

Privacy and the Protection of Personal Data

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Cyberspace & Cyberlaw 14 April 2009



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BIRD & BIRD

roadmap

- backgrounds
 - what is 'privacy' anyway?
- European Privacy Law
 - EU Privacy Directive (95/46)
 - rules for the processing of personal data
 - when may 'controllers' process personal data..?
 - what rights have 'data subjects'...?

Privacy and
electronic
communications
Directive 2002/58

People do not have secret trolleys at the supermarket, so how can it be a violation of their privacy if a grocer sells their purchasing habits to a marketing firm? If they walk around in public view, what harm can cameras recording their movements cause?

A company is paying them to do a job, so why should it not read their emails when they are at work?

Economist January 2007

to define the province of privacy distinctly is impossible

James Fitzjames Stephen

the most striking thing about the right to privacy is that nobody seems to have any clear idea of what it is

Is Thompson 1975

privacy means many things to many people and different things in different contexts

Berman & Mulligan 1999

the concept of privacy is elusive and ill-defined

Posner 1978

studies about privacy show that 80 percent of us are concerned about privacy. the bad news is that we do not know what we mean

Branscomb 1994

the right to be left alone

Samual D. Warren & Louis D. Brandeis 1890

viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small group intimacy or, when among larger groups, in a condition of anonymity or reserve

the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about themselves is communicated to others

Alan F Westin 1967

*you have zero
privacy anyway*

get over it

Scott McNealy CeO Sun Microsystems

Privacy

- relational privacy
 - the right to be left alone
 - the inviolability of the home
- secrecy of communications
 - claims with respect to the secrecy of the medium
 - correspondence
 - telephone
- informational privacy
 - protection of personal data

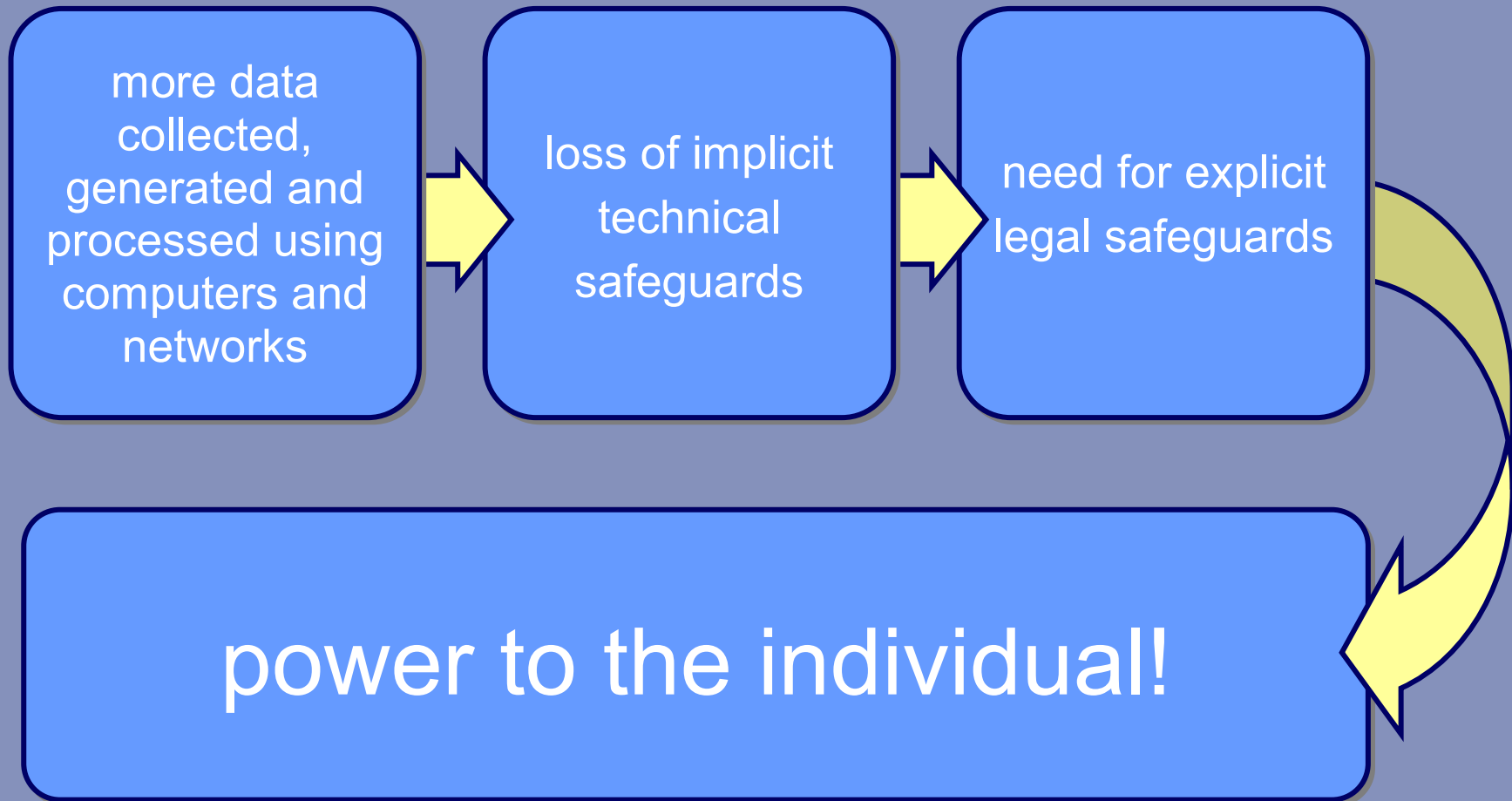
Westin
"claims of individuals to..."

