

# Data Protection as regulation

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# Introductory remarks

- Data protection as a regulatory regime
  - EU Charter of Fundamental Rights, Art. 8
    - (3) Compliance with these rules shall be subject to control by an independent authority
  - General Data Protection Regulation, Art. 83
    - From 2% to 4% of the total worldwide annual turnover
- Data protection as a barrier to digital trade
  - WTO General Agreement on Trade in Services, Art. XIV:  
*General Exceptions*
    - ‘(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
      - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;’

# Regulatory oversight

- ‘complete independence’
  - ‘human, technical and financial resources, premises and infrastructure necessary’
  - ‘dismissal only in cases of serious misconduct or...no longer fulfils the conditions required’
- Tasks
  - Promote good practice
- Powers
  - Investigative:
  - Corrective
  - Authorisation or advisory

# Transborder data flows

- Transfers of personal data only to countries with an ‘adequate level of protection’
  - Adequacy analysis
    - Content of applicable rules
    - Effective application
  - Adequacy decisions (to date)
    - Andorra, Argentina, Canada (commercial organisations), Faeroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland and Uruguay
  - Case C-362/14 *Shrems*
    - Standard of review: ‘essentially equivalent’
      - ‘no administrative or judicial means of redress’
  - Data localisation provision?