

# Example new slide

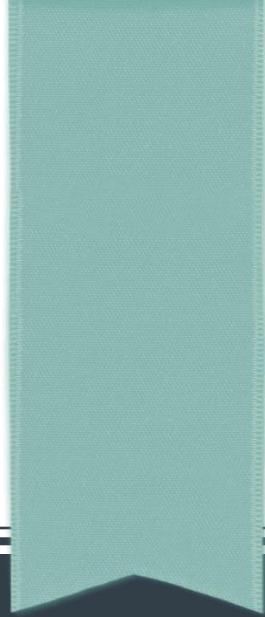
This is some text



# INTRODUCTION TO DATA PROTECTION

Tobias Bräutigam





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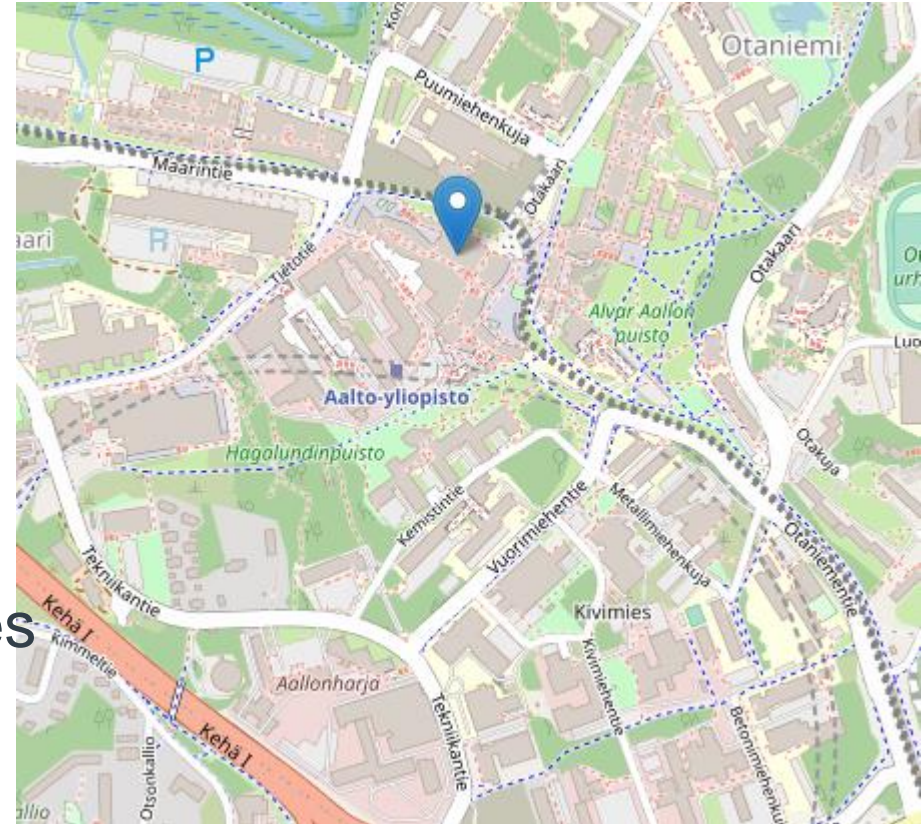
# WELCOME AND PRACTICALITIES

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# Agenda

- Welcome and expectation management
- Practicalities, housekeeping
- Why this might be relevant
- How the EU works
- Fundamental rights dimension
- Margin of manoeuvre for the Member States
- Role of the Courts



# Who am I and who are you?

Partner at Bird & Bird

Docent of information law at Helsinki & Turku

30+ university level courses

First time at Aalto

## **Some Questions for you:**

Which is your background 1: Finland – outside of Finland

What did you study or are you studying?

How much do you know about data protection? (1-10)

How you approach this lecture is what you get out of it







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# WHAT IS THIS COURSE ABOUT? PRACTICALITIES

WHAT DO YOU NEED TO DO TO COMPLETE THE COURSE?

