

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 30th, 2019



lecturers



G.J. (Gerrit-Jan) ZWENNE
Full Professor Leiden University
Partner Pels Rijcken & Droogleeveer Fortui



B.H.M. (Bart) CUSTERS
Full Professor Leiden
University



A (Alan) Sears
Researcher at eLaw



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

guest lecturer for 1st of November



https://en.wikipedia.org/wiki/Peter_Hustinx

course overview

10:15-11:00 lecture
11:00-11:15 break
11:15-12:00 lecture
12:00-12:30 lunch
12:30-13:15 lecture
13:15-13:30 break
13:30-14:15 lecture
09:15-10:00 lecture
10:00-10:15 break
10:15-11:00 lecture
11:00-11:15 lunch
11:15-12:00 lecture
12:00-12:15 break
12:15-13:00 lecture

31 October **START 10:15**
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*

1 November **START 10:15**
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*

6 November **START 9:15**
V. Data Protection in Practice: A Data Protection Impact Assessment *prof. Bart Schermer*
VI. The Data Protection Officer *prof. Gerrit-Jan Zwenne*


13 November **START 9:15**
VII. Data Subject Rights and Controller Obligations (incl. profiling, Third Country Data Transfers (incl. Privacy Shield)) *prof. Bart Custers*
VIII. IoT, Datafication, Big Data, AI, Machine Learning etc. *prof. Gerrit-Jan Zwenne*

20 November **START 9:15**
XI. Workshop on the Right to be Forgotten *prof. Alan Sears*
X. Exam Training *prof. Gerrit-Jan Zwenne*


★ 27 November **START 9:00**
Written Exam *prof. Gerrit-Jan Zwenne & Alan Sears*

★ 4 December
written assignment due!

literature



Handbook on European data protection law
2018 edition



ARTICLE 29 DATA PROTECTION WORKING PARTY
WP 252 (en) 05

Guidelines on the right to data portability

Adopted on 17 December 2018
Article Revised and adopted on 7 April 2017

recommended literature is not required reading



EUROPEAN
Data Protection
Law and Practice

Executive Editor
Eduardo Utrera, CPVE
Partner, Hogan Lovells



iapp

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)

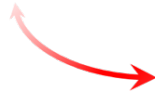
§3 provides context (e.g. relation with other relevant court decisions or literature), explains the significance of the decision, its relation with other court decisions, and allows the author to give his or her opinion on whether or not it's a good or bad decision, the implications etc. (2000-3000 words)



- CJEU 1 October 2019, C637/17 ECLI:EU:C:2019:801 (*Planet49*)
- 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*)