Westin:
"viewed in terms of the relation..."

paper...



informational privacy... why?



privacy law

fundamental rights

1948 Univ. Decl. of Human Rights (art. 12)

1950 European Convention on Human Rights (art. 8)

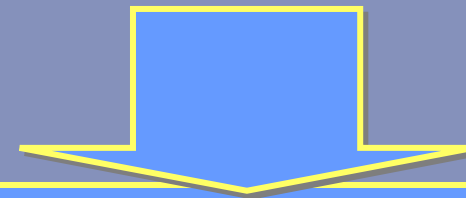
1966 Intern. Covenant on Civil and Political Rights (art. 17)

harmonisation

1980 OECD-Guidelines

1981 CoJ Convention 108

1995 EC Data Protection Directive 95/46/EC



Wet bescherming persoonsgegevens

Data Protection Act 1998

Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés

Personuppgiftslagen etc.

more privacy law

electronic
communications

directive 2002/58/EC

- security of networks and services
- call blocking
- caller identification
- directory services
- traffic and location data

Data Retention
Directive
2006/24

Electronic
Communications
and Privacy
Directive 2008/58

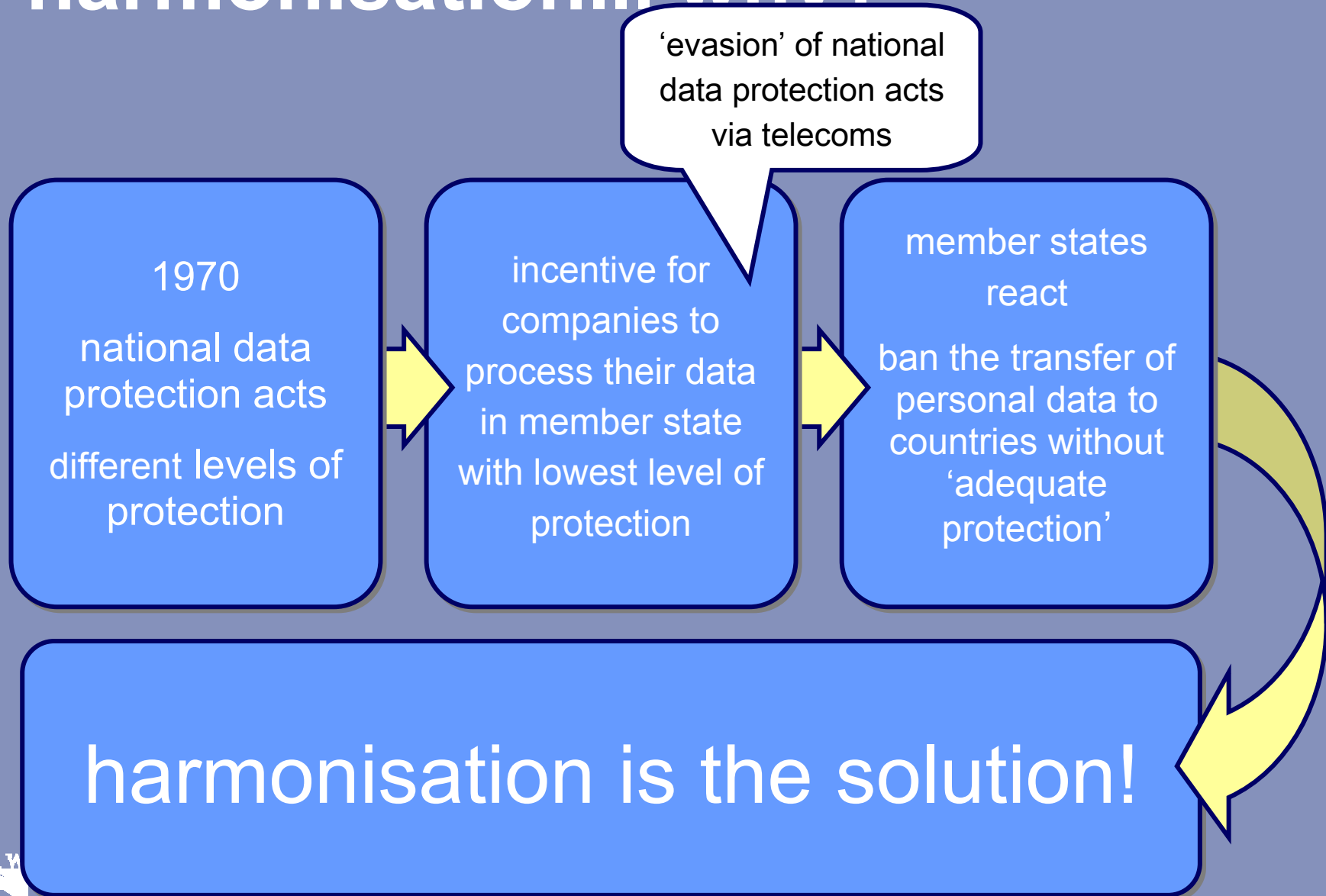
European Privacy Law

Directive 95/46/EC OJ. L281, 23.11.1995, p. 31 – 50

objective of directive 95/46/EC

- protection of fundamental rights and freedoms of natural persons
 - and in particular their right to privacy with respect to the processing of personal data
- no restrictions for the free flow of personal data between Member States
 - for reasons connected with the protection of these rights

harmonisation... why?



processing personal data

- personal data
 - any information relating to an identified or identifiable natural person
 - contact details, e-mail, subscription data, mileage, etc.
- processing
 - any operation or set of operations which is performed upon personal data, whether or not by automatic means
 - collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction, etc.

'data subject'

'controller'

applicability

- processing of personal data
 - wholly or partly by automatic means
 - data which form part of a filing system or are intended to form part of a filing system
- exemptions
 - processing by a natural person in the course of a purely personal or household activity
 - specific acts
 - police files, municipal data, voting registers, etc.

structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis



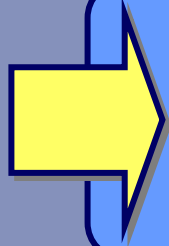

journalistic artistic literary purposes

- limited applicability on processing for journalistic, artistic or literary purposes
 - material rules for processing do apply
 - fair and lawful processing
 - processing grounds
 - collection for specific purposes
 - etc.
 - but no notification requirements

newspapers,
television, radio,
magazines, etc.
websites..?

establishment in the Netherlands

- processing carried out in the context of the activities of an establishment of the controller in the Netherlands

 does the DPA also apply if the data are processed abroad, and/or if the data do not relate to Dutch citizens? 

no establishment in the EU

- use is made of equipment, automated or otherwise, situated in the Netherlands
 - unless such equipment is used only for purposes of transit through the territory of the Community



what if there is no establishment in the Netherlands but there is in another Member State..?



rules for processing personal data

when is processing allowed?

