



@zwenne

INFORM DAY ON EU DATA PROTECTION LAW

## SESSION 1. GDPR Background, Scope and Basic Terminology

Prof. mr. G-J. (Gerrit-Jan) ZWENNE



BACKGROUND & CONTEXT

# HARVARD LAW REVIEW.

VOL. IV. DECEMBER 15, 1890. No. 5.

## THE RIGHT TO PRIVACY.

"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."

WILSON, J., in Miller v. Taylor, 4 Barr. 1928, 2121.

**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 demands of society. Thus, in very early times, the law gave a 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; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in

INFORMATION

## 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.



eLaw Leiden



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428

## Gesetz- und Verordnungsblatt für das Land Hessen - Teil I

1890	Ausgegeben zu Wiesbaden am 12. Oktober 1890	Nr. 41
Titel	Inhalt	Seite
7. 10. 70	Datenschutzgesetz GVBl. II 200-22	623
7. 10. 70	Gesetz zur Änderung kommunikativer und heilungswirtschaftlicher Vorschriften GVBl. II 201-26	626
7. 10. 70	Gesetz über vordringlichste Leistungen für Beamte GVBl. II 222-28	633
7. 10. 70	Zweites Gesetz zur Änderung des Hessischen Personalvertretungsgesetzes Änderl. GVBl. II 202-2	634
7. 10. 70	Gesetz über die Auftragsübertragung und den Ehrenamt der städtischen Bürgermeister und der städtischen Kammerverwalter der Gemeinden GVBl. II 202-21	635
7. 10. 70	Gesetz zur Änderung des Hessischen Architektengesetzes Änderl. GVBl. II 202-2	636
7. 10. 70	Drittes Gesetz zur Änderung des Gerichtsverordnungsgebietes Änderl. GVBl. II 210-10	639
7. 10. 70	Gesetz zur Änderung des Hessischen Schiedsmannengesetzes Änderl. GVBl. II 202-2	643
7. 10. 70	Gesetz über die Ermächtigung zur Bestellung von Zeitungsstellen nach der Anstaltsverordnung GVBl. II 202-17	645
7. 10. 70	Gesetz über die Weisungsrechte GVBl. II 202-27	647

Der Landtag hat die folgende Gesetz beschlossen:

**Datenschutzgesetz<sup>1)</sup>**  
Vom 7. Oktober 1890

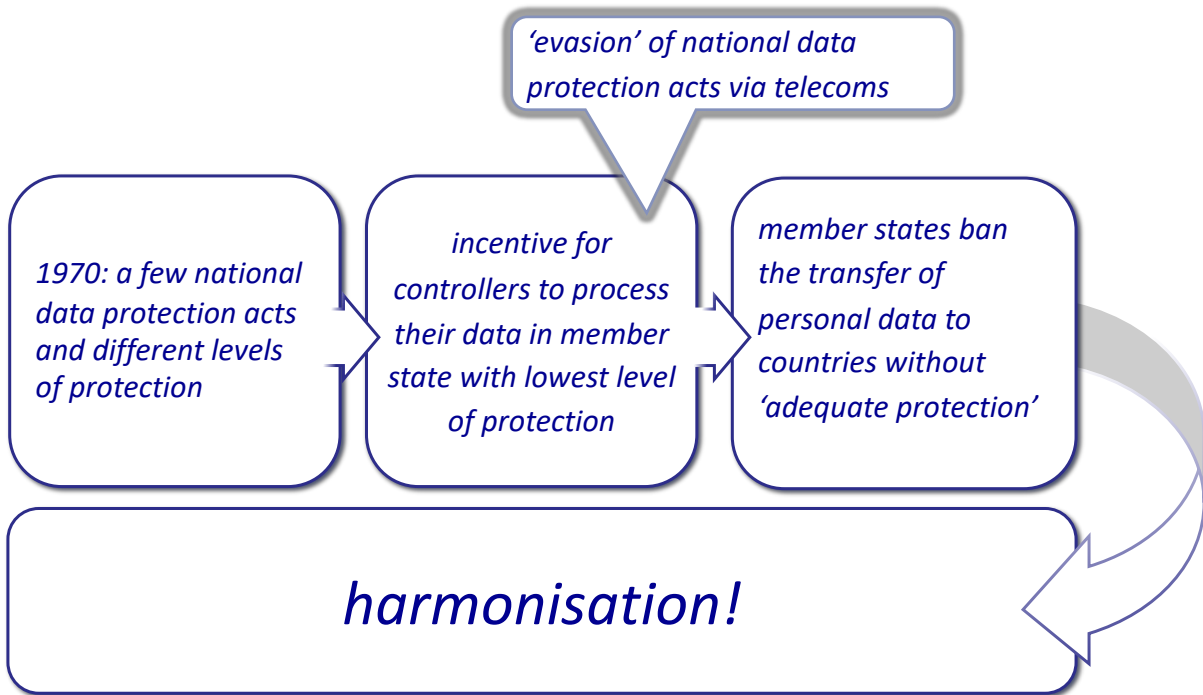
<p><b>ERSTER ABSCHNITT</b></p> <p><b>Datenschutz</b></p> <p>§ 1 Bereitschaft des Datenschutzes</p> <p>Der Datenschutz erstreckt sich für Zwecke der staatlichen Datenverarbeitung ausschließlich auf die Verarbeitung im Bereich der Behörden des Landes und der der Aufsicht des Landes unterstehenden Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts.</p> <p><small>1) GVBl. II 200-22</small></p>	<p>§ 2 Inhalt des Datenschutzes</p> <p>Die vom Datenschutz erfassten Unterlagen, Daten und Erzeugnisse sind zu erstellen, weiterzuleiten und aufzubewahren, sich nicht durch Substanz eingeben, verbleibt, abzugeben oder verändert werden können. Dies ist durch geeignete personelle und technische Vorkehrungen sicherzustellen.</p> <p>§ 3 Datenschutzmaßnahmen</p> <p>(1) Dies soll die Datenverarbeitung dem Datenschutzgesetz, der Datenspeicherung oder der staatlichen Datenverarbeitung betreffen Personen ist unterliegt.</p>
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data processing in the 1960's