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# Learning objectives

After the course you should

- Have a basic understanding of the current rules on data protection
- Understand the main definitions
- Understand the roles in data protection
- Understand the obligations following from accountability provisions

You should also be able to understand the nature of data protection as a fundamental right and which consequences it has

No prior legal knowledge is required, and we will use legal documents as sources; this might mean that it will take you more time to read articles etc. than usual



# What you need to complete the course

Active participation



Attending the lessons



Read the mandatory reading



Solve a case study (3000-4000 words)



# Reading assignments & discussion

You will find reading assignments on the syllabus

There is mandatory and (sometimes) optional reading

There will be usually questions on the assignments and they build the basis for the discussions/activities

How to read an article

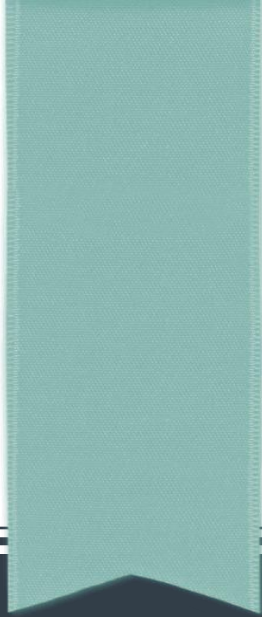
Take part actively in the discussion. I will assign people to summarize parts and there will be group work.

# When shall we meet again in thunder, lightening or rain?

No	When	What
1	05.09.2022, 09.15-11.45	Introduction & Background
2	12.09.2022 09.15-11.45	Principles & Definitions
3	19.09.2022 09.15-11.45	Everything is forbidden, unless it is allowed & accountability
4	26.09.2022 09.15-11.45	Rights & Transparency
5	03.10.2022 09.15-11.45	Data transfers
6	10.10.2022 09.15-11.45	Enforcement & the right with a megaphone
E	24.10.2022	Case studies due

ANY QUESTIONS?

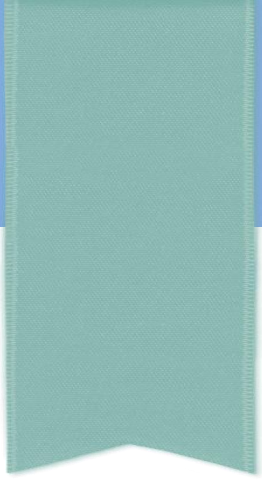




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# INTRODUCTION & BACKGROUND

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# WHY THE TOPIC IS RELEVANT?

