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**Master’s Degree in Computer Science**

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**LAW AND DATA**

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# **1. Laws, legal systems and sources of law**

A **law** is a set of conditions under which the choices of each person can be united with the choices of others under a universal law of freedom.

A **legal order** is a collection of general and specific norms that regulate human behaviour, setting expectations for how individuals ought to act. These norms are guidelines that create an "ought," or a prescribed way of behaving, which can function as commands, permissions, or authorizations. The concept of a norm is inherently tied to the concept of the "ought", a behavioural expectation.

A group of norms forms an **order** if they create a unified system, sharing a common foundation of validity. In the case of **positive law**, the norms within a legal order are established or "posited" through deliberate human actions.

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 considering 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)

Note: European Union is a huge legal system that deals with other 27 legal systems.

Legal systems are organized based on modern theory of **separation of power** where the power is divided into three branches: legislative branch is responsible for making laws; executive for implementing and enforcing these laws; judicial for interpreting them.

This structure ensures that power is not concentrated in one branch, **promoting** **legal certainty** (the law should be easily understandable, making clear what an individual can do or not), **impartiality**, and **equality before the law** (everyone should be treated equally before the law). Every power should be checked by the other powers, in a way a power cannot overcome the others, having all the powers balanced.

The system of **checks & balances** limits the power of a single individual/entity/body of government to ensure balanced and harmonious and relationships and co-existence.

There are two branches of law and each legal systems need to manage this separation: **public law** and **private law**. Branches of law is fundamental universally accepted exhaustive, meaning every law belongs to one of those two branches, there cannot be a third branch.

**Public law** governs the relationship between individuals and the state, ensuring the regulation of public affairs and the protection of individual rights through administrative, constitutional, and criminal law.

**Private law**, on the other hand, manages relationships between private individuals and entities, encompassing areas such as contract law, property law, family law, and tort law.

Privacy law is unique because it fits into both public and private law:

* **Public Law**: privacy law controls how government bodies handle personal information, protecting individuals from government overreach. For example, laws may limit how much data the government can collect on citizens.
* **Private Law**: privacy law also applies to interactions between private individuals or companies. For instance, it regulates how businesses can collect and use customer data or allows someone to sue another for invading their privacy.

Privacy law overlaps with both public and private law because it protects people’s rights both against the government and in private relationships.

There are two primary types of legal systems used by countries worldwide:

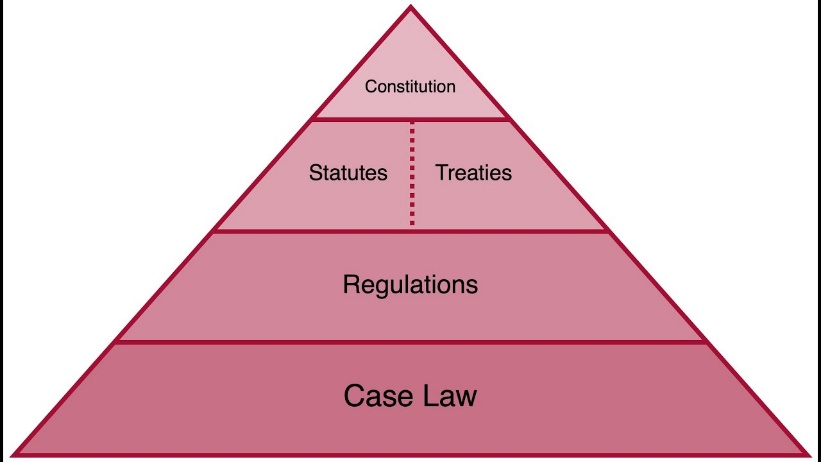
* **Civil Law**:
  + Based on written laws or codes (like statutes and regulations) that are applied and interpreted by judges.
  + Judges play a limited role in creating law; they focus mainly on applying the existing laws to cases.
  + Legal decisions generally do not set binding precedents for future cases.
* **Common Law**:
  + Based on precedents, or past judicial decisions, alongside written statutes.
  + Judges have a more active role in shaping the law because their decisions can set precedents for future cases.
  + This system relies heavily on the principle of *stare decisis*, which means that courts follow the rulings of previous similar cases to maintain consistency.

