

LAW & DATA

2023/2024

University of Padova

8 November 2023



The Course

- Target
- Syllabus | Contents
- Reference materials
- Exams
- Students' meetings

Contents

- Law
- Legal systems
- the EU legal system
- Basics of EU Law
- Sources of EU Law
- EU Privacy and Personal Data Protection
- General Principles of EU Personal Data Protection
- Enforcement of EU Data Protection
- Protection of Other Data
- Case-study analyses and possible workshops
- the EU Digital Strategy

Basic legal notions

- Notion of Law
- Basic legal notions
- Legal systems to be taken into consideration
- International Law
- European Union Law

What is Law?





What is Law?



law 1 of 2 **noun**

'lɔ ˌlɔː

plural laws

1 a (1) : a binding custom or practice of a community : a rule of conduct or action prescribed (see [PRESCRIBE](#) [sense 1a](#)) or formally recognized as binding or enforced by a controlling authority

(2) : the whole body of such customs, practices, or rules

| The courts exist to uphold, interpret, and apply the *law*.

(3) : **COMMON LAW**

b (1) : the control brought about by the existence or enforcement of such law

The Indian government is believed to have detained thousands of other people last year The government said the move, decried by critics as draconian, was necessary to maintain *law* and public order in the region.

— *BBC.com*

→ see also **LAW AND ORDER**

(2) : the action of laws considered as a means of redressing wrongs

also : **LITIGATION**

developed the habit of going to *law* over the slightest provocation

— H. A. Overstreet

c : a rule or order that it is advisable or obligatory to observe

| a *law* of self-preservation

d : something compatible with or enforceable by established law

| The decrees were judged not to be *law* and were therefore rescinded.

e : **CONTROL, AUTHORITY**

| The child submits to no *law*.

3 : a rule of construction or procedure

| the *laws* of poetry

4 : the whole body of laws relating to one subject

| criminal *law*

| probate *law*

law

noun

law noun (RULE)

Add to word list

B1 [C]

a rule, usually made by a government, that is used to order the way in which a society behaves:

- *There are laws **against** drinking in the street.*
- *The laws **governing** the possession of firearms are being reviewed.*
- *They led the fight to impose laws **on** smoking.*
- [+ -ing verb or + to infinitive] *Many doctors backed plans for a law **banning/to ban** all tobacco advertising.*

B2 [U]

(often **the law**)

the system of rules of a particular country, group, or area of activity:

- *What does the law say about having alcohol in the blood while driving?*
- *Of course robbery is **against** the law!*
- *The judge ruled that the directors had knowingly **broken** the law.*
- *You can't take that course of action and remain **within** the law.*
- *They have to provide a contract **by** law.*
- *It was a detailed study of international human rights law.*

B2 [U]

the area of knowledge or work that involves studying or working with the law :

- *She's going to study law at university.*
- *a law firm in New York*



C2 [C]

a general rule that states what always happens when the same conditions exist:

- *Newton's laws **of** motion*
- *the laws of nature/physics*
- humorous *The **first** law **of** (= the most important principle in) politics is - if you're going to lie, don't get found out!*

law

The law is a system of rules that a society or government develops in order to deal with crime, business agreements, and social relationships. You can also use the **law** to refer to the people who work in this system.

Law is used to refer to a particular branch of the law, such as **criminal law** or **company law**.

A **law** is one of the rules in a system of law which deals with a particular type of agreement, relationship, or crime.

The laws of an organization or activity are its rules, which are used to organize and control it.

Law

*«Set of conditions under which
the choices of each person
can be united with the choices of others
under a universal law of freedom»*

Immanuel Kant

The Metaphysical Elements of Justice

«**Set of conditions** under which
the **choices** of each **person**
can be united with the choices of **others**
under a universal law of **freedom**»

LAW



WHAT IS
A *LEGAL ORDER/SYSTEM*?

«A **LEGAL ORDER** is an aggregate or a **plurality** of **general and individual norms** that **govern** human behavior, that prescribe, in other words, how one ought to behave. That behavior is prescribed in a norm or, what amounts to the same thing, is the content of a norm means that one ought to behave in a certain way.

The concept of the norm and the concept of the "ought" coincide. To prescribe in a norm how one ought to behave is understood here not only as a **command but also as a positive permission or an authorization.**

A plurality of norms is an order if the norms constitute a unity, and they constitute a unity if they have the same basis of validity.

If the law is positive law, the norms of a legal order are "posited" or "created" through human acts. To say that a norm prescribing how one ought to behave is "posited" or "created" through an act is a metaphorical way of saying that the norm is the subjective meaning of the act. Acts through which the norms of a legal order are posited or created comprise legislative acts, acts constituting legally binding custom, judicial acts, administrative acts, and private law transactions, in particular contracts. These acts are characterized here as legal acts, and the individuals authorized by the legal order to perform such acts are characterized as legal officials».

H. Kelsen, *The concept of the legal order*, in *The American Journal of Jurisprudence* (translated by S.L. Paulson)

The **LEGAL SYSTEM**
includes
rules, procedures and **institutions**
by which activities, both public and private,
can be carried out through legitimate means.

