

LAW AND DIGITAL TECHNOLOGIES

Internet Privacy and Data Protection

Seminar I

Introduction. History, Context and Background of
European DP Law. DP Institutions *prof. dr. Gerrit-Jan
Zwenne*

October 19th, 2016



your professors for this course



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course overview

19th October

I. Introduction. History, Context and Background of European DP Law. DP Institutions prof. Gerrit-Jan Zwenne

II. The Significance of EU DP Law in Europe and the Rest of the World dr. Peter Hustinx

26th October

III. The Concept of Privacy prof. Esther Keymolen

IV. Privacy in the Digital Age prof Esther Keymolen

2th November

V. Key concepts of EU Data Protection Law and its Applicability prof. Gerrit-Jan Zwenne

VI. Territorial Scope of DP Law prof. Gerrit-Jan Zwenne

9th November

VII. Principles relating to data protection prof. Gerrit-Jan Zwenne

VII. Data Subject Rights and Controller Obligations (incl. profiling. Third Country Transfers prof. Bart Custers

16th November

XI. Data Protection in Practice: A Data Protection Impact Assessment prof Bart Schermer

X. Exam Training prof. Gerrit-Jan Zwenne & prof. Esther Keymolen

★ *23 November*

Written Exam! prof. Gerrit-Jan Zwenne & prof. Esther Keymolen

★ *28 November*

paper due

our guest lecturer today



INTRODUCTION



third country transfer



*personal data?
profiling?*

health data.!

religious data..?



gender..?

*employee relationship:
consent?*

legitimate interest?

privacy....?

- physical *respect for physical and mental integrity (drugtest, cavity search)*
- territorial *inviolability of the home*
- communications *secrecy of correspondence*
- informational *claims of individuals with respect to information on them*

HISTORY

THE KODAK CAMERA.



"You press the button, -
- - - we do the rest."

The only camera that anybody can use
without instructions. Send for the Primer,
free.

The Kodak is for sale by all Photo stock dealers.

The Eastman Dry Plate and Film Co.,

Price \$25.00—Loaded for 100 Pictures.

ROCHESTER, N. Y.

A full line Eastman's goods always in stock at LOEBER BROS., 111 Nassau
Street, New York.

information technology



fundamental rights (inc. privacy rights)

harmonisation of national privacy law

fundamental rights (inc. privacy and data protection rights)

harmonisation and more

Council of Europe
European Convention
on Human Rights

Council of Europe
Convention for the
Protection of Individuals
with regard to Automatic
Processing of Personal
Data

**European
Communities**
Directive 95/46/EC on
the protection of
individuals with
regard....

European Union
Charter on
Fundamental Rights

European Union
Regulation 2016/679 on the
protection of natural
persons...

1950

1981

1995

2009

2018





data processing 1960's



1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz



(7) Whereas the difference in levels of protection of the rights and freedoms of individuals, notably the right to privacy, with regard to the processing of personal data afforded in the Member States may prevent the transmission of such data from the territory of one Member State to that of another Member State;

whereas this difference may therefore constitute an obstacle to the pursuit of a number of economic activities at

Community level, distort competition and impede authorities in the discharge of their responsibilities under Community law;

whereas this difference in levels of protection is due to the existence of a wide variety of national laws, regulations and administrative provisions;

(8) Whereas, in order to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data must be equivalent in all Member States;

whereas this objective is vital to the internal market but cannot be achieved by the Member States alone, especially in view of the scale of the divergences which currently exist between the relevant laws in the Member States and

Directive 95/46/EC

the need to coordinate the laws of the Member States, so as to ensure that the cross-border flow of personal data is regulated in a consistent manner that is in keeping with the objective of the internal market [...]

whereas Community action to approximate those laws is therefore needed;

the need for a directive or regulation

'evasion' of national data protection acts via telecom

*1970
national data protection acts
different levels of protection*

incentive for companies to process their data in member state with lowest level of protection

member states ban the transfer of personal data to countries without 'adequate protection'

harmonisation!

