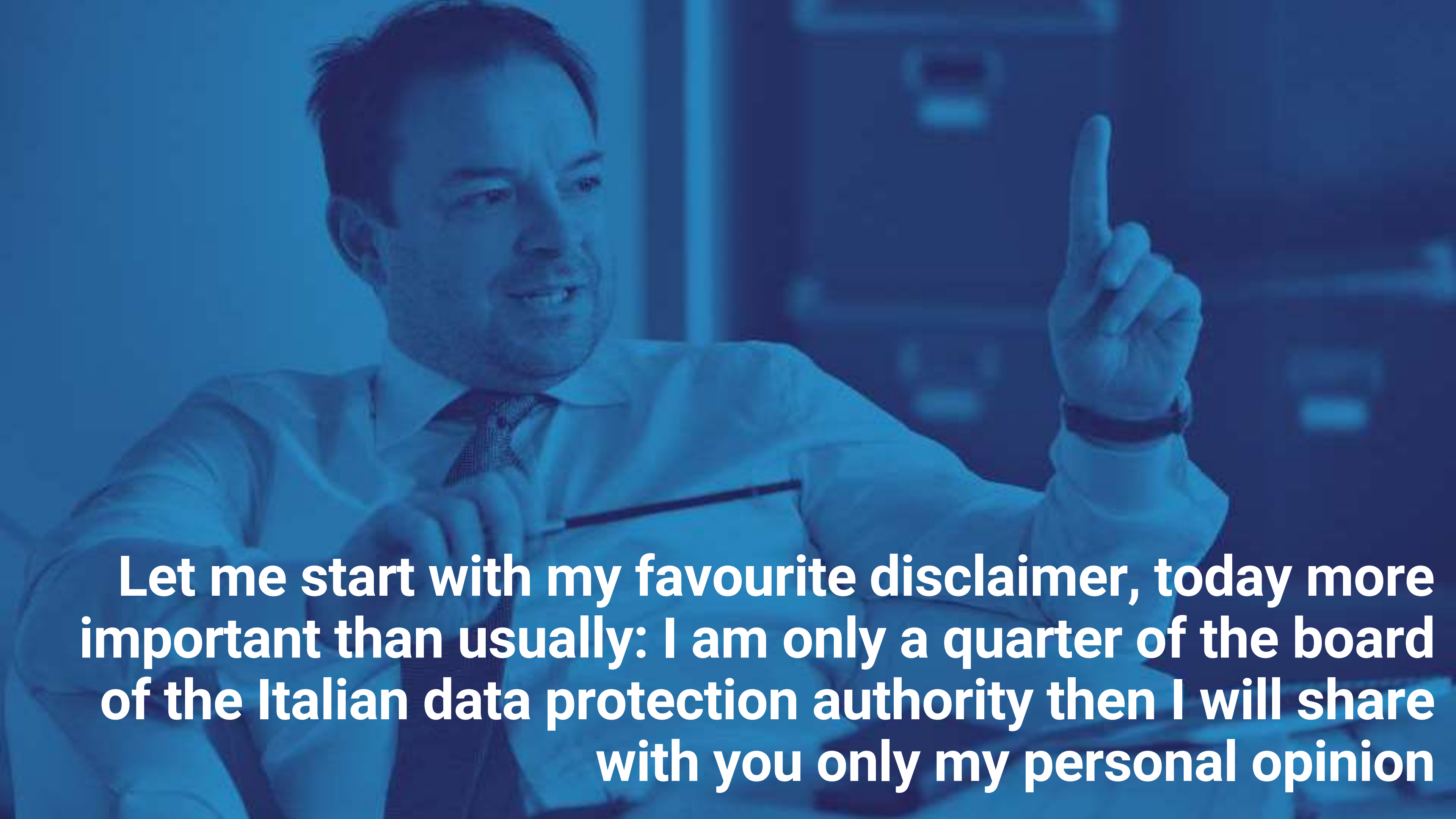


Data protection, consumer protection, competition intersection: a very curious case