A legal system is
a system for **interpreting and enforcing the laws**.

PLURALITY OF LEGAL SYSTEMS
in light of several and different social groups

Examples of what legal systems can be / Where legal systems can be found

STATES

e.g. Italy, France, USA, India, China, etc.

EUROPEAN UNION

Legal system encompassing 27 Member States

COUNCIL of EUROPE

Legal system including 47 Member States

INTERNATIONAL LEGAL ORDER

Special legal system – independent from States

WORLD WIDE WEB?

Modern theory of the **SEPARATION OF POWERS**

Legislative

Executive

Judicial

MAKE

**IMPLEMENT
&
ENFORCE**

INTERPRET

LAW

separate and independent bodies
so to ensure
legal certainty, impartiality, equality before the Law

Montesquieu, The Spirit of the Laws (1748)



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Modern theory of the **SEPARATION OF POWERS**

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**IMPLEMENT
&
ENFORCE**

INTERPRET

LAW

separate and independent bodies
so to ensure
legal certainty, impartiality, equality before the Law

Montesquieu, The Spirit of the Laws (1748)

system of CHECKS & BALANCES

to limit the power of a single individual/entity/body of government to ensure balanced and harmonious and relationships and co-existence

BRANCHES OF LAW

fundamental
universally accepted
exhaustive

PUBLIC LAW

PRIVATE LAW

TYPE OF STATE LEGAL SYSTEMS

MAIN DIFFERENCE
between

CIVIL LAW

COMMON LAW

SOURCES OF LAW

HARD LAW

binding legal provisions
which can be legally enforced
before a court

SOFT LAW

contents
(agreements, principles,
declarations, statements, etc.)
which are **not legally binding**

Usually cannot be enforced by a
party before a court,
but can be used by a judge to
interpret hard law

Examples of **SOURCES OF LAW**

- Treaties / Conventions
- Legislation (Constitution, acts, laws, statutes, regulations, codes, etc.)
- Case-law
- Public and Private Policies
- Doctrine
- Fundamental/General Principles of Law
- Customary Law

HIERARCHY OF THE SOURCES OF LAW

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WHAT IS *the EUROPEAN UNION?*

DIFFERENCES

COUNCIL OF EUROPE - CoE -

Continental level

46 Member States

Institutions
(European Court of Human Rights)

Strasbourg (France)

EUROPEAN FREE TRADE ASSOCIATION - EFTA -

Regional trade organisation

Iceland, Norway, Liechtenstein,
Switzerland

Free trade area → participation in
the European Single Market (not in
the customs Union)

Participation in the Schengen
Area

Geneva (Switzerland)
Bruxelles + Luxembourg

EUROPEAN ECONOMIC AREA - EEA -

EU MS + EFTA MS
(no Switzerland)

Defined by an international
agreement (1994) within which
the EU single market basic rules
apply

Geographic area

DIFFERENCES | Members

- EFTA -

Iceland
Liechtenstein
Norway
Switzerland

- EEA -

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland

Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

- SCHENGEN -

Austria
Belgium
Croatia
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Italy
Latvia

Liechtenstein
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Slovakia
Slovenia
Spain
Sweden
Switzerland

NO Bulgaria, Cyprus, Ireland, Romania



EUROPEAN UNION

➤ INTERNATIONAL ORGANIZATION

- 1952 Treaty Establishing European Coal and Steel Community
- 1957 **Treaties of Rome**
 - Treaty establishing the European (Economic) Community (1958)
 - Treaty establishing the European Atomic Energy Community (1958)
- 1965 Treaty establishing a Single Council and a Single Commission (1967)
- 1986 **Single European Act** (1987)
- 1992 Treaty on the European Union [**Maastricht Treaty**] (1993)
- 1997 Treaty of Amsterdam (1999)
- 2001 Treaty of Nice (2003)
- 2009 **Treaty of Lisbon** amending the Treaty on the European Union and the Treaty establishing the European Community
 - Treaty on the European Union [TEU]**
 - Treaty on the Functioning of the European Union [TFEU]**
- 2009 **EU Charter of fundamental rights**

EUROPEAN UNION

- «The Community constitutes a **NEW LEGAL ORDER** OF INTERNATIONAL LAW for the benefit of which the states have limited their sovereign rights»
ECJ, case 6/64, Costa v. ENEL [1964]
- «its own legal system which, on the entry into force of the Treaty, became an **integral part of the legal systems of the Member States** and which their courts are bound to apply (...)»
ECJ, case 26/62, Van Gend en Loos [1963]

➤ REGIONAL LEVEL

➤ 27 MEMBERS STATES

EUROPEAN UNION

27 MEMBER STATES

1 January 1958 Treaty of Rome	1 January 1973	1 January 1981	1 January 1986	1 January 1995	1 May 2004	1 January 2007	1 July 2013
Italy The Netherlands Belgium Luxembourg France Germany	Denmark Ireland {United Kingdom}	Greece	Spain Portugal	Austria Finland Sweden	Czech Republic Estonia Cyprus Latvia Lithuania Hungary Malta Poland Slovenia Slovakia	Bulgaria Romania	Croatia

