

reducing  
data  
production?

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International Conference  
Brussels, 12 & 13 October 2007  
*deBuren*



Vrije Universiteit Brussel



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# reinventing data protection?

**International Conference**  
**Brussels, 12 & 13 October 2007**  
*deBuren*

## **Organised by**

Tilburg University, Tilburg Institute for Law, Technology,  
and Society TILT (NL),  
Université de Namur, Centre de Recherches Informatique et  
Droit CRID (BE),  
Vrije Universiteit Brussel, Research group on Law, Science,  
Technology and Society LSTS (BE),  
Vlaams-Nederlands Huis *deBuren*, Brussels

## **Scientific committee**

Paul DE HERT (Vrije Universiteit Brussel, LSTS & Tilburg  
University TILT)  
Cécile DE TERWANGNE (Université de Namur FUNDP, CRID)  
Serge GUTWIRTH (Vrije Universiteit Brussel LSTS)  
Thierry LÉONARD  
(Facultés Universitaires Saint Louis, Brussels)  
Emilio MORDINI (Università La Sapienza, Rome,  
Center for Science, Society and Citizenship)  
Sjaak NOUWT (Tilburg University TILT)  
Yves POULLET (Université de Namur FUNDP, CRID)  
Corien PRINS (Tilburg University)  
Charles RAAB (University of Edinburgh SSPS)

## **Organizing committee**

Paul DE HERT (Vrije Universiteit Brussel LSTS,  
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Serge GUTWIRTH (Vrije Universiteit Brussel LSTS)  
Sjaak NOUWT (Tilburg University TILT)  
Yves POULLET (Université de Namur FUNDP, CRID)  
Dorian VAN DER BREMPT  
(Vlaams-Nederlands huis *deBuren*, Brussels)

## Objectives of the Conference

Assessing the 12 years of existence of the E.U. Data Protection Directive and the 26 years of the Council of Europe Data Protection Convention, the conference will evaluate and rethink data protection by analysing the problems, lacunae and bottlenecks of current data protection law.

The Conference aims at

1. Identifying the new challenges faced by data protection regulation,
2. Examining challenges and issues raised by new ICT developments,
3. Bringing together in a high quality expertise symposium most of the key academic specialists in the field, Data Protection Commissioners and representatives from standardization bodies and ICT industries,
4. Addressing recommendations to private and public policy makers in the context of the review of the E.U. Data Protection Directive.

### Note

This programme was carefully put together. Printing errors, modifications, or last-minute changes are still possible. Some speakers need to be confirmed \*.



## Is Data Protection the Adequate Concept to Face the Challenges of the Information Society?

### 1. Foundations of Data Protection Law

Which fundamental legal concepts can uphold and justify data protection regulation(s)? Without any doubt, the main legal references for European data protection regulations are the data protection principles laid down in the CoE Convention 108. On which underlying values do these principles rest on? Which values should in turn data protection principles serve and implement? Are data protection principles and these values evolving?

‘Data Protection’ and ‘privacy’ being two different concepts, it seems quintessential to (re-)address the question whether ‘privacy’ (in the sense of the value or set of values protected by article 8 of the E.C.H.R.) can justly be considered as the value that pre-eminently explains, justifies and validates data protection law. Isn’t this a too narrow, outdated perspective? Do developments such as biometrics, interoperability and ambient intelligence affect data protection in a way that requires to take into consideration again its nature and function?

Are values such as ‘human dignity’, ‘individual self-determination’, ‘property’, ‘anonymity’ and ‘non-discrimination’ relevant in this context?

If so, how do they come into play when data protection is challenged by both new technologies and new political priorities such as the fight against terrorism?

#### **9.00 Jon BING, Welcome by the Chairman,**

Professor, Dr Juris at the Norwegian Research Center for Computers and Law, University of Oslo (NOR)

#### **9.05 Karel DE GUCHT, Opening of the Conference,**

Minister of External Affairs of Belgium (BE),  
Professor at the Vrije Universiteit Brussel (BE)

#### **9.20 Frans TIMMERMANS\*, Opening of the Conference,**

Minister of European Affairs of the Netherlands (NL)

**9.35 Yves POULLET, Professor, Dean of Faculty of Law FUNDP,**  
Head of Centre de Recherches Informatique et Droit CRID,  
Université de Namur (BE),

#### **Self-Determination as a synonymous of Privacy?**

**9.55 Stefano RODOTA, Professor, Faculty of Law,**  
Università La Sapienza di Roma (IT),  
**Data protection as fundamental right.**

