



PART I. PRIVACY & DATA PROTECTION LAW

Amélie Lachapelle
amelie.lachapelle@unamur.be

PART 1. PRIVACY & DATA PROTECTION LAW

SUB PART I. GENERAL PRINCIPLES

1. Legal Basis of Privacy

- A. CoE Level
- B. EU Level
- C. National Level

2. Legal Basis of Data Protection Law

- A. CoE Level
- B. UE Level
- C. National Level

3. Introduction to the GDPR: scope and definitions

- A. Material scope
- B. Personal scope
- C. Territorial scope

1. Legal Basis of Privacy

- A. CoE Level
- B. EU Level
- C. National Level

A. CoE Level



- ✓ According to Article 8 of the ECHR (available at [link CoE](#)):

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.



PRINCIPLE

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



EXCEPTIONS

A. CoE Level (2)

- List of signatures of ECHR (www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/005/signatures): 47 members (including Russia and EU)

- The ECHR provides for :
 - “negative” obligations
 - “positive” obligations



- The ECHR is **directly** applicable

- The ECHR has a **vertical** and a **horizontal** effect



a) Notion of « private life » (1)

- **What is “private life” ?** (scope of article 8, §1)
- **No exhaustive definition** of the notion of private life (Niemiets v. Germany, § 29), but this is a **broad term** (Peck v. the United Kingdom, § 57; Pretty v. the United Kingdom, § 61).



- According to the **literature**, cases falling under the notion of private life may be grouped into **three categories**:
 1. a person's **physical**, psychological or moral integrity,
 2. his **privacy**,
 3. his **identity**.

a) Notion of « private life » (2)

1. A person's physical, psychological or moral integrity, including:

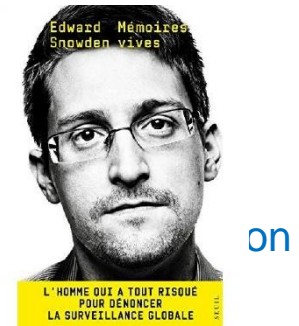
- medical treatment and psychiatric examinations
- (mental) health
- conditions of detention
- prohibition of abortion
- domestic violence
- effectiveness of a criminal investigation
- gender identity including the right to legal recognition of post-operative transsexuals
- sexual orientation and sexual life
- prohibition of abortion
- activities of a professional or business nature
- restrictions on access to certain professions or to employment
- certain rights of people with disabilities
- matters concerning the burial of family members
- lack of clear statutory provisions criminalising the act of covertly filming a naked child
- obligation to ensure that the applicants received essential information enabling them to assess the risks to their health and lives (medication, vaccine, industry ...)
 - Right to a safe environment



a) Notion of « private life » (3)

2. A person's privacy, including:

- the right to one's image and photographs of an individual
- an individual's reputation
- files or data of a private nature (e.g.: incomes) or public nature (e.g.: information about a person's political activities) collected and stored
- DNA profiles, cell samples and fingerprints collected
- information about a person's health (e.g., information about infection with HIV or with COVID 19)
- surveillance of communications and telephone conversations
- video surveillance of public places
- video surveillance of an employee by the employer
- GPS surveillance of a person and the processing and use of the data thus obtained
- police listing and surveillance of an individual because of his membership of a human rights organisation



a) Notion of « private life » (4)

3. A person's identity, including:

- the right to personal development and personal autonomy, concerning a person's choice to avoid what she considered would be an undignified and distressing end to her life;
- an individual's right to decide how and when his or her life should end (provided that he or she is in a position to form his or her own free will in that respect and to act accordingly);
- the applicants' grievance that there is a regulatory limitation on their capacity to choose, in consultation with their doctors, the way in which they should be medically treated with a view to possibly prolonging their lives;
- the right to obtain information in order to discover one's origins and the identity of one's parents;
- a person's marital status as an integral part of his or her personal and social identity;
- ethnic identity and the right of members of a national minority to maintain their identity and to lead a private and family life in accordance with that tradition;
- information about personal religious and philosophical convictions;
- the right to establish and develop relationships with other human beings and the outside world
- stopping and searching of a person in a public place;
- severe environmental pollution potentially affecting individuals' well-being and preventing them from enjoying their homes;

a) Notion of « private life » (5)

- All what is listed in slides (and even more) comes under the scope of Art. 8, §1 of the ECHR
- **Three key dimensions of the right to privacy**
 - Right to be **let alone**
 - Right to personal development and to establish and **develop relationships** with other human beings and the outside world
 - Right to **self-determination**

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- For all these kinds of topics, **interferences are authorized only under the conditions of Art. 8, §2 of the ECHR:**
 1. **Legality Principle** : “*in accordance with the law*”
 2. **Purpose Principle** : “*in the interests of...*”
 3. **Proportionality Principle** : “*necessary in a democratic society*”

b) Exceptions (1)

1. Legality Principle : “*in accordance with the law*”

- interferences provided by law must be publicly accessible and sufficiently clear (foreseeability principle)
- legal basis in a “material” sense

2. Purpose Principle : “*in the interests of...*”

- see list of Art. 8, § 2: national security, public safety, economic wellbeing of the country, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others

