Research Guide to European Data Protection Law

Steven S. McCarty-Snead
Anne Titus Hilby

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* Steven S. McCarty-Snead, University of California, Berkeley School of Law, J.D. Candidate, 2015.
** Anne Titus Hilby, University of California, Berkeley School of Law, J.D. Candidate, 2014.
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I. Introduction to the European Data Protection Legal Research Guide

I.A. Background to the European Data Protection Legal Research Guide

“Data protection” law refers to the legal scheme governing the collection, holding, processing, disclosure, and transfer of individuals’ personal information online... and off.¹ Data protection is a fast-changing and increasingly important supranational, international (including transnational), and national topic² that touches on a numerous core political concerns, including the freedom of expression, public safety, and international trade.³ One recent study found that “data privacy laws are spreading globally, and their number and geographical diversity accelerating since 2000.”⁴

In Europe, which is recognized as a global leader in data protection, this legal scheme protects individuals’ fundamental right to privacy, generally, and fundamental right to data privacy, specifically.⁵ These rights are guaranteed in not one but two supranational conventions, the European Convention for Human Rights and the Charter of Fundamental Rights. Moreover, these rights are enforced by individual European states, the Council of Europe (“CoE”), and the European Union (“EU”). Any private or public actor who seeks to collect, analyze, or monetize the personal information of Europeans must take time to understand European data privacy rights.

As of 2013, the EU is in the process of drafting a new data protection regulation that seeks to increase the level of data protection across the Union’s twenty-seven member states and beyond.⁶ Similar to the EU’s existing Data Protection Directive, the impending regulation will likely seek to

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² For an overview of the difference between these terms, see Marci Hoffman & Mary Rumsey, INTERNATIONAL AND FOREIGN LEGAL RESEARCH, 3-9 (2012).
⁵ See CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, art. 8 (Nov. 4, 1950) (commonly known as the “European Convention on Human Rights”); EU TREATY OF LISBON, CHARTER OF FUNDAMENTAL RIGHTS, arts. 7-8 (Dec. 13, 2007). See also Juliane Kokott & Christoph Sobotta, The distinction between privacy and data protection in the jurisprudence of the CJEU and the ECHR, 3 INT’L DATA PRIVACY L. 222 (2013). American researchers should recall that, in Europe, fundamental rights exist against the government and against private actors.
regulate the use of EU citizens’ personal information throughout the world by prohibiting “the transfer of personal data outside the European Union to any country that is not considered as providing ‘adequate’ protection of personal data.”

I.B. Scope of the European Data Protection Legal Research Guide

This research guide provides an introduction to the key supranational sources of data protection law in Europe, academic and professional secondary sources commenting on that law, and the major revisions being made to that law as of 2013. The guide aims to assist researchers and practitioners of European data protection law, including students, academics, government officials, representatives of companies doing business in Europe, privacy and free speech advocates, and others involved in the transfer of personal data of citizens of Europeans. While the guide focuses on the EU and CoE, it points researchers to sources for related international and national data protection legal developments.

Data protection is a broad field, and thus this research guide is narrowed by the following parameters:

• **Sources of law:** This guide covers key supranational sources of law in Europe. A supranational political entity is an association of independent states into a legal entity “somewhere between a confederation and a federation.” Supranational unions are created by treaty. They require participating states to delegate certain sovereign powers to the supranational body. This guide focuses on the data protection law promulgated by the EU and CoE, two key entities in which European states participate.

• **Time period.** The guide covers the time between 1948 and ends with the EU’s proposal for a data protection regulation and the CoE’s 2013 draft revisions to the Convention 108 on data protection.

• **Language:** This guide considers only English-language sources.

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7 See Jacqueline Klosek, DATA PRIVACY IN THE INFORMATION AGE, 3 (2000).
9 For example, one may consult N-Lex at [http://eur-lex.europa.eu/n-lex/index_en.htm](http://eur-lex.europa.eu/n-lex/index_en.htm) for information on relevant European national laws. For a more global reach, one might consult McAfee’s site at [http://www.mcafee.com/us/regulations/international.aspx](http://www.mcafee.com/us/regulations/international.aspx) or Morrison & Foerster’s Privacy Library at [http://tinyurl.com/lh8uejj](http://tinyurl.com/lh8uejj). For an annual fee of $7,000, one can also access global data protection laws and related notes provided by DataGuidance at [http://www.dataguidance.com/](http://www.dataguidance.com/).
• **What this guide is not:** This guide does not provide significant guidance on individual European states’ data protection laws, soft law on data privacy from the UN or other global international organizations, sector specific data protection law (e.g. health care, financial services, etc.), or technology specific data protection law (e.g. cloud computing, social networking, etc.). However, the guide should enable the reader to understand how to begin any of these more specific inquiries. For example, it points readers to where to find domestic statutes and case law implementing the European data protection regulatory schemes, but does not discuss secondary sources for researching those domestic sources of law. This guide also does not focus on related areas of law such as freedom of information, copyright, telecommunications, or general privacy law. Finally, the guide does not consider print sources of finding tools.11

I.C. Recommended Research Strategy

I.C.1. Recommended Search Terms

The key to your search of databases and library catalogues will be the quality and creativity of your search terms. Remember that data protection is the preferred name for this field among European English-speaking authors. American authors may call it information privacy or digital privacy. Make sure to search all of these terms.

Researchers should note that the EU was referred to as the European Economic Community (EEC) or just the European Community (EC) prior to 1992, which may require adjusting search terminology when looking for historical documents. Additionally, researchers should note the EU’s tendency to follow the British organization of dates by day-month-year rather than month-day-year whenever that becomes relevant in searches.

Finally, data protection is a broad topic with many related subjects. It will be a challenge for researchers to stay focused on data protection exclusively. Utilizing iterative search techniques is one useful strategy for beneficial research and effectively focusing on a topic. Basically, one should continually adjust search terms based on what is found. Initially, searches should be limited by “data protection” or “personal data,” which are used ubiquitously in English-speaking Europe but are not used frequently in unrelated literature. If looking for American sources on European data protection, then “information privacy” might be best as a relevant search term to begin a search strategy focused on data protection issues.

One suggested roadmap of data protection law search terms is to first search the general academic field using terms such as data protection, data privacy, information(al) privacy, digital privacy, or cyber security. Then, narrow this initial search by the subfield you are concerned with, such as health, medical, surveillance, security, consumer, social networking, cloud computing, etc. Additionally, once

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11 While Westlaw and LexisNexis provide excellent information, particularly with regard to the European Union, this research guide aims for a larger audience than law students and others with access to these databases. Still, Westlaw will be used with regard to the use of the Legal Journals Index because this is an invaluable index in this field.
you know what legal instrument(s) you are interested in, searching by instrument name or number is an effective way to quickly narrow your search. For example, you can narrow by document number (e.g. 1995/46/EC), Europe, ECHR (spell out or not), EU (spell out or not), Article 8, etc.

I.C.2. Basic Research Strategy

Basic Research Strategy

While individuals are encouraged to choose a research strategy most appropriate to their personal preferences or needs, this guide suggests that everyone consult multiple sources. Most researchers will benefit from a research strategy that starts with secondary sources, then utilizes a topical research guide, and finally moves to specific primary sources.

I.C.3. Secondary Sources

In order to gain a better understanding of the general topic of European data protection and its many facets, most researchers will benefit from starting with a general background reading of relevant secondary sources discussing the field and essential primary sources of specific interest. For example, one may start research with a search in a library catalog, such as the online catalog provided by WorldCat, which itemizes over 1.9 billion physical and digital assets from over 70,000 libraries in approximately 170 countries around the world.

WorldCat, which is also available as a mobile app on Android and iPhone, allows one to search specifically for books, articles, DVDs, CDs, or everything at once. Additionally, WorldCat allows one to search for lists created by other users. For example, one can locate a list of sources for data protection by searching for “data protection” under “lists.” With regard to searching for secondary sources, a search for “European Data Protection” under “books” provides a large list of options to commence a

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12 A listing of several sources and explanations of EU law and institutions in general can be found in online European Union research guides. See, e.g.,

http://www.law.berkeley.edu/library/dynamic/guide.php?id=52;
http://www.asil.org/erg/?page=eu;
http://library.law.columbia.edu/guides/European_Union_Legal_Materials;
http://www.law.nyu.edu/library/research/researchguides/europeanunionresearch/index.htm;
https://www.usfca.edu/law/library/research/foreign/european/;
http://lib.law.washington.edu/ref/eu.shtml;
http://www.law.georgetown.edu/library/research/guides/EuropeanUnion.cfm; or
http://law.duke.edu/lib/researchguides/europe/.

13 Available at http://www.worldcat.org/; see http://en.wikipedia.org/wiki/WorldCat for more information.

14 Available at https://www.worldcat.org/webservices/root/search/lists.
research project.\textsuperscript{15} For example, the third result in the list, \textit{Data Protection: A Practical Guide to UK and EU Law}, provides an excellent introduction to European data protection that is accessible to new researchers while remaining useful for more experienced ones as well.\textsuperscript{16}

While WorldCat links to the second edition of the book as the third result, clicking on “Editions and formats” shows that a third edition is also available. Upon clicking on a link of the third edition of the book, WorldCat will search local libraries according to the researcher’s location in order to discover the closest copies of the book. WorldCat ranks the libraries by distance to the researcher’s location, which is usually approximated by zip code. Unfortunately, WorldCat often contains multiple entries of any given resource, and it does not cross-reference the multiple entries when searching local library catalogs. For example, when searching for the book highlighted above, WorldCat produces multiple entries for the third edition, but only one entry will often be found in a local library; thus, WorldCat may incorrectly suggest that a local library does not have a copy of the book. Due to this error, researchers should use WorldCat to locate resources, but should then search directly by title for the book in a local library catalog.

\textbf{I.C.4. Research Guides}

Those who possess an understanding of a specific European data protection area of interest might prefer to bypass a review of relevant secondary sources and start their search with relevant primary sources. Similarly, those who complete a review of relevant secondary sources may want to locate relevant primary sources of interest. In addition to using this research guide to locate primary sources, searching for other relevant research guides will be helpful for locating additional primary sources. For example, a catalog search for “European data protection” on HeinOnline, a subscription-based website for legal information, returns two results. One of the results is a highly relevant, though slightly outdated, research guide on EU data protection entitled \textit{International Regulatory Devices: Legal Research Guides to the EU Data Protection Directive and the Convention on Biological Diversity}.\textsuperscript{17} A review of that 2001 research guide coupled with use of this guide is an excellent way to begin primary source research.

The 2001 research guide contains three sections, including an introduction, background on the Data Protection Directive, and tools for researching the Data Protection Directive. The introduction provides a helpful overview of the Data Protection Directive. However, the discussion of the Internal Market Directorate General is outdated, as data protection now falls under the Directorate General for Justice.\textsuperscript{18} Regardless, much of the information on the Internal Market Directorate General, particularly related to its website’s utility as a resource guide for European data protection issues, equally applies to

\begin{footnotesize}
\begin{enumerate}
\item \footnotesize Available at \texttt{http://www.worldcat.org/search?qt=worldcat\_org\_bks&q=European+Data+Protection&fq=dt%3Abks}.
\item \footnotesize Peter Carey, \textit{DATA PROTECTION: A PRACTICAL GUIDE TO UK AND EU LAW} (2009).
\item \footnotesize Available at \texttt{http://home.heinonline.org/}.
\item \footnotesize For information on the Directorate General for Justice, see \texttt{http://ec.europa.eu/justice/index_en.htm}.
\end{enumerate}
\end{footnotesize}
the Directorate General for Justice. Indeed, the Directorate General for Justice’s website provides a great deal of information on European data protection, including current legislative activity in the field.19

Unlike the outdated reference to the Internal Market Directorate General, the 2001 guide’s section on research tools is still very relevant, and it includes a useful discussion of keywords for searches that points out that using “directive” in a search in Europe is similar to using “legislation” in a search in the United States.20 Despite data protection literature constantly referring to “the Directive” or “the Regulation,” a search for either phrase in most databases will produce voluminous results. Similarly, a search for “privacy” produces broader results than just “data protection.” Thus, this research guide concurs with the 2001 guide that the best search queries will use “data protection” together in quotation marks. If one is looking for information specifically related to the Data Protection Directive, then a search for “Data Protection Directive” will find the relevant information in most databases.

I.C.5. Primary Sources

One good place to start the search for relevant primary sources is the EU’s Europa website, which is listed in several research guides on the EU, including the research guide outlined above.21 Specifically, Europa hosts a Summaries of EU Legislation website that provides the means to search for relevant EU legislation by subject.22

This Europa website is free to the public, but it can be difficult to navigate if one does not know what subject data protection falls under. In this case, clicking on “Information Society” pulls up several pertinent areas for research on European information law.23 Of focus here, however, is data protection, which is lumped together under the link entitled “Data protection, copyright and related rights” within the Information Society webpage.24 Upon opening the data protection webpage, a researcher will find information regarding relevant EU legislation, including summaries and links to official documents. Overall, this website provides an excellent introduction to the topic and its official sources, and it may represent the best place to start research into primary sources in this field.

I.D. Challenges Reseaching European Data Protection

I.D.1. Staying Current

European data protection law is developing rapidly, and it can be difficult to find fully up to date information. As a general guideline for research, discussions of the origins, history, or general theory associated with data protection or EU law can be a bit older, and traditional forms of scholarship

21 Available at http://europa.eu/.
22 Available at http://europa.eu/legislation_summaries/index_en.htm#.
(books and journals found in major indexes) will provide much of the information you need. However, if your research involves questions about the current state of the law or data protection in a specific industry, use new journal articles and professional sources such as desk reference guides, unpublished papers, industry newsletters, and reputable law firm blogs.

The Social Science Research Network ("SSRN") is an excellent tool to stay current on developments within the field. SSRN provides access to working papers published nearly instantaneously online. The papers are usually available to the public for free, though some publishers are permitted to charge a nominal fee per download. While SSRN’s collection does not provide the validity of peer-reviewed journals, many of the contributors on the website are published authors and experts in the field. In fact, many of the articles are submitted to SSRN just prior to publication in an academic journal. As a proxy to peer-review, SSRN ranks papers according to their popularity as measured by the number of times they are downloaded.

SSRN also organizes its papers into research networks. For data protection issues, the Legal Scholarship Network and the Information Systems and eBusiness Network appear most relevant. Upon clicking on a research network, SSRN provides access to relevant conferences and meetings, ejournals, organizations, and announcements. For example, clicking on the Legal Scholarship Network and then “Subject Matter ejournals” will lead to a listing of relevant journals available online, including the Information Privacy ejournal and the Legal Information & Technology ejournal that can be easily found by conducting a “Ctrl-F” search for “information” or “privacy” within the webpage. Clicking on a journal and then “Browse our Electronic Library” grants access to several relevant articles published by the journal on SSRN. One can utilize the “Search Within Results” tool on the webpage to look for articles dealing with European data protection specifically. For example, a search for “European Data Protection” within the Information Privacy ejournal produces 137 relevant results that can be sorted by popularity, date posted, or title. One can also subscribe to an ejournal to receive notifications of newly posted papers of interest.