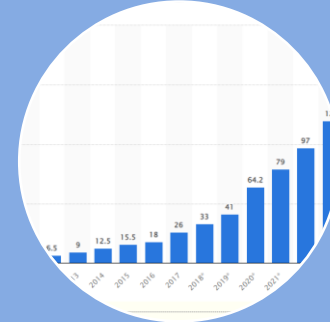
# Many reasons to pay attention



Mistakes  
could impact  
your business



Public debate



Data as the  
new  
paradigma



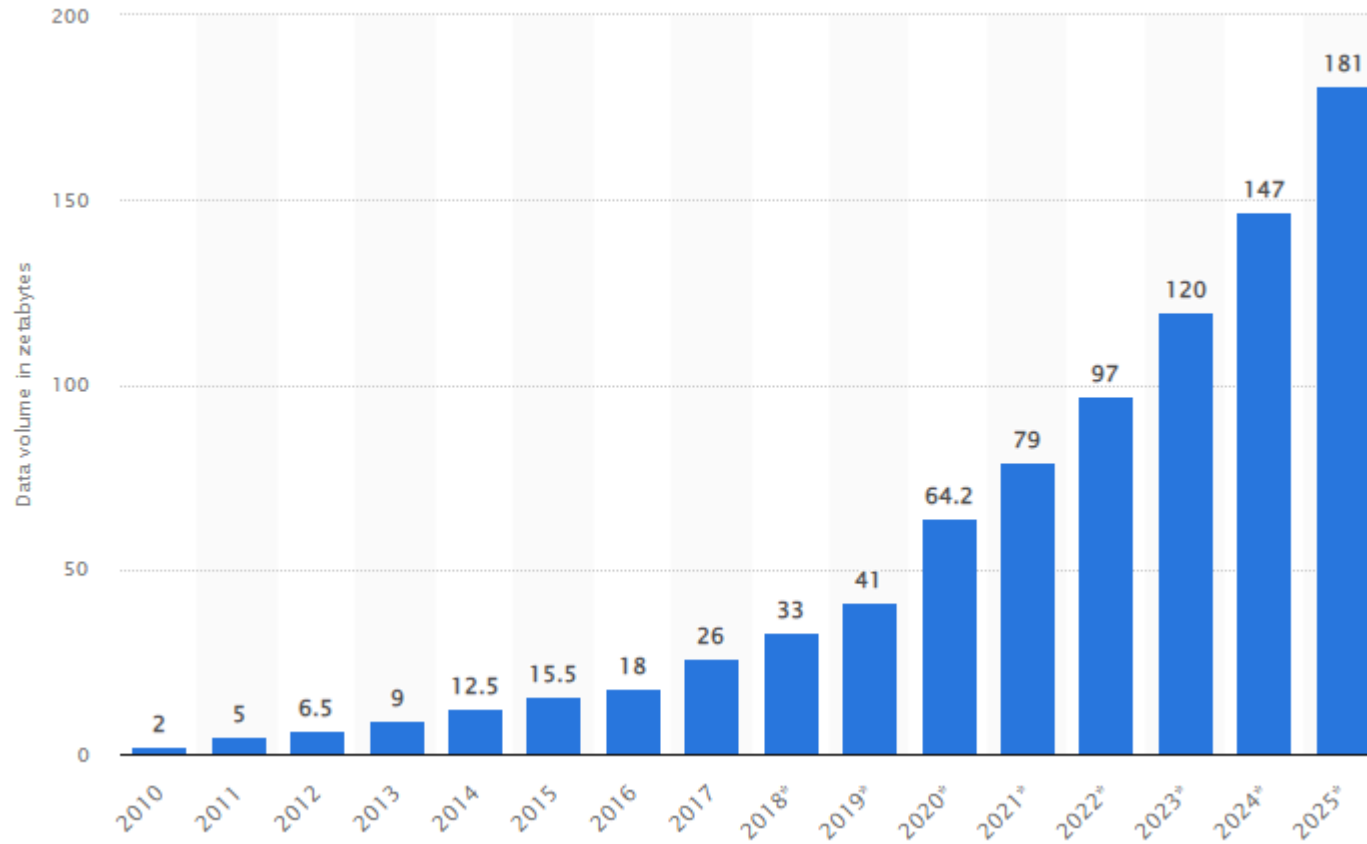




THERE IS A LOT OF DATA

# Volume of data/information created, captured, copied and consumed worldwide from 2010 to 2025

20



## How much is a zettabyte?

A zettabyte is  $10^{21}$  or 1,000,000,000,000,000,000 bytes.

It would take 1 billion 1 terabyte harddrives to store one zettabyte.

It is a lot.

**600**  
Petabytes

**1**  
Exabyte

**5**  
Exabytes

**15**  
Exabytes

**100 Years of Video**

Global monthly internet traffic in 2004

All words spoken by human beings

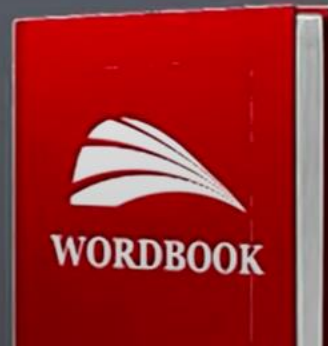
Steam delivered data in 2018

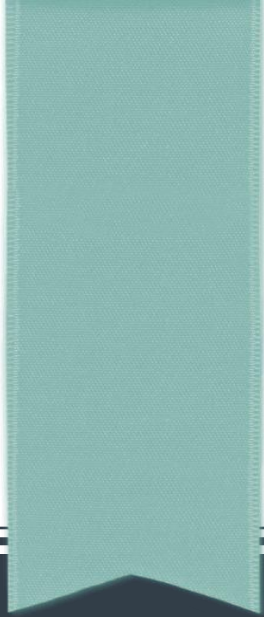
This amount of videos is uploaded to youtube in about 29 hours

1 Exabyte = 1000 Petabytes

This is equal to 1 million terabytes

That's 15 billion gigabytes!