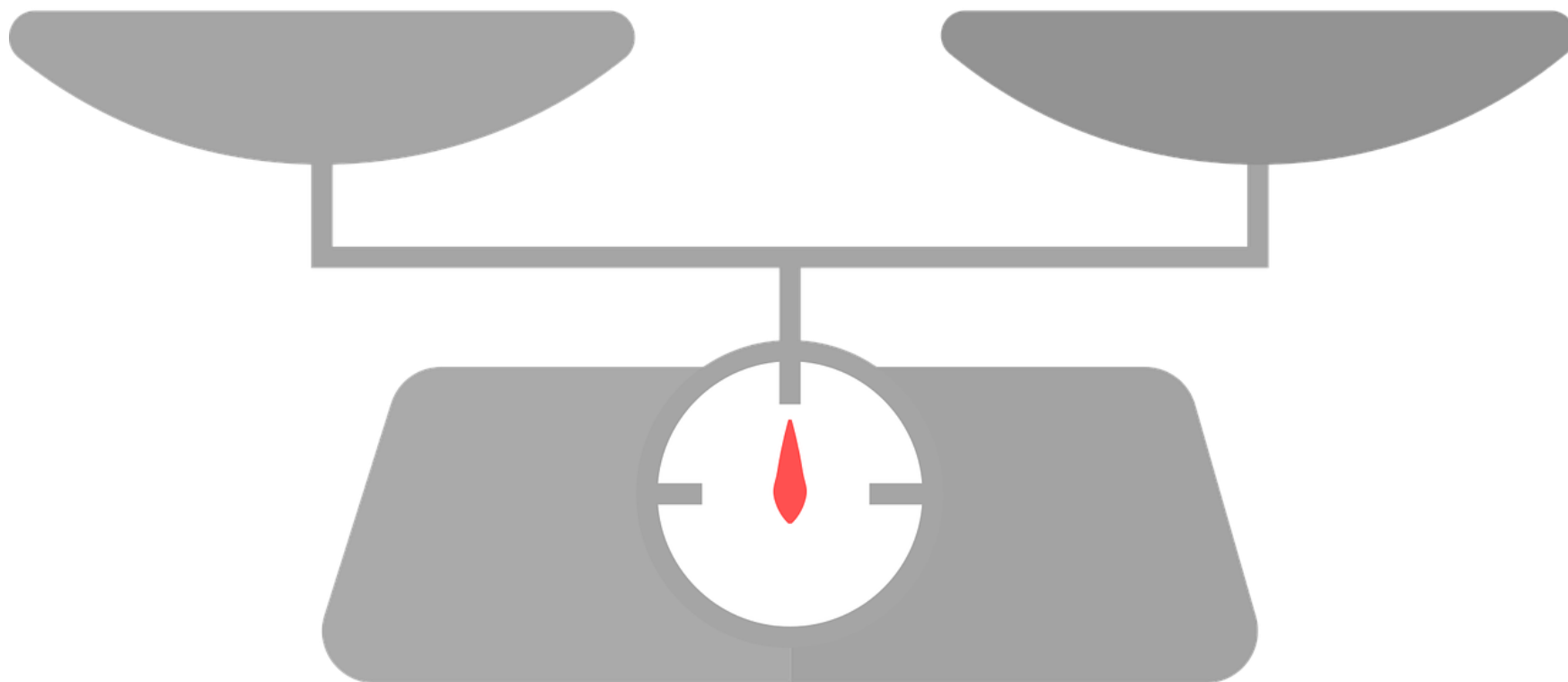
3. Proportionality Principle : “*necessary in a democratic society*”

- interferences have to respond to a “*pressing social need*”
- see next slide

3. Proportionality Principle

- “Necessary”, within the meaning of Art. 8, §2, is not synonymous with “indispensable”, the words “absolutely necessary” and “strictly necessary” neither has it the flexibility of such expressions as “admissible”, “ordinary”, “useful”, “reasonable” or “desirable”
- It is for the national authorities to make the initial assessment of the reality of the “pressing social need”
- Consequently, Art.8, §2 leaves to the States a **margin of appreciation**
- **Fair balance** between the relevant interests





b) Exceptions (3)

- The right to privacy is a fundamental right ...
- **Security is NOT !** (= “legitimate interest” in the sense of Art. 8 §2 of the ECHR)
- What about Article 5 of the ECHR?

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

b) Exceptions (4)

→ The **philosophy** of the ECHR is to reach **security** **through** the respect of **liberties** and rights... Not the opposite !



I would argue that security and liberty, security and privacy are not actually opposing. The only place those can be oppositional is in the realm of rhetoric but not fact.

— Edward Snowden —

AZ QUOTES

b) Exceptions (5)


! Article 15 of the ECHR !

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.


COVID?

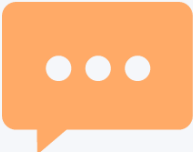


WEB

How to participate?

