

# Introduction to basic principles of Regulation (EC) 45/2001



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# European Data Protection Legal Framework

INTERNATIONAL	EU	NATIONAL
<i>European Convention on Human Rights – art. 8</i>	<i>EU Charter on Fundamental Rights – art. 8</i>	Transposition of Directives to <b>national laws</b>
<i>Council of Europe Convention n. 108 - 1981</i> “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data”	former First Pillar: <b>Directive 95/46</b> , <i>Directive 2002/58</i> (e-privacy), <i>Directive on Data Retention</i> For EU Institutions : <b>Regulation 45/2001</b>	Sector specific laws and codes of conduct



# Charter of Fundamental Rights of the European Union

## *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**.



# What is “Data Protection”?

- **Obligations** (data controller):
  - data quality, lawfulness of processing, transfer of personal data, sensitive data, information to be provided, adoption of security measures, etc.
- **Rights** (data subject):
  - access, rectification, blocking, erasure, right to object, automated individual decisions, etc.
- **Exemptions and restrictions**
- **Remedies**
- **Independent Supervisory Authority**



# Compliance with the Regulation: Layered approach

- **Institutions and bodies**
- **Controllers**
- **Data Protection Officer**
- **EDPS**

# What is the EDPS?

The EDPS is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies. A number of specific duties of the EDPS are laid down in Regulation 45/2001. The three main fields of work are:

## **Supervisory tasks**

**Consultative tasks:** to advise EC institutions and bodies on proposals for new legislation as well as on implementing measures. Technical advances, notably in the IT sector, with an impact on data protection are monitored as part of this activity.

**Cooperative tasks:** involving work in close collaboration with national data protection authorities and acting as a member of the Article 29 Working Party.



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# Supervision main activities

- **Prior check:** specific risks
- **Complaints:** data processed by EU institutions and bodies
- **Consultations** on Administrative Measures
- **Inspections:** own initiative or on the basis of a complaint



# EDPS compliance monitoring tools

- Raising awareness
- Targeted monitoring and reporting exercises
- General monitoring and reporting exercises
- Inspections





# Powers: article 47

- Give advice
- Refer matter to controller and make proposals to remedy breach
- Warn or admonish controller
- Order rectification, blocking, erasure
- Impose temporary or definitive ban
- Refer matter to institution or EP, Council, COM
- Refer matter to ECJ



# Scope of application of Directive 95/46/EC and Regulation 45/2001

*Material scope: processing of personal data wholly or partly by automatic means or which form part of a filing system*

- Personal data: “any information relating to an identified or identifiable natural person”, that is the ‘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 or her physical, physiological, mental, economic, cultural or social identity”
- Art. 29 Working Party: where the criteria of "content", "purpose" or "result" allow the information on the **legal person** or on the business to be considered as "**relating**" to a natural person, it should be considered as personal data, and the **data protection rules should apply**.



# Data quality criteria

- Processed fairly and lawfully
- Collected for specified, explicit and legitimate purpose
- Adequate, relevant and non excessive
- Accurate and kept up to date
- Kept in a form which permits identification of data subjects for no longer than necessary

# When is data processing “lawful”?

- Article 5:
  - a) public interest on the basis of EU law / official authority vested in EU institution/body
  - b) compliance with legal obligation
  - c) performance of a contract
  - d) unambiguous consent
  - e) vital interests



# Change of purpose

- **Article 4.1.b** “not processed in a way incompatible with the purposes for which data was collected”
- **Article 6.1.**”personal data shall only be processed for purposes other than those for which have been collected if change of purpose is expressly permitted by internal rules of the EU institution or body”

# When is data processing “fair”?

## Rights of data subject

- Information (no excessive delay/expense) on whether data are processed, purpose, recipient, Information on rights of data subject, legal basis / time limit / recourse to EDPS
- Access and rectification, erasure or blocking

# Data transfers under Regulation 45/2001

- Transfer from EU institution to recipients subject to Dir. 95/46 (national authorities): yes if recipient establishes that transfer necessary for public interest task or subject to public authority
- Transfer from EU institution to recipients not subject to Dir. 95/46: adequacy + solely to allow tasks of controller's competence



# Security of processing

- To prevent unauthorised disclosure or access, unlawful destruction, accidental loss or alteration or other unlawful processing, controller to implement appropriate technical and organisational measures to ensure security
- Specific requirements for automated means of processing (art. 22.2 Reg. 45/2001)



## Restrictions (article 20)

- May restrict application of certain principles (conservation period, rights of data subjects, ...) when necessary for
  - Prevention, investigation, detection, prosecution of criminal offences
  - Important financial or economic interest
  - Protection of data subject or rights and freedoms of others
  - National security, public security or defence MS

## Restrictions (cont)

- If apply restriction:
  - Inform reasons and recourse EDPS
  - May defer this information for as long as would deprive the restriction of its effect (20.5)
  - Indirect access through EDPS (art 20.4)



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