

LAW AND DIGITAL TECHNOLOGIES

# Internet Privacy and EU Data Protection

*Seminar I.*

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

October 24<sup>th</sup>, 2018



# the professors for this course



**G-J. (Gerrit-Jan) ZWENNE**  
Full Professor Leiden University  
Partner Pels Rijcken & Droogleever Fortuyn



**B.H.M. (Bart) CUSTERS**  
Associate Professor Leiden University



**K (Karolina) LA Fors**  
Assistant Professor Leiden University



**B.W. (Bart) SCHERMER**  
Associate Professor Leiden University  
Owner Considerati B.V.

our guest lecturer for 31 October



[https://en.wikipedia.org/wiki/Peter\\_Hustinx](https://en.wikipedia.org/wiki/Peter_Hustinx)

# course overview

10:00-10:45 lecture  
10:45-11:00 break  
11:00-11:45 lecture  
11:45-12:15 lunch  
12:15-13:00 lecture  
13:00-13:15 break  
13:15-14:00 lecture

may  
change

24 October

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

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

14 November

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

VIII. IoT, Datafication, Big Data, AI, Machine Learning etc. *prof Gerrit-Jan Zwenne*

31 October

III. The main principles and rules relating to data protection *prof. Gerrit-Jan Zwenne*

IV. The significance of EU DP law in Europe and the Rest of the World *dr. Peter Hustinx*

21 November

XI. Workshop on the Right to be Forgotten *prof. Karolina La Fors*

X. Exam Training *prof. Gerrit-Jan Zwenne*

7 November

V. Data Subject Rights and Controller Obligations (incl. profiling. *prof. Bart Custers*

Via Third Country Data Transfers (incl. Privacy Shield) *prof. Bart Custers*

VIb. The Data Protection Officer *prof. Gerrit-Jan Zwenne*

★ 28 November

Written Exam *prof. Gerrit-Jan Zwenne*

★ 5 December

written assignment due!

# literature

recommended literature  
is not required reading



# EUROPEAN Data Protection

Law and Practice

Executive Editor  
Eduardo Ustaran, CIPP/E  
Partner, Hogan Lovells



An **iapp** publication

# assignment

- short paper, approx. 3000 - 4000 words
- pre-defined structure & template
- explains the facts, questions and significance of a specific CJEU-decision

§1 facts of the case in a concise manner (approx. 500 words)

§2 discusses the legal questions the Court had to answer and its answers (approx. 500 words)

§3 provides context (e.g. relation with other relevant court decisions or literature), explains the significance of the decision, its relation with other court decisions, and allows the author to give his or her opinion on whether or not it's a good or bad decision, the implications etc. (2000-3000 words)



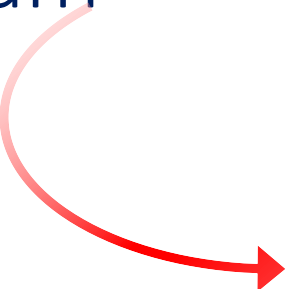


- CJEU 20 December 2017, C-434/16, ECLI:EU:C:2017:994 (*Nowak*)
- CJEU 4 May 2017, C-13/16, ECLI:EU:C:2017:336 (*Rigas*)
- CJEU 21 December 2016, C-203/15 and C-698/15 (*Tele2*)
- CJEU 1 October 2015, C-230/14, ECLI:EU:C:2015:639 (*Weltimmo*)
- CJEU 17 July 2014, C-141/12 and C-372/12 ECLI:EU:C:2014:2081 (*IND*)
- CJEU 11 December 2014, C-212/13, ECLI:EU:C:2014:2428 (*Ryneš*)
- CJEU 7 May 2009, C-553/07, ECLI:EU:C:2009:293 (*Rijkeboer*)
- CJEU 16 December 2008, C-73/07, ECLI:EU:C:2008:727 (*Markkinapörssi*)
- CJEU 6 November 2003, C-101/01, ECLI:EU:C:2003:596 (*Lindqvist*)
- CJEU 20 May 2003, C-465/00, ECLI:EU:C:2003:294 (*Österreichischer Rundfunk*)





# exam

- 
- 28 November, 9:00-12:00
  - *Sterrewacht 1.04*
  - *in writing (on laptops)*
  - *probably four questions, each question 25 points*
  - *at least one case with questions*

Total U-rinal

# INTRODUCTION



third country transfer

personal data?  
profiling?

health data.!

religious data..?

gender..?

employee relationship:  
consent?

legitimate interest?

# privacy dimensions

- 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 Right to Privacy”**

**Warren and Brandeis**

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**Harvard Law Review.**

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Vol. IV   December 15, 1890   No. 5

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**THE RIGHT TO PRIVACY**[\[\\*\]](#) .