- 1 Connect to www.wooclap.com/CYBESECU11OCTOBER
- 2 You can participate





SMS

- 1 Not yet connected? Send **@CYBESECU11OCTOBER** to **0460 200 711**
- 2 You can participate

wooclap

Questions - / 4 Messages 100 % Exit

0

B. EU Level



- ✓ Charter of fundamental rights of the EU (available on [link EU Charter](#))
- The EU has acceded to the ECHR : EU = Contracting Party of the Convention

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

- The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR (ECJ caselaw) → Article 7 Charter // Article 8 ECHR
- "correspondence" → "communications"

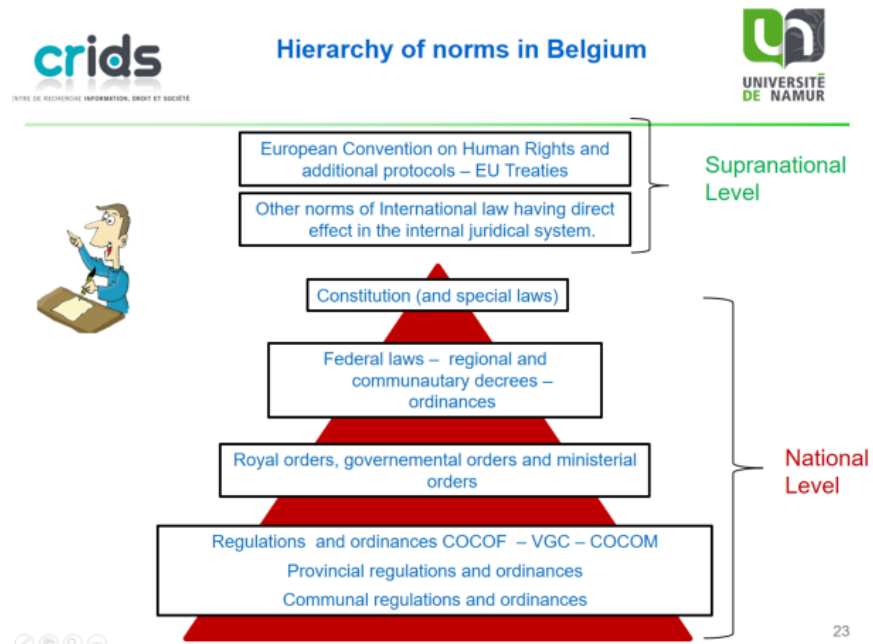


Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

C. National Level



✓ Article 22 of the Belgian Constitution (available on [link Senate](#))

“Everyone has the right to respect for his or her private and family life, except in the cases and under the conditions established by law” (« Chacun a droit au respect de sa vie privée et familiale, sauf dans les cas et conditions fixés par la loi »).

- Belgian Constitution ≠ ECHR:
 - Interferences « provided by law » means strictly « **law** » or « **decree** » or « **ordinance** » → a *royal decree* is not sufficient to interfere with the essence of the right to privacy (but may be sufficient for « details ») nor a *legal precedent* → legal basis in a **formal sense**
 - No explicit **proportionality** test (but ECHR is directly applicable)
 - No **legitimate** aims listed for interferences (but ECHR is directly applicable)

2. Legal Basis of Data Protection

A. CoE Level



- No right to data protection in the ECHR

- Right to privacy = tentacular right 

- Right to data protection = part of the right to privacy



The protection of personal data is **of fundamental importance to a person's enjoyment of his right** to respect for private and family life (S. and Marper v. the United Kingdom, § 41).

- Broad meaning of “correspondence” // ICTs



Private life includes the **privacy of communications**, which covers the **security and privacy of mail, telephone, e-mail and other forms of communication**; and **informational privacy**, including online information (Copland v. the United Kingdom)

- ✓ Convention for the Protection of **Individuals** with regard to Automatic Processing of Personal Data, Strasbourg, 28.I.1981 (**“Convention n° 108 +”** available on [link CoE](#))

*“Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular **the right to the respect for privacy**, taking account of the increasing flow across frontiers of personal data undergoing automatic processing”*

Article 1. The **purpose** of this Convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular **his right to privacy, with regard to automatic processing of personal data relating to him** (“data protection”).”

- WW II : processing of (sensitive) personal data = WMD



- Convention n° 108 +

In 2018, the Convention was modernised to adapt it to the new realities of an increasingly connected world and to strengthen its effective implementation.

- Fully consistent with the GDPR and the Police & Justice Directive

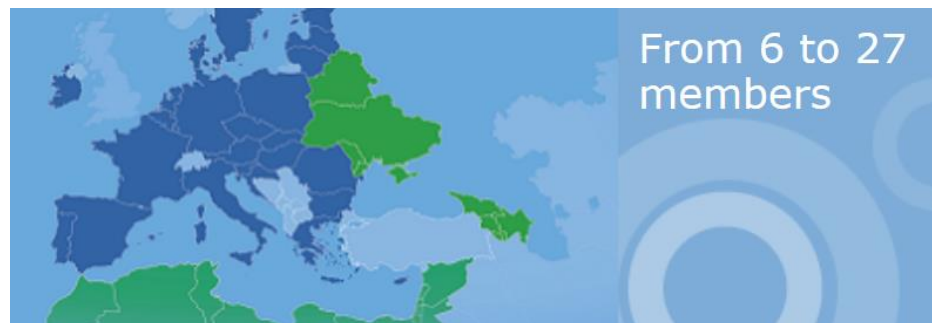
A. CoE Level (4)