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# HISTORY AND STRUCTURE

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# Gesetz- und Verordnungsblatt

## für das Land Hessen · Teil I

1970	Ausgegeben zu Wiesbaden am 12. Oktober 1970	Nr. 41
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Tag	Inhalt	Seite
7. 10. 70	<b>Datenschutzgesetz</b> . . . . . <i>GVBl. II 300-10</i>	625
7. 10. 70	<b>Gesetz zur Änderung beamtenrechtlicher und besoldungsrechtlicher Vorschriften</b> . . . . . <i>GVBl. II 321-20</i>	628
7. 10. 70	<b>Gesetz über vermögenswirksame Leistungen für Beamte</b> . . . . .	633

# History: Data protection law (data protection v. privacy)

1970: Hesse (state in Germany)

1973: Sweden => Datalag

70ies: Germany, France end of the 70ies; UK act 1984

1974: US → Privacy Act (note: administration!)

1980: Economic orientated OECD Guidelines of [The OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data](#), adopted on 23 September 1980

1981: Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108)

1998: Directive 95/46

2008: the Data Protection Framework Decision 2008/977/JHA on personal data processed for police and judicial cooperation in criminal matters (FDPJ) was finally adopted with the intention of covering data processing in (former) third pillar matters.

2018: GDPR – will be applicable May 2018

2019: Tietosuojalaki applicable (1.1.2019)

# History (2) (semi-automatic) data processing

Herman Hollerith – 2nd generation immigrant  
 Tabulating machine company => became IBM  
 Machines used for 1890 census

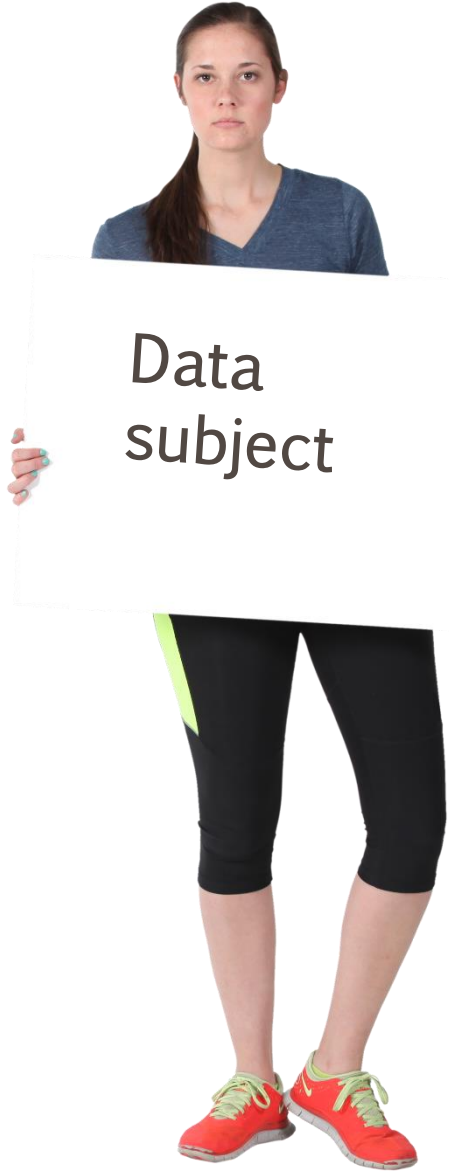
Why punch cards?

	1	2	3	4	5	6	7	8	9	10	On	S	A	C	E	a	c	e	g	EB	SB	Ch	Sy	U	Sh	Hk	Br	Rm	
	2	2	4	1	3	E	15	Off	IS	B	D	F	b	d	f	h				SY	X	Fp	Cn	R	X	Al	Cg	Kg	
	3	0	0	0	0	W	20		0	0	0	0	0	0	0	0	0	0	0	●	0	0	0	0	0	0	0	0	0
A	1	1	1	1	1	0	25	A	1	1	1	1	1	1	1	1	1	1	1	1	●	1	1	1	1	1	1	1	1
B	2	2	2	2	2	5	30	B	2	2	●	2	2	2	2	2	2	2	2	2	2	●	2	2	2	2	2	2	2
C	3	3	3	3	3	0	3	C	3	3	3	●	3	3	3	3	3	3	3	3	3	3	●	3	3	3	3	3	3
D	4	4	4	4	4	1	4	D	4	4	4	4	●	4	4	4	4	4	4	4	4	4	4	●	4	4	4	4	4
E	5	5	5	5	5	2		C	E	5	5	5	5	5	5	●	5	5	5	5	5	5	5	5	5	5	5	5	5
F	6	6	6	6	6	A	D	F	6	6	6	6	6	6	6	6	●	6	6	6	6	6	6	6	6	6	6	6	6
G	7	7	7	7	7	B	E	G	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
H	8	8	8	8	8	a	F	H	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
I	9	9	9	9	9	b	c	I	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9





