

Personal data

Jakub Klodwig



...means any information relating to an **identified or identifiable natural person**; an identifiable natural person is one who can be identified, **directly or indirectly**.

Personal data

name, permanent address, delivery address, gender, age, date of birth, place of birth, birth number, personal status, Medical disadvantage, photographic record, video record, audio record, e-mail address, telephone number - private and work, identification number, VAT number, identity card number, driving license number, passport number, education, employment income (wage, salary)

data on racial or ethnic origin (nationality), religion, philosophical belief, trade union membership, health status - data on physical or mental health, provision of health services, sexual orientation, criminal offenses, final convictions, DNA, RNA, blood group, Rh blood factor, facial image, fingerprint, iris image, retina image, signature, voice (color)

Scarlet Extended SA case (CJEU) C-70/10

“It is common ground, first, that the injunction requiring installation of the contested filtering system would involve a systematic analysis of all content and the collection and identification of users’ IP addresses from which unlawful content on the network is sent. Those addresses are protected personal data because they allow those users to be precisely identified.”

Breyer case (CJEU) C-582/14

It is **not personal data** *“if the identification of the data subject was prohibited by law or practically impossible on account of the fact that it requires a disproportionate effort in terms of time, cost and man-power, so that the risk of identification appears in reality to be insignificant.”*

Anonymisation

The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.

Pseudonymisation

The application of pseudonymisation to personal data can **reduce the risks** to the data subjects concerned and help controllers and processors to meet their data-protection obligations. [...]

‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can **no longer be attributed to a specific data subject without the use of additional information**, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person

Personal data

Identified or identifiable

Why?

Purpose of Personal data protection law

„the protection of natural persons with regard to the processing of personal data and on the free movement of such data“

- To protect natural persons data
- To enable free movement of personal data

THE RIGHT TO PRIVACY.

"It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage."

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2303, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of the rights of conscience, of free speech, and of free assembly; and the term "property" has grown to include the right of possession — intangible, as well as tangible.

"Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual ... the right 'to be let alone' ... Numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops.'"

Privacy protection

Information self determination

1983 –Germany, Census case

One of basic premises of personal data protection

- Accent on consent
- Right to be forgotten
- Right to object the processing

Personal data protection



Personal
data
protection

Scope of protection
(Legal person, dead person)

public X private
preventive X restrictive
DPA X court
non-distributive X distributive



Privacy
protection

History of personal data protection

2020

- 1950 - European Convention on Human Rights
- 1980 - OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data
- 1981 - Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)
- 1995 - Directive 95/46/EC
- 2018 - General Data Protection Regulation (2016/679)



Effective legislation

In European Union

General Data Protection Regulation (2016/679)

- personal or household activity
- activities which fall outside the scope of Union law
- activities which fall within the scope of Common foreign and security policy
- Processing of personal data by Union institutions
- This Regulation shall be without prejudice to the application of Directive 2000/31/EC (eCommerce Directive)

Police Directive (2016/680)

- purposes of the prevention, investigation, detection or prosecution of criminal offences

In Czechia

Act No. 110/2019 Sb., on personal data processing act

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.
1. 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.
2. Compliance with these rules shall be subject to **control by an independent authority**.

Territorial scope

This Regulation applies to the processing of personal data in the context of the activities of an **establishment** of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

This Regulation applies to **the processing of personal data of data subjects** who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

- the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
- the monitoring of their behaviour as far as their behaviour takes place within the Union.



= natural or legal person, public authority, agency or other body which, alone or jointly with others, **determines the purposes and means** of the processing of personal data



= natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller

Personal data processing

'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

Principles of processing Personal data

- Principle of **lawfulness, fairness and transparency**
 - processed lawfully, fairly and in a transparent manner in relation to the data subject
- Principle of **purpose limitation**
- Principle of **data minimalization**
- Principle of **accuracy**
- Principle of **storage limitation**
- Principle of **integrity and confidentiality**
- Principle of **accountability**
 - The controller shall be responsible for, and be able to demonstrate compliance with rules



Legal grounds for processing

1. Processing is necessary for the performance of a contract to which the data subject is party
2. Processing is necessary for compliance with a legal obligation to which the controller is subject
3. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
4. Processing is necessary in order to protect the vital interests of the data subject or of another natural person
5. Processing is necessary for the purposes of the legitimate interests pursued by the controller
6. Consent of the data subject

5. Processing is necessary for the purposes of the legitimate interests pursued by the controller



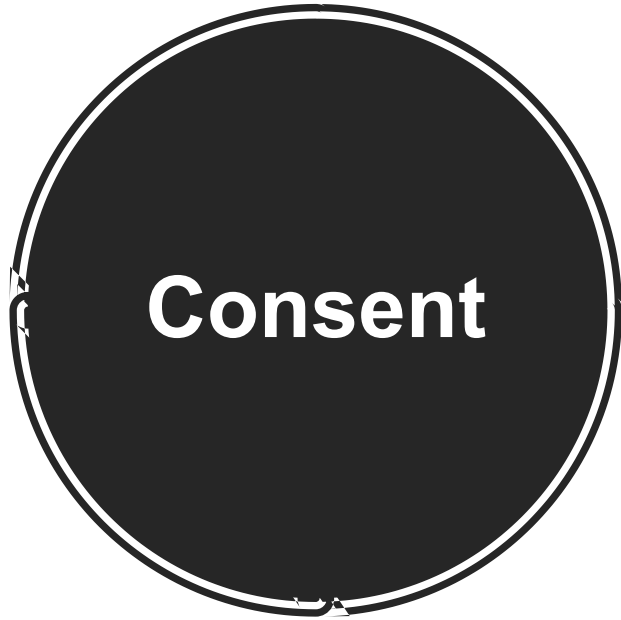
processing is necessary for the purposes of the **legitimate interests** pursued by the controller or by a third party, except where such interests are overridden by the **interests** or **fundamental rights and freedoms** of the data subject which require protection of personal data, in particular where the data subject is a child

Balancing test!