Data protection is a popular topic in both the European and American English-language news as of 2013, making popular news a good source to stay engaged with developments in European data protection law. For example, a quick Google search for “data protection news” results in several useful websites: Computer Weekly’s Privacy and Data Protection News and The Guardian’s Data Protection News aggregate those news outlets’ stories regarding data protection. Similar to SSRN, these websites allow readers to subscribe to receive email alerts of new stories.

As another way to stay current, researchers should join related groups and listservs, such as the National Academic Mailing List Service’s (JISCMail) Data Protection mailing list. The mailing list can be found through a simple Google search for “data protection listserv.” Upon subscribing to the listserv, members receive a steady stream of emails from academics and practitioners regarding data protection

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27 Available at [https://www.jiscmail.ac.uk/cgi-bin/webadmin?A0=data-protection](https://www.jiscmail.ac.uk/cgi-bin/webadmin?A0=data-protection).
issues. Membership in the listserv also grants one access to the listserv’s members who often provide a wealth of information on the topic when asked for assistance.

Blogs also provide a great resource for current information on data protection. Similar to the use of Google to find the other resources listed above, a simple Google search for “data protection blogs” provides a wealth of resources. The first result of such a search query is Datonomy.eu, which is particularly relevant for those interested in European data protection. Again, one can subscribe to the blog for email updates. The blog also provides an archive of past posts going back to 2008. Furthermore, the whole website is searchable in case one wants to search for thoughts on a particular area of data protection. Finally, the blog provides a list of contributors who are experts in the field, which may provide another resource for researchers of European data protection. Of course, there are many more relevant blogs on the topic, and a researcher may subscribe to one or more to stay current on the issue.

With regard to the recently proposed regulation in this area, one should follow it on PreLex. Upon visiting Prelex’s homepage, a standard search for “data protection regulation” provides a link to the proposal. Similarly, the recently proposed regulation may also be tracked on PreLex. Tracking the legislation on PreLex provides a useful timeline of events and links to related documents regarding the legislative proposals. In general, PreLex provides a free and searchable database of the EU’s decision-making processes, which allows one to monitor relevant legislative activity and access official documents and related communications. Thus, PreLex represents an indispensable tool for staying current on the EU’s legislative proposals in this area. When used in conjunction with the other sources outlined above, one can easily locate relevant legislative proposals on the website and follow their progress over time.

I.D.2. British vs. American English

While English sources for data protection law are widely available, many of them utilise the British spelling of words such as organisation. The EU regularly translates official documents with British spellings. In order to help researchers overcome this challenge, the Oxford Dictionaries provides a resource to analyze (analyse) such spelling variations. Another resource for overcoming this particular challenge is provided by Wikipedia. However, since Wikipedia is edited by anyone, it should be used with caution. These and other useful resources can be located through a simple Google search for “American British spelling variations dictionary,” which produces more than enough resources to understand the issue.

I.D.3. European vs. American Regulatory Jargon

Depending on whether you are in the US or Europe, and depending on the nature of your research question, data protection may also be known as data privacy, information privacy, or digital privacy. Initially, searches should be limited by “data protection” or “personal data,” which are used ubiquitously in English-speaking Europe but are not used frequently in unrelated literature. If looking for American sources on European data protection, “information privacy” might be best as a relevant search term to begin a search strategy focused on data protection issues.

To understand the technical jargon of the data protection field in Europe, one should visit the [Directorate General for Justice’s glossary of European data protection terms](http://ec.europa.eu/justice/data-protection/glossary/index_en.htm). Similar glossaries, such as one provided by the European Data Protection Supervisor, can be located with a simple Google search for “Glossary of Data Protection Terms.” As with other searches, results with website domain names ending in “.eu” or “.uk” rather than “.com” will usually lead to European websites. Additionally, researchers should note the EU’s tendency to follow the British organization (organisation) of dates by day-month-year rather than month-day-year whenever that becomes relevant.

II. Introduction to European Data Protection Law and Policy

II.A. History of European Data Protection Law

After World War II, governments around the world, especially in Europe, realized the need to protect personal data to prevent similar atrocity from occurring in the future. Indeed, the United Nations’ Universal Declaration of Human Rights (“UDHR”) emerged in 1948, and Article 12 of the UDHR proclaimed that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” The United Nations (“UN”) followed the UDHR with other instruments protecting privacy generally and personal data specifically, such as the Guidelines for the Regulation of Computerized Personal Data Files in 1990.

Europe’s right to data protection, conveyed by the EU’s Charter of Fundamental Rights and by the Council of Europe’s Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, mirror the core principles of data protection regimes throughout the world. While the origin of these principles is contestable, the EU and CoE efforts largely followed the

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basic principles of data protection established by the Organisation for Economic Co-operation and Development (“OECD”) in 1980.\(^\text{39}\)

The OECD’s eight data protection principles, as outlined in Part II of the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, are as follows:

1. **Collection Limitation Principle.** There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.

2. **Data Quality Principle.** Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.

3. **Purpose Specification Principle.** The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfillment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

4. **Use Limitation Principle.** Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with Paragraph 9 except:
   a. with the consent of the data subject; or
   b. by the authority of law.

5. **Security Safeguards Principle.** Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data.

6. **Openness Principle.** There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.

7. **Individual Participation Principle.** An individual should have the right:
   a. to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him;
   b. to have communicated to him, data relating to him
      i. within a reasonable time;
      ii. at a charge, if any, that is not excessive;
      iii. in a reasonable manner; and
      iv. in a form that is readily intelligible to him;
   c. to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and

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\(^{39}\) Available at [http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm#part2](http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm#part2).
d. to challenge data relating to him and, if the challenge is successful to have the data erased, rectified, completed or amended.

8. Accountability Principle. A data controller should be accountable for complying with measures which give effect to the principles stated above.\(^{40}\)

These eight principles reverberate in data protection legislation throughout the world.\(^{41}\) Thus, if one needed an introduction to data protection, familiarity with the eight aforementioned principles represents a necessary step into understanding the European regime.

The EU Charter of Fundamental Rights came into force (that’s EU-speak for “became law”) via the EU’s Treaty of Lisbon in 2009. Since that time, the EU has recognized a fundamental right of data protection via Article 8 of the Charter.\(^{42}\) Specifically, Article 8 of the Charter of Fundamental Rights provides for the following regarding a right to the protection of personal data:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes 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.
3. Compliance with these rules shall be subject to control by an independent authority.\(^{43}\)

Interestingly, this right exists in addition to the right to privacy recognized in Article 7 of the Charter as well as in Article 8 of the European Convention for Human Rights (“ECHR”). This bifurcation reflects increasing distinction between the two concepts—privacy and data protection—in law and society. Without delving to deeply into the subject, suffice it to say that privacy represents a more abstract concept than data protection that includes “right to respect for his or her private and family life, home and communications.”\(^{44}\)

II.B. Getting up to Speed If You Are New to European Lawmaking

One of the biggest challenges when researching European data protection law is understanding Europe’s national, transnational, and supranational lawmaking and political processes. This section

\(^{40}\) Available at http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm#part2.
\(^{44}\) Available at http://ue.eu.int/uedocs/cms_data/docs/2004/4/29/Charter%20of%20fundamental%20rights%20of%20the%20European%20Union.pdf.
provides a brief introduction to European law and policy, specifically geared toward data protection researchers.

II.B.1. Familiarizing yourself with European lawmaking bodies and processes

The various supranational bodies that bind European nations, and how those bodies relate to one another, are complex and constantly evolving. In order to effectively research data protection in Europe, you should take a little time to understand the structure and sources of law for the two most important of these bodies: EU and the CoE. Particularly confusing is that many subsidiary bodies of the EU and CoE have similar names (e.g. the Parliamentary Assembly of the Council of Europe is not the same as the European Parliament). Check the CoE’s visual guide to the subsidiary bodies that belong to it versus the EU versus the UN for a brief overview or if you find yourself getting confused. Below are several resources that provide a good place to start to familiarize yourself with CoE and EU lawmaking and political bodies.

II.B.2. Council of Europe Resources

- **History, Role and Activities of the Council of Europe: Facts, Figures and Information Sources.** This Globalex guide, last updated in 2007, provides an approachable but comprehensive introduction to the CoE, its principal parts (legislative, judicial, executive), its myriad of foundational legal documents and subject-specific treaties, and an excellent history of the CoE. It is available for free on NYU’s Globalex website, www.nyulawglobal.org/Globalex/, clicking on International Law Research, and scrolling down to “Council of Europe” in the alphabetical list of guides. This guide gives a clear, approachable overview of the CoE’s components and mission, especially the CoE’s high court, the European Court of Human Rights. It also provides numerous links to outside sources where specific primary source documents can be located. However, the guide is only up to date as of 2007, and much has changed since then in the area of data protection.

II.B.3. European Union Resources

- **European Union Law: Boalt Research Guide.** For those completely new to the EU and its law, this guide gives a good “30,000 foot” introduction to the EU. It provides a quick overview of the political structure of the EU (executive, legislative and judicial branches), the treaties that created the EU, the case law of the EU’s high court (the European Court of Justice), the different forms of legislation that the EU promulgates, and the official journals of the EU. It is available for free from the Berkeley Law Library’s home page, law.berkeley.edu/library, clicking on Research Guides, and scrolling down to “E” in the alphabetical list of guides. Note that this guide is not totally current, and many of the links are dead or out of date.

- **Globalex’s European Union Legal Materials: An Infrequent User’s Guide.** This guide, last updated in 2011, provides a deeper dive into the EU’s structure, sources of law and recommendations for researching each of these further. It is available for free on NYU’s Globalex website, www.nyulawglobal.org/Globalex/, clicking on International Law Research, and
scrolling down to “European Union” in the alphabetical list of guides. The guide gives helpful comparisons to the US’s governmental structures, a clear history of the treaties that created the EU, and good suggestions for pursuing additional EU research. However, this guide is only up to date as of 2011, and it may be a bit overwhelming to someone completely new to EU law.

- **Foreign Law Guide’s info page on the European Union.** For an even deeper dive into the basics of the EU, see the FLG’s European Union info page. It is available to subscribers of FLG at the site’s main webpage, www.foreignlawguide.com, and selecting European Union from the drop down menu. This page provides detailed discussion and some thoughtful commentary and plain-language descriptions for some of the more confusing EU structures and processes. However, there are many important areas of EU law (in Eurospeak, areas of “EU competency”) that are completely omitted. Don’t use this guide as an introduction to areas of law the EU engages in, but rather use it as an introduction to political form and structure. For those who remember *Schoolhouse Rock*, think of this page as a dense “How a Bill Becomes a Law” for the EU.

**II.C. Familiarizing Yourself with Data Protection Law in Europe**

Once you have a basic understanding of the EU and CoE and their lawmaking roles in Europe, generally, a good strategy for familiarizing yourself with data protection law in Europe, specifically, is to read one or two introductory sources then go straight to the supranational bodies’ websites.

**II.C.1. Searching for Introductory Sources for Data Protection Law**

Section IV of this guide outlines strategies for how to search for secondary sources of European data protection law. Follow these suggestions for journal indexes and suggested articles, books, and desk books to find introductory data protection sources.

A great introduction to data protection in Europe is provided in *Daniel J. Solove & Paul Schwartz, INFORMATION PRIVACY LAW (2011).* Primarily an American information privacy law textbook, Solove and Schwartz’s discussion of international privacy law is concise and particularly accessible to American law students and practitioners. Its introduction to the philosophical underpinnings of European data protection law is particularly helpful for Americans, as there are significant differences between the European and American approaches to data protection.

A good description of European privacy law is also contained in *Edward C. Harris, Personal Data Privacy Tradeoffs and How a Swedish Church Lady, Austrian Public Radio Employees, and Transatlantic Air Carriers Show that Europe Does Not Have the Answers, 22 AM. U. INT’L L. REV. 745 (2007).* Harris’s article outlines key terminology and provisions of the 1995/46/EC Data Protection Directive and the legal foundations of the Directive in the ECHR. It also highlights the Directive’s impact on competing EU policy goals such as free flow of commerce, security, and free expression.
Audio/visual learners may prefer to gain an introduction to the topic via YouTube. A simple search for “European data protection” on YouTube produces several relevant results. For example, the third result is a brief video prepared by the EU to briefly introduce the data protection topic to the public. A useful feature of YouTube is that it lists related videos on the side of the selected video, as well as on the main screen after watching a video, which helps users locate other relevant videos.

II.C.2. Council of Europe Data Protection Introduction

The CoE’s data protection website provides a quick background of the CoE’s data protection work, including treaty-level agreements and links to ECHR case law. It can be found through the CoE website, hub.coe.int, clicking on the Topics tab, and then clicking on “Personal Data” under the “Law” heading.

II.C.3. European Union Data Protection Introduction

The European Commission’s data protection website provides quick backgrounder on the EU’s data protection initiatives, including timelines of EU data protection legislation, interpretive documents and other EU-produced studies and research. It can be found through the EU Commission’s website, ec.europa.eu, clicking on Departments (Directorates-General) and services, clicking on Justice, and then clicking on Data Protection.

II.D. Tip for Effectively Searching the EU and CoE Websites

Spend some time looking around the EU’s data protection website and the CoE website for data protection as well as its site for the European Court of Human Rights (“ECtHR”). Each of these sites contains a wealth of primary source documents, including texts of treaties, minutes of meetings, and relevant case law, etc. The sites also contain valuable reports, case synopses, and other helpful secondary sources created by the staff of these bodies. These secondary materials can be hit and miss in terms of how comprehensive or up to date they are, but some are as useful as Westlaw’s headnotes when you are just getting to know a topic. For example, from the main page of the ECtHR, click on the Case Law tab, and you are brought to a page with extensive analysis of the case law of the ECtHR. The column on the left side of that page provides links to many different sources of case law analysis. Looking around the resources provided in these links you will find, among other helpful reports:

- A report on the Internet-related case law of the ECtHR
- Three fact sheets on the ECtHR’s case law relating to personal data

II.E. A Note Regarding the Relationship Between the CoE and EU

The idea of a unitary legal entity of “Europe” is a 20th Century invention that is still evolving. Nowhere is this more apparent than when trying to understand the formal legal relationships between

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45 Available at http://www.youtube.com/
46 Available at http://www.youtube.com/watch?v=qRDcuQPiX6k.
different European supranational bodies and their legal instruments. The ECJ and ECtHR are creating legal doctrine right now that lays the foundation for how the ECHR and Charter of Fundamental Rights relate to and constrain one another.\footnote{See generally Gloria Gonzalez Fuster & Raphael Gellert, The Fundamental Right of Data Protection in the European Union: In Search of an Uncharted Right, 26 INT’L REV. L. COMPUTERS & TECH. 73 (2012).}

This newness means that now is an exciting time to investigate data protection and other questions of fundamental rights in Europe. It also means that many of your questions about binding authority and the relationship between the EU, CoE, Charter of Fundamental Rights, ECHR, and member state lawmaking may go unanswered because clear answers simply do not exist yet. A good summary of some of these key questions as they relate to data protection is found in \textit{Gloria Gonzalez Fuster & Raphael Gellert, The Fundamental Right of Data Protection in the European Union: In Search of an Uncharted Right, 26 INT’L REV. L. COMPUTERS & TECH. 73 (2012)}. Finally, note that all European Union member states are also members of the Council of Europe, however there are parties to the Council of Europe’s conventions that are NOT members of the European Union.

