

Personal Data Protection

Protection of personal data

Croatia and Turkey

Screening Chapter 23 - Judiciary and fundamental rights

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Living in an
area of
freedom,
security
and justice

Overview

1. Introduction
2. Directive 95/46/EC
3. Transfer of personal data to third countries
4. Personal Data Protection in European institutions and the European Data Protection Supervisor



1. Introduction

Google™ 2084

Google Search

I'm Feeling Lucky

I'm Feeling Paranoid

- Your Brain
- Your Home
- Family
- Friends
- Ex-friends
- Relatives
- Co-workers
- Ex-spouse(s)
- Enemies
- Satellite Photos of People You Want to Spy On
- Satellite Photos of People Spying on You
- Medical Records
- Credit Reports
- Tax Records
- Phone Records
- Court Documents
- Other People's Conversations
- Books
- Movies
- TV Shows
- Music
- Pornography
- Your Past
- Your Present
- Your Future

A fundamental right

- EU Charter of Fundamental Rights of 7 December 2000: Article 8
- Treaty on the European Union (TEU): Article 6
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Article 8

EU Charter of Fundamental Rights

Article 8 - Protection of personal data

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.

Council of Europe I

- Convention 108/81 for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108) (Strasbourg, 28 January 1981)
 - + Additional Protocol to the Convention regarding supervisory authorities and transborder data flows (CETS 181) (Strasbourg, 4 November 2001).

Council of Europe II

Recommendations and Resolutions of the Committee of Ministers

e.g. on the protection of personal data in the area / for purposes of:

- No.R(2002) 9 **insurance**
- No.R(99) 5 **Internet**
- No.R(97) 18 **statistics**
- No.R(97) 5 **medical data**
- No.R(95) 4 **telecommunication**
- No.R(90) 19 **payment and other operations**
- No.R(89) 2 **employment**
- No.R(87) 15 **police sector**
- No.R(86) 1 **social security**
- No.R(85) 20 **direct marketing**

UN and OECD

United Nations (UN):

Guidelines concerning computerized personal data files

(adopted by the General Assembly on 14 December 1990)

Organisation for Economic Co-operation and Development (OECD):

Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data

(adopted by the Council 23 September 1980)

Data protection in the EC and EU

- Article 286 EC Treaty
- **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,**
OJ L 281, 23.11.1995, p. 31.
 - Report from the Commission - First report on the implementation of the Data Protection Directive (95/46/EC) COM/2003/0265 final

Data protection in the EC and EU

Other data protection rules and areas:

- ***Electronic communication (e-privacy):***
EU Directive 2002/58/EC (DG INFSO)
- ***Police and judicial co-operation in criminal matters***
EU Framework Decision COM (2005) 475 (proposal)

Texts:

http://europa.eu.int/comm/justice_home/fsj/privacy/index_en.htm

- ***Schengen Convention and rules***
- ***Europol***
- ***Eurojust***



2. Directive 95/46/EC

Data Protection Directive 95/46/EC:

- **high level of protection** of personal data
- **free movement** of data within EU/EEA
- Applies to **public and private** sectors
- Relation data subject - controller
- Personal data: identified or identifiable person
- Processing: broad definition

Personal Data

“Personal data“ means much more than “name and surname“:

Definition:

'personal data': shall mean any information relating to an identified or identifiable natural person ('data subject');
⇒ an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

(Art. 2 Directive 95/46/EC)

Processing

“Processing“ means more than “collection”:

Definition:

'processing of personal data' ('processing'):

shall mean **any operation** or set of operations **which is performed upon personal data**, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(Art. 2 Directive 95/46/EC)

Legitimacy

- (Unambiguous) Consent
- Necessary for performance of a contract
- Necessary for compliance with a legal obligation of the controller
- Necessary to protect the vital interest of the data subject
- Necessary for the performance of a task of public interest or official authority
- Legitimate interests of the controller (balance of interest)

Quality of data

- Adequate, relevant and not excessive (in relation to purpose)
- Accurate and kept up to date
- Kept in a form which permits identification for no longer than necessary

Finality principle

- Personal data must be collected for a specified, explicit and legitimate purpose
- Not further processed in a way incompatible with those purposes

Sensitive data

Processing of sensitive data is prohibited

Data revealing race or ethnic origin, political opinions, religious or philosophical belief, trade-union membership, health or sexual life

Exceptions:

- consent (unless forbidden),
- obligations of controller in employment field,
- vital interests data subject or another person,
- legitimate activities of non-profit organisation,
- data manifestly made public or legal claims

Rights of the individual

Data protection rights

- Information for the data subject:
 - clear and understandable language
 - sufficient information
- Access to own data
- Rectification
- Objection
- Complaint to Data Protection Authority

Obligations

Controller obligations

- Responsible for exercise of data subjects' rights
- Confidentiality of the processing
- Security of the processing
- Notification to the data protection authority
- Liability

Data Protection Supervisory Authority

Fully independent bodies

- Responsible for enforcing national legislation
 - Organization to be decided by Member States
 - Criteria + powers:
 - EC Directive 95/46/EC (Art. 28)
 - cf. Council of Europe: Additional protocol to Convention 108 regarding supervisory authorities and transborder data flows (ETS No. 181)
- ➔ 'Full independence' means:
no government control or supervision.

Data Protection Supervisory authorities in Europe...





