

privacy dimensions

- physical
- territorial
- communications
- informational

respect for physical and mental integrity
(drugtest, cavity search)

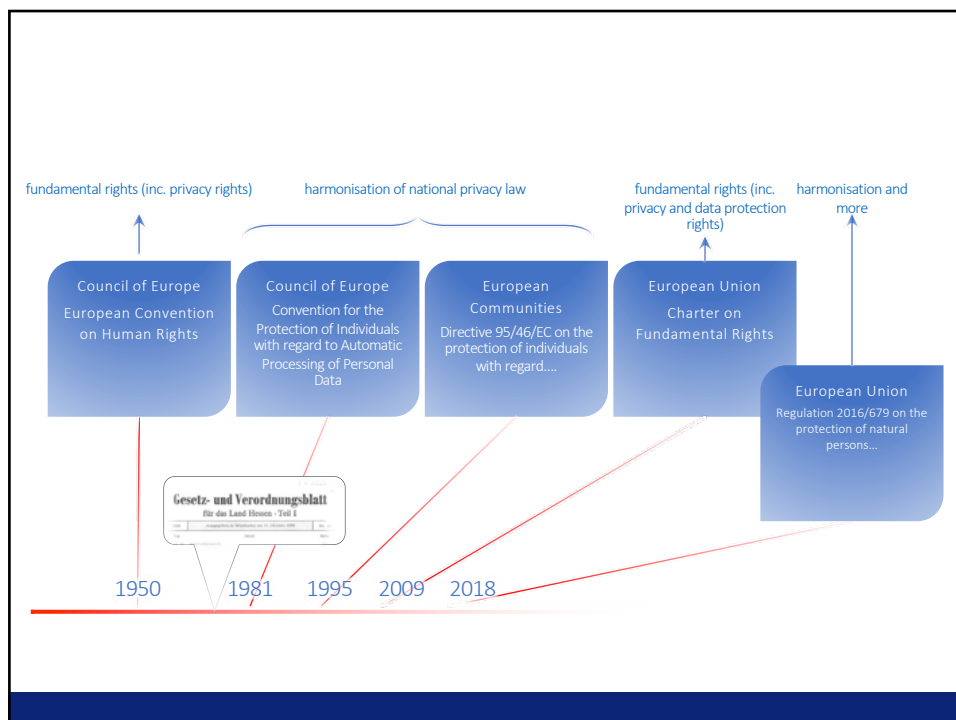
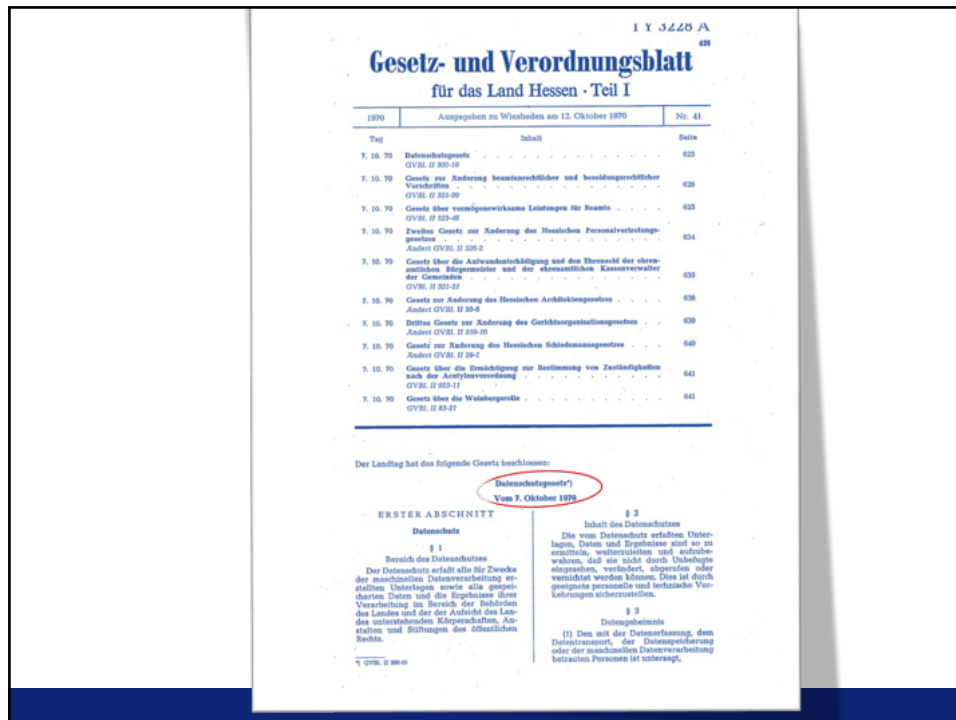
e.g. inviolability of the home

claims of individuals with respect to information on them

secrecy of correspondence and telecommunications, etc.