\section*{III. Primary Sources of European Data Protection Law}
\section*{III.A. Overview of Sources of Law}

\textit{Table 1: Overview of the Sources of Data Protection Law in Europe.}

<table>
<thead>
<tr>
<th>Supranational body</th>
<th>Council of Europe</th>
<th>European Union</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)</td>
<td></td>
</tr>
<tr>
<td>Existing supranational legislation</td>
<td>Resolution (73) 22 on the Protection of the Privacy of Individuals vis-à-vis Electronic Data Banks in the Private Sector (1973)</td>
<td>1995/46/EC Data Protection Directive</td>
</tr>
<tr>
<td></td>
<td>Resolution (74) 29 on the Protection of the Privacy of Individuals vis-à-vis Electronic Data Banks in</td>
<td>2002/58/EC E-Privacy Directive</td>
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<tr>
<td></td>
<td></td>
<td>2006/24/EC Data Retention Directive</td>
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<tr>
<td>Proposed supranational law</td>
<td>Revised Convention 108 – Data Protection</td>
<td>Proposed data protection package (three parts):</td>
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<tr>
<td>----------------------------</td>
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<td>------------------------------------------------</td>
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<tr>
<td></td>
<td></td>
<td>1. COM/2012/11 Proposed data protection regulation</td>
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<tr>
<td></td>
<td></td>
<td>2. COM/2012/10 Proposed directive outlining public safety/law enforcement carve outs to COM/2012/11</td>
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<td></td>
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<td>3. COM/2012/09 Communication from Commission re: proposal</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Body interpreting</th>
<th>Council of Ministers</th>
<th>Article 29 Working Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>National legislation</td>
<td>State party data protection legislation (not required)</td>
<td>National implementing legislation (required)</td>
</tr>
<tr>
<td>Supranational court</td>
<td>European Court of Human Rights</td>
<td>European Court of Justice</td>
</tr>
</tbody>
</table>

Table 2: Overview of Sources of Soft Data Protection Law in Europe

<table>
<thead>
<tr>
<th>United Nations (UN)</th>
<th>Organisation for Economic Co-operation and Development (OECD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 17 of the International Covenant on Civil and Political Rights (1966)</td>
<td></td>
</tr>
<tr>
<td>Guidelines for the regulation of computerized personal data files (1990)</td>
<td></td>
</tr>
</tbody>
</table>
III.B. Finding Soft Law

There are numerous sources of information about the interrelated legal developments of the UN and the OECD in this area. Researchers will gain a better understanding of European data protection law by recognizing broader trends and contexts in laws from elsewhere. For example, a thorough review of data protection laws from around the world demonstrates the significance of the aforementioned OECD data protection principles because they are found in some form within most data protection laws of the world—one could only elucidate this through comparative research.48

III.C. Finding Constitutional and Legislative Sources of Law

III.C.1. CoE Primary Sources

As discussed in earlier sections of this guide, government websites are the easiest and fastest places to find the CoE’s primary sources of law. All CoE treaty level documents, interpretations and amendments to those documents, and other related documents (meeting minutes, agendas, etc.) are available on the CoE’s main website. You can also search specifically for CoE treaties on the CoE’s Treaty Office Web page. This page allows you to search through the treaties in numerous ways, including by date, subject, type, signatory, proposed vs. adopted, etc.

The CoE treaty level documents described in Table 1 can be found at the following locations:

- European Convention on Human Rights, Article 8 (1950)
- CoE Convention 108 - Data Protection Convention (1981). This Convention regards the automatic processing of personal data and is in the process of being revised.
- A list of the CoE Council of Ministers’ interpretations, recommendations and resolutions related to Convention 108 is available here.
- Additional information about the convention is available at the CoE data protection general information page.
- Proposed CoE Data Protection Convention (proposed 2012). If ratified, this will replace Convention 108. As of April 2013 the proposed revisions were nearly final.

Additionally, state party data protection legislation is available through the CoE website, on its guide to state party data protection legislation and data protection authorities. It is not clear how frequently this page is updated, but it is certainly a good place to start. Note that much of this legislation is the same as the legislation implementing EU Directive 1995/46/EC. There is often no official English language translation of state parties’ data protection legislation. Unofficial English translations of this legislation may be linked from the CoE list of legislation itself. They may also be referenced or linked from Foreign Law Guide’s discussion of that country (if the Foreign Law Guide entry on that country includes a discussion of data protection law).

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48 See BENNETT, supra note 41.
III.C.2. EU Primary Sources

The EU’s principal sources of data protection law include 1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (“the Directive”); and 2) the proposed Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (“the Regulation”). While other sources of EU data protection law certainly exist, these two pieces of legislation represent the present and proposed basis of all the EU’s peripheral data protection legislation respectively.\(^{49}\)

You will find all EU sources of data protection law on the EU’s giant document management website, www.europa.eu. Two parts of this site, EurLex and PreLex, are the principle pages you will need to conduct your European Union primary source research. These are both easily searchable by key word, date, type of action, and document number.

The existing EU treaty and legislative documents from Table 1 can be found here:

- **European Charter of Fundamental Rights OJ C 326/02 (2012)**
  - Title II, Article 7 – Respect for Private and Family Life
  - Title II, Article 8 – Protection of Personal Data
  - The Charter of Fundamental Rights was incorporated into the Treaty on the European Union via the Lisbon Treaty (the 2007 update to the Treaty on the European Union). This was signed in 2007 and entered into force in 2009.
  - Omnibus data protection legislation
  - Would be replaced by 2012 proposed Regulation
  - Interpreted by
    - **Article 29 Working Party**: “independent advisory” body to the Commission on the Directive created by 1995/46/EC, art. 29 & 30
      - Additional information available on the Working Party’s website
    - ECJ decisions
    - Member state implementing legislation available here
- **2002/58/EC – E-Privacy Directive**
  - Regulates privacy of electronic communications
  - Interpreted by
    - Article 29 Working Party
  - ECJ decisions
  - Member state implementing legislation available here
- **2006/24/EC – Data Retention Directive**

o Requires telecommunications providers and ISPs to retain certain data for use in prosecution of serious crimes, as that is defined by the member states
o Interpreted by
  ▪ ECJ decisions
  ▪ Member state implementing legislation available here

The proposed EU Data Protection Framework Package described in Table 1 can be found here:

• COM/2012/11 – Proposed Data Protection Framework Regulation
  o The principle piece of legislation in the package. As a regulation, it would become binding member state law. No implementing legislation would be needed as it is with directives.
  o The status of this regulation is available on PreLex
  o Official comments on the regulation from other EU organs (e.g. Parliamentary committee recommendations) are available on the regulation’s EurLex page

• COM/2012/10 – Proposed Directive Re: Data Processing by Gov’t Authorities
  o This directive instructs member states on the contours of the public safety carve-outs they can make to the proposed regulation
  o The status of this directive is available on PreLex
  o Official comments on the directive from other EU organs (e.g. Parliamentary committee recommendations) are available on the directive’s EurLex page

• COM/2012/09 final –Communication from the Commission
  o Communication from the Commission to the Parliament regarding the proposed framework regulation
  o The status of this communication is available on PreLex
  o Official comments on this communication are available on its EurLex page

III.C.2.i. EU Directorate General for Justice Website

Directorate General for Justice’s website is an excellent source to get up to speed on the EU’s latest data protection activities or to find a primary source document.\textsuperscript{50} Once on the website, click on “Data Protection” on the “Policies and activities” menu on the left side of the homepage screen to get to the relevant webpage.\textsuperscript{51}

The Directorate General for Justice’s data protection webpage provides links to relevant legislation, organizations, documents, case law, dates, programs, public consultations, events, other Internet sources, and a very useful glossary of EU data protection terms. Furthermore, the right side of the webpage posts regularly updated press releases and news updates regarding EU data protection. While the webpage offers a search function, its layout is already optimized for quick and easy browsing. The multiple sources made available through this website make it another indispensable resource for EU data protection law research.

\textsuperscript{50} Available at http://ec.europa.eu/justice/index_en.htm.
III.C.2.ii. EurLex

EurLex provides free online access to EU law and related documents going back to as early as 1951.\textsuperscript{52} It is useful for finding proposed and existing sources of EU law, such as a directive, as well as all subsequent EU legal acts that impact that source of law.\textsuperscript{53} For example, when you search EurLex for the 1995/46/EC Data Protection Directive, you will be taken to a page that includes the bibliographic information and text of the directive. It will also contain a list of links to ECJ cases affecting the directive, amendments to the directive, member state implementing legislation for the directive, and more.

The website is updated daily and about 12,000 new documents are uploaded every year.\textsuperscript{54} While EurLex’s Advanced Search is very complicated and might only be practical for professional users searching for data in bulk,\textsuperscript{55} EurLex’s Simple Search feature allows users to search by terms, document numbers, dates, authors, classification headings, and keywords. For example, knowing the title of the Directive mentioned above, a text search for the Directive by title provides results with access to the official version of the Directive from the Official Journal of the European Union.\textsuperscript{56} The law can be displayed in HTML or downloaded as a PDF. Clicking on “Bibliographic notice” within a search result provides access to additional information on the Directive.\textsuperscript{57} The bibliographic webpage provides official citations, relevant dates (e.g., date of entry into force), keyword classifications that are useful for locating related documents, legislative history, and links to related legal developments and documents.

While EurLex may not be a good place to being research into European data protection because it is difficult to navigate blindly, it becomes invaluable once one knows the title of relevant EU legislation. Its detailed information under “Bibliographic notice” is also useful for locating related information. For example, finding the Directive’s bibliographic notice leads one to see relevant keyword classifications of “data protection,” “personal data,” “access to information,” and “protection of privacy,” amongst others. Clicking on a keyword classification provides access to all webpages with that classification, which can then be sorted by date, or searched within by clicking “Refine” and adding additional search limitations.

One can also search EurLex by broad subject category, which is similar to browsing a library shelf.\textsuperscript{58} In this case, clicking on “Science, information, education, and culture,” then “Dissemination of information,” pulls up several relevant European data protection laws. Running a “Ctrl-F” search for

\textsuperscript{53} Note that an updated version of EurLex is being beta tested as of 2013. This guide will not address this revised version.
\textsuperscript{54} Available at http://eur-lex.europa.eu/en/tools/about.htm.
\textsuperscript{55} As described by EurLex, “[t]he advanced search service provides an interface designed to enable professionals to fully exploit the database’s rich legal data through flexible search and display modules, a wide range of Boolean operators and full access to EUR-Lex indexed headings,” available at: http://eur-lex.europa.eu/expert/sg/sga_cnc/celexexpldev?LANG=EN&BASE=bas-cen.
\textsuperscript{56} Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML.
\textsuperscript{57} Available at http://tinyurl.com/mjbdcul.
“data protection” or “personal data” helps one locate the most relevant pieces of legislation. This latter search method might not be as intuitive as the simple search method outlined above, but it is useful if one wants to browse potential areas of interest without knowing the exact title of a piece of data protection legislation.

**Tips for searching EurLex**

Use EurLex’s simple search to search by type of document (e.g. directive, regulation, case law), subject, document number, or many other categories. The advanced search is somewhat confusing, especially at the beginning of a research project.

When using the simple search to research data protection or any other subject area, two approaches are effective at culling the database:

- To find the core legal instruments related to that subject, do a full text search with broad terms (e.g. “data” or “privacy”) and filter those results to secondary legislation (regulations, directives, opinions).
- To find additional EU acts in a subset of that field, search for more specific terms (e.g. “data protection” or “e-commerce”) in a title search and do not filter those results; this leads you to uncover interpretations, amendments, opinions, etc., on that subfield.

To be comprehensive in your EurLex research, search EurLex’s Directory of European Union Legislation in Force as well. This search function allows researchers to review all EU existing legislation (in Eurospeak “legislation in force”) via a subject matter index created by EU staff. This Directory is useful for making sure your EU primary source research is comprehensive, but it will pull up a lot of documents, many of which don’t pertain to your topic. Therefore, this tool is best used after you have identified the core legal instruments related to your search and have a sense of what you are looking for.

To search the Directory for data protection law, go to its homepage → select “16. Science, Information, Education, and Culture” → and select “16.20 Dissemination of Information.” From here you can review all of the legal instruments included in section 16.20 or control F search through for key words (e.g. “data”). Note that the homepage of the Directory states the date to which the directory is up to date (for a search run on April 21, 2013 it was up to date as of April 1, 2013).

**III.C.2.iii. PreLex**

PreLex is useful for tracking the progress of proposed EU legislation (“the decision making process”), such as the proposed data protection regulation. For example, when you search PreLex for the 2012/COM/11 proposed Data Protection Regulation, PreLex clearly shows where that document is in the legislative process, including what committees it has been assigned to, when its is coming up on those committees’ agendas or how a committee vote turned out, as well as any amendments that have been made to it.
Tips for searching PreLex

Legislative proposals sent from the EU Commission and introduced in Parliament, such as the proposed Data Protection Framework Regulation, are known as “COM” docs. When searching in PreLex or EurLex for a proposal that has not yet been enacted, use “COM” for the document series field.

Use PreLex’s standard search, rather than its advanced search, when first researching what legislative proposals exist related to data protection (or any other EU law topic). To start your search, it is helpful to have some idea of what you are looking for, as PreLex pulls up many documents, including reports from the Commission and other advisory bodies. It is ideal if you can search by document series (COM), a keyword that would be found in the proposed legislation’s title (not its full text), and a year or a narrow date range. If you don’t have all of this information, search for COM docs and your keyword. The description of each item retrieved starts by identifying what kind of action it is (e.g. “Proposal for a DIRECTIVE OF THE EUROPEAN UNION”); you can start your review of the many documents retrieved by looking or keyword searching for the type of legislation or action you are looking for. This enables you to quickly cull through the results that are less useful to you.

One piece of information EurLex is not effective at providing is whether a proposed piece of legislation is actually part of a legislative package. Make sure to check PreLex for this information if you are researching a legislative proposal, such as the proposed data protection regulation. For example, once you know that the 2012 EU data protection package contains the document 2012/COM/09, you can search that document in EurLex and find all kinds of information about amendments to this document and official comments about this document by various Commission or Parliamentary committees. However, you will not see that it is associated with two additional legislative proposals, 2012/COM/10 and 2012/COM/11, which are actually the meat of the legislative package. However, searching “2012” and “data protection” in PreLex will take you to a list of legislative proposals, including all three documents, that you can easily see are related to one another. Searching around the content of these a bit you soon confirm that this is a legislative package.

For those doing a very detailed investigation of EU law, PreLex also indicates what type of vote is needed for a given piece of legislation to be approved by a given body. The EU’s governing treaties specify different voting procedures in the Council for different issues or types of votes. The voting mechanism can have a big impact on whether a certain measure is likely to pass. If this matters to you (or to your client), make sure to check PreLex for this information.