Examples:

- Google Spain, IP Addresses in CySec
- Open Data Applications

6. Consent of the data subject

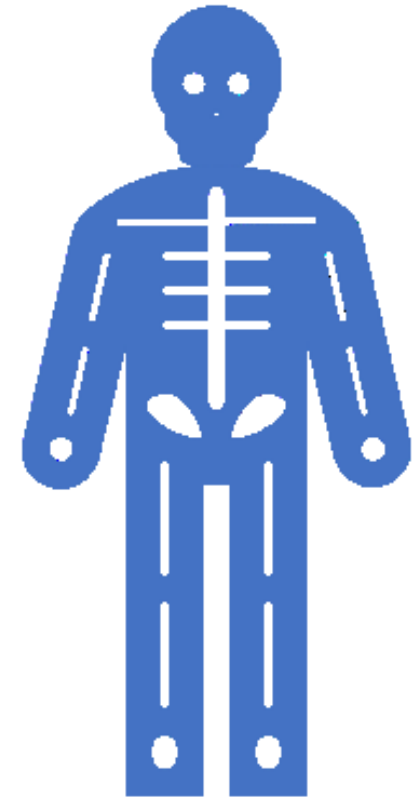


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1. Freely given
 2. Specific
 3. Informed
 4. Unambiguous
-

- Controller should be able to demonstrate that the data subject has given consent to the processing operation
- Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended
- Data subject can withdraw at any time

Rights of the data subjects

- the right to be informed about processing (13,14)
- the right of access by data subject (15)
- the right to rectification (16)
- the right to erasure (17)
- the right to restrict processing (18)
- the right to data portability (20)
- the right to object to processing (21)
- the rights in relation to automated decision making and profiling (22)



Right to information about processing

- Basic information about processing:
- Who, how, why (purpose), why (legal ground), how long, where...
- Art. 14 para. 5 – exception. Information duty not apply when:
 - the data subject already has the information
 - the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes ... In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available
 - obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests
 - where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or MemberState law, including a statutory obligation of secrecy

Right to access

- Data subject can actively ask for:
 - Basic information about processing:
 - Who, how, why (purpose), why (legal ground), how long, where...
- Para 3: The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

Right to erasure (Right to be Forgotten)

- Google Spain Case
- The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay, when:
 - the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed
 - the data subject withdraws consent on which the processing is based
 - the data subject objects to the processing pursuant to Article 21(1) (legitimate or public interest) and there are no overriding legitimate grounds for the processing
 - the personal data have been unlawfully processed
 - the personal data have to be erased for compliance with a legal obligation
 - Children consent

Right to erasure (Right to be Forgotten)

- Exceptions (Art. 17 Para. 3) -Processing is necessary for:
 - exercising the right of freedom of expression and information
 - compliance with a legal obligation or for the performance of a task carried out in the public interest
 - reasons of public interest in the area of public health
 - archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1)
 - the establishment, exercise or defence of legal claims

Right to restriction of processing

- The data subject shall have the right to obtain from the controller restriction of processing when:
 - the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data
 - the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead
 - the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims
 - the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject



Duties of controller

1. Responsibility of the controller (Art. 24)
 - Controller must implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation
2. Data protection by design and by default (Art. 25)
3. Records of processing activities (Art.30)
 - Files and documents
4. Cooperation with the supervisory authority (Art. 31)
5. Security of processing(Art. 32)
6. Notification of a personal data breach to the supervisory authority (Art. 33)
7. Data protection impact assessment (Arts. 35)
8. Data protection officer (Arts. 37 –39)

International data transfer

Why do we care?

- Different regimes in different countries – different levels of protection
- Possible loophole – exported data might not be protected enough
- Data Transfers Rules – ensuring data are protected even when transferred abroad

Approaches:

- Territorial = based on specific territory
- Organisational = only for specific organization

Data transfers under GDPR

- Free flows in the EU/EEA
- Transfers to „third countries“
 - Adequacy decision (Israel, Japan, Canada ...) X USA
 - Appropriate safeguards
 - Binding Corporate Rules (47)
 - Standard Contractual Clauses (28/8)
 - Codes of Conduct (40)
 - Certifications (42)
 - Derogations (49)

Data transfers to USA

- **Safe Harbour**
 - Adequacy decision for USA
 - Not whole country, but only certified companies
 - Edward Snowden and PRISM affair
- Schremes C-362/14

- **Privacy shield**
- Schremes II C-311/18
- Standard Contractual Clauses

Questions?

MS Teams /

434044@mail.muni.cz