- ✓ **Additional protocol** to Convention 108 regarding supervisory authorities and transborder data flows (ETS No. 181) (available on [link CoE](#))
- “The text will increase the protection of personal data and privacy by improving the original Convention of 1981 (ETS No. 108) **in two areas.**
 - Firstly, it provides for the setting up of national **supervisory authorities** responsible for ensuring compliance with laws or regulations adopted in pursuance of the convention, concerning personal data protection and transborder data flows.
 - The second improvement concerns **transborder data flows to third countries.** Data may only be transferred if the recipient State or international organisation is able to afford an **adequate level of protection.**”
- 43 ratifications

Recommendations (not binding):

- Recommendation no. R (87) 15 of the Committee of Ministers to Member States regulating the use of personal data in the police sector
- Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling
- Recommendation No. R (2002) 9 on the protection of personal data collected and processed for insurance purposes
- Recommendation No. R (99) 5 on the protection of privacy on the Internet
- Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes
- Recommendation No. R (97) 5 on the protection of medical data Recommendation No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services
- Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies
- Recommendation No. R (90) 19 on the protection of personal data used for payment and other related operations
- Recommendation No. R (89) 2 on the protection of personal data used for employment purposes
- Recommendation No. R (86) 1 on the protection of personal data used for social security purposes
- Recommendation No. R (85) 20 on the protection of personal data used for the purposes of direct marketing
- Recommendation No. R (83) 10 on the protection of personal data used for scientific research and statistics
- Recommendation No. R (81) 1 on regulations for automated medical data banks
- www.coe.int/en/web/common-european-framework-reference-languages/recommendations

B. EU Level



✓ Article 8 of the EU Charter of Fundamental Rights

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

- ✓ **Directive 95/46/EC** on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- “Data Economy”
- A "directive" is a legislative act that sets out a **goal** that all EU States must achieve. However, it is up to the individual States to devise their own laws on how to reach these goals
 - Objective of a Directive: **harmonization of national laws**
 - BUT** national implementations may vary a lot

➔ Hence the adoption of a Regulation : The **General Data Protection Regulation** (Regulation EU 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and **repealing Directive 95/46/EC**).

Regulation has been **adopted** on 27 April 2016

Regulation has been **published** on 4 May 2016

Regulation has **entered into force** on 24 May 2016

Regulation shall **apply** from 25 May 2018

date of publication

4.5.2016

EN

Official Journal of the European Union

L 119/1

I

(Legislative acts)

REGULATIONS

date of enactment

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Article 99

Entry into force and application

date of entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 25 May 2018.

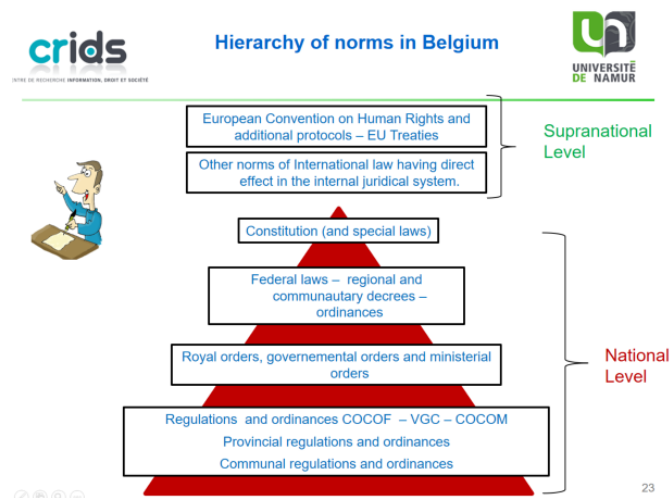
date of application

- A "regulation" is a binding legislative act. It must be applied in its entirety across the EU.
 - In principle, the objective is to complete harmonisation ...
 - **BUT** GDPR leaves scope for divergences between Member States in a number of areas



[Link to trailer](#)

C. National Level



- ✓ **Loi du 8 décembre 1992** relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel
- That law, as modified in 1998, **implements the Directive 95/46/EC in Belgium.**
- ✓ **NEW ACT** to take account the new GDPR

Loi du 30 Juillet 2018 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel (*M.B.*, 5 septembre 2018), available on [link Moniteur Belge](#))

3. Introduction to the GDPR

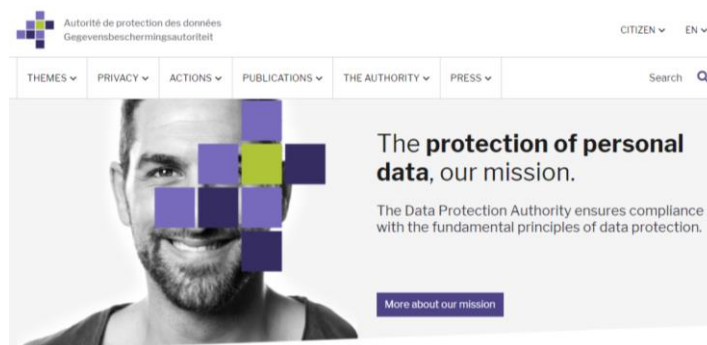


Preliminary remarks

Preliminary remarks (1)