APPLICATION FOR EU MEMBERSHIP

ART. 2 TEU

«any European state which **respects the common values of the Member States** and undertake to promote them may apply to become a member of the Union. These **values** include **human dignity, freedom, democracy, equality, the rule of law and respect for human rights**, including the rights of persons belonging to minorities»

ART. 49 TEU

«Any European State which respects the **values referred to in Article 2** and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State **shall address its application to the Council**, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the **subject of an agreement between the Member States and the applicant State**. This agreement shall be submitted for **ratification** by all the contracting States in accordance with their respective constitutional requirements»

COPENAGHEN CRITERIA FOR EU ACCESSION

- **Political**

stability of institutions guaranteeing democracy, the rule of law, **human rights** and respect for and protection of minorities

- **Economic**

a functioning market economy and the capacity to cope with competition and market forces

- **Administrative and institutional** capacity

to effectively implement the **acquis communautaire*** and ability to take on the obligations of EU membership

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HIERARCHY OF SOURCES OF EUROPEAN UNION LAW

PRIMARY LAW

INTERNATIONAL AGREEMENTS

SECONDARY LAW

SUPPLEMENTARY LAW

<https://eur-lex.europa.eu/homepage.html>

PRIMARY LAW

○ **TREATIES**

- **Founding treaties** (establishing EC → EU)
- Amending treaties
- Protocols annexed to Treaties
- **Accession treaties**

○ **CHARTER OF FUNDAMENTAL RIGHTS**

(since 2009 Lisbon Treaty – same value as Treaties)

○ **GENERAL PRINCIPLES ESTABLISHED BY THE ECJ**

TREATIES

○ TREATY ON THE EUROPEAN UNION

- objectives and principles of the EU
- institutions of the EU

○ TREATY ON THE FUNCTIONING OF EUROPEAN UNION

- organisational, functional provisions to reach EU objectives
- procedures for the functioning of EU institutions

○ TREATY ON THE EUROPEAN UNION

Art. 2

The Union is founded on the **values** of **respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights**, including the rights of persons belonging to **minorities**.

These **values are common** to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Art. 3

1. The Union's aim is to **promote peace**, its **values** and the **well-being** of its **peoples**.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the **free movement of persons** is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an **internal market**. It shall work for the **sustainable development** of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the **environment**. It shall promote **scientific and technological advance**.
It shall combat **social exclusion and discrimination**, and shall promote social justice and protection, **equality** between women and men, **solidarity between generations** and protection of the **rights of the child**.
It shall promote economic, social and territorial **cohesion**, and **solidarity among Member States**.
It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an **economic and monetary union** whose currency is the euro.
5. **In its relations with the wider world**, the Union shall **uphold and promote its values and interests** and contribute to the **protection of its citizens**. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives **by appropriate means** commensurate with the **competences** which are conferred upon it in the Treaties.

○ TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Art. 16(1)

***Everyone** has the right to
the **protection of personal data** concerning them.*

EU CHARTER OF FUNDAMENTAL RIGHTS

ART. 6(1) TEU

«The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties»

CHAPTERS:

- I **DIGNITY** *«Human dignity is inviolable, it must be respected and protected»*
- II **FREEDOMS** Respect for private and family life
Protection of personal data
- III **EQUALITY**
- IV **SOLIDARITY**
- V **CITIZENS' RIGHTS**
- VI **JUSTICE**
- VII **GENERAL PROVISIONS** Safeguard clause

GENERAL PRINCIPLES OF EU LAW ESTABLISHED BY THE COURT OF JUSTICE

legal principles developed by the Court of Justice over time
no exhaustive list - under constant development
stemming from constitutional traditions of EU Member States

examples

Legal certainty

Legitimate expectation

Primacy of EU Law

Direct effect of EU Law

Protection for fundamental rights → art. 6(3) TEU

«Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law»

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INTERNATIONAL AGREEMENTS

agreements concluded by the European Union and third countries within the sphere of competence of the EU

Art. 216 TFEU

- «1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.
2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States».

Art. 217 TFEU

«The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure».

Art. 218 TFEU

Procedure for negotiating and concluding international agreements, involving Council, European Parliament (possibly, the ECJ)

SECONDARY LAW

○ TYPICAL ACTS – Art. 288 TFEU

- REGULATIONS | DIRECTIVES | DECISIONS (hard law)
- OPINIONS | RECOMMENDATIONS (soft law)

○ ATYPICAL ACTS

- communications | resolutions | white papers | green papers

SECONDARY LAW

REGULATION

binding
in its entirety

directly applicable
in all Member States

DIRECTIVE

binding
as to the result
to be achieved

IMPLEMENTATION
IN MS

=

the choice of form
and methods to
achieve the result lies
with the national
authorities

DECISION

binding
in its entirety

GENERAL //
INDIVIDUAL*

*decision which specifies
those to whom it is
addressed shall be binding
only on the addressees

