



Brussels Laboratory for Data Protection & Privacy Impact Assessments (d.pia.lab)  
Research Group on Law, Science, Technology & Society (LSTS)  
Vrije Universiteit Brussel (VUB)

# Adjudicating personal data protection in the European Union: what to expect from impact assessments?

**Monday 20 May 2019**  
**14:00 – 16:30**  
**Brussels, Belgium**

**Vrije Universiteit Brussel**  
**Faculty of Law and Criminology**

Pleinlaan 2  
1050 Elsene (Brussel)  
room **4C306**

[dpialab.org/events](https://dpialab.org/events)

Participation is free of charge, yet – due to limited number of places, registration is required.  
Please register by sending an e-mail to [Ioulia.Konstantinou@vub.be](mailto:Ioulia.Konstantinou@vub.be) prior to 16 May 2019.

## Agenda

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13:30 – 14:00 *Sandwich lunch*

14:00 – 14:15 **Introduction**

[Dariusz KLOZA](#), Vrije Universiteit Brussel – Research Group on Law, Science, Technology & Society [BE]

14:15 – 15:15 **Roundtable Part I: mapping DPIA-related legal questions**

*moderated by* Prof. Dr. [Niels VAN DIJK](#), Vrije Universiteit Brussel – Research Group on Law, Science, Technology & Society [BE]

*panel:*

- Dr. [Brendan VAN ALSENOY](#)  
Autorité de protection des données / Gegevensbeschermingsautoriteit [BE]
- Katerina DEMETZOU  
Radboud University Nijmegen [NL]
- Dr. [Rossana DUCATO](#)  
Université catholique de Louvain [BE]
- Mag.<sup>a</sup> Cindy FÖKEHRER  
Österreichische Notariatskammer [AT]
- David GEE  
Brunel University [UK]
- Dr. [Raphaël GELLERT](#)  
Universiteit van Tilburg – Tilburg Institute for Law, Technology, and Society [NL]
- Prof. Dr. [Eleni KOSTA](#)  
Universiteit van Tilburg – Tilburg Institute for Law, Technology, and Society [NL]
- [Estelle MASSÉ](#)  
Access Now [BE]
- [Anna MOŚCIBRODA](#)  
European Commission – Directorate-General for Justice and Consumers [EU]
- [Heidi WAEM](#)  
Crowell & Moring LLP [BE]

15:15 – 15:30 *Coffee break*

15:30 – 16:00 **Roundtable Part II: discussion between the panellists**

*moderated by* Dariusz KLOZA, Vrije Universiteit Brussel – Research Group on Law, Science, Technology & Society [BE]

16:00 – 16:15 **Debate with the audience**

16:15 – 16:30 **Closing remarks**

Prof. Dr. [Paul DE HERT](#), Vrije Universiteit Brussel – Research Group on Law, Science, Technology & Society [BE] & Universiteit van Tilburg – Tilburg Institute for Law, Technology, and Society [NL]

Rapporteur: [Sergi VAZQUEZ MAYMIR](#), Vrije Universiteit Brussel – Research Group on Fundamental Rights & Constitutionalism [BE]



The workshop is organised within the framework of the research project [PERSONA](#) (Privacy, ethical, regulatory and social no-gate crossing point solutions acceptance), funded by the European Union's Horizon 2020 Research and Innovation Programme under grant agreement No. 787123.

Article 35

**Data protection impact assessment**

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
2. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
  - a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
  - b) processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
  - c) a systematic monitoring of a publicly accessible area on a large scale.
4. The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. The supervisory authority shall communicate those lists to the Board referred to in Article 68.
5. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5, the competent supervisory authority shall apply the consistency mechanism referred to in Article 63 where such lists involve processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union.
7. The assessment shall contain at least:
  - a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
  - c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
8. Compliance with approved codes of conduct referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.
9. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
10. Where processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or in the law of the Member State to which the controller is subject, that law regulates the specific processing operation or set of operations in question, and a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of that legal basis, paragraphs 1 to 7 shall not apply unless Member States deem it to be necessary to carry out such an assessment prior to processing activities.
11. Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

Article 36

**Prior consultation**

1. The controller shall consult the supervisory authority prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
2. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the supervisory authority shall, within period of up to eight weeks of receipt of the request for consultation, provide

written advice to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the supervisory authority has obtained information it has requested for the purposes of the consultation.

3. When consulting the supervisory authority pursuant to paragraph 1, the controller shall provide the supervisory authority with:
  - a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;
  - b) the purposes and means of the intended processing;
  - c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
  - d) where applicable, the contact details of the data protection officer;
  - e) the data protection impact assessment provided for in Article 35; and
  - f) any other information requested by the supervisory authority.
4. Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.
5. Notwithstanding paragraph 1, Member State law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to processing by a controller for the performance of a task carried out by the controller in the public interest, including processing in relation to social protection and public health.

