

PRIVACY AND EU DATA PROTECTION

Seminar II.

Key concepts of EU Data Protection law and its applicability (incl. territorial scope)

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October 30th, 2019



program

Today

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

1st of November 2019

rules of the game

- processing grounds
- purpose limitation
- storage and retention
- special categories of data



players

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

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players

Art. 4 GDPR

data subject ('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

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.

"processor"

Art. 4(8) GDPR

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 the data subjects

who notifies a data breach?



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- a Facebook 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 their 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)?

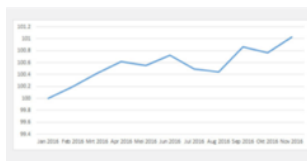
- a provider of modular HR cloud solutions uses a third party to provide a tool that enables its customers (employers) to calculate the (max) compensation they can pay employees for travel expenses
- business information bureaus such as Experian or Dun & Bradstreet generate credit scores and scorecards 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]



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

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"processing"

Art. 4(3) GDPR

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*


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) recital
23 GDPR

any information relating to an identified or identifiable natural person ("data subject")

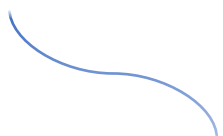


an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or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

"anonymous data"

Art. 4(2) recital
23 GDPR

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"

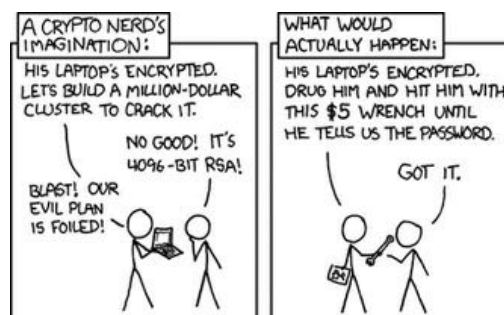
Art. 4(5) GDPR

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





TOILET INTELLIGENT YOU-TOILET — POWERED BY GOOGLE STRAINSENSE ANALYTICS

YOU AREN'T GETTING ENOUGH VITAMIN D
YOU ARE DANGEROUSLY DEHYDRATED
ARE YOU SATISFIED WITH LEANPRO? ARE YOU SATISFIED WITH LEANPRO? ARE YOU SATISFIED WITH LEANPRO?

info@companyname.com

social security number

@zwnne

ip-address

cookies, device fingerprints

zip code, street and/or house nr.

070 515 3000

+31(0)6 2251 8330

"single out"

"A very common family name will not be sufficient to identify some one – 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 (Breyer)

ISP

additional subscriber information required to identify the internet user

legal means?

website

dynamic IP-address

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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.

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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 automated 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 provided to all members within the SNS or the data is indexable by search engines, access goes beyond the personal or household sphere. [WP29 opinion on social networks, 2009]

exception for journalistic, artistic, or literary 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.

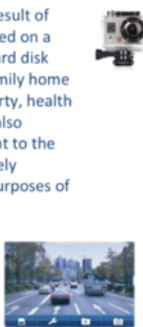


CJEU 11 December
2014 C-212/13
(Reynes)



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

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?

basic 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



- 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 Mumbay (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.
- As of 1st of November 2019, the successor of Cambridge Analytica will process personal data of Dutch citizens, living in Canada.
- An internet advertising network uses cookies to obtain data from internet-users, inter alia in the Netherlands

Is the GDPR applicable? Why (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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