**LAW AND DATA – OPEN QUESTIONS**

Note that for some questions a skeleton of the possible answer is provided.

**Please explain the so-called “Barbra Streisand Effect” in no more than 100 words. (up to 6 pts)**

* A brief summary of the facts of the case
* Description of the Effect: The protection of privacy through legal means can backfire and worsen the situation of the individual.
* Takeaways: I. the Legal protection of privacy can consist in avoiding seeking legal protection; II. The legal vindication of privacy is different -and sometimes opposite - from the social enjoyment of privacy.

**Please describe any legal provision included in EU primary law sources setting out the right to personal data protection in max 250 words. (up to 8 pts)**

* Personal data protection in the TEU, starting from the values of the EU as protected by article 2 TEU and the protection thereof set out in article 3 TEU.
* Personal data protection as set forth by article 16 TFEU.
* The fundamental right to data protection in the Charter of Fundamental Rights (article 8 CFR) and possible reference to article 7 CFR on the right to privacy (and their differences).
* Possible limitations of fundamental rights and, specifically, of the right to data protection in light of the safeguard clause (article 52 CFR) – the balancing of conflicting rights.

**Please describe in no more than 250 words the 2020 European Data Strategy conceived by the European Union. (up to 8 pts)**

* The GDPR that paved the way to the 2020 European Data Strategy
* Aims of the EU Data Strategy: free flow of personal data, free flow of non-personal data, single market for data
* EU Data Strategy Package: Data Governance Act, Digital Services Act, Digital Markets Act, Artificial Intelligence Act, Data Act (a summarized description of their contents).

**Please describe the structure of the “proportionality scrutiny” in no more than 200 words. (up to 6 pts)**

* The answer should describe the three-steps or four-steps proportionality scrutiny that courts often employ to balance competing rights and interests. The sequence is extremely relevant because the scrutiny is a test: if a measure fails to pass one step, the measure is unlawful and the scrutiny is over.
* The steps are the following:
  1. Does the measure under scrutiny pursue a legitimate goal?
  2. Is the measure concretely connected with the purported goal (this is the “rational connection” step—some courts omit it)?
  3. Is the measure necessary to pursue that goal? (This is the “least restrictive means” step)
  4. Are the benefits more than the sacrifices that the measure causes to the interests and rights that are involved?

**Please, explain what ‘personal data’ means according to the EU personal data protection legislation and the difference with sensitive personal data in no more than 200 words (up to 8 pts)**

* definition of personal data according to article 4(1) of the GDPR
* definition of sensitive data, even involving article 9 GDPR
* differences in the processing of personal data and sensitive personal data
* lawful reasons for processing personal data and sensitive personal data with or without data subjects’ consent
* possible references to the origins of the definition of personal data and sensitive personal data (Convention 108, OECD Guidelines)

**Please, describe which are the main rights recognized to a data subject by the GDPR in max 250 words. (up to 8 pts)**

* Right to access
* Right to data rectification
* Right to data erasure – right to be forgotten
* Right to processing restriction
* Right to data portability
* Right to limit the processing
* Right to object to data processing
* Right to lodge a complaint before the NSA
* Right to seek legal redress before Courts

**Please identify and illustrate three legal problems posed by social credit systems in no more than 150 words. (up to 6 pts)**

Social Credit Systems are national credit ratings and blacklists, mainly developed by the government

of China and allow for easy yet for monitoring purposes, with governments defining good/bad actions

according to their citizens behaviour. Given its context, it enables widespread/effective monitoring,

not based on simple data but multiple channels of information, often collecting vast amounts of

personal data without proper consent, potentially infringing individuals rights of privacy.

Lack of due process is another issue. Decisions made by social credit systems can significantly

impact people's lives, yet often lack transparency or mechanisms for appeal. This violates

fundamental principles of due process and fairness in legal systems.

Discrimination is a third problem. The algorithms underlying social credit systems may perpetuate or

exacerbate existing societal biases, leading to unfair treatment of certain groups based on

characteristics like race, gender, or socioeconomic status.

