

European Data Protection an example for the U.S.?

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The EU's data protection reform

Why #EUdataP?

- Update of 1995 rules
- Stricter enforcement
- Closing loopholes
- Trust and legal certainty
- Safeguarding a Fundamental Right
- Setting and exporting an EU standard
- Transformation to digital and global society

Data protection & privacy law

- 1960s: US debate on registers with personal data
- 1970: **Datenschutz** Act of Hestia (German Land)
- 1974: US **Privacy** Act (only public authorities)
- 1977 & 1978: data protection acts DE & AT, following EC
- 1980: OECD guidelines on data protection
- 1981: Council of Europe's Convention 108
- 1983: „Volkszählungsurteil“ German constitutional court
- 1995: EU data protection directive 95/46/EC
- 2002: EU ePrivacy directive 2002/58/EC
- 2006: EU data retention directive 2006/24/EC

inofficial EU Constitution



Article 16 TFEU

1. Everyone has the right to the protection of personal data concerning them.
2. 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 (...) Compliance with these rules shall be subject to the control of independent authorities.

Article 8 EU Charter of Fundamental Rights

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**.

The European Union – only bureaucracy



The European Union - only democracy



The European Union – a bureaucratic democracy, but the first above nations



Justice & Home affairs Committee
(European Parliament LIBE Committee)

Lead negotiators:

Jan Philipp Albrecht MEP (Regulation)

Dimitrios Droutsas MEP (Directive)

Justice & Home affairs Council
(Council of ministers JHA Council)

Lead negotiators:

Greek Presidency (First half 2014)

Italian Presidency (Second half `14)

What happened until now? I

- 2009-2011: Consultation process on a possible repeal of the data protection directive from 1995 on basis of Lisbon
- July 2011: EU Parliament Resolution
 - Single EU data protection standard on the basis of directive 95/46/EC
 - Strengthening of individual rights
 - Sharp sanctions and consistent enforcement in and by the EU and its member states

What happened until now? II

- 25 January 2012: EU Commission proposal
 - Regulation (private & public sectors)
 - Directive (law enforcement authorities)
- March 2012: EP rapporteurs appointed
- Since: hearings, meetings, discussions, ...
- January 2013: draft reports & amendments
- 21/10/13 & 12/03/14 Vote on EP position
 - almost unanimously
 - agreement with council after summer?

Some details on process

- Biggest lobbying tsunami ever in Brussels
 - Me & my staff: 168 meetings with lobbyists alone in nine months of 2012
 - Some understandable concerns
 - don't overburden SMEs, R2BF, ...
 - Some just way over the top
 - „EudataP should not apply to us“, legitimate interest, reduce scope of data protection, ...

Lobbyplag.eu: data journalism

Article 79, Paragraph 2	ITRE #872	Giles Chichester UK ECR	American Chamber of Commerce Page 48	Browse
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Article 3, Paragraph 2, Point a	IMCO #157	Rafał Trzaskowski PL EPP	Bits of Freedom Page 11	Browse
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Article 4, Point 3	IMCO #171	Malcolm Harbour UK ECR Adam Bielan PL ECR	American Chamber of Commerce Page 11	Browse
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Article 4, Point 13	IMCO #180	Malcolm Harbour UK ECR Adam Bielan PL ECR	Amazon Page 12	Browse
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3999 amendments



poor trees...



Core Issues I

- Definition of personal data
 - IP#, RFID ID, etc covered
 - „can be identified *or singled out*“ (identifiable)
- Consent: „specific, informed and explicit “
- Scope of application:
 - Market location principle
 - EU institutions covered
 - private / household use: incl. gainful interest

Core Issues II

- Legitimate interest
 - Must meet reasonable expectations based on the relationship with the data controller
 - Direct marketing:
 - Internet: only for own or similar goods & services
 - Snail mail: everything (transaction cost barrier)
 - Opt-out always possible (Do Not Track)
- Profiling: limited; *highly visible* information
- Privacy by design & default; data minimisation

Core Issues III

- Corporate data protection officer
 - Threshold at XYZ employees doesn't make sense
 - Now: 5000 persons per year
 - Can be part-time!
 - Helps compliance
 - Less consultation with DP authorities instead