# A simple structure of data protection problems



Data  
subject

## Collection

- As communicated?
- Surveillance

## Use

- Using as communicated?
- Necessary data?
- Profiling
- Manipulating?

## Where does it ends up?

- Hacking
- Data breaches
- Selling? Sharing?



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# SOURCES IN DP LAW

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# There are various sources in data protection law

Fundamental Rights documents	Charta of Fundamental Rights
	European Convention on Human Rights
EU Law	GDPR
	E-Privacy
Member States law	Data Protection Act (tietosuojalaki)
	Act on the privacy in working life (työelämän tietosuojalak)
Case law	EU courts
	National courts
Guidance documents	EDPB
	National authorities



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# HOW EU LAW WORKS

Credit goes to Sam Wrigely, mistakes are my own

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# Primer on EU legal structure?

## Primary law

- Treaties
- Charter

## Secondary law

- Regulations (directly applicable in Member States), v
- Directives (must be implemented) and other acts

EU law effectively has supremacy over national law (simplification)

## EU "laws" are made up of

- articles (legally binding)
- recitals (a non-binding preamble that often states the goals for the legislation and is used as a guide to interpretation)

# How does the EU Commission work?

The European Commission is made up of one commissioner from each country and their staff. It has sole competence to draw up the first draft of legislation.

Legislation is then amended and voted upon by the Council of the European Union (confusingly a different body to the European Council), which is made up from government ministers from each Member State, and the European Parliament, which is made up from directly elected MEPs

Each Institution tends to come up with their own preferred version of the text, and then agree on a final version during the trialogue procedure

The legislative procedure takes a very long time and a lot of political compromise between different countries, parties and interest groups

[https://www.europarl.europa.eu/external/appendix/legislativeprocedure/europarl\\_ordinarylegislativeprocedure\\_howitworks\\_en.pdf](https://www.europarl.europa.eu/external/appendix/legislativeprocedure/europarl_ordinarylegislativeprocedure_howitworks_en.pdf)

# Primer on EU legal structure?

Questions of legal interpretation are brought before the CJEU, often through the preliminary reference procedure.

The Court of Justice, which deals with certain special actions, questions of interpretation and appeals from the General Court. One judge from each country sits on the Court, and there are 11 advocate generals, who issue non-binding expert opinions on each case.

Only the CJEU is entitled to interpret matters of EU law.

If a Member State court is not sure how the law should be read, they normally need to send a **preliminary reference** to the Court of Justice (e.g. Schrems case)





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# FUNDAMENTAL RIGHTS DIMENSION

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# Our fundamental rights

Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”)

- Article 8 – Right to respect for private and family life

Charter of Fundamental Rights of the European Union [2012] OJ C326/391

- Article 7 – Right to respect for private and family life
- Article 8 – Right to the protection of personal data
- Article 42 – Right of access to documents

# European Convention on Human Rights

## **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

# Charta 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.



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GDPR

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# The GDPR is the main data protection law in Europe

Very much debated, heavily lobbied

Two-year transition period, applicable since [25 May 2018](#)

The GDPR replaced the national laws and regulations based on the EU Data Protection Directive (46/95/EC)

The GDPR is directly applicable in each member state

The Data Protection Authorities are task with enforcing those rules

# Overview over the GDPR (just the highlights)

Principles & Definitions

Rules that make processing lawful

Rights

Roles: controllers & processors

Data breaches & accountability

International data transfers

Rules for DPAs

Enforcement

Special rules

# Principles-based vs rules-based regulation

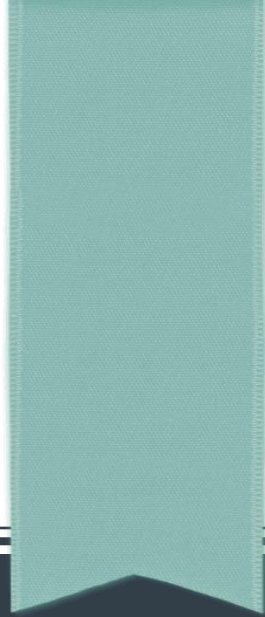
Principle-based regulation: “Processing must be fair, lawful and transparent”

Rules-based regulation: “The contract between the controller and the processor must contain the following elements: X, Y, Z...”