INSTITUTIONS OF THE EU

ART. 13 TEU

- **EUROPEAN PARLIAMENT**
- **EUROPEAN COUNCIL**
- **COUNCIL OF THE EUROPEAN UNION (Council)**
- **EUROPEAN COMMISSION**
- **COURT OF JUSTICE OF THE EU**
- **EUROPEAN CENTRAL BANK**
- **COURT OF AUDITORS**

EUROPEAN PARLIAMENT

- max 750 members = MEPs (currently 705)
every MS has a different number of MEPs according to its population
- 5 years' term
- since 1979 directly elected by EU citizens
representing **citizens' interests** (not MS)
- groups formed according to affinities in political parties (not upon nationality)
- Strasbourg | Brussels | Luxembourg

FUNCTIONS

➤ **LEGISLATIVE**

one of the legislative chambers of the EU

➤ **BUDGETARY**

monitoring on the expenditures

➤ **SUPERVISORY**

on the activities of other EU Institutions – general report

- question the Commission
- investigate (temporary Committees of Inquiry)
- receive petitions by EU citizens
- election of Ombudsman = civil mediator

➤ **ELECTIVE**

President of the EU Commission (proposed by the Council)

EU Commissioners (proposed by the Commission's President)

European Council

27 Heads of State and Governments

President elected for a 2.5 years' term

No legislative function, but
guideline function (objectives in CFSP + EU external action; broad guidelines on economic policies)

It can intervene in some areas foreseen by Treaties

Conclusions

Council (Council of the EU)

One representative for each MS, able to commit the government of that State and cast its vote → **interests of the Governments**

Different configurations (GA, FA, Economic and financial, Environment, JHA, ...)

LEGISLATIVE FUNCTION
(one chamber)

Supervisory functions on other institutions

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EUROPEAN COMMISSION

27 Commissioners – approved by the EP (5 years' term)

but independent from MS, appointed with a procedure involving EP, President of the Commission and MS
(President is proposed by the European Council)

Divided into Directorates General

Representing the **interests of the EU as a whole**

FUNCTIONS:

LEGISLATIVE – initiative

EXECUTIVE AND ADMINISTRATIVE – enforcement of EU law

BUDGETARY – management of EU budget

SUPERVISORY – on MS (possible breaches of EU law) and on private entities

EUROPEAN COURT OF JUSTICE

European Court of Justice + General Court of the EU

JUDGES and ADVOCATES GENERAL

whose number depends on the number of MS (usually one per MS)
6 years' term – renewable every three years

Appointed among individuals possessing qualifications required for appointment to the highest judicial offices in their respective countries or jureconsults of recognised competence BUT independent from their MS

FUNCTIONS:

JURISDICTIONAL

→ litigation

INTERPRETATIVE / PRELIMINARY RULINGS

→ not litigation

ADVISORY / CONSULTATIVE

→ not litigation

LITIGATION PROCEEDINGS BEFORE THE ECJ

DIRECT APPEALS

263 TFEU

Appeal of acts adopted
by EU Institutions

PUBLIC initiative

MS, other EU institutions

PRIVATE initiative

Any natural or legal person
*«against an act addressed to that
person or which is of direct and
individual concern to them, and against
a regulatory act which is of direct
concern to them and does not entail
implementing measures»*

➤ VICES

lack of competence, invalidity, voidness,
misuse of powers

➤ Time-limit: 2 months + 10 days

FAILURE TO ACT

265 TFEU

PRELITIGATION

Letter of formal notice

2 months for acting

Non-performance

LITIGATION before the ECJ

COMPENSATION FOR DAMAGES

340(2) TFEU

Initiative by individuals, legal
persons, and Member States

Damage must be proved as
unlawful, serious, certain

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LITIGATION PROCEEDINGS BEFORE THE ECJ

DIRECT APPEALS

263 TFEU

Appeal of acts adopted
by EU Institutions

PUBLIC initiative

MS, other EU institutions

PRIVATE initiative

Any natural or legal person
*«against an act addressed to that
person or which is of direct and
individual concern to them, and against
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concern to them and does not entail
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FAILURE TO ACT

265 TFEU

PRELITIGATION

Letter of formal notice

2 months for acting

Non-performance

LITIGATION before the ECJ

COMPENSATION FOR DAMAGES

340(2) TFEU

Initiative by individuals, legal
persons, and Member States

Damage must be proved as
unlawful, serious, certain



NON-LITIGATION PROCEEDINGS BEFORE THE ECJ

PRELIMINARY RULINGS

ECJ (not General Court)
267 TFEU

Initiative: by **any jurisdiction** of any MS (nature and instance – also upon the parties' request)

Object: **INTERPRETATION** of any EU law provision
VALIDITY of acts of EU Institutions

Development:

1. MS National proceedings
2. national judge refers the preliminary rulings to the ECJ
3. (usually) suspension of the national proceedings
4. Decision of the ECJ (judgment / order) which is **compulsory** for the national judge