#### Article 39

##### **Tasks of the data protection officer**

1. The data protection officer shall have at least the following tasks: [...]
  - c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
  - d) to cooperate with the supervisory authority;
  - e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.[...]

#### Article 83

##### **General conditions for imposing administrative fines**

1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be effective, proportionate and dissuasive. [...]
4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
  - a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
  - b) the obligations of the certification body pursuant to Articles 42 and 43;
  - c) the obligations of the monitoring body pursuant to Article 41(4).[...]

#### Article 84

##### **Penalties**

1. Member States shall lay down the rules on other penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 83, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.
2. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

## *Annex 2: Biographies of the panellists*

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**Brendan VAN ALSENOY** is a Legal Advisor and acting Head of Unit at the Belgian Data Protection Authority. He is also a senior affiliated researcher at the KU Leuven Centre for IT & IP law – imec, and a co-editor of the periodical “Privacy & Persoonsgegevens” (“Privacy & Personal data”). Previously, Brendan worked as a legal researcher, with a focus on data protection and privacy, intermediary liability and trust services. In 2012, he worked at the Organisation for Economic Co-operation and Development (OECD) to assist in the revision of the 1980 OECD Privacy Guidelines. In 2016, he obtained the degree of Doctor of Laws (PhD) at KU Leuven. He recently published a book entitled “Data Protection Law in the EU: Roles, Responsibilities and Liability” (Intersentia, 2019).

**Katerina DEMETZOU** is a PhD researcher at Radboud University, in the Netherlands, both in the Business & Law Research Centre as well as the Institute for Computing and Information Sciences. Her research is about the concept of risk in the field of data protection and more specifically under the article 35 DPIA obligation.

**Niels VAN DIJK** is a lecturer in philosophy of law at the law faculties of the Vrije Universiteit (VUB) and the Université catholique de Louvain, both in Brussels. He is also a senior post-doctoral researcher at the VUB Centre for Law Science Technology and Society (LSTS) within the strategic research program ‘Articulating Law, Technology, Ethics and Politics beyond the GDPR’. Niels van Dijk is director of the Brussels Laboratory for Data Protection & Privacy Impact Assessments (d.pia.lab). He is the author of the award-winning monograph “Grounds of the Immaterial. A Conflict-Based Approach to Intellectual Rights”. Niels van Dijk has been a researcher in several national and European (FP6 & FP7, H2020, FWO) interdisciplinary research projects on the challenges digital technologies pose to practices of law, especially privacy, data protection and intellectual rights. More broadly, his research is situated at the intersection between legal philosophy, science and technology studies (STS), and governance of digital innovation, where he is interested in the role and nature of law in a changing technological world. Other current fields of interest include: technology assessment, privacy by design, ethics of innovation, constitutionalism, and ethnography of legal institutions. He holds a PhD degree in law by the VUB, and LL.M and MA (cum laude) degrees in law and philosophy by the University of Amsterdam. In the past, he has been a (visiting) researcher at the digital security department of Radboud University Nijmegen (NL), the law department of the London School of Economics (UK), and the philosophy department of the Autonomous University of Barcelona (ES).

**Rossana DUCATO** is a postdoctoral researcher at UCLouvain and principal investigator of the project “The Internet of Platforms: an empirical research on private ordering and consumer protection in the sharing economy”, funded by INNOVIRIS. She is also Module Leader of the Jean Monnet course on “European IT Law by Design”. She holds a Ph.D. in European and Comparative Legal Studies from the University of Trento (Italy). Her research interests are always pursued in a comparative vein and range from Consumer protection to Intellectual Property and Data Protection, with a special focus on the problems related to new technologies and their impact on society.

**Cindy FÖKEHRER** is an Austrian lawyer. Since 2010 she has been working for the Austrian Chamber of Civil Law Notaries, since October 2012 as head of the Brussels office. In her work, which mainly covers European civil and commercial law, she has been closely following European company law, starting with the European Private Company, the European Foundation, and the Societas Unius Personae. She is a Member of the Expert Group on Judicial Training of the European Commission’s Directorate-General for Justice, Consumers and Gender Equality. From 2013 to 2015 she was the coordinator of the CNUE training project “Notaries for Europe – Europe for Notaries”. Before, Ms Fökehrer was seconded to the European Commission’s Directorate-General for Enterprise and Industry, where she worked in “Financing Innovation and SMEs” Unit for four years. In that function she was responsible for the Expert Groups on Microcredit and Banks and SMEs. Ms Fökehrer has been based in Brussels since 2002, starting as an EU coordination advisor for the Austrian Federal Economic Chamber with a secondment to Eurochambres, where she monitored and analysed European banking regulation. A graduate of the University of Salzburg, Cindy Fökehrer also did a traineeship in the Directorate-General Competition of the European Commission.