Another element – the risk-based approach. “Processing must be governed according to how much it might harm data subjects.”

Which method does the GDPR use? What are the pros and cons each method?





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# OTHER EUROPEAN ACTS

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# One more thing..

## Open Data Directive

- The Directive on open data and the reuse of public-sector information sets out minimum rules on the reuse public

## Regulation on data protection in EU Institutions

- The GDPR does not apply to EU institutions. Thus, the aim of this regulation is to fill this gap and regulate personal data processing inside the EU.

## Law Enforcement Directive

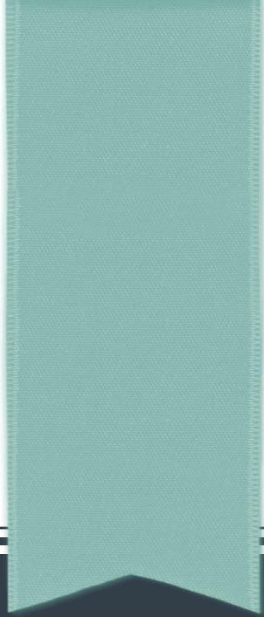
- The GDPR does not apply to situations where law-enforcement authorities act as controllers. Thus, the aim of this directive is to fill this gap and regulate personal data processing in lawenforcement situations

## Database Directive

- Protection for databases.