history







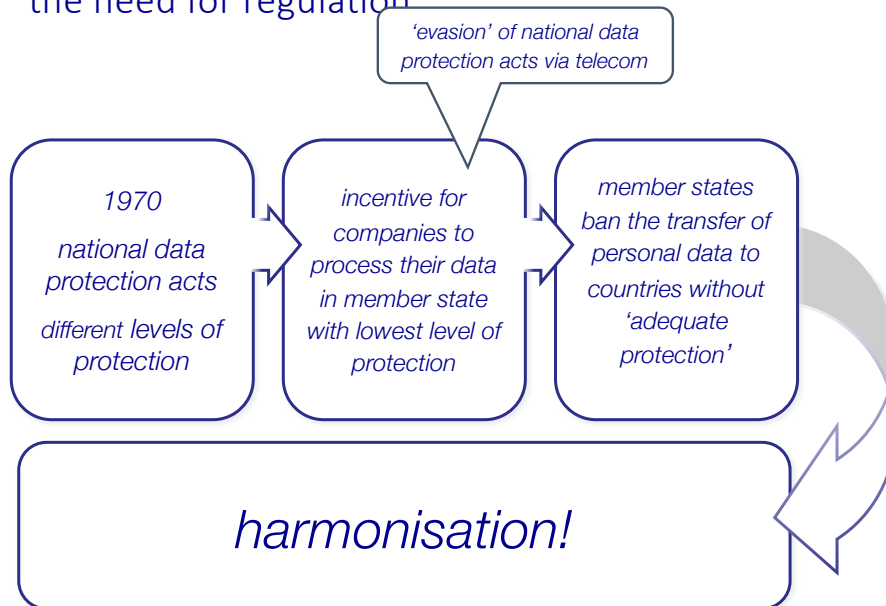
data processing 1960's



1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz



the need for regulation



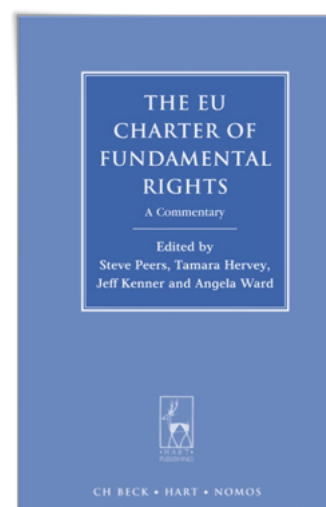
(9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular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

EU Charter of Fundamental Rights (2000)

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



legal basis

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. [...]

Article 114(1) TFEU

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.



