

PHILIPP JAUD

Personal Data as an Economic Asset

Internet und Gesellschaft

35

Mohr Siebeck

Internet und Gesellschaft
Schriften des Alexander von Humboldt Institut
für Internet und Gesellschaft

Herausgegeben von
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Björn Scheuermann, Thomas Schildhauer
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Philipp Jaud

Personal Data as an Economic Asset

Compatibility with the EU Charter
of Fundamental Rights

Mohr Siebeck

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Open access funded by the Fachinformationsdienst (FID) interdisziplinäre Rechtsforschung in Berlin.

ISBN 978-3-16-163406-2 / eISBN 978-3-16-163407-9

DOI 10.1628/978-3-16-163407-9

ISSN 2199-0344 / eISSN 2569-4081 (Internet und Gesellschaft)

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available at <https://dnb.dnb.de>.

Published by Mohr Siebeck Tübingen, Germany, 2024. www.mohrsiebeck.com

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The book was printed on non-aging paper by Laupp & Göbel in Gomaringen and bound by Buchbinderei Nädle in Nehren.

Printed in Germany.

Preface

With profound gratitude, I introduce this book, a synthesis of rigorous research and academic commitment. The aim of this work is to contribute to the ongoing discourse surrounding the intricate relationship between personal data, economic dynamics and fundamental rights.

The motivation behind this exploration stems from a recognition of the evolving role of personal data in our digital landscape. As personal data transforms into a commodity, it becomes crucial to scrutinise the compatibility of these practices with the principles outlined in the EU Charter of Fundamental Rights.

This work seeks to provide insights into the nuanced interplay between the economic value assigned to personal data and the safeguards enshrined in the EU Charter of Fundamental Rights. While not exhaustive, the scope of this exploration covers legal, societal and economical dimensions, acknowledging the multifaceted nature of the subject.

It is crucial to acknowledge the inherent limitations of such an endeavour. The dynamic nature of technology, legal frameworks and societal attitudes implies that this work offers a snapshot rather than a comprehensive map of the entire landscape. As personal data continues to evolve, ongoing discussions and adaptations will be necessary.

I express my deepest appreciation to Mohr Siebeck for providing an invaluable platform to disseminate this research. Their editorial proficiency and research prowess have greatly enhanced the final presentation of this work.

The University of Innsbruck has been a crucial supporter throughout my academic endeavors. The doctoral scholarship from the University's Emerging Scholars Program enabled me to dedicate a focused year to research, laying the groundwork for this book.

Gratitude extends to Prof. Matthias C. Kettmann and Prof. Malte Kramme for their insightful instructions and rigorous examination of my dissertation. Their expertise has been instrumental in shaping the intellectual foundation of this book.

Prof. Bernardo Cortese from the University of Padova deserves acknowledgment for sparking my passion for EU law. His guidance and encouragement have been pivotal in shaping the transnational perspective of this work.

A special note of gratitude is reserved for Prof. Clara Rauchegger. Her unwavering support, mentorship and tireless advocacy for my academic pursuits have played a crucial role in my growth as a legal practitioner. This book stands as a

testament to her commitment to fostering intellectual curiosity and academic excellence.

Finally, heartfelt thanks to my family and my dear Danijela for their unwavering support and understanding throughout this challenging yet rewarding journey. You have been my constant sources of inspiration.

May this book contribute meaningfully to the academic discourse and serve as a valuable resource for those navigating the intricate landscape of personal data, economics and fundamental rights within the EU.

Innsbruck, January 2024

Philipp Jaud

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Abbreviations

ABGB	Austrian Civil Code
B2C	Business-to-Consumer
BGB	German Civil Code
BGH	German Federal Court of Justice
BVerfG	German Federal Constitutional Court
CAI	Institute of Chartered Accountants of Ireland
CEO	Chief Executive Officer
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CVV	Card Verification Value
DCD	Digital Content Directive
DPD	Data Protection Directive
DSB	Austrian Data Protection Authority
DSG	Austrian Data Protection Law
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
ed.	editor
eds.	editors
e.g.	example given
et al.	et alii
etc.	et cetera
EU	European Union
GDPR	General Data Protection Regulation
GPDP	Garante per la protezione dei dati personali
ibid	ibidem
ICO	Information Commissioner's Office
i.e.	id est
IP	Internet Protocol
ODD	Open Data Directive
OECD	Organisation for Economic Co-Operation and Development
OLG	Oberlandesgericht
p.	page
pp.	pages
para.	paragraph
paras.	paragraphs
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