- ✓ To understand the scope and the working of the GDPR regime, you must consult:
 - **GDPR**
 - Caselaw of the **ECJ** 
 - Opinions of the **Article 29 Data Protection Working Party (WP29)**
 - The WP is made up of a representative from the data protection authority (DPA) of each EU Member State, the European Data Protection Supervisor (EDPS) and the European Commission (if appropriate)
 - The WP issues *opinions* and *recommendations* ([link archives WP29](#))
 - Since the entry into force of the GDPR, the WP has been replaced by the **European Data Protection Board** ([link EDPB](#))

- Opinions of the **Belgian Privacy Commission**
 - The Privacy Commission is an *independent* body ensuring the protection of privacy when personal data are processed in Belgium.
 - The Privacy Commission issues *opinions* and *recommendations* ([link DPA](#))
 - Since the entry into force of the GDPR, the Privacy Commission has been replaced by the **Data Protection Authority (DPA)**



A. Scope and definitions of key concepts

- a) Material scope
- b) Personal scope
- c) Territorial scope

When does the
GDPR apply?

a) Material Scope (1)

- The GDPR applies when there is (Art. 2.1):
 - “processing” of
 - “personal data”
 - wholly or partly by automatic means
 - OR organized manually in a filing system



- The GDPR does not apply to:
 - processing of personal data by a natural person in the course of a purely personal or household activity



i) Household exemption (1)

ECJ, Lindqvist Case, [link curia](#)

Judgment

- 1 By order of 23 February 2001, received at the Court on 1 March 2001, the Göta hovrätt (Göta Court of Appeal) referred to the Court for a preliminary ruling under Article 234 EC seven questions concerning inter alia the interpretation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
- 2 Those questions were raised in criminal proceedings before that court against Mrs Lindqvist, who was charged with breach of the Swedish legislation on the protection of personal data for publishing on her internet site personal data on a number of people working with her on a voluntary basis in a parish of the Swedish Protestant Church.

On those grounds,

THE COURT,

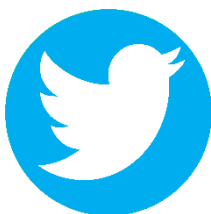
in answer to the questions referred to it by the Göta hovrätt by order of 23 February 2001, hereby rules:

1. The act of referring, on an internet page, to various persons and identifying them by name or by other means, for instance by giving their telephone number or information regarding their working conditions and hobbies, constitutes 'the processing of personal data wholly or partly by automatic means' within the meaning of Article 3(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

i) Household exemption (2)

wooclap

Is the use of **online social networks** a “*purely personal or household activity*” ?



i) Household exemption

✓ According to the WP29, ([link WP29](#)):

- **In most cases**, the use of SNS is part of the “household exemption”

BUT in some instances, the GDPR applies to SNS users:

- where the activities of some SNS users may extend beyond a purely personal or household activity, for example when the SNS is used as a **collaboration platform for an association or a company**. If an SNS user acts on behalf of a company or association, or uses the SNS mainly as a platform to advance commercial, political or charitable goals, the exception does not apply.
- 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.

i) Household exemption (3)

Is the dissemination of personal data (by a private person) through a website or a book a “purely personal or household activity” ?

Please read the statement below before searching

There are legitimate uses for offshore companies and trusts. We do not intend to suggest or imply that any people, companies or other entities included in the ICIJ Offshore Leaks Database have broken the law or otherwise acted improperly. Many people and entities have the same or similar names. We suggest you confirm the identities of any individuals or entities located in the database based on addresses or other identifiable information. If you find an error in the database please [get in touch with us](#).

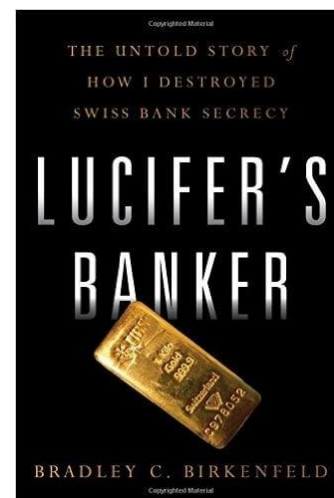
☐ I have read and understood the terms

SUBMIT



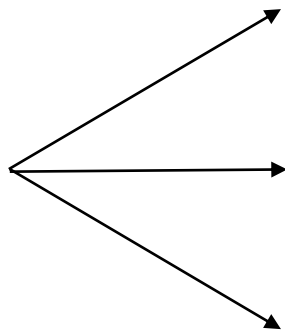
OFFSHORE LEAKS DATABASE
by The International Consortium of Investigative Journalists

wooclap



i) Household exemption

- ✓ According to the ECJ and the WP29:
 - when the purpose of the activities is to bring the data collected to the knowledge of an **indefinite number** of people, the exception does **not apply**



i) Household exemption (4)

wooclap

Is the sending of a **letter** a “purely personal or household activity” ?

- A letter to a friend ?
- A letter to authority ?
- A letter to a journalist ?



