



Max Planck Institute
LUXEMBOURG
for Procedural Law

Privacy in European Cross-Border Settings

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Law in Luxembourg – Where Local Tradition Meets
European and International Innovation

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A new understanding and shaping of privacy

Privacy in a traditional setting:

Traditional territorial and time-wise limitations to the extension of the violation

Privacy in an automatized and computerized setting:

Ubiquitous and potentially permanent nature of the violation

Internet users:

738 millions in 2000

4.2 billions in 2018



The definition of privacy (I)

The underlying rationale

Continental EU:

Privacy as an expression of **dignity** and self determination

United States, IV Am. U.S. Constitution:

Privacy as an expression of **liberty** and protection from the Government (protection against unreasonable seizures)

Right to publicity

United Kingdom:

Until recently in English law there was **no general tort of violation of privacy**

2016: misuse of private information characterized as a tort for jurisdictional purposes



The definition of privacy (II)

The scope

Privacy

Is identified with ‘the notion of an individual’s space’.

A violation of privacy rights involves the unauthorized dissemination of truthful information

Data protection

Refers to the specific area of the law that regulates ‘the processing of data associated with an identifiable individual’

Defamation and the right to reputation

Is defined as any allegation or imputation – characterized by a certain degree of falsehood – of a fact made public that disparages the reputation of an individual to whom the fact is ascribed

Unlike a privacy violation, defamation entails the dissemination of information which is tainted by some degree of falsehood



Sources of regulation of privacy in the European Union (I)

Instruments adopted in the context of the Council of Europe

The European Convention on Human Rights

Article 8 : ‘Everyone has the right to respect for his private and family life, his home and his correspondence’

Convention 108 of 1981 for the Protection of Individuals (modernized in 2018)

It is the first legally binding international instrument adopted in the field of data protection



Sources of regulation of privacy in the European Union (II)

Instruments adopted in the context of the European Union

The Charter on Fundamental Rights of the EU

Articles 7 and 8 of the EU Charter of Fundamental Rights recognise respect for private life and protection of personal data as closely related but separate fundamental rights

Art 52(3) refers to the ECHR as setting a minimum standard:

‘In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.’

The General Data Protection Regulation (GDPR)

The aim of the GDPR is to protect all EU citizens from privacy and data breaches in today’s data-driven world. Although the key principles of data privacy still hold true to the previous directive, many changes have been proposed to the regulatory policies



Sources of regulation of privacy in the European Union (III)

The General Data Protection Regulation (GDPR) – Basic Concepts

‘personal data’

‘any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’.

‘processing’

‘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, alignment or combination, restriction, erasure or destruction’



Sources of regulation of privacy in the European Union (IV)

The General Data Protection Regulation (GDPR) – Novelties

- **Increased Territorial Scope (extraterritorial applicability)**
- **Consent**
- **Breach notifications**
- **Right to Access**
- **Right to be Forgotten**



Sources of regulation of privacy in the European Union (V)

The Data Protection Law Enforcement Directive

The directive protects citizens' fundamental right to data protection whenever personal data is used by law enforcement authorities. It ensures that the personal data of victims, witnesses, and suspects of crime are duly protected and facilitates cross-border cooperation in the fight against crime and terrorism.



Sources of regulation of privacy in the European Union (VI)

An outlook on the current proposals for new legislation

Proposal for a Regulation on access to and preservation of electronic data held by companies (the E-evidence Regulation)

Proposal for a Directive "to appoint a legal representative within the [EU] bloc"





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Thank you for your attention!

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