The Official Journal of the European Union is the EU’s daily publication of record for updates to EU legislation, legal notices, and procurement information. It is similar to the US Federal Register that provides daily updates on proposed and final administrative rules, however the Official Journal extends
far beyond administrative-type rulemaking. The Official Journal is available for free on EurLex which contains all versions since 1998, and earlier versions are continuously being scanned and uploaded.  

III.C.2.v. European Union Law Reporter

The EUROPEAN UNION LAW REPORTER organizes relevant laws by subject area and contains texts of treaties, secondary legislation, draft proposals, cases, and annotations related thereto. Still, the focus of this guide remains on electronic resources. It is available in loose-leaf hard copy in four volumes in most law libraries.

III.D. Following European Data Protection Law Updates Real Time

As described above, governmental websites often contain a wealth of primary source documents that reflect the most current state of the law and track real-time evolutions in the law, such as legislative processes. Several of the most useful of these for sources of data protection law include:

• **European Data Protection Supervisor’s (EPDS) Website.** The European Data Protection Supervisor (“EPDS”) is an independent supervisory authority responsible for promoting good data protection practice within the EU’s institutions and bodies in accordance the Directive. The EPDS monitors the EU administration’s processing of personal data, advises on data protection policies and legislation, and cooperates with data protection authorities throughout the EU to help ensure consistency and harmonization of data protection. The EPDS’s website contains useful information about EU data protection events, press releases, related news and links to other webpages, and downloadable publications, including papers, annual reports, speeches, brochures, fact sheets, and strategies produced or commissioned by the EPDS. It also contains a wealth of information regarding the reform of EU data protection legislation, organized by institutional body. Such information gives insight into the reform process, which is presently unfolding and not widely published on in secondary sources; thus, it is an essential resource to be familiar with if following such reform efforts.

• **Article 29 Working Party Website.** The Article 29 Working Party, organized under Directive 95/46/EC, is the EU Commission body charged with interpreting the Data Protection Directive and E-Communications Directive. It possesses independent advisory status and issues influential opinions, working documents, and letters regarding the Directive. Each EU country, as well as the EU and Commission itself, provides a representative on the Article 29 Working Party. The group’s activities, including meeting agendas, annual reports, opinions, and other documents, are largely published online, and the publications are indexed and searchable by subject.

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60 EUROPEAN UNION LAW REPORTER (1962 - ).
categories, sub-categories, and sub-sub categories.\(^{65}\) The website enables researchers to track updates and register to receive automatic updates for the interpretations, draft agendas, opinions, and other official communications put out by the Article 29 Working Party.

- **Check the new preparatory (COMM) documents associated with the draft data protection framework regulation.**

- **Check the webpage dedicated to the modernisation of Convention 108** created and maintained by the CoE for updates on that revision process.

### III.E. Cases and Judicial Opinions

Researching case law of the CoE and EU is remarkably easy to accomplish on free government websites. While these sites do not have the full functionality of Westlaw or Lexis, they do allow you to search effectively by Article (e.g. Article 7 or Article 8), date range, or legislative instrument.

When researching CoE case law, researchers will want to focus on the decisions of the ECtHR. When researching EU case law, researchers will want to focus primarily on decisions by the European Court of Justice (known as the “ECJ” or as the “CJ” by European practitioners) and also the EU’s Court of First Instance (known as the General Court or “GC” by European legal practitioners).

#### III.E.1. European Court of Human Rights and the HUDOC Database

The best source for researching the extensive case law of the ECtHR is HUDOC, a freely available online database of such cases and related reports, decisions, resolutions, and summaries.\(^{66}\) To effectively scope a data protection-related search, start by searching only judgments pertaining to Article 8 written in English. Note that the Court acts as the court of last resort for legal disputes concerning the ECHR and other CoE conventions, including Convention 108. Litigants in party states may appeal to the ECtHR cases initially brought in domestic courts once they have exhausted their domestic judicial remedies. Just like the U.S. Supreme Court, these decisions are only a small fraction of the total claims brought regarding the constitutional/treaty level document.

One can further limit the search by date range and official language. The database permits filtering by member state, level of importance, and judgments that did or did not result in a finding of a violation. Thus, HUDOC provides an excellent database for opinions impacting members of the Council of Europe, which include all of the members of the EU. To the limited extent that Article 8 impacts data protection in the EU, this database may prove useful to the focus of this research guide.

With regard to case law on the Council of Europe’s Convention, a simple Google search for “European Court of Human Rights Convention 108” returns a collection of cases put together by the

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\(^{66}\) Available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"documentcollectionid": ["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"]}].
Council of Europe regarding the Convention, which can then be searched for on HUDOC by case name or number.\(^6^7\) The key search term to find such cases is “Convention 108,” the primary source of data protection law in the Council of Europe.

In addition to searching the HUDOC database on your own, a list and brief description of important ECtHR decisions related to data protection is compiled by ECtHR staff. This is up to date as of January 2013, and it appears to be updated regularly. If you are new to ECtHR case law, this is a good place to start to get up to speed on the most important data protection case law of the Court.

Locating state party domestic court cases regarding data protection and alleged violations of ECHR Article 8 and Convention 108 is more complex than finding sources from the CoE itself. The quality of documentation will vary from. Below is a very thumbnail list of steps, using Spain as a case study.

**Step 1:** Find the given country’s EU Data Protection Directive implementing legislation from EurLex and/or the state party data protection legislation compiled by the Council of Europe.


**Step 2:** Look up that country’s judicial system in Foreign Law Guide or Globalex in order to find a discussion of and hyperlinks to that country’s database of judicial opinions.

- Spain: Boletín Oficial del Estado, Iberlex case lookup.

**Step 3:** To the extent possible given that country’s website and your language abilities, search for decisions via their online database.

**III.E.2. EU and European Court of Justice**

The European Court of Justice (ECJ) represents the central source of EU case law. Here, the key search term is “Directive 95/46/EC,” the primary source of data protection law in the EU.

**III.E.2.i. Curia Database**

Curia provides a good database of EU case law, although it is not as easily utilized as the Council of Europe’s HUDOC website because it does not allow one to limit a search by level of importance of the decision or by keyword categories relevant to data protection.\(^6^8\) Still, the advanced search of Curia allows a researcher to conduct searches by case name or number, type of document (e.g., judgments, orders, decisions, summaries), date range, subject matter (though data protection is not a recognized

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\(^6^7\) Available at [http://hub.coe.int/c/document_library/get_file?uuid=ec21d8f2-46a9-4c6e-8184-dfff9d3e3e6b&groupId=10227](http://hub.coe.int/c/document_library/get_file?uuid=ec21d8f2-46a9-4c6e-8184-dfff9d3e3e6b&groupId=10227).

subject), type of court procedure and result, language, nationality of the parties, and other categories that are further explained on the website.

One useful way to find relevant case law is to read secondary sources to determine important decisions relevant to data protection. As outlined above, the resources to stay current on the topic of data protection often provide information on new cases, and introductory secondary sources often provide an overview of past cases of the greatest importance. Thus, even though Curia does not provide the functionality of HUDOC, one can still gain a grasp of the most relevant case law by following the basic research strategy outlined above and consulting multiple sources.

III.E.2.ii. EurLex

Another important resource for EU case law is the previously discussed EurLex. EurLex’s search function permits many of the same searches made available by Curia, but with a slightly less user-friendly presentation. As discussed above when reviewing EurLex, the advanced search function is even less user friendly, but it may be useful for professional users who plan to work with large amounts of data and can afford to invest the time to learn how to make the most of the advanced search feature. If you want to search for cases adjudicating a specific EU legal instrument (e.g. Directive 1995/46/EC), going to that instrument’s EurLex page is the easiest way to do so. The ECJ decisions regarding any enacted EU legal instrument are available on each instrument’s EurLex page under the heading “Affected by case.”

Perhaps the most useful function of EurLex’s presentation of EU case law is the ability to sort cases by date. If one knows the period of time of interest, it is very easy to click through years and months to find case law for any period of time from 1954 onwards. If one does not know the date of a case or period of interest, then searching for “Directive 95/46/EC” in a simple search in the title field produces a manageable number of cases since there is not an overwhelming amount of cases regarding data protection at the EU level. Even searching for “Directive 95/46/EC” in the title and text field produces only 95 hits. Thus, one can use EurLex to consult EU data protection case law even without first consulting secondary sources to gain an understanding of the landmark cases in the field.

If you want to search ECJ case law by subject or keyword (for example “data protection”), take the following steps to search the EurLex case law database:

- Go to the main EurLex page
- Click on Simple Search in the left-hand column
- Under “Search by Category,” click on “EU Case-law”

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• Select the courts and/or types of orders you want to search AND under “Search Options” select Search Terms
• Type in your search terms and run your search.

See the suggestions for effective search terms in Section I.C.1 of this guide for suggested language to use in running this search. For example, searching “data protection” in this manner yields eight cases while searching “privacy” with “data” yields 10 (largely different) cases.

In order to locate member state domestic court decisions, see the instructions in Section III.E.1 above for locating state party domestic court cases. The process of locating member state domestic court cases regarding data protection and alleged violations of the Charter of Fundamental Rights is identical to the process of finding state party domestic court cases relating to the CoE’s Charter of Fundamental Rights or Convention 108.

III.E.2.iii. Other sources

For a quick overview of the most relevant case law, one could also consult the previously mentioned Directorate General for Justice’s website, which provides a collection of the most important ECJ case law on data protection.73 The Directorate General for Justice’s collection of relevant case law links directly to official versions of the relevant case law available on the previously mentioned Curia website. As another source for relevant European case law in the ECJ and ECtHR, the forthcoming handbook from the European Union Agency for Fundamental Rights, the HANDBOOK ON EUROPEAN DATA PROTECTION CASE LAW, promises to provide an easily accessible collection of such case law for researchers and practitioners alike.74

III.F. Member State Implementing Legislation

Since most European data protection law, such as the European Data Protection Directive 95/46/EC, requires subsequent implementation via national legislation in the member countries, it is often necessary to find corresponding national implementing legislation or national execution measures to more fully understand the law in any given national context.

With Directive 95/46/EC, for example, one could find corresponding national legislation by going to the EU’s website on the Application of EU law.75 Once there, clicking on the link to EurLex will allow a researcher to access a tool to locate a webpage listing the national execution measures received by the European Union for any given directive’s Celex number for national implementing legislation.76

For Directive 95/46/EC, the corresponding Celex number to use in a search for national implementing legislation is “71995L0046,” where “7” is the sector code for national measures to implement directives that precedes the date of the directive and “L” is the type of document—in this

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75 Available at http://ec.europa.eu/eu_law/directives/directives_transposition_en.htm.
case, a directive— that precedes the specific directive’s number. Thus, other than the sector code, national implementing legislation possesses the same Celex number as the corresponding directive (i.e., the “7” takes the place of the “3” in the 31995L0046 Celex number for Directive 95/46/EC itself). A full listing of codes for sectors and documents is available on the Types of Documents in EurLex webpage, which might assist researchers in locating other types of documents. If a researcher does not know the specific number of a directive, however, one can also search by sector code and year (e.g., 71995), which will pull up a list of webpages for national implementing legislation corresponding to directives of that year.

After running the search for “71995L0046” as outlined above, clicking on “Bibliographic notice + NEM” will pull up a webpage of the various national execution measures related to Directive 95/46/EC.78 Clicking on a country will provide the researcher with the citations of corresponding national legislation. For example, clicking on “United Kingdom” allows one to see that the United Kingdom’s corresponding national implementing legislation is the Data Protection Act 1998. Thus, this resource is useful for identifying national implementation legislation, especially if one already has the Celex number or the directive number of interest. This site is particularly useful for locating the titles of national legislation of interest in foreign languages. A particular drawback to the site is that it does not link directly to the national legislation. With the title of the relevant national legislation, however, one can use other resources, such as N-Lex discussed below, to locate the text of the national legislation more easily.

Another excellent source of information for national implementing legislation is available at N-Lex: A Common Gateway to National Law. To search for the national legislation of interest with regard to Directive 95/46/EC, one must select the national database from the country of interest. For example, clicking on “Legislation” after scrolling over “United Kingdom” brings one to a search tool to locate national legislation from the United Kingdom.80

One can search by words in the title, words in the text, document type, document number, and date or date range of signing into law. If one completed a search using the EurLex tool outlined above, then he or she would have a citation to look for in the national database accessed with N-Lex. In this case, searching words in the title for the “Data Protection Act 1998” found with the EurLex tool produces 4 results related to the Data Protection Act 1998, including a link to the text of the legislation itself. While every country’s national database provides differing levels of coverage and slightly different search functionality, the N-Lex database provides an indispensable tool for gaining access to national laws corresponding to European legislation and provides additional tips for each national database by clicking on the button next to the search field of interest. For example, details on the limitations and

search functions available for the United Kingdom show that the database includes all pieces of legislation back to 1988.\textsuperscript{81}

To search for national legislation in a foreign language, one can use the \textbf{EuroVoc tool linked to in N-Lex}.\textsuperscript{82} EuroVoc provides a multilingual thesaurus useful for finding words of interest in 23 EU languages. Running a simple search for “data protection” and then clicking on “data protection” provides access to the following table of corresponding phrases in other languages.\textsuperscript{83}

With regard to the Council of Europe, one may find corresponding national legislation on their webpage of national laws of data protection.\textsuperscript{84} These laws are not required to implement a state’s commitment(s) to the CoE, however, they can form the basis of a human rights suit brought by an individual against a state in the ECtHr. Additionally, note that these national laws are more likely than not the same laws that serve as implementing legislation for the EU Data Protection Directive. Simply clicking on the country of interest leads one to a webpage with links to related national legislation that may not be linked to in the previous resources. For example, clicking on “United Kingdom” provides access to national laws, including laws of territories such as Jersey, the Isle of Man, etc., unmentioned in the resources discussed above.\textsuperscript{85}

\textsuperscript{81} \textit{Available at} \url{http://eur-lex.europa.eu/n-lex/search_help/uk.legis.hmso/uk.legis.hmso_en.htm#date_of_doc}.  
\textsuperscript{82} \textit{Available at} \url{http://eurovoc.europa.eu/drupal/}.  
\textsuperscript{84} \textit{Available at} \url{http://www.coe.int/t/dghl/standardsetting/dataprotection/National%20laws/National_laws_en.asp}.  
\textsuperscript{85} \textit{Available at} \url{http://www.coe.int/t/dghl/standardsetting/dataprotection/National%20laws/United%20Kingdom_en.asp}. 
Another potential source for national legislation of interest is provided by McAfee’s website on International Privacy and Data Protection Laws, which offers a more global reach that the EU-focused websites listed above.\(^{86}\) With McAfee’s website, one can search for laws in countries from across the world, including in Europe, North America, Latin America, the Asia Pacific, and the Middle East and Africa. For example, clicking on the “United Kingdom” under “Europe” leads one to a webpage with the names of relevant national legislation, including the previously found Data Protection Act 1998 but also the Regulation of Investigatory Powers Act of 2000.\(^{87}\) Thus, it might be useful for a researcher to use this site to find related legislation that may not be considered national implementing legislation by the European Union resources noted above. The website provides different levels of detail for each country and includes links to the text of national legislation on occasion, but the lack of consistent treatment of each country’s national laws and regulatory structures is a potential drawback. Thus, one should not rely entirely on this website for research but should use it in combination with other resources.