BODIES OF THE EU

- **European Data Protection Supervisor (EDPS)**
independent body ensuring that EU institutions and bodies respect people's right to privacy when processing their personal data
- **European Data Protection Board (EDPB)**
independent body ensuring the consistent application of data protection rules throughout the EU, promoting cooperation between national data protection authorities in the EU
- **Agencies of the European Commission**
 - EU decentralised bodies distinct from the institutions
 - specific tasks

FUNDAMENTAL RIGHTS AGENCY

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PRIVACY

1890

S. Warren // L. Brandeis

RIGHT TO BE LET ALONE

«most comprehensive of rights and the right most valued by civilized men»

- right to reputation
- right to honour and moral integrity
- right to one's own image
- right to private/family life
- right to non-interference
- personhood / protection of identity and dignity
- ...
- right to control personal information

COMMON LAW ORIGIN

distinction between what is private from what is public

PRIVACY

Common Law tradition

Civil Law tradition

RIGHT TO LIBERTY

RIGHT TO DIGNITY



(RIGHT TO) PERSONAL DATA

«Everyone has the right to protect personal data concerning him or her»

Article 8(1) CFR

PERSONAL DATA ?

«any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person»

Art. 4(1)(1) GDPR

CIVIL LAW ORIGIN

Right to PRIVACY & PERSONAL DATA

- 'same, but different'
- intertwined
- different, but overlapping

HUMAN RIGHTS

rights belonging to individuals as human beings
regardless of race, sex, nationality, ethnicity, language,
religion or any other status

History - **RIGHT TO PRIVACY**

➤ **UN Universal Declaration of Human Rights (1948)**

Article 12

*No one shall be subjected to **arbitrary interference** with his privacy, family, home or correspondence, nor to attacks upon his **honour and reputation**. Everyone has the right to the protection of the law against such interference or attacks.*

➤ **International Covenant on Civil and Political Rights (1966)**

Article 17

- 1. No one shall be subjected to **arbitrary or unlawful interference** with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

History - **RIGHT TO PRIVACY**

➤ **UN Convention on the Rights of the Child (1989)**

Article 16

No child shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

The child has the right to the protection of the law against such interference or attacks.

History - **RIGHT TO PRIVACY**

➤ **European Convention of Human Rights (1950)**

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family private life, his home and his correspondence.

*2. **There shall be no interference by a public authority** with the exercise of this right **except** such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

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RIGHT TO PRIVACY

➤ **Nice Charter (2009) → EU Charter of Fundamental Rights (2009)**

Article 7 – Respect for private and family life

1. Everyone has the right to respect for his or her private and family life, home and communications.

*2. **There shall be no interference by a public authority** with the exercise of this right **except** such as is in accordance with the law and is **necessary** in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

Article 8 – Protection of personal data

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for **specified purposes** and on the basis of the **consent** of the person concerned or some **other legitimate basis** laid down by law. Everyone has the right of **access** to data which has been collected concerning him or her, and the right to have it **rectified**.*
3. *Compliance with these rules shall be subject to control by an **independent authority**.*

RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

Article 52 – Scope and interpretation

1. **Any limitation** on the exercise of the rights and freedoms recognised by this Charter must be **provided for by law** and respect the essence of those rights and freedoms. Subject to the principle of **proportionality**, limitations may be made only if they are **necessary** and genuinely meet objectives of **general interest** recognised by the Union or the **need to protect the rights and freedoms of others**.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

(...)

RIGHT TO PERSONAL DATA PROTECTION

➤ **OECD Privacy Guidelines (1980)**

Soft law universal standards

- ✓ Collection Limitation Principle
- ✓ Data Quality Principle
- ✓ Purpose Specification Principle
- ✓ Use Limitation Principle
- ✓ Security Safeguards Principle
- ✓ Openness Principle
- ✓ Individual Participation Principle
- ✓ Accountability Principle

RIGHT TO PERSONAL DATA PROTECTION

- **CoE Convention 108** (28 January 1981 – Data Privacy Day)
Convention for the protection of individuals with regard to automated processing of personal data

first legally binding instrument
at the international level
on data protection

UNIVERSAL STANDARDS

- **CoE Convention 108+** (adopted on 18 May 2018)

RIGHT TO PERSONAL DATA PROTECTION

➤ CoE Convention 108

Main principles:

- Protection of the individuals against PD abuses
- Regulation of transborder data flows
- Fair and lawful collection
- Legitimate purposes
- Processing for the same purposes for which data were collected
- Storage duration (no longer than necessary)
- Quality of data: adequate, relevant not excessive (proportionality)
- Sensitive data (special categories of data)
- Right to know information stored and to have it rectified
- Possible overriding interests for different processing activities

Applicable EU Legislation – **RIGHT TO PERSONAL DATA PROTECTION**

➤ TEU

Article 39

*In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the **Council** shall adopt a **decision laying down the rules** relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which **fall within the scope of this Chapter**, and the rules relating to the **free movement** of such data. Compliance with these rules shall be subject to the control of independent authorities.*

Applicable EU Legislation – **RIGHT TO PERSONAL DATA PROTECTION**

➤ TFEU

Article 16

1. *Everyone has the right to the protection of personal data concerning them.*
2. **The European Parliament and the Council**, acting in accordance with the ordinary legislative procedure, **shall lay down the rules** relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the **free movement of such data**. Compliance with these rules shall be subject to the control of **independent authorities**.
3. *The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 39 of the Treaty on European Union.*

