PRIVACY AND EU DATA PROTECTION

Seminar XII.

ePRIVACY

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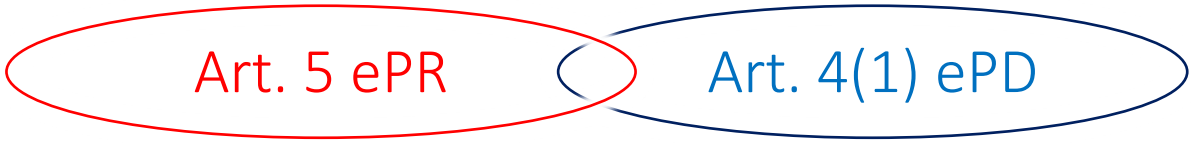
eLaw Leiden

roadmap

- confidentiality of communications
  - security obligations (breach notification)
  - no tapping, monitoring (eg deep packet inspection)
  - requirements re traffic data
  - cookies…!
- communication without identification
  - directory services (‘secret telephone number’), no reversed search
  - calling line identification
  - not-itemized billing
- unsolicited commercial communications
  - spam (e-mail, sms, social networks) and telemarketing

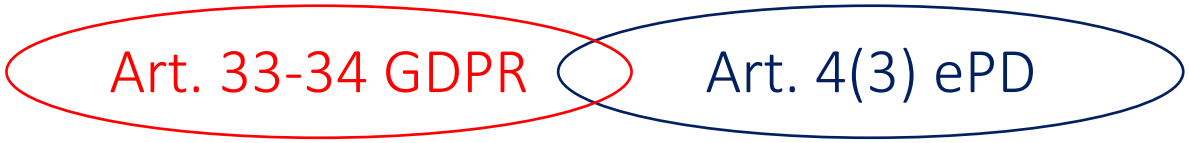
confidentiality of communications



security obligation

appropriate technical and organisational measures to safeguard **security** of the [electronic communication] services, if necessary in conjunction with the provider of the public communications network with respect to network security

having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.