**Sources of law** are the origins from which laws derive their authority and content. They include the foundational rules and principles that govern a legal system, such as constitutions, statutes, regulations, case law, and customary practices. These sources establish legal standards, rights, and obligations and guide the judiciary, legislators, and public in the application and interpretation of law.

Sources of law can be classified as:

* **Hard law** consists of binding legal rules that can be enforced in a court of law (e.g., European Convention of human rights). Examples include constitutions, statutes, regulations, and treaties, which impose clear obligations and specify consequences for non-compliance. Hard law provides the legal certainty and authority necessary to govern conduct, protect rights, and ensure accountability within society.
* **Soft law** includes non-binding guidelines, principles, and agreements, such as codes of conduct (e.g., Universal Declaration of human rights). Soft law can be used by a judge to interpret hard law. Many rights and obligations regarding data protection originates from soft law provision.

**Sources of law are hierarchical**, meaning that lower sources of law cannot contradict higher sources of law. This hierarchy determines which laws take precedence in cases of conflict. To have an idea consider the following source of law pyramid, keeping in mind every country has its own one that my differ from this.



# **2. European Union (EU)**

The European Union is a legal system, composed by rules (defined by legislators), procedures (set up by rules) and institutions. It is an example of legal system composed by other 27 states (other legal systems) and due to that is one of the most complex.

In Europe there are also international organizations (legal systems) that deal with states that belong to EU and not, in general with European states. It is important to talk about them since these organizations are involved in data protection policies.

* The **Council of Europe (CoE)** operates with the goal of upholding human rights, democracy and the rule of law (compliance to existing legal systems) in Europe. Composed by 46 member states. The most important institution is the European Court of Human Rights.
* The **European Free Trade Association (EFTA)** is an intergovernmental organisation established in 1960 by the EFTA Convention, that promotes free trade and economic integration between its members, within Europe and globally.
* The **European Economic Area (EEA)** includes EU and EFTA members (excluding Switzerland) under an international agreement from 1994, ensuring the application of EU single market rules across a defined geographic area.

What we need to understand is how the rules of each legal system of interest are applied in data protection, asking so ourselves which is the legal boundary in which we can operate when talking about personal data.

**Members of the different international organizations**

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**Schengen Area** is a group of 27 European countries that have abolished most of their internal borders to allow free and unrestricted movement of people across member states. This means that within the Schengen Area, people can travel from one country to another without going through passport checks or border controls, much like moving between states within a single country.

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EU was born to prevent conflicts of any type between the member states (e.g., wars). Now the European Union counts 27 members states (28 before UK left).

*“The Community constitutes a* ***NEW LEGAL ORDER*** *OF INTERNATIONAL LAW for the benefit of which the states have limited their sovereign rights”*.

In the *Costa v. ENEL* case, the European Court of Justice (ECJ) ruled that the European Community (now the EU) established a new legal order, distinct from international law and above the individual laws of member states. This new legal system requires that **member states** **cede some aspects of their sovereignty to the EU**, meaning that EU law takes precedence in areas governed by EU treaties.

*“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 (…)”*.

In *Van Gend en Loos*, the ECJ established that EU law is directly applicable in member states and forms an integral part of their national legal systems. This principle means that EU law can create rights and obligations for individuals and entities within member states that national courts must enforce.

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**Article 2** sets the foundational values for EU membership, while **Article 49** defines the structured, consensus-driven process by which eligible countries can join the EU. These articles reinforce the EU as a **values-based union** with strict entry requirements to maintain cohesion among its member states. In general, both articles set the basis for the respect of the fundamental human rights which is also related to data protection.

The **Copenhagen Criteria** defines the different kind of requirements for a country to join EU:

* **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, protecting so the consumers’ rights (freely able to purchase what they want).
* **Administrative and institutional capacity**: to effectively implement the *acquis communautaire\*\** and ability to take on the obligations of EU membership.

\* rule of law: all public powers must operate within the limits established by law.

* LAW-MAKING PROCESS: transparent, accountable, democratic and pluralistic.
* JUDICIAL PROTECTION: effective 🡪 access to justice, independent and impartial courts, separation of powers.
* EQUAL PROTECTION: everyone enjoys equal protection under the law and prevents the arbitrary use of power by governments.
* POLITICAL AND CIVIL RIGHTS: protection of basic political and civil rights, civil liberties.

\*\* *acquis communautaire*: body of common rights and obligations binding upon EU member states.