- there must be a processing ground
 - data subject's consent, agreement, legal obligation, legitimate interest etc.
- further processing for purposes not incompatible with collection purposes
 - purpose binding
- collecting data only for specific purposes,
 - explicitly defined, and
 - legitimate
- data not stored longer than necessary
 - for the purposes for which they were collected

legitimate processing

Article 7 Directive 95/46

- processing is only allowed...
 - with unambiguous consent of the data subject
 - necessary for the performance of a contract
 - necessary for compliance with a legal obligation
 - necessary in order to protect the vital interests of the data subject
 - necessary for the performance of a task carried out in the public interest or in the exercise of official authority...



and processing is allowed...

Article 7

- processing is also allowed...
 - if the processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed...
 - except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject

collection and further processing

Article 6(1)(b)

- collection of personal data is allowed for purposes that are
 - specified and explicit
 - and legitimate
- further processing is allowed
 - if this is done in a way that is not incompatible with the purposes for which the data are collected

special data

Article 8

- data on racial or ethnic origin, sex life, political opinions, religious or philosophical beliefs, trade union membership, health,
 - and social security number
- may not be processed, unless
 - by certain controllers
 - for certain purposes
- or with explicit consent of the data subject (etc.)

security obligation

- implement
 - appropriate technical and organizational measures to protect personal data against unlawful forms of processing
- to ensure
 - a level of security appropriate to the risks represented by the processing and the nature of the data to be protected
 - having regard to the state of the art and the cost of their implementation



Data protection watchdog distributes email mailing list

Friday 29th October 2004 09:51 GMT. The Dutch Data Protection Authority (Dutch DPA), which supervises the compliance with acts that regulate the use of personal data, was rather red-faced this week when it sent out a newsletter with all of the recipients in the Cc: field instead of the Bcc: field.

DPA's news letter goes out to 4000 subscribers. The DPA, which supervises the compliance with the Dutch Personal Data Protection Act and the Dutch Municipal Database Personal Records Act, was lucky that 'only' a thousand subscribers received the letter, but it managed to make the mistake twice. In a message it apologised for sending the first letter, again putting all recipients to the Cc list, so a second apology had to be sent.

<wilbert.vrouwenvelder@ minvenw.nl>, <gert.wabeke@ kpn.com>, <twagemans@ ebay.com>, <j.wester@ minez.nl>, <m.wiegel@ nctb.nl>, <leon.de.wit@ nl.pwc.com>, <a.p.h.g.van.zantvoort@ minjus.nl>, <hz@ kahuna.nl>, <gerrit-jan.zwenne@ twobirds.com>, <righard.zwienenberg@ norman.no>

Cc: "Dries, Hein" <H.Dries@ opta.nl>, "Man, Mei Po" <M.Man@ opta.nl>

Conversation: Consultatiedocument voorgenomen beleidsregels basismaatregel ogv art. 11.3 Tw

Subject: Consultatiedocument voorgenomen beleidsregels basismaatregel ogv art. 11.3 Tw

Geachte heer/mevrouw,

Hierbij ontvangt u het Consultatiedocument beleidsregels basismaatregelen op grond van artikel 11.3 van Telecomwet.

Voor verdere informatie verwijs ik u naar de bijlagen die in deze email zijn bijgevoegd.

Met vriendelijke groet,

Daniëlle Kick
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Opta Onafhankelijke Post en Telecommunicatie Autoriteit
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Tel.: + 31 (0)70 - 3159232
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P.O. Box 90420; NL-2509 LK Den Haag
H Muzenstraat 41; NL-2511 WB Den Haag

transparency and more...