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*"It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage." — Willes, J., in Millar v. Taylor, 4 Burr. 2303, 2312*

**T**hat the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the new demands of society. Thus, in very early times, the law gave remedy only for physical interference with life and property, for trespasses vi et armis. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint;

# 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





# Gesetz- und Verordnungsblatt

## für das Land Hessen · Teil I

1990	Ausgegeben zu Wiesbaden am 12. Oktober 1990	Nr. 41
Tag	Inhalt	Seite
7. 10. 70	Datenschutzgesetz GVBl. II 300-10	623
7. 10. 70	Gesetz zur Änderung beamtenrechtlicher und besoldungsrechtlicher Vorschriften GVBl. II 321-20	626
7. 10. 70	Gesetz über vordienstwirksame Leistungen für Beamte GVBl. II 323-48	633
7. 10. 70	Zweites Gesetz zur Änderung des Hessischen Personalvertretungsgesetzes Änderl. GVBl. II 326-2	634
7. 10. 70	Gesetz über die Aufwandsentschädigung und den Ehrensold der ehrenamtlichen Bürgermeister und der ehrenamtlichen Kreisverwalter der Gemeinden GVBl. II 323-23	635
7. 10. 70	Gesetz zur Änderung des Hessischen Architektengesetzes Änderl. GVBl. II 36-6	638
7. 10. 70	Drittes Gesetz zur Änderung des Gerichtsorganisationsgesetzes Änderl. GVBl. II 210-10	639
7. 10. 70	Gesetz zur Änderung des Hessischen Schiedsmannengesetzes Änderl. GVBl. II 20-2	640
7. 10. 70	Gesetz über die Ermächtigung zur Bestimmung von Zuständigkeiten nach der Acetylenverordnung GVBl. II 323-12	641
7. 10. 70	Gesetz über die Weichburgrolle GVBl. II 43-21	641

Der Landtag hat das folgende Gesetz beschlossen:

Datenschutzgesetz

Vom 7. Oktober 1970

### ERSTER ABSCHNITT

#### Datenschutz

##### § 1

##### Bereich des Datenschutzes

Der Datenschutz erfasst alle für Zwecke der maschinellen Datenverarbeitung erstellten Unterlagen sowie alle gespeicherten Daten und die Ergebnisse ihrer Verarbeitung im Bereich der Behörden des Landes und der der Aufsicht des Landes unterstehenden Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts.