→ The household exemption shall apply

ii) Definition of « Personal Data » (1)

✓ “**Personal Data**” is defined in Art. 4 of the GDPR :

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
- The WP29 has given a **broad interpretation** of the notion (see Opinion 4/2007 on the concept of personal data – [link WP29](#))

- “Any information”
 - Nature :
 - ✓ Objective (presence of a certain substance in one's blood) or subjective (opinions or assessments)
 - ✓ Correct or incorrect
 - Content
 - ✓ Privacy and family life, economic/social/political behaviour, political/philosophical convictions, health, etc.
 - Format
 - ✓ Whatever form, be it alphabetical, numerical, graphical, photographical or acoustic



ii) Definition of « Personal Data » (3)

- “Relating to”
 - Relations/links between data & natural person
 - **In many cases**, it’s easy to establish (direct or not)
 - **BUT** in some cases, NO
 - ✓ In order to consider that the data “relate” to an individual, a “**content**” element OR a “**purpose**” element OR a “**result**” element should be present :
 - “**Content**”: information “about” a person
 - “**Purpose**”: data used with the purpose to evaluate, treat in a certain way or influence the status or behaviour of an individual
 - “**Result**”: data used likely to have an impact on a certain person's rights and interests

CE QUI VA CHANGER SUR LA CARTE D'IDENTITÉ



SOURCE

"content" element
e.g. : information contained in a
 RFID/NFC chip

ii) Definition of « Personal Data » (4)

- “A natural person”
 - ✓ Only living people – **not dead people**
 - ✓ GDPR does **not** apply to data related to **legal persons**
 - ✓ **BUT nuances :**
 - Professional data are personal data (if corresponding to the definition)
 - Natural persons acting in their professional context
 - Merchants can be natural persons: self-employed workers
 - But... Some legal persons can be linked to a unique individual (hence GDPR applies).
 - e.g.: one person company; company name linked to individual name (“haute couture” sector)

ii) Definition of « Personal Data » (5)

- “identified or identifiable”
 - ✓ **Recital 26:** “To determine whether a natural person is **identifiable**, account should be taken of all the means reasonably likely to be used, such as singling out, **either by the controller or by another person** to identify the natural person **directly or indirectly**. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments”



I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

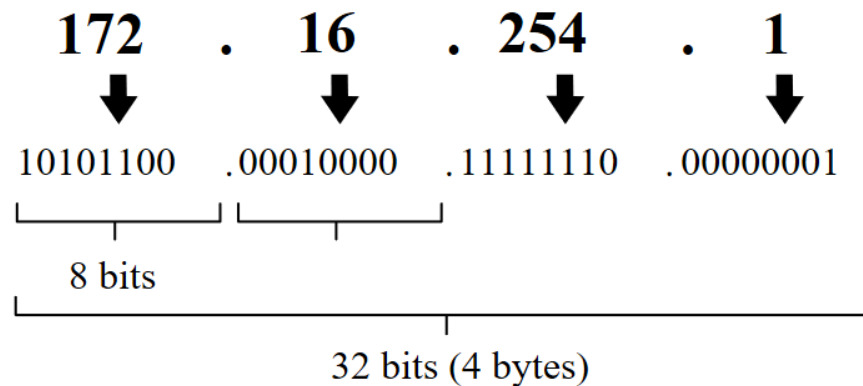
Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right.

Are IP addresses “personal data” ?

IPv4 address in dotted-decimal notation



[SOURCE](#)

ii) Definition of « personal data » (5)

- IP addresses **are personal data** under the GDPR
 - **Recital 30**: “Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, **such as internet protocol addresses, cookie identifiers** or other identifiers such as **radio frequency identification tags**. This may leave **traces** which, in particular when combined with unique identifiers and other information received by the servers, may be used to create **profiles** of the natural persons and **identify** them”
 - **ECJ – Breyer Case – 19 October 2016** ([link curia](#)): “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 (§ 49)

wooclap

What about **anonymous** data?



➤ Recital 26: The principles of data protection do not apply to anonymous information

- = “information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable” (Recital 26)

- Explanatory Memorandum of the Belgian Act: « *elles ne perdent leur caractère de données à caractère personnel que si le **caractère anonyme est absolu** et que **plus aucun moyen raisonnablement** susceptible d'être mis en œuvre ne permet de revenir en arrière pour briser l'anonymat* » ≠ pseudonymisation

- Explanatory Memorandum CoE, Recommendation No.R (97) 18:
“However, although this is not strictly a zero risk, it may be considered to be non-existent in practice when re-identification would require excessively complicated, lengthy and costly operations. No safe is completely burglar-proof; precautions are required to make safebreaking highly unlikely, though not strictly impossible. This requirement may vary according to the nature of the data, depending on how sensitive they are”.
- As a general rule, think twice before defining data as being “anonymous”

iii) Definition of « processing » (1)

- “**Processing**” is defined in Art. 4 of the GDPR

“any operation or set of operations which is performed upon personal data, whether or not by **automatic means** such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by means of transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of personal data”.

Illustration

Number of pages:
Sum:

E-mail back to:

LEFEBVRE SARRUT BELGIUM



Tel. XXXXXXXX

e-mail: xxxxxx@larcier.com

May we ask you to fill this document out and send or e-mail it back to xxxxxx@larcier.com.