- obligations of controllers
 - notification to the Data Protection Authority
 - provide information to data subject
 - notification to third parties of rectification or erasure or blocking
- rights of data subjects
 - access
 - rectification, removal, blocking
 - object
 - processing based upon art. 7(e) - (f)
 - processing for direct marketing purposes

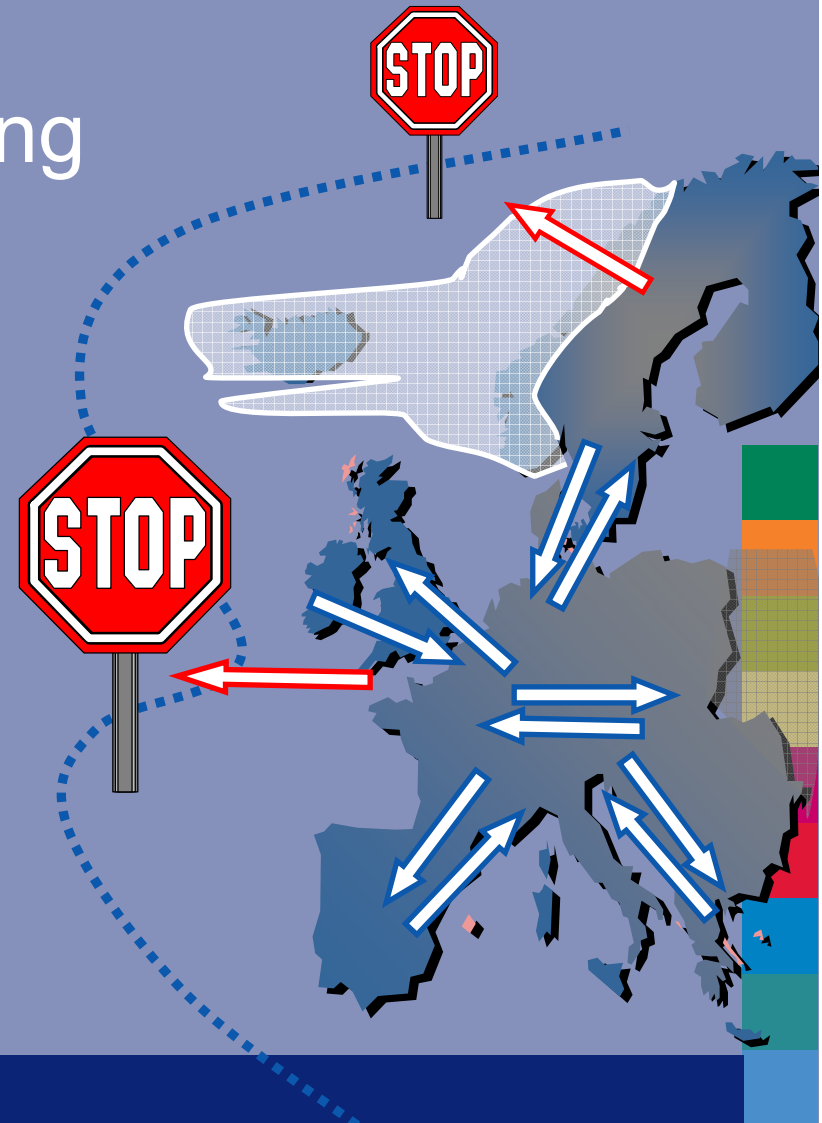


transfer of personal data
prohibited (art. 76 Wbp)



transfer rules

- inside the EU
 - no restrictions regarding cross border transfer
- outside the EU
 - restrictions regarding data transfer