7. GVBl. II 300-10

##### § 2

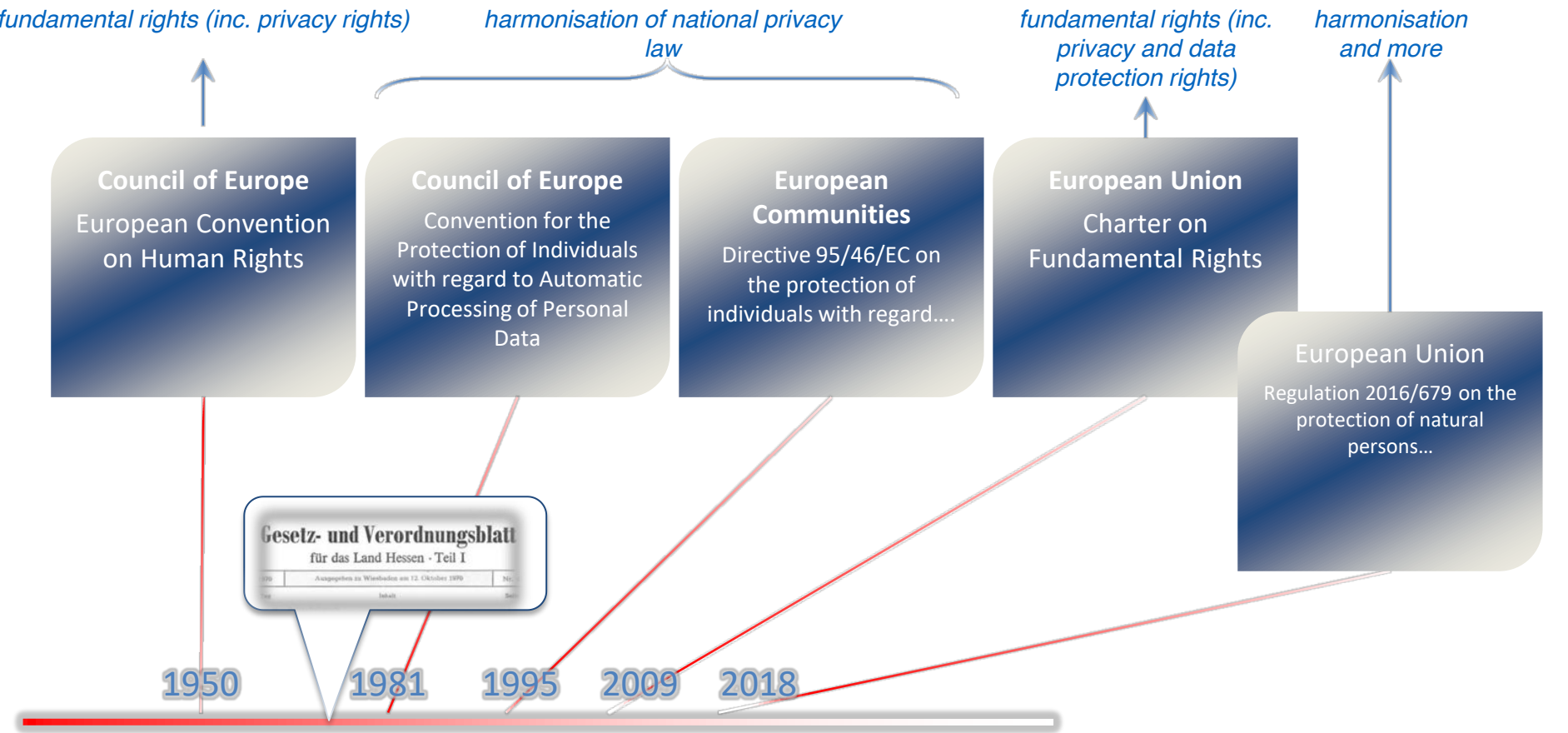
##### Inhalt des Datenschutzes

Die vom Datenschutz erfassten Unterlagen, Daten und Ergebnisse sind so zu ermitteln, weiterzuleiten und aufzubewahren, daß sie nicht durch Unbefugte eingesehen, verändert, abgerufen oder vernichtet werden können. Dies ist durch geeignete personelle und technische Vorkehrungen sicherzustellen.

##### § 3

##### Datensgeheimnis

(1) Dem mit der Datenerfassung, dem Datentransport, der Datenspeicherung oder der maschinellen Datenverarbeitung betrauten Personen ist untersagt,





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 the need to coordinate the laws of the Member States so as to ensure that the 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;

# Directive 95/46/EC

# the need for regulation

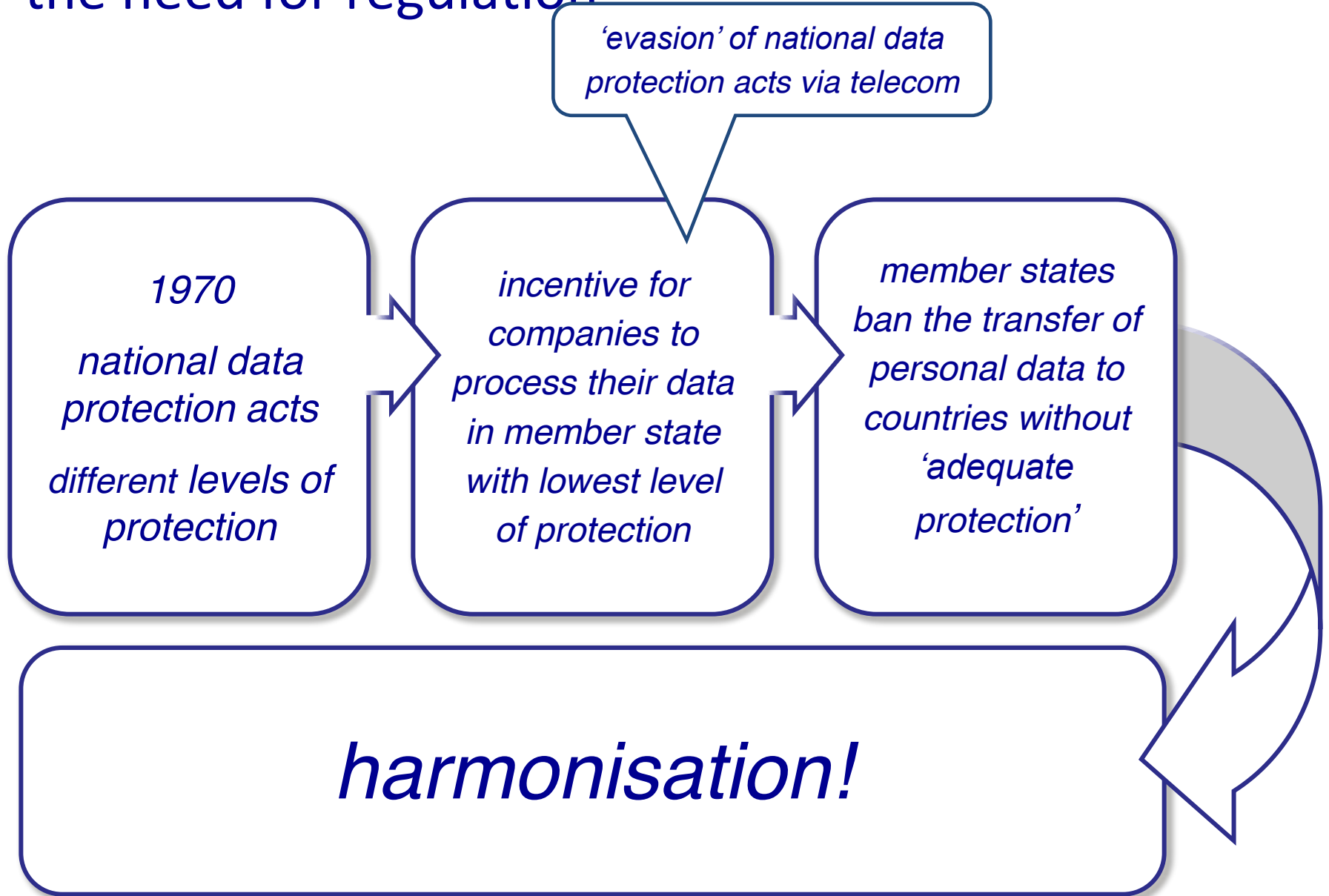
*'evasion' of national data protection acts via telecom*