(9) *The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity. Differences in the level of protection of the rights and freedoms of natural persons, in particular the right to the protection of personal data, with regard to the processing of personal data in the Member States may prevent the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. Such a difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.*

(13) [...] *The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.*

General Data Protection Regulation

EU Data Protection Directive 95/46/EC (1995)

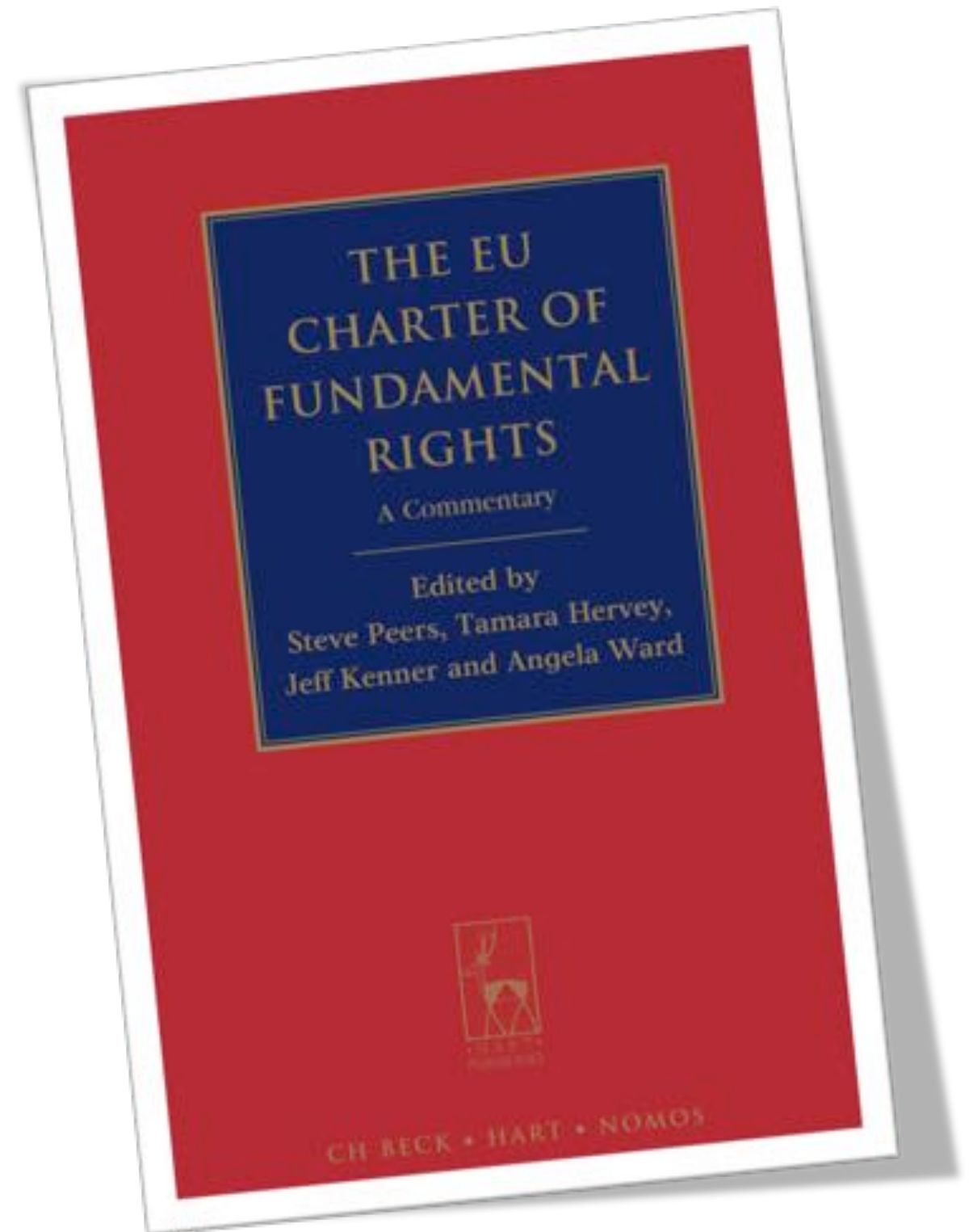
objectives

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



EU Charter of Fundamental Rights (2000)

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



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.