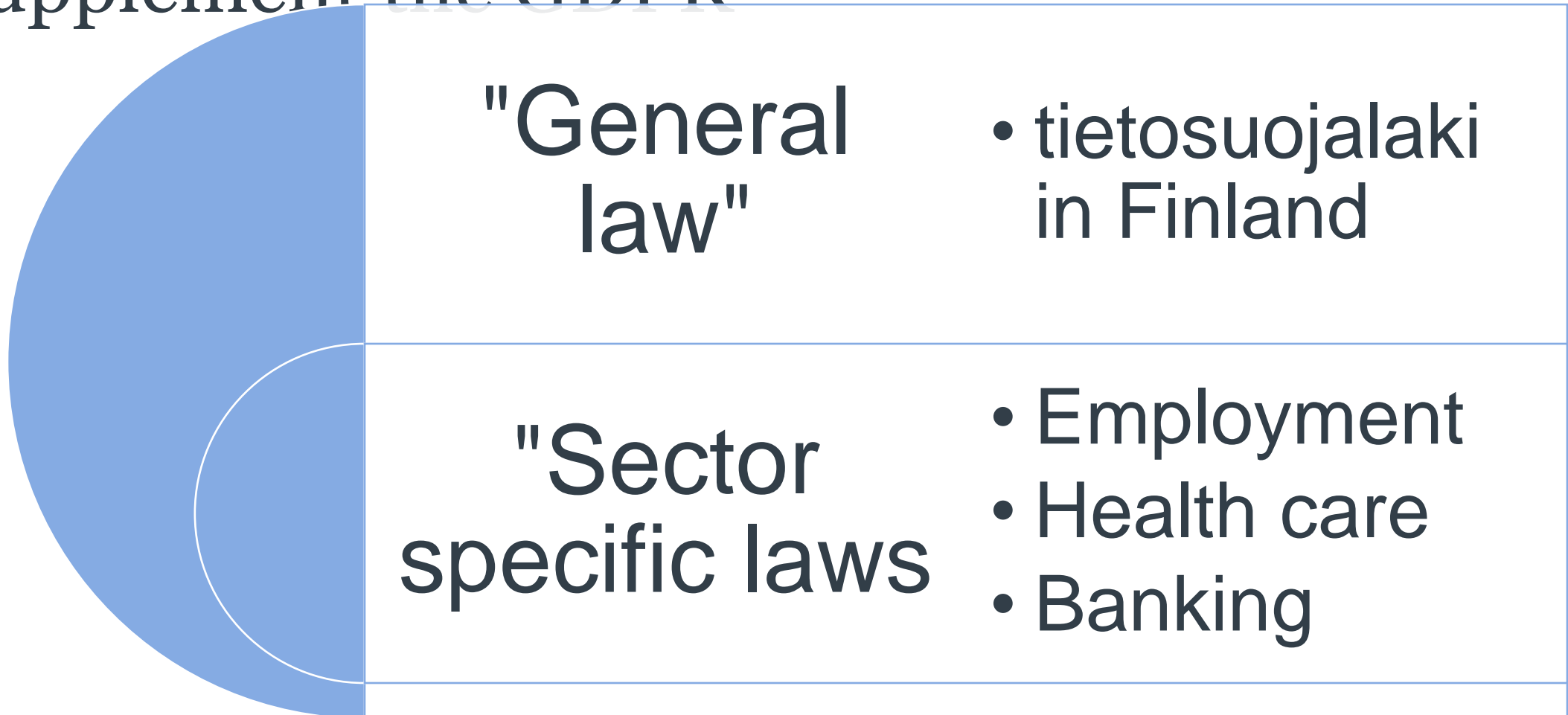
## PSD2

- Regulates data usage



# NATIONAL LAWS

# Member States have national laws that supplement the GDPR





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# CASE LAW AND GUIDANCES FROM AUTHORITIES

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# Case law: there is a lot!

**What is personal data?** Lindqvist (2003); Breyer (2016), Nowak (2017) Vyriausioji tarnybinės etikos komisija (2022)

**Roles:** Jehovan todistajat (2018), Wirtschaftsakademie (2018), Fashion ID (2019)

**Data retention:** Digital Rights Ireland (2014)

**International data transfers:** Schrems I (2015), Schrems II (2020)









**Right to be forgotten:** Google Spain (2014)

**Jurisdiction:** Weltimmo (2015), Google Spain (2014)

**Cookies:** Planet 49 (2019)



# DPA case law

Country	Date of Decision	Fine [€]	Controller/Processor
<input type="text" value="fin"/>		<input type="text" value="Filter Column"/>	<input type="text" value="Filter Column"/>
 FINLAND	2022-05-09	85,000	Otavamedia Oy
 FINLAND	2022-04-29	8,300	Telemarketing company
 FINLAND	2021-12-26	5,000	Medical clinic
 FINLAND	2021-12-16	52,000	Motor insurance center
 FINLAND	2021-12-16	6,500	Travel agency
 FINLAND	2021-12-07	608,000	Psykoterapiakeskus Vastaamo
 FINLAND	2021-07-05	25,000	Higher Education Institution
 FINLAND	2021-06-24	8,500	Magazine publisher

# The European Data Protection Board gives non-binding guidance (but very influential)

## Guidelines, Recommendations, Best Practices

We issue general guidance (including guidelines, recommendations and best practice) to clarify the law and to promote common understanding of EU data protection laws.