Morrison & Foerster’s Privacy Library also provides an excellent resource for locating national implementing legislation from around the world, including Europe.\(^{88}\) As with McAfee’s website, researchers should not use this website exclusively, especially since it may be outdated with regard to the national legislation and related information in some countries. Interestingly, this website also includes related laws and information from multilateral organizations and individual states in the United States. Some of the information on the site is outdated, however, for a free resource, the Privacy Library is still an excellent point to begin research regarding data protection and privacy laws and regulatory structures from across the world. The site also provides access to legal updates and news regarding data protection and privacy laws, which one may subscribe to via Really Simple Syndication (RSS).\(^{89}\) Clicking on the website for the United Kingdom provides links to relevant national legislation, including the Data Protection Act 1998, and the webpage also lists legal updates and articles of interest related to the United Kingdom.\(^{90}\)

For an annual fee of $7,300, one can also access global data protection laws and related notes provided by DataGuidance, which claims to provide the world’s leading data privacy database.\(^{91}\) One can also sign-up for a free trial of the database, which includes guidance by a member of the DataGuidance team and seven days of free access.\(^{92}\) The database claims to provide access to all the relevant legal and regulatory information from around the world that a practitioner would need to


\(^{90}\) Available at [http://www.mofo.com/privacylibrary/PrivacyLibraryDetail.aspx?xpST=PrivacyLibraryDetail&pid=12e323b4-c5af-46ef-b709-e2ef5e51f426](http://www.mofo.com/privacylibrary/PrivacyLibraryDetail.aspx?xpST=PrivacyLibraryDetail&pid=12e323b4-c5af-46ef-b709-e2ef5e51f426).

\(^{91}\) Available at [http://www.dataguidance.com](http://www.dataguidance.com).

ensure compliance. Furthermore, notes on the laws provide advice on compliance and are written in English, which would be most helpful for practitioners advising clients on “international data transfers, employee monitoring, data breaches, email marketing and customer data.” Overall, this resource is expensive, but appears to be very useful for practitioners in particular. Researchers may not need the full list of features offered by the website, especially for an extended period of time.

For those looking to identify specific national data protection laws by date, title, and subject area, Foreign Law Guide, referenced frequently in this guide, provides a clear and simple look up feature. Foreign Law Guide is a paid subscription service of Brill Publishing. Those with access through their organization or university can go to the site’s main page, click on the tab “Laws by Subject,” and select “Cybercrime, Data Protection, Information & Internet” from the alphabetical list of topics. You will then be brought to an alphabetical list of countries. Once you select a country, the guide provides a list of relevant legislation, including the date it came into force and title, as well as information on where to find additional information on sources regarding a nation’s laws in this area. Foreign Law Guide is in the process of being updated to make its coverage more comprehensive and its interface more effective. Thus, if a given nation’s data protection laws are not discussed when you search one time, it is worth checking the guide again if you find yourself searching for similar information several weeks or months later.

Finally, for those who prefer print sources, Christopher Millard & Mark Ford, DATA PROTECTION LAWS OF THE WORLD (1998), is an excellent loose-leaf desk reference for national data protection laws in Europe and beyond. While it may take more time for this print source to be updated – the editors can’t simply add a blog update each time legislation changes – it is an effective starting point for those looking to quickly identify the key points of national legislation.

IV. Secondary Sources of DP Law

IV.A. Finding Tools

This section identifies a variety of tools useful for locating European data protection law sources. Additionally, this section provides examples of some of the materials that can be located with these tools. As in the previous sections, this research guide suggests the use of multiple sources during the research process.

IV.A.1. Indexes

There are numerous databases and indexes to facilitate an effective search of journal literature on European data protection law. Some of these are discussed below. Which among these are most useful to you will largely depend on your specific research question and the format(s) you prefer for searching.

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94 Available at [http://referenceworks.brillonline.com/browse/foreign-law-guide#SubjLetC](http://referenceworks.brillonline.com/browse/foreign-law-guide#SubjLetC) (only available to those with paid access to the service).
Here is one potential strategy suggested for those just beginning their research of data protection law journal literature:

**Step 1:** Search the Index to Legal Periodicals and LegalTrac to find the seminal articles on data protection law generally and your subset of questions specifically.

**Step 2:** Search Legal Research Network on SSRN for very current articles on these topics that have not yet been published and cover breaking news and events in the field.

**Step 3:** Once you have refined your search, identified the authors and questions you are dealing with, and have a sense of the legal events and instruments you are relying on, make another pass through the indexes suggested in Steps 1 and 2 and then expand your search to Westlaw and the other sources discussed below.

The Index to Foreign Legal Periodicals (“IFLP”) is one useful multilingual index to articles and book reviews from more than 500 legal journals from around the world. The IFLP also analyzes approximately eighty collections of legal essays and related writings on an annual basis. In total, the IFLP includes nearly 300,000 index records with more than 265,000 articles and 31,000 book reviews accumulated from more than 500 periodicals. The IFLP indexes from 1985 to the present, and it provides access to the full text of many of the resources through HeinOnline, which includes a digitized version of the print index going back to 1960. The IFLP allows one to search for materials by any combination of keyword, author, article or book title, journal title, publication year, country of publication, language, and other descriptors. One can also restrict results to articles available on HeinOnline. Relevant search terms include “data protection,” “data protection directive,” “data regulation,” “personal data protection,” and “Directive 95/46.” Since the IFLP indexes many foreign language articles and book reviews, a researcher should take care to limit a search only to languages of interest.

A keyword search for “data protection” articles or book review in English produces eighty-nine results, which may be sufficiently narrow, or one can further refine the search by including “European” as a search term. A keyword search for “European” within the results of the keyword search for “data protection” produces twenty-six results, including a directly relevant article entitled *Data protection law in the European Union and the United Kingdom.* Clicking on the article pulls up additional information on the article, as well as its Subject Headings, which include “Data Protection-European Union.” From there, one can search for other articles or book reviews by the same author or click on the relevant subject headings for similarly indexed articles or book reviews. Clicking on the “Data Protection” subject heading leads to 1,177 indexed articles and book reviews, which can be further sorted by relevance, title, or date. Overall, the IFLP represents one very useful tool for searching a variety of resources.


throughout the world; however, one should consult multiple indexes to gain broader access to materials.

Another useful index for European data protection research is the **Index to Legal Periodicals and Books (ILP)**,\(^9\) which indexes 1,025 legal journals, law reviews, yearbooks, bar association publications, university publications, and government publications—much more than the IFLP.\(^10\) The ILP yields effective results with the search strategy outlined for IFLP. The database contains a wide variety of articles, and certainly includes articles by the leading scholars in the field. Note that ILP is particularly good at retrieving four to ten core articles in a subfield—a helpful number when you are just starting out. When searching identical data protection search terms in the ILP and the IFLP, the ILP produced more articles and higher quality search results. In fact, the ILP claims to provide “complete coverage of the most important English language legal information.”\(^11\) Of relevance to this guide, its coverage includes many European sources of materials from 1981 to the present. For coverage of over 880 legal periodicals, yearbooks, and other materials going back as far as 1908, the **Index to Legal Periodicals Retrospective** is available online by subscription as well.\(^12\) Both subscription-based indexes are hosted online by EBSCO. The EBSCO website allows researchers to conduct basic text searches or advanced searches. Basic and advanced searches permit one to search text with phrases and Boolean operators, and it offers a unique service known as SmartText Searching that summaries up to 5,000 characters of text into the most relevant search terms.

A useful way to utilize SmartText Searching is to copy and paste text from an article of interest into the search field, and then run a search to retrieve similar articles. Other useful search tips are also provided online, which can help maximize the site’s unique and sophisticated search features.\(^13\) Advanced searches allow one to select search fields and to combine text searches in multiple fields, such as title, author, text, subject, source, and abstract. Basic and advanced searches allow one to search for related words automatically by clicking this option, as well as to limit results by publication, publication type (e.g., academic journal, book, trade publication, periodical), scholarly or peer-reviewed journals only, and date range. Search results can be sorted by relevance, date, source, or author, and a summary of results provides the number of findings by subject, source type, publication, and database, which can help one design future searches of greatest relevance or to further refine an existing search. For example, a basic search for “European data protection” produces eighty-six results, which can be further refined by relevant subject headings such as “privacy—European Union” and “data protection—law & legislation—European Union countries.” The summary of results also allows one to see which

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99 °Available at [http://web.ebscohost.com/ehost/search/advanced?sid=0e16dc9e-a842-4d34-ac01-e458ba4d4e69%40sessionmgr114&vid=1&hid=112](http://web.ebscohost.com/ehost/search/advanced?sid=0e16dc9e-a842-4d34-ac01-e458ba4d4e69%40sessionmgr114&vid=1&hid=112).


publications return the most relevant results. In the case of the search for “European data protection,” *Computer Law & Security Review* provided the greatest amount of results and may be a journal worth following for future articles of interest.

While the Basic and Advanced text-based searches are already uniquely sophisticated on the EBSCO website, one can also search the ILP databases with a Visual Search. The Visual Search option allows one to search with the basic or advanced searches discussed above and then browse results in a graphical interface grouped by subject or publication that allows one to click on an increasingly specialized area of interest until only the most relevant publications remain. Since the resulting graphic is difficult to explain in words, an image of this is below.

One can further manipulate the results in the graphical interface by sorting them by date or relevance, filtering them by date range, or displaying them in the columns seen in the image above or separate blocks of information seen in the image below.
One additional unique feature of the EBSCO website is the ability to create alerts for new material. One can receive email alerts when new material corresponding to a particular search query is added to the database, and users can adjust the frequency and length of such alerts. To stay current on an issue, one can even limit the email alerts to cover articles published only within the last month. Keeping with its already user-friendly character, the EBSCO website provides Android and iPhone apps. Overall, the ILP databases outlined above, which are hosted online by EBSCO, are one of the most comprehensive and easily navigable indexes available today.

Additionally, LegalTrac yields many effective results when searching data protection law. LegalTrac has an index of over 1,400 specially selected titles from the United States, Australia, Canada, Great Britain, Ireland, and New Zealand, which covers the period from 1980 to the present. The index includes over 1,000 business and general interest titles. The index allows you to search for common topics within a large pool of results; this is particularly helpful if you are researching a discrete area of data protection law. For example, if you search “data,” “privacy,” and “Europe,” in LegalTrac, the index pulls up more than 300 articles. However, if you are searching a common topic such as “human rights,” “discovery,” or “transborder data flows,” you can quickly narrow your search down to those articles. While certainly not every article in that sub-topic has been picked up and indexed by LegalTrac, you at least now have a strong starting place. LegalTrac is also particularly good at retrieving new articles (articles published in the last one to three years) in the field of data protection. LegalTrac can also be found on Westlaw and LexisNexis, where it is referred to as the Legal Resources Index (LRI).

Westlaw’s International Materials, available on Westlaw Next and Westlaw Classic, are most useful for finding practitioner-focused secondary sources, including articles discussing how specific European legal instruments and regulatory developments impact important international sectors such as telecommunications and financial services. However, Westlaw is much more effective for searching EU legal questions than CoE-related questions.

To search Westlaw’s EU materials, log-in to Westlaw Next, click on International Materials, and then click on European Union. A great volume of secondary sources are easily searchable by key word under each “Legal News, Highlights & Current Awareness” and “Business and News.” Searching for data protection under sub-headings such as telecommunications, consumer protection, e-commerce, and new media, yields particularly effective results for researching questions related to the impact of EU data protection regulation on these areas of international investment and commerce.

The Legal Journal Index (LJI) provided by Westlaw contains a wealth of European journal articles and should be consulted for any comprehensive study of European law, including data

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104 Available at
http://support.ebsco.com/help/?int=ehost&lang=en&feature_id=CreateAlert&TOC_ID=Always&SI=0&BU=0&GU=1&PS=0&ver=live&dbs=

105 Available at
http://go.galegroup.com/ps/dispBasicSearch.do?prodId=LT&userGroupName=ucblaw_boalt

106 Available at
http://web2.westlaw.com/search/default.wl?DB=LJI&AP=&RS=WEBL5.03&VR=2.0&SP=SEARCHIDEN-
protection. As of 2013, the LJI is only available via Westlaw Classic (not Westlaw Next). The LJI indexes over 430 English-language legal journals from throughout Europe, including journals regularly covering topics related to the European Union and its member states, from 1986 to the present.

Overall, Westlaw provides fairly intuitive search options utilizing Natural Language or Terms & Connectors; however, additional instructions on using either search method are made available online. Essentially, the Natural Language search method permits one to enter a search query in plain English, which Westlaw will use to extract legal phrases, remove common words, and automatically generate variations of the search. Natural Language searches look for concepts, including significant terms, phrases, legal citations, and topic or key numbers unique to Westlaw. Such a search method aims to result in the 100 documents that most closely match one’s search query. For example, one can search for “data protection in the European Union” and receive 100 extremely relevant results from sources such as the WORLD DATA PROTECTION REPORT, PRIVACY & DATA PROTECTION, and DATA PROTECTION LAW & POLICY. Clicking on an indexed article provides a full citation, relevant subject categories, keywords, an abstract, and a list of legislation cited within the article. One can also amend a search by adding relevant terms. Clicking on the Thesaurus button, which is next to the search box, produces a list of related terms that can be added to the search query. In the case of “data protection in the European Union,” related terms include “information,” “statistics,” “facts,” and others; however, adding these terms does not increase relevance of the already relevant search results in this case.

The Terms and Connectors search method permits one to enter key terms from a topic and then use connectors to specify the relationship between those key terms, which can be done as an original search or as a search within results of a search in specified fields (e.g., citation, title, author, abstract). Results of any search on Westlaw can also be limited by date range. As a useful tip, one can retrieve variations of terms by using the root expander (!). The root expander is useful in searches on this topic because “European” can also be presented as “Europe” in text; for example, one may say “European data protection” or “data protection in Europe.” The root expander would allow one to search for either variation with “Europe!” Similar to most search tools today, one can also search for a phrase by placing quotation marks around the words of that phrase. One should become familiar with the many Boolean connectors, and there are several sources available online to assist users in learning how to make the most of Westlaw searches.


As discussed supra Section I.D.1 with regard to overcoming challenges of staying current in the quickly developing field of data protection, the Legal Scholarship Network,\textsuperscript{108} a database of legal scholarship contained within the Social Science Research Network ("SSRN"), yields great results for data protection searches. Scholarship on SSRN is often very new and includes works not yet published in traditional sources, PhD dissertations, white papers, and early research results. This is helpful for researching a field changing as fast as data protection, as even articles as recent as 2009 or 2010 may be out of date. Make sure to take a critical eye to the quality of the scholarship on SSRN as authors can post their works with no peer review or publication review process. If an article posted on SSRN is also identified as being “forthcoming” from a respected academic journal or is written by an author who has been published in a respected journal, you can be almost certain it is of a high quality. Legal Scholarship Network, and indeed all of SSRN, is free and accessible to the public.