URL	Uniform Resource Locator
US	United States
VAT	Value-Added Tax
VFGH	Austrian Constitutional Court
WIFI	Wireless Fidelity
WP29	The Article 29 Data Protection Working Party
WP136	Article 29 Working Party opinion 4/2007 on the concept of personal data, 20 June 2007
WP217	Article 29 Data Protection Working Party opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC, 14 November 2014

I. Introduction

1. Aims and objectives

This work primarily examines personal data as an economic asset under EU law. In this regard, personal data as an economic asset is analysed mainly in the light of the Charter¹. Furthermore, this work seeks to address the question of whether and to what extent the use of personal data as an economic asset can be compatible with the Charter and to what extent personal data can be used as an economic asset at all.

As well as this main aim, this work discusses fundamental questions about personal data as an economic asset. It intends to introduce the concept of personal data as an economic asset. Moreover, the value of personal data and their economic exploitation are explored. The rights to personal data and the allocation of personal data as an economic asset are analysed. EU regulation of personal data as an economic asset is also discussed. This should give a concise analysis of the notion ‘personal data as an economic asset’.

Moreover, this work aims to examine the applicability of the Charter to the use of personal data as an economic asset. Facilitations and limits set by the Charter on the use of personal data as an economic asset are outlined.

2. Background

In recent years, the business practice that people do not have to pay a price for digital content or digital services, but rather provide personal data in exchange for digital content or services, has become more and more established. Often content or services are then perceived by users as free. However, they are not free, as companies accumulate large amounts of personal data that are used as an economic asset in return. *Cohen* argues that the purpose of this business practice is

‘to produce tractable, predictable citizen-consumers whose preferred modes of self-determination play out along predictable and profit-generating trajectories’.²

¹ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391.

² J.E. Cohen, ‘What Privacy Is For’, 126 *Harvard Law Review* (2013), p. 1917.

In this regard, Zuboff coined the notion of ‘surveillance capitalism’.³

In order to grant certain rights in these cases to persons who provide personal data in return for digital content or digital services, the DCD⁴ was adopted by the EU. The DCD applies not only if the consumer pays a price for the digital content or digital service, but also if the consumer supplies personal data in return.⁵ Article 3 (1) DCD states that its provisions apply where ‘the consumer pays or undertakes to pay a price’ and

‘[...] shall also apply where the trader supplies or undertakes to supply digital content or a digital service to the consumer, and the consumer provides or undertakes to provide personal data to the trader [...]’.

It was criticised early in the legislative process of the DCD that personal data was treated as a counterperformance for digital content or services. The EDPS was critical of the treatment of the fundamental right to data protection almost as a mere economic asset.⁶ The EDPS even went so far as to compare the market for personal data to the market of organ trafficking.⁷ This comparison may seem extreme, but it illustrates the need for academic discussion on this issue. The question to what extent a fundamental right can be ‘traded’ is of utmost relevancy not only because of the existing business practice of large online companies, but also through Article 3 DCD.

Some aspects of the use of personal data as an economic asset have been addressed in the literature.⁸ Langhanke’s work should be emphasised here as the first German-language monograph on the topic after the adoption of the GDPR⁹, in which she outlines approaches for the contractual classification of the phenomenon of ‘paying with data’.¹⁰ However, it needs to be further explored to

³ See S. Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs, 2019).

⁴ Directive 2019/770/EU of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, [2019] OJ L 136/1.

⁵ Art 3 (1) Directive 2019/770/EU.

⁶ European Data Protection Supervisor, *Opinion 4/2017 of European Data Protection Supervisor on the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content*, 14 March 2017.

⁷ *Ibid.*, p. 7.

⁸ See for example, G. Versaci, ‘Personal Data and Contract Law: Challenges and Concerns about the Economic Exploitation of the Right to Data Protection’, 14 *European Review of Contract Law* (2018). See also regarding data protection law in general, without reference to the Charter, M. Durovic and M. Montanaro, ‘Data Protection and Data Commerce: Friends or Foes?’, 17 *European Review of Contract Law* (2021).

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L199/1.

¹⁰ C. Langhanke, *Daten als Leistung – Eine rechtsvergleichende Untersuchung zu Deutschland, Österreich und der Schweiz* (Mohr Siebeck 2018).

what extent the fundamental right to data protection is compatible with transactions of personal data as an economic asset. This question has not been clarified and even in recent literature, for example, ‘trading’ with personal data is considered to be in conflict with the Charter.¹¹ Therefore, this work explores the concept of personal data as an economic asset.

