

# LAW AND DATA

**2024-2025**

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## BASIC LEGAL NOTIONS (02/11)

### WHAT IS LAW?

There are multiple definitions of law, each reflecting its multifaceted role in society. Law should be an instrument for peace, not conflict - hence the idea that we should "make law, not war."

EMBALANCING CONFLICT OF INTERESTS

A key function of law is to provide a framework for resolving disputes and maintaining social order. Judges interpret and apply the correct rules.

To understand the complexity of law, let's examine several authoritative definitions.

Merriam-Webster dictionary definition of law:

1. a binding custom or practice of a community: law is a rule of conduct or action prescribed or formally recognized as binding by a governing authority.
2. Control and Enforcement: law brings about control through its existence and enforcement, serving as a means of redressing wrongs and regulating behavior.
3. Advisability or Obligation: law can be a recommendation or an obligation, something that is advisable or required to observe.
4. Compatibility with Established Norms: laws are enforceable when they are compatible with existing legal frameworks.
5. Authority and Power: law embodies the control and authority exercised by governing bodies to regulate society.
6. Procedural Framework: law establishes the rules and procedures for managing disputes, forming agreements, and structuring societal functions.
7. Law covers various fields, such as criminal law, civil law or international law, forming the full body of rules that govern specific areas of life.

Cambridge dictionary definition of law:

1. Governmental Rules: law is a rule, usually made by a government, that regulates how society behaves (e.g., laws against drinking in the street).
2. System of Rules: the law refers to the system of rules governing a country, group, or area of activity (e.g., what the law says about driving while under the influence).
3. Area of Knowledge or Work: law is also the field of study or work involving legal practice (e.g., studying law at university, working in a law firm).
4. Scientific Laws: law can refer to a general rule that states what always happens under certain conditions, such as Newton's laws of motion or the laws of physics.

Collins dictionary definition of law:

1. System of Rules: law is a system of rules developed by society or governments to deal with crime, business agreements, and social relationships.
2. Branches of Law: law can refer to a specific branch of the legal system, such as criminal law or company law.
3. Specific Rules within the System: a law is a specific rule in the legal system that deals with a certain type of agreement, relationship, or crime.
4. Organizational Rules: the laws of an organization or activity are the rules used to organize and control it.

Immanuel Kant (The Metaphysical Elements of Justice) - Law is the set of conditions under which the choices of each person can be united with the choices of others under a universal law of freedom.

Google (Oxford) - "The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties".

## LEGAL ORDER

Concept of Legal Order in The American Journal of Jurisprudence (H. Kelsen)

A **legal order** is an **aggregate** or a plurality of **general and individual norms** that govern **human behavior**.

- Norms prescribe behavior through commands, permissions, or authorizations.
- The concept of a **norm** = the concept of the "ought" - meaning that the **norm** not only imposes obligations but can also permit or authorize specific behaviors.
- Legal orders are **collections of norms**, be it the law of nation-states, supranational entities or international law.

Unity of Norms: a plurality of norms forms a legal order **if they share a common basis of validity**.

- Positive law → the **norms of a legal order** are "posited" or "created" through **human acts**: legislative, judicial, administrative, or private law acts.
- Legal acts → **acts that create or posit norms** are called **legal acts**. Legal acts also include acts constituting legally binding customs.
- Legal officials → **individuals empowered and authorized by the legal order to perform legal acts**.

## LEGAL SYSTEM

The **legal system** includes **rules, procedures and institutions** by which **activities**, both public and private, **can be carried out through legitimate means** (acting like a framework binding disputes using jurisdiction).

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

Plurality of legal systems in light of several and different social groups.

Legal systems operate through a dynamic interplay between laws, individuals, and institutions. In this structure, institutions hold the responsibility of legitimizing, enacting, and enforcing laws.

**The Constitution is the foundation of any legal system**

- It stands as the **supreme law**, governing all other laws and ensuring that they conform to its mandates.
- It provides the **fundamental framework for the creation, enactment, and amendment of laws**, safeguarding the rights of individuals while outlining the **limits of state power**.
- It acts as a **guiding document**, ensuring that all laws adhere to established mandates, thereby preserving stability and justice within the system.

Laws are created by governing bodies (such as courts and legislatures) to establish clear and binding rules that shape society's behavior.

- They aim to create predictable and equitable outcomes, which are essential for societal cohesion.

- They serve as tools to regulate behavior, ensuring that individuals and entities operate within boundaries that support the public good.
- These rules may enforce penalties or promote cooperative benefits and must adapt to control behavior effectively within varying jurisdictions, especially in a global context

### **Adaptability and Jurisdiction**

Laws must adapt to the complexity of society and the diversity of the groups within it. In a global context, this adaptability is crucial as laws intersect with multiple jurisdictions. Legal systems must not only enforce uniform principles but also accommodate variations in legal traditions, customs, and norms. This adaptability allows for the protection of individual rights.

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

- States: 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
- Possible Emerging Legal Systems: World Wide Web(?)

## **SEPARATION OF POWERS**

The modern theory of the separation of powers, a foundational principle in democratic governance, divides state power into three branches: legislative, executive, and judicial

- the legislative branch makes laws
- the executive implements and enforces laws
- the judicial interprets laws

The theory of separation of powers, developed by Montesquieu in "The Spirit of the Laws" (1748), divides government functions into the three branches (legislative, executive, and judicial) to ensure that no single branch holds excessive power, promoting checks and balances, legal certainty, impartiality, and equality before the law. Each branch operates independently but interdependently to maintain a balance of power and prevent abuses, exemplified by systems like the U.S. Constitution.

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

# **BRANCHES AND SOURCES OF LAW (04-09/10)**

## **SYSTEM OF CHECKS & BALANCES**

The system of checks and balances is designed to limit the power of any single individual, entity, or branch of government.

### Purpose

- Prevent the concentration of power: ensures that no one branch (legislative, executive, or judicial) becomes too powerful.
- Promote balanced governance: encourages cooperation and harmony relationships between the branches.
- Support fairness and impartiality: Ensures that laws are made, implemented, and interpreted with fairness and justice, avoiding abuses of power.

### Function

- Distributed authority: power is divided among the branches (legislative, executive, judicial), each with specific responsibilities.
- Mutual control: each branch has the ability to check the powers of the others, ensuring a balance that prevents any one branch from overpowering the rest to maintain a stable government structure

## **BRANCHES OF LAW**

The branches of law are essential categories that organize legal principles and rules, forming the foundation of legal systems. They are divided into two primary types: public law and private law.

### **Public Law**

The public law governs the relationship between individuals and the state, ensuring regulation of public affairs and protection of individual rights.

#### Key Areas

- Administrative Law: manages government agencies and their interactions with individuals.
- Constitutional Law: defines the structure of the state and guarantees fundamental rights.
- Criminal Law: enforces laws designed to protect society by punishing offenses.

Scope: Laws intended for general application, affecting society at large.

## Private law

The private law manages relationships between private individuals and entities, focusing on personal and business matters.

### Key Areas

- Contract Law: governs agreements between individuals or entities.
- Property Law: manages ownership and rights over property.
- Family Law: addresses family-related issues, such as marriage, divorce, and custody.
- Tort Law: covers civil wrongs that cause harm or loss to others.

Scope: Laws enacted for the benefit of specific individuals or groups, rather than society as a whole.

Together, these branches of public and private law form a comprehensive framework within which legal systems operate, regulating all aspects of social and individual life to ensure order and justice.

spread all over the world because of colonies

## TYPE OF STAGE LEGAL SYSTEMS

and Commonwealth

Legal systems worldwide are categorized into two main types: Civil Law and Common Law. Each system has distinct characteristics, influenced by its historical development, and each shapes how laws are interpreted and applied.

Roman / Germanic law

The Chinese legal system was not referred to any legal system, now can be defined as civil law

### Civil law → NOT a branch of private law in this case.

The Civil Law system is a structured legal framework based on written statutes and legal codes. Regulations, acts ...