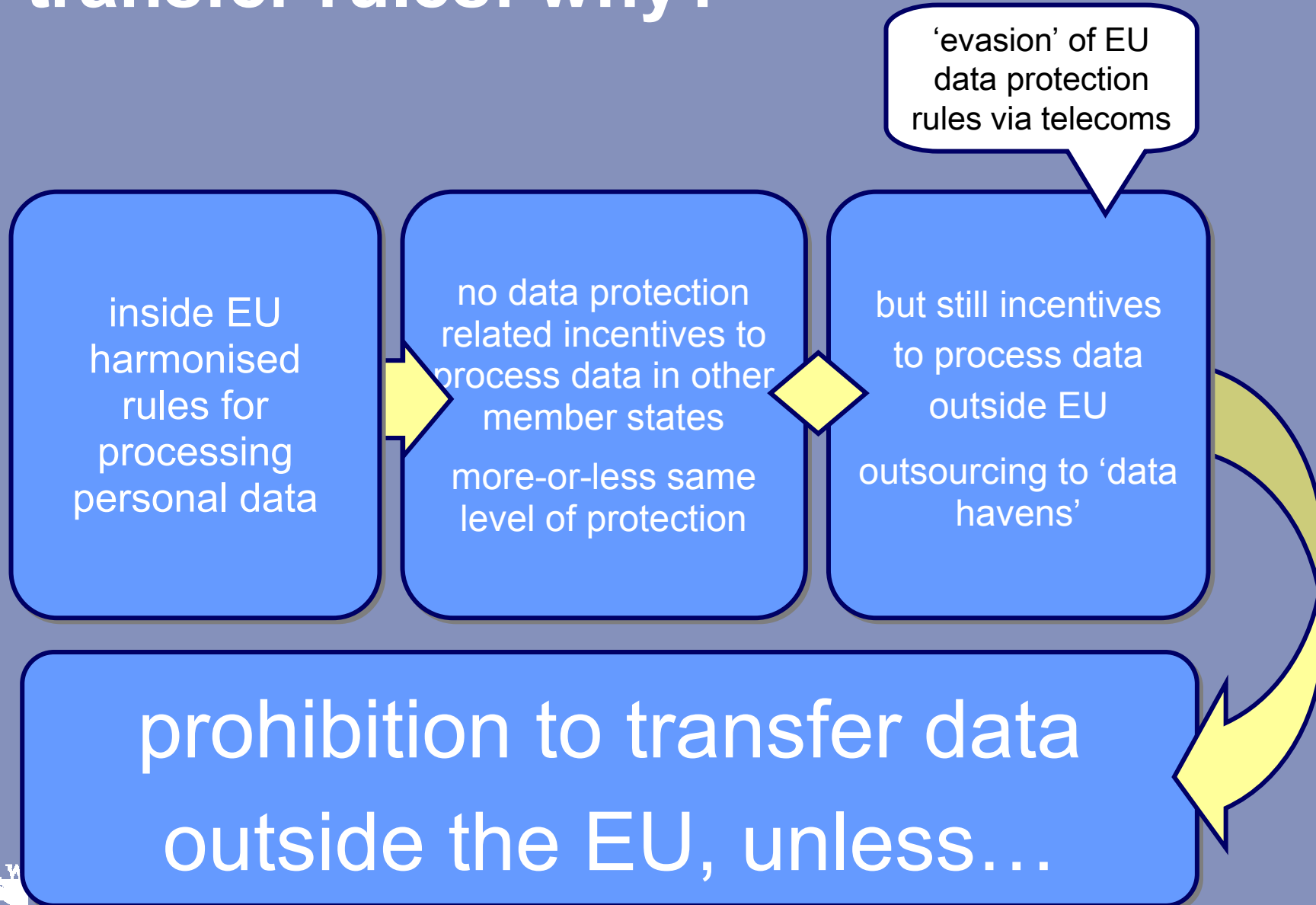


transfer to third countries

Article 25

- in principle, transfer is only allowed if the non EU-country provides an adequate level of protection
 - US “safe harbor principles”
 - www.export.gov/safeharbor
 - “EC Standard Contractual Clauses”
 - europa.eu.int/comm/internal_market

transfer rules: why?



no adequate level

Article 26

- if there is no adequate level of protection, the transfer is allowed nevertheless
 - with unambiguous consent
 - performance of a contract to which the data subject is party or a contract closed in the interest of the data subject; or
 - important public interest grounds, or for the establishment, exercise or defence of legal claims; or necessary to protect the vital interests of the data subject, from public registers

Madoff data can be extradited back to US **High Court says legal interest trumps data protection**

26th March 2009 10:18 GMT: Data which is protected by the Data Protection Act can be transferred to the US to help in the investigation of companies run by Bernard Madoff, the UK High Court has said.

The Data Protection Act (DPA) forbids the export of personal data to countries where privacy protection is poor. Pickard and provisional liquidators in the UK applied for permission to send data relating to a Madoff Securities International Ltd to Pickard in New York.

The transfer would usually be barred by the DPA but it does have some exceptions. Data can be transferred, it says, when "the transfer is necessary for reasons of substantial public interest" and when "the transfer is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)".

