

@zwne


INFORM DAY ON EU DATA PROTECTION LAW

GDPR Background & Scope

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

INTRODUCTION OF THE DATA PROTECTION REFORM TO THE JUDICIAL SYSTEM

INFORM



1. *restoring the balance*
2. *predicting the future*
3. *experimenting with law*
4. *and the European Union*

BACKGROUND & CONTEXT

1. restoring the balance

HARVARD LAW REVIEW.

Vol. 29. DECEMBER 15, 1916. No. 5

THE RIGHT TO PRIVACY.

TRUST the individual shall have full protection in person and in property in a civilized and well-ordered society. But in the time of our present crisis there is a danger that the most sacred and essential of our rights, the right to privacy, will be sacrificed to the demands of the state. The right to privacy is the right to be left alone; it is the right to be free from unreasonable searches and seizures; it is the right to be free from the intrusion of the government into the privacy of one's home, one's papers, and one's communications. It is the right to be free from the disclosure of one's private life to the public. It is the right to be free from the use of one's name and likeness for commercial purposes without one's consent. It is the right to be free from the use of one's name and likeness for political purposes without one's consent. It is the right to be free from the use of one's name and likeness for any purpose without one's consent.

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—Load4 for 100 Pictures. ROCHESTER, N. Y.

All the Eastman's goods always in stock at LOEHRER BROS., 111 Nassau Street, New York.

1. restoring the balance

Gesetz- und Verordnungsblatt für das Land Hessen - Teil I

| Nummer | Titel | Datum |
|--------|-------|-------|
| 1 | ... | ... |
| 2 | ... | ... |
| 3 | ... | ... |
| 4 | ... | ... |
| 5 | ... | ... |
| 6 | ... | ... |
| 7 | ... | ... |
| 8 | ... | ... |
| 9 | ... | ... |
| 10 | ... | ... |

1. *restoring the balance*

2. *predicting the future*

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

INFORME

2. *predicting the future*

rules with a very broad scope in a very dynamic context

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

3. *experimenting with law*

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

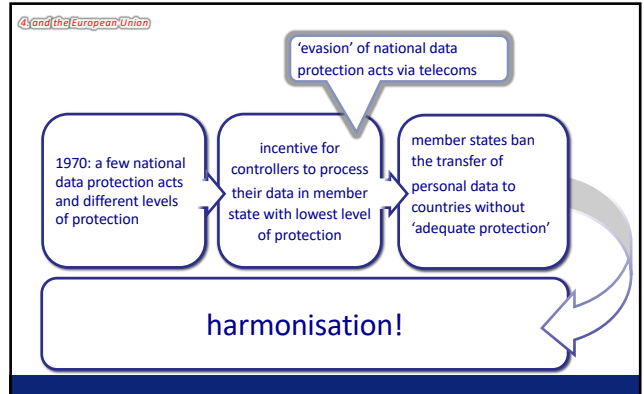
Q and the European Union



data processing in the 1960's




In 1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz

Q and the European Union

GDPR

(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. [...]

SCOPE AND BASIC TERMINOLOGY

material scope

any operation or set of operations which is performed on personal data or on sets of personal data, whether the information is automated or not, 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

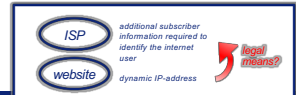
Article 2

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)



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

OneDrive

PeopleSoft

workday.

SWIFT

ADP

salesforce

[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.

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.