- Laws are organized into specific codes which provide clear guidance on legal rights and duties.
- Judges have a limited role and are mainly responsible for applying the law as it is written.
- This system is commonly found in countries like Italy, France, Germany, Japan, and several Latin American nations.

### Common law based on a few written acts (like Constitution)

The Common Law system is largely based on judicial decisions and case law. Unwritten legal provisions

↓  
How can this be binding?  
Judges are required to take into account higher acts and apply them considering the case

- This system relies on prior court rulings, allowing it to adapt and evolve over time through judicial interpretation.
- Precedent-Based: means that similar cases should be resolved in the same way. However, judges can decide to NOT APPLY THE SAME DECISION FOR SPECIFIC REASONS
- Judges have a more active role, by interpreting statutes
- The Common Law system is dynamic, allowing for legal principles to evolve as society changes, making it adaptable to new circumstances.
- Countries using the Common Law system include the United States, the United Kingdom, Canada, and Australia.

**General right of property**  
you are an owner of a land and someone occupied it.  
The judge decide who is right based on the Constitution.  
Once the judgement became final, then this is set as a legal principle and acquire a binding legal force

## SOURCES OF LAW

Sources of law include various legal instruments and frameworks that guide the creation, interpretation, and enforcement of legal norms.

Sources of law are categorized into two main types: Hard Law and Soft Law. Each type plays a distinct role in the legal landscape.

### Hard law

Hard law consists of binding legal provisions that can be legally enforced before a court. This includes statutes, regulations, and treaties that create mandatory rules that must be followed.

#### Characteristics

- Binding Nature: hard law imposes mandatory obligations on individuals and entities, and failure to comply can lead to legal consequences.
- Common in International Law: the term is common in international law, where enforcement mechanisms may be limited due to the absence of sovereign governing bodies.

#### Examples

- Statutes: laws enacted by legislative bodies (e.g., Congress, Parliament).
- Regulations: rules created by government agencies to enforce statutes.
- Treaties: formal agreements between states that are legally binding.
- UN Security Council Resolutions: binding decisions made by the UN Security Council on matters of international peace and security.
- Customary International Law: established practices accepted as law, deriving from consistent state practice and a sense of legal obligation.

### Soft law

Soft law encompasses agreements, principles, declarations, and statements that are not legally binding. Although these norms don't have the force of law, they can still influence legal practice and interpretation.

#### Characteristics

- Non-Binding: soft law lacks enforceability in a court of law, meaning that non-compliance does not result in legal penalties.
- Guiding Role: despite being non-binding, soft law can guide judicial interpretation and inform the development of hard law by providing frameworks, principles, and recommendations.

#### Examples

- Recommendations: non-binding suggestions issued by organizations or bodies.
- Guidelines: documents outlining best practices or standards for behavior.
- Codes of Conduct: Sets of rules outlining appropriate behaviors and practices for individuals or organizations.
- Non-Binding Resolutions: decisions made by international organizations that do not impose legal obligations on member states.
- Standards: norms established by various bodies that, while not legally enforceable, may influence industry practices.

## **Examples of the sources of law**

Examples of the sources of law:

- Treaties and conventions = agreements between states or international entities.
- Legislation (constitutions, acts, laws, statutes, regulations, and codes established by governmental bodies)
- Case-law = judicial decisions that interpret and apply the law
- Public and private policies that can influence legal frameworks
- Doctrine (scholarly writings and theories)
- Fundamental or general principles of law - foundational concepts
- Customary law that arises from long-standing practices and traditions recognized as binding

## **Hierarchy of the sources of law**

The hierarchy of the sources of law refers to the ranking system that determines the authority and application of various types of legal rules and principles. This hierarchy is essential in legal systems to resolve conflicts between laws, as higher-ranking laws override or take precedence over lower-ranking ones.

## **EUROPEAN UNION (09-11-16/10)**

The European Union (EU) is an international organization that has developed through various treaties since its inception in 1952.

- It consists of 27 member states that have collectively agreed to limit some aspects of their sovereignty for mutual benefit.
- The EU operates under a complex legal system that is integrated into the national laws of its member states, promoting uniformity and cooperation across the region.
- Membership is open to European countries that adhere to fundamental principles such as human dignity, freedom, democracy, equality, and human rights.
- The Copenhagen Criteria outline the political, economic, and administrative requirements that countries must meet to gain access to the EU.

## **DIFFERENCES OF EUROPE**

There are some differences between how Europe is composed: the CoE focuses on human rights and democracy, while EFTA and the EEA facilitate trade and economic cooperation among member states.

### **Council of Europe (CoE)**

The Council of Europe (CoE) is an international organization operating at the continental level, consisting of 46 member states.

- Its primary goal is to uphold human rights, democracy and the rule of law across its member states.
- Key institutions include the European Court of Human Rights, which plays a vital role in enforcing the European Convention on Human Rights.
- The CoE is located in Strasbourg (France).

### **European Free Trade Association (EFTA)**

The European Free Trade Association (EFTA) is a regional trade organization.

- Its member states include Iceland, Norway, Liechtenstein, and Switzerland.
- EFTA promotes free trade and economic integration among its members.
- EFTA is characterized by its free trade area, which allows for participation in the European Single Market, although it is not part of the EU customs union.
- Member states also have the option to participate in the Schengen Area, facilitating the free movement of people.
- EFTA has offices in Geneva, Switzerland, with additional institutions in Brussels and Luxembourg.

## **European Economic Area (EEA)**

The European Economic Area (EEA) includes EU member states and EFTA member states (excluding Switzerland).

- The EEA was established by an international agreement in 1994, allowing the basic rules of the EU single market to apply within a defined geographic area.
- This framework ensures that member countries benefit from the same economic rights and obligations associated with the EU single market, promoting the free movement of goods, capital, services, and people, known collectively as the "four freedoms".
- The application of these rules is achieved through common standards that all participating states are legally committed to follow, reinforcing the rule of law in Europe.

## **Different members**

### **EFTA**

Members: Iceland, Liechtenstein, Norway, Switzerland

### **EEA**

Members: 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**

The Schengen Area is a region comprising most EU member states and some non-EU countries. However, not all EU members participate in the Schengen Area.

Members: 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).

In these countries, passport control at internal borders has been abolished, allowing for free and unrestricted movement of people.

## **LEGAL FOUNDATIONS OF EU**

«The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights»

This case established the principle of EU law supremacy. Flaminio Costa, an Italian citizen, refused to pay an electricity bill to protest the nationalization of the electricity industry. He argued that the nationalization law conflicted with EU treaties.

This is important since legal subjects are not only the States, but citizens themselves.

«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 (...)»

This case introduced the principle of direct effect of EU law. A Dutch transport company contested a customs tariff imposed by the Dutch government, claiming it was contrary to EU treaties.

This principle meant that EU laws are immediately enforceable by individuals in member states' national courts, making EU law a direct part of each state's legal system without further intervention.

This is important since laws are effective directly without intervention of any other Member State.

## **REGIONAL LEVEL**

The European Union operates at a regional level, meaning it is a supranational organization that transcends the traditional boundaries of national governance among its member states.

## **27 MEMBER STATES**

1 January 1958 (treaty of Rome): Italy, The Netherlands, Belgium, Luxembourg, France, Germany

1 January 1973: Denmark, Ireland

1 January 1981: Greece

1 January 1986: Spain, Portugal

1 January 1995: Austria, Finland, Sweden

1 May 2004: Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia

1 January 2007: Bulgaria, Romania

1 July 2013: Croatia

## **APPLICATION CRITERIA**

For the application for EU membership: ART. 2 and 49

### **ART. 2 TEU (Treaty on European Union)**

«Any European state which respects the common values of the Member States and undertakes 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 (Treaty on European Union)**

«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»

So, to summarize: Article 49 TEU outlines the procedure for application, requiring the applicant state to address its application to the Council, which must act unanimously after consulting the Commission and receiving the European Parliament's consent.