3. Transfer of personal data to third countries

Transfer of personal data I

personal data processing in the EU / EEA



- **harmonized level** of data protection for citizens
- Internal Market: **free flow** of personal data

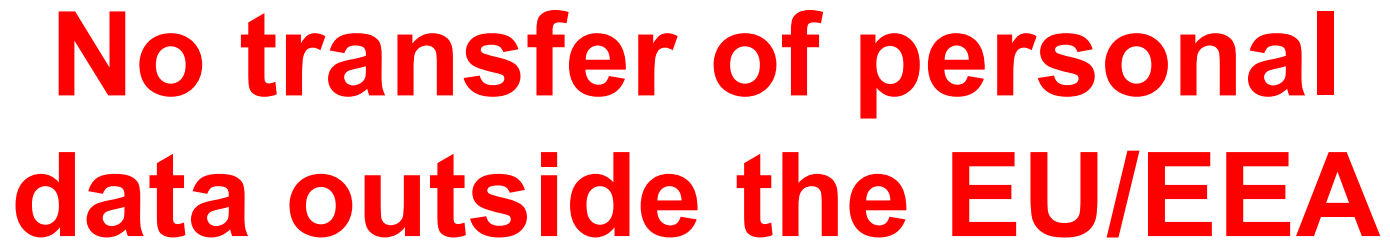
data transfers

- *only possible when special conditions fulfilled*

Third countries (outside EU/EEA)

Transfer of personal data II

No transfer of personal data outside the EU/EEA



Exceptions:

- Adequate protection
- Adequacy decision by European Commission
- Individual Authorization by DP Supervisory Authority
- use of Commission Model contracts

Transfer of personal data III

Commission decisions
on the adequacy of the protection of
personal data in third countries

Transfer of personal data IV

- Adequacy decisions I

ARGENTINA: 

- Commission Decision 2003/490/EC of 30 June 2003

CANADA: 

- Commission Decision 2002/2/EC of 20 December 2001

GUERNSEY: 

- Commission Decision 2003/821/EC of 21 November 2003

ISLE OF MAN: 

- Commission Decision 2004/411/EC of 28 April 2004

SWITZERLAND: 

- Commission Decision 2000/518/EC of 26 July 2000

Transfer of personal data V

- Adequacy decisions II

UNITED STATES OF AMERICA: 

“Safe Harbor”:

In order to bridge different privacy approaches and provide a streamlined means for US organizations to comply with the Directive, the European Commission and the US Department of Commerce developed the "Safe Harbor" framework.

Certifying to the Safe Harbor will assure that a US company provides “adequate” privacy protection, as defined by the Directive.

- Commission Decision 2000/520/EC of 26.7.2000

Websites:

<http://www.export.gov/safeharbor/index.html>

http://ec.europa.eu/justice_home/fsj/privacy/thridcountries/index_en.htm

Transfer of personal data VI - Adequacy decisions III

Transfer of Air Passenger Name Record Data (PNR) to US Department of Homeland Security:

- Council Decision of 17 May 2004 (2004/496/EC) and Commission Decision of 14 May 2004 (2004/535/EC)

➔ annulled by European Court of Justice and **no longer in force** (Cases C-317/04 and C-318/04).

Transfer of personal data VII

Model contracts for the transfer of personal data to third countries

- Certain standard contractual clauses offer sufficient safeguards as required by Article 26 (2), that is, they provide adequate safeguards with respect to the protection of the privacy.
- The effect of such a decision is that by incorporating the standard contractual clauses into a contract, personal data can flow from a Data Controller established in EU and EEA to a Data Controller established in a country not ensuring an adequate level of data protection.

Transfer of personal data VIII

- Model contracts

For transfers to Data controllers:

- (*Set I*) Commission Decision 2001/497/EC on standard contractual clauses for the transfer of personal data to third countries, of 15 June 2001 under the Directive 95/46/EC; OJ L 181, 4.7.2001, p. 19.
- (*Set II*) Commission Decision 2004/915/EC of 27 December 2004 amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries; OJ L 358, 29.12.2004, p. 74.

For transfers to Data processors:

- Commission Decision 2002/16/EC on standard contractual clauses for the transfer of personal data to processors established in third countries of 27 December 2001, under Directive 95/46/EC; OJ L 006, 10.1.2002, p. 52.

European Court of Justice

Case law

Rechnungshof

- Judgment of the European Court of Justice of 20 May 2003, Joint Cases C-465/00, C-138/01 and C-139/01

Bodil Lindqvist

- Judgment of the European Court of Justice of 6 November 2003, Case C-101/01

Passenger name records (PNR)

- Judgment of the European Court of Justice of 30 May 2006
Joined Cases C-317/04 and C-318/04



4. Personal Data Protection in European institutions and the European Data Protection Supervisor

Data protection in European institutions

- Article 286 EC Treaty
- Regulation (EC) 45/2001 of the European Parliament and of the Council of 18. December 2000 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; OJ L 8, 12.1.2001, p. 1.

European Data Protection Supervisor

- Regulation (EC) 45/2001
- Decision No 1247/2002/EC on the regulations and general conditions governing the performance of the European Data-protection Supervisor's duties, OJ L 183, 12.7.2002, p. 1
- Decision No. 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty (European Data Protection Supervisor); OJ L 12, 17.1.2004, p. 47.

European Commission

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