INFORMATION CONCERNING THE AUTHOR

Last name:

Name: e:

Date of birth:

Home address (legal place of residency):

Phone:

Mobile phone:

Work address:

Cadre III. - REVENUS DE BIENS IMMOBILIERS.

page 3

A. REVENUS BELGES.

NON INDEXE

1. Propre habitation (ou partie de celle-ci) que vous occupez personnellement :

▲ Attention : cette rubrique ne doit être complétée que dans les circonstances précisées dans la brochure explicative (voir « Remarque importante » dans les explications relatives à cette rubrique) !

- a) RC soumis au précompte immobilier :
- b) RC non soumis au précompte immobilier :
- c) Nombre maximum d'enfants qui étaient à votre charge au 1^{er} janvier d'une année antérieure quelconque et qui occupaient avec vous cette habitation :

2. Immeubles utilisés pour votre profession :

3. Immeubles bâtis non donnés en location, donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession ou donnés en location à des personnes morales autres que des sociétés, en vue de les mettre à disposition de personnes physiques à des fins d'habitation :

4. Immeubles non bâtis non donnés en location ou donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession :

5. Immeubles donnés en location conformément à la législation sur le bail à ferme, à des fins agricoles ou horticoles :

6. Immeubles donnés en location dans des circonstances autres que celles évoquées aux n^{os} 3 à 5 ci-dessus :

a) bâtiments, matériel et outillage :

1100	2100
1101	2101
1105	2105
1106	2106
1107	2107
1108	2108
1109	2109
1110	2110

Loyer brut



Vous avez déjà un compte Yahoo! ou une adresse mail ? [Ouvrir session.](#)

Les champs précédés d'une astérisque * sont obligatoires.

Créer mon compte Yahoo!

* Prénom:
 * Nom:
 * Sexe: [choisir]
 * Compte Yahoo: @yahoo.fr
 Lettres, chiffres et souligné, seulement.
 * Mot de passe:
 Au moins 6 caractères (attention, les majuscules comptent!)
 * Saisir à nouveau le mot de passe:

En cas d'oubli de mot de passe...

* Question secrète: [Choisir une question]
 * Votre réponse:
 Au moins 4 caractères (choisissez une réponse facile à retenir pour vous et difficile à deviner pour les autres).
 * Date de naissance: [Mois]
 * Code postal:
 * Pays: France
 Adresse mail alternative:

Email d'information sur l'actualité des produits et services Yahoo!

☒ Je veux recevoir les emails d'information sur l'actualité des services Yahoo! (je peux me désabonner à tout moment).

Confirmer votre inscription

* Code sur l'image ci-dessous: [Plus d'infos sur ce champ](#)
 Cette étape sert à éviter les inscriptions automatisées.



Conditions d'Utilisation du Service

Veuillez prendre connaissance des Conditions d'Utilisation du Service ci-dessous et en accepter les termes en cliquant sur le bouton "J'accepte". [Version imprimable](#)

1. ACCEPTATION DES CONDITIONS D'UTILISATION

Bienvenue sur Yahoo! Yahoo! France vous fournit ses services sous réserve que vous vous engagiez à respecter les présentes conditions d'utilisation

FINANCIAL SERVICES
AND MARKETS
AUTHORITY

SEARCH

PROFESSIONALS

HOME / PROFESSIONALS / TOPICS / NOTIFICATION OF INFRINGEMENTS /

INTERNAL PROCEDURES

WHISTLEBLOWERS' POINT OF CONTACT

WHISTLEBLOWERS' POINT OF CONTACT

iii) Definition of « processing » (2)

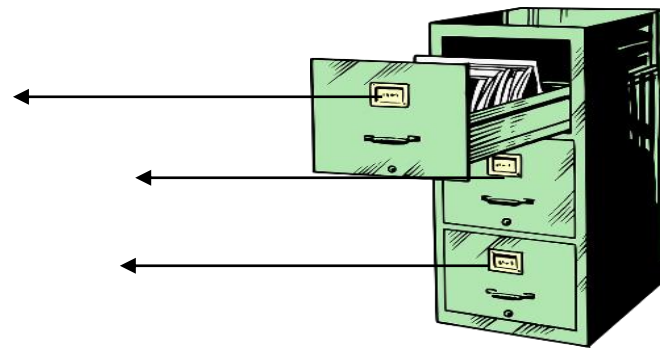
- Even anonymization or erasure of personal data is a “processing”
- When there is NO automatic means, the GDPR only applies to “personal data which form part of a filing system or are intended to form part of a **filing system**”.
- “**Filing system**” is defined in Art.4(6) of the GDPR as: a “**structured** set of personal data which are accessible according to **specific criteria**, whether centralised, decentralised or dispersed on a functional or geographical basis”.

E.g.

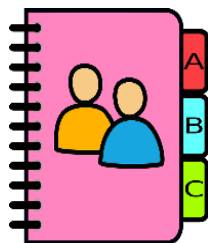
Workers since 2000

Workers since 2010

Workers since 2020



- Directory (address book) which is “organized”
alphabetical order



Number of pages:
Sum:

E-mail back to:

LEFEBVRE SARRUT BELGIUM



Tel. XXXXXXXX

e-mail: xxxxxx@larcier.com

May we ask you to fill this document out and send or e-mail it back to xxxxxx@larcier.com.