## COPENHAGEN CRITERIA FOR EU ACCESSION

To join the EU, applicant countries must meet the Copenhagen Criteria, which establish political, economic, and administrative requirements:

- 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 within the EU
- Administrative and institutional capacity:
  - the ability to effectively implement the *acquis communautaire*, which includes all EU laws, treaties, regulations, and court decisions. This legal body covers diverse policy areas such as single market regulations, environmental standards, and consumer protection.
  - new member states are required to adopt the *acquis* to align with the EU's legal and policy standards

### Rule of law

The rule of law ensures that all public authorities act within legal boundaries, guaranteeing fairness and justice in society.

- Transparent and Accountable Law-Making: laws must be created openly and with responsibility.
- Judicial Independence: courts must be impartial and free from influence to protect citizens' rights.
- Equal Protection and Rights: all individuals must have equal protection under the law, preventing government abuses and ensuring civil liberties.

### Acquis communautaire

The *acquis communautaire* represents the collective body of EU laws and obligations that all member states must follow.

- Common Legal Framework: it includes treaties, regulations, and directives shared across the EU.
- Uniform Standards: new member states must adopt these laws to align with EU practices.
- Wide Policy Coverage: it spans multiple areas, including market regulations, environmental protection, and social policies.

# HIERARCHY AND SOURCES OF EU LAW (18-23/10)

## HIERARCHY OF SOURCES

The European Union's legal framework consists of a structured hierarchy of legal sources, which is foundational for the EU's governance and legislative process. This hierarchy is divided into several levels:

### 1. Primary Law

At the top of the hierarchy, primary law consists of the EU's founding treaties, including the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). These treaties establish the EU's core legal framework, outlining fundamental principles, institutional structures, and the division of powers between the EU and its member states.

### 2. International Agreements

The EU enters into various international agreements with non-EU countries or other international organizations. These agreements, which include treaties, conventions, and accords are binding on EU institutions and member states, shaping the EU's external relations and trade policies.

### 3. Secondary Law

Secondary legislation comprises regulations, directives, decisions, recommendations, and opinions adopted by EU institutions.

- Regulations are binding in their entirety and directly applicable in all member states without needing national implementation.
- Directives set out objectives that member states must achieve but leave the choice of how to implement them to national governments.
- Decisions are binding on those to whom they are addressed, such as specific member states, companies, or individuals.

### 4. Supplementary Law

This includes the case law developed by the Court of Justice of the European Union (CJEU), as well as general principles of EU law. The CJEU's interpretations are crucial for clarifying and filling gaps in both primary and secondary legislation.

## PRIMARY LAW

Primary law includes foundational treaties, the EU Charter of Fundamental Rights and general principles established by the European Court of Justice (ECJ).

**Treaties** includes:

- **Founding Treaties:** these treaties formed the European Communities, which evolved into today's European Union. Examples include:
  - the Treaty of Rome (1957), which created the European Economic Community (EEC).
  - the Treaty of Maastricht (1992), which formally established the EU.
- **Amending Treaties** (modificativo): these modify the original treaties to reflect changes in the EU's structure and objectives. Examples include:
  - the Single European Act (1986) which streamlined EU operations
  - the Treaty of Lisbon (2007), which expanded the EU competencies.

- **Protocols:** protocols are documents attached to the main treaties that provide additional details or conditions related to their implementation. Protocols have the same legal weight as the treaties themselves.
- **Accession Treaties:** agreements between the EU and countries seeking to join. These treaties outline the terms and conditions of membership, including transitional arrangements and the necessary adjustments to existing EU treaties.

### The **EU Charter of Fundamental Rights**

- Proclaimed in 2000 and made legally binding by the Treaty of Lisbon in 2009.
- It consolidates the EU's fundamental rights including human dignity, freedom, equality, solidarity, and justice.
- It applies to EU institutions and member states when implementing EU law.

### The **European Court of Justice (ECJ)**

- Establishes general principles of EU law through its case law.
- These principles include proportionality, legal certainty and protection of fundamental rights
- They guide the interpretation and application of EU law, ensuring consistency and fairness in its implementation across all member states.
- The ECJ's role is crucial in maintaining the integrity of the EU legal system.

## Key EU treaties

The EU is founded on two key treaties:

- **Treaty on the European Union (TEU)**

Since 1993 (under the Maastricht Treaty), the TEU outlines the EU's objectives, principles and institutional structure. It specifies the role and functioning of main EU bodies (= European Parliament, European Council, European Commission and the Court of Justice of the EU).

- **Article 2 TEU - EU values**

- Core values from the fundamental values of the EU: respect for human dignity, freedom, democracy, equality, rule of law, and respect for human rights including minority rights.
- Shared Principles: These values are shared among all member states, forming a foundation for a society based on pluralism, non-discrimination, tolerance, justice and solidarity.
- These principles are fundamental in guiding the actions and policies of the EU and its MSs (member states).

Original Text: "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."

- **Article 3 TEU - EU objectives**

Outlines the EU's aims and objectives:

- The Union's primary aim is to promote peace, its values, and the well-being of its peoples.
- The Union ensures: free movement of persons, the establishment of an internal market, sustainable development, scientific and technological advancement, social inclusion, and environmental protection.
- Promotes social justice: The EU promotes social justice, equality, and solidarity among member states.
- Economic and monetary union: The Union maintains an economic and monetary union with the euro as its currency.
- External relations: In its external relations, the Union upholds its values and interests, contributing to global peace, security, sustainable development, and the protection of human rights.

The Union pursues these objectives using appropriate means within the competences conferred upon it by the Treaties.

Original Text:

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.
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 people, 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 (TFEU)**

Initially known as the Treaty of Rome and effective since 1958, the TFEU specifies the organizational and functional aspects of the EU, particularly regarding policies and internal actions essential for achieving the EU's goals.

- **Article 16 TFEU - right to data protection**

- Data protection as a fundamental right: establishes the right to data protection for EU citizens, underscoring the importance of privacy and data protection within the EU.
- Legal basis for GDPR: forming the basis for regulatory frameworks like the General Data Protection Regulation (GDPR), which aims to ensure that personal data is processed fairly, transparently and securely.
- Significance in the digital age: the right to data protection is critical in safeguarding individuals' privacy, especially given the increasing volume of personal data processed in the digital era.

Original Text: "Everyone has the right to the protection of their personal data."

## EU charter of fundamental rights

The EU Charter of Fundamental Rights consolidates the fundamental rights protected within the European Union.

- It was proclaimed in 2000 and became legally binding in 2009 with the Treaty of Lisbon, giving it the same legal status as the EU treaties.
- Purpose: Consolidates and reinforces fundamental rights within the EU, holding equal legal status to the EU treaties.
- Application: Guides EU institutions and member states in legislation and policies, ensuring fundamental rights are respected when applying EU laws.

## Article 6(1) TEU

Original Text: «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 (authority) as the Treaties»

Significance: confirms that the Charter has the same authority as EU treaties, making it legally binding for EU institutions and member states.

The Charter is divided into several chapters, each addressing different aspects of rights:

1. DIGNITY: human dignity is inviolable and must be respected and protected. (EU's human rights framework)
2. FREEDOMS: covers essential freedoms, including respect for private and family life, freedom of expression, and protection of personal data. (EU's dedication to safeguarding privacy)
3. EQUALITY: ensures equal treatment for all individuals, prohibiting discrimination.
4. SOLIDARITY: addresses social and economic rights, emphasizing workers' rights, fair working conditions, social protections, the right to healthcare and environmental protection.
5. CITIZENS' RIGHTS: includes rights such as the right to vote and stand in elections and the freedom of movement across member states.
6. JUSTICE: ensures access to justice and fair trials. (rule of law and legal equality)

7. GENERAL PROVISIONS (safeguard clause): outlines how the Charter's provisions should be interpreted and applied, reinforcing its role as a protective framework for fundamental rights within the EU.