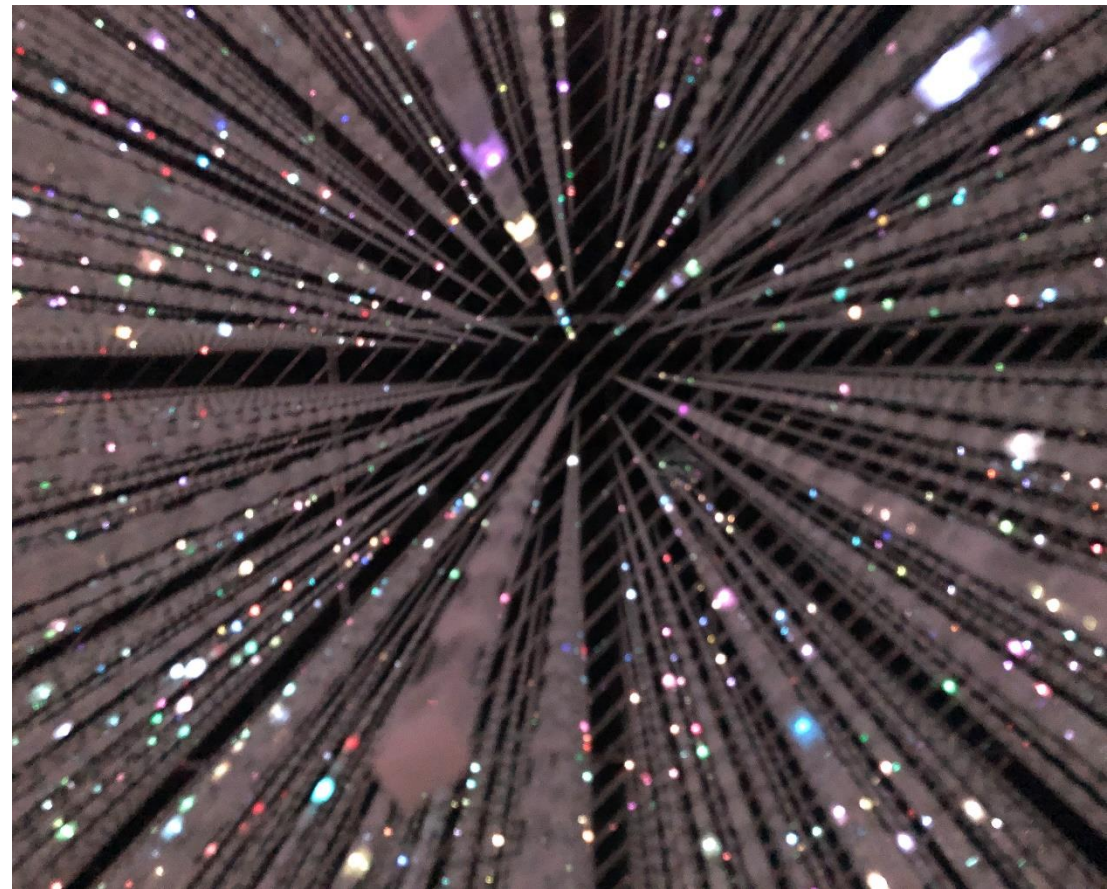
We can issue guidelines, recommendations and best practices about the [GDPR](#) and the [Law Enforcement Directive](#), as well as [other documents](#).

<p><b>Guidelines 07/2022 on certification as a tool for transfers</b></p> <p>📅 30 June 2022</p>	<p>Guidelines</p> <p>General Data Protection Regulation</p> <p>International Transfers of Data Certification</p>	<p>👁️ Public consultation</p>
<p><b>Guidelines 06/2022 on the practical implementation of amicable settlements</b></p> <p>📅 12 May 2022</p>	<p>Guidelines</p> <p>General Data Protection Regulation</p> <p>Cooperation between authorities</p>	<p>📄 Download</p>
<p><b>Guidelines 05/2022 on the use of facial recognition technology in the area of law enforcement</b></p> <p>📅 12 May 2022</p>	<p>Guidelines</p> <p>Biometric data Police &amp; Justice Law Enforcement Directive</p>	<p>👁️ Public consultation</p>
<p><b>Guidelines 04/2022 on the calculation of administrative fines under the GDPR</b></p> <p>📅 12 May 2022</p>	<p>Guidelines</p> <p>General Data Protection Regulation</p> <p>Cooperation between authorities Power of authorities</p>	<p>👁️ Public consultation</p>
<p><b>Guidelines 3/2022 on Dark patterns in social media platform interfaces: How to recognise and avoid them</b></p> <p>📅 14 March 2022</p>	<p>Guidelines</p>	<p>👁️ Public consultation</p>





# ACTIVITY



# Questions regarding the Article "The Right to Privacy"

Form groups of 2-3 people and discuss. Start by clarifying what you have not understood.

1. What is the new technology discussed in the article? What would it be in our times?
2. "*Gossip is no longer the resource of the idle and of the vicious, but has become a trade [...] It both belittles and perverts* " Do you agree?
3. The authors quote a variety of cases and also theorize about what might be the reason to protect what we now call privacy. What 5 justifications do they discuss?
4. Which of the options mention in Q3 do the authors land on as the root of the right to privacy?