



@zwnne

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 



BACKGROUND & CONTEXT



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

1. restoring the balance

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."

WILLES, J., in *Millar 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 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 property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in

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—Loaded for 100 Pictures.

ROCHESTER, N. Y.

A full line Eastman's goods always in stock at LOEBER BROS., 111 Nassau
Street, New York.

1. restoring the balance



Gesetz- und Verordnungsblatt für das Land Hessen · Teil I

1970	Ausgegeben zu Wiesbaden am 12. Oktober 1970	Nr. 41
Tag	Inhalt	Seite
7. 10. 70	Datenschutzgesetz GVBl. II 300-10	625
7. 10. 70	Gesetz zur Änderung beamtenrechtlicher und besoldungsrechtlicher Vorschriften GVBl. II 321-20	628
7. 10. 70	Gesetz über vermögenswirksame Leistungen für Beamte GVBl. II 323-48	633
7. 10. 70	Zweites Gesetz zur Änderung des Hessischen Personalvertretungsgesetzes Ändert GVBl. II 326-2	634
7. 10. 70	Gesetz über die Aufwandsentschädigung und den Ehrensold der ehrenamtlichen Bürgermeister und der ehrenamtlichen Kassenverwalter der Gemeinden GVBl. II 321-21	635
7. 10. 70	Gesetz zur Änderung des Hessischen Architektengesetzes Ändert GVBl. II 50-6	638
7. 10. 70	Drittes Gesetz zur Änderung des Gerichtsorganisationsgesetzes Ändert GVBl. II 210-16	639
7. 10. 70	Gesetz zur Änderung des Hessischen Schiedsmanngesetzes Ändert GVBl. II 29-1	640
7. 10. 70	Gesetz über die Ermächtigung zur Bestimmung von Zuständigkeiten nach der Acetylenverordnung GVBl. II 923-11	641
7. 10. 70	Gesetz über die Weinbergsrolle GVBl. II 83-21	641

Der Landtag hat das folgende Gesetz beschlossen:

Datenschutzgesetz¹⁾

Vom 7. Oktober 1970

ERSTER ABSCHNITT

Datenschutz

§ 1

Bereich des Datenschutzes

Der Datenschutz erfaßt alle für Zwecke der maschinellen Datenverarbeitung erstellten Unterlagen sowie alle gespeicherten Daten und die Ergebnisse ihrer Verarbeitung im Bereich der Behörden des Landes und der der Aufsicht des Landes unterstehenden Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts.

¹⁾ GVBl. II 300-10

§ 2

Inhalt des Datenschutzes

Die vom Datenschutz erfaßten Unterlagen, Daten und Ergebnisse sind so zu ermitteln, weiterzuleiten und aufzubewahren, daß sie nicht durch Unbefugte eingesehen, verändert, abgerufen oder vernichtet werden können. Dies ist durch geeignete personelle und technische Vorkehrungen sicherzustellen.

§ 3


Datengeheimnis

(1) Den mit der Datenerfassung, dem Datentransport, der Datenspeicherung oder der maschinellen Datenverarbeitung betrauten Personen ist untersagt,

1. restoring the balance



Publicatieblad L 119
van de Europese Unie



Uitgave in de Nederlandse taal Wetgeving 59e jaargang
4 mei 2016

Inhoud

I Wetgevingshandelingen

VERORDENINGEN

- * Verordening (EU) 2016/679 van het Europees Parlement en de Raad van 27 april 2016 betreffende de bescherming van natuurlijke personen in verband met de verwerking van persoonsgegevens en betreffende het vrije verkeer van die gegevens en tot intrekking van Richtlijn 95/46/EG (algemene verordening gegevensbescherming) (*) 1

RICHTLIJNEN

- * Richtlijn (EU) 2016/680 van het Europees Parlement en de Raad van 27 april 2016 betreffende de bescherming van natuurlijke personen in verband met de verwerking van persoonsgegevens door bevoegde autoriteiten met het oog op de voorkoming, het onderzoek, de opsporing en de vervolging van strafbare feiten of de tenuitvoerlegging van straffen, en betreffende het vrije verkeer van die gegevens en tot intrekking van Kaderbesluit 2008/977/JBZ van de Raad 89
- * Richtlijn (EU) 2016/681 van het Europees Parlement en de Raad van 27 april 2016 over het gebruik van persoonsgegevens van passagiers (PNR-gegevens) voor het voorkomen, opsporen, onderzoeken en vervolgen van terroristische misdrijven en ernstige criminaliteit 132

(*) Voor de EER relevante tekst

NL Besluiten waarvan de titels mager zijn gedrukt, zijn besluiten van dagelijks beheer die in het kader van het landbouwbeleid zijn genomen en die in het algemeen een beperkte geldigheidsduur hebben.
Besluiten waarvan de titels vet zijn gedrukt en die worden voorafgegaan door een sterretje, zijn alle andere besluiten.

2. predicting the future

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



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



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

4. and the European Union



data processing in the 1960's



In 1970 verabschiedete Hessen das weltweit erste Datenschutzgesetz



4. and the European Union

'evasion' of national data protection acts via telecoms

1970: a few national data protection acts and different levels of protection

incentive for controllers to process their data in member state with lowest level of protection

member states ban the transfer of personal data to countries without 'adequate protection'

harmonisation!

