

LAW AND DIGITAL TECHNOLOGIES

Internet Privacy and Data Protection

Seminar 2
The history, context and background of European Data Protection Law: the legal framework and institutions *prof. dr. Gerrit-Jan Zwenne*

October 14th, 2015




HISTORY


development of privacy and data protection law in Europe

1948 Universal Declaration (art. 12)	} <i>fundamental rights and freedoms</i>
1950 ECRM (art. 8)	
1980 OECD-Guidelines?	
1981 CoE Convention 108	} <i>harmonisation</i>
1995 EC DP Directive 95/46/EC	
2000 EU Charter of Fundamental Rights	
2016 General Regulation on DP	

→ • EC Version 56 29/11/2011
• EC Draft 25 January 2012
• EP LIBE draft 21 October 2013
• Council proposal 11th June 2015
•?

• *Wet bescherming persoonsgegevens*
• Data Protection Act 1998
• *Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*
• Personuppgiftslagen
• etc.



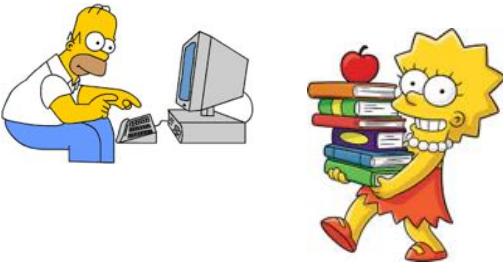


United Nations 1948 **ECHR Council of Europe 1950**

• Europe's leading human rights organisation
 • Now 47 member (incl. the 28 EU member states)

Article 8
 1. 'Everyone has the right to respect for his private and family life, his home and his correspondence.'
 2. No interference; only if:
 - necessary in democratic society - in limited circumstances (e.g. national security, rights of others)

Information technology



development of privacy and data protection law in Europe

1948 Universal Declaration (art. 12)	} <i>fundamental rights and freedoms</i>
1950 ECRM (art. 8)	
1980 OECD-Guidelines?	
1981 CoE Convention 108	} <i>harmonisation</i>
1995 EC DP Directive 95/46/EC	
2000 EU Charter of Fundamental Rights	
2016 General Regulation on DP	→

- *Wet bescherming persoonsgegevens*
- Data Protection Act 1998
- Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés
- Personuppgiftslagen
- etc.

- EC Version 56 29/11/2011
- EC Draft 25 January 2012
- EP LIBE draft 21 October 2013
- Council proposal 11th June 2015
-?

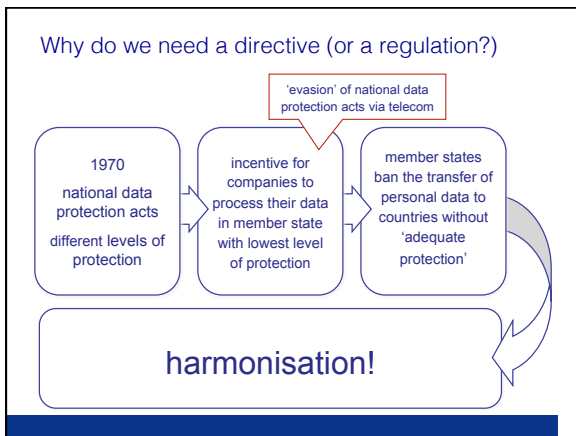


data processing 1960's




1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz





EU Charter of Fundamental Rights 2000

- art 7 privacy
- art 8 data protection
- art.11 freedom of information



horizontal effect?

'there may be positive obligations inherent in an effective respect for private or family life [...].

These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves'

I. v. Finland 2008

HARMONISATION

CoE Data Protection Convention 108

- 48 parties to this convention
- A revision in the works

EU Data Protection Directive 1995

objectives

- free flow of personal data within EU (internal market)
- A high level of protection of fundamental rights (privacy and related rights)



the regulation ~ legal basis of...

Article 16(2)

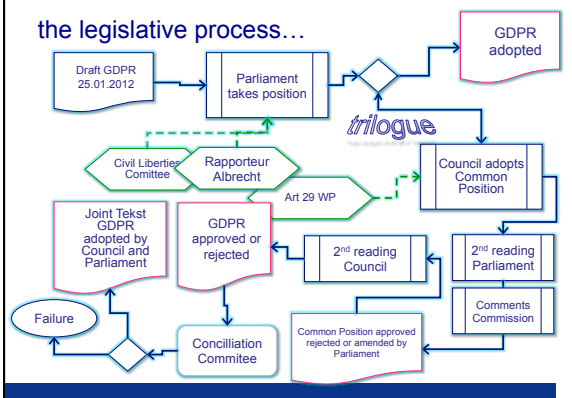
The European Parliament and the Council [...] shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. [...]

Article 114(1)

The European Parliament and the Council shall [...] adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.




the legislative process...




risk of over-regulation

- GDPR is far more detailed and prescriptive
- does it provide sufficient flexibility?
- not always an obvious link between the measures to take and the protection of privacy
- risk of 'red tape' and cosmetic solutions




DP Directive	GDPR Regulation
34 articles	91 articles
72 recitals	139 recitals
8 definitions	19 definitions
scope extends to local processing	scope extends to global processing
no powers delegated to EC	many powers delegated to EC

Art. 6(5), 8(3)-(4), 9(3), 12(5)-(6), 10(7)-(8), 15(3)-(4), 17(9), 18(3), 20(5), 22(4), 23(3)-(4) etc.



INSTITUTIONS

European Court of Human Rights (ECtHR)



- broad interpretation of privacy (art. 8 ECHR)
- the concept of "private life" is a broad term not susceptible to exhaustive definition

S. and Marper v. UK 2008 ←

EU Court of Justice (CJEU)

- Luxembourg
- highest authority on interpreting EU law
- national courts can ask CJEU advice on interpretation EU law

- Examples
- *Data Retention*
 - *Google Spain*
 - *Schrems*

Independent authorities

- *ICO, CNIL, Cbp, etc.*
- National: Data Protection Authorities (DPAs)
 - Article 29 Working Party: Advisory body: opinions, working documents etc.
 - EDPS (European Data Protection Supervisor) Supervises processing by EU bodies (Reg 45/2001, art 41-48)

questions?
g.j.zwenne@law.leidenuniv.nl