The concept of data as economic asset received a lot of scientific attention from the first proposals of the DCD. On the one hand, the focus of the academic discourse in the German-speaking area was and still is on fundamental questions that relate to private autonomy, the relationship between data protection and contract law as well as the civil and contractual classification of data trading.¹² For example, *Sattler* proposes a model that enables the synchronisation of data protection and contract law.¹³ However, some fundamental questions on this issue are yet to be explored in detail. In the Anglo-Saxon literature, property rights aspects in particular have been discussed.¹⁴ At EU policy level, the notion of control over personal data was particularly prominent.¹⁵

On the other hand, less attention was paid to the question of the extent to which the fundamental right to data protection may be used as a mere economic asset. The commercialisation of the fundamental right to data protection, if one compares it with other personality rights, is not excluded per se.¹⁶ But the requirements that must be fulfilled in order to meet the Charter’s criteria must be answered in more detail. Therefore, this work seeks to address the question of whether and to what extent the use of personal data as an economic asset can be compatible with the Charter.

Moreover, the core question of the work, to what extent personal data can be used as an economic asset, is particularly topical not only due to the existing business practises of large online companies, but also due to the DCD, which had

¹¹ See B. Custers and G. Malgieri, ‘Priceless data: why the EU fundamental right to data protection is at odds with trade in personal data’, 45 *Computer Law & Security Review* (2022), pp. 1–11.

¹² See for example, N. Forgò and B. Zöchling-Jud, *Das Vertragsrecht des ABGB auf dem Prüfstand: Überlegungen im digitalen Zeitalter* (MANZ’sche Verlags- und Universitätsbuchhandlung, 2018); A. Metzger, ‘A Market Model for Personal Data: State of the Play under the New Directive on Digital Content and Digital Services’, in S. Lohsse et al. (eds.), *Data as Counterperformance – Contract Law 2.0?* (Münster Colloquia on EU Law and the Digital Economy V, 2020).

¹³ A. Sattler, *Informationelle Privatautonomie – Synchronisierung von Datenschutz- und Vertragsrecht* (Mohr Siebeck, 2022).

¹⁴ See for example, P.M. Schwartz, ‘Property, Privacy, and Personal Data’, 117 *Harvard Law Review* (2004), pp. 2056–2128; N. Purtova, ‘The illusion of personal data as no one’s property’, 7 *Law, Innovation and Technology* (2015), pp. 40–81.

¹⁵ C. Lazaro and D. Le Métayer, ‘Control over Personal Data: True Remedy or Fairy Tale?’, 12 *SCRIPTed* (2015), p. 19.

¹⁶ See for example, G. Versaci, ‘Personal Data and Contract Law: Challenges and Concerns about the Economic Exploitation of the Right to Data Protection’ (*supra* Chapter I, note 8).

to be implemented in national law by the beginning of 2022.¹⁷ As a result, since 1 January 2022, national provisions have been in force in all Member States that deal, *inter alia*, with personal data in return for digital content and services and their legal consequences. Fundamental rights aspects of this issue have not been sufficiently considered in the scientific literature so far.

This work deals with the above-mentioned questions in order to contribute to the legal discussion and development of the concept ‘data as an economic asset’ and its compatibility with the Charter.

3. Methodology

This work relies on doctrinal analysis, the traditional method of legal research.¹⁸ It aims to systematise and rationalise the legal rules, principles, standards and procedures that apply to personal data as an economic asset. For this purpose, EU primary law is examined, with particular focus on the Charter. This is done by using the interpretation methods of grammatical, historical, systematic and teleological interpretation, with particular emphasis on the latter.

To answer the research questions, the Charter, as a primary source, is of particular importance. In addition, several instruments of EU secondary law – such as the GDPR and DCD – are analysed insofar as they are relevant for personal data as an economic asset. The case law of the CJEU guides the interpretation of these sources of primary and secondary EU law.

Economic perspectives are also applied to discuss the value of personal data. Different methods, including empirical studies, are presented to assess the value of personal data. How companies use, share and value personal data in the data-driven economy is illustrated with real-life examples. Contract law considerations concerning personal data as an economic asset would go beyond the scope of this work and are therefore not addressed.