## **2.1 Hierarchy of sources of law in EU**

The hierarchy of sources in European Union law establishes the order of legal authority among various types of legislation within the EU framework.

1. At the top is **Primary Law**, which includes foundational treaties such as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). These treaties form the constitutional basis of EU law and set out the structure, powers, and principles guiding the EU.
2. Below primary law are **International Agreements**, which are treaties and agreements that the EU makes with non-EU countries or international organizations. These agreements are binding and integrate into EU law, influencing member states’ legal systems.
3. **Secondary Law** follows, comprising regulations, directives, decisions, recommendations, and opinions issued by EU institutions to implement and operationalize primary law.
4. Lastly, **Supplementary Law** fills in gaps through case law from the Court of Justice of the European Union and unwritten principles that ensure consistent interpretation and application of EU law across member states. This structured hierarchy ensures clarity, coherence, and legal order within the EU.

### **2.1.1 Primary Law**

Primary law includes **Treaties**, the **Charter of Fundamental Rights**, and **General Principles** established by the Court of Justice of the European Union.

Treaties are the core legal documents that founded and continue to shape the European Union:

* **Founding Treaties**: these treaties established the European Communities, which eventually evolved into the European Union. The key founding treaties laid the groundwork for European integration and cooperation.
* **Amending Treaties**: over time, various treaties have been amended to adapt to changing political and economic conditions. Amending treaties expand or adjust the EU’s functions and powers.
* **Protocols annexed to treaties**: protocols attached to the treaties clarify or specify certain aspects of EU law. They are legally binding and part of primary law.
* **Accession Treaties**: these treaties enable new countries to join the EU, setting terms for their membership and adapting the EU structure to accommodate new members.

The **Charter of Fundamental Rights** guarantees key rights and freedoms to individuals within the EU, such as dignity, freedoms, equality, solidarity, citizens' rights, and justice. The Charter reflects the EU’s commitment to human rights.

The **General Principles**,established by the Court of Justice, ensure fairness and coherence in the interpretation and application of EU law. These principles include proportionality, legal certainty and protection of fundamental rights.

As mentioned before, primary law also consists in two treaties that shaped the basis of EU:

* **Treaty on the European Union (TEU)** sets out the EU’s main objectives, principles, and values, such as promoting peace, democracy, and the well-being of its peoples. It also defines the core institutions of the EU (e.g., European Parliament, European Commission, Council of the EU) and describes their functions and relationships. The TEU essentially acts as a "constitutional" document for the EU, outlining its purpose and values.
* **Treaty on the Functioning of the European Union (TFEU)** provides detailed organizational and operational rules to implement the objectives established in the TEU. It includes the procedures, competencies, and responsibilities of the EU institutions, helping to structure the day-to-day functions and powers of the EU.

Together, these treaties form the legal foundation of the EU, setting both broad principles and specific mechanisms for how the EU functions and interacts with its member states and citizens.

**Article 16(1) of TFEU** establishes the right to **personal data protection** as a fundamental aspect of human rights within the EU. This provision underscores that individuals have a right to privacy concerning their personal data, ensuring their control over how personal information is used, stored, and shared. This article laid the groundwork for the General Data Protection Regulation (GDPR).

### **2.1.2 Secondary Law**

**Secondary Law** in the EU refers to legal acts established based on the EU Treaties, and it is governed by Article 288 of the TFEU which defines typical and atypical acts.

**Typical Acts** (Art. 288 TFEU) include:

* **Regulations**, **Directives**,and **Decisions**: these are binding forms of law often referred to as "hard law." They have legal force and are mandatory in specific ways, depending on the type.
* **Opinions** and **Recommendations**: these are non-binding, often termed "soft law," and serve as guidance without enforceable power.

**How much is each typical act binding?**

* A **regulation** is binding in its entirety and is directly applicable in all EU Member States. This means that once it is adopted, it automatically becomes part of national law without the need for transposition. Member States are required to apply it as it is, ensuring consistent application across the EU.
* A **directive** is binding regarding the result it seeks to achieve but allows Member States flexibility in how they implement it. National authorities are responsible for choosing the form and methods to reach the directive’s objectives. This process requires transposition, where each Member State adapts the directive into its own legal framework, while still achieving the intended EU-wide goal.
* A **decision** is fully binding in its entirety. It can be general, applying to all within the EU, or individual, targeting specific entities or individuals. When a decision is individual in scope, it is only binding on the parties to whom it is addressed, making it a tailored instrument for specific cases.