History – EU DATA PROTECTION DIRECTIVES

Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

limited harmonization → GDPR

Directive 2006/24/EC – Data Retention Directive

on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC

repealed by ECJ in *Digital Rights Ireland* | C-293/12 + C-594/12

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History – EU DATA PROTECTION DIRECTIVES

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Applicable – EU DATA PROTECTION DIRECTIVES

Directive 2002/58/EC

Directive on privacy and electronic communications

Directive 2016/680/EU

on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

Directive 2002/58/EC | E-PRIVACY DIRECTIVE

USER

any **natural person** using a **publicly available electronic communications service**, for private or business purposes, without necessarily having subscribed to this service (**SUBSCRIBER**)

TRAFFIC DATA

any data **processed** for the purpose of **the conveyance of a communication** on an electronic communications network or **for the billing** thereof

LOCATION DATA

any data processed in an electronic communications network, **indicating the geographic position of the terminal equipment of a user** of a publicly available electronic communications service

COMMUNICATION

any **information exchanged or conveyed** between a **finite number of parties** by means of a **publicly available electronic communications service**. This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related⁴ to the identifiable subscriber or user receiving the information



Directive 2002/58/EC | E-PRIVACY DIRECTIVE

- **Scope of application** *‘services concerned’
processing of PD in connection with the provision of **publicly available electronic communications services** in **public communications networks** within the EU*
- **Service Provider** *required to take **appropriate technical and organizational measures** to ensure **security** of its services*
- **Objective** *require MS to ensure **confidentiality** of communications and related PD (i.e. traffic data) processed through public communication networks/publicly available electronic communications services*

Directive 2002/58/EC | E-PRIVACY DIRECTIVE

X AUTOMATIC CALL FORWARDING

by third parties to the subscriber's terminal, unless stopped

X DIRECTORIES OF SUBSCRIBERS

possible, but based on consent (express or implied)

X UNSOLICITED COMMUNICATIONS

automated calling systems without human intervention / fax
/ e-mail / direct marketing

possible, but with clear, distinct and prior consent
possibility to object free of charge & easily

Directive 2018/1972

European Electronic Communications Code (Recast)

NO PROCESSING OF PERSONAL DATA

Harmonised framework for the regulation of electronic communications networks, electronic communications services, associated facilities and services, and some aspects of terminal equipment

Goals:

- ✓ implement an **internal market** in electronic communications
- ✓ promote **fair competition** between companies
- ✓ ensure equal and fair access to these services
- ✓ promote **connectivity** all across EU

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Directive 2016/680/EU

Data Protection Law Enforcement Directive

Repealed **Decision 2008/977/JHA** – protection of PD processed in the framework of police and judicial cooperation in **criminal matters**

Filled the void of **Data Retention Directive**

Adoption in parallel with GDPR → new '**PDP PACKAGE**'

Directive 2016/680/EU | DP Law Enforcement Directive

- data protection by design / by default
 - data security
 - data breach notifications
 - appointment of Data Protection Officers
 - emerging tech challenges
-
- ❖ NO decisions based solely on automated processing (including profiling) (in principle)
 - ❖ MUST NOT be based on sensitive data
 - ❖ MUST NOT LEAD to any discrimination against any person

Applicable - EU DATA PROTECTION REGULATIONS

Regulation 2016/679/EU General Data Protection Regulation

Regulation 2018/1725/EU
setting forth the rules applicable to the processing of personal data by European Union institutions, bodies, offices and agencies

[Digital Services Act – DSA]
[Digital Markets Act – DMA]



GDPR

MAIN SUBJECTS

- **DATA SUBJECT**
- **CONTROLLER**
- **PROCESSOR**
- **SUB-PROCESSOR**
- **DATA PROTECTION OFFICER**
- **SUPERVISORY AUTHORITY**

GDPR | DATA SUBJECT

Identified or identifiable person
to which any information may relate

Main rights of the Data Subject

- Right to transparency of communication
- Right to be informed of purposes
- Right to access
- Right to rectification, erasure*, restriction,
- Right to data portability
- Right to object

**Right to be forgotten*

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GDPR | CONTROLLER

the natural or legal person, public authority, agency or other body which, alone or jointly with others, **determines the purposes and means of the processing of personal data**

JOINT CONTROLLERS

Obligations of the Controller

As a general rule, it is responsible and liable for any processing of personal data carried out by

- itself
- on its behalf

Main obligations of the Controller

- Adoption of appropriate **TOMs** (technical & organizational measures)
- (+ protection policies)
- Record of processing activities
- Cooperation with Data Subjects
- Cooperation with Supervisory Authorities

- DPMS - DATA PROTECTION MANAGEMENT SYSTEM

risk-based internal compliance system

typically consisting in an IT security concept that introduces and monitors technical and organisational conduct of data processing activities, and records/documents processing activities to achieve compliance with the GDPR