exam

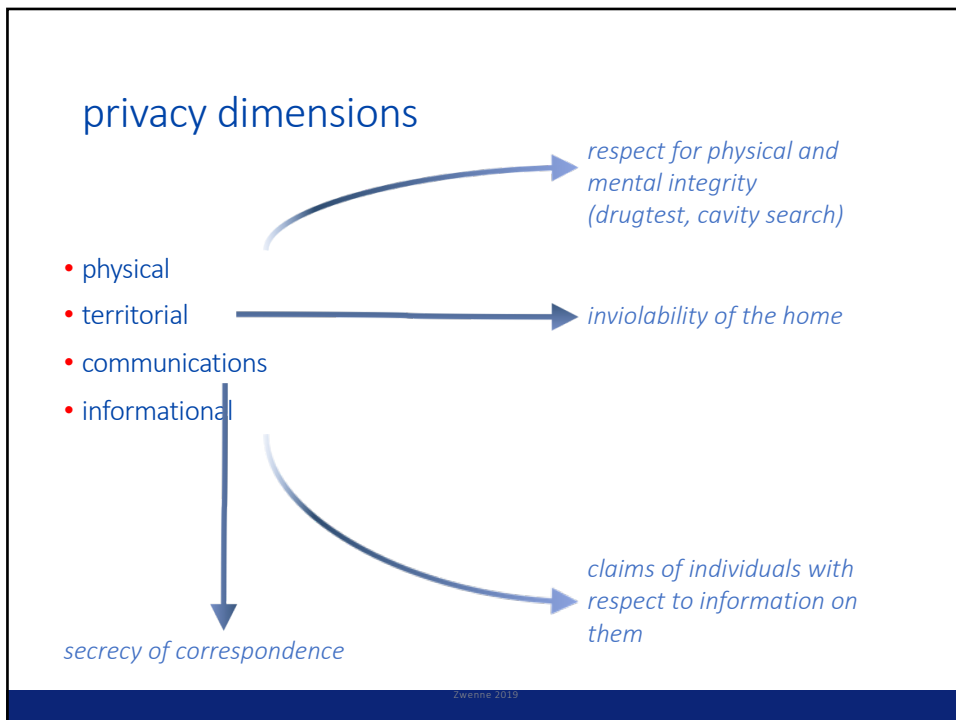
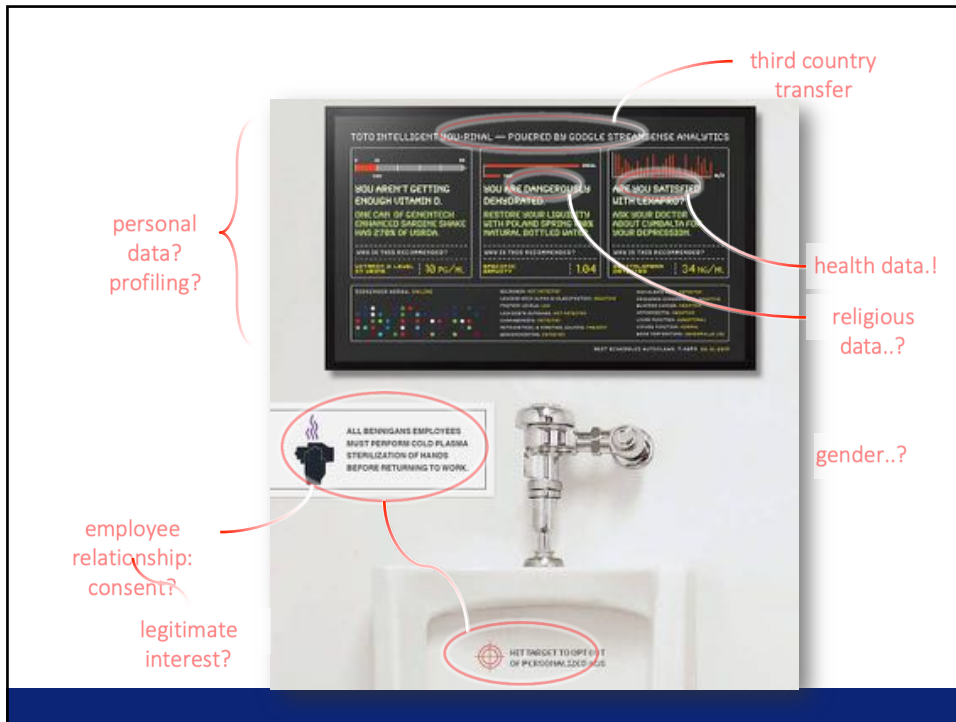


- 27 November, 9:00-12:00
- KOG C006
- *in writing (possibly on laptops)*
- *probably four questions, each question 25 points*
- *at least one case with questions*