The Charter is a comprehensive document that integrates and reinforces the protection of fundamental rights within the EU, guiding both EU institutions and member states in their legislation and policies.

The **safeguard clause** in Article 52(1) of the Charter of Fundamental Rights (CFR) sets limits on the exercise of rights in the Charter. It states that any restrictions on these rights must:

1. **Be provided for by law** – There must be a legal basis.
2. **Respect the essence of the rights** – The core of the right cannot be taken away.
3. **Be necessary and proportionate** – Restrictions should be needed to meet objectives like public safety, and should not go beyond what's required to achieve that goal.

This ensures a balance between protecting rights and allowing reasonable limits for the common good.

## GENERAL PRINCIPLES OF EU LAW

The general principles of EU law, developed through CJEU (= Court of Justice EU) case law, include:

- **Legal Certainty**: guarantees that EU laws are clear and predictable.
- **Legitimate Expectation**: protects individuals' expectations based on current law.
- **Primacy of EU Law**: asserts that EU law takes precedence over national laws of member states.
- **Direct Effect**: allows certain EU laws to be directly enforced by individuals in national courts.
- **Protection for Fundamental Rights** based on Article 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."

Implication: Upholds that fundamental rights are an integral part of EU law, shaped by the traditions and laws of member states and evolving through case law.

These principles are essential for maintaining the integrity, coherence, and effectiveness of the EU's legal system across all member states.

# EU LEGAL FRAMEWORKS AND INSTITUTIONAL DYNAMICS (25/10)

## INTERNATIONAL AGREEMENTS

The Treaty on the Functioning of the European Union (TFEU) outlines the EU's competence to engage in international agreements, as detailed in the following articles:

### Article 216 TFEU

establishes the EU's ability to conclude agreements with third countries or international organizations when necessary to achieve EU objectives or when provided for in legally binding EU acts.

- An agreement is likely to affect common rules or alter their scope.
- Binding Nature: agreements concluded by the Union are binding upon both EU institutions and its Member States.

Text:

"1. The Union may conclude an agreement with one or more third countries or international organizations 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."

### Article 217 TFEU

allows the EU to establish association agreements involving reciprocal rights and obligations with third countries or international organizations.

- Such agreements facilitate deeper partnerships and integration between the EU and other entities.

Text:

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

### Article 218 TFEU

describes the procedure for negotiating and concluding international agreements.

- It involves various EU institutions, including the Council and the European Parliament and potentially the European Court of Justice (ECJ).
- This procedure ensures proper institutional oversight and democratic legitimacy in the EU's external relations.

## SECONDARY LAWS

Secondary law, in the European Union, refers to the legal acts adopted by EU institutions based on the founding treaties.

### Typical Acts

Article 288 of the Treaty on the Functioning of the European Union (TFEU) defines the typical acts of secondary law that are categorized into hard law and soft law:

- **Hard Law** - these instruments have legally binding force:
  - Regulations: binding in their entirety and directly applicable in all Member States.
  - Directives: binding as to the result to be achieved (require national implementation). Directives specify the desired outcome but allow Member States to decide how to achieve it.
  - Decisions are binding in their entirety on those to whom they are addressed, whether Member States or specific individuals or entities.
- **Soft Law** - these instruments have NOT legally binding force:
  - Opinions and Recommendations: these instruments provide guidance and can influence policy and practices within the EU, serving as important tools for shaping legislative agendas and public policy.

### Atypical Acts

These acts, while not explicitly mentioned in Article 288 TFEU, include:

- Communications, Resolutions, White Papers, Green Papers: these are used by EU institutions to communicate policies, propose legislation, or stimulate discussion on specific topics

### Regulation

- **Definition:** A regulation is a legislative act of the European Union that has general application.
- **Characteristics:**
  - **Binding in its entirety:** Regulations are obligatory for all Member States and must be applied in full.
  - **Directly applicable in all Member States:** They do not require transposition or implementation by individual States; they become part of the national legal order as soon as they are published in the Official Journal of the European Union.

### Directive

- **Definition:** A directive is a legislative act of the European Union that sets out goals to be achieved.
- **Characteristics:**
  - **Binding as to the result to be achieved:** Member States are obliged to achieve the objectives set out in the directive.
  - **Implementation at the discretion of Member States:** Member States have the freedom to choose the form and methods for achieving the directive's objectives, which can lead to significant differences in application at the national level.
  - **Implementation deadline:** Member States must adopt the necessary measures within a specified timeframe, usually established within the directive itself.

## Decision

- **Definition:** A decision is a legislative act of the European Union that can have general or individual application.
- **Characteristics:**
  - **Binding in its entirety:** Decisions are obligatory for the addressees to whom they are addressed.
  - **General or individual:**
    - **General:** A decision may have effects on a broad group of subjects or situations.
    - **Individual:** When a decision specifies the subjects to whom it is addressed, it is binding only on these subjects.

## EXAMPLES

- **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 - **Data Protection Directive**
- **Regulation (EU) 2016/679** on the protection of individuals with regard to the processing of personal data and on the free movement of those data, known as the GDPR - **General Data Protection Regulation**
- **Directive (EU) 2016/680** on protecting individuals when personal data are used by law enforcement authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties – **Data Protection Law Enforcement Directive**
- **Regulation (EU) 2018/1725** laying down rules for protecting individuals with regard to the processing of personal data by the EU institutions, bodies, offices and agencies and on the free movement of those data.
- **Directive 2002/58/EC** on the processing of personal data and the protection of privacy in the electronic communications sector – **E-communications Directive**
- **Regulation (EU) 2024/1689** of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence – **Artificial Intelligence Act**

# INSTITUTIONS OF THE EUROPEAN UNION

**Article 13 of the Treaty on European Union (TEU)** establishes the main institutions of the European Union. These institutions form the core of EU governance and decision-making processes. In general, we can define the following:

- The European Parliament represents EU citizens and is directly elected
  - It shares legislative and budgetary powers with the Council
- The European Council, composed of heads of state or government, sets the EU's overall political direction but doesn't legislate
- The Council of the European Union (Council) represents member state governments
  - It shares legislative and budgetary authority with the Parliament
- The European Commission proposes and enforces legislation, implements policies, and represents the EU internationally
- The Court of Justice of the EU ensures EU law is interpreted and applied consistently across member states
- The European Central Bank (ECB) manages the euro and EU monetary policy
- The Court of Auditors oversees EU finances

## EUROPEAN PARLIAMENT

- Max 750 members = MEPs (currently 705) – Members of European Parliament
  - Every MS has a different number of MEPs according to its population
- Directly elected by EU voters every five years
- 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

It has the following functions:

- **Legislative**
  - Passing EU laws, together with the council of EU, based on EU Commission proposals
  - Deciding on international agreements/enlargements, reviewing Commission's work programme
- **Budgetary**
  - Establishing the EU budget, together with the council, approving EU's long-term budget
- **Supervisory**
  - Democratic scrutiny of all EU institutions
  - Electing the Commission President and approving the Commission as a body
  - Granting discharge, i.e. approving the way EU budgets have been spent
  - Examining citizens' petitions and setting up inquiries
  - Discussing monetary policy with the European Central Bank
  - Questioning Commission and Council
  - Election observations
- **Elective**
  - President of the EU Commission (proposed by the Council)
  - EU Commissioners (proposed by the Commission's President) This image compares two key EU institutions: the European Council and the Council of the European Union (Council).

## **EUROPEAN COUNCIL**

The European Council is a collegiate body defining the overall political direction and priorities of the EU, being part of the European Union, beside the European Commission.

