

Law and Information Society in Europe

Strobl 2017

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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>
 - <https://rm.coe.int/1680078b37>
 - „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

Full list CETS 108 - Conven Full list Home CETS 108 - Explan Universal Declar Universal Declar CHCHR | Special R Abse government Japan accused of Japan protests ag 14/06/2017

www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx

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 **UNITED NATIONS**
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER


WHAT ARE HUMAN RIGHTS? DONATE

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English > Your Human Rights > Privacy > Special Rapporteur

Special Rapporteur on the right to privacy

A Special Rapporteur is an independent expert appointed by the Human Rights Council to examine and report back on a country situation or a specific human rights theme. This position is honorary and the expert is not United Nations staff nor paid for his/her work. The Special Rapporteurs are part of the [Special Procedures](#) of the Human Rights Council.



Introduction

In July 2015, the Human Rights Council appointed Prof. Joseph Cannataci of Malta as the first-ever Special Rapporteur on the right to privacy. The appointment is for three years.

Mandate

The Special Rapporteur is mandated by Human Rights Council Resolution 28/16:

(a) To gather relevant information, including on international and national frameworks, national practices and experience, to study trends, developments and challenges in relation to the right to privacy and to make recommendations to ensure its promotion and protection, including in connection with the challenges arising from new technologies;

(b) To seek, receive and respond to information, while avoiding duplication, from States, the United Nations and its agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society organizations, the private sector, including business enterprises, and any other relevant stakeholders or parties;

Latest news

US could do more on privacy rights, UN rapporteur concludes after official visit
27 June 2017

Right to privacy: UN privacy expert announces first fact-finding visit to the USA (19-27 June)
15 June 2017

More press releases and statements

Highlights

New! End of mission statement visit to the USA

Clarification: Status of SRP's Communication to the Government of Japan concerning the "anti-conspiracy bill"

Consultations - Surveillance and Privacy, considering new measures at international law

Letter to Japan on the the "conspiracy" bill

Call for information to support the visit to the USA

In this Section

Introduction

International standards

How to submit complaints?

Annual reports

Country visits

Related links

Right to Privacy in the Digital Age

External links

The Individual and Privacy

University of Malta - Department of Information Policy and Governance - Faculty of Media and Knowledge Sciences

University of Groningen - European Information Policy and Technology Law - Faculty of Law

STeP Research Group

Edith Cowan University, Australia

SMART project

Special Rapporteur

- Independent Expert
 - One of 43 thematic and 13 country-related mandates
 - <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewAllCountryMandates.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

+

- 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

The screenshot shows the official website of the European Data Protection Supervisor (EDPS). The header features the EDPS logo, the text "EUROPEAN DATA PROTECTION SUPERVISOR", and the tagline "The EU's independent data protection authority". A navigation bar includes links for Home, About, Data Protection, and Press & Publications. The main content area is divided into sections for News, GDPR, and a Blog. The News section highlights two articles: "A digital Europe needs data protection" (dated 01/08/2017) and "Teenagers on privacy" (dated 14/07/2017). The GDPR section provides a timeline of key dates and events. The Blog section features the article "Teenagers on privacy" by Giovanni Buttarelli, dated Friday, 14 July, 2017. A footer banner at the bottom informs users about cookies and analytics, with buttons for "I've read it" and "More information".

EDPS
EUROPEAN DATA PROTECTION SUPERVISOR
The EU's independent data protection authority

English (en)

Home About Data Protection Press & Publications

News

+ View all news

01/08/2017
A digital Europe needs data protection

14/07/2017
Teenagers on privacy
How do millennials relate to digital life and privacy? [Read blogpost](#) by Giovanni Buttarelli

11/07/2017
EU-Japan cooperation on data protection
Giovanni Buttarelli and Jiro Akama, Japanese State Minister of Internal Affairs and Communications, have met on convergence and cooperation between EU and Japan on data

GDPR
Our timeline contains key dates, events and some of the ways the GDPR strengthens data protection in the EU.
[Read more about the GDPR](#)

Blog
+ View all posts
[Teenagers on privacy](#)
Friday, 14 July, 2017
Giovanni Buttarelli

We use cookies on our website to support technical features that enhance your user experience.
We also use analytics. To opt-out from analytics, click for more information.

I've read it More information

<https://edps.europa.eu/>

Relevant Players on European Level (2)



The screenshot shows a web browser window displaying the European Commission's website. The page is titled "JUSTICE AND CONSUMERS" and is part of the "Data protection" section. The main heading is "Article 29 Working Party". The page includes a sidebar with links to "News", "Events", "Public consultations", "Grants", "Calls for tender", "Calls for expressions of interest", "Contract archive", and "Newsroom archive". The main content area contains a date "22 November 2016" and a paragraph stating: "The material (opinions, working documents, letters etc.) issued by the Article 29 Working Party (Art. 29 WP), available on this website reflect the views only of the Art. 29 WP which has an advisory status and acts independently. They do not reflect the position of the European Commission." Below this, there is a note about the policy of the Art. 29 WP to publish correspondence and a link to a document: http://ec.europa.eu/newsroom/document.cfm?doc_id=40100. Further down, it states: "The European Commission is in the process of creating a new, unified web presence and this will replace our website. At present it can therefore not be updated, but all existing information can be consulted via the usual link." and "For the time being news and updates are posted in a Newsroom, which can be reached via the website DG Justice and Consumers, Data Protection and Article 29 WP or via this link." The page also has a section titled "Composition & Structure" with a note: "The Article 29 Data Protection Working Party is composed of:".

European Commission

JUSTICE AND CONSUMERS

European Commission > Justice and Consumers > Newsroom > Data protection

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DATA PROTECTION

Article 29 Working Party

22 November 2016

The material (opinions, working documents, letters etc.) issued by the Article 29 Working Party (Art. 29 WP), available on this website reflect the views only of the Art. 29 WP which has an advisory status and acts independently. They do not reflect the position of the European Commission.

Please note that it is the policy of the Art. 29 WP to publish on its website the correspondence it receives, as well as its response to such correspondence. Should you not wish that your correspondence, or the response of the Art. 29 WP, be published, in full or in part, either for reasons of business confidentiality, protection of personal data or other legitimate reason, please indicate in advance such reason/s, as well as the parts of the correspondence to which this applies.

http://ec.europa.eu/newsroom/document.cfm?doc_id=40100

The European Commission is in the process of creating a new, unified web presence and this will replace our website. At present it can therefore not be updated, but all existing information can be consulted via the usual link.

For the time being news and updates are posted in a Newsroom, which can be reached via the website DG Justice and Consumers, Data Protection and Article 29 WP or via this link.

Composition & Structure

The Article 29 Data Protection Working Party is composed of:

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50083

Reasons for Change

<https://www.youtube.com/watch?v=9binnTteKeA>

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=lst&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=lst&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=lst&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_k1ruL0&list=PLrELwTyrvGDrO98Ackz0Opt25W2KZAR35
- <https://www.youtube.com/watch?v=Oz8-itX5kVU&list=PLrELwTyrvGDrO98Ackz0Opt25W2KZAR35&index=18>
- https://www.youtube.com/watch?v=Azt1wjTZJ_U&index=17&list=PLrELwTyrvGDrO98Ackz0Opt25W2KZAR35

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, trade-union 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

- **Unambiguous** 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-profit-seeking body with a political, philosophical, religious or trade-union 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 approach

Trends

- Joint responsibility of data controller and data processor
- Fundamental principles remain in place such as
 - Personal/non personal data (Art. 4 I)
 - 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)