

## **The Judiciary's Response to Anxiety in Legislation: Mass Surveillance in the UK, Germany and the EU**

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Legislators on the national as well as the EU level have introduced surveillance measures in reaction to a public discourse focused on threats of terrorism and serious crime. These measures include data retention as a particularly far-reaching instrument of massive online surveillance. While there has been little evidence to demonstrate the effectiveness of such blanket retention in the fight against terrorism and serious crime, this instrument is lauded by politicians as a powerful tool in a public debate informed by anxiety. This anxiety can be observed on both sides of this at times emotional debate: the anxiety concerns terrorist attacks as well as the undermining of democratic values through mass surveillance. In this heated atmosphere courts have been charged with reviewing legislation on data retention.

This presentation will take the UK, Germany and the EU as case studies to show different approaches to such legislation in three distinct legal cultures. As the courts award the respective legislators varying degrees of discretion, their engagement with these anxiety-induced measures has come to differing conclusions. The UK and German approach can be contrasted by way of a least similar comparison, whereas the EU approach, albeit in a supranational context, is even stricter than the German approach: While the UK courts tend towards a wider margin of appreciation, the German constitutional court and the EU Court of Justice have been very critical of purported claims on the effectiveness of mass surveillance and reviewed these measures more strictly. By analyzing these different approaches the presentation aims to illustrate in how far the courts engage in or remove themselves from anxiety-driven debate.