*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)

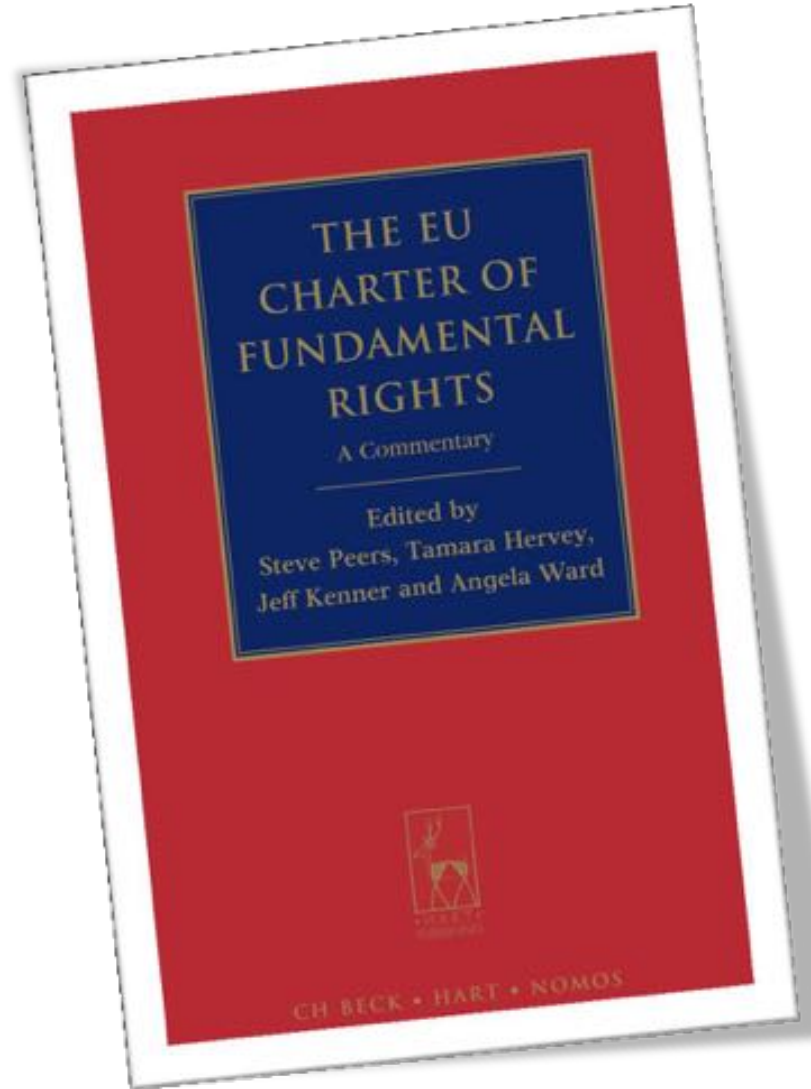
objectives

- 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

*security, spam & telemarketing, calling line identification, traffic data, directory services*

*retention of traffic data for the purpose of prevention of terrorism and serious crime*

*strict rules for cookies, breach notification*

*under consultation: rules for OTT*

## European Communities

Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector

## European Union

Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

## European Union

Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic ...

## European Union

Directive 2009/136/EC amending Directive 2002/58/EC

## European Union

New ePrivacy Directive or Regulation (?)

1997

2002

2006

2009

2019?

# national data protection law (in addition to the GDPR)

- special data and criminal data
- health care and social security
- exemptions for the press (freedom of information)
- establishment and organisation of the supervisory authority



rules with a very  
broad scope in a  
very dynamic  
concept

therefore open  
concepts and  
general norms

because that  
flexible and future-  
proof

not too much  
court decisions

many legal  
concepts not clear

supervisory  
authorities got a  
lot to say...