## 1st Day - Morning - continued

**10.15 Corien PRINS**, Professor, TILT Tilburg Institute for Law, Technology, and Society, Tilburg University (NL),  
**Are property rights in personal data an effective means to enhance their protection?**

### 10.35 Coffee Break

**11.00 Serge GUTWIRTH**, Professor of Law, Research group LSTS, Vrije Universiteit Brussel (BE),  
**Paul DE HERT**, Professor of Law, Research group LSTS, Vrije Universiteit Brussel (BE), Assistant Professor, TILT Tilburg Institute for Law, Technology, and Society, Tilburg University (NL),  
**A constitutional approach to European Data Protection.**

### 11.30 Discussion

### 12.00 Lunch

## 1st Day - Afternoon - Chairman Alain BRUN

### 2. Privacy versus conflicting values

Privacy can be in conflict with other values of same importance and weight. Cases like the Lindqvist ECJ case, in which freedom of expression is jeopardized by data protection requirements, underline the relevance of how to conciliate such freedom and privacy. What about privacy and individual autonomy (e.g. the US notion of User Empowerment)? How can they be balanced taking into account that 'consent' might be a cause of certain privacy threats?

**13.30 Alain BRUN**, Welcome by the Chairman,  
Head of Unit DG Justice and Home Affairs in charge of  
Data Protection, European Commission (EUR)

**13.35 Gus HOSEIN**, Visiting Fellow Information Systems Group, London School of Economics and Political Science; Senior Fellow, Privacy International, Advisor to the American Civil Liberties Union project on Technology and Liberty (UK),  
**The spectrum of threats to privacy.**

**13.55 Ivan SZEKELY**, Professor, Department of Information and Knowledge Management, Budapest University of Technology and Economics, Counsellor, Open Society Archives, Central European University (HUN),  
**Freedom of Information vs. Privacy.**

### 14.15 Discussion



## And Are the fundamental concepts of the Data Protection regulation still adequate?

The 1995 Data Protection Directive is governed by basic concepts such as 'processing', 'data controller' and 'identifiable subjects'. However, new developments concentrating on anonymous profiles rather than on identifiable subjects raise the question whether it is time to reconsider the concept of 'identity' or 'identifiability'.

Additionally, is the concept of 'data processing' still adequate in the context of an adaptive networked environment and taking into account the role played by new actors such as communication service providers and terminal equipment producers who might not be qualified as 'data controllers'?

Certain basic principles need also to be scrutinized taking into account ICT developments: Is 'consent' still a valid and acceptable basis to legitimate data processing? Is it not too often abused or uninformed ("by using this service, you give your consent to...")? What about the 'purpose specification principle' in the context of interoperable applications? Finally, is a distinction between public and private actors appropriate, especially when considering the development of E-government?

**14.30 Jean-Marc DINANT**, Director of Research,  
Centre de Recherche Informatique et Droit CRID,  
Université de Namur (BE),

**The concepts of Identity and Identifiability:  
a convergence between the technical and legal approaches?**

**14.50 Emilio MORDINI**, Director of the Center for Science,  
Society and Citizenship, Università La Sapienza di Roma (IT),

**Do Androids dream of Biometric Sheep?**

**15.10 Mireille HILDEBRANDT**, Senior Researcher,  
Center for Law, Science, Technology and Society Studies LSTS,  
Vrije Universiteit Brussel (BE), Dean of Education of the  
Research School for Safety and Security,

Erasmus Universiteit Rotterdam (NL),

**Profiling: Ethical and Legal Aspects.**

**15.30 Thierry LEONARD**, Professor, Facultés Universitaires  
Saint-Louis, Brussels (BE),

**'Data Processor' and 'Data Controller'.**

**Are these concepts still adequate?**

**15.50 Discussion**

**16.00 Coffee break**

**16.15 Lee BYGRAVE**, Dag Wiese SCHATUM,  
Professors of Law, University of Oslo (NOR),

**Consent versus Proportionality Principle:  
Are the Proportions right?**

**16.45 Roger BROWNSWORD**, Professor of Law, Director of  
Centre for Technology, Law, Ethics and Society TELOS,  
King's College London (UK),

**Consent in Data Protection Law: A vote of 'NO Confidence'?**



## How to Envisage the Role of the different Data Protection Actors and the Synergies between them?

Data Protection authorities might be viewed as watchdogs or as administrative controllers. Is the setting up of such authorities still an adequate way to ensure the respect of legal requirements? Are not there other conceivable solutions to achieve this goal, notably a better cooperation between the traditional way of regulating and new ones?

Beyond that, the possibility for collective actors (human liberties associations, trade-unions, business associations) to play an increasing role in the context of a global society must be assessed.

