

C.14 Informational Asymmetry

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The economic and/or social power of a private party can lead to threats to fundamental rights. This is particularly debatable in the case of the information power of certain internet companies, but also, for example, in the case of insurance companies, credit agencies, etc.

The law can react to this by assuming that private individuals are indirectly bound by fundamental rights. Case groups for the assumption of such a horizontal effect of fundamental rights are market dominance, discrimination in mass transactions or the provision of public communication spaces.

Some data protectionists see the prevention or mitigation of the informational power of controllers as the main concern of data protection law [\[Tile PC.25\]](#).

However, according to the GDPR, the existence of informational asymmetry is precisely not what matters in the application of its provisions. At no point does the GDPR contains provisions that are specifically linked to an imbalance of power between the controller and the data subject. Some provisions may be interpreted in this direction. However, this presupposes a prior understanding that cannot be justified either by the history of the GDPR or by the wording and systematics of the GDPR.

It is also questionable from a legal policy perspective whether data protection law is the right means to combat the informational asymmetries of digital life. Other possibilities are offered in particular by antitrust and competition law or special forms of platform regulation.