Throughout his career **David GEE** has worked at the interface of science and policy-making in the fields of occupational health and the environment, both in the UK with trade unions and NGOs, and as an international civil servant. Graduating in economics and politics from York University, UK, in 1968, he worked for the AUEW and then the Trades Union Congress where he was responsible for developing and rolling out the national programme of Safety Reps training. He moved on to a new post as National Health and Safety Officer at the GMB union (1978-88), then was appointed Director of Friends of the Earth UK (1989-91). Between 1995 and 2012, when he retired, he worked on Information Strategy and then as Senior Adviser on Science, Policy and Emerging Issues at the European Environment Agency in Copenhagen. The EEA is a data, information and knowledge providing institution of the EU whose main clients are the EU Commission, Parliament, and Council of Ministers. Among such long term projects as eco-tax reform and eco-efficiency; scientific uncertainty; children’s risks from environmental hazards; methods for evaluating evidence of potential harm; the precautionary principle; and regulatory reform, particularly on hazardous substances (e.g. the UK COSHH and the EU REACH regulations), David initiated and co-edited both volumes of the influential “Late lessons from early warnings” reports (EEA, 2001, 2013), some of whose chapters he also authored. These reports use case studies from over 80 expert authors on 34 of some of the most prominent environmental and health issues of the last 100 years to synthesise insights on science, precaution and innovation. They are used widely both in academic and policy-making contexts. David is now Visiting Fellow at the Institute of Environment, Health, and Societies, Brunel University, London.

**Raphaël GELLERT** completed his PhD at VUB-LSTS in 2017, on the risk-based approach to data protection law (entitled “Understanding the risk-based approach to data protection: An analysis of the links between law, regulation, and risk”), and has been one of the original founders of the d.pia.lab. He conducts interdisciplinary research in law, resorting to the social sciences and social theory. In the context of his doctoral research he analysed data protection law through the use of literature coming from the fields of risk and regulation studies. In this context he wrote extensively on data protection law, data protection impact assessments, and risk management. He is currently a post-doctoral researcher at the Tilburg Institute for Law, Technology, and Society (TILT, Tilburg University), where he focuses on issues of algorithmic regulation broadly speaking. Finally, Raphaël has always had an interest for issues related to human rights and environmental law. For this reason, he has written on such topics as smart electricity grids and sustainable development, nanotechnologies, or anti-discrimination law.

**Paul DE HERT**'s work addresses problems in the area of privacy & technology, human rights and criminal law. A human rights approach combined with a concern for theory is the common denominator of all his work. In his formative years, De Hert studied law, philosophy and religious sciences (1985-1992). After a productive decade of research in areas such as policing, video surveillance, international cooperation in criminal affairs and international exchange of police information, he broadened up his scope of interests and published a book on the European Convention on Human Rights (1998) and defended a doctorate in law in which he compared the constitutional strength of eighteenth and twentieth century constitutionalism in the light of contemporary social control practices ("Early Constitutionalism and Social Control. Liberal Democracy Hesitating between Rights Thinking and Liberty Thinking", 2000, Promoter: Prof. dr. Bart De Schutter (VUB)). De Hert has (had) a broad teaching portfolio: Past: 'Human Rights', 'Legal theory', 'Historical constitutionalism' and 'Constitutional criminal law'. Currently, at Brussels, 'Criminal Law', and 'International and European Criminal Law' and at Tilburg University, 'Privacy and Data Protection'. He is Director of the Research group on human rights (FRC) and Vice-Dean of the Faculty and former Director of the Research group Law Science Technology & Society (LSTS), and of the Department of Interdisciplinary Studies of Law. He is board member of several Belgian, Dutch and (other) international scientific journals such as 'Computer Law & Security Review' (Elsevier), 'Inter-American and European Human Rights Journal' (Intersentia) and 'Criminal Law & Philosophy' (Springer). He is co-editor in chief of the 'Supranational Criminal Law' Series (Intersentia) and 'New Journal of European Criminal Law' (Sage). Since 2008 he has edited with Serge Gutwirth, Ronald Leenes and others annual books on data protection law (before Springer, now Hart) that, judging sales numbers, quotations and downloads, attract a massive readership and have contributed to creating the legal, academic discipline of data protection law. De Hert is now series editor of 'Computers, Privacy and Data Protection' series, now published by Hart.