**9.00 Bart DE SCHUTTER, Welcome by the Chairman,**  
Professor, Head of The Institute for European Studies IES,  
Vrije Universiteit Brussel (BE)

**9.05 Peter J. HUSTINX, European Data Protection  
Supervisor EDPS (EUR),  
The Role of Data Protection Authorities.**

**9.25 Ronald LEENES, Associate Professor, Tilburg Institute for  
Law, Technology and Society TILT, Tilburg University (NL),  
The Citizens' Perspective on Privacy.**

**9.45 Marc ROTENBERG\*, Executive Director Electronic Privacy  
Information Center EPIC, Washington DC (USA),  
The Role of Civil Liberties Associations.**

**10.05 Jan M. A. BERKVENS\*, Professor of Law, Radboud  
Universiteit Nijmegen, Juridical Advisor Rabobank (NL)  
The Role of Business Associations.**

**10.25 Discussion**

**10.45 Coffee Break**



## How to Regulate Data Protection? Is Data Protection Served by the Law?

### 1. Self-regulation, Public Regulation and Co-regulation

Self-regulation or co-regulation are used as a substitute or as a complement to public regulation. Even in the USA, however, certain authorities are in favour of government regulation, because self-regulation of data protection does not seem to be effective. Research conducted by the US Federal Trade Commission has shown that online privacy cannot be sufficiently protected exclusively by industry self-regulation initiatives.

In order to analyse the legal validity of these new ways to regulate data protection, three criteria should be taken into account: the legitimacy of alternative options, the conformity of their content vis-à-vis privacy requirements and the effectiveness of the solutions.



## 2nd DAY - Morning - continued

**11.00 Charles RAAB**, Professor of Government,  
University of Edinburg (UK),  
**Data Protection: Who Does What, When, Where?**

**11.20 Pierre TRUDEL**, Professor, L.R. Wilson Chair on the Law  
of Information Technology and Electronic Commerce,  
Public Law Research Center, Université de Montréal (CAN),  
**How to Regulate Data Protection on the Internet?**

**11.40 Discussion**

**12.00 Lunch**

## 2nd Day - Afternoon - Chairman Emilio DE CAPITANI

### 2. Technology as a Threat and/or as a Safeguard

The role of technology vis-à-vis data protection has to be analysed from different points of view.

On the one hand technology creates new threats for data protection and should perhaps be regulated as such (terminal equipment, electronic communications infrastructures,...). There is a need to enlarge data protection legislation to the actors providing these equipments and services.

On the other hand certain solutions (PETS) might be encouraged and additional services might be offered by new actors like infomediaries in order to increase data protection.

**13.30 Emilio DE CAPITANI**, Welcome by the Chairman,  
Head of Unit Committee on Civil Liberties, Justice and Home  
Affairs, Directorate C, Citizens' Rights and Constitutional  
Affairs, European Parliament (EUR)

**13.35 Bert-Jaap KOOPS**, Professor of Regulation & Technology,  
Tilburg Institute for Law, Technology, and Society TILT,  
Tilburg University (NL),  
**Actors and responsibilities in privacy protection.  
Who should act (now)?**

**13.55 Joel R. REIDENBERG**, Professor of Law, Director,  
Center on Law and Information Policy,  
Fordham University School of Law New York (USA),  
**Technology as a Data Protection Mechanism.**

**14.15 Jane K. WINN**, Professor of Law, Director,  
Shidler Center for Law Commerce and Technology,  
University of Washington School of Law (USA),  
**Technical Standards as a Form of Data Protection Regulation.**

**14.35 Discussion**

**14.45 Coffee Break**



## Is Data Protection a Global Concept?

Data protection legislation could be considered as a European trademark, even if it sounds difficult to conciliate the 'market-approach' of the EU Directive and the 'human rights approach' of the Council of Europe.

Is there room for different approaches according to different cultures?

Do we need to re-evaluate the adequacy concept and its significance?

Do the different ways by which EU is regulating transborder data flows answer to the new practices of transferring data?

Are the basic data protection principles (contained in CoE Convention 108, OECD Privacy Guidelines, Fair Information Practices) still relevant to create a global concept of Data Protection?

Should common data protection principles be adopted in the three EU pillars?