In 1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz

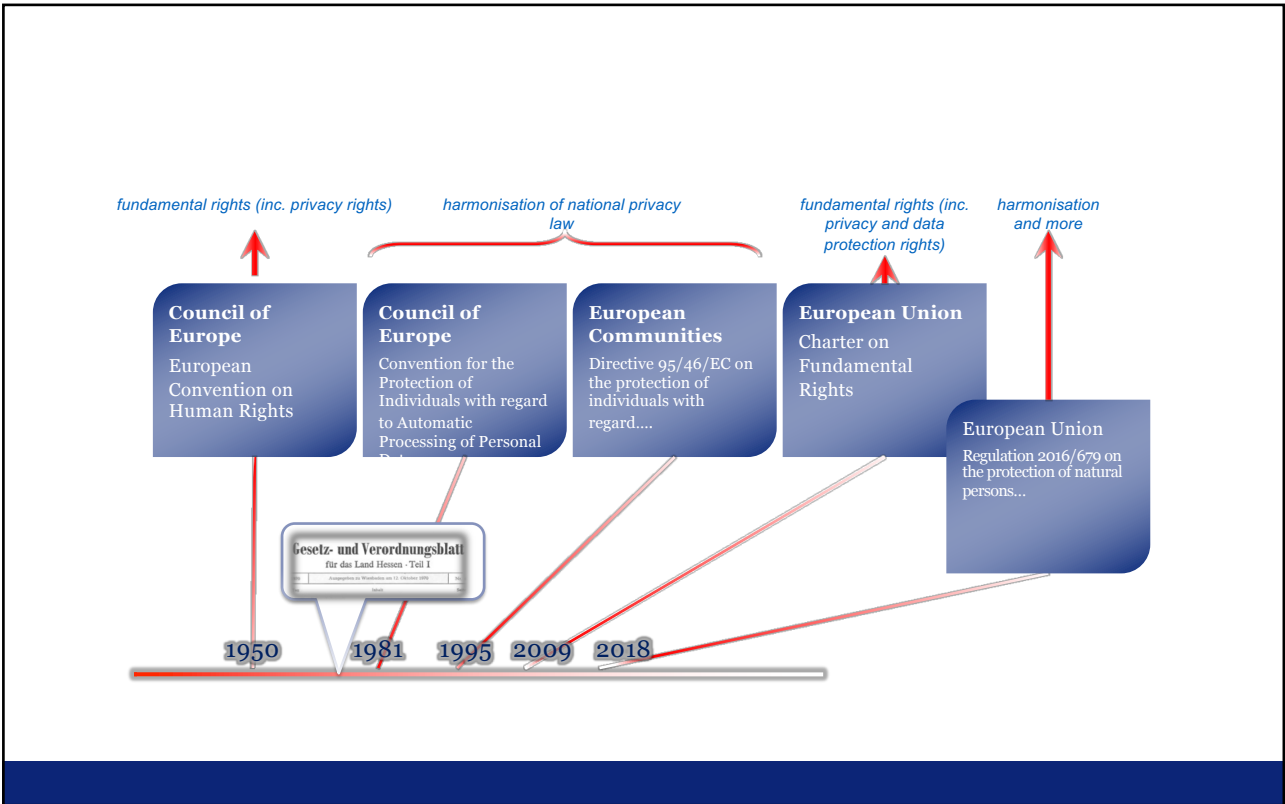


*(13) ...The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data....*

### ***Article 16(2) TFEU***

*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. [...]*





*It's hard to make predictions. Especially about the future.*



*rules with a very broad scope in a very dynamic concept*

*therefore open concepts and vague norms*

*because that makes the rules flexible and future-proof*

*however, there are not too much court decisions*

*many legal concepts not clear*

*supervisory authorities got a lot to say...*



European Data Protection Board



*a bit experimental and sometimes perhaps not well thought-through...*

## SCOPE AND BASIC TERMINOLOGY

*any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction*

### Article 2

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

*any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*



“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 (Breyer)



legal means?

who is in control..? the controller..!