4. 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 or not by automated means, 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

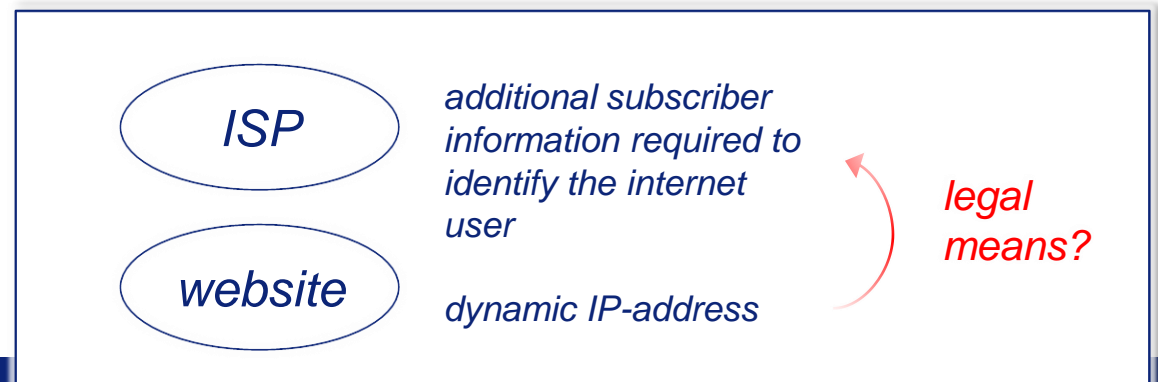
Article 2

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



[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...

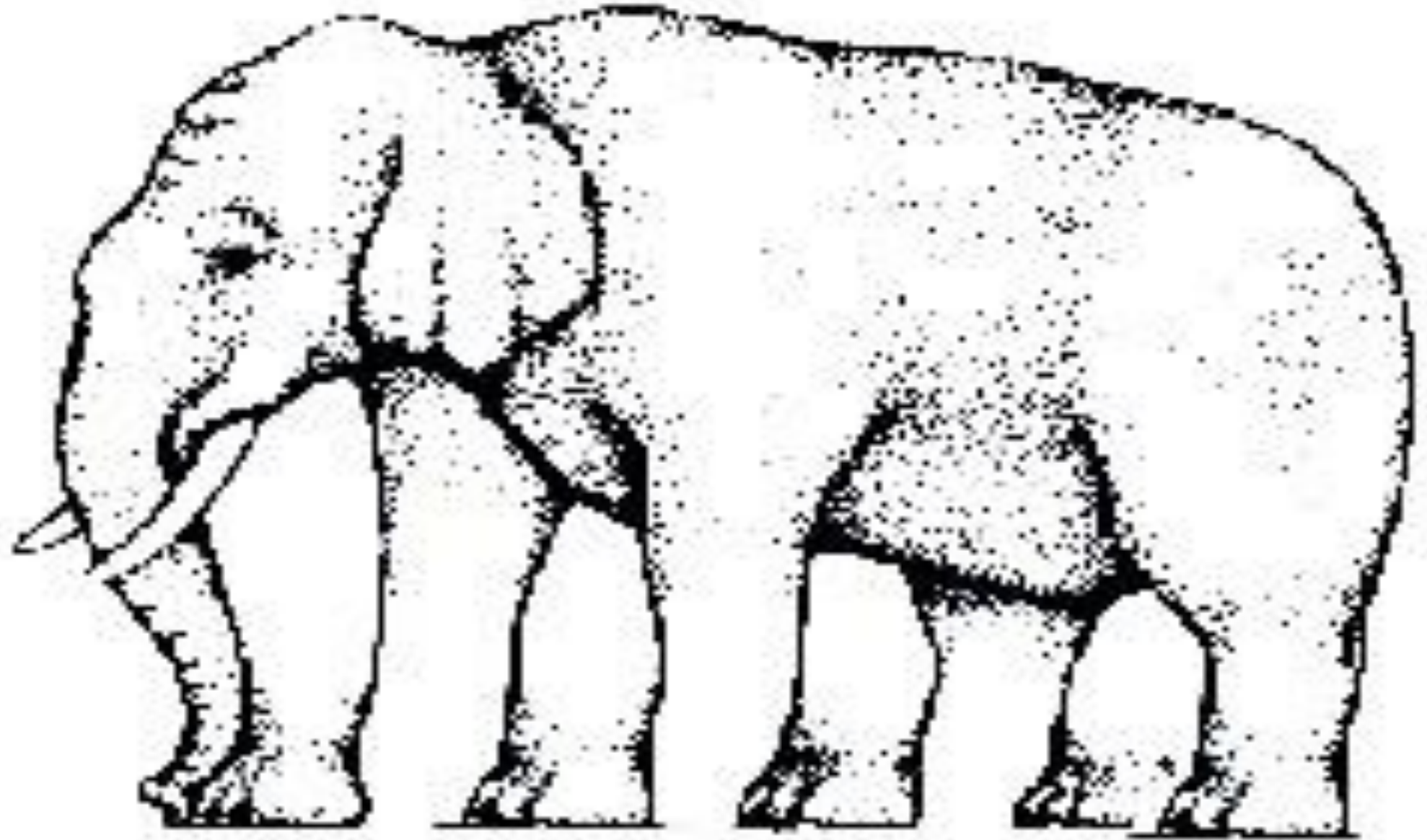
personal data revealing

- 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...*



- **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.



g.j.zwenne@law.leidenuniv.nl