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Good morning



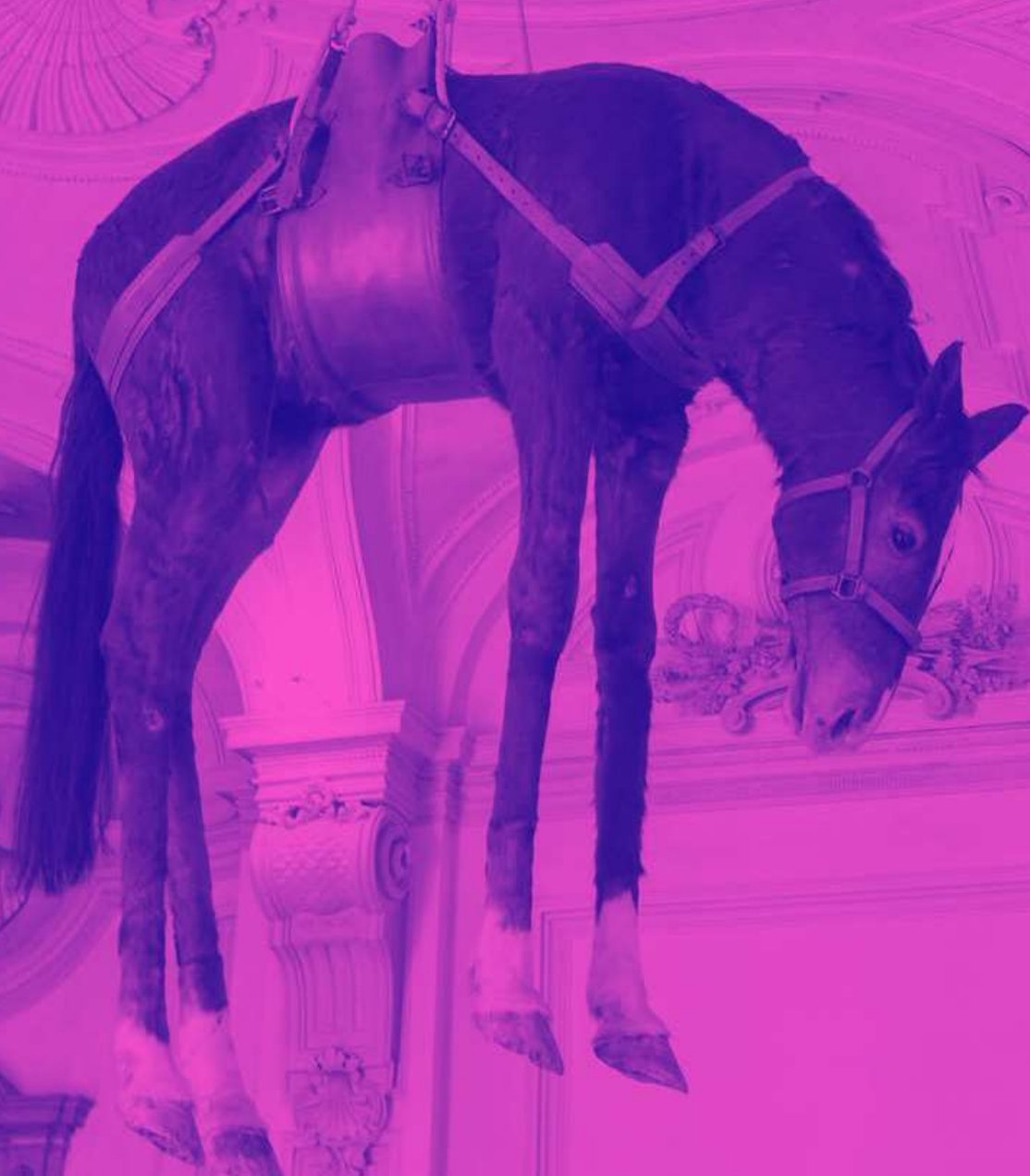


Let me start with my favourite disclaimer, today more important than usually: I am only a quarter of the board of the Italian data protection authority then I will share with you only my personal opinion

**Two times thanks to organizers: for
inviting me and for choosing the
topic of our today's discussion
because it is one of the most
important and complex we are facing**

Thank You

Let me say in a provocative way, just for opening our discussion that today we will discuss about intersection and overlapping between data market, data protection, consumer protection and competition law but we are not sure that personal data can be sell and buy!





***“...personal data cannot be considered as a
tradeable commodity”***

**According to the Opinion 08/2024 on Valid Consent in the Context of Consent or Pay
Models Implemented by Large Online Platforms Adopted on 17 April 2024**



**Most privacy experts and
certainly most data protection
authorities consider personal
data the same as human organs**

This conclusion is normally
based on the fact that...



**Privacy is a fundamental
right and fundamental
rights can't be market**

If we share this conclusion,
we must confront some
paradoxes



Some economic data for example



**In 2022, a family of four people could
"earn" \$ 868 from their personal data
exploitation.
Robert J. Shapiro.**



**In 2020, the European data market worth
€ 184 billion with an estimated growth,
for 2025, between € 200 and 300 billions**

source: data.europa.eu



But we have also some paradox coming from a legal perspective





The Facebook case

E-mail o telefono Password Accedi

Non ricordi più come accedere all'account?

Iscriviti

Agosto 2019

È veloce e semplice

Nome Cognome

Numero di cellulare o indirizzo e-mail

Nuova password

Data di nascita

28 ago 1994

Genere

☐ Donna ☐ Uomo

☐ Opzione personalizzata

E-mail o telefono Password Accedi

Non ricordi più come accedere all'account?

Iscriviti

Gennaio 2019

È gratis e lo sarà sempre.

Nome Cognome

Numero di cellulare o indirizzo e-mail

Nuova password

Data di nascita

1 gen 1994

☐ Donna ☐ Uomo

Perché devo fornire la mia data di nascita?