Core Issues IV

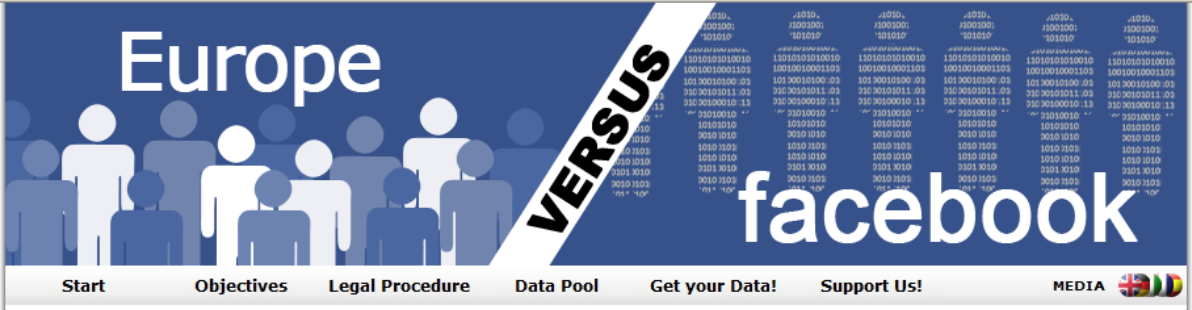
- International transfers based on EU law
- Consistency
 - One-stop-shop for data controller and for us
 - Coordination in European Data Protection Board
 - Final decision in case of conflict:
EDPB, $\frac{2}{3}$ majority
 - No loophole in Ireland anymore



CANAL HOUSE

CENTRA

An Coimisinéir
Cosanta Sonraí Data Protection
Commissioner



Legal Procedure against "Facebook Ireland Limited"

For years the shortcomings of Facebook's privacy practice have been discussed, thought and talked about. Besides a couple of individual law suits there have been almost no consequences. Oftentimes we read that Facebook is a US company and therefore we cannot do too much within Europe. Are you sure?



"If you are a resident of or have your principal place of business in the US or Canada, this Statement is an agreement between you and Facebook, Inc. Otherwise, this Statement is an agreement between you and Facebook Ireland Limited. References to "us," "we," and "our" mean either Facebook, Inc. or Facebook Ireland Limited, as appropriate."

(Facebook's Terms, Chapter 18. "Other")

The Snowden Effect



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Welcome European Negotiators

The NSA thanks you for sharing
your negotiating positions.

Defending Our Nation. Securing The Future.



The Snowden Effect (strategic)

- Data Protection as competitive advantage

30. Oktober 2013 18:55 - Attacke auf Rechenzentren

NSA kopiert unverschlüsselte Mails von Google-Servern

Kryptotechnik schützt Gmail-Nutzer, wenn sie eine Nachricht schreiben - aber nur bis die E-Mail auf Google-Servern landet. Offenbar kann die NSA hier Daten direkt abgreifen. Der US-Geheimdienst feiert den Erfolg mit einem ries grinsenden Smiley. Während Google sich "aufgebracht" zeigt, wiegelt NSA-Chef Alexander ab.

Die Internetkonzerne dementierten hart: Der US-Geheimdienst habe keinen direkten Zugang auf ihre Server, hieß es seltsam einstimmig von Google, Yahoo und anderen Internetfirmen. Genau das stand allerdings in einer der ersten internen NSA-Präsentationen, die der Whistleblower Edward Snowden an die Öffentlichkeit brachte.