introduction

Total U-rinal

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history

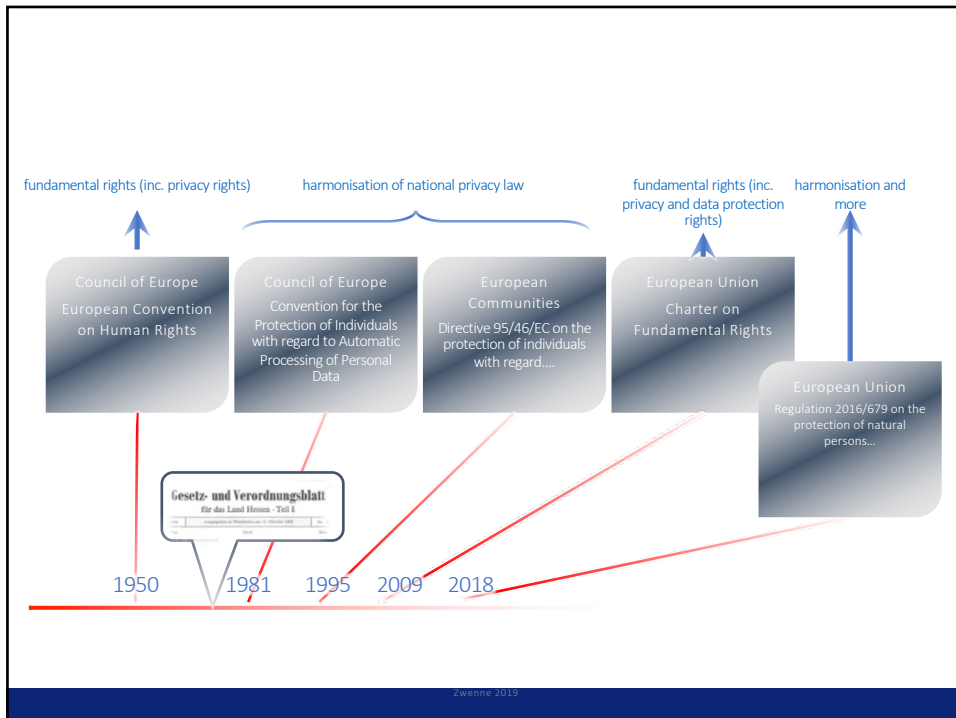
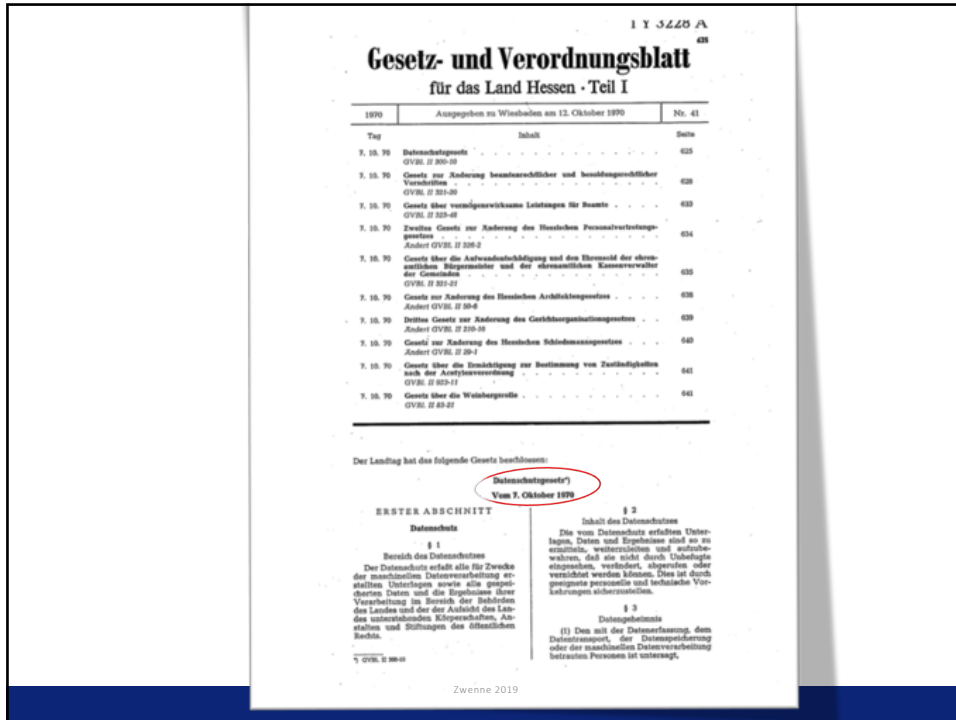
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"The Right to Privacy"
Warren and Brandeis
Harvard Law Review
Vol. IV December 15, 1890 No. 5
THE RIGHT TO PRIVACY

"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 Burr. 2303, 2312

That 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 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 move about as the individual his lands and his cattle. Later, there came a recognition of







data processing 1960's



1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz



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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)



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(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 Union law; whereas this difference in levels of protection is due to the existence of a wide variety of national laws, regulations and administrative provisions;

Directive 95/46/EC

(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 those laws with a view to ensuring the free flow of personal data 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;

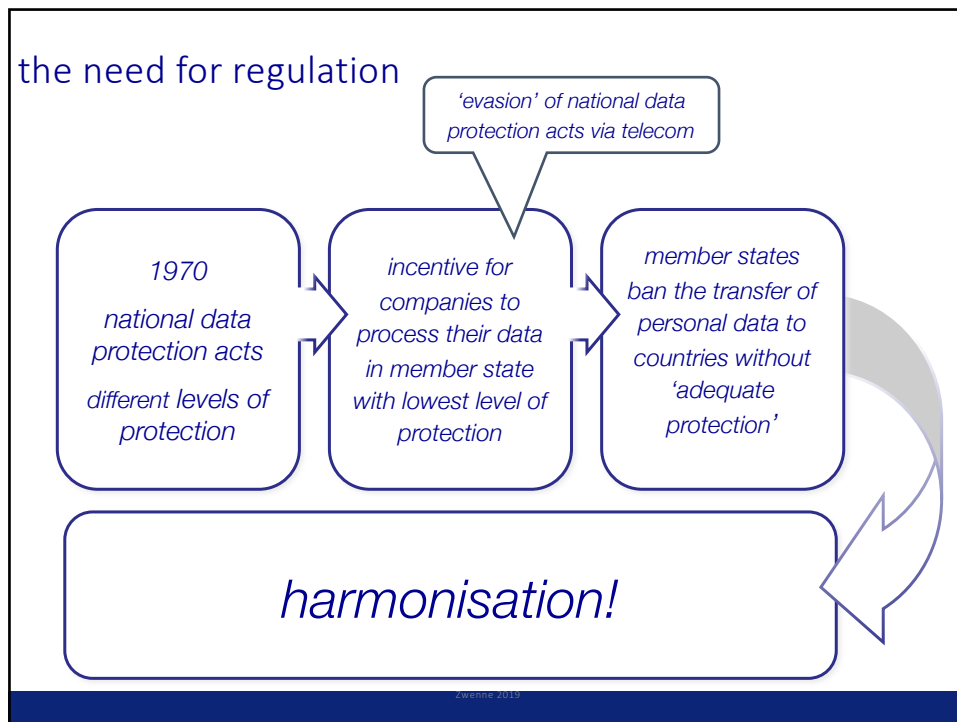
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(9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks 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