Aim = achieve compliance with GDPR, by adopting appropriate TOMs

GDPR | PROCESSOR

a natural or legal person, public authority, agency or other body which **processes* personal data** on behalf of the controller

***PROCESSING OF PERSONAL DATA**

ANY OPERATION OR SET OF OPERATIONS WHICH IS PERFORMED ON PERSONAL DATA OR ON SETS OF PERSONAL DATA, WHETHER OR NOT BY AUTOMATED MEANS SUCH AS COLLECTION, RECORDING, ORGANISATION, STRUCTURING, STORAGE, ADAPTATION OR ALTERATION, RETRIEVAL, CONSULTATION, USE, DISCLOSURE BY TRANSMISSION, DISSEMINATION OR OTHERWISE MAKING AVAILABLE, ALIGNMENT OR COMBINATION, RESTRICTION, ERASURE OR DESTRUCTION

Main obligations of the Processors

- Act upon instructions of the Controller
- Implement TOMs
- Appoint a Representative within the EU
- Maintain a record of processing activities
- Cooperate with Supervisory Authorities
- Designate a Data Protection Officer (where required)

Contents of the RECORD

CONTROLLER

Name and contact details of the (joint) controller(s), the representative(s) and DPO(s)

Purposes

Description of the categories of data subjects and categories of personal data

Categories of recipients to whom personal data are or will be disclosed (including outside EU and/or international organisations)

Transfer to third countries/international organisation and documentation of suitable safeguards

Envisaged time-limits for erasure of the different categories of data

General description of TOSMs

PROCESSOR

Name and contact details of the processor(s) and (joint) controller(s), the representative(s) and DPO(s)

Categories of processing

--

--

Transfer to third countries/international organisation and documentation of suitable safeguards

--

General description of TOSMs

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GDPR | DATA PROTECTION OFFICER

Person who advises on compliance with data protection rules in organisations undertaking data processing

Voluntarily appointed by controllers, unless:

- a public authority or body carries out the processing
- the controller's or processor's core activities consist of processing operations requiring the regular and systematic monitoring of data subjects on a large scale
- the core activities consist of large-scale processing of special categories of data or personal data relating to criminal convictions and offences

GDPR | SUPERVISORY AUTHORITIES

Independent public authority which is established by each Member State pursuant to Article 51

- data subjects' complaints
- be responsible for monitoring the application of the GDPR, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union
- contribute to the consistent application of the GDPR throughout the Union and collaboration with the EU Commission

GDPR

MAIN NOTIONS

- **PERSONAL DATA**
- **SENSITIVE DATA**
- **PURPOSES**
- **CONSENT**
- **PROCESSING**
- **TRANSFER**
- **CROSS-BORDER PROCESSING**
- **DATA PROTECTION IMPACT ASSESSMENT**

GDPR | PERSONAL DATA

means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person

GDPR | SENSITIVE DATA

special categories of personal data

personal data revealing **racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership**, and the processing of **genetic data, biometric data** for the purpose of uniquely identifying a natural person, data concerning **health** or data concerning a natural person's **sex life or sexual orientation**

SENSITIVE DATA - Processing

In principle: PROHIBITED

Exceptions:

- ✓ Explicit consent (specified purposes)
- ✓ Employment law / social security and social protection law
- ✓ Protection of vital interests
- ✓ Legitimate activities of foundations, associations, non-profit bodies – members or former members
- ✓ Manifestly made public by DS
- ✓ Legal claims
- ✓ Substantial public interest
- ✓ Preventive / occupational medicine
- ✓ Health - public interest
- ✓ Scientific and historical research – public interest

GDPR | PURPOSES

(not expressly defined by GDPR)

aims for which data are collected and processed

GDPR | CONSENT

(OF THE DATA SUBJECT)

any **freely given, specific, informed** and **unambiguous indication** of the data subject's **wishes** by which he or she, by a statement or by a **clear affirmative action**, signifies **agreement** to the processing of personal data relating to him or her

GDPR | PROCESSING

any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

GDPR | DPIA

DATA PROTECTION IMPACT ASSESSMENT

assessment of the impact of the envisaged processing operations on the protection of personal data

CONTROLLER \leftrightarrow DPO

GDPR | DPIA Contents

- systematic **description** of the envisaged processing operations + purposes + legitimate interest of the Controller (if any)
- assessment of the **necessity and proportionality** of the processing operations **in relation to the purposes**
- an assessment of the **risks** to the rights and freedoms of data subjects
- the **measures envisaged to address the risks**, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance

MAIN PRINCIPLES FOR PERSONAL DATA PROCESSING

- **LAWFULNESS**
- **FAIRNESS & TRANSPARENCY**
- **PURPOSE LIMITATION**
- **DATA MINIMISATION**
- **ACCURACY**
- **STORAGE LIMITATION**
- **INTEGRITY & CONFIDENTIALITY**
- **ACCOUNTABILITY**

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GDPR | Main principles for PD Processing

