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## A comparison of data protection legislation and policies across the EU

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### A B S T R A C T

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Although the protection of personal data is harmonized within the EU by Directive 95/46/EC and will be further harmonized by the General Data Protection Regulation (GDPR) in 2018, there are significant differences in the ways in which EU member states implemented the protection of privacy and personal data in national laws, policies, and practices. This paper presents the main findings of a research project that compares the protection of privacy and personal data in eight EU member states: France, Germany, the UK, Ireland, Romania, Italy, Sweden, and the Netherlands. The comparison focuses on five major themes: awareness and trust, government policies for personal data protection, the applicable laws and regulations, implementation of those laws and regulations, and supervision and enforcement.

The comparison of privacy and data protection regimes across the EU shows some remarkable findings, revealing which countries are frontrunners and which countries are lagging behind on specific aspects. For instance, the roles of and interplay between governments, civil rights organizations, and data protection authorities vary from country to country. Furthermore, with regard to privacy and data protection there are differences in the intensity and scope of political debates, information campaigns, media attention, and public debate. New concepts like privacy impact assessments, privacy by design, data breach notifications and big data are on the agenda in some but not in all countries. Significant differences exist in (the levels of) enforcement by the different data protection authorities, due to different legal competencies, available budgets and personnel, policies, and cultural factors.

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## 1. Introduction

The protection of personal data in the European Union largely depends on existing legislation. The EU Data Protection Directive (Directive 95/46/EC),<sup>1</sup> valid until May 25th 2018 and the General Data Protection Regulation (GDPR, Regulation 2016/679),<sup>2</sup> in force after May 25th 2018, predominantly determine the legal framework for rights and obligations of persons whose data are collected and processed (data subjects) and for companies and governments that collect and process these personal data (data controllers). The actual protection, however, does not only depend on the legal framework, but also on the actual implementation and interpretation of the legislation and the ways in which it is enforced by courts and Data Protection Authorities (DPAs). The legislation on privacy and the protection of personal data contains many open norms that need further translation into workable, sector-specific, and context-specific rules and practices. Because of differences in legal systems and cultures, the *legal* implementation of the Data Protection Directive varies across EU member states. Similarly, open norms combined with cultural differences also result in different *practical* implementations of the protection of personal data in EU member states.<sup>3</sup> Although the GDPR aims to further harmonize law and practice, it may be expected that differences in both will continue to exist.

The differences in the extent to which personal data are protected raise the question of which country best protects personal data (which is an important aspect of privacy). In this research, the personal data protection frameworks of eight different EU member states have been compared.<sup>4</sup> This comparison shows the position of these different countries in relation to each other. Based on this research, areas of improvement concerning the protection of personal data can be identified in the event that a particular country provides less protection in comparison with other EU member states. The central research question of this study is:

*What is the position of different countries with regard to the protection of personal data in comparison with other EU member states?*

The focus of this research is on the protection of personal data (informational privacy), and not on the protection of privacy in a broad sense. Although a considerable number of the re-

search questions have a legal nature, this is not typical legal or legally positivistic research. Rather, the focus is on the question of how the protection of personal data for residents is implemented in practice and experienced by residents. Previous research has shown that the way people experience privacy does not always match the goals of legislation.<sup>5</sup> This research does not provide a normative judgment on where a country should be positioned in comparison with other European countries, but it does provide suggestions for how a country could move in a specific direction regarding particular aspects of its data protection framework.

## 2. Methodology

An international comparison requires decisions to be made on which aspects (of the protection of personal data) to compare and on which countries to compare.

### 2.1. Aspects to compare

Based on preparatory research,<sup>6</sup> five aspects were determined as points of comparison in this research. These aspects are: (1) general situation, (2) national government policies, (3) laws and regulations, (4) implementation, and (5) regulatory authorities and enforcement. For each country investigated in this research, information was collected on these aspects by means of desk research, an extensive questionnaire, and follow-up expert consultations. During the desk research stage, available literature and online data (for instance, websites and reports of data protection authorities, governments, and civil rights organizations) were collected. In this research, no survey was conducted among EU citizens, but secondary analyses and/or reuse of existing surveys were used to collect further information, which was combined with the expert consultations. Surveys used include the CONSENT survey (2012),<sup>7</sup> the Eurobarometer (2011),<sup>8</sup> and the Oxford Internet Survey.<sup>9</sup> Information that was not available via desk research was requested through an extensive questionnaire sent to experts in the respective countries. Furthermore, employees at the data protection authorities in the different countries were contacted for further information. These experts and data protection authorities did not receive the entire questionnaire, but only those questions that yielded limited results during the desk research. For aspects on which limited or no information was available after desk research and expert

<sup>1</sup> 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, OJ L 281, [http://ec.europa.eu/justice/policies/privacy/docs/95-46-ce/dir1995-46\\_part1\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf).

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1, [http://ec.europa.eu/justice/data-protection/reform/files/regulation\\_oj\\_en.pdf](http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf).

<sup>3</sup> See also Mulligan, D.K. and Bamberger, K.A. (2015) *Privacy on the Ground in the United States and Europe*, MIT Press.

<sup>4</sup> For the full report, see Custers, B.H.M., Dechesne, F., Georgieva, I.N., and Van der Hof, S. (2017) *De bescherming van Persoonsgegevens; acht Europese landen vergeleken*. Den Haag: SDU.

<sup>5</sup> Custers B.H.M., Hof S. van der & Schermer B. (2014), *Privacy Expectations of Social Media Users: The Role of Informed Consent in Privacy Policies, Policy and Internet* 6(3): 268–295.

<sup>6</sup> Roosendaal, A., Ooms, M., Hoepman, J.H. (2015) *Een raamwerk van indicatoren voor de bescherming van persoonsgegevens*. Delft: TNO.

<sup>7</sup> CONSENT (2012). *Consumer sentiment regarding privacy on user generated content (UGC) services in the digital economy*. <http://web.archive.org/web/20161019183048/consent.law.muni.cz/>.

<sup>8</sup> Eurobarometer Survey 431 (2015). *Attitudes on Data Protection and Electronic Identity in the European Union*. Brussels, June.

<sup>9</sup> Dutton, W.H., and Blank, G. (2013). *Cultures of the Internet: The Internet in Britain*. Oxford Internet Survey 2013. <http://oxis.oxi.ac.uk/reports>.

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