Clickando su Iscriviti, accetti le nostre Condizioni, la Normativa sui dati e la Normativa sui cookie. Potresti ricevere notifiche tramite SMS da noi, ma puoi disattivarle in qualsiasi momento.

The italian antitrust authority banned Facebook from saying "it's free and it will be forever"

«the online services promised as free of charge but which, evidently, are not free, representing the "compensation" for making available for commercial purposes the user personal data»

Consiglio di Stato, March 29, 2021, n. 2631





BUT

also



«This Directive shall also apply where the trader supplies or undertakes to supply digital content or a digital service to the consumer, and the consumer provides or undertakes to provide personal data to the trader,»

DIRECTIVE (EU) 2019/770 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services

How can we consider a provision like this compatible with the principle just enunciated by the EDPB? If personal data cannot be traded in the markets, how can the regulator be concerned that consumers, if they pay in personal data, can count on the same safeguards that they have if they pay in money?



If we say that there can be no personal data market, there should be, by definition, no relationship between competition, consumer protection and contract law with data protection law, and probably not even between my Authority and the Authority of Giovanni!

Here let me remember my initial disclaimer and let me say, as only a quarter of the board of the italian data protection authority, that my opinion is that we are not yet arrived at the final conclusion about the problem and we need to look into this more deeply



Simply saying that personal data cannot be traded in the markets is simpler and, perhaps, may seem a position more consistent with our role but...



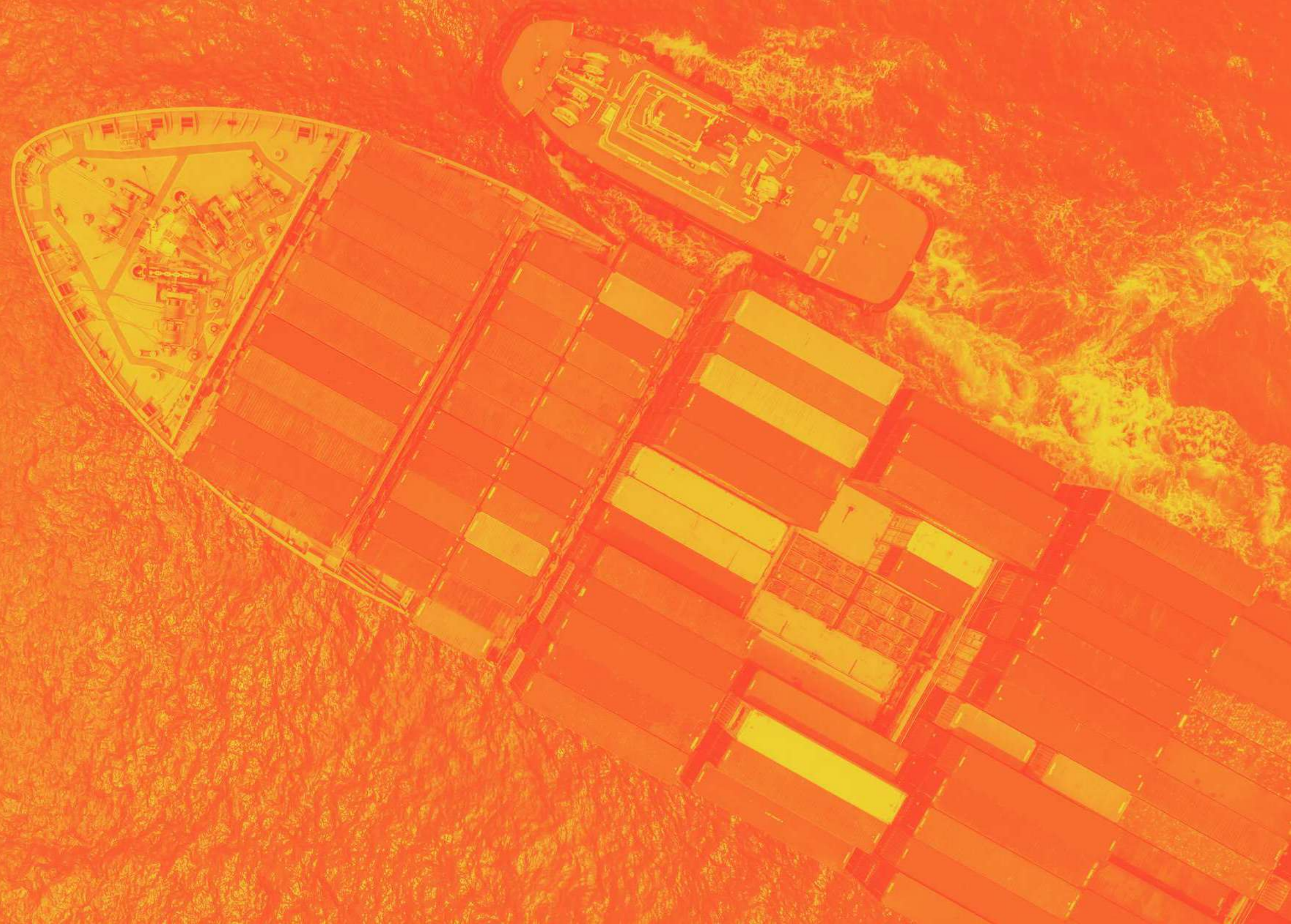
...personally, I'm not sure it's the right answer or the one with the greatest guarantee with respect to the right to personal data protection. Regulating rather than banning may be more difficult, but it could be more effective



Here is my theory



**We can trade personal data, without
trade the data protection right**





Data are not rights.