**Atypical Acts** include documents like communications, resolutions, white papers, and green papers. They are not explicitly mentioned in Art. 288 TFEU and generally lack binding force, often used to express ideas, intentions, or proposals from EU institutions.

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## **2.2 EU institutions**

**Article 13 of the Treaty on European Union (TEU)** establishes the main institutions of the European Union which are:

* European Parliament
* European Council
* Council of the EU (Council)
* European Commission
* Court of Justice of the EU
* European Central Bank
* Court of Auditors

### **2.2.1 European Parliament**

The European Parliament serves as a cornerstone of **democratic representation** within the European Union. It consists of a maximum of 750 MEPs (Members of the European Parliament), though currently, there are 705. Each Member State (MS) is allocated a number of MEPs proportional to its population. Since 1979, EU citizens have directly elected MEPs every five years to represent their interests rather than those of their respective MS. The Parliament's members organize themselves into **political groups based on shared ideologies**, rather than national affiliations. It operates across three primary locations: Strasbourg, Brussels, and Luxembourg.

The **functions of the European Parliament** span legislative, budgetary, supervisory, and elective domains.

* As one of the EU’s two **legislative** chambers, it collaborates with the Council of the European Union in shaping laws.
* In its **budgetary** role, the Parliament oversees EU expenditures.
* It also exercises **supervisory** authority, holding other EU institutions accountable through general reports, questioning the European Commission, and conducting inquiries via temporary committees. Furthermore, the Parliament provides a platform for EU citizens to submit petitions and elects the EU Ombudsman, a civil mediator addressing maladministration.
* Its **elective** responsibilities include approving the President of the European Commission, proposed by the European Council, and the team of EU Commissioners, ensuring democratic legitimacy within the EU’s executive branch.

### **2.2.2 European Council**

The European Council is the **EU's strategic decision-making body**, comprising the 27 Heads of State or Government from each Member State. Its role is to set the EU's overall political direction, though it holds no formal legislative power. The European Council **provides guidelines on key areas** such as the Common Foreign and Security Policy (CFSP), external actions, and broad economic strategies. While its primary function is advisory, it can intervene in specific matters outlined by EU treaties. Led by a President elected for a 2.5-year term.

### **2.2.3 Council of the EU (Council)**

The Council of the European Union, often referred to simply as the Council, **represents the governments of the EU Member States**. Each Member State sends a representative, typically a minister, empowered to commit their government and cast votes on its behalf. The Council operates in various configurations, depending on the policy area under discussion, such as General Affairs, Foreign Affairs, Economic and Financial Affairs, Environment, or Justice and Home Affairs. As one of the EU’s legislative chambers, the Council **shares responsibility with the European Parliament for adopting legislation**. Additionally, it performs supervisory functions, ensuring that other EU institutions align with the agreed policies and objectives, thus maintaining accountability within the Union's governance structure.

### **2.2.4 European Commission**

The European Commission is the EU's executive body, composed of 27 Commissioners who serve five-year terms and are collectively approved by the European Parliament. Commissioners are appointed through a collaborative process involving the European Parliament, the President of the Commission, and the Member States. However, once in office, they act independently of national governments, prioritizing the interests of the EU as a whole rather than those of their home countries. The Commission is organized into specialized Directorates-General, each handling specific policy areas. Its primary functions include proposing new legislation, enforcing EU law, managing the EU budget, and supervising compliance by Member States and private entities.

### **2.2.5 Court of Justice of the EU (ECJ)**

The European Court of Justice, together with the General Court of the EU, serves as the **judicial branch of the European Union**, ensuring the uniform interpretation and application of EU law. It comprises **Judges** and **Advocates** **General**, with the number typically corresponding to the number of Member States (one per MS). Judges and Advocates General are appointed for renewable six-year terms, with appointments staggered every three years to maintain continuity. They are selected from among individuals qualified for the highest judicial offices in their respective countries or recognized legal experts of high competence. Despite their national origins, these officials act with complete independence from their home countries, prioritizing the principles and laws of the EU.

