

**JUR 5630 – 2010**  
**Lecture 4**  
**Overview of data protection laws, their aims and scope**  
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**1. Disposition**

- Overview of data protection instruments
- Aims of data protection laws
- Field of application of data protection laws

**2. Overview of international instruments**

- Council of Europe Convention of 1981
- OECD Guidelines of 1980
  - NB. Guidelines on information security (1992 and 2002); guidelines on cryptography policy (1997); guidelines on consumer protection in context of e-commerce (1999)
- UN Guidelines of 1990
- EU Directives 95/46/EC, 97/66/EC, 2002/58/EC, 2006/24/EC
  - NB. recognition in EU of data protection as fundamental right in itself: see particularly EU Charter of Fundamental Rights (2000), Article 8; cf. Article 7
  - Council Framework Decision 2008/977/JHA regarding police and judicial cooperation in criminal matters
- APEC Privacy Framework of 2004/05

**3. Overview of national instruments (non-exhaustive)**

- Hessen's Data Protection Act (1970)
- Sweden's Data Act (1973)
  - see now Personal Data Act of 1998
- USA's Privacy Act (1974)
- France's Law on Data Processing, Files and Individual Liberties (1977)
- Germany's Federal Data Protection Act (1977)
  - see now Federal Data Protection Act of 1990, as amended in May 2001
- Norway's Personal Data Registers Act (1978)
  - see now Personal Data Act of 2000
- Austria's Data Protection Act (1978)
  - see now Data Protection Act of 2000
- Canada's Privacy Act (1982)
  - see also now Personal Information Protection and Electronic Documents Act of 2000
- UK's Data Protection Act (1984)
  - see now Data Protection Act of 1998
- Australia's Privacy Act (1988)
  - see now too Privacy Amendment (Private Sector) Act of 2000
- Netherlands' Data Protection Act (1988)
  - see now Personal Data Protection Act of 2000
- Portugal's Data Protection Act (1991)
  - see now Personal Data Protection Act of 1998
- Switzerland's Federal Data Protection Act (1992)
- New Zealand's Privacy Act (1993)
- Italy's Data Protection Act (1996)

- Poland's Data Protection Act (1997)
- Argentina's Data Protection Act (2000)
- Russia's Personal Data Act (2007)
- Dubai's Data Protection Act (2007)
- Bills in preparation in South Africa, Malaysia, Thailand and Turkey

#### 4. Aims of data protection laws

- Safeguard privacy, personal integrity etc.
- Ensure adequate information quality
- Ensure smooth TBDF (international instruments primarily)
- Promote realisation of Internal Market (DPD)
  - Cf. CJ decision in Joined Cases C-465/00, C-138/01, and C-139/01 *Österreichischer Rundfunk and Others* [2003] ECR I-4989 (emphasising human rights rationale of DPD)
- Ensure “informational equilibrium” between various State organs (some German laws only)
- Still considerable uncertainty over aims and rationale of data protection laws
  - Some laws lack objects clauses
- Note interest catalogues developed in Norwegian data protection discourse
  - Traditional catalogue: confidentiality; completeness; insight/participation; privacy; citizen-friendly administration; robustness; protection from abuse of power.
  - Cf. catalogue proposed by Bygrave 2002, chapter 7.

#### 5. Ambit of data protection laws

##### 5.1 Key concept = “personal data / information”

- What = “personal data/information”?
  - “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”: DPD Art. 2(a)
  - Basic criterion is identifiability
  - But many definitional issues:
    - What = identification?
    - How easily or practicably must a person be identified from the information?
    - Who is the legally relevant agent of identification?
    - To what extent must the link between a set of data and a person be objectively valid?
    - To what extent is the use of auxiliary information permitted in identification process?
    - What degree of individuation is required?
  - Recital 26 of DPD important in determining scope of “personal data” concept:
    - “to determine whether a person is identifiable, account should be taken of *all* the means *likely reasonably* to be used *either* by the controller or by *any* other person to identify the said person”
  - Note attempts to cut back on prima facie scope of “personal data”
    - Court decisions
      - *Durant v. Financial Services Authority* [2003] EWCA Civ 1746 (personal data must be “biographical in a significant sense”; it must go beyond simply registering a person’s involvement “in a matter or event that has no personal connotations”; and it must have the individual “as its focus” – [28] per Auld LJ)

- Cf. *R v. Rooney* [2006] EWCA Crim 1841 (defendant unable to avoid conviction for breach of DPA by running argument based on an interpretation of what = personal data similar to the interpretation given in *Durant*).
- *Eastweek Publisher Ltd & Anor v. Privacy Commissioner For Personal Data* [2000] HKCA 140
- *Harder v. The Proceedings Commissioner* [2000] NZCA 129

## 5.2 Trends

- Movement from regulating “registers” to “processing”
- From regulating only *computerised* processing/registers to manual processing also
- From regulating only *public sector* to private sector also
  - Cf. USA and, to lesser extent, Japan and Australia

## 5.3 Exemptions

- Police / national security
  - See, e.g., DPD Art. 3(2)
  - Cf. Council Framework Decision 2008/977/JHA regarding police and judicial cooperation in criminal matters
- Journalistic activity
  - See, e.g., DPD Art. 9
  - See CJ decision of 16.12.2008 in Case C-73/07, *Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy, Satamedia Oy* [2008] ECR I-0000.
  - See Swedish Supreme Court decision in *Rambro* case (Case B293-00; 12.06.2001)
  - Cf. Norway’s Personal Data Act 2000, § 7 (“opinion-formative” activity)
- Personal / domestic activity exemption
  - See, e.g., DPD Art. 3(2)
  - See ECJ decision in Case 101/01, *Bodil Lindqvist* [2003] ECR I-129711 (website publishing)