Let me give you a very stupid example: imagine that someone would propose to me paying 5 euro per month for using my telephone number to promote some telecommunication and energetic services with not more than 5 call per month guaranteeing me the right to terminate the contract anytime with the only consequence to lose the right to receive part of the fee. I do not believe that if I accepted the proposal I would be selling my right to privacy and corrupting its nature as a fundamental right.





W R I T E R

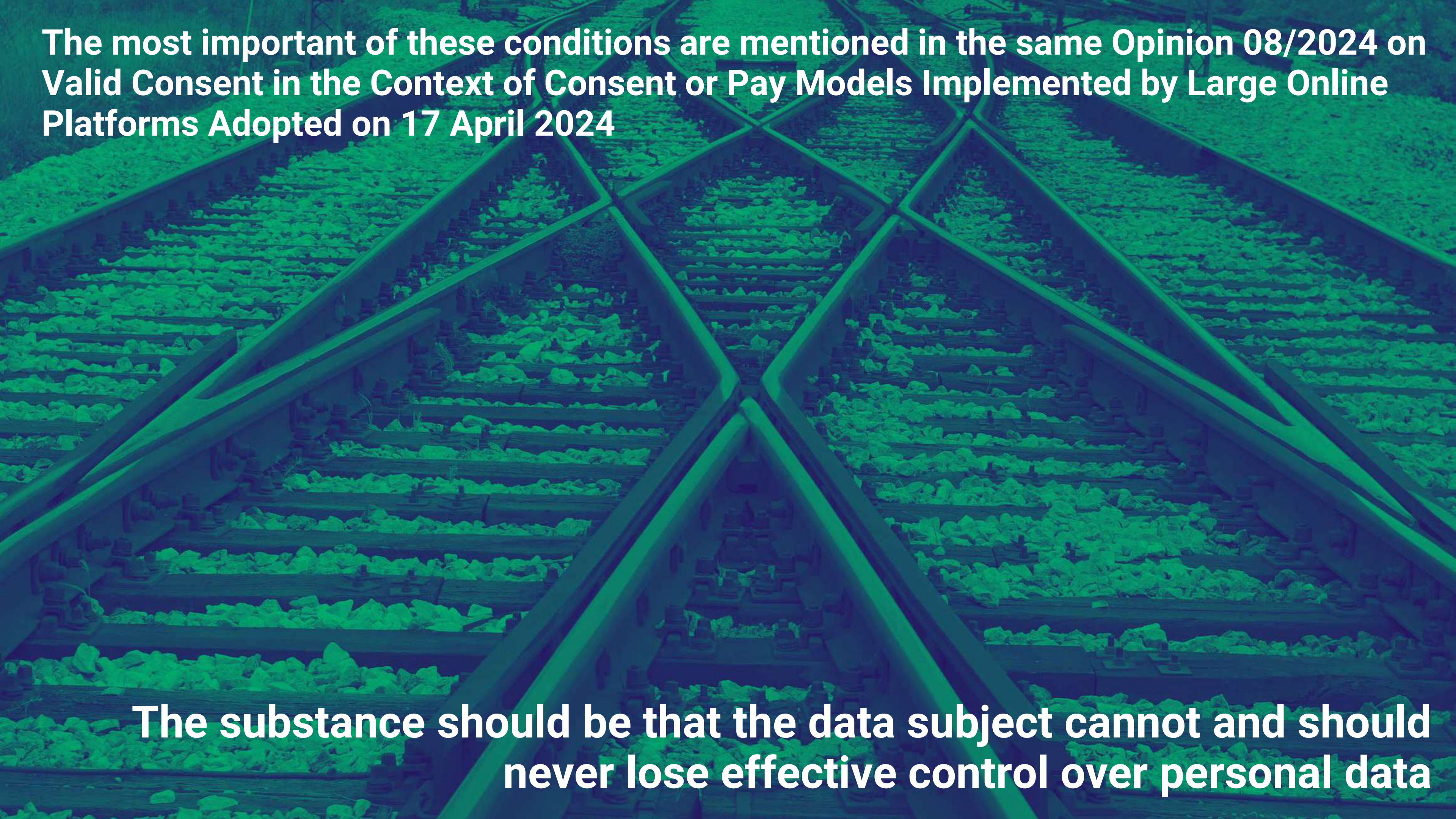
Copyright is also a fundamental right, and the right to authorship of the work is also inalienable, but the ghost writer waives the right to exercise it upon recognition of a fee