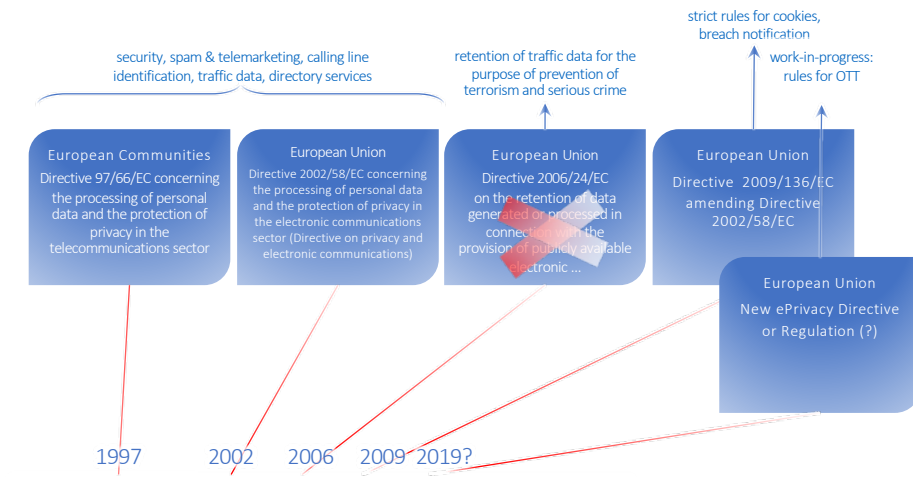
horizontal effect

'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

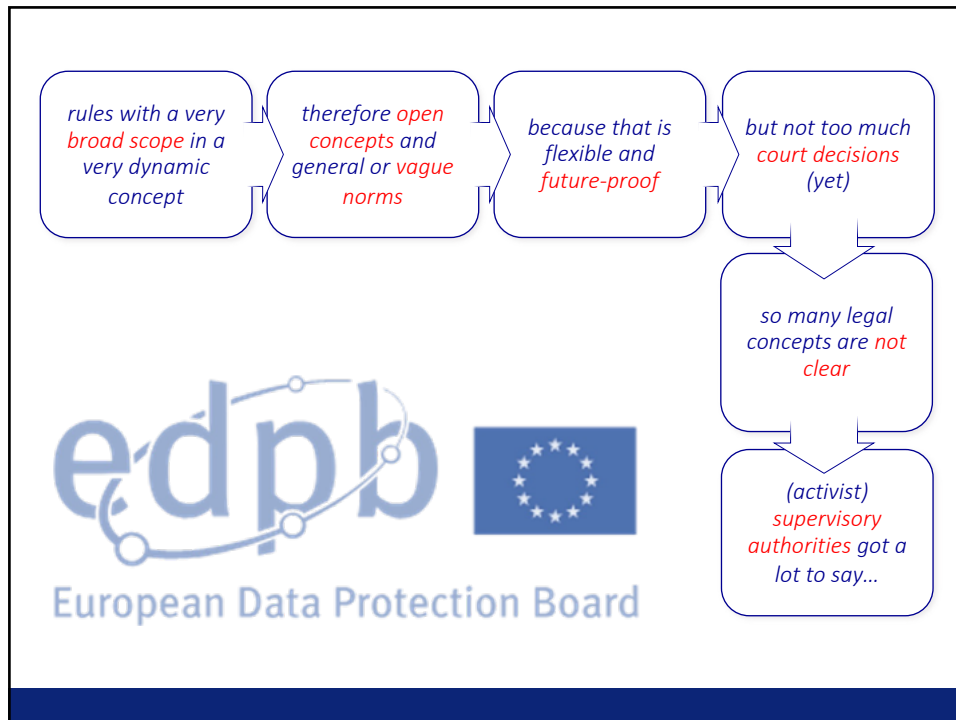
ePrivacy Directive 2002/58/EC



national DP-law

- special data and criminal data
- health care and social security
- exemptions for the press (freedom of information)
- establishment and organisation of the supervisory authority

In the Netherlands:
GDPR Implementation Act
(*Uitvoeringswet AVG* or *UAVG*)



interesting discussions...

POLITICO

Meet the Dutchman who cried foul on Europe's tracking technology

As European governments rushed to embrace technology to fight the coronavirus, a plainspoken Dutchman emerged as a thorn in their side. Aleid Wolfsen's message: Don't pretend your solutions are privacy-friendly. In a group that normally keeps disagreements quiet, Wolfsen stands out. A former politician and mayor of Utrecht who had no formal training in data protection when he took on his role in 2016, he has repeatedly been at odds with other watchdogs, most of whom do not

is political background.



The official in charge of Europe's grouping of privacy regulators was also keen to play down any disagreements. There is "no difference in the positions" of different privacy regulators and the "Dutch case was a specific case," Andrea Jelinek said, while a spokesperson for the group, the European Data Protection Board, added: "The legal concept of anonymization is not an absolute concept."

Europe's Data Protection Supervisor, who had OK'd the Commission's use of telecoms data to track the coronavirus, said: "There is a difference between the technical impossibility of doing something to the very end, and something which we would call an effective anonymization."

