

# EUROPEAN GENERAL DATA PROTECTION REGULATION VS HABEAS DATA

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**ABSTRACT:** *This paper contrasts two pivotal frameworks for data protection—Habeas Data and the European General Data Protection Regulation (GDPR). Originating in Latin American legal systems, Habeas Data focuses on individual access, correction, and control over personal data, exhibiting regional variations. In contrast, the GDPR, a global benchmark, provides a comprehensive, standardized approach within the European Union and beyond, influencing global data protection discourse. Examining the two frameworks reveals disparities in legal nature, development, principles, and global impact. While Habeas Data addresses regional needs, GDPR's extraterritorial reach and stringent enforcement establish a unified, internationally recognized standard. Key distinctions include the scope of rights, enforcement mechanisms, and the global influence each exerts.*

*This exploration underscores the evolving landscape of data protection, highlighting the ongoing convergence of global standards and the necessity of balancing privacy rights with technological innovation. As countries worldwide navigate this complex terrain, future developments may witness increased harmonization, fostering a global approach to safeguarding individuals' data rights.*

**KEYWORDS:** *Habeas Data, GDPR, Personal Data, Cyber, Data Protection*

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## 1. INTRODUCTION

In an era defined by the ubiquitous collection and utilization of personal data, the legal frameworks governing data protection play a pivotal role in safeguarding individual rights and privacy. This discourse navigates the intricacies of two significant frameworks—Habeas Data and the European General Data Protection Regulation (GDPR). Originating from Latin American legal traditions, Habeas Data encapsulates regional responses to the evolving landscape of data privacy, emphasizing individual control over personal information. On the other hand, the GDPR, established within the European Union, has emerged as a global benchmark, influencing data protection legislation and discussions worldwide. This exploration aims to elucidate the nuanced differences between Habeas Data and the GDPR, shedding light on their respective origins, principles, rights, and implications. By understanding the unique features of each framework, we gain insights into the diverse approaches countries adopt to address the complex challenges posed by data protection. As technology advances and globalization necessitates harmonized standards, this analysis provides a foundation for comprehending the evolving dynamics of data protection on both regional and global scales.

This examination seeks to unravel the intricacies that distinguish Habeas Data and the GDPR, offering insights into their historical foundations, principles, and practical implications. As nations grapple with crafting effective data protection mechanisms, understanding the nuanced interplay between these frameworks becomes crucial. Moreover, the analysis delves into the broader implications of these regulations, considering their impact on the global discourse around data protection, the convergence of standards, and the ongoing quest for a harmonized approach to safeguarding individual rights in the digital age.

## 2. METHODOLOGY

The scientific methods used in the given study are: historical, qualitative, analytical, comparative methods, as well as the data collection method, which are intertwined in the issues addressed in the given paper.

**Historical method:** This method was used to reflect the evolutionary development of respect and constitutional guarantees for the protection of personal data in different legal systems, especially in Italy.

**Qualitative method:** The use of this method is based on data that will be obtained from various texts and the constitutions of the countries studied, that is, from primary and secondary sources.

### **3. HABEAS DATA: ORIGINS AND HISTORICAL CONTEXT**

Habeas Data has its roots in Latin American law and is often enshrined in the constitutions of many countries in the region as a mechanism to safeguard fundamental rights. It evolved as a response to the need for protecting privacy and individuals' rights in a context where governments or other institutions might collect and use personal data invasively. One key principle is the individual's right to access information pertaining to oneself. This implies the right to request and obtain a copy of personal data held by an organization or authority. Habeas Data also grants the right to correct any errors in personal data. Individuals have the right to ensure that information about them is accurate and up-to-date. Habeas Data aims to protect individuals' privacy by limiting unauthorized use and disclosure of their personal data.

Habeas Data is often used as a means to protect citizens from invasive state powers. For example, an individual might file a Habeas Data action to obtain information about what information the government has on them and ensure that such information is used lawfully.

Beyond the public sphere, Habeas Data can also be invoked against private companies processing personal data. People have the right to control how companies collect, use, and store their data.