Let me say, honestly speaking, that imagine a personal data license agreement without renouncing at the strongest personal data protection and without discussing the nature of fundamental right of the right to privacy is possible or should be possible also for a quarter of the board of a data protection authority ;-)



**My idea is that we
have to move from a
prohibition by
principle to a
permission obviously
respecting GDPR
conditions**

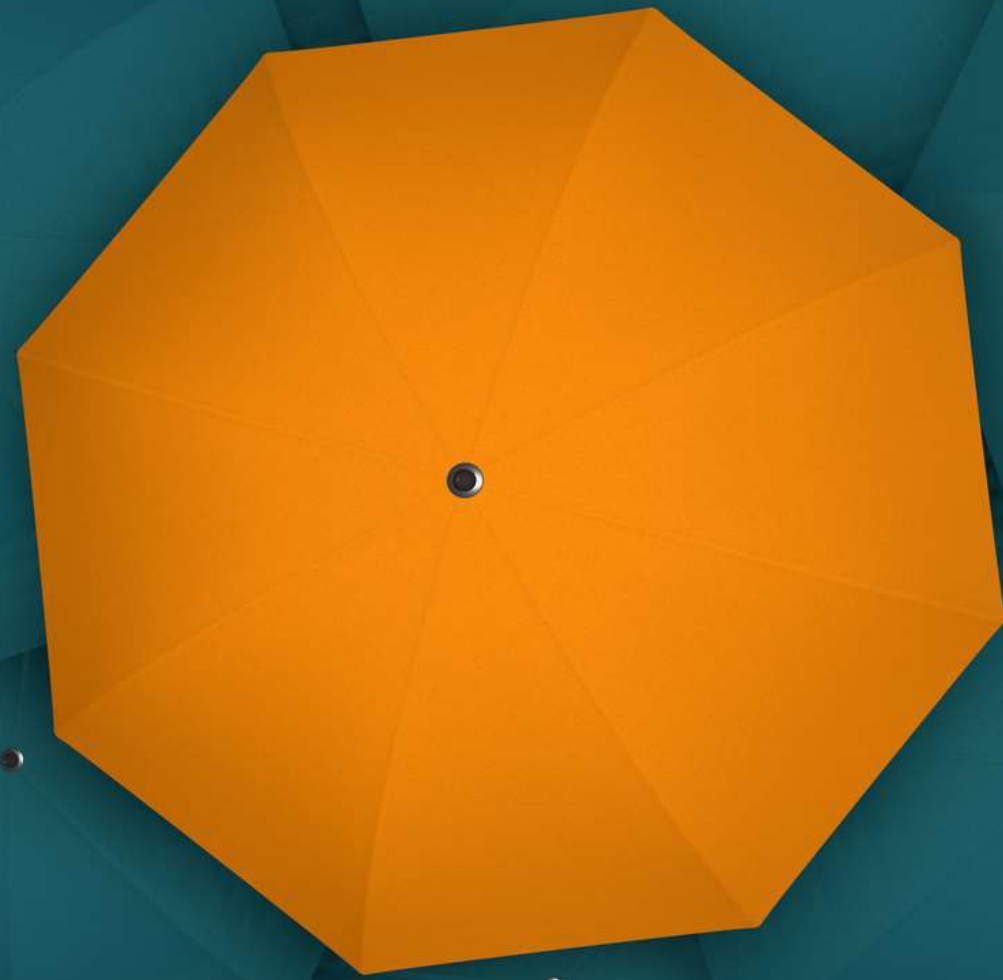


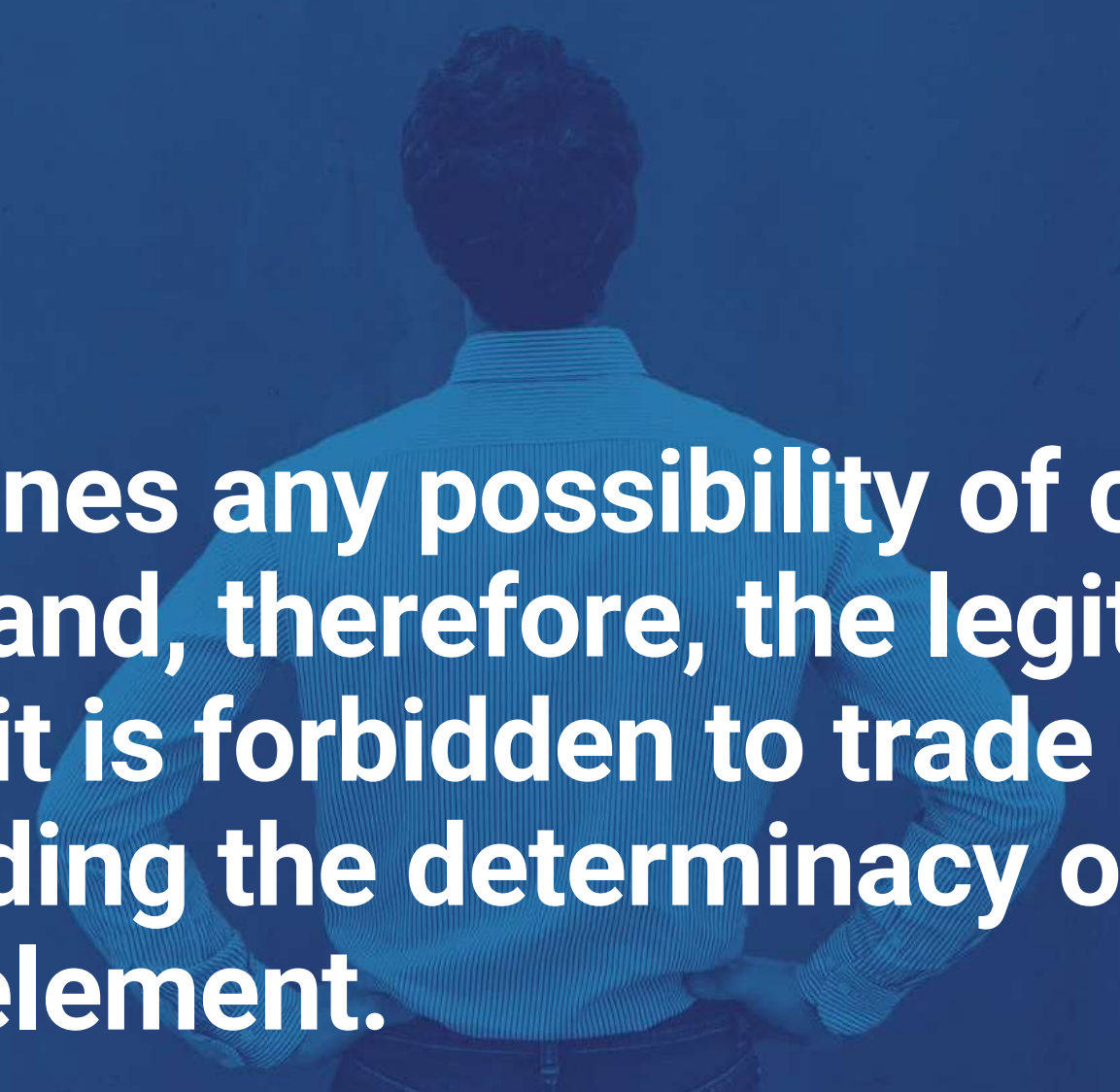
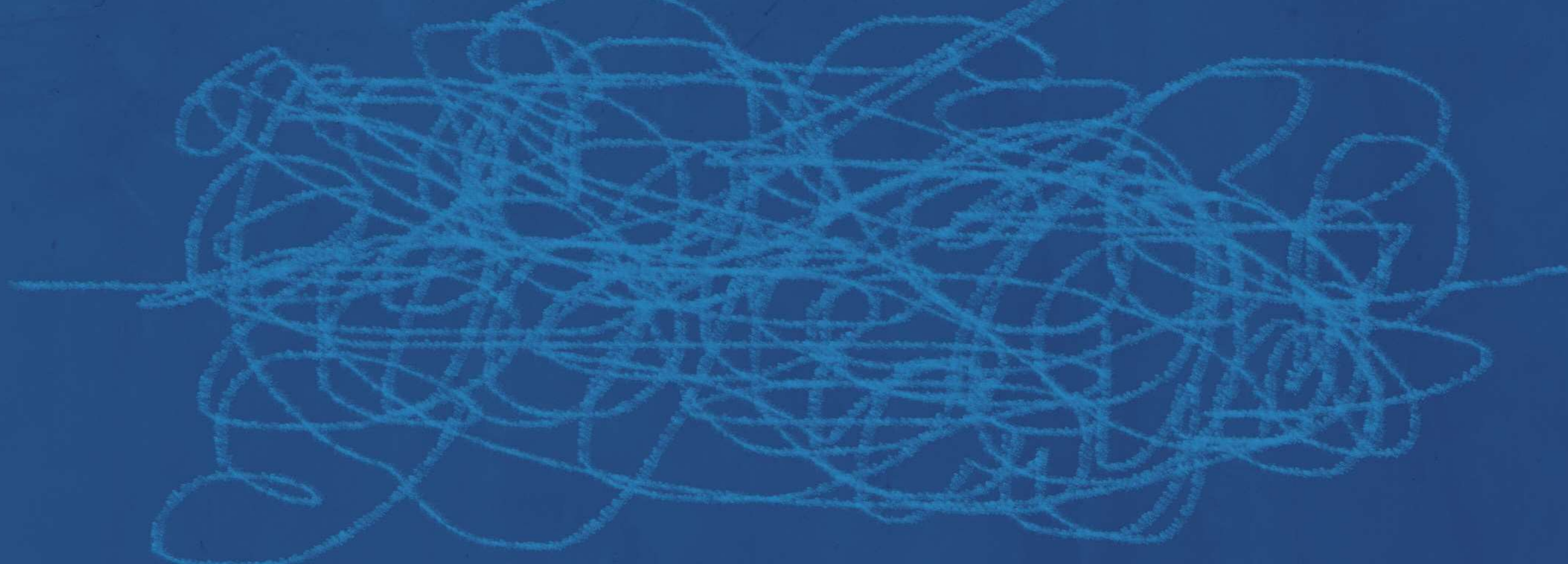
An aerial photograph of a railway track, showing the rails and sleepers receding into the distance. The image is overlaid with a semi-transparent blue filter. The text is positioned in the upper left corner.