- It is composed of the heads of state or of government (27) of the EU member states, the President of the European Council, and the President of the European Commission (elected for 2.5 years term)
- While the European Council has no legislative power, it is a strategic (and crisis-solving) body that provides the union with general political directions and priorities and acts as a collective presidency
- The European Commission remains the sole initiator of legislation, but the European Council provides a guide to legislative policy

## **COUNCIL (OF THE UE)**

The Council of the EU, often simply called the Council but also Council of Ministers, comprises one representative from each member state, typically ministers, able to commit the government of the state and cast its vote -> interest of the Governments

- It is one of two legislative bodies and together with the European Parliament serves to amend and approve or veto the proposals of the European Commission, which holds the right of initiative
- The Council of the European Union and the European Council are the only EU institutions that are explicitly intergovernmental
  - That is, forums whose attendees express and represent the position of their Member State's executive, be they ambassadors, ministers or heads of state/government

## **EUROPEAN COMMISSION**

The European Commission (EC) is part of the executive of the European Union (EU).

- It operates as a cabinet government, with 27 members of the Commission (directive system, informally known as "Commissioners", appointed by the European Parliament – EP) headed by a President, proposed by the European Council
- The commission is divided into departments known as Directorates-General (DGs) that can be likened to departments or ministries each headed by a Director-General who is responsible to a Commissioner
- It represents the interests of the EU as a whole, promoting the general interest of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget

It has different functions:

- Legislative – initiative (proposes and enforces new laws)
- 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

The Court of Justice of the European Union (CJEU) interprets EU law to make sure it is applied in the same way in all EU countries and settles legal disputes between national governments and EU institutions, ensuring countries and EU institutions abide by EU law.

It can also, in certain circumstances, be used by individuals, companies or organizations to act against an EU institution, if they feel it has somehow infringed their rights.

The CJEU is divided into 2 courts:

- European Court of Justice (ECJ) – deals with requests for preliminary rulings from national courts, certain actions for annulment and appeals
  - This is formed by 1 judge from each EU country, plus 11 advocates general
- General Court of the EU – rules on actions for annulment brought by individuals, companies and, in some cases, EU governments
  - It's formed by 2 judges from each EU country
  - In practice, this means that this court deals mainly with competition law, State aid, trade, agriculture, trademarks

Both courts are staffed by 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.

They have distinct functions:

- Jurisdictional: handles litigation between parties
- Interpretative/Preliminary rulings: provides clarification on EU law, not direct litigation
- Advisory/consultative: offers opinions on EU law matters, also not litigation

The CJEU gives rulings on cases brought before it. The most common types of case are:

- **Interpreting the law** (preliminary rulings) – national courts of EU countries are required to ensure EU law is properly applied, but courts in different countries might interpret it differently
- **Enforcing the law** (infringement proceedings) – this type of case is taken against a national government for failing to comply with EU law
- **Annulling EU legal acts** (actions for annulment) – if an EU act is believed to violate EU treaties or fundamental rights, the Court can be asked to annul it
- **Ensuring the EU takes action** (actions for failure to act)
- **Sanctioning EU institutions** (actions for damages) – any person or company who has had their interests harmed as a result of the action or inaction of the EU or its staff can take action against them through the Court

## LITIGATION PROCEEDINGS BEFORE THE ECJ

Here are the types of litigation proceedings before the European Court of Justice (ECJ) under the Treaty on the Functioning of the European Union (TFEU):

1. **Direct appeals** (Article 263 TFEU)
  - a. Public initiative: Member States (MS), other EU institutions
  - b. Private initiative: any natural or legal person against an act addressed to them, or which is of direct and individual concern, including regulatory acts that directly affect them without implementing measures
  - c. Grounds for Appeals (Vices): lack of competence, invalidity, voidness, misuse of powers
  - d. Time Limit: 2 months + 10 days from the act's adoption.
2. **Failure to act** (Article 265 TFEU)
  - a. Pre-Litigation Stage: this process begins with a letter of formal notice if an EU institution fails to act, providing them 2 months to respond.
  - b. Non-performance leads to litigation before the ECJ
3. **Compensation for damages** (Article 340(2) TFEU)
  - a. Individuals, legal entities, or Member States can initiate this for damages proven to be unlawful, serious, and certain

## NON-LITIGATION PROCEEDINGS BEFORE THE ECJ

Here we give some details about the non-litigation procedures involving preliminary rulings by the European Court of Justice (ECJ), not the General Court, under Article 267 of the Treaty on the Functioning of the European Union (TFEU).

There are court affairs which does not form a legal proceeding, but in which the court assists and engages in the procedure of creation, alteration, or extinguishment of personal rights. It is called a non-litigation case.

### Preliminary Rulings (Article 267 TFEU)

-> **Initiative:** Can be requested by any jurisdiction of a Member State (MS), regardless of the court's level, and may also be requested upon the parties' initiative.

#### -> Object:

- Interpretation: Interpretation of any EU law provision.
- Validity: Assessment of the validity of acts by EU institutions.

#### -> Procedure Development:

1. National Proceedings: Begins with a case in a Member State's national court.
2. Referral: The national judge may refer questions related to the interpretation or validity of EU law to the ECJ.
3. Suspension: Generally, the national proceedings are suspended while awaiting the ECJ's ruling.
4. Decision of the ECJ: The ECJ issues a judgment or order that is binding and compulsory for the referring national judge when resolving the case.

## BODIES OF THE EU

Here we describe the bodies within the European Union focused on data protection and fundamental rights:

### - European Data Protection Supervisor (EDPS)

- Nature: Independent body.
- Function:
  - Monitors and ensures that EU institutions and bodies respect people's right to privacy when processing personal data.
  - Intervenes and cooperates with relevant authorities when necessary.

### - European Data Protection Board (EDPB)

- Nature: Independent body.
- Function:
  - Ensures consistent application of data protection rules throughout the EU, covers both GDPR (General Data Protection Regulation) and Data Protection Law Enforcement Directive.
  - Promotes cooperation between national data protection authorities within the EU.

### - Agencies of the European Commission

- Nature: Decentralized bodies distinct from EU institutions.
- Function: perform specific tasks as assigned by the Commission.

### - Fundamental Rights Agency

- It focuses on protecting and promoting fundamental rights and freedoms within the EU context.

## PRIVACY AND RIGHTS (08/11)

### PRIVACY

The concept of privacy encompasses various dimensions such as:

- the right to reputation and honor: ensures personal dignity and moral integrity are safeguarded
- personal and family life: protects individual autonomy and family life from public interference
- the control over personal information emphasizes individual autonomy in deciding how personal data is shared or exposed

Conceptual foundations

- Negative Aspect: Prevention of intrusions.
- Positive Aspect: Exclusion of others from personal matters.

### THE RIGHT TO BE LET ALONE

In 1890, Samuel Warren and Louis Brandeis introduced the "Right to Be Let Alone," framing privacy as a fundamental human right essential to a civilized society.

This concept emphasized the protection of personal reputation, honor, image, and private or family life. It centers on safeguarding individuals from unwarranted intrusion,

preserving their dignity and identity, and giving them control over personal information, distinguishing private matters from public exposure.

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

- right to reputation
- right to honor 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

Origin: Common law tradition emphasizing the distinction between private and public spheres.

## HUMAN RIGHTS – RIGHT TO PRIVACY AND PERSONAL DATA

There is a fundamental difference in how privacy is viewed within Common Law and Civil Law traditions.

- **Common Law** - Right to Liberty: Emphasizes individual freedom and protection against government intrusion.
- **Civil Law** - Right to Dignity: Focuses on respect, inherent worth of individuals. This might translate to laws that protect personal honor, privacy, or social welfare.

**Right to Personal Data** (Article 8(1) CFR - Charter of Fundamental Rights of the EU)

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

**Definition of Personal Data** (Article 4(1) GDPR - General Data Protection Regulation)

«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»

- Definition of Personal Data (Article 4(1)): personal data is any information related to an identified or identifiable natural person (referred to as a "data subject").
- Scope of Identification: includes direct (e.g., name, ID number) and indirect identifiers (e.g., location data, online identifiers), covering various dimensions of physical, physiological, genetic, mental, economic, cultural, or social identity.