**15.00 Sjaak NOUWT**, Assistant Professor,  
Tilburg Institute for Law, Technology and Society TILT,  
Tilburg University, Privacy Consultant (NL),  
**European Data Protection or European Data protections?  
A common approach of the E.U., the CoE and the national  
legislators?**

**15.20 Cécile de TERWANGNE**, Professor,  
Faculty of Law FUNDP, Centre de Recherches  
Informatique et Droit CRID (BE),  
**Is a global Data Protection regulatory Model possible?**

**15.40 Christopher KUNER**, Chair, International Chamber  
of Commerce Data Protection Task Force,  
Hunton & Williams Brussels (BE),  
**Is the present EU 'adequacy' framework 'adequate'?**

**16.00 Diane ALONSO BLAS**,  
Data Protection Officer, Eurojust (EUR),  
**First Pillar and Third Pillar: need for a common approach?**

### 16.20 Discussion

**16.40 Herbert BURKERT**, President,  
Research Centre for Information Law,  
University of Sankt Gallen, Switzerland (CH),  
**Conclusions. Towards a new Generation of  
Data Protection legislations?**

Friday Evening Event 19.00-21.11

## Reasonable expectations of privacy after 9/11

**FREE DEBATE organized by**

**the Privacy Network, Tilburg Institute for Law, Technology and Society TILT and Vlaams-Nederlands Huis *deBuren***

**with reception offered by *deBuren***

The horrible events of 9/11/2001 have resulted, more than five years later, in several legislative measures at national and international level to fight terrorism. At the same time, technology makes it easier now than ever to collect and retain citizens' personal data. The right to information privacy is seriously reduced both by legislations and by new techniques that provide more information powers to the government. What happened with privacy in Europe and in other countries, like the USA, Canada, etc.? Which legislative measures can be considered serious threats to the fundamental right to privacy, and how much Reasonable Expectation of Privacy is left?

This workshop offers an opportunity to engage with leading researchers and professionals in the privacy and data protection area, to be informed of developments and to debate these contemporary issues. Speakers will discuss these and other questions from their country perspective.

**with expected participation of**

**Ernst HIRSCH BALLIN,**  
Minister of Justice of the Netherlands (NL),

**Kathalijne BUITENWEG,**  
Member of the European Parliament (EUR),

**Jon BING,**  
Norwegian Research Center for Computers and Law (NOR),

**Ivan SZEKELY,**  
Open Society Archives, Central European University (HUN),

**Marc ROTENBERG,**  
Electronic Privacy Information Center EPIC,  
Washington DC (USA),

**Pascale GELLY,**  
Member of the SCM Lambot-Gelly-Soyer Paris (FR),

**Gus HOSEIN,**  
School of Economics and Political Science,  
King's College London (UK),

**Peter HUSTINX,**  
European Data Protection Supervisor (EUR),

**Charles RAAB,**  
Professor of Government, School of Social and Political  
Studies, University of Edinburgh (UK)

# reinventing data protection?

**DATES** 12 & 13 October 2007

**LANGUAGE** English

**AUDIENCE** Members of the international PrivacyNetwork, Data protection authorities and officials, Working group members Art. 29, academics, civil liberties organisations, magistrates, barristers, legal consultants, lobbyists.

**FEE** 180 euro. 2-days Conference and Friday Evening Event, including handouts, coffee breaks and lunches.

**LOCATION** Vlaams-Nederlands Huis *deBuren* (facing the Opera La Monnaie)  
Leopoldstraat 6, 1000 Brussels  
Tel. +32 (0)2 212 19 30  
Fax: +32 (0)2 212 19 49  
E-mail: [info@deburen.eu](mailto:info@deburen.eu)  
[www.deburen.eu](http://www.deburen.eu)

## **ITINERARY**

### **By public transport**

Brussels' Central Station is only ten minutes' walk from the Vlaams-Nederlands Huis *deBuren*.

The Leopoldstraat is located behind the Opera La Monnaie (stage door) and the Central Public Library (HOB) and connects Wolvengracht to Schildknaapstraat.

A number of underground tram (metro) and bus stops at De Brouckèreplein, close to Muntplein and Leopoldstraat.

De Brouckère underground tram station is served by lines 1A & 1B and has stops for lines 23, 52, 55, 56 and 81.

Bus numbers 29, 60, 63, 65, 66 and 71 all stop at De Brouckère.

Bus numbers 34, 48, 95 and 96 stop at the Beurs, within walking distance of the Vlaams-Nederlands Huis *deBuren*.

### **By car**

Paying car parks close to the Vlaams-Nederlands Huis *deBuren*:

Parking 'Schildknaap/Ecuyer'

Parking 'Munt/Monnaie'.

## **MORE INFORMATION AT**

[www.vub.ac.be/iPAVUB](http://www.vub.ac.be/iPAVUB)

[www.privacynetwork.info](http://www.privacynetwork.info)



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