The most important of these conditions are mentioned in the same Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms Adopted on 17 April 2024

The substance should be that the data subject cannot and should never lose effective control over personal data

The difference and the distance between my stupid example about licensing the use of my phone number and what is happening today in the digital ecosystem consists in the enormously greater complexity of the processing of personal data that is claimed to be possible in exchange for digital services.





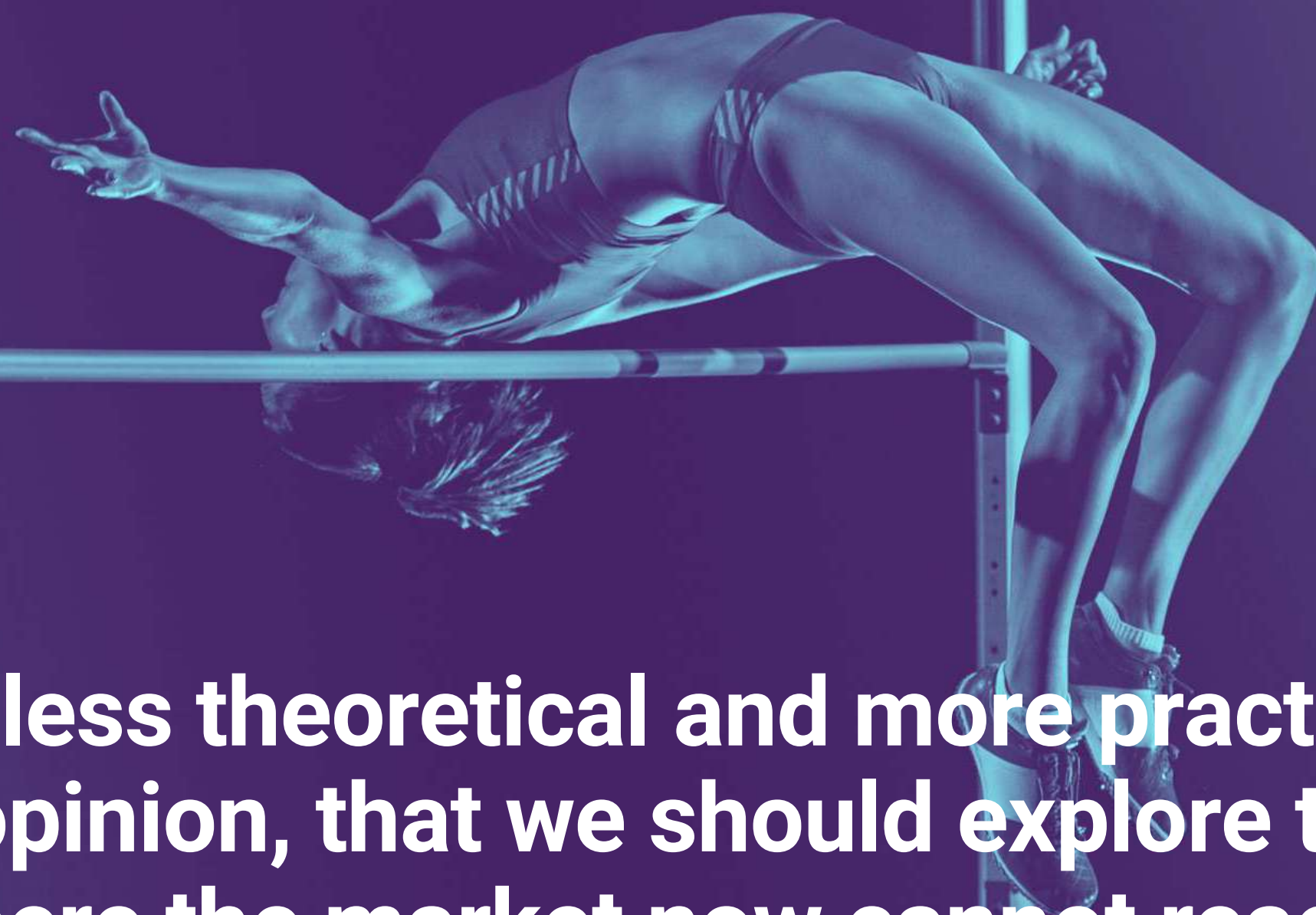
This complexity undermines any possibility of control by data subjects over their personal data and, therefore, the legitimacy of the relevant processing not because it is forbidden to trade personal data but because even in fruit trading the determinacy of the object of the contract is an essential element.