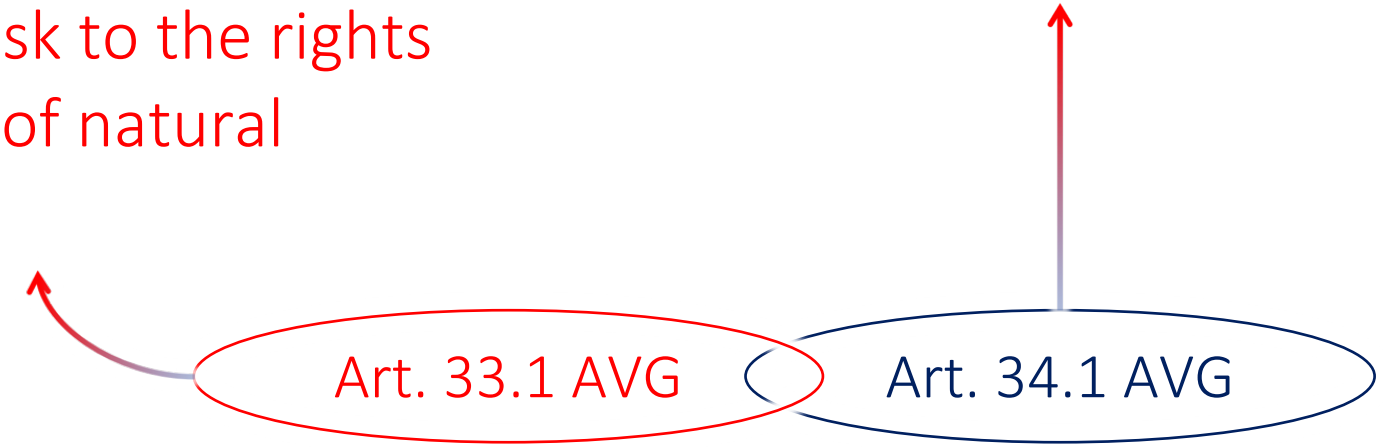
breach notification

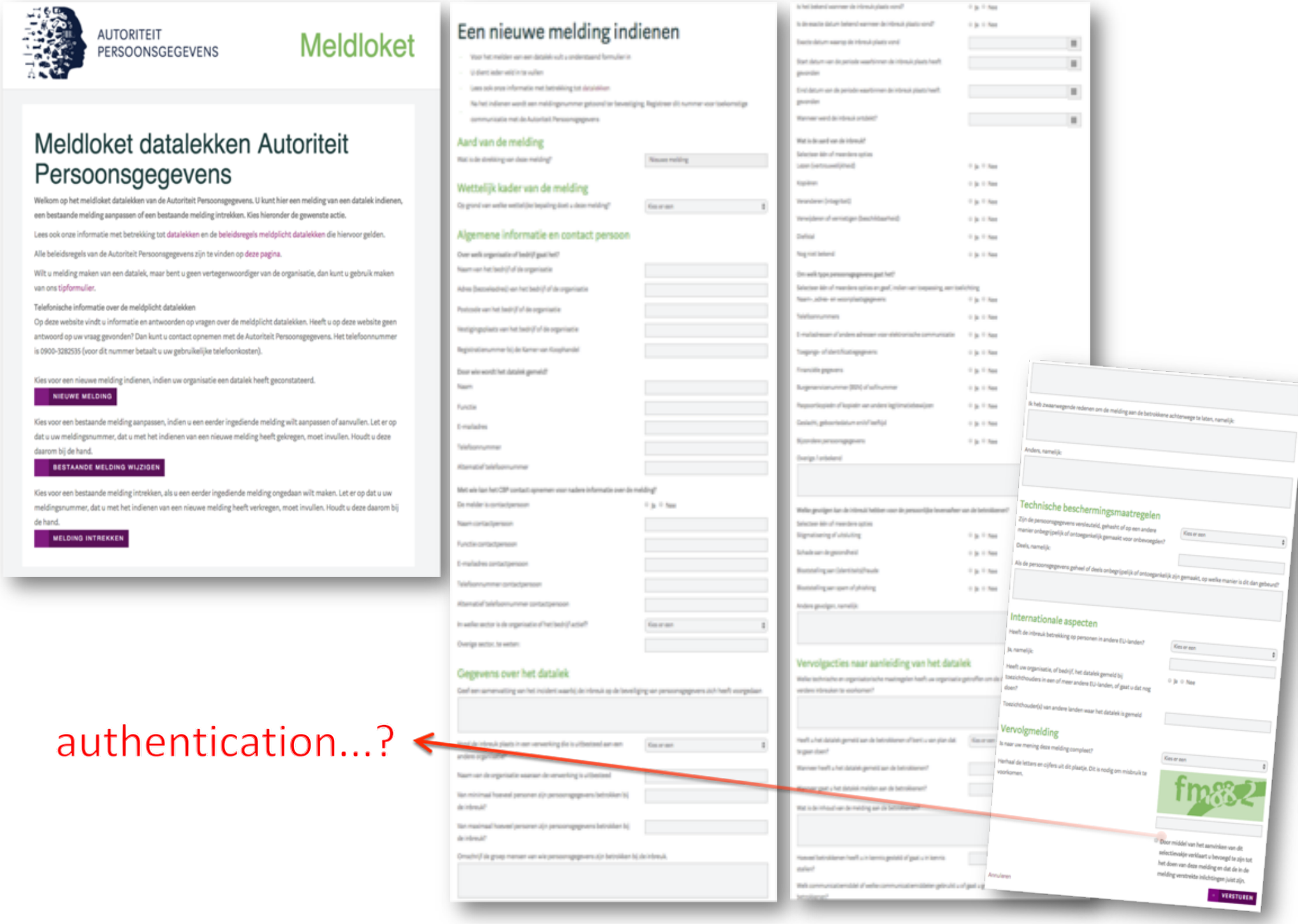
- notify the personal data breach to the competent national authority
- also notify the subscriber or individual,
  if likely to adversely affect the personal data or privacy of a subscriber or individual, f the breach without undue delay

72 hours? what's the startingpoint?

breach notification to DPA
In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority [...], unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons

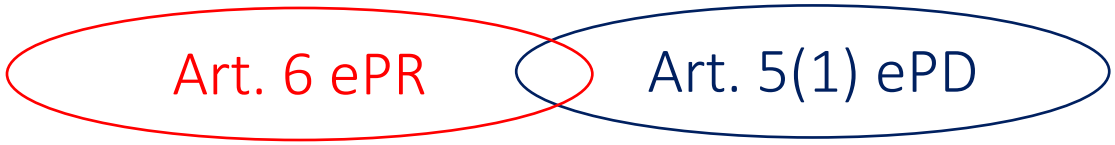
notification to data subject
When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.





authentication...?

“electronic communications metadata”



confidentiality of communications and traffic data

no listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned

deep packet inspection (“dpi”)

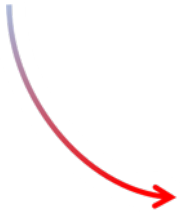
net neutrality debat…

spam filter..?

communication without identification

Art. 6 ePD

traffic data relating to subscribers and users must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication



with user or subscriber consent data may be used for the purpose of marketing electronic communications services or for the provision of value added services

cookies! device fingerprinting, pixels etc..