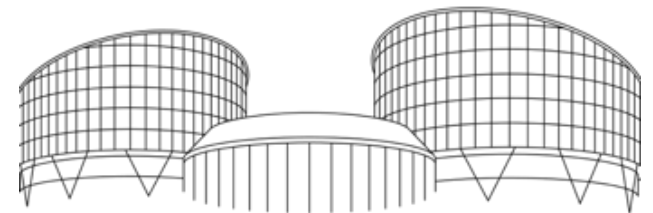


European Data Protection Board

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



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

*e.g. 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, 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)

*European Data  
Protection Board*



LAW AND DIGITAL TECHNOLOGIES

# Internet Privacy and EU Data Protection

*Seminar II.*

Key concepts of EU Data Protection law and its applicability  
(incl. territorial scope) *prof. dr. Gerrit-Jan Zwenne*

October 24<sup>th</sup>, 2018



# program

## context

- privacy and privacy law
- the need for harmonisation

## players

- data subject
- controller
- processor
- DPA and DPO

## playing field

- processing of personal data and filing system
- personal or household activities
- journalism
- the territorial scope

## rules of the game

- processing grounds
- purpose limitation
- storage and retention
- special categories of data
- transparency and rights of data subjects
- third country transfers
- privacy impact assessments





datasubjects, controllers, processors, dpo's and dpa's, art. 29 WP

# PLAYERS

# players

Art. 4 GDPR &  
Art. 2 95/46/EC

## data subject (or 'individual')

- an identifiable person (ie a natural person) who can be identified, directly or indirectly

## controller

- controls the purposes and means of processing
- natural person, legal person, or government institution

## processor

- processes data for the controller, without being directly under its authority

## DPA

- authority overseeing the processing of personal data

## DPO

- data protecting officer



# "controller"

Art. 4(7) GDPR &  
Art. 2(d) 95/46/EC

*the natural or legal person, public authority, agency or any other body which alone or jointly with others determines purposes and means of the processing of personal data.*

*both factually  
and legally*



# "processor"

Art. 4(8) GDPR &  
Art. 2(e) 95/46/EC

a natural or legal person, public authority, agency  
or other body which processes personal data on  
behalf of the controller

eg. Infosys, WorkDay, Salesforce etc. But not Internal IT department!

*The Working Party recognizes that the concrete application of the concepts of data controller and data processor is becoming increasingly complex. This is mostly due to the increasing complexity of the environment in which these concepts are used, and in particular due to a growing tendency, both in the private and in the public sector, towards organisational differentiation, in combination with the development of ICT and globalisation, in a way that may give rise to new and difficult issues and may sometimes result in a lower level of protection afforded to data subjects.*

# who is in control..?

*who determines retention terms?*

*who decides on outsourcing?*

*who decides on DSAR's*

*which party enters into contracts  
with data subjecy*

*who notifies a data breach?*



- a Facebook user (or an Instagram or Twitter user) uploads photo's to her profile page or feed
- a university uses Gmail for Business
- the tax authorities require that you submit your income details in an electronic form and via its online tax portal
- to discover and prevent health insurance fraud municipalities and insurers construct a fraude detection system: each participant uploads data ('signals') on possible fraudulent behaviour

Who are the data subjects? Who is (are) controller(s)? and/or processor(s)?

- a provider of modular HR cloud solutions uses a third party to provide a tool that enables its customers (employers) to calculate the (max) compensation they can pay employees for travel expenses
- business information bureaus such as Experian or Dun & Bradstreet generate credit scores and scorecards of companies and individuals, which customers use to assess the solvency of these companies and individuals.
- Cambridge Analytica processed personal data of US citizens
- what other example can you think of?

Who are the data subjects? Who is (are) controller(s)? and/or processor(s)?

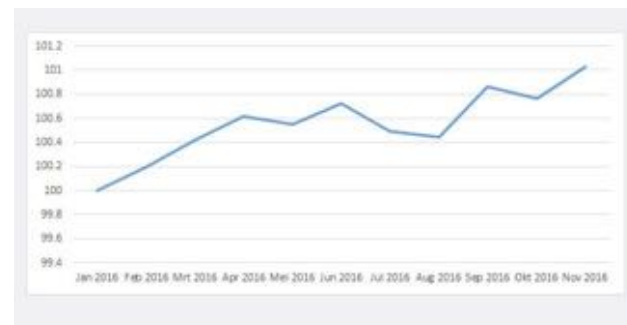


The Raet Banen Index refers to the jobs of employees who are employed by their employer and are active that month. The index does not include FTEs but the number of persons employed by an employer. Paid trainees and holiday workers are included. Temporary agency workers, volunteers, freelancers and unpaid trainees are not included.

The figures are based on transactional data about the number of actually paid employees of Raet's customers. The figures are therefore not dependent on the accuracy and completeness of surveys or polls. The figures are based on more than 1 million employees and extrapolated to the size of the Dutch labour force.

[translated with [www.DeepL.com](http://www.DeepL.com)]

raet



**0.3% up in November**

In November The Raet Jobs Index shows that the number of jobs of employees in the Netherlands increased in November 2016. The index stands at 101.0.