The ECJ’s functions span several key areas. Its **jurisdictional role** involves handling litigation cases. In its **interpretative role**, the ECJ provides preliminary rulings (“decisions”) when national courts request clarification on EU law (not litigation). Additionally, its **advisory and consultative function** enables the court to offer non-binding guidance on legal matters (not litigation).

The **Litigation Proceedings** before the ECJ can be summarized into three main categories:

* **Direct Appeals** (Article 263 TFEU): appeals can be filed against acts adopted by EU institutions.
  + Public Initiatives: Filed by Member States or other EU institutions.
  + Private Initiatives: Filed by individuals or legal entities if the act directly and individually concerns them or relates to a regulatory act without implementing measures. Grounds for appeals include lack of competence, invalidity, voidness, or misuse of powers. There is a strict time limit of 2 months and 10 days for filing.
* **Failure to Act** (Article 265 TFEU): if an EU institution fails to act when legally required, a process is initiated:
  + Prelitigation: A formal notice is sent, providing the institution 2 months to respond or act.
  + If non-performance persists, the matter proceeds to litigation before the ECJ.
* **Compensation for Damages** (Article 340(2) TFEU): individuals, legal entities, or Member States can seek compensation for damages caused by unlawful, serious, and certain actions or omissions of EU institutions.

The **Non-Litigation Proceedings** before the ECJ focus on Preliminary Rulings (Article 267 TFEU):

* **Initiative:** any jurisdiction in a Member State (MS), regardless of its nature or instance, can request a preliminary ruling, often at the request of the parties involved.
* **Object:**
  + **Interpretation** of any EU law provision.
  + **Validity** of acts adopted by EU institutions.
* **Development Process:**
  + A case begins in the national court of an MS.
  + The national judge refers questions regarding EU law to the ECJ.
  + Typically, national proceedings are suspended while awaiting the ECJ’s decision.
  + The ECJ delivers a binding judgment or order, which the national judge must follow.

### **2.2.6 Bodies of the EU**

The Bodies of the EU consist of specialized institutions and agencies that support the functioning of the Union by addressing specific areas of expertise. Here we list the bodies focused on data protection and fundamental rights:

* **European Data Protection Supervisor (EDPS)**: an independent body that ensures EU institutions and bodies respect individuals' right to privacy when processing personal data.
* **European Data Protection Board (EDPB)**: an independent body that oversees the consistent application of data protection rules across the EU and promotes cooperation among national data protection authorities.
* **Agencies of the European Commission**:
  + Decentralized bodies within the EU, distinct from its main institutions.
  + Created to perform specific tasks and responsibilities.
* **Fundamental Rights Agency (FRA)**: focused on providing expert advice and data on fundamental rights to help ensure these rights are upheld across the EU.

# **3. Privacy and Personal Data Protection**

Over the time, the notion of privacy was subject to many interpretations and declinations. Initially privacy was aligned with a **negative** connotation which deals with the need to prevent intrusions from the external space. Nowadays, instead, privacy is represented by a **positive** connotation which refers to the possibility/right of making free choices ourselves, no more avoiding external intrusions in our personal space but rather **deciding who can have access to our personal space**. Exclusion becomes something individuals can decide, not avoid.

The **distinction between private and public** **matters**, rooted in common law, forms the basis of privacy rights. Common law recognizes certain aspects of life, such as reputation, family matters, and personal information, as private, offering legal protection from interference or exposure. In contrast, public matters, such as actions in the public sphere or information voluntarily shared with the public, receive less legal protection.

The **distinction between the Common Law and Civil Law traditions in privacy** highlights different approaches to individual rights. In the Common Law tradition, privacy is often linked to the **right to liberty**, emphasizing personal freedom and protection from interference in private matters. This approach tends to focus on safeguarding individuals' autonomy and control over their personal lives. In contrast, the Civil Law tradition emphasizes the **right to** **dignity**. Here, privacy is more closely tied to the protection of an individual's inherent worth and moral integrity, ensuring that a person’s dignity is respected and preserved in all aspects of life.

Article 8(1) of the Charter of Fundamental Rights (CFR) specifically states: "Everyone has the right to the protection of personal data concerning him or her”.

**Personal data** is any information relating to an identified or identifiable natural person; 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).

Note: the concept of personal data has not common law origin, but it belongs to civil law development of the notion of privacy. The right to protect personal data is seen as part of the individual's dignity and autonomy, ensuring that their personal information is handled with care and respect.

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