



Data protection

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Structure

- Background
- Legal framework
 - EU
 - National
- Administrative framework
 - Data Protection Authorities
- The Internet and social media
 - Targeted advertising
 - IP addresses
 - Cookies
 - Multiple http requests
 - Social media

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Data protection

- Definition?
- Examples?

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Data protection- background

- EU concept
- Sweden – first law in EU on the *integrity* of personal data
⇒ *Datalag (1973:289)*
- Germany – datenschutz (strongest protection)

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The legal framework

EU law



- **Directive 95/46/EC** on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Data Protection Directive)
- **Directive 2002/58/EC** concerning the processing of personal data and the protection of privacy in the electronic communications sector (E-Privacy Directive)
- **Directive 2002/21/EC** on a common regulatory framework for electronic communications networks and services
- **Directive 2006/24/EC** on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC
- General Data Protection Regulation (???)



National law – main legal framework

- EU law



Sweden: Personuppgiftslag (1998:204)

- *PUL*



UK: Data Protection Act 1998

- *DPA*

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Directive 95/46



- Key instrument
- Establishes the main legal framework for data processing
- Sufficiently general to be technology-neutral and serve as a reference point to establish relevant principles
- Sets quality standards
- Imposes positive actions upon **controllers**
- Establishes rights for **data subjects**

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Directive 95/46 - scope

- Art. 3(1) applicability
*this Directive shall apply to the **processing of personal data** wholly or partly by automatic means*
- Art.2(b) processing of data
any operation or set of operation or set of operations which is performed upon personal data, whether or not by automatic means
- Art.3(2) limit
not applicable to processing by a natural person processing in the course of a purely personal or household activity, or national security etc.

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Directive 95/46 – example

- Lindqvist C101/01

confirms that the publication of data on a webpage, where it is accessible to anyone visiting the page, even if the information is published in the course of what might seem to be a personal activity (Lindqvist published details of some of her fellow parishioners on her webpage), will not be treated as a personal or household activity, thereby making the processing come under the Directive.

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Directive 95/46 - scope

- Art. 4(1) national law applicable on the processing of personal data where:
 - a) Processing is carried out by a controller on the territory of the Member State
 - b) (...)
 - c) The controller is not established on Community territory (EEA) and, for the purpose processing makes use of equipment, automated or otherwise, situated on the territory of the said Member State...
- Art. 4(2) in the circumstances described in 1(c), the controller **must** designate a representative established in the territory of that Member State.

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Directive 95/46 – personal data

- Art. 2(a) personal data
*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*



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Directive 95/46 – personal data

- Name?
- DoB?
- Face on a picture?
- Other parts excl. face?
- Interests?
- UserID?
- IP address?

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Directive 95/46 - controller

- Art.2(d) controller
*a natural or legal person, public authority, agency or any other body which alone or jointly with others **determines** the **purposes** and **means** of the **processing** of personal data...*

⇒ *it is the entity that has to meet the standards concerning data quality, and which has to implement various measures to meet the requirements of the Directive.*

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Directive 95/46 - controller

- Content providers?
- Website operators?
- E-shops?
- Newsletter operators?
- Social media operators – Facebook, LinkedIn?
- Users of such services?

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Directive 95/46

Rules of data processing

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Directive 95/46 – processing rules

- Certain standards prescribed by the Directive
- Art.6 – data quality
- Art.7 – legitimate processing
- Arts.10-11 – provision of information to data subjects
- Art. 12 – right to access data by data subjects
- Arts.16-17 – confidentiality and security safeguards
- Art.18 – obligation to notify domestic supervisory agency

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Directive 95/46 – quality of data

- Art.6 personal data must be:
 - (a) processed **fairly** and **lawfully**;
 - (b) collected for **specified, explicit** and **legitimate purposes** and not further processed in a way incompatible with those purposes.
 - (c) **adequate, relevant** and not excessive **in relation to the** purposes for which they are collected and/or further processed;
 - (d) **accurate** and, where necessary, **kept up to date**; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
 - (e) **kept** in a form which permits identification of data subjects **for no longer than is necessary for the purposes for which the data were collected** or for which they are further processed.

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Directive 95/46 – legitimate processing

- Art.7 personal data may be processed only if:
 - (a) the data subject has **unambiguously** given his **consent**; or
 - (b) processing is **necessary** for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
 - (c) processing is necessary for **compliance with a legal obligation** to which the controller is subject; or
 - (d) processing is necessary in order to **protect the vital interests** of the data subject; or
 - (e) 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 or in a third party to whom the data are disclosed; or
 - (f) processing is necessary for the purposes of the **legitimate interests pursued by the controller** or by the third party or parties to whom the data are disclosed, **except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject** which require protection under Article 1 (1).

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Directive 95/46 – consent

Consent must be *freely given, specific and Informed*

Informed consent:

- ⇒ clear to a data subject what is consented to
- ⇒ how personal data is used - often hidden in T&Cs (small print)

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Directive 95/46 – consent

Types of consent: *express or implied*

- ⇒ express: sign, mark/click box etc.
- ⇒ implied: e.g. signing up to newsletter by simply providing an e-mail address



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Directive 95/46 – consent and special categories of data

- Art.8(1) Absolute prohibition of processing of **special categories of data** = *revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex-life*
- Unless **express**, unambiguous consent has been provided to the processing of such data

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Directive 2002/58/EC



- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (e-Privacy Directive)
- In comparison to DPD it specifically focuses on modern communication technologies – made clear in art.1(1)
- Introduced certain mandatory provisions regarding cookies and the provision of **clear** consent (25 May 2011 amendment – until then basically useless)

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Directive 2002/58

Art.5(3)

..the use of electronic communications networks to **store information** or to **gain access to information** stored in the terminal equipment of a subscriber or user is **only allowed** on condition that the subscriber or **user** concerned is **provided with clear and comprehensive information** in accordance with Directive 95/46/EC, inter alia about the **purposes of the processing**, and is **offered the right to refuse such processing** by the data controller.

This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

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Data protection - compliance

- The data protection framework is obligatory
- Requirements are not followed if
 - Processing is illegitimate
 - Interferes with fundamental freedoms (right to privacy)



Sanctions
(usually financial penalties)

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Supervisory framework


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Supervisory framework

 European Data Protection Supervisor 

 Sweden: Datainspektionen 

 UK: Information Commissioner's Office 

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The Internet and social media



Internet and social media

- Social media
 - IP addresses
 - Cookies
 - Multiple http requests
- } collection of information
↓
targeted advertising

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Conclusion

- Is data protection about privacy?
- Which way should we be heading? More protection or less protection?
- *Privacy by design* better?
- International harmonisation required/desired?

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