The **rights to Privacy and Personal Data** are distinct but share significant overlaps.

- Distinct but overlapping concepts:
  - Right to Privacy - broad protection for personal life, reputation, honor, and identity.
  - Right to Personal Data - more specific focus on controlling personal data and protecting identifiable information.
- Shared Goal: Safeguarding individuals' autonomy and protection from invasive practices.
- Scope: Protects individuals across various identifiers (e.g., race, nationality, religion, etc.).
- Applicability: Rights extend to all individuals regardless of race, sex, nationality, language, religion, etc.

## RIGHT TO PRIVACY (13/11)

Here we give an overview about the history of 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
- 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
- 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

## RIGHT TO PRIVACY AND EU DIRECTIVES (15/11)

While originally not present in the 1948 Universal Declaration of Human Rights, we can quote from its article 12 the following statement on privacy: "No one shall be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks".

The **Nice Charter (2009)** and the **EU Charter of Fundamental Rights (2009)** are crucial because they provide a codified set of rights that are legally binding on the European Union (EU) and its member states. These documents consolidate and ensure a wide range of civil, political, economic, and social rights for EU citizens and residents – see for them here. The transition from the Nice Charter to the EU Charter of Fundamental Rights marked a significant evolution in the EU's commitment to protecting fundamental human rights. These charters are instrumental in shaping EU laws and have a direct impact on the legislation of member countries, aligning them with shared European values and legal standards.

We quote different articles now from EU Charter of Fundamental Rights:

- 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
- 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
- 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**

The **OECD Privacy Guidelines** (with OECD standing for **Organisation for Economic Co-operation and Development**) established in 1980, represent a set of universal standards aimed at balancing the rights of data subjects with the needs of data controllers. These introduce several key principles:

- Collection limitation: There should be limits to the collection of personal data, which must be obtained by lawful and fair means
- Data quality: Personal data should be relevant to the purposes for which they are used, and be accurate, complete, and up-to-date
- Purpose specification: The purposes for which personal data are collected should be specified at the time of data collection
- Use limitation: Personal data should not be disclosed, made available, or otherwise used for purposes other than those specified except with the consent of the subject or by the authority of law
- Security safeguards: Personal data should be protected by reasonable security safeguards against risks such as loss or unauthorized access, destruction, use, modification, or disclosure
- Openness: There should be a general policy of openness about developments, practices, and policies with respect to personal data
- Individual participation: An individual should have the right to obtain data about themselves, and to have data corrected or erased if it is inaccurate, incomplete, outdated, or processed unlawfully

- Accountability: Data controllers should be accountable for complying with measures that give effect to the principles stated above

The **Council of Europe's (CoE) Convention 108**, established on January 28, 1981, serves as the first legally binding international treaty concerning data protection, so to give universal standards.

- It outlines standards for the protection of individuals with regard to the automated processing of personal data, aiming to secure the individual's right to privacy

The **Convention 108+** update, adopted on May 18, 2018, enhances these protections to address new challenges in data privacy and adapts to technological developments, reinforcing the universal standards initially set out in the original convention

CoE Convention Main Principles follow here:

- Protection of the individuals against Personal Data (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

The applicable EU legislation on the **right to personal data protection**:

- Article 39 TEU
  - 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 rules relating to free movement of such data
  - Compliance with these rules shall be subject to the control of independent authorities
- Article 16 TFEU
  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.

**EU Data Protection Directives** are two:

- Directive 95/46/EC – Data Protection Directive 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

## EU DATA PROTECTION DIRECTIVES

**Applicable** - EU Data Protection Directives

The following directives are integral components of EU's legal framework aiming to protect personal data and individual privacy across different contexts and sectors, enhancing security and trust in digital services.

1. Directive 2002/58/EC – ePrivacy Directive
  - a. Focuses on the protection of privacy in electronic communications
  - b. It regulates processing of PD in the electronic communications sector and includes provisions on confidentiality of communications, cookies, unsolicited marketing
2. Directive 2016/680/EU – Law Enforcement Directive
  - a. Pertains to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection, or prosecution of criminal offenses
  - b. It aims to ensure data protection within the law enforcement sector and facilitates the cross-border exchange of such data within the EU, replacing the older Framework Decision 2008/977/JHA (Justice and Home Affairs Council) to better align with modern standards and the General Data Protection Regulation (GDPR)

### DIRECTIVE 2002/58/EC | E-PRIVACY DIRECTIVE

Going more specifically on this directive, we give the following definitions:

- User: any natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to this service. This is also called 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 related to the identifiable subscriber/user receiving the information.

As an overview of the directive:

- Scope of application: "Services concerned" processing of PD in connection with the provision of publicly available electronic communications services in communications networks within EU
- Service provider: Required to take appropriate technical and organizational measures to ensure security of its services
- Objective: Require MSs to ensure confidentiality of communications and related PD (i.e. traffic data) processed through public communication networks/publicly available electronic communications services

Other features:

- Automatic call forwarding: by third parties to the subscriber's terminal, unless stopped
- Directories of subscribers: possible, but based on consent (express or implied)
- 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)**

The European Electronic Communications Code (Recast) is outlined in Directive 2018/1972. It sets an EU-level legal framework to coordinate national legislation on electronic communications networks and services, from the telephony services and the single European emergency number 112 to basic internet access that must now be considered as a universal service by EU countries, with an emphasis on not processing personal data.

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

The directive has the following 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

## **DIRECTIVE 2016/680/EU | DP LAW ENFORCEMENT DIRECTIVE**

Directive 2016/680/EU, also known as the Data Protection Law Enforcement Directive, addresses personal data protection in criminal matters within the EU.

- This directive replaced Decision 2008/977/JHA and aimed to cover areas previously governed by the Data Retention Directive, which had been voided.
- This package seeks to modernize and harmonize data protection frameworks across the EU, specifically focusing on processing personal data by police and judicial authorities for the purposes of preventing, investigating, detecting, and prosecuting criminal offenses - Filled the void of Data Retention Directive
- It was part of a broader reform, introduced simultaneously with the General Data Protection Regulation (GDPR), together known as the "PDP Package"

Directive 2016/680/EU focuses on data protection within law enforcement activities. It emphasizes principles like data protection by design and by default, ensuring robust data security measures, and requiring data breach notifications. It reports the following points:

- Data protection by design / by default

- Data security
- Data breach notifications
- Appointment of Data Protection Officers (DPOs)
- Emerging tech challenges

Importantly, it restricts decisions based solely on automated processing, such as profiling, particularly those based on sensitive data, to prevent discrimination. These stipulations aim to balance effective law enforcement with the protection of individual privacy rights.

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 Regulation**

There are also other regulations to note:

- Regulation 2016/679/EU General Data Protection Regulation (GDPR)
  - GDPR sets a comprehensive framework for data protection across the EU, applying strict privacy and security standards to protect individual rights
- Regulation 2018/1725/EU – Protection of natural persons on processing of PD
  - It sets forth the rules applicable to the processing of personal data by European Union institutions, bodies, offices and agencies

The reference to the Digital Services Act (DSA) and Digital Markets Act (DMA) suggests a broader regulatory environment aimed at digital platforms, promoting fair competition and accountability.

These are three significant pieces of EU legislation aimed at regulating digital platforms to ensure a safer digital space and promote fair competition:

- DSA (Digital Services Act) focuses on creating a safer digital space where users' fundamental rights are protected
- DMA (Digital Markets Act) targets large online platforms acting as "gatekeepers" to ensure that these platforms do not abuse their powerful market position
- IAA (Artificial Intelligence Act)

## GDPR

The General Data Protection Regulation (GDPR) is a legal framework that sets guidelines for the collection and processing of personal information from individuals who live in and outside of the European Union (EU).