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

who determines retention terms?

who decides on outsourcing?

who decides on DSAR's?

which party enters into contracts with data subjects?

who notifies a data breach?

etcetera, etcetera





what about the processor?

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



PeopleSoft



*[T]he 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.*

WP29 Opinion 1/2010,  
(WP169), 16 February  
2010, p. 2

## special categories of personal data...

personal data revealing

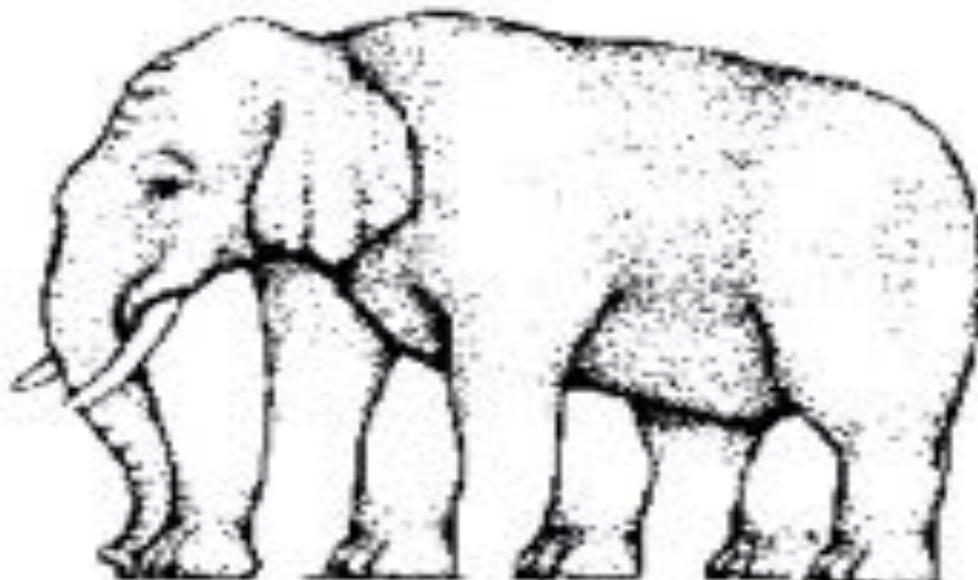
- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetic data
- biometric ID-data
- health data
- sex life or sexual orientation

*processing not allowed, unless...*

*date of birth  
length, weight  
passport photo*



- **specific exceptions** e.g. use of health data by a medical doctor
- **general exceptions** such as with explicit data subject consent, manifestly made public by data subject, etc.



[g.j.zwenne@law.leidenuniv.nl](mailto:g.j.zwenne@law.leidenuniv.nl)