IV.A.2. Directories

While indexes provide citations to a variety of articles, directories provide similarly easy access to information about other sources of information on European data protection. For example, the Ezilon Europe International Web Directory and Search Engine provides access to a variety of regionally relevant websites.\textsuperscript{109} A search for “data protection” produces 56 results, but many of them are not relevant or are too specific to individual countries within Europe. A search for “Directive 95/46” or “European Data Protection” produces no results. Still, this website is useful for locating the websites of

\textsuperscript{108} Available at http://www.ssrn.com/lsn/.
\textsuperscript{109} Available at http://www.ezilon.com/index.shtml.
country-specific data protection authorities and companies. In comparison to Google, this website seems to better access data protection companies in Europe.

Another useful directory includes the directory of privacy professionals put together by the Privacy Journal, which lists over 600 names, addresses, websites, email addresses, and descriptions of privacy professionals. The directory is kept current through the present year, and lists privacy professionals from a variety of backgrounds. This resource may help one identify relevant public interest advocates, academics, corporate officers, and government officials involved in data protection specifically or privacy generally. The directory is only available electronically, and it is fully searchable by keyword.

IV.A.3. Subscription Services

LexisNexis

EU treaties, legislation, preparatory documents, national implementing legislation, and other documents as provided by EURLex are also available on the subscription-based LexisNexis’s EurLex EU Law Database: Combined Files. As of the date of this research guide, international materials, such as those provided in this database, are not yet available on Lexis Advance. The database provides coverage from 1952 onwards, and it is updated as received, usually within two weeks of publication elsewhere. Those familiar with LexisNexis may appreciate how comprehensive such a resource is compared to some of the free resources available elsewhere. At one time, a researcher may search for references to primary law, international agreements, secondary legislation, supplementary legislation, preparatory acts, parliamentary questions, national provisions implementing directives, and other sources of relevant information. While full text legislation is not available in the case of national implementing legislation, it is available for EU law.

When utilizing the database, it is helpful to be aware of what type of document is desired, especially since some of the files will best be located with specific search terms. For example, searching for national implementing legislation will best be accomplished by using the phrase “national provisions communicated by the member states concerning,” followed by the specific directive number. To find

110 Available at http://www.privacyjournal.net/_center_directory_of_privacy_professionals__center__18733.htm.

111 This research guide assumes familiarity with LexisNexis. For a more detailed tutorial on using LexisNexis generally, including a review of selecting sources and databases and the many search options, see http://www.lexisnexis.com/tutorial/global/globaltutorial_frameset.asp?sPage=overview&adaptation=academic&libu=US&locale=en_us.

112 If logged into LexisNexis, then the database is available for searching at the following website: http://www.lexis.com/research/form/search?_m=d0cd9e13ee109a1f628f65eb8b9930b7&_src=10952&wchp=dGLzVzk-zSkAW&_md5=7c927cc0f5babd2c01909d2631b00231.

113 See the following webpage for more detailed information on the database: http://w3.lexis.com/research2/source/srcinfo.do?_m=883f7e24a34e14984c00606e765608c3&src=10952&wchp=dGLzVzk-zSkAW&_md5=35e2f474b4550b2362928b0b5c42c29c.
specific tips of interest to the particular type of document one is looking for, click the button next to the following databases included within the EurLex EU Law Database: Combined Files search tool:

1. EUR-Lex EU Law Database: Legislation
2. EUR-Lex EU Law Database: National Provisions Implementing Directives
3. EUR-Lex EU Law Database: Parliamentary Questions
4. EUR-Lex EU Law Database: Preparatory Acts
5. EUR-Lex EU Law Database: Treaties

For case law, one should search the **EURLex EU Cases database**, which provides access to full text, English language decisions from 1954 onwards. The database is typically updated within three to four weeks of a decision. As with the other databases available on LexisNexis, additional information on the database, including sample searches and tips, are available by clicking the button next to the database name.

**Westlaw**

Westlaw also provides a subscription-based resource that offers broad search capability as well. Similar to LexisNexis’s EurLex EU Law Database: Combined Files, Westlaw offers the **European Union-All (EU-ALL) database**. Clicking the button next to the database name provides additional information on it, including information on search tips and citation formats. The database claims to include “comprehensive coverage of European Union legal materials, including legislation, case law, preparatory documents, parliamentary questions, treaties, and information and notices.” Thus, unlike the LexisNexis’s EurLex EU Law Database: Combined Files, Westlaw’s EU-ALL includes case law without needing to add another database to the search strategy. Indeed, Westlaw’s EU-ALL includes access to the following databases:

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114 Available at [http://www.lexis.com/research/form/search?_m=09dfa881694969956a1eb10ddd117bae&_src=164604&wchp=dGLzVzk-zSkAW&_md5=f1828a5aa873d5a4caa02e3ce9af0cbe](http://www.lexis.com/research/form/search?_m=09dfa881694969956a1eb10ddd117bae&_src=164604&wchp=dGLzVzk-zSkAW&_md5=f1828a5aa873d5a4caa02e3ce9af0cbe).

115 Additional information, if logged in to LexisNexis, available at [http://w3.lexis.com/research2/source/srcinfo.do?_m=09dfa881694969956a1eb10ddd117bae&src=164604&wchp=dGLzVzk-zSkAW&_md5=e68900c0c428194e180e3826869307d3](http://w3.lexis.com/research2/source/srcinfo.do?_m=09dfa881694969956a1eb10ddd117bae&src=164604&wchp=dGLzVzk-zSkAW&_md5=e68900c0c428194e180e3826869307d3).


As with LexisNexis, the coverage varies between each of the aforementioned databases, and it is worthwhile to click the button next to the names of each of the databases to learn more information on the database, including sample searches and tips. Also similar to LexisNexis, Westlaw provides full-text searches.

Max Planck Encyclopedia of Public International Law

The Max Planck Encyclopedia of Public International Law is a subscription-based online resource that offers a wide variety of peer-reviewed articles regarding public international law. The encyclopedia is updated continuously throughout the year and published in partnership with the Max Planck Institute for Comparative Public Law and International Law. While private subscriptions cost approximately £325, institutions can request a free trial for thirty days. Researchers can request that their library sign-up for a subscription or a free trial.

Once on the site, one need only type in “data protection” in the search box for “This site,” which leads to the most relevant entry entitled “Data, Transboundary Flow, International Protection” as the first result. This entry provides an excellent overview of the legal and regulatory landscape for international data protection. The seventh result, “Internet,” also provides relevant information on data protection in a brief paragraph discussing specific legal issues related to information networks and data sharing. Both entries provide relevant background information and a bibliography of additional sources relevant to the topic.

Researchers can click on any of the sources included in the bibliography and then “Oxford Law Citator” to get more bibliographic data on the item. Furthermore, one can discover additional entries that reference the item by clicking on “References to this commentary” from the Oxford Law Citator webpage for the item. Clicking on “Find it in your Library” next to any of the sources in the bibliography of an encyclopedic entry may help a researcher locate the item in a local library, although the feature did not work at the time of testing for this research guide. Finally, one should note that the aforementioned encyclopedic entries were last updated in 2009 and 2010 respectively, and another update is likely forthcoming due to more recent developments in the field.

120 Available at http://www.mpepil.com/.
121 Available at https://ams.oup.com/user/trial.pfm.
123 Available at http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1059?rskey=mFlvDd&result=7&q=data%20protection&prd=EPIL.
**IV.A.4. Bibliographies**

Bibliographies provide one with quick access to a collection of relevant materials, which usually proves useful during the beginning of one’s research project. A simple Google search for “data protection bibliographies” pulls up a variety of webpages, but diligent browsing leads to the discovery of several useful sources. For example, the **Privireal Data Protection Bibliography** includes a variety of materials particularly useful as an introduction to the field of European data protection. While Privireal emphasizes the intersection between the Directive and medical research and ethics committees, it nonetheless provides a useful bibliography to any researcher of European data protection in general. Still, the bibliography includes no resources after 2003, and the webpage itself was last updated only in 2005.

The **EU provides another useful data protection bibliography**, which is fully annotated with summaries of the resources. While the webpage was last updated in 2009, the most recent resource cited in the bibliography is from 1999. Unfortunately, many of the bibliographies available on data protection are not recent.

Similar to the Max Planck Encyclopedia of Public International Law, **Oxford Bibliographies** provides reliable information and useful bibliographies. Unlike the bibliographies included in the encyclopedic entries of the Max Planck Encyclopedia of Public International Law, Oxford Bibliographies include annotated bibliographies that provide even more utility to researchers looking for relevant sources of information. Every article published in Oxford Bibliographies is formally reviewed by a team of editors for currency on an annual basis. Furthermore, between 500 and 600 articles are added in ten to twelve new disciplines every year and fifty to seventy-five articles are added per existing discipline each year, which means that the resource is continually growing in terms of depth and breadth of coverage. If something of interest is not covered by the website, a researcher can make a request by emailing an Oxford Bibliographies editor. Similar to the Max Planck Encyclopedia of Public International Law, institutions may request a free trial prior to purchasing a subscription. Individuals may also purchase an article of interest via Amazon or VitalSource by searching for the subject article of interest and “Oxford Bibliographies” on the vendor’s website.

Running a simple search for “data protection” in the search box produces four results. The first result is for an article entitled “Internet Law,” which includes a paragraph dedicated to data protection

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and several relevant sources in the annotated bibliography included therein. Oxford Bibliographies automatically highlights all instances of the “data protection” search phrase in the article, which is useful for finding information of interest, although a “Ctrl-F” search could perform the same function. Some of the items in the bibliography are directly linked to online copies, whereas others can be found via WorldCat or Google Books as outlined elsewhere in this research guide. Any of the citations can be saved, exported in a variety of formats, or emailed for later use. A list of related articles as identified by editors of Oxford Bibliographies is included on the webpage for any given article, and the list changes over time as new articles are added regularly. As with the Max Planck Encyclopedia of Public International Law, it is likely than additional articles of interest will be added to this topic in the near future because of recent and ongoing developments in the field.

In addition to searching for bibliographies on Google, searching for “data protection” with “bibliography” in other databases and catalogs, including the previously discussed WorldCat, usually returns useful results that can be sorted by date. Of course, not all bibliographies are available online, including the following two print sources:


If one cannot locate a relevant or recent bibliography, another useful source of resources can be found in the works cited pages of secondary sources such as the writings of experts mentioned above.

IV.A.5. Research Guides

While this research guide presents one view of the process and resources available to research European data protection, one may of course learn more by consulting multiple research guides on similar topics. Several research guides were already suggested above with regard to getting up to speed with European data protection law and policy. In general, starting with Globalex and Foreign Law Guide’s research guides for the Council of Europe and European Union is a good idea. These often lead you to other helpful research guides, bibliographies, introductory sources, and other good background reference materials. To find topical research guides, a simple Google search for “data protection” with “research guide” or “research” produces a variety of useful results, but one can also run a similar search query on online databases and catalogs such as the previously mentioned HeinOnline. Such a search leads to a variety of results, including the following:

- Joshua S. Bauchner & Rekha Ramani, INTERNATIONAL REGULATORY DEVICES: LEGAL RESEARCH GUIDES TO THE EU DATA PROTECTION DIRECTIVE AND THE CONVENTION ON BIOLOGICAL DIVERSITY, Buffalo, N.Y.: W.S. Hein, 2001. This guide was already discussed above with regard to developing a basic research strategy, and it represents the best research guide available on the topic prior to 2013.

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While already outdated, it presents a good overview of the Directive, and the various ways to find resources regarding it. The guide itself is available online through HeinOnline.

• **The John Marshall Law School, Technology and Privacy Research Guide: Security and Data Protection. Last updated 2012.** This guide provides breadth rather than depth, but it may help one commence research in the area. The webpage usefully separates the sources into general and international/foreign categories. For purposes of European data protection research, the website considers European sources as international/foreign. Although the webpage was last updated in 2012, the most recent resource cited is from 2009.

• **Georgetown Law Library, International Cyberspace Law Research Guide. Last updated 2010.** Although not readily discernible by the title of the research guide, many of the resources listed in this webpage are useful for data protection research. A “Ctrl-F” search for “data protection” helps identify the most relevant resources. Many of the resources cited are annotated with summaries.

**IV.A.6. Library Catalogs**

This guide already discussed [WorldCat](http://libraryguides.jmls.edu/content.php?pid=71130&sid=528880) when discussing the basic research strategy in Section 1.C.3, but other library catalogs are useful as well. For example, the University of California, Berkeley Law School’s library catalog, LawCat, permits one to search the law library’s collection. Indeed, many libraries provide searchable access to their collections, which one can often use to locate resources by author, title, subject, or keyword. When looking for resources regarding European data protection, the by now familiar search terms of “data protection,” “data protection” AND “Europe,” or “European data protection” are useful queries.

In LawCat, one useful strategy is to search for resources by subject. For example, clicking on the subject tab and searching for “data protection,” then scrolling down the list of results, leads one to see subjects of “Data protection—European Union countries” and “Data protection—Europe.” Clicking on either of those subjects leads one to a manageable list of resources available at the law library. Similar searches in other local library catalogs will often help one locate resources readily available there. If the resource is checked out, one might want to check the library policy on recalls or simply wait until the item is returned. Fortunately, many of the resources in LawCat are also available online through the library’s online network. Finally, an excellent feature of LawCat, although somewhat atypical of libraries, is the availability of online chat with reference librarians to further assist one in the research process. If such a service is not available at a local library, one may still be able to speak with a reference librarian in person or over the phone in order to gain valuable assistance locating available resources.

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134 Available at [http://lawcat.berkeley.edu/](http://lawcat.berkeley.edu/).
IV.B. Print Sources

While online resources are often convenient to access, many sources are still only available in print. Additionally, many of the resources available online are still also available in print. The previous discussions of WorldCat and LawCat, as well as the aforementioned research guides and bibliographies, outlined some of the strategies for locating print sources. The following list of books, periodicals, and articles relevant to European data protection were located with these strategies.

IV.B.1. Books

Academic books are particularly helpful for understanding where your data protection law research question might best be addressed, such as in privacy law, human rights, Internet jurisprudence, European studies, and other fields of inquiry. Many books that are useful for European data protection law research are actually books about larger topics and include data protection as a chapter or case study. Several books helpful for beginning your research are listed below.

• **Ed Bates, The Evolution of the European Convention on Human Rights from Its Inception to the Creation of a Permanent Court of Human Rights (2010).** This book provides an excellent history of the ECtHR, with extensive discussion of the evolution of Article 8 and the European fundamental right to privacy.

• **Collin Bennett, Regulating Privacy: Data Protection and Public Policy in Europe and the United States (1992).** This comparative political science work traces the history of data protection in several EU member states and Europe. This book is three years older than even the first EU data protection directive and ten years older than the Euro currency. While its information is out of date, it is a thorough comparative scholarly history of the evolution of this area of policy in two separate regions.