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EU Charter of Fundamental Rights (2000)

- art. 7 privacy
- art. 8 data protection
- art. 11 freedom of information

The image shows the front cover of a book. The cover is red with a central blue rectangular area containing white text. The text reads: "THE EU CHARTER OF FUNDAMENTAL RIGHTS A Commentary Edited by Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward". At the bottom of the cover, there is a small logo and the text "CH BECK • HART • NOMOS".

THE EU CHARTER OF FUNDAMENTAL RIGHTS
A Commentary
Edited by
Steve Peers, Tamara Hervey,
Jeff Kenner and Angela Ward

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GDPR ~ 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.



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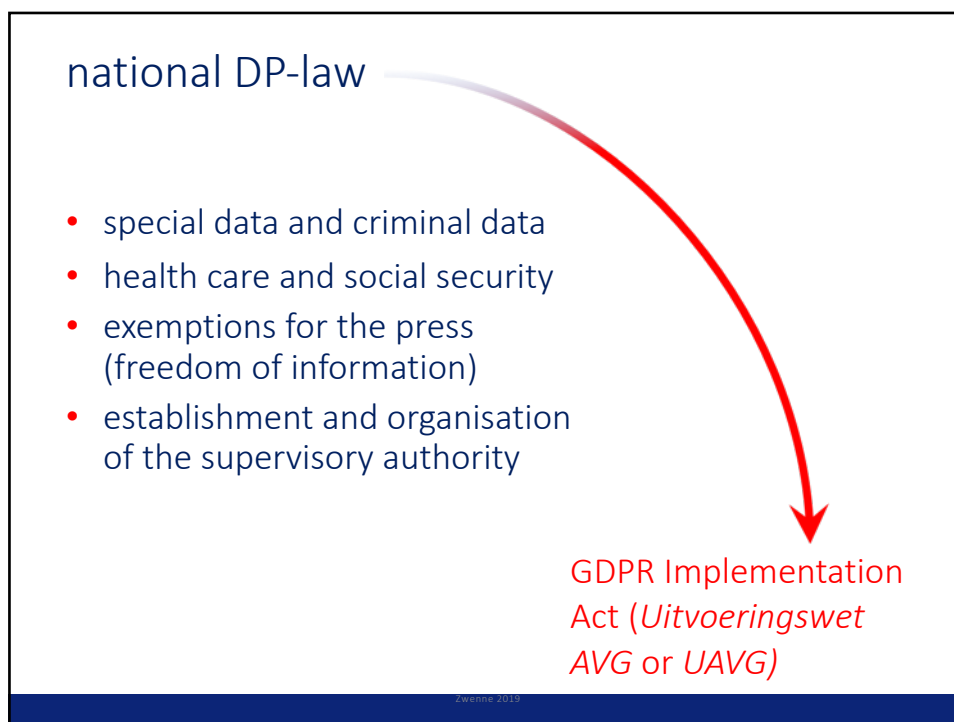
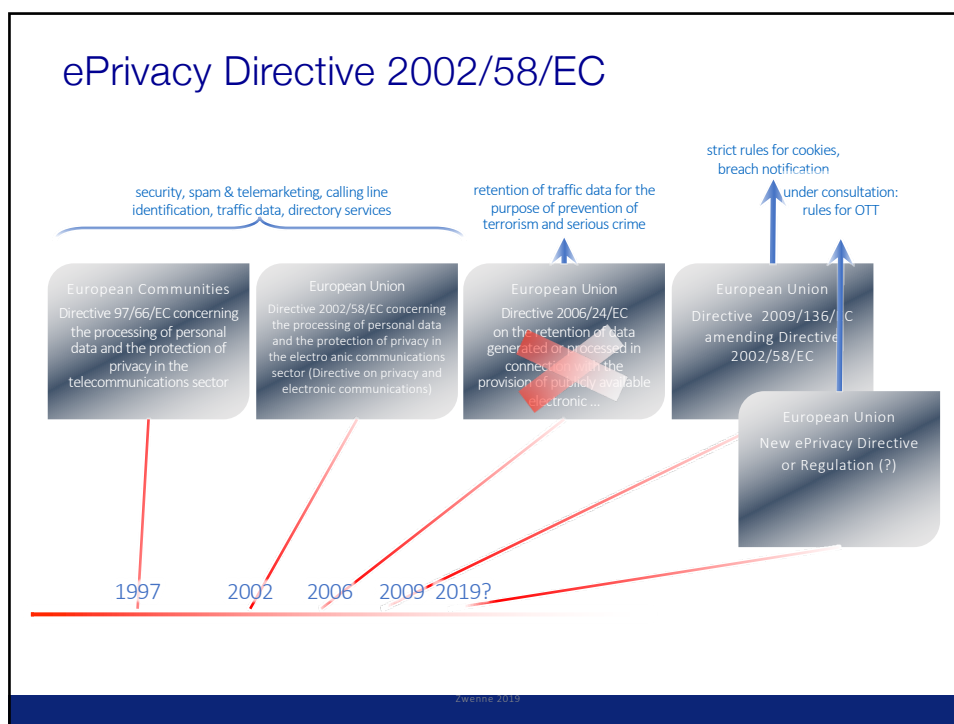
'horizontal effect'