INFORMATION CONCERNING THE AUTHOR

Last name:

Name: e

Date of birth:

Home address (legal place of residency):

Phone: fax:

Mobile phone: e-mail:

Work address:

Cadre III. - REVENUS DE BIENS IMMOBILIERS.

page 3

A. REVENUS BELGES.		NON INDEXE	
1. Propre habitation (ou partie de celle-ci) que vous occupez personnellement :			
<p>▲ Attention : cette rubrique ne doit être complétée que dans les circonstances précisées dans la brochure explicative (voir « Remarque importante » dans les explications relatives à cette rubrique) :</p>			
a) RC soumis au précompte immobilier :	RC	1100.....	2100.....
b) RC non soumis au précompte immobilier :	RC	1101.....	2101.....
c) Nombre maximum d'enfants qui étaient à votre charge au 1 ^{er} janvier d'une année antérieure quelconque et qui occupaient avec vous cette habitation :			
		1104.....	2105.....
2. Immeubles utilisés pour votre profession :			
3. Immeubles bâtis non donnés en location, donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession ou donnés en location à des personnes morales autres que des sociétés, en vue de les mettre à disposition de personnes physiques à des fins d'habitation :			
		1105.....	2106.....
4. Immeubles non bâtis non donnés en location ou donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession :			
		1106.....	2107.....
5. Immeubles donnés en location conformément à la législation sur le bail à ferme, à des fins agricoles ou horticoles :			
		1107.....	2108.....
6. Immeubles donnés en location dans des circonstances autres que celles évoquées aux n°s 3 à 5 ci-dessus :			
a) bâtiments, matériel et outillage :	RC	1109.....	2109.....
		1110.....	2110.....
		Loyer brut	

b) Personal scope (1)

- **Data 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**; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law”;



The controller shall be **responsible** for, and be **able to demonstrate** compliance with Principles relating to processing of personal data (**‘accountability’ principle**).

Cadre III. - REVENUS DE BIENS IMMOBILIERS.

page 3

A. REVENUS BELGES.

1. Propre habitation (ou partie de celle-ci) que vous occupez personnellement : NON INDEXÉ

▲ Attention : cette rubrique ne doit être complétée que dans les circonstances précisées dans la brochure explicative (voir « Remarque importante » dans les explications relatives à cette rubrique) !

a) RC soumis au précompte immobilier : RC 1100..... 2100.....
 b) RC non soumis au précompte immobilier : RC 1101..... 2101.....

c) Nombre maximum d'enfants qui étaient à votre charge au 1^{er} janvier d'une année antérieure quelconque et qui occupaient avec vous cette habitation : RC 1104..... 2105.....

2. Immeubles utilisés pour votre profession : RC 1105..... 2105.....

3. Immeubles bâtis non donnés en location, donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession ou donnés en location à des personnes morales autres que des sociétés, en vue de les mettre à disposition de personnes physiques à des fins d'habitation : RC 1106..... 2106.....

4. Immeubles non bâtis non donnés en location ou donnés en location à des personnes physiques qui ne les affectent pas à l'exercice de leur profession : RC 1107..... 2107.....

5. Immeubles donnés en location conformément à la législation sur le bail à ferme, à des fins agricoles ou horticoles : RC 1108..... 2108.....

6. Immeubles donnés en location dans des circonstances autres que celles évoquées aux n°s 3 à 5 ci-dessus : RC 1109..... 2109.....
 a) bâtiments, matériel et outillage : RC 1110..... 2110.....

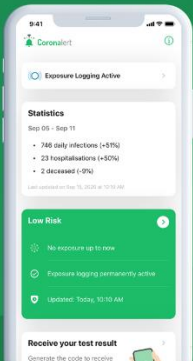
Loyer brut



**Federal
Public Service
FINANCE**

sciensano





Protect each other.

Coronalert is a free application. Download the application. You remain anonymous.

Download on the App Store

b) Personal scope (2)

- **Data processor** = “a natural or legal person, public authority, agency or other body which **processes** personal data **on behalf of the controller**”

E.g.: BDO (“whistleblowing as a service”); direct marketing and advertising services

- **Third party** = “a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, **under the direct authority** of the controller or processor, are authorised to process personal data”

E.g.: Central Point of Contact (NBB)

- **Data subject** = an identified or identifiable natural person

c) Territorial scope (1)

- The GDPR applies to the processing of personal data (Art. 3) :

“1. ... in the context of the activities of an **establishment** of a controller or a **processor in the Union**, regardless of whether the processing takes place in the Union or not.



2. ... **of data subjects who are in the Union** by a controller or processor **not established** in the Union, where the processing activities are related to:

- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
- (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.



3. ... by a controller not established in the Union, but **in a place where Member State law applies** by virtue of public international law.”



c) Territorial scope (2)

- The Belgian Act applies to the processing of personal data (Art 4):
 - “1. ... in the context of the activities of an **establishment** of a controller or a **processor on Belgian territory**, regardless of whether the processing takes place in the Union or not.
 2. ... **of data subjects who are on Belgian territory** by a controller or processor **not established in the Union**, where the processing activities are related to:
 - (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
 - (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.
 3. ... by a controller not established **on Belgian territory**, but **in a place where Belgium law applies** by virtue of public international law.”

Many thanks for your attention !

Have a nice week !