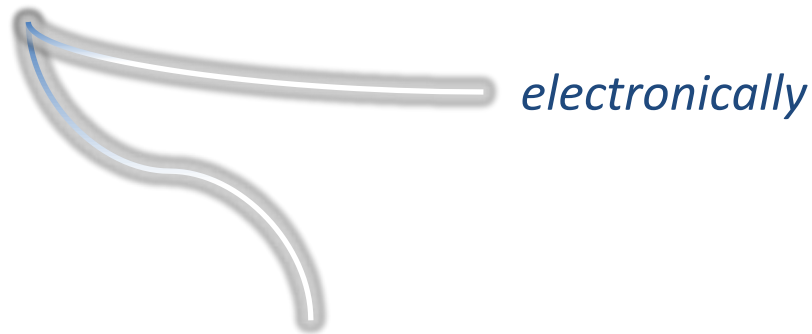
# THE PLAYING FIELD



# "processing"

Art. 4(3) GDPR &  
Art. 2(b) 95/46/EC

*means any operation or set of operations,  
which is performed upon personal data or  
sets of personal data, whether or not by  
automated means*



*electronically*

*such as collection, recording, organization, structuring,  
storage, adaptation or alteration, retrieval, consultation, use,  
disclosure by transmission, dissemination or otherwise making  
available, alignment or combination, erasure or destruction*

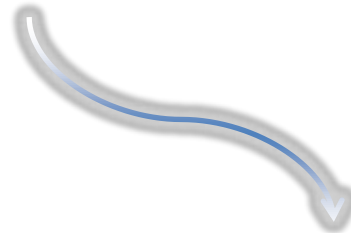
# a question

can you name an activity with respect to personal data that is *not* covered by the definition of 'processing of personal data'

# "personal data"

Art. 4(2) (cons. 23) GDPR &  
Art. 2(a) 95/46/EC

*any information relating to an identified or identifiable natural person (“data subject”)*

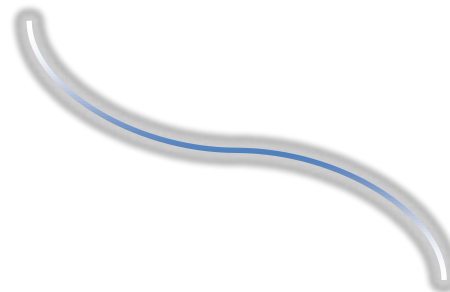


*an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person*

# "anonymous data"

Art. 4(2) (cons. 23) GD  
PR

*information that does not relate to an identified or identifiable natural person*




*an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person*

# "pseudonymous data"

Art. 4(5)  
GDPR

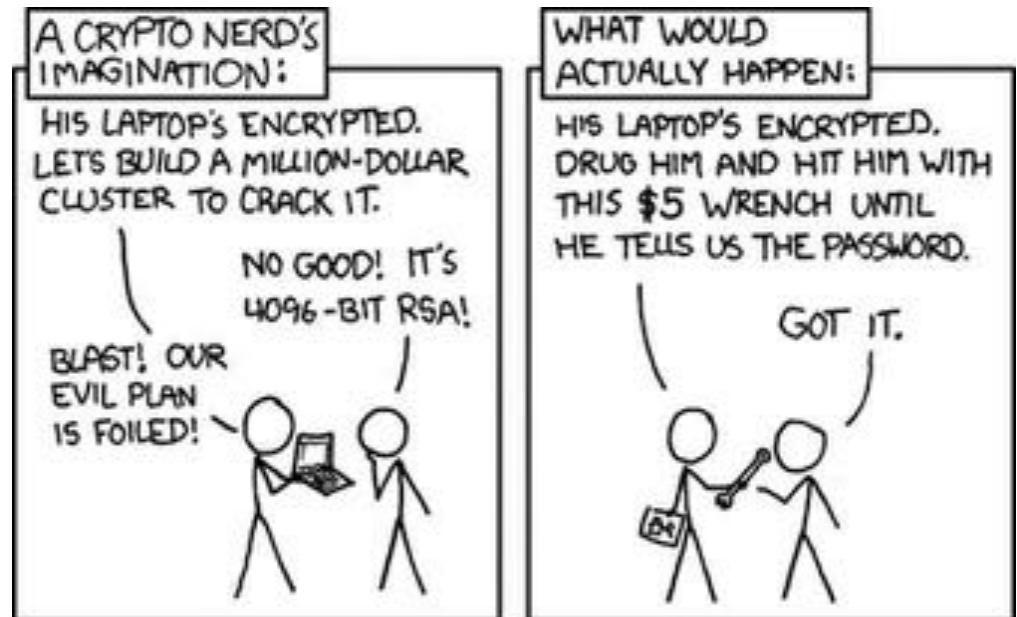
*personal data that cannot be attributed to a specific data subject without the use of additional information*



*as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution*

# "encrypted data"

*personal data, which through technological protection measures is rendered unintelligible to any person who is not authorised to access it*







info@companyname.com

social security  
number

@zwnne

ip-address

cookies, device  
fingerprints

zip code, street or  
house nr.