horizontal effect

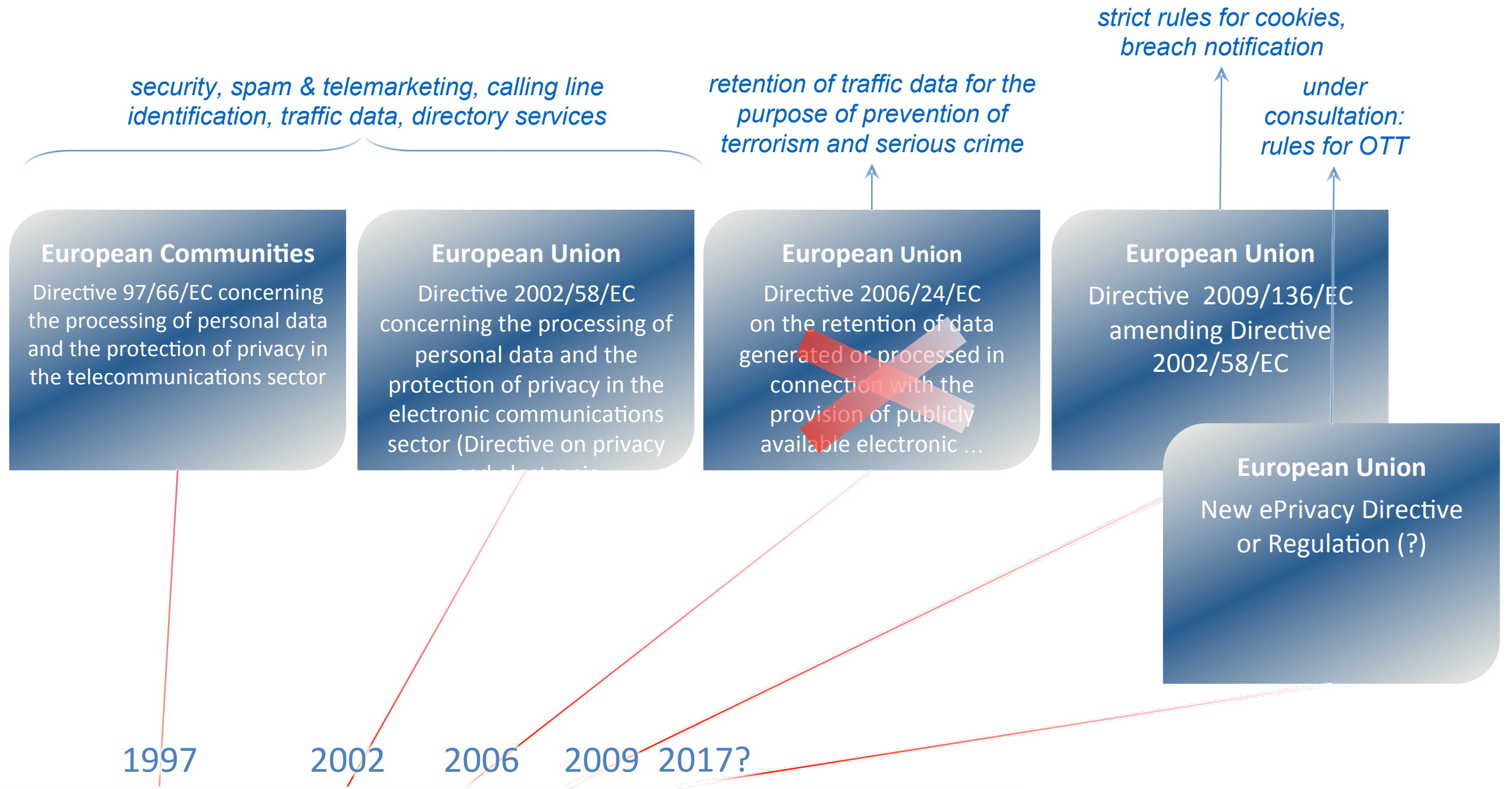
‘there may be positive obligations inherent in an effective respect for private or family life [...].

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

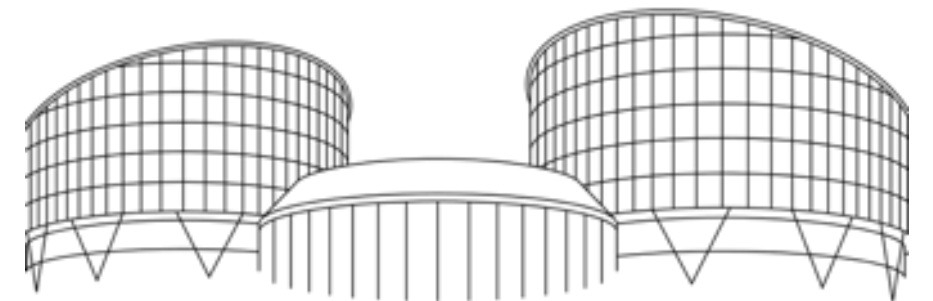
ePrivacy Directive 2002/58/EC



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



ROPEAN COURT OF HUMAN RIGI
EUROPÉENNE DES DROITS DE L'H

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

- *Lindqvist*
- *Data Retention*
- *Google Spain*
- *Weltimmo*
- *Schrems*
- *Breyer*

independent authorities

*ICO, CNIL, Cbp or Ap,
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)

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