**Dariusz KŁOZA** is a researcher at the [Research Group on Law, Science, Technology and Society \(LSTS\)](#) at the Vrije Universiteit Brussel (VUB), where he is a founding member of the [Brussels Laboratory for Data Protection & Privacy Impact Assessments \(d.pia.lab\)](#). He also freelances at the [Centre for Direct Democracy Studies \(CDDS\)](#) at the University of Białystok (Poland). His expertise concentrates on the governance of privacy and personal data protection, in particular on the notion of impact assessments for emerging technologies. He holds both an LL.M. in Law and Technology (2010) from Tilburg Institute for Law, Technology, and Society (TILT) at Tilburg University (with distinction) and a master degree in law from the University of Białystok (2008), including a student exchange at the University of Copenhagen (2007-08). Previously, he held in parallel a part-time research position at [Peace Research Institute Oslo \(PRIO\)](#); 2015-17) and visiting fellowships, among others, at Bond University (Queensland, Australia; 2016).

**Eleni KOSTA** is full Professor of Technology Law and Human Rights at the Tilburg Institute for Law, Technology and Society (TILT, Tilburg University, the Netherlands). Eleni obtained her law degree at the University of Athens (Greece) and a Master's degree in Public Law at the same University. She then completed an LL.M. in legal informatics at the University of Hannover (Germany) and in 2011 she was awarded the title of Doctor of Laws at the KU Leuven (Belgium) with a thesis on consent in data protection. Eleni is conducting research on privacy and data protection, specialising in electronic communications and new technologies. She has been involved in numerous EU research projects and is teaching "Capita Selecta Privacy and Data Protection" at the LL.M. Law & Technology. In 2014 Eleni was awarded a personal research grant for research on privacy and surveillance by the Dutch Research Organisation (VENI/NWO). Eleni also collaborates as associate with timelex.

**Estelle MASSÉ** is Senior Policy Analyst and Global Data Protection Lead at Access Now. Her work focuses on data protection, privacy, surveillance and telecoms policies. In particular, Estelle leads the work of the organisation on data protection in the EU and around the world. She is a member of the Multistakeholder Expert Group of the European Commission to support the application of the General Data Protection Regulation (GDPR). She graduated with a Master in European Law from the University of Granada, Spain.

**Anna MOŚCIBRODA** currently works as a policy officer in a field of personal data protection for European Commission, Directorate General (DG) for Justice and Consumers. Upon taking her current duties in 2014, she focused mostly on the data protection aspects of migration policies (including asylum, Schengen acquis, large scale IT systems) and law enforcement. She participated in several Schengen evaluations of the Member States. Lawyer by education, Anna was previously a case handler in DG Competition dealing with variety of antitrust and mergers cases. She was also, for several years, a researcher at Vrije Universiteit Brussel, Centre for Law, Science, Technology & Society (LSTS), reading and publishing on competition and intellectual property laws and on data protection.

**Sergi VAZQUEZ MAYMIR** graduated in Law and in Business Management and Administration at the Pompeu Fabra University of Barcelona. He holds a LL.M. in Law & Technology from Tilburg University (distinction, 2017). His master thesis discussed the necessity and proportionality of recent developments in EU border checks through the prism of privacy and data protection. Since 2011 Sergi is a qualified lawyer and member of the Barcelona bar association. Before starting his doctoral research at VUB, he worked as a legal Trainee at Secretariat of the Commission for the Control of INTERPOL's Files (CCF). Prior to that Sergi held a student-assistant position at the Tilburg Institute for Law, Technology, and Society (TILT), performing research on English criminal-procedural law in relation to new technological developments and privacy for police investigation within Prof. Bert-Jaap Koop's VICI project. His research is focused on implications of technological developments in terms of legal problems and solutions, especially concerning the fields Cybercrime, Cybersecurity, Surveillance, European Criminal Law, Data Protection & Privacy. At VUB his research will also comprise mutual legal assistance, extraterritorial jurisdiction and sovereignty in cyberspace.

**Heidi WAEM** is a counsel in the Brussels office of Crowell & Moring, where she is a member of the firm's Privacy & Cybersecurity Group. Heidi's practice focuses on privacy and data protection, including the General Data Protection Regulation (GDPR). In addition, Heidi has extensive experience in contract law, market practices, consumer laws, IP/IT, and compliance. Her experience in these fields includes both litigation and non-contentious matters. Clients include major companies in the FMCG, media, life sciences, and retail sectors. Over the years, Heidi has been seconded to various multinational companies in different sectors, which has given her valuable insight and experience in the needs of and problems faced by businesses, as well as experience as in-house counsel. Heidi is known and appreciated by clients for her pragmatic, hands-on approach. Heidi is a frequent speaker at privacy and data protection events. She also teaches at the Brussels Privacy Hub's GDPR summer school. Heidi joined the Brussels bar in 2009 and was officially admitted in October 2012 after having successfully accomplished her traineeship. She obtained her law degree from the University of Antwerp. Heidi also has a degree in translation studies.