- **LAWFULNESS**
- **FAIRNESS & TRANSPARENCY**
- **PURPOSE LIMITATION**
- **DATA MINIMISATION**
- **ACCURACY**
- **STORAGE LIMITATION**
- **INTEGRITY & CONFIDENTIALITY**
- **ACCOUNTABILITY**

LAWFULNESS & FAIRNESS

Legal permission / DS consent

- CASES OF LEGAL PERMISSION – NECESSARY FOR
 - PERFORMING A CONTRACT
 - COMPLYING A LEGAL OBLIGATION
 - PROTECTING VITAL INTERESTS
 - PERFORMANCE OF A TASK OF PUBLIC INTEREST
 - LEGITIMATE INTERESTS OF THE CONTROLLER/THIRD PARTY

TRANSPARENCY

How PD are collected, used, consulted or otherwise disclosed

- Information
 - on the identity of the controller
 - on the purposes of the processing
 - on the DS rights / to obtain confirmation and communication of processing activities
 - on risks, rules, safeguards and rights in relation to processing activities

PURPOSE LIMITATION

Processing for SPECIFIED, EXPLICIT AND LEGITIMATE PURPOSES

- **Legitimacy**
accordance with existing applicable laws
- **Detail of the purpose**
further processing operations need to be verified
(if compatible with initial purposes)

DATA MINIMISATION

Personal data shall be ADEQUATE, RELEVANT AND LIMITED

to what is necessary in relation to the purposes
for which they are processed

- Assessment on PROPORTIONALITY
- Technical and organisational measures

ACCURACY

Personal data shall be ACCURATE and KEPT UP TO DATE

If inaccurate → erasure or rectification

Personal data shall reflect the reality of any given situation
Inaccuracy may imply legal consequences even for the subjects involved

STORAGE LIMITATION

Personal data shall be kept in a form
that permits identification of data subjects

FOR NO LONGER THAN NECESSARY

for the processing purposes

STRICT MINIMUM

INTEGRITY & CONFIDENTIALITY

Personal data shall be processed in a manner that ensures
their appropriate SECURITY

Necessary to avoid:

- Unauthorised/unlawful processing
- Unauthorised/unlawful access
- Accidental loss, destruction, damage

ACCOUNTABILITY

1.CONTROLLER

2.PROCESSOR

PRIVACY POLICY

Templates - <https://gdpr.eu/privacy-notice/>

Topics

What data do we collect?

How do we use cookies and what types of cookies do we use?

How do we collect your data?

How to manage your cookies

How will we use your data?

Privacy policies of other websites

How do we store your data?

Changes to our privacy policy

Marketing

What are your data protection rights?

How to contact us

How to contact the appropriate authorities



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EUROPEAN DATA STRATEGY

- **FREE FLOW OF PERSONAL DATA**
- **FREE FLOW OF NON-PERSONAL DATA**
- **SINGLE MARKET FOR DATA**

EU Data Strategy (2020) - Package

- (Regulation 2018/1807) (2018)
- **DGA | Data Governance Act (2022)**
- **DSA | Digital Services Act (2022)**
- **DMA | Digital Markets Act (2022)**
- **AI Act (2024?)**
- **Data Act (2024?)**

Regulation 2018/1807

- Ensuring free flow of data other than personal data
laying down rules relating to **data localisation requirements**
- Processing of electronic data (other than PD)
- Scope of application:
 - within the EU
processing provided as a service to users within EU / carried out by a person
 - limited application for set of data including personal & non-personal data

Regulation 2018/1807

Data localisation requirements

obligation, prohibition, condition, limit or other requirement provided for in the laws, regulations or administrative provisions of a Member State or resulting from general and consistent administrative practices in a Member State and in bodies governed by public law

IMPOSING THE PROCESSING OF DATA IN THE TERRITORY OF A
SPECIFIC MS

or

HINDERING SUCH PROCESSING IN ANOTHER MS

In principle, PROHIBITED

Regulation 2018/1807

Obligations upon the Member States
to repeal any legal provision
setting out data localisation requirements

GOALS:

- ✓ Encouraging the development and adoption of self-regulatory codes of conduct
- ✓ To contribute to a competitive data economy

EU Data Governance Act - DGA

Aim

creating a framework for facilitating a safe data-sharing
setting out conditions for their **re-use** and **intermediation services**

It covers data held by:

- public bodies
- private entities
- citizens

'Data' = any digital representation of acts, facts or information
and any compilation of such acts, facts or information, including
in the form of sound, visual or audiovisual recording

EU Digital Services Act | DSA

EU Digital Markets Act | DMA

Aims

1. creating a safer digital space
where users' fundamental rights are protected
2. establishing a level playing field
to foster innovation, growth and competitiveness

Artificial Intelligence Act | AI Act

Aim

harmonised framework on artificial intelligence for respecting fundamental rights

Improving prediction, optimising operations and resource allocation, and personalising service delivery

- support socially and environmentally beneficial outcomes
- key competitive advantages to companies and the EU economy.

BIG DATA

Great volume, velocity and variety of
(personal and non-personal) **DATA**

+

technological ability to collect,
process and extract new and
predictive knowledge

**Thanks for your
attention and participation!**

For further queries

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