**WorldCat, LawCat, and Google** all provide excellent tools to locate additional books related to European data protection. The previous sections of this research guide highlighted the best search terms and strategies for utilizing these tools and more.

**Google Books** represents one particularly useful tool to locate books and magazines, especially since it often allows partially or fully searchable access to the text of the books or magazines. In fact, the advanced search feature of Google Books allows one to restrict results to those books or magazines that allow full or partial online access. The advanced search feature also allows one to utilize familiar Google search functions, such as exact phrases or word exclusions, and it allows one to search for books

by title, publisher, author, subject, language, and date.\textsuperscript{136} Demonstrating the utility of Google Books, the following relevant books were located by running a simple search query for “data protection” or “European data protection” and then browsing the search results for books of interest:

\begin{itemize}
\item Frits Hondius, \textit{EMERGING DATA PROTECTION IN EUROPE} (1975).
\item Cullen International, \textit{A BUSINESS GUIDE TO CHANGES IN EUROPEAN DATA PROTECTION LEGISLATION} (1999).
\item Monica Kusch, (ed.), \textit{DATA PROTECTION & PRIVACY: JURISDICTIONAL COMPARISONS} (2012).
\item Serge Gutwirth; Ronald Leenes; Paul de Hert; Yves Poulet (eds.), \textit{EUROPEAN DATA PROTECTION: COMING OF AGE} (2013).
\end{itemize}

\textbf{IV.B.2. Periodicals and Yearbooks}

Utilizing the tools discussed above, one may also locate periodicals or yearbooks of particular relevance to European data protection. For example, one can locate \textit{INTERNATIONAL DATA PRIVACY LAW (UK)} with the previously mentioned Index to Foreign Legal Periodicals (IFLP).\textsuperscript{137} IFLP permits one to browse by publication title or search within journal titles. For example, a search of journal titles with “Data” allows one to find the previously mentioned \textit{INTERNATIONAL DATA PRIVACY LAW} periodical previously mentioned, as well as individual articles within it. Of course, one may also use Google to find relevant periodicals. For example, a Google search for “data protection journal” allows one to find the \textit{PRIVACY & DATA PROTECTION JOURNAL}, which could not be found via the IFLP on HeinOnline—further demonstrating the value of consulting multiple sources.\textsuperscript{138}

\textbf{IV.B.3. Desk References and Practitioner Guides}

Desk references and guides written by practitioners are a great source of up-to-date information on region, country, and sector specific data protection law. These are especially helpful for practitioners looking to get up to speed on the current state of the law in a given area without wading through lots of theoretical academic discussion. These desk books are expensive, but they are often available through your law library in hard copy or electronically via the library’s catalog search. Several good desk references are listed below. In particular, the guides by Carey and Kuner have been printed in numerous editions and serve as “go-to” guides for many data protection law practitioners.

\begin{itemize}
\item \textbf{Peter Carey, \textit{DATA PROTECTION: A PRACTICAL GUIDE TO UK AND EU LAW} (2009).} Discusses the EU Data Protection Directive in the context of its implementation in the UK and further breaks this discussion down by type of processing (e.g. storing data, transmitting data overseas, etc.). Good example of the type of sources and questions you will want to examine if you are researching
\end{itemize}

\textsuperscript{136} Available at \url{http://www.google.com/advanced_book_search}.
\textsuperscript{137} Available at \url{http://heinonline.org/HOL/Index?collection=iflp&set_as_cursor=clear}.
\textsuperscript{138} Available at \url{http://www.pdpjournals.com/overview-privacy-and-data-protection}.
data protection in a particular European country and need to understand how European law and domestic law in that country fit together.

- Lothar Determann, DETERMANN’S FIELD GUIDE TO INTERNATIONAL DATA PRIVACY LAW COMPLIANCE (2012). Good for practitioners looking to accomplish a specific task or draft a specific document that will implicate the European privacy law regime (or for research assistants working for a professor on a business law or contract question with similar implications). Also provides a good glossary of many of the key terms used in EU data privacy law. As of 2013, the author leads Baker McKenzie’s global privacy law practice based out of Silicon Valley.

- Francoise Gilbert, GLOBAL PRIVACY AND SECURITY LAW REFERENCE (2009). A good, quick reference guide for the privacy law landscape in the European region or a particular country therein. Has an entire chapter dedicated to the EU privacy framework and logic behind it, sections for major European and other nations world wide, and appendices that include all the key European privacy law sources, both binding law (e.g. the Data Protection Directive) and soft law (e.g. the OECD privacy guidelines). The author is a partner at the IT Law Group in Silicon Valley.

- Christopher Kuner, EUROPEAN DATA PROTECTION LAW CORPORATE COMPLIANCE AND REGULATION (2007). This is a very well respected desk book that was mentioned above as well with regard to writings of experts. The current (2007) edition is now fairly out of date, but an updated version is expected soon. The author leads Wilson Sonsini’s data protection practice in Brussels and serves as the Editor of the INTERNATIONAL DATA PRIVACY LAW journal.

IV.C. Journal Articles

IV.C.1. Recommended Journals to Follow

Good journals for data protection researchers to follow are: INTERNATIONAL DATA PRIVACY LAW, COMPUTER LAW & SECURITY REVIEW, and the INTERNATIONAL JOURNAL OF LAW & INFORMATION TECHNOLOGY. Reading through the table of contents of recent issues of each of these will likely yield articles of interest to you and help you understand current trends in data protection and technology law scholarship.

Note that these sources publish both academic authors and policy makers in Europe. For example, EU Commission Vice-President Viviane Reding published an article advocating for a new data protection framework in Europe at the same time as she released the proposed data protection regulation legislative package to the EU Parliament in 2012.

IV.C.2. Effective Journal Searching Techniques

Many articles can also be found with the aforementioned tools. For example, the previously discussed HeinOnline provides access to journal articles. Another important resource is JSTOR.140

139 Available at http://home.heinonline.org/
140 Available at http://www.jstor.org/
JSTOR, short for Journal Storage, provides a digital library of over 1,500 journals from a variety of disciplines. JSTOR also includes some books and primary sources. While most of the sources are only available by subscription, some older content is freely available to the public. Furthermore, JSTOR launched a no-cost program for access to old articles if one registers as an individual researcher.

All of the material on JSTOR is fully searchable, and the available content is continuously updated. Most of the journals in JSTOR go back to the first issue and many of the leading journals are current to the most recent issue. Similar to HeinOnline, search results can be restricted to content that can be accessed on the JSTOR website. JSTOR’s advanced search option also allows one to narrow searches by date range, language, item type (e.g., article, books, pamphlets, reviews, or miscellaneous), author, publication title, and discipline.141 Additionally, JSTOR permits one to conduct text searches of the title, full text, or an abstract thereof. One can also browse the collection by publisher, title, or subject.142 There is also a new Beta Search option that attempts to provide easier access to better results. Unlike the advanced search option, the Beta Search, which will become standard, utilizes a new search engine that can access topic assignments by each individual article rather than merely discipline assignments at the journal level—this helps researchers locate relevant articles that may appear outside of their discipline.143 The Beta search also offers spell checking and auto-completion, which collectively make the research experience more intuitive and quicker.

A Beta Search for “European data protection” in all content produces ninety-six results, which can be sorted by relevance or date. Other relevant search terms include “EU data protection” and “Directive 95/46.” The following two articles, which are particularly useful to see the historical development of European data protection law, provide an example of some of the sources that can be found with JSTOR:


Another important tool for locating journal articles is Google Scholar, which is a freely accessible search engine that indexes the full text of a variety of scholarly literature.144 Like Google Books, Google Scholar provides a user-friendly search tool, which produces remarkably relevant results of physical or online copies of articles. Results are ranked according to author prestige, the amount and date of references linked to the article, and the ranking of the publication title itself. The indexed literature represents scholarly articles, theses, books, abstracts, web pages, and even court opinions from a variety of sources.

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141 Available at [http://www.jstor.org/action/showAdvancedSearch](http://www.jstor.org/action/showAdvancedSearch).
142 Available at [http://www.jstor.org/action/showJournals](http://www.jstor.org/action/showJournals).
143 Available at [http://www.jstor.org/betasearch](http://www.jstor.org/betasearch).
144 Available at [http://scholar.google.com/](http://scholar.google.com/).
Fortunately, Google Scholar provides useful search tips to maximize the utility of the tool. While many of the articles found within the results are only available for a fee, Google Scholar helps locate these articles for future reference nonetheless. Furthermore, Google Scholar allows one to explore related articles, citations, authors, and publications with a click of a button. Like the other resources, “European data protection” produces a great deal of relevant results that can be sorted by relevance or date, including the two found with JSTOR’s Beta Search that are cited above. Interestingly, several articles from HeinOnline also appear within the search results of Google Scholar. Still, a major drawback of Google Scholar is that it is not known how often it is updated or the full extent and limitations of its coverage; for these reasons, it should not be relied upon exclusively.

IV.C.3. Selected Articles

The articles listed below all provide general introductions to data protection law in Europe, including introductions to relevant legal instruments (directives, regulations, etc.), highlights of core case law, and comparisons between the US and EU regulatory regimes. They are not intended to provide sector-specific (e.g. European data protection regulation in cross border financial transactions) or technology-specific (e.g. European data protection regulation and cloud computing) introductions, but rather they provide a baseline understanding of the European data protection regime against which a sector-specific inquiry could be undertaken.

Note that many of these articles are five to ten years old. These are (mostly) sufficiently current for understanding the data protection regulatory regime as a whole. However, any sector specific inquiry would need to be much more current to be effective.

- **Symposium: Data Protection Law and the European Union’s Directive, 80 IOWA L. REV. (1995).** This 1995 symposium issue contains articles reflecting on the significance of the 1995 Data Protection Directive at the time of its approval. The article are written by the leading US and EU privacy law scholars (both then and now), including Fred H. Cate, Spiros Simitis, Paul Schwartz, and Joel R. Reidenberg.

- **Lee A. Bygrave, Data Protection Pursuant to the Right to Privacy in Human Rights Treaties, 6 INT’L J.L. & INFO. TECH. 247 (1998).** Examines how to read a right to data protection into human rights treaties, especially the ECHR. Note that this article predates the drafting of the EU’s Charter of Fundamental Rights. This article is helpful for understanding how data privacy became understood as a fundamental right in Europe. However, the legal sources(s) of that right in Europe are very different today than at the time the author wrote this piece. This article is a good example of why you need to pay attention to the date even somewhat recent articles were written when researching data privacy.

• **David Erdos, *Freedom of Expression Turned on its Head? Academic Social Research and Journalism in the European Union’s Privacy Framework*, 1 PUBLIC LAW: THE CONSTITUTIONAL & ADMINISTRATIVE LAW OF THE COMMONWEALTH 52 (2013).** Ostensibly an article about the interpretation of the 1995 Directive vis-a-vis researchers and journalists, this article provides a good introduction into how both the EU and CoE have balanced the right to privacy with the right to free expression as well as how those balancing acts might differ from one another in these two fields where this privacy/expression debate is at its apex.

• **Gloria Gonzalez Fuster & Raphael Gellert, *The Fundamental Right of Data Protection in the European Union: In Search of an Uncharted Right*, 26 INT’L REV. L. COMPUTERS & TECH. 73 (2012).** Examines the legal foundations of and legal questions surrounding the EU Charter for Fundamental Rights that entered into force with the EU Lisbon Treaty in 2009. This includes how the Charter’s right to Privacy (Article 7) overlaps with or can be distinguished from the right to Data Protection (Article 8) as well as how the Charter itself relates to the CoE’s European Convention for Human Rights’ Article 8 protections for Privacy.


• **Edward C. Harris, *Personal Data Privacy Tradeoffs and How a Swedish Church Lady, Austrian Public Radio Employees, and Transatlantic Air Carriers Show that Europe Does Not Have the Answers*, 22 AM. U. INT’L L. REV. 745 (2007).** Harris’s article outlines key terminology and provisions of the 1995/46/EC Data Protection Directive, the legal foundations of the Directive in the European Charter for Human Rights, key ECJ caselaw interpreting the directive, and fundamental differences in the EU and US’s approach to privacy. It also highlights the impact of the directive on competing EU policy goals such as free flow of commerce, security, and free expression.

• **Viviane Reding, *The European Data Protection Framework for the Twenty-First Century*, 2 INT’L DATA PRIV. L. 119 (2012).** Reding was the EU Commission’s Vice-President for Justice, Fundamental Rights, and Citizenship in 2012. This article accompanied Reding’s roll-out of the EU’s proposed 2012 Data Protection Framework Regulation.

IV.D. Electronic Sources: Industry Reports and Blogs

Many electronic resources, such as online catalogs and indexes, were already highlighted above, but this section provides a brief overview of some more of them as related to online industry reports and blogs. Data protection and legal industry websites and blogs provide cutting edge commentary on data privacy law in Europe and across the globe. The focus of these sources tends to be events that impact the international business or privacy professional community. This includes tracking changes to legislation, commenting on significant litigation or other regulatory activities taken by the EU, or discussing how a data privacy matter may interact with other significant political happenings, such as a trade agreement.

There is no singular way to find these sources. Subscription based newsletters produced by mainstream news outlets, such as the Bloomberg BNA World Data Protection Report, often appear in a search of your law library’s catalog. When you see something like this in your search results, check the catalog or with a reference librarian to see if your library offers a digital subscription (for example, the Berkeley Law Library has both hardcopy and digital access to BNA sources).

When looking for quality blogs and websites, pay attention to the leading scholars writing in the field today. Once you hit the point in your traditional research where you are seeing the same scholars referenced in many articles or same interest groups referenced in legal briefs or academic articles, take the time to Google those organizations or individuals. Also pay attention to the sources listed as publishing those informal pieces. For example, in an academic article about digital privacy as a human right, you might see a footnote to a blog post written by Christopher Kuner (a leading scholar and practitioner) in a Center for European Policy Studies (CEPS) report. Googling both “Christopher Kuner” and “CEPS” will probably yield information about Kuner’s own webpage, his Wilson Sonsini law firm bio which may link to several other industry blogs in which he has written, the CEPS webpage dedicated to their digital forum project, and the CEPS twitter feed on data protection which links to a dedicated blog on this topic. This process is not as organized as searching research indexes; however, for those accustomed Googling everything, it comes naturally.

As another example of a potential search process for electronic resources, searching for “law firm data protection library” on Google provides several useful results as well. One of which is Morrison & Foerster’s Privacy and Data Protection webpage.146 Exploring that webpage, one can find a link to Morrison & Foerster’s Privacy Library discussed in Section III.F.147

As mentioned previously, blogs such as Datonomy also provide an excellent source of electronic information on European data protection.148 Like the law firm-maintained Privacy Library above, law firms often also maintain blogs of relevance. For example, a Google search for “data protection blog law firm” produces several data protection blogs maintained by law firms, including Hunton & Williams’

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146 Available at http://www.mofo.com/privacy--data-security-services/.
147 Available at http://www.mofo.com/privacylibrary/.
148 Available at http://www.datonomy.eu/.
Privacy and Information Security Law Blog,¹⁴⁹ Hogan Lovell’s Chronicle of Data Protection,¹⁵⁰ and Proskauer’s Privacy Law Blog,¹⁵¹ among others. All of these blogs are regularly updated and, with the exception of Proskauer’s Privacy Law Blog, allow for subscription to receive notifications of the latest updates. While these blogs often post on topics other than just data protection in the European Union, a quick review of a post can help one find the most relevant information. Furthermore, these blogs list experts in the field, as well as their contact information; however, these professionals likely charge a fee for consultation.