ANZEIGE

Google Cloud Hosting

 cloud.google.com/appengine

Build And Run Your App Using
Google App Engine

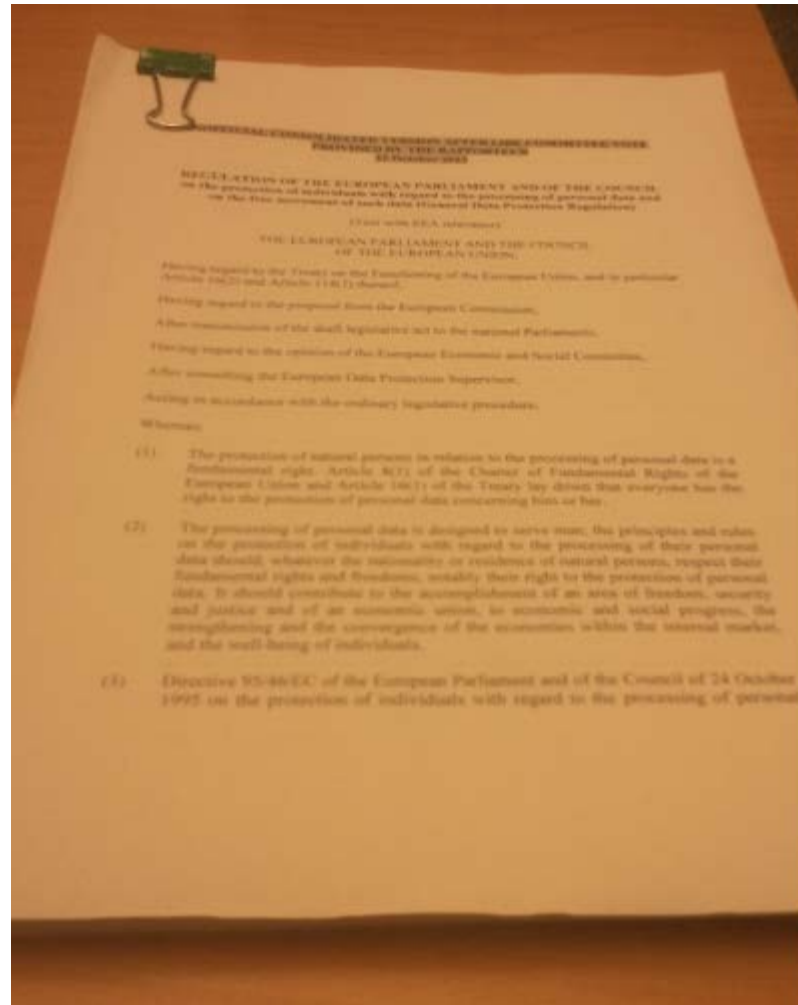


Datenschutzinfo [x]

The Snowden Effect (immediate)

- Privacy high on the political agenda
- Lots of promises, but little meat
- Article 42 → 43a
- Sunset clause for Safe Harbour etc.
- No BCRs for processors
- Whistleblower provisions
- Fines up to 5% of global annual turnover
- But no real impact on core issues...

After half a year of negotiations...



Overall result in Parliament

- Very good compromise
- Compared to the lobbying and amendments, much better than hoped for
- Structural majority of conservatives & market liberals!
- Result: support from all political groups
- Understandable that EDRi and others are not 100% happy, but others are even less

What's next?

- Waiting for Council of Ministers to adopt their position
- Going around in circles
- Helpful allies: FR, PL, AT, EL (Greece) ...
- Delaying countries:
 - UK, DK, HU, SI don't want regulation at all
 - DE, some others: „lots of questions“
(Diplomat speak for „delay until it's dead“)



The Argus

**COUNCIL CALLS
IN COUNSELLORS
TO COUNSEL
COUNCILLORS**

The Argus

Big Picture

- #EUdataP won't solve all issues,
 - but **level playing field & data control** for us
- Watch out for #Epinquiry report in Jan `14
 - Workshop: Day 3, 14:00-15:00,
Noisy Square Assembly
- Need joint effort for EU IT capabilities
 - whole stack, from processor design to OS
 - free and open approach helps security
- Digital New Deal (investing in privacy)

Safeguard self determination



Digital Declaration of Independence

- Someone has to do a start!
- We do not have the majority on global level
- But we can have power & majorities in EU/US
- Privacy activists around the world watching
- EU Data protection reform: best chance we get
- Race against the clock: Forum shopping, TTIP, ...
- Possible legislation also in the US?
- Data Protection getting competitive advantage

Questions?

Documents & more:

ec.europa.eu

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#EUdataP

#EPinquiry