Law and Information Society in Europe

Strobl 2017 nikolaus.forgo@iri.uni-hannover.de

Sources

- European Convention on Human Rights
- EU-Charter Fundamental Rights
- National Constitutions
- Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981, in force since 1985)
 - https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108
 - <u>https://rm.coe.int/1680078b37</u>
 - "Article 6 Special categories of data Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions."

UN

Universal Declaration of Human Rights

- Article 12.

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.

- Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

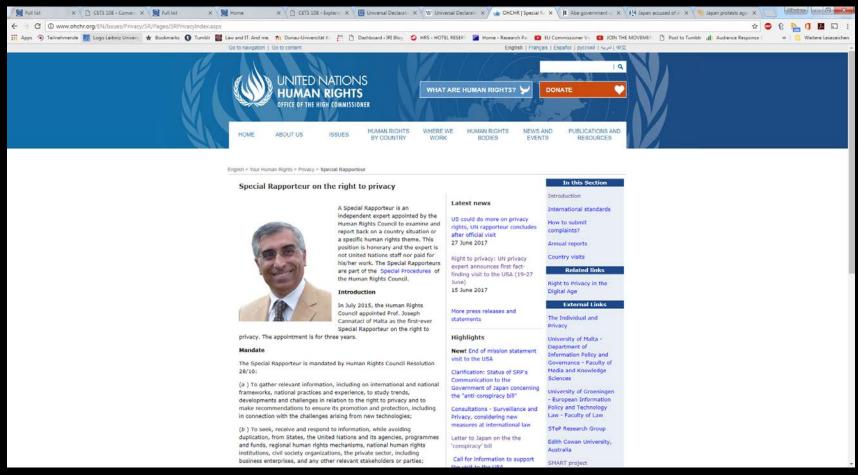
High Commissioner

- United Nations High Commissioner for Human Rights
- First Asian, Muslim and Arab in this role



Zeid Ra'ad Al Hussein

UN Special Rapporteur on the right to privacy



Special Rapport

- Independent Expert
 - One of 43 thematic and 13 country-related mandates
 - http://spinternet.ohchr.org/_ Layouts/SpecialProcedures Internet/ViewAllCountryMa ndates.aspx?Type=TM
- Appointed by the Human Rights Council
- In Office since July 2015
- Mandated by Human Rights Council Resolution 28/16



Joe Cannataci

Secondary Law

Current Secondary Law

Directive 95/46

Regulation 679/2016

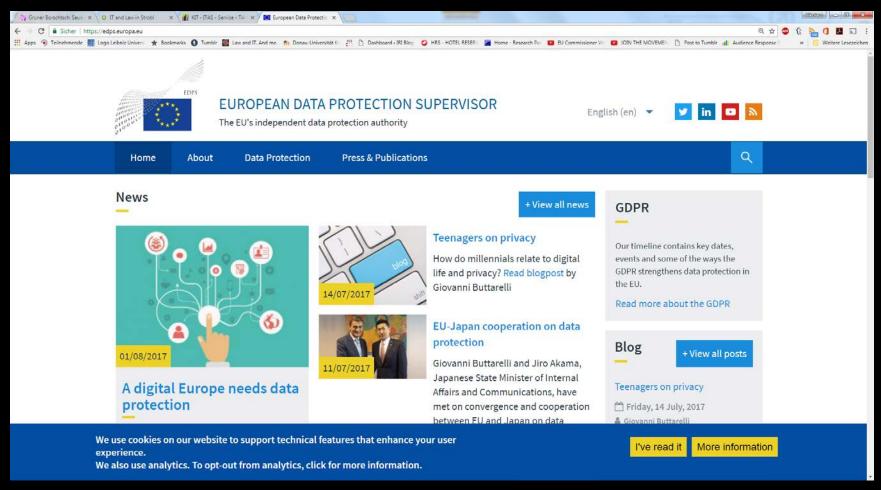
Council Framework Decision 2008/977

Directive 2016/680

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- Directive 2002/58/EC
- Regulation 45/2001 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
- Decision 1247/2002/EC on the regulations and general conditions governing the performance of the European Data protection Supervisor's duties

Relevant Players on European Level



Relevant Players on European Level (2)



Reasons for Change

https://www.youtube.com/watch?v=9binnTte KeA

Relevant typical problems

- Personal data
 - Directly/indirectly identifiable information?
 - Aggregation?
 - Pseudonymization?
- Consent
 - Freely given?
 - Informed?
 - Broad/narrow?
 - In writing?
 - Revocable?
- Purpose
 - Specific?
 - Identical/compatible?
 - Legitimate/proportionate?
- Transfer
 - Legitimacy?
 - Third Country?
 - Role of DPA?