Using Google, one can locate non-law firm blogs and experts simply by searching for “data protection blog.” Many well-regarded groups maintain blogs, such as the previously mentioned Oxford Privacy Information Law & Society (OxPILS) group at the University of Oxford.¹⁵² The OxPILS blog allows readers to subscribe for updates, but it is not updated often. OxPILS can also be followed via Twitter. Looking at the Blog List on the OxPILS blog, one can find other relevant blogs to follow, such as Datonomy.¹⁵³ Finally, the OxPILS blog mentions its authors, who may be more willing to be contacted without a consultation fee than the authors of blogs maintained by for-profit organizations.

Other blogs, such as the one put on by the Oxford Internet Institute (OII), cover broader topics but tag blog posts related to data protection for easy access to relevant information.¹⁵⁴ The OII Policy and Internet Blog is regularly updated, and it also offers subscription services to receive the latest content.

One can locate similar blogs by searching for advocacy groups or academic institutions that practice or research areas related to data protection, such as the Internet, privacy, or cyberspace. Finally, blogs can also be located with Justice’s BlawgSearch.¹⁵⁵ BlawgSearch allows one to search for relevant blogs via search engine or browse by category. A simple search for “data protection” returns several relevant blog posts that may be sorted by relevance or date, including the first result entitled Report: Data Protection in the European Union from a Stanford Law School blog.¹⁵⁶ The primary benefit of BlawgSearch is that it identifies blog posts relevant to European data protection that might not come from blogs dedicated to the topic. Of course, researchers should carefully review the sources of content to help assess validity and legitimacy, which can vary greatly between blogs. One tip to assess the validity of a blog is to assess the credentials of its authors, sponsoring organizations, and audience or followers.

¹⁴⁹ Available at http://www.huntonprivacyblog.com/.
¹⁵⁰ Available at http://www.hldataprotection.com/.
¹⁵¹ Available at https://privacylaw.proskauer.com/.
¹⁵² Available at http://oxpils.blogspot.com/.
¹⁵³ Available at http://datonomy.blogspot.com/.
¹⁵⁴ Available at http://blogs.oii.ox.ac.uk/policy/?tag=data-protection.
¹⁵⁵ Available at http://blawgsearch.justia.com/.
Several other useful online European data protection law sources include the following:

- **BNA World Data Protection Report.** BNA is a division of Bloomberg news and is a highly respected news source, especially in the global business community.

- **IAPP European Data Protection Digest.** The International Association of Privacy Professionals is the premier worldwide professional association for privacy professionals. This digest is its weekly European privacy e-newsletter.

- **Center for European Policy Studies Digital Forum.** The Center for European Policy Studies is a highly respected European Studies think tank located in Brussels. The Digital Forum is the Center’s project dedicated to Internet policy issues and hosts the Center’s Task Force on Personal Data Processing. As of April 2013, the Forum’s website was under construction, however it appears to be producing regular content via its Twitter feed, @CEPSDigfor.

- **International Chamber of Commerce’s Task Force on Privacy and Personal Data Protection.** This is interesting to keep an eye on, though it is not updated regularly. The ICC is a pro-business group based in Paris. Its positions on European data protection schemes are somewhat different from both those who advocate for data protection as a human right in Europe and American companies’ strong resistance to increased EU regulation of information flows.

### IV.E. Public Organizations

As mentioned in the previous subsection, organizations provide blogs, but they also provide a wealth of other information related to European data protection. This section highlights some of the many relevant Intergovernmental Organizations (IGOs), Government Organizations (GOs), and Nongovernmental Organizations (NGOs), as well as tools to help find more of them. Like the other tools listed in this guide, a researcher will benefit most from using multiple tools together.

#### IV.E.1. IGOs and GOs

Many of the most relevant intergovernmental and governmental organizations other than the European Union and its bodies, such as the Council of Europe and the United Nations, were already mentioned above. To help find more organizations, one can consult other electronic sources, such as the lists of organizations provided by country and region in Morrison & Foerster’s Privacy Library or the list of organization’s provided on the Directorate General for Justice—both of which are mentioned in more detail above.\(^{157}\)

Two important governmental organizations listed on the Directorate General for Justice’s website, as well as the Morrison & Foerster Privacy Library, are the **Article 29 Working Party** and the

European Data Protection Supervisor. The Article 29 Working Party, which was organized under Directive 95/46, possesses independent advisory status; however, it issues influential opinions, working documents, and letters regarding the Directive. Each EU country, as well as the EU Commission itself, provides a representative on the Article 29 Working Party. The group’s activities, including meeting agendas, annual reports, opinions, and other documents, are largely published online, and the publications are indexed and searchable by subject categories, sub-categories, and sub-sub categories.

The European Data Protection Supervisor ("EPDS") is an independent supervisory authority responsible for promoting good data protection practice within the EU’s institutions and bodies in accordance the Directive. EPDS monitors the EU administration’s processing of personal data, advises on data protection policies and legislation, and cooperates with data protection authorities throughout the EU to help ensure consistency and harmonization of data protection. The EPDS’s website contains useful information about EU data protection events, press releases, related news and links to other webpages, and downloadable publications, including papers, annual reports, speeches, brochures, fact sheets, and strategies produced or commissioned by the EPDS.

One can utilize Google’s Intergovernmental Organization (IGO) Search Engine to locate IGOs. This search engine searches through hundreds of IGO websites, which helps researchers locate IGOs working on data protection issues. A quick search for “data protection” immediately results in relevant and previously discussed webpages of the European Union, Council of Europe, the OECD, and the United Nations. While outside of the focus of this research guide, this search engine also produces results of other IGOs working on data protection, such as the Organization of American States and the International Chamber of Commerce. While this search engine does not provide some of the advanced features of Google’s other search engines, it appears to work well at locating the primary IGOs involved in European data protection. Browsing relevant IGOs’ websites will often lead researchers to additional governmental organizations of importance to European data protection.

Another useful tool for locating IGOs is Northwestern University Library’s IGO List. The International Documents staff of the Northwestern University Library regularly update the list with the intention of making it a comprehensive listing of IGOs with websites, especially English-language websites. The list can be searched with text or by browsing alphabetical listing of the IGOs. The list

163 Available at http://www.google.com/cse/home?q=006748068166572874491%3A55ez0c3j3ey.
164 Available at http://www.oas.org/cse/home?q=006748068166572874491%3A55ez0c3j3ey.
165 Available at http://libguides.northwestern.edu/content.php?pid=227016&sid=1878754.
includes a tab dedicated to the EU; however, some of the links are obsolete, such as the links to the European Commission Libraries Catalogue, to an alphabetical index of EU organizations, and to a listing of Directorates-General. This website is not quite as useful as the Google IGO Search Engine because it does not search within the webpages of the IGOs to find information relevant to European data protection. Still, if one knows the name of an organization of interest, this website likely provides a link to it.

IV.E.2. NGOs

Many nongovernmental organizations (NGOs) can be found with Google’s Non-Governmental Organization (NGO) Search Engine. This search engine operates similarly to the previously discussed IGO search engine, and it produces several relevant results as well. The NGOs included in the search were selected according to their consultative status with the United Nations Economic and Social Council, or inclusion within the University of Minnesota Human Rights Library, Duke University Libraries' NGO Research Guide, or the World Association of Non-Governmental Organizations (WANGO). Thus, this search engine is certainly not comprehensive. Furthermore, it is difficult to locate relevant groups since a search for “data protection” results in several organizational websites that merely include the phrase “data protection” when discussing their compliance with a data protection regime but not as a central mission of the organization itself.

A more effective phrase for searches is “European data protection,” which turns up results for organizations discussing European data protection specifically. Since this search engine searches the full text of NGOs’ websites, searches often result in NGOs that one would not immediately expect to be dealing with data protection issues based on their organizational title, such as the Wellcome Trust.

Similar to the strategies outlined above, one should search for additional NGOs within academic institutions researching related topics. For example, the following institutions maintain useful group webpage’s related to data protection generally, and often European data protection specifically:

- Berkeley Center for Law & Technology
- Oxford Privacy Information Law & Society
- Yale University Information Society Project
- New York University Information Law Institute
- University College London Freedom of Information and Data Protection

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166 Available at [http://libguides.northwestern.edu/content.php?pid=227016&sid=1879002](http://libguides.northwestern.edu/content.php?pid=227016&sid=1879002).
167 Available at [http://www.google.com/cse/home?cx=012681683249965267634%3Aq4g16p05-ao](http://www.google.com/cse/home?cx=012681683249965267634%3Aq4g16p05-ao).
169 Available at [https://www.law.berkeley.edu/bclt.htm](https://www.law.berkeley.edu/bclt.htm).
170 Available at [http://www.csls.ox.ac.uk/dataprotection/](http://www.csls.ox.ac.uk/dataprotection/).
172 Available at [http://www.law.nyu.edu/centers/ili/index.htm](http://www.law.nyu.edu/centers/ili/index.htm).
173 Available at [http://www.ucl.ac.uk/constitution-unit/research/foi](http://www.ucl.ac.uk/constitution-unit/research/foi).
These groups often put on events or publish information related to data protection. Searches for “privacy,” “data protection,” or “information law,” on academic institutions’ websites will often lead one to find comparable groups of interest.

Similarly, one should run simple Google searches for results that include smaller nonprofit advocacy groups that would not likely be included within the NGO search engine’s indexes above. Standard Google searches using terms such as “data protection” AND “association” or “society,” as well as “privacy” AND “association” or “society,” produce effective results, such as the following NGOs relevant to European data protection:

- Center for Data Protection
- Privacy International
- Industry Coalition for Data Protection

These groups often allow one to join to access information and other resources, such as other members, pertinent to the group’s mission. The Center for Data Protection is primarily dedicated to issues at the intersection of European data protection and biomedical research, however, it also aims to support and promote practical solutions to data protection challenges in general. The group’s website is not very comprehensive and provides little information to non-members.

Privacy International, however, aims to defend the right to privacy globally, and it makes a wealth of information available for free on its website. Information can be searched for by text or category, and the website contains links to blog posts, reports, news stories, events, and related information. Additionally, the website contains a webpage dedicated to data protection and privacy issues, although one must search for issues related to European data protection specifically to find the most relevant information. One can also subscribe to a general mailing list for email updates, but the list does not appear to permit updates regarding only European data protection issues. Still, much of the information provided by Privacy International is freely available to members and non-members alike.

The Industry Coalition for Data Protection represents another kind of NGO in the field. The group aims to represent European business organizations with regard to European data protection issues. The group’s website is hosted by a group member, the European Internet Service Providers Associations (EuroISPA). Aside from the main webpage, however, the group only makes one product

174 Available at www.privacypeople.org/.
175 Available at https://www.privacyinternational.org/.
178 Available at https://www.privacyinternational.org/.
available, which was a press release generated in November 2011 that announced the formation of the group.\footnote{Available at \url{http://www.digitaleurope.org/Portals/0/Documents/Digital%20Economy/20111115_ICDP%20press%20release.pdf}.}

**IV.F. Other Sources**

**IV.F.1. Organizations and Conferences**

The community of scholars and organizations focused on data protection in Europe and worldwide is still relatively small. Once you find a scholar, practitioner, or organization working on the area or questions of data protection in which you are interested, keep an eye on that individual or group. Most reputable organizations and many professors maintain their own websites. Bookmark and follows these, paying particular attention to the titles of conferences these groups are hosting or individuals are speaking at. Often scholars float their new ideas or upcoming articles first in a conference. Several examples of this include:

- Berkeley Center for Law and Technology’s website and news roll
- IAPP schedule of upcoming events

As mentioned throughout this research guide, additional sources of information appear in membership directories, governmental and non-governmental websites, and media websites. Additionally, browsing “links” pages on websites often leads to other websites of interest. The following subsections provide examples of individuals and government documents of particular relevance to European data protection.

**IV.F.2. Individuals**

Academics, lawyers, advocates, and government officials can provide a great deal of information about European data protection. These individuals can be identified by utilizing the membership directories and websites listed above. As previously discussed, experts can also be identified by reviewing speaker lists of conferences. Some of the individuals identified using the aforementioned methods include the following:

- Peter Hustinx, European Data Protection Supervisor\footnote{Available at \url{http://www.edps.europa.eu/EDPSWEB/edps/EDPS/Membersmission/Members}.}
- Rosemary Jay, Lawyer and Author\footnote{Available at \url{http://www.hunton.com/rosemary_jay/}.}
- Dr. David Erdos, Academic\footnote{Available at \url{http://www.law.ox.ac.uk/profile/david.erdos}.}
- Professor Paul Schwartz, Academic\footnote{Available at \url{http://paulschwartz.net/}.}
- Professor Christopher Millard, Academic and Lawyer\footnote{Available at \url{http://paulschwartz.net/}.}
IV.F.3. Government Documents

As outlined above when discussing various governmental websites, such websites often contain relevant government documents that can prove invaluable to a researcher. For example, the EPDS website contains a wealth of information regarding the reform of EU data protection legislation. The EPDS’s website organizes such information by institutional body. Such information gives insight into the reform process, which is presently unfolding and not widely published on in secondary sources; thus, it is an essential resource to be familiar with if following such reform efforts. Researchers can find similar documents on other governmental websites, such as the ones listed throughout this research guide, by going to the websites and running an internal search for “data protection” or otherwise looking out for tabs that specifically indicate the availability of “reports,” “publications,” “papers,” or similar terms. The resulting information is freely available and often unavailable elsewhere. While EPDS offers update notification services, many governmental websites do not offer such updates and must resultantly be visited regularly to stay current.

V. Conclusion

From the proposed EU data protection regulation to the inclusion of data protection and electronic commerce in the upcoming US-EU trade agreement, as well as with international concerns about US security agencies’ collection of personal information worldwide, data protection is a rapidly growing field in international law and policy. Given the legal nature of this guide, it may be appropriate to end with a disclaimer. As much as the Internet has a tendency to retain data indefinitely, Internet links do not often last forever. As a temporary solution, one may simply run a Google search for the tool or resource hyperlinked to herein, which may pull up a relevant website. Additionally, one may utilize the Wayback Machine to view captured images of the linked to webpage for May 2013, or some period of time close to the original publication of this research guide, by entering the URL of the website into the designated place of the Wayback Machine and clicking “Take Me Back.” This guide, completed in 2013, will undoubtedly be out of date as soon as it is published. However, we hope these sources and the approaches suggested will continue to be valuable to researchers investigating this exciting area of law.

186 Available at [http://www.law.qmul.ac.uk/staff/millard.html](http://www.law.qmul.ac.uk/staff/millard.html).