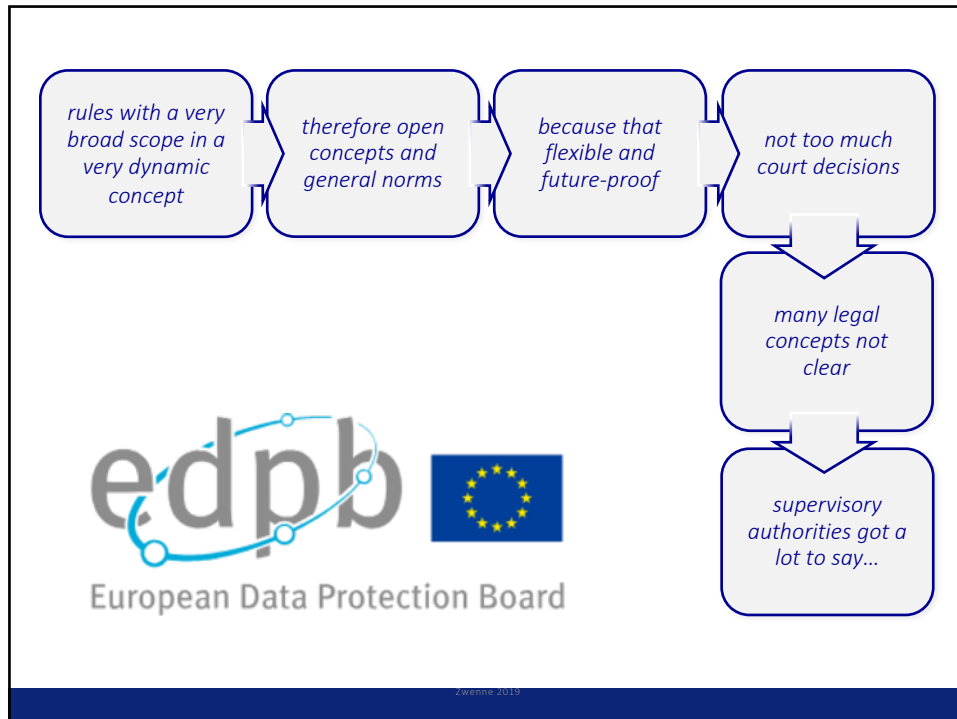
'there may be positive obligations inherent in an effective respect for private or family life [...].

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

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institutions

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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

e.g. S. and Marper v. UK 2008



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Court of Justice of the EU (CJEU)

- Luxembourg
- highest authority on interpreting EU law
- national courts can ask CJEU advice on interpretation EU law

Lindqvist, Data Retention, Google Spain, Weltimmo, Schrems, Breyer



COURT OF JUSTICE
OF THE EUROPEAN UNION

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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*

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