Art. 8 ePR

Art. 5(3) ePD

the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information

but functional or technical cookies are allowed nevertheless

"cookies"

where technically possible and feasible [...] consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.

Art. 7, 8 and 12 ePD

subscriber has the right to have invoice without details

non-itemized billing

calling line identification

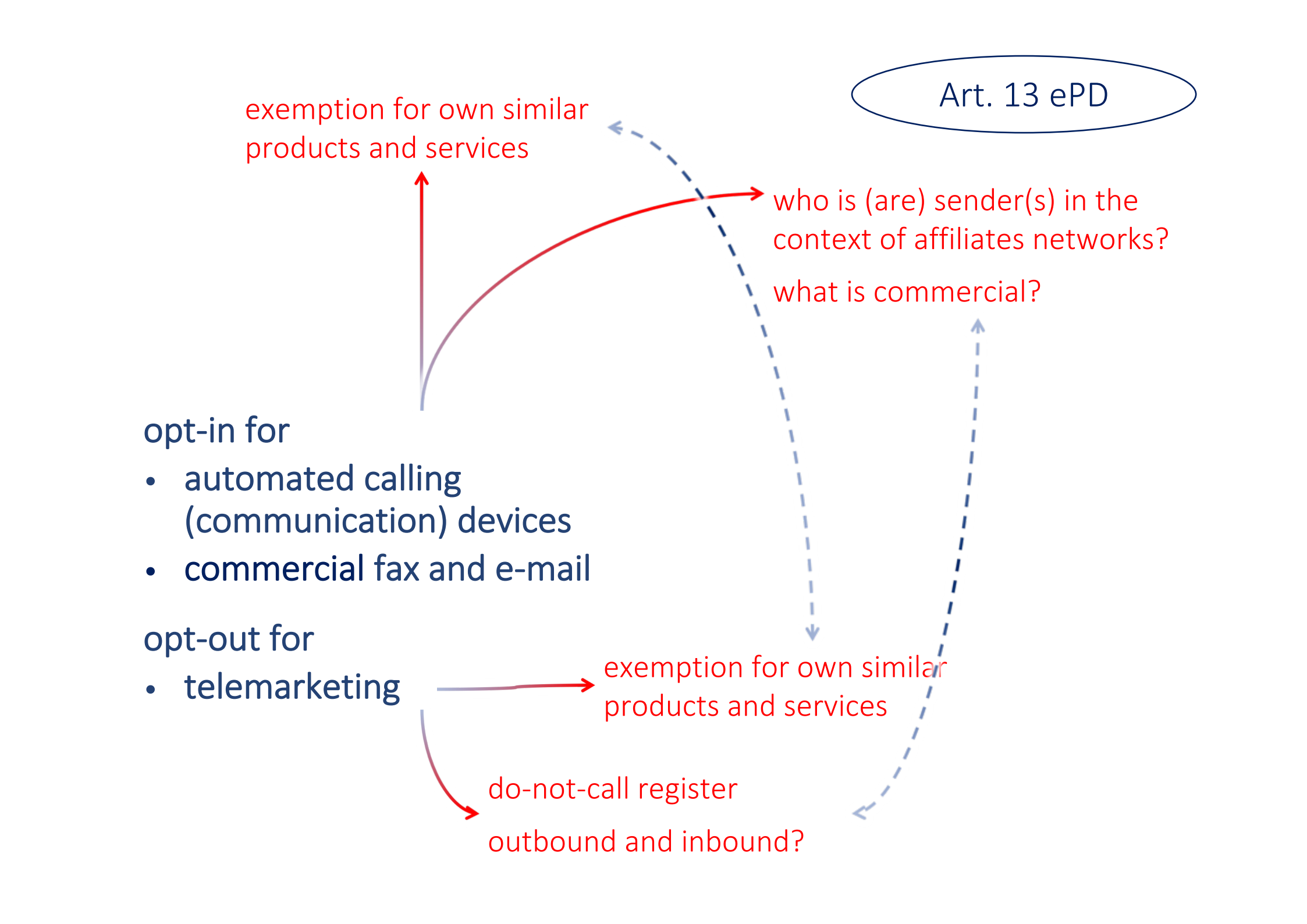
directory services

user has the right to

- block cli-presentation of his/her own calls
- reject cli-blocked calls from others
- block cli-presentation of calls from others

- subscriber must be informed about inclusion in directories (incl purposes), and
- provided a choice (opt-in or opt-out)

unsolicited commercial communication


Art. 13 ePD
exemption for own similar products and services
who is (are) sender(s) in the context of affiliates networks?
what is commercial?
opt-in for
• automated calling (communication) devices
• commercial fax and e-mail
opt-out for
• telemarketing
exemption for own similar products and services
do-not-call register
outbound and inbound?

questions?

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