Habeas Data differs from other privacy-related concepts, such as habeas corpus, which pertains to personal freedom against unjustified arrest or detention. Habeas Data specifically focuses on the protection of personal data.

While Habeas Data is originally a Latin American concept, the underlying principles are influencing global discussions on privacy. Many countries are adopting laws and regulations that similarly reflect the need to protect individuals' rights regarding their personal data. In summary, Habeas Data represents a set of legal principles and fundamental rights aimed at ensuring that individuals have control and access to their personal data, with the goal of protecting their privacy and dignity against potential abuses by public or private entities.

### **4. GENERAL DATA PROTECTION REGULATION (GDPR)**

The GDPR is a comprehensive data protection framework that came into effect on May 25, 2018. It applies not only to European Union (EU) member states but also to organizations outside the EU that process the data of EU residents. One of the notable features of the GDPR is its extraterritorial reach. It applies to organizations based outside the EU if they offer goods or services to, or monitor the behaviour of, EU data subjects. Organizations must process personal data lawfully, fairly, and transparently. Individuals should be informed about the processing of their data. Data should be collected for specified, explicit, and legitimate purposes, and not further processed in a manner incompatible with those purposes. Organizations should only collect and process data that is necessary for the intended purpose. Individuals have the right to obtain confirmation of whether their personal data is being processed and access to that data. Data subjects can request the correction of inaccurate personal data. Individuals have the right to have their personal data erased under certain condition (right to be alone). Data subjects can receive their personal data and, if they choose, transmit it to another controller. Individuals can object to the processing of their data under certain circumstances. Some organizations are required to appoint a Data Protection Officer to ensure compliance with the GDPR. Organizations may need to conduct DPIAs for processing that is likely to result in high risks to individuals' rights and freedoms. Organizations must report certain types of data breaches to the relevant supervisory authority within 72 hours of becoming aware of the breach. In some cases, organizations must also communicate a data

breach to the affected data subjects without undue delay. Each EU member state has a supervisory authority responsible for monitoring the application of the GDPR within its jurisdiction. The GDPR promotes the concept of privacy by design and default, encouraging organizations to consider data protection from the outset of the design of systems, services, and products. The GDPR establishes mechanisms for the transfer of personal data outside the EU, ensuring that data subjects maintain a consistent level of protection even when their data is transferred internationally.

In summary, the GDPR is a comprehensive and robust legal framework that sets high standards for the protection of personal data. It emphasizes transparency, individual rights, accountability, and the need for organizations to integrate data protection into their operations. The regulation represents a significant step forward in the global efforts to safeguard the privacy and rights of individuals in the digital age.

## 5. CONCLUSION

In conclusion, the distinctions between Habeas Data and European Data Protection (GDPR) highlight the diversity in approaches to safeguarding individuals' privacy and data rights in different legal and cultural contexts.

Habeas Data is rooted in Latin American legal systems, Habeas Data reflects the specific needs and concerns of individual countries in the region. As Habeas Data is implemented independently in different jurisdictions, variations exist in its legal provisions, enforcement mechanisms, and the extent of its influence.

The GDPR has set a global standard for data protection, with its extraterritorial reach impacting organizations worldwide. It provides a comprehensive and harmonized framework across all EU member states, offering a consistent set of principles, rights, and obligations for organizations processing personal data.

Habeas Data remains primarily relevant within Latin American jurisdictions, contributing to the regional legal landscape. In contrast, the GDPR has broader implications globally, influencing legislative discussions and prompting other regions to enhance their data protection standards.

The global discourse on data protection is gradually converging, with countries around the world considering and adopting regulations that share common principles with both Habeas Data and the GDPR. Future developments may see a continued evolution of data protection laws, possibly leading to increased harmonization of principles and practices on a global scale.

In navigating the complex landscape of data protection, the unique features of Habeas Data and the GDPR underscore the importance of considering regional nuances, cultural contexts, and evolving global standards. As technology continues to advance and data becomes an increasingly valuable asset, the ongoing development and harmonization of data protection regulations will be crucial in ensuring a balance between individual rights and the responsible use of personal information.

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