QUESTIONS

1. When did the European Convention of Human Rights (ECHR) enter into force?

- A. 1946
- B. 1949
- C. 1953
- D. 1966

Question 1a preparation assignment questions

2. And what article of that Convention deals with privacy and data protection?

- A. Article 6
- B. Article 8
- C. Article 10
- D. Article 12

Question 1b preparation assignment questions

SEMINAR I. AND II. 18 QUESTIONS

- In Seminar I professor Zwenne will discuss the history, context and background of European Data Protection Law: the legal framework and institutions. In Seminar II the key concepts applicability and territorial scope are set out. For both seminars students are expected to have prepared answers on the questions below, which may be discussed in class.
1. When did the European Convention of Human Rights (ECHR) enter into force? What article of the Convention deals with privacy and data protection?
 2. Why did policymakers and lawmakers in some European countries see the need for data protection law (data privacy law) in the 1960s and the early 1970s?
 3. In 1976 the European Commission commented that "the diversity of national approaches and the lack of a system of protection at community level are an obstacle to completion of the internal market". How can this diversity be such obstacle?
 4. What is the role of the position papers, policy papers, and background papers by the EDPS? Are they legally binding?
 5. Which ECJ (CJEU) cases are considered particularly influential in shaping EU DP-law?
 6. What are the definitions of the controller and the processor? Give a few real examples of both.
 7. What is meant by 'joint controllership'? What are the consequences of such joint controllership?
 8. A company has a small ICT-department, consisting of five employees that provide ICT-support to other employees in the company. Does this ICT-department qualify as processor? Why (not)?
 9. What was the DART-case about?
 10. Do pseudonymous data qualify as personal data? Why (not)?
 11. When is an individual considered to be identified or identifiable?
 12. Does EU DP-law apply to manual (i.e. non-automated) processing of personal data?
 13. A data subject dies. Is his data still protected under EU DP-law?
 14. What did the CEU say about 'special categories of personal data'?
 15. What are 'special data' or 'special categories of personal data'. Is the process of anonymisation covered by the concept of processing personal data?
 16. A controller decides to anonymise a personal data. Is the process of anonymisation covered by the concept of processing personal data?
 17. In the Google Spain case the Court ruled that the Spanish DP Act did apply to the processing of personal data controlled by Google Inc., which is established in Mountain View (CA) in the US. How did the Court come to that decision?
 18. A Dutch electronics manufacturer instructs an India-based ICT service provider to analyse a set of personal data on individuals in South Africa, in order to sell its devices. Does the GDPR apply to personal data on individuals in South Africa, in order to sell its devices. Does the GDPR apply to personal data on individuals in South Africa, in order to sell its devices.

QUESTION

3. Why did policymakers and lawmakers in some European countries see the need for data protection law (data privacy law) in the 1960s and the early 1970s

- A. Because, at that time the ARPANET, a precursor of the internet, was created and subsequently specific DP-law was needed
- B. Because, particularly government and multinationals started using computers for processing personal data and as a result new threats to privacy emerged
- C. Because of Alan F. Westin's influential books on Privacy and Freedom (1967) and Databanks in a Free Society (1972)

Question 2 preparation assignment questions

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QUESTION

4. In 1976 the European Commission commented that

"[t]he diversity of national approaches and the lack of a system of protection at community level are an obstacle to completion of the internal market".

How can this diversity be such obstacle?

- A. Because companies don't have sufficient knowledge of all data protection rules in all member states
- B. Because member states that have data protection rules cannot allow companies to avoid these rules by using facilities in member states without these rules
- C. Because it is immoral that some European citizens are protected, and some other citizens are not

Question 3 preparation assignment questions)

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QUESTION

5. What is the role of the position papers, policy papers, guidelines and background papers published by WP29, EDPB and EDPS? Are they legally binding?

- A. The position papers, policy papers and background papers are not binding; the guidance is binding
- B. All documents published by these authorities are binding
- C. None of these documents are binding
- D. These documents only bind the authorities that published these

Question 4 preparation assignment questions

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QUESTIONS

1. Which ECJ (CJEU) cases are considered particularly influential in shaping EU DP-law?

- A. CJEU 13 May 2014, C-131/12, (Google Spain) and CJEU 24 September 2019, C-507/17 (Google/CNIL) and CJEU 24 September 2019 C-136/17 (GC/CNIL)
- B. CJEU 17 July 2014, C-141/12 and C-372/12 (IND) and CJEU 20 december 2017, C 434/16, (Nowak)
- C. CJEU 6 October 2015, C-362/14 (Schrems I)
- D. All of the above (and many more)



g.j.zwenne@law.leidenuniv.nl