the data subject
- Security
- Rights and remedies
  - Right to access (direct or indirect), rectify or erase
  - Judicial remedy, data protection authority
- Exceptions

## Basic principles (III)

- Transfer to third countries/Private sector
  - “Adequate” level of protection
  - Exceptions
  - Contractual clauses/Binding Corporate rules



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# Challenges for data protection

- Common misconceptions about data sharing (“the false comfort of mass data collection/exchange”)
- A patchwork of applicable regulations and initiatives
- A more harmonised legal framework is needed but not at the cost of a high level of data protection



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Thank you for your attention!

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