We will now discuss it with the distinction of the following main subjects:

- Data subject
- Controller
- Processor
- Sub-processor
- Data protection officer (DPO)
- Supervisory authority

## GDPR - DATA SUBJECT

The term "data subject" in GDPR refers to any individual who can be identified, directly or indirectly, by information such as a name, an identification number, location data, or factors specific to their physical, physiological, genetic, mental, economic, cultural, or social identity.

In has the following main rights:

- Right to transparency of communication
- Right to be informed of purposes
- Right to access
- Right to rectification, erasure (right to be forgotten), restriction
- Right to data portability
- Right to object

## GDPR - CONTROLLER

The General Data Protection Regulation (GDPR) defines a controller as: "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"

When two or more entities jointly determine the purposes and means of processing, they are considered **joint controllers**. This designation carries specific responsibilities regarding the lawful handling of personal data, including ensuring transparency, data security, and adherence to data protection principles laid out by the GDPR.

Controllers have also **obligations**: as a general rule, a controller is responsible and liable for any processing of personal data carried out by itself and on its behalf.

Specifically, here we list the main obligations of the Controller:

- Adoption of appropriate TOMs (Technical and Organizational Measures) for GDPR compliance
- (+ protection policies)
- Record of processing activities
- Cooperation with data subjects
- Cooperation with supervisory authorities

A **Data Protection Management System (DPMS)** is a risk-based internal compliance framework designed primarily to ensure GDPR compliance.

- It includes a robust IT security concept that manages and oversees the technical and organizational aspects of data processing activities

- By adopting and implementing appropriate Technical and Organizational Measures (TOMs), DPMS aims to document these activities comprehensively and enhance overall data protection compliance within an organization to GDPR
- The aim is to achieve compliance with GDPR, by adopting appropriate TOMs

## GDPR - PROCESSOR

The General Data Protection Regulation (GDPR) defines a processor as: "A natural or legal person, public authority, agency or other body which processes\* personal data on behalf of the controller"

Let's specify what **processing of personal data** means:

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

We list here the 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 DPO - Data Protection Officer (where required)

Here is outlined the record-keeping responsibilities under GDPR for both controllers and processors of personal data.

CONTROLLER	PROCESSOR
Name and contact details of the (joint) controller(s), the representative(s) and DPO(s)	Name and contact details of the processor(s) and (joint) controller(s), the representative(s) and DPO(s)
Purposes	Categories of processing
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	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	General description of TOSMs

## Data protection by

DESIGN	DEFAULT
the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of the GDPR and protect the rights of data subjects	The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons

## GDPR - DATA PROTECTION OFFICER

According to GDPR, the data protection officer (DPO) is: "A 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 categories large-scale processing of special categories of data or personal data relating to criminal convictions and offences

## GDPR - SUPERVISORY AUTHORITIES

The supervisory authorities are defined as: "Independent public authority established by each Member State pursuant to Article 51 – the article is Control Authority in GDPR"

They have various responsibilities:

- Data subjects' complaints
- Be responsible for monitoring the application of the GDPR, in order to protect 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

From here, some main notions about GDPR will be delighted:

1. personal data
2. sensitive data
3. purposes
4. consent
5. processing
6. transfer
7. cross-border processing
8. data protection impact assessment

## GDPR - PERSONAL DATA

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

In principle, the processing of sensitive data is considered prohibited.

There are a few exceptions however:

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

## GDPR - PURPOSES

GDPR does not define explicitly the **purposes**, but they can be generally described as:  
"Aims for which data are collected and processed"

## **GDPR - CONSENT**

Instead, GDPR defines the consent (of the data subject) as: "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**

GDPR defines the processing as: "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 - DATA PROTECTION IMPACT ASSESSMENT (DPIA)**

Also, GDPR defines a DPIA – Data Protection Impact Assessment, as:

- Assessment of the impact of the envisaged processing operations on the protection of personal data - helping identify/minimize data protection risks of a project (particularly, determining "whether processing likely result in high risk")
- These is mapping Controller <-> DPO , since one determines how data will be handled while the other one guarantees rules are respected according to Controller dispositions

### **Mandatory (in certain cases):**

- systematic/extensive evaluation of personal data based on automated processing, including profiling activities
- processing on a large scale of special categories of data
- systematic monitoring of a publicly accessible area on a large scale

### **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

# GDPR - MAIN PRINCIPLES FOR PERSONAL DATA PROCESSING

In this lecture, we start considering all of the main principles for data processing (such are listed):

1. Lawfulness
2. Fairness and transparency
3. Purpose limitation
4. Data minimization
5. Accuracy
6. Storage limitation
7. Integrity and confidentiality
8. Accountability

## 1) LAWFULNESS & FAIRNESS

Lawfulness and fairness are based on legal permission given from the DS consent.

Legal permission is necessary for:

- Performing a contract
- Complying with a legal obligation
- Protecting vital interests
- Performance of a task of public interest
- Legitimate interests of the controller/third party

## 2) TRANSPARENCY

Transparency describes how PD are used, consulted or otherwise disclosed. The information which should be note is the following:

- 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

## 3) PURPOSE LIMITATION

Purpose limitation principle requires that personal data be processed only for specified, explicit, and legitimate purposes. The key aspects are the following:

- Legitimacy
  - The purposes for processing must be in accordance with existing applicable laws
  - This ensures that data processing is lawful and compliant with relevant regulations
- Detail of the purpose
  - The purpose must be clearly defined and communicated
  - Any further processing operations need to be verified to ensure they are compatible with the initial purposes for which the data was collected

## 4) DATA MINIMISATION

The data minimization principle ensures personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. Here:

- An assessment of proportionality should be made
- Accurate technical and organisational measures

## **5) ACCURACY**

The principle of accuracy ensures personal data should be accurate and kept up to date.

- If data is inaccurate, erasure or rectification must be done
- Personal data shall reflect the reality of any given situation
- Inaccuracy may imply legal consequences even for the subjects involved

## **6) STORAGE LIMITATION**

Storage limitation principle says personal data shall be kept in a form that permits identification of data subjects for no longer than necessary for the processing purposes, basically the bare/strict minimum.

## **7) INTEGRITY & CONFIDENTIALITY**

Integrity and confidentiality principles ensure personal data shall be processed in a manner that ensures their appropriate security. This is necessary to avoid:

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

## **8) ACCOUNTABILITY**

The principle of accountability focuses on focusing on two key roles:

1. Controller: This is typically the entity (organization or individual) that determines the purposes and means of processing personal data, ensuring compliance with data protection laws
2. Processor: This is the entity that processes personal data on behalf of the controller

Both controllers and processors must take responsibility for their handling of personal data.

## **PRIVACY POLICY**

A privacy policy is a crucial document for any organization handling personal data and some templates on how to write a policy are here. The topics asked are the following:

- What data do we collect?
- How do we collect your data?
- How will we use your data?
- How do we store your data?
- Marketing
- What are your data protection rights?
- How to contact us
- How to contact the appropriate authorities

Inside of websites, some questions can be asked on this:

- How do we use cookies and what types of cookies do we use?
- How to manage your cookies
- Privacy policies of other websites
- Changes to our privacy policy

## EU DATA AND REGULATIONS

**SYNTHETIC DATA:** artificial data generated from original data and a model that is trained to reproduce the characteristics and structure of the original data. Synthetic data and original data should deliver very similar results when undergoing the same statistical analysis (generation process = SYNTHESIS).

**BIG DATA:** great volume, velocity and variety of (personal and non-personal) DATA + technological ability to collect, process and extract new and predictive knowledge.