4. Structure

Following this introductory chapter, Chapter II. explores the definition of personal data. The concept of personal data is often taken for granted. However, the answer to the question of what exactly is meant by personal data is of fundamental importance for the analysis that is conducted in the subsequent chapters. A clear understanding of the term ‘personal data’ is obtained here by examining the meaning of ‘personal data’ in the GDPR and by analysing the relevant case law of the CJEU.

¹⁷ See Article 24 DCD.

¹⁸ See for an outline of legal research methodology: L. Cahillane and J. Schweppe (eds.), *Legal Research Methods: Principles and Practicalities* (Clarus Press, 2016).

Chapter III. examines the value of personal data. The term ‘economic asset’ suggests that data is ascribed a certain material value. In view of the numerous tech companies that generate their revenue from personal data, this value should not be underestimated. Different methods are presented and applied to assess how personal data are used, shared and valued. It will be shown that personal data, such as names, addresses, age, have a monetary value.

After establishing the concept of ‘personal data as an economic asset’, Chapter IV. aims to examine how and by whom personal data can be used as an economic asset. Different approaches on how rights to personal data may be designed are critically appraised. Emphasis is placed on EU data protection law. It will be argued that EU data protection law gives data subjects numerous rights, allowing them to control and dispose of their personal data.

Chapter V. provides an overview of EU instruments that deal with the data economy and data as an economic asset. The chapter gives an overview of EU legal instruments regarding data, with particular focus on the DCD. It is argued that the EU recognises that (personal) data can be an economic asset.

Before this work turns to the question of whether and, if so, under which conditions the concept of personal data as an economic asset is compatible with the Charter, it is necessary to clarify under what circumstances the Charter is applicable to personal data as an economic asset. To establish this fundamental premise, Chapter VI. examines the EU and its Member States as Addressees of the Charter. The Chapter then turns to horizontal effect of the Charter. It will be shown when the Charter can be applied in the context of personal data as an economic asset.

Article 8 of the Charter establishes an autonomous fundamental right to data protection and therefore merits a detailed analysis in the context of personal data as an economic asset. Thus, the scope of application and protection of Article 8 of the Charter are described in Chapter VII. This is followed by an examination of the requirements of lawful data processing and thus the use of personal data as an economic asset. It will be established that the economic use of personal data is not per se incompatible with Article 8 of the Charter.

As the fundamental right to data protection is not limitless, Chapter VIII. discusses the limitations of this right. Special consideration is given to Article 52 of the Charter, which provides conditions for limitations of rights of the Charter. The conditions under which the use of personal data as an economic asset meets the criteria of Article 52 of the Charter are examined. Then, fundamental rights and interests in the use of personal data as an economic asset, which can limit the fundamental right to data protection, are outlined.

Chapter IX. summarises the main findings of the work.

II. Definition of personal data

The aim of this chapter is to define personal data. This definition is necessary in order to be able to examine the notion of personal data as an economic asset in subsequent chapters. The definition of personal data serves to delineate which information falls within the scope of personal data and which information does not.¹ The GDPR, which has been comprehensively governing the data protection regime of the EU since May 2018, is of considerable significance in this regard. The GDPR is relevant not only because of its extensive regulatory scope, but also because it contains a legal definition of personal data.

The definition of personal data in the GDPR includes four key elements. While these four building blocks are tightly interconnected and build on one another,² they will be analysed individually for the purpose of this chapter. Section 1 below reflects the legal definition of the GDPR and the Opinion of the WP29. Section 2 examines the first element of the definition ('any information') and Section 3 the second one ('relating to'). Section 4 looks at the third element ('an identified or identifiable'), while Section 5 turns to the fourth one ('natural person'). On the basis of these four components, a clear understanding of the term 'personal data' is obtained by examining the meaning of 'personal data' in the GDPR and by analysing the relevant case law of the CJEU.

1. Legal definition and WP29 Opinion

Article 4 (1) GDPR defines personal data as follows:

'Personal data means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person';³

¹ C. Bergauer, 'Art 4 Z 1 personenbezogene Daten' in D. Jahnel (ed.), *DSGVO Datenschutz-Grundverordnung* (Jan Sramek Verlag, 2021), para. 5; D. Jahnel and C. Bergauer, *Teil-Kommentar zur DS-GVO* (Jan Sramek Verlag, 2018), p. 25.

² Article 29 Working Party opinion 4/2007 on the concept of personal data, 20 June 2007 ('WP136'), p. 6.

³ See Article 4 (1) GDPR.

