

LAW AND DIGITAL TECHNOLOGIES  
INTERNET PRIVACY AND DATA PROTECTION

Principles and Rules for  
Processing Personal Data

Gerrit-Jan Zwenne  
Seminar VI  
November 9th, 2016



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data protection rules

- lawfulness, fairness and transparency → *lawfulness can be derived from consent, vital data subject interests, legitimate controller interests etc.*
- purpose specification and limitation →
- data and storage minimisation → *'time-limits on storage'*
- accuracy →
- effectiveness → *'credit-worthiness assessments'*
- integrity →
- accountability → *demonstrate compliance*



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Recital 39  
Art. 5(a) GDPR

**“lawfulness, fairness and transparency”**  
means personal data is processed lawfully,  
fairly and in a transparent manner in relation  
to the data subject

eg. a privacy statement

*'fair relationship  
between controller  
and data subject'*



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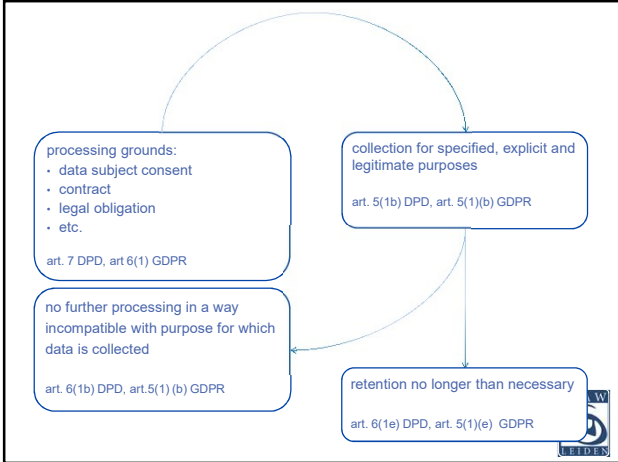
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### processing grounds

- (unambiguous) consent
- execution of a contract
- legal obligation
- data subject vital interest
- public authority
- legitimate interest




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### legitimate interest...

factors to consider when carrying out the balancing test :

- nature and source of the legitimate interest and whether the data processing is necessary for the exercise of a fundamental right, is otherwise in the public interest, or benefits from recognition in the community concerned;
- impact on the data subject and their reasonable expectations about what will happen to their data, as well as the nature of the data and how they are processed;
- additional safeguards which could limit undue impact on the data subject, such as data minimisation, privacy-enhancing technologies; increased transparency, general and unconditional right to opt-out, and data portability


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Recital 39  
Art. 5(1)(b) GDPR

“purpose specification” and “purpose limitation” means personal data collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes

- personal data which airlines gathered about their passengers for flight purposes cannot subsequently be used by immigration services at the destination
- achmea and albert heijn




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### purpose limitation

A substantive compatibility assessment requires an assessment of all relevant circumstances. In particular, account should be taken of the following key factors:

- the relationship between the purposes for which the personal data have been collected and the purposes of further processing;
- the context in which the personal data have been collected and the reasonable expectations of the data subjects as to their further use;
- the nature of the personal data and the impact of the further processing on the data subjects;
- the safeguards adopted by the controller to ensure fair processing and to prevent any undue impact on the data subjects.




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Art. 5(1)(c) GDPR

“data minimisation” means personal data is adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed;

they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data




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Art. 5(1)(e) GDPR

“**storage minimisation**” means personal data is kept in a form which permits direct or indirect identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed



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Art. 5(1)(d) GDPR

“**accuracy**” means personal data is accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay



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Art. 5(ea) GDPR

“**effectiveness**” means personal data is processed in a way that effectively allows the data subject to exercise his or her rights



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Art. 5(1)(f) GDPR

“**accountability**” processed under the responsibility and liability of the controller, who shall ensure and be able to demonstrate the compliance with the provisions of this Regulation




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Art.6 GDPR

**lawfulness of processing**

- data subject consent
- performance of a contract
- compliance with a legal obligation
- vital interest of the data subject
- public authority
- legitimate interest of controller or third parties to whom the data are provided




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Art. 7 GDPR

**conditions for consent**

- burden of proof
- written declaration which also concerns another matter
- withdrawal of consent
- purpose limitation

*consent must be presented clearly distinguishable in its appearance from this other matter*




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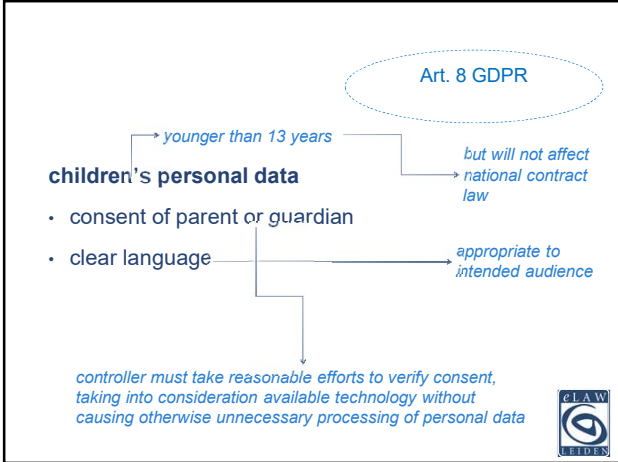
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When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.



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vital interests





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Art. 9 GDPR

**special (categories) of data**

- race or ethnic origin
- political opinions
- religion or philosophical belief
- sexual orientation or gender identity
- trade union membership
- genetic or biometric or health or sex life
- administrative sanctions, judgments, criminal or suspected offences, convictions, security measures

*processing not allowed, unless*

- by certain controllers for their specific purposes
- specific exemptions such as explicit consent




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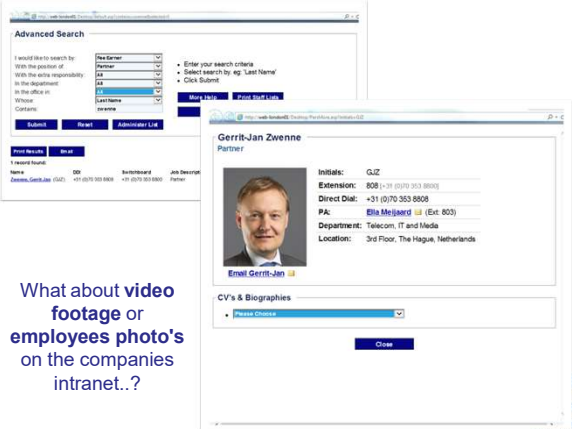
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Advanced Search

What about **video footage** or **employees photo's** on the companies intranet..?




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Art. 5(1)(d) GDPR

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- in cases of first and non-intentional non-compliance: a warning in writing
- regular periodic data protection audits

a fine up to €10 or 20 mio  
or up to 2% or 4% of the  
annual worldwide  
turnover  
(whichever is greater)



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questions?

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