## EUROPEAN DATA STRATEGY

The European Data Strategy is a comprehensive plan initiated by the European Union (EU) to create a single market for data. This strategy is aimed at making the EU a leader in the data-driven economy, ensuring that data flows freely across the Union and is utilized to its full potential for the benefit of society and businesses alike. Its main principles are:

- Free flow of personal data
  - Guaranteeing protection, privacy, portability, cross-border data flow, ensuring respect of rules according to regulatory frameworks
- Free flow of non-personal data
  - Ensure improvement over data localization restrictions, data availability for regulatory controls, portability/interoperability
- Single market for data
  - Data sharing among sectors, aiming to clarify with acts data and its usage, between sectors and infrastructure

The EU Data Strategy, initiated in 2020, is a comprehensive framework aimed at making the European Union a global leader in the data-driven economy. It encompasses various regulations and acts designed to ensure a balanced, fair, and innovative digital environment.

- Regulation 2018/1807 (Free Flow of Non-Personal Data): Eliminates data localization restrictions within the EU and promotes data portability and interoperability
- Data Governance Act (DGA) (2022): Establishes a framework for the ethical and transparent reuse of public sector data, data altruism, and data-sharing intermediaries
- Digital Services Act (DSA) (2022): Imposes obligations on online platforms to enhance user safety, transparency in advertising, and consumer protection
- Digital Markets Act (DMA) (2022): Regulates large digital platforms (gatekeepers) to ensure fair competition and prevent market abuses
- Data Act (2023): Regulates IoT-generated data access and sharing, enhancing data portability and fairness in data-related contracts.
- AI Act (2024): Creates a legal framework for AI systems based on their risk level, ensuring safety, transparency, and fundamental rights

## REGULATION 2018/1807

Regulation 2018/1807 has the purpose of ensuring free flow of data other than personal data laying down rules relating to data localization requirements. Scope of the application is the following:

- Applies to the processing of electronic data other than personal data

- Includes data processing provided as a service to users within the EU or carried out by a person within the EU
- Limited application to sets of data that contain both personal and non-personal data, where non-personal data provisions apply to the non-personal data part

The data localisation requirements are the following:

- 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

In principle, data localization requirements are prohibited.

- This means that MSs cannot enforce rules that require data to be processed or stored within their territory, nor can they hinder the processing of data in another member state.

There are obligations upon the Member States to repeal any legal provision setting out data localisation requirements. The goals are the following:

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

## ACTS: DGA, DSA, DMA, AI & BIG DATA

The **Data Governance Act (DGA)** is a key component of the EU's data strategy, aiming to establish a robust 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.

The **EU Digital Services Act (DSA)** and the **EU Digital Markets Act (DMA)** are complementary legislative measures under the EU's digital strategy aimed at regulating the digital space. Their primary aims are to create a safer online environment and to ensure fair competition in digital markets.

In specific:

- DSA ensures the creation of a safer digital space, accounting for user protection and ensuring transparency and accountability
- DMA ensures fair competition while fostering innovation and growth, so to prohibit practices and enforce obligations and penalties in case of non-compliance

As general aims, we can report:

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

## Data Act

Aim: granting fair access to and use of data (fair distribution of the value of data by establishing clear and fair rules for accessing and using data within the European data economy)

cross-sectoral (principles and guidelines applying to all sectors)

- Increasing legal certainty for companies and consumers
- Mitigating the abuse of contractual imbalances that impede equitable data sharing
- Rules enabling public sector bodies to access and use data held by the private sector for specific public interest purposes
- New rules setting the framework for customers to effectively switch between different providers of data-processing services

The **Artificial Intelligence Act (AI Act)** is a landmark legislative proposal by the European Union which has the aim at establishing a harmonized legal framework for artificial intelligence.

The Act seeks to ensure that AI systems are used in a way that respects fundamental rights, promotes safety and transparency, and supports innovation and economic growth. Particularly, it enhances the capabilities of AI systems improving predictions, optimizing operations and personalizing service delivery.

It also gives the following advantages:

- Support socially and environmentally beneficial outcomes
- Key competitive advantages to companies and the EU economy

In the end, we define big data as "great volume, velocity and variety of (personal and non-personal) data and technological ability to collect, process and extract new and predictive knowledge".

# THE EUROPEAN AI ACT

## MAIN CHALLENGES OF AI

- compliance with regulations that safeguard fundamental rights and freedoms;
- addressing biases, rights and privacy in AI systems, and maintaining transparency and accountability in decision-making processes;
- the rapid pace of AI development often outstrips the creation of regulatory frameworks, leading to potential gaps in oversight;
- balancing innovation with ethical considerations;
- international harmonization of AI governance;
- protecting intellectual property rights related to AI-generated content and AI learning.

## The Need for a Harmonised AI Framework

1. Fragmentation: Without a harmonized AI framework, fragmentation across different EU member states could create barriers to innovation and hinder the development of a single market for AI.
2. Level Playing Field: A unified regulatory approach ensures a level playing field for businesses and promotes fair competition in the AI market.
3. Trust and Confidence: A harmonized framework fosters trust and confidence in AI technologies, encouraging wider adoption and societal acceptance.

## SUBJECT MATTER OF AI ACT – Art. 1

- a) harmonised rules systems;
- b) prohibitions SUBJECT MATTER OF AI ACT – Art. 1 for the placing on the market the putting into service, and the use of AI of certain AI practices;
- c) specific requirements for high-risk AI systems and obligations for operators of such systems;
- d) harmonised transparency rules for certain AI systems;
- e) harmonised rules for the placing on the market of general-purpose AI models;
- f) rules on market monitoring, market surveillance, governance and enforcement;
- g) measures to support innovation , with a particular focus on SMEs, including start-ups.

## SCOPE OF APPLICATION OF THE AI ACT – art. 2

The AI Act applies to (subjects and territory):

- a) providers placing on the market or putting into service AI systems or placing on the market general-purpose AI models in the Union, irrespective of whether those providers are established or located within the Union or in a third country;
- b) deployers of AI systems that have their place of establishment or are located within the Union;
- c) providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the AI system is used in the Union;
- d) importers and distributors of AI systems;
- e) product manufacturers placing on the market or putting into service an AI system together with their product and under their own name or trademark;
- f) authorised representatives of providers, which are not established in the Union;
- g) affected persons that are located in the Union.

## **RELEVANT DEFINITIONS – Art. 3**

- 'provider' means a natural or legal person, public authority, agency or other body that develops an AI system or a general-purpose AI model or that has an AI system or a general-purpose AI model developed and places it on the market or puts the AI system into service under its own name or trademark, whether for payment or free of charge;
- 'deployer' means a natural or legal person, public authority, agency or other body using system an AI under its authority except where the AI system is used in the course of a personal non professional activity;
- 'authorised representative' means a natural or legal person located or established in the Union who has received and accepted a written mandate from a provider of an AI system or a general purpose AI model to, respectively, perform and carry out on its behalf the obligations and procedures established by this Regulation;
- 'importer' means a natural or legal person located or established in the Union that places on the market an AI system that bears the name or trademark of a natural or legal person established in a third country;
- 'distributor' means a natural or legal person in the supply chain, other than the provider or the importer, that makes an AI system available on the Union market;
- 'operator' means a provider, product manufacturer, deployer, authorised representative, importer or distributor.

## **SCOPE OF APPLICATION OF THE AI ACT – art. 2**

The AI Act applies to (subject matter):

- 'AI system' means a machine-based system that is designed to operate with varying autonomy and that may exhibit adaptiveness levels of after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments;
- 'General-purpose AI model' means an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications, except AI models that are used for research, development or prototyping activities before they are placed on the market.

## **SCOPE OF APPLICATION OF THE AI ACT – art. 2**

The AI Act DOES NOT apply to :

- AI systems distributed under a FOSS license.
- AI models, including their output, specifically developed and put into service for the sole purpose of scientific research and development.
- Household exception: deployers who are natural persons using AI systems in the course of a purely personal non-professional activity.
- AI systems where and in so far they are placed on the market, put into service, or used with or without modification exclusively for military, defence or national security purposes, regardless of the type of entity carrying out those activities.
- Public authorities in a third country nor to international organisations falling within the scope of this Regulation pursuant to paragraph 1, where those authorities or organisations use AI systems in the framework of