It is already evident from the first reading of this definition that personal data is defined broadly and comprehensively.⁴ The definition closely follows that of the DPD^{5,6}

‘personal data shall mean any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;⁷

The DPD was replaced by the GDPR. The European Commission’s adjusted proposal of the DPD stated that

‘the amended proposal meets Parliament’s wish that the definition of “personal data” should be as general as possible, so as to include all information concerning an identifiable individual’.⁸

This wish was also considered by the Council.⁹

According to Article 1 (1) GDPR, it is one of the objectives of the GDPR to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.¹⁰ With this purpose in mind, it seems clear why the European lawmaker has adopted such a broad definition of personal data.¹¹ The concept of personal data is intended to ensure individuals the utmost protection of their rights.

The WP29 adopted a similarly broad definition. The WP29 was an autonomous European working party which has addressed issues regarding the protection of privacy and personal data until 25 May 2018 (the entry into force of the GDPR).¹² Although the WP29 was replaced by the EDPB, its opinions are still

⁴ A. Klabunde, ‘Art. 4 Begriffsbestimmungen’ in E. Ehmann and M. Selmayr (eds.), *DS-GVO Datenschutz-Grundverordnung* (2nd edition, C.H. Beck, 2018), para. 7; F. Costa-Cabral and O. Lyskey, ‘Family ties: The intersection between data protection and competition in EU law’, 54 *Common Market Law Review* (2017), p. 16; F. Costa-Cabral and O. Lyskey, ‘The Internal and External Constraints of Data Protection on Competition Law in the EU’, *LSE Law, Society and Economy Working Papers* (2015), p. 5; see also, Case C-434/16 *Nowak*, EU:C:2017:994, para. 34.

⁵ 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 [1995] OJ L281/31.

⁶ A. Klabunde, ‘Art. 4 Begriffsbestimmungen’ (*supra* Chapter II. note 4), para. 8.

⁷ See Article 2 (a) DPD; A. Klabunde, ‘Art. 4 Begriffsbestimmungen’ (*supra* Chapter II. note 4), para. 8.

⁸ Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM (92) 422 final, p. 9.

⁹ Common position (EC) No 1/95, adopted by the Council on 20 February 1995, OJ NO C 93 of 13.4.1995, p. 20.

¹⁰ See Article 1 (1) GDPR.

¹¹ This broad definition also corresponds to the view repeatedly expressed by the CJEU, e.g. Case C-434/16 *Nowak* (*supra* Chapter II. note 4), para. 33.

¹² See European Data Protection Board, *Article 29 Working Party*, https://edpb.europa.eu/our-work-tools/article-29-working-party_en (accessed 31 January 2024).

considered of importance. The EDPB has endorsed the WP29 guidelines concerning the GDPR.¹³ Moreover, the European Commission still references the WP29 opinions on its homepage.¹⁴

One of these referenced documents is the WP136. Although it is not legally binding, the WP136 has undoubted significance and offers detailed guidelines on how the concept of personal data should be interpreted.¹⁵ While this opinion was issued on the DPD, it is still relevant today since, as stated above, the GDPR closely follows the DPD. This view was also expressed by Advocate General *Kokott* in her opinion on the *Nowak* case.¹⁶

The WP136 provides a broad definition of personal data, emphasising the fact that this definition should not be overinterpreted but that the understanding of the concept of personal data should also not be unduly limited.¹⁷ The WP136 divides the definition of personal data into four key elements.¹⁸ The structure of this chapter reflects this approach.

2. 'Any information'

The phrase 'any information' in Article 4 (1) GDPR is very general and suggests a broad interpretation.¹⁹ The WP136 notes that the phrase 'any information' in the GDPR indicates the legislator's eagerness to develop a wide definition of personal data.²⁰ It is worth noting that information, not data, is mentioned and no distinguishing features are specified.²¹ The insufficient differentiation between

¹³ See European Data Protection Board, *Endorsement of GDPR WP29 guidelines by the EDPB*, 25 May 2018, https://edpb.europa.eu/news/news/2018/endorsement-gdpr-wp29-guidelines-edpb_de (accessed 31 January 2024).

¹⁴ See for example, European Commission, *What is personal data?*, https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-personal-data_en (accessed 31 January 2024), which references the WP29 opinion 4/2007 on the concept of personal data.

¹⁵ N. Purtova, 'The law of everything. Broad concept of personal data and future of EU data protection law', 10 *Law, Innovation and Technology* (2018), p. 43.

