

***"Privacy and Data Protection Concepts in Europe "***  
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## **Council of Europe (1948)**

Promoting cultural diversity and peaceful cooperation through conclusion of treaties

-European Convention Protection of Human Rights (ECHR, 1950)

-Convention on Protection Personal Data (Treaty 108, 1981)

Today about 45 member states incl. Turkey and Russia



## **Article 8 ECHR**

1. Everyone has the right to respect for his private and family life, his home and his correspondence
  
2. There shall be no interference by a public authority with the exercise of this right except such as is
  - in accordance with the law and
  - is necessary in a democratic society
  - in the interest of national security, public safety, prevention crime (...)

**IDEA OF MINIMAL STATE WHENEVER THERE IS  
PRIVACY**



## **Convention on Protection Personal Data (Treaty 108, 1981)**

- needed because ECHR did not provide protection for ordinary data
- needed because ECHR did not provide protection for infringements by private actors

Treaty 108 protects all data and against all actors



## European Communities (EC, 1955)

- Started as an economic initiative, to create an area of economic freedoms
- becoming a more complete Union with more complete ambitions. Justice and police are still no complete Union powers but the object of intergovernmental cooperation in so called third pillar

only 25 members, not open to other countries that are member of Council of Europe (have to be accepted)

- EC Data Protection Directive of 1995
- Charter of Fundamental Rights and Freedoms (2001)



## **EC Data Protection Directive of 1995**

same principles as Council of Europe Treaty 108 BUT  
-does not apply to justice processing of data since EC  
is not

-endorses idea that states should set up independent  
authorities to monitor compliance

-contains rules for exchange data with non European  
states (e.g. Safe Harbor)



## Charter of Fundamental Rights and Freedoms (2001)

**Article 7** Everyone has the right to respect for his or her private or family life, home and communications

**Article 8** Everyone has the right to the protection of personal data concerning him or her  
Such data must be processed fairly for specified purpose 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 that has been collected concerning him or her and the right to have it rectified  
Compliance with these rules shall be subject to control by an independent authority



## **Two tools of power governance**

- Blocking power = idea of privacy
- Allowing power, but channelling it = idea of data protection

Combination of tools is needed in post 11\9 era

Capps initiative learns that Europe trusted to much tool 2  
political initiative was needed to help out data protection  
authorities

For comments on European perspective on Capps:  
see Emillio de Capitani

For the IPTS report on post 11\9 policy:  
see [www.jrc.es](http://www.jrc.es)