**Please, explain the main principles for personal data processing in no more than 200 words. (up to 6 pts)**

The main principles for personal data processing are fundamental guidelines that ensure the ethical

and lawful handling of individuals' personal information. These principles include:

* Lawfulness, fairness, and transparency: Data must be processed legally, fairly, and in a
* transparent manner that individuals can understand.
* Purpose limitation: Data should be collected for specified, explicit, and legitimate purposes
* and not further processed in incompatible ways.
* Data minimization: Only necessary data should be collected, adequate and relevant to the
* specified purpose.
* Accuracy: Personal data must be kept accurate and up-to-date, with inaccurate data promptly
* corrected or erased.
* Storage limitation: Data should be kept in a form that permits identification of individuals for
* no longer than necessary for the processing purposes.
* Integrity and confidentiality: Appropriate security measures must be implemented to protect
* personal data against unauthorized access, loss, or damage.
* Accountability: The data controller is responsible for demonstrating compliance with these
* principles.
* Data subject rights: Individuals have rights regarding their personal data, including access, rectification, erasure, and objection to processing.

These principles aim to balance the interests of organizations processing data with the privacy rights

of individuals, fostering trust and responsible data handling practices.

**Please, illustrate in no more than 100 words the EU personal data protection package adopted since 2016. (up to 6 pts)**

The EU package adopted since 2016 centers on the General Data Protection Regulation (GDPR), used since 2018. This law strengthens individuals' rights and imposes obligations on organizations processing personal data. Key elements include:

* Enhanced user rights (access, erasure, portability)
* Stricter consent requirements
* Data breach notification within 72 hours
* Appointment of Data Protection Officers
* Privacy by design and default
* Hefty fines for non-compliance (up to 4% of global turnover)

The package also includes the Law Enforcement Directive for data processing in criminal matters and

the ePrivacy Regulation (still in draft) to address electronic communications privacy.

**Please describe how the right to privacy evolved into the right to personal data protection in no more than 150 words (up to 6 pts.)**

The evolution from privacy to personal data protection reflects the changing nature of information in

the digital age:

* Initially, privacy focused on the "right to be let alone," protecting individuals from intrusion into their personal lives. This concept, rooted in common law traditions, emphasized physical privacy and protection of reputation
* As technology advanced, the focus shifted to informational privacy. The proliferation of digital data collection and processing raised new concerns about how personal information was used and shared.
* In response, the right to personal data protection emerged, particularly in Europe. This right, enshrined in the EU Charter of Fundamental Rights (Article 8) and the GDPR, goes beyond traditional privacy. It provides individuals with specific rights over their data, such as access, rectification, and erasure.

Unlike privacy, data protection is more proactive, imposing obligations on data controllers and

processors. It addresses not just confidentiality, but also fairness, transparency, and accountability in

data processing. This evolution reflects the need for more comprehensive protection in our datadriven

society.

**Why is the notion of synthetic data relevant in the field of privacy protection? How would you define synthetic data? (up to 6 pts)**

Synthetic data is relevant in the field of privacy protection because it offers a way to maintain data utility while significantly reducing privacy risks associated with using real personal data.

It is artificially generated information that mimics the statistical properties and patterns of real data without containing any actual personal information from real individuals.

* Data anonymization: Synthetic data provides a more robust form of anonymization compared to traditional methods, as it doesn't contain any real personal identifiers.
* Reduced re-identification risk: Since synthetic data is artificially created, it dramatically lowers the risk of re-identifying individuals, a common concern with anonymized real data.
* Compliance facilitation: Using synthetic data can help organizations comply with data protection regulations like GDPR while still enabling data-driven innovation and research.
* Data sharing and collaboration: Synthetic data allows for safer sharing of data between organizations or researchers without risking exposure of sensitive personal information.
* Testing and development: It provides a privacy-safe alternative for software testing, machine learning model development, and other data-intensive processes.
* Overcoming data scarcity: In fields where personal data is limited or highly sensitive, synthetic data can provide a viable alternative for analysis and model training.

**Please describe in no more than 150 words the legal status of EU regulations. (up to 6 pts)**

**Please explain how the right to personal data protection is regulated in EU primary law in no more than 200 words. (up to 8 pts)**

**Please describe the differences of processing activities involving personal data and sensitive personal data in no more than 150 words. (up to 6 pts)**

**Please describe a Data Protection Impact Assessment and its aims in no more than 150 words. (up to 8 pts)**

**Please describe in no more than 150 words the difference between EU regulations and directives. (up to 6 pts)**

**Please describe the main subjects involved in personal data processing activities and their rights and obligations according to the GDPR in no more than 200 words. (up to 8 pts)**