070 515 3000

+31(0)6 2251 8337

# "single out"

*“A very common family name will not be sufficient to identify someone – i.e. to single someone out – from the whole of a country’s population, while it is likely to achieve identification of a pupil in a classroom.*

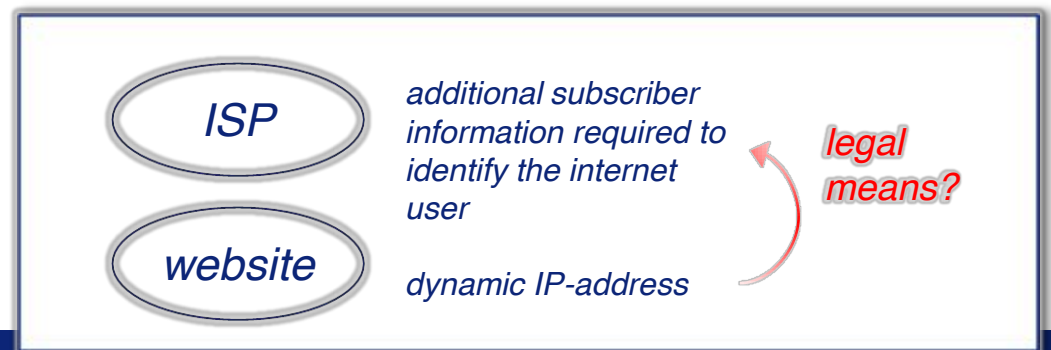


*Even ancillary information, such as “the man wearing the black suit” may identify someone out of the passers-by standing at a traffic light.”*

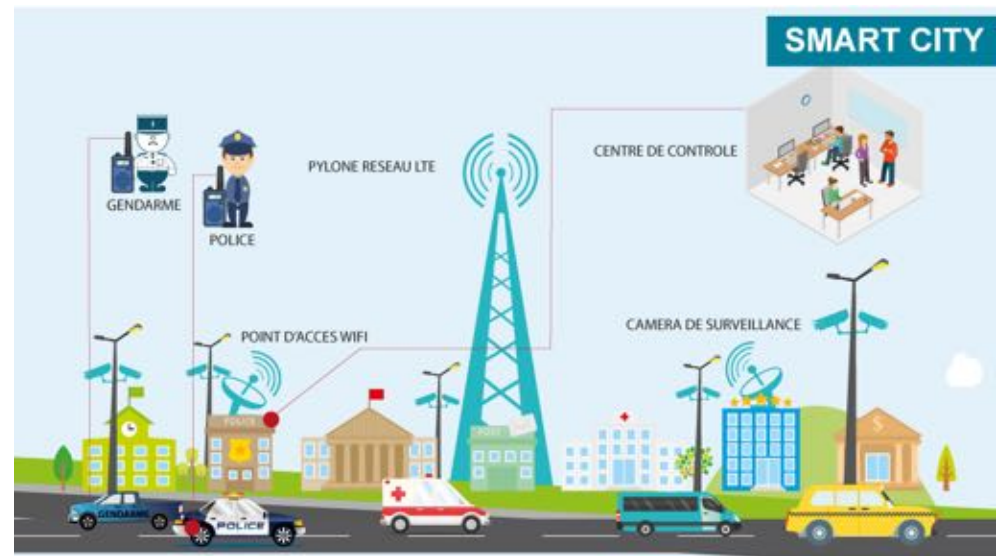
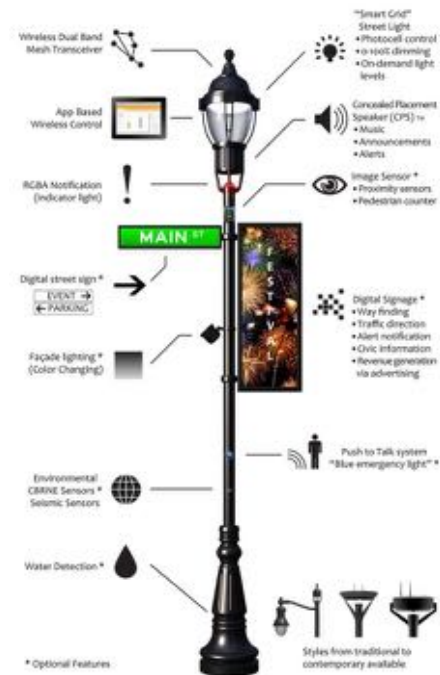
WP29 opinion on the concept of personal data 20th June 2007

“a dynamic IP address registered by an online media services provider when a person accesses a website that the provider makes accessible to the public constitutes personal data within the meaning of that provision, in relation to that provider, where the latter has the legal means which enable it to identify the data subject with additional data which the internet service provider has about that person”

CJEU 19 October  
2016 C-582/14



# SMART CITY



Singapore

# 'Smart lamp posts' in Singapore won't shine light into people's lives

An ambitious project is underway to equip lamp posts in Singapore with various capabilities to improve urban planning - serving to be more than just a light source.