¹⁶ Opinion of Advocate General Kokott in Case C-434/16 *Nowak*, EU:C:2017:582, para. 3.

¹⁷ WP136 (*supra* Chapter II. note 2), p. 5.

¹⁸ *Ibid.*, p. 6.

¹⁹ C. Bergauer, 'Begriff und Kategorien' in R. Knyrim (ed.), *Datenschutz-Grundverordnung* (Manz, 2016), p. 50; D. Jahnel and C. Bergauer, *Teil-Kommentar zur DS-GVO* (*supra* Chapter II. note 1), p. 26; C. Bergauer, 'Art 4 Z 1 personenbezogene Daten' (*supra* Chapter II. note 1), para. 9.

²⁰ WP136 (*supra* Chapter II. note 2), p. 6.

²¹ M. Finck and F. Pallas, 'They who must not be identified – distinguishing personal from non-personal data under the GDPR', 10 *International Data Privacy Law* (2020), p. 13; N. Purtova, 'The law of everything. Broad concept of personal data and future of EU data protection law' (*supra* Chapter II. note 15), p. 49; L. A. Bygrave, 'Information Concepts in Law: Generic Dreams and Definitional Daylight', 35 *Oxford Journal of Legal Studies* (2015),

data and information, given that data does not necessarily equal information, can be viewed critically.²² However, a further discussion of the differences between the two concepts would go beyond the scope of this work.

The nature of the information can be both objective and subjective to be considered ‘personal data’ under Article 4 (1) GDPR.²³ Therefore, not only objective facts, such as a person’s age, are included, but also subjective opinions on the consumer behaviour of an individual.²⁴ Moreover, it does not matter whether the information is true or false, accurate or inaccurate, for it to be considered ‘personal data’.²⁵

There are no specific criteria regarding the content of the information. The definition of ‘personal data’ contains both information relating to the private and family life on an individual and information relating to any type of public behaviour by the individual,²⁶ such as employment affairs or the political or leisure activities of the individual.²⁷ The GDPR itself mentions data processing in the context of employment²⁸ and data revealing political beliefs.²⁹ The CJEU also ruled in the *Lindqvist* case that working conditions and hobbies are included in the term ‘personal data’.³⁰ The fact that the concept of ‘personal data’ includes not only data concerning private and family life is also in line with the Charter since the protection of personal data is specifically enshrined in Article 8 of the Charter and this is independent of Article 7, which protects private and family life.³¹

The format or medium on which the information is held is not relevant according to the WP29, which cites alphabetic, numeric, graphic, photographic and audio information as examples.³² For example, an email or a drawing of a child

p. 96; C. Bergauer, ‘Begriff und Kategorien’ (*supra* Chapter II. note 19), p. 43; W. Ziebarth, ‘Artikel 4 Begriffsbestimmungen’ in G. Sydow (ed.), *Europäische Datenschutzgrundverordnung* (2nd edition, Nomos Verlag, 2018), para. 8; C. Bergauer, ‘Art 4 Z 1 personenbezogene Daten’ (*supra* Chapter II. note 1), para. 9.

²² See already on the DPD, M. Albers, *Informationelle Selbstbestimmung* (Nomos Verlag, 2005), p. 318.

²³ WP136 (*supra* Chapter II. note 2), p. 6.

²⁴ A. Klabunde, ‘Art. 4 Begriffsbestimmungen’ (*supra* Chapter II. note 4), para. 9; C. Bergauer, ‘Begriff und Kategorien’ (*supra* Chapter II. note 19), p. 51.

²⁵ WP136 (*supra* Chapter II. note 2), p. 6; D. Jähnel and C. Bergauer, *Teil-Kommentar zur DS-GVO* (*supra* Chapter II. note 1), p. 27.

²⁶ See Case C-465/00 *Österreichischer Rundfunk*, EU:C:2003:294, paras. 73, 74; Case C-615/13 P *ClientEarth*, EU:C:2015:489, para. 30; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European data protection law*, (Publications Office of the European Union, 2018), p. 86.

²⁷ WP136 (*supra* Chapter II. note 2), p. 6.

²⁸ See Article 88 GDPR.

²⁹ See Article 9 (1) GDPR.

³⁰ Case C-101/01 *Lindqvist*, EU:C:2003:596, para. 24.

³¹ See Articles 7 and 8 of the Charter.

³² See WP136 (*supra* Chapter II. note 2), p. 8; A. Klabunde, ‘Art. 4 Begriffsbestimmun-

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