

Contents

<i>List of key cases</i>	<i>x</i>
<i>List of abbreviations</i>	<i>xv</i>
1 Electronic surveillance yesterday and today	1
1.1 <i>Introduction</i>	1
1.2 <i>Origins of bulk surveillance</i>	2
1.3 <i>Electronic surveillance in the digital era</i>	8
1.4 <i>Between targeted and untargeted measures</i>	11
1.5 <i>Development of technical capabilities</i>	17
1.6 <i>Summary</i>	28
2 Sector-specific approach to bulk surveillance	34
2.1 <i>Introduction</i>	34
2.2 <i>Electronic communications</i>	35
2.3 <i>Web services and online data gathering</i>	43
2.4 <i>Financial surveillance</i>	51
2.5 <i>Public space surveillance</i>	56
2.6 <i>Summary</i>	64
3 Fundamentals of the European legal model	69
3.1 <i>Introduction</i>	69
3.2 <i>Multilateral approach to the protection of human rights</i>	70
3.3 <i>Legitimate objectives for implementing surveillance measures</i>	75
3.3.1 <i>National security</i>	75
3.3.2 <i>Criminal investigations</i>	79
3.4 <i>Electronic surveillance and human rights</i>	83
3.4.1 <i>Right to privacy</i>	84
3.4.2 <i>Data protection</i>	88

3.4.3	<i>Right to information</i>	92
3.4.4	<i>Right to peaceful assembly</i>	95
3.4.5	<i>Right to a fair trial</i>	97
3.5	<i>Proportionality and necessity of surveillance measures</i>	100
3.6	<i>Summary</i>	105
4	Shaping the European standard for electronic surveillance	111
4.1	<i>Introduction</i>	111
4.2	<i>Secret surveillance programmes as interference with individual rights</i>	112
4.3	<i>Accessibility and foreseeability of the law</i>	119
4.4	<i>Minimum legal safeguards and the intrusiveness of surveillance</i>	124
4.4.1	<i>Criminal surveillance – a Huvig/Weber test and beyond</i>	125
4.4.2	<i>A “less intrusive” Uzun-based approach</i>	135
4.4.3	<i>From Huvig to Big Brother Watch: aligning Huvig/Weber with indiscriminate surveillance</i>	141
4.4.4	<i>Adoption of the ECtHR standard by the CJEU</i>	148
4.5	<i>Summary</i>	151
5	In search of a European consensus	155
5.1	<i>Introduction</i>	155
5.2	<i>The CJEU perspective: a more than decade-long saga concerning a general data retention obligation</i>	157
5.2.1	<i>Origins of the legal regulation of data retention in EU law</i>	157
5.2.2	<i>General obligation to retain data</i>	159
5.2.3	<i>Criteria for lawful access to data</i>	166
5.2.4	<i>Data retention and national security</i>	171
5.2.5	<i>Algorithmic retention</i>	177
5.3	<i>The ECtHR perspective: bulk surveillance in the light of the (strict) necessity test</i>	179
5.4	<i>Cross-border data flows</i>	186
5.5	<i>Best of both worlds – a common legal framework for electronic surveillance</i>	193
5.6	<i>Summary</i>	200
6	Emerging challenges of bulk surveillance	207
6.1	<i>Introduction</i>	207
6.2	<i>Mass surveillance as a targeted measure</i>	208

- 6.3 *Future use of surveillance data warehouses* 217
- 6.4 *AI-based surveillance* 221
- 6.5 *Automatic content control and electronic surveillance* 230
- 6.6 *The fading public/private surveillance divide* 238
- 6.7 *The transatlantic cooperation in the shadow of surveillance* 243
- 6.8 *Summary* 253

Index

260