- Role of Supervisory Authority
 - Independence?
 - Alignment with other authorities?
- User Rights
 - Identification?
 - Representation?
 - Costs?
- Data Security
 - State of the Art?
 - Proportionate?
 - Privacy Breach Notification?
- Specific Cases of public interest
 - Media?
 - (Medical) Research?

Presentations for Wednesday and Thursday

- CJEU, Opinion 1/15 of the Court (Grand Chamber), 26 July 2017
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=193216&pageIndex=0&doclang=EN&mode=lst&dir=& occ=first&part=1&cid=723177
- Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 19 September 2016 Maximilian Schrems v Facebook Ireland Limited, (Case C-498/16)
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=185593&pageIndex=0&doclang=EN&mode=req&dir= &occ=first&part=1&cid=382035
 - Not yet decided, Knowledge of German very useful
- CJEU C-314/12 (UPC Telekabel)
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=149924&pageIndex=0&doclang=EN&mode=Ist&dir=& occ=first&part=1&cid=304164
- CJEU- C-484/14 (McFadden)
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=183363&pageIndex=0&doclang=EN&mode=lst&dir=& occ=first&part=1&cid=304317
- CJEU C-166/15
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=184446&pageIndex=0&doclang=EN&mode=Ist&dir=& occ=first&part=1&cid=300289
- CJEU C-169/15
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=184690&pageIndex=0&doclang=EN&mode=Ist&dir=& occ=first&part=1&cid=299127
- CJEU C-527/15 Stichting Brein
 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=190142&pageIndex=0&doclang=EN&mode=lst&dir=& occ=first&part=1&cid=298751

Further Process

- Parliament
 - Rapporteur Albrecht: 350 amendments
 - Other MEPs: 3133 amendments

- Council
 - Very lengthy and very complex debates
 - Snowden

Jan Philipp Albrecht

- https://www.youtube.com/watch?v=Qm2e_k1 ruL0&list=PLrELwTyrvGDrO98Ackz0Opt25W 2KZAR35
- https://www.youtube.com/watch?v=Oz8itX5kVU&list=PLrELwTyrvGDrO98Ackz0Opt2 5W2KZAR35&index=18
- https://www.youtube.com/watch?v=Azt1wjTZ J_U&index=17&list=PLrELwTyrvGDrO98Ack z0Opt25W2KZAR35

Structural Principles of Directive 95/46/EC

- Purpose Limitation
- Data Canniness
- User Rights
- DPAs
- Distinction sensitive/non sensitive Data
- Distinction Controler/Processor
- Data Security

Art. 6

- 1. Member States shall provide that personal data must be:
- (a) processed fairly and lawfully;
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;
- (c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.
- 2. It shall be for the controller to ensure that paragraph 1 is complied with.

Legality of Processing

- Art. 7 ("normal" personal data)
- Art. 8 (sensitive personal data)
 - data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, tradeunion membership, and the processing of data concerning health or sex life
- Art. 9 (freedom of information)
- Art. 17 (security)

Art. 7 – Legality of Processing of Non-sensitive Data

- Unambigous Consent
- In the alternative:
 - Necessity for
 - the performance of a contract
 - compliance with a legal obligation
 - to protect the vital interests of the data subject
 - for the performance of a task carried out in the public interest or in the exercise of official authority
 - the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1)

Art. 8. - Legality of Processing of Sensitive Data

- Explicit Consent
- In the alternative:
 - Necessity for
 - purposes of carrying out the obligations and specific rights of the controller in the field of employment law
 - to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent
 - in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profitseeking body with a political, philosophical, religious or tradeunion aim
 - processing relates to data which are manifestly made public by the data subject
 - necessary for the establishment, exercise or defence of legal claims

Regulation 679/2016/EU

- In force since May 2016
- Applicable from May 2018
- Replaces Directive 95/46/EC
- Evolutionary aproach

Trends

- Joint responsibility of data controler and data processor
- Fundamental principles remain in place such as
 - Personal/non personal data (Art. 4 l)
 - Sensitive/non-sensitive data (Art. 9 I)
 - Golden rule (Art. 6; Art. 9 I)
 - Data Security (Art. 32)
 - Conditions for transfer to third countries (Art. 45)
- New (innovative) approaches
 - Right to be forgotten (Art. 17)
 - Data Portability (Art. 20)
 - Privacy by design/by default (Art. 25)
 - Privacy Impact assessment (Art. 35)
 - Privacy Breach Notification (Art. 33/34)
 - Better Cooperation between DPAs (Art. 60)
 - Data Protection Officer (Art. 37)
 - Soft Law (e. g. Codes of Conduct, Art. 40, Certifications, Art. 42)
 - (Significantly) higher fines (Art. 83 VI)