"I am satisfied that it is in the public interest for an alleged fraud on this scale and of this complexity to be investigated, and on the evidence before me I am therefore satisfied that transfers of the information scheduled to the draft order are necessary for reasons of substantial public interest," said Mr Justice Lewison in the High Court.

solutions

Safe Harbor (US-only)

- Cie. Decision 520/2000/EG
 - Safe Harbor provides for adequate protection
- Safe Harbor List
 - o.a. Apple Computers, Hewlett Packard, Microsoft Corp. and its US subsidiaries, Kodak, Foot Locker, Tupperware Corp., Procter & Gamble & US affiliates, enz

<http://web.ita.gov/safeharbor>

Standard Clauses

- export EU d.p. rules to third countries
- between
 - data exporter and data importer
 - controller-to-controller (c2c)
 - controller-to-processor (c2p)
- sometimes permit required!
 - Netherlands, France...

http://biphome.spray.se/mors/ - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Media Print Mail

Address http://biphome.spray.se/mors/ Go Links

spray * Gör hemsidan proffsigare köp en domän 199 kr | * Spray Mail - gratis e-post med spamskydd

sök med LYCOS Sök

Vad vore livet utan datorn?



Välkommen till tant Bodil privat som är en salig blandning mellan andligt och profant. Sidan kan möjligen innehålla känsliga uppgifter både om min hälsa och min religiösa tillhörighet. Vilket i och för sig är allvarligt, men jag lämnar härmed mitt samtycke till att jag får publicera dessa uppgifter, så släng dig i väggen Ulf Widebäck (Generaldirektör för datainspektionen och synnerligen nitisk tjänsteman) Och om någon mot förmodan skulle känna igen sig så är det bara ett beklagligt sammanträffande ty det som har berättats här har ju aldrig hänt eller?



Alla Bodils goda sidor

[Startsidan] [Hela storyn] [Varför?] [Artiklar] [Saga] [Gästbok] [Maila mig!]

Och rättvisans kvarnar mal långsamt! Men väl!



Länkar till mina övriga skötebarn

- **Stensjöns församling**
Min stolthet, mitt hem och glädje.
- **Mölnadals hembygdsförening**
Även föreningslivet tar bruk av mig!
- **Grundsunda församlings hemsida**
Numera administrerad av Sten Bylin, men framtagen av undertecknad
- **Den dömda**
Vågar ni se den? Kolla då på egen risk.
- **Göteborgs stifts kyrkor**
Kan kyrkbilder vara intressant?

Med mest kristet innehåll

- **Mina betraktelser**
Tankar när jag haft tid
- **Konfirmandmaterial**
Egenhändigt tillverkat konfirmandmaterial
- **Kunskapstest för konfirmander**
Testa om du kan få tjugo rätt..
- **Trosbekännelser**
Tänkvärda trosbekännelser från diverse konfirmander.
- **Slutord.**
Summering och avslut

Kära besökare

Min förhoppning är att du hittat någon intressant läsning på dessa sidor. Hör gärna av dig med tips och ideer om hur jag ska göra denna hemsida ännu mera läsvärd!
mail
031.3310815@telia.com

Tack för besöket, välkommen till...
Du är besökare **0063**

ECoJ 6 November
2003 Case C101/01

Opening page http://biphome.spray.se/mors/left.html...

Start Microsoft Word Adobe Acrobat Inbox - Microsoft O... http://biphome.s... 12:00

applicable to websites?

- automated processing of personal data
- exemptions do not apply
 - public security, defence, State security (incl. economic well-being of the State) and the activities of the State in areas of criminal law
 - a natural person in the course of a purely personal or household activity
 - journalism etc

not considered 3rd country transfer

even if the data can be accessed from third countries, because...

“given, first, the state of development of the internet at the time Directive 95/46 was drawn up and, second, the absence, in Chapter IV, of criteria applicable to use of the internet...”

...one cannot presume that the Community legislature intended the expression transfer [of data] to a third country to cover the loading, by an individual in Mrs Lindqvist's position, of data onto an internet page, even if those data are thereby made accessible to persons in third countries with the technical means to access them”



tot ziens!

<<http://zwenneblog.weblog.leidenuniv.nl>>