For example, environmental sensors could potentially be added to monitor rainfall, humidity and temperature, and noise sensors to detect unusually loud sounds, such as a person screaming or a car crash.

With video sensors, it would be possible to incorporate facial recognition systems. Navigational beacons could also be mounted to direct autonomous vehicles while speed-trap sensors could be used to track speeding bicycles or personal mobility devices.

"The whole point of the sensor platform is to look at improving services, look at how to run the city and operate the city better and how to plan the city better. We have no plans to do moral policing or things like that."

"Admittedly there will be a very tiny sliver of cases, when you're tracking a person of interest, criminal on the run, and you're going to be using all this infrastructure to monitor those and track them. But that's going on already, there's no surprise and there's high public acceptance of that."

Instead, the professor warned that cybersecurity threats such as hacking and data leaks could be bigger dangers.

# material scope

*any structured set of personal data  
which form part of a filing system or are  
intended to form part of a filing system*

*processing of records of non-EU citizens,  
not in EU Member State, by non EU-  
based controller*

processing of personal data wholly or partly by autom  
ated means

- sometimes also non-automated processing

exception

- activities outside scope of EU law
- Ch. 2 Title V of Treaty on EU
- prevention investigation detection or prosecution of criminal offences
- processing for purely personal or household activity

*common security and  
defence*

*when access to profile information extends beyond self  
selected contacts, such as when access to a profile is pr  
ovided to all members within the SNS or the data is inde  
xable by search engines, access goes beyond the person  
al or household sphere. [WP29 opinion on social networks 2009]*

exception for journalistic, artistic, or litera  
ry ends

Art. 85 GDPR & Art. 9 (cons. 37) 95/46/EC

This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.



Recital 18 GDPR



the operation of a camera system, as a result of which a video recording of people is stored on a continuous recording device such as a hard disk drive, installed by an individual on his family home for the purposes of protecting the property, health and life of the home owners, but which also monitors *a public space*, does not amount to the processing of data in the course of a purely personal or household activity, for the purposes of that provision.



CJEU 11  
December 2014  
C-212/13





the operation of a camera system, as a result of which a video recording of people is stored on a continuous recording device such as a hard disk drive, installed by an individual on his family home for the purposes of protecting the property, health and life of the home owners, but which also monitors *a public space*, does not amount to the processing of data in the course of a purely personal or household activity, for the purposes of that provision.



CJEU 11  
December 2014  
C-212/13



*What if the continuous recording device also monitors parts of another individuals space (e.g. a garden)*



# territorial scope under DPD

1. *who is the controller?*
2. *does the controller have an establishment in a Member State?*
3. *is processing taking place in the context of the activities of that establishment?*

main rule (95/46/EC)

- processing in the context of the activities of an establishment of a controller in a Member State

sub rule

- if the controller is not established on Community territory and,
- for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of [a] Member State,
- unless such equipment is used only for purposes of transit through the territory of the Community



# Google Spain

1. *who is the controller?*
2. *does the controller have an establishment in a Member State?*
3. *is processing taking place in the context of the activities of that establishment?*

*(55) In the light of that objective of Directive 95/46 and of the wording of Article 4(1)(a), it must be held that the processing of personal data for the purposes of the service of a search engine such as Google Search, which is operated by an undertaking that has its seat in a third State but has an establishment in a Member State, is carried out 'in the context of the activities' of that establishment if the latter is intended to promote and sell, in that Member State, advertising space offered by the search engine which serves to make the service offered by that engine profitable.*

# territorial scope under the GDPR

## main rule

- processing in the context of the activities of an establishment of a controller **or a processor** in a Member State

## sub rule

- offering of goods or services to such data subjects in the union;  
or
- the monitoring of their behaviour as far as their behaviour takes place within the EU

1. *Who is the controller?*
2. *does the controller have an establishment in a Member State?*
3. *is processing taking place in the context of the activities of that establishment?*



- Koninklijke Philips N.V., a Dutch multinational tech company headquartered in Amsterdam (NL), intends to sell MRI-scanners and LED-lights in China. For that purpose Philips requests the data science department of the University of Mumbai (India) to analyze personal data of board members of Chinese health clinics.
- Cambridge Analytica Ltd based in London (UK) processed personal data of US citizens.
- The successor of Cambridge Analytica will process personal data of Dutch citizens, as of Friday, 29 March 2019.
- An internet advertising network uses cookies to obtain data from internet-users

**Is the GDPR applicable? Why (not)..?**

# question

generally we assume that the territorial scope of the GDPR covers more than that of Directive 95/46/EC. Can you think of a situation where the Directive does apply and the GDPR does not?

## Chicago Tribune

Unfortunately, our website is currently unavailable in most European countries. We are engaged on the issue and committed to looking at options that support our full range of digital offerings to the EU market. We continue to identify technical compliance solutions that will provide all readers with our award-winning journalism.

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