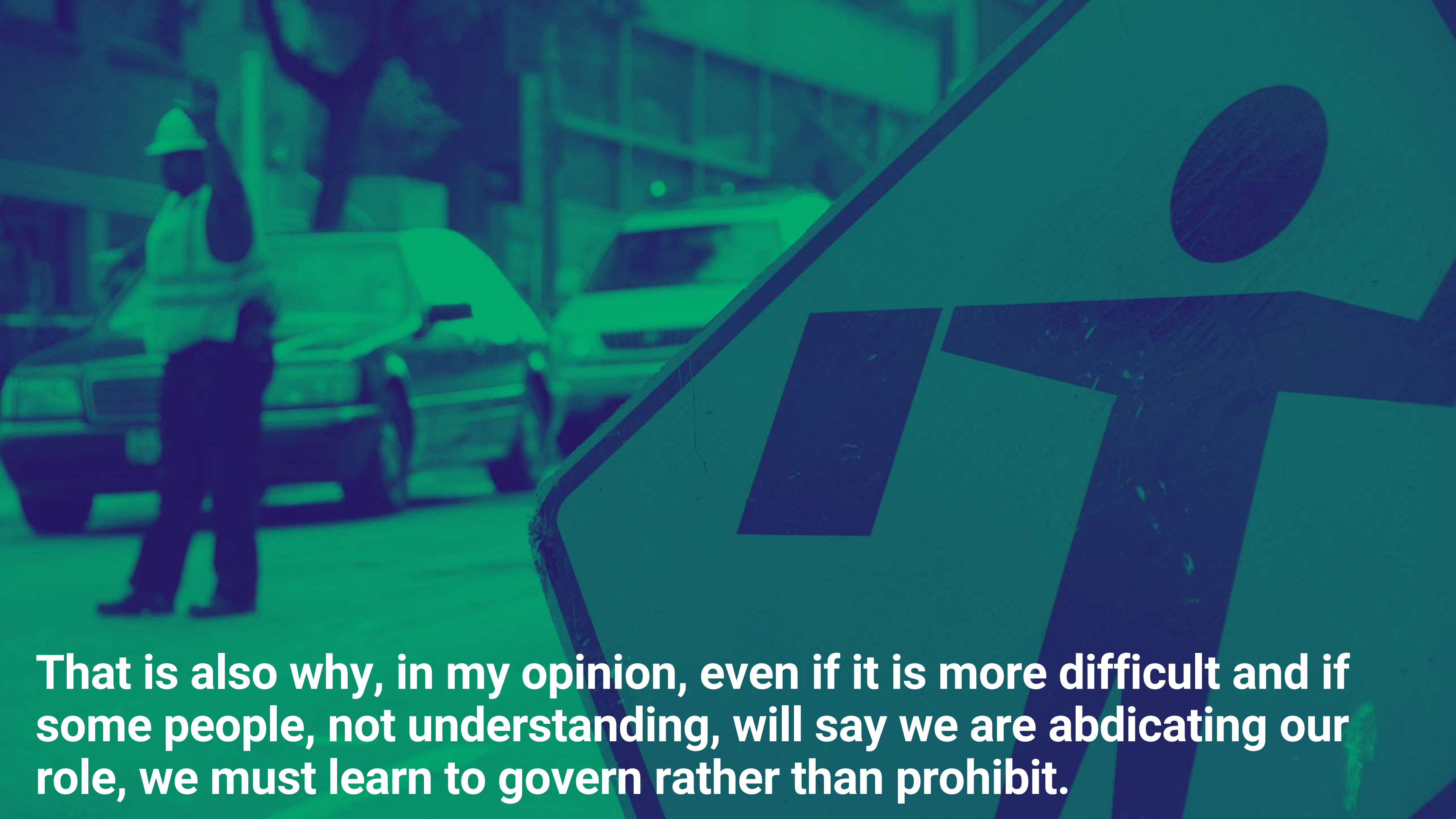
I believe that if we went along this road without preconceptions and with scientific method, possibly discussing with private stakeholders, we would not only not weaken the right to privacy but would reinforce it



And, I believe that with some caution, civil, consumer, competition law could empower the right to personal data protection and that's why I'm sure that we and competition authorities, we need learning to collaborate much more!



And let me add a less theoretical and more practical reason that suggests, in my opinion, that we should explore this way deeper: if we set the bar where the market now cannot reach, we will not be able to effectively defend the right to privacy.



That is also why, in my opinion, even if it is more difficult and if some people, not understanding, will say we are abdicating our role, we must learn to govern rather than prohibit.



But I'm sure that the road is still long and winding ...

**... and only those
who believe they
have the right
answer in their
pocket are
wrong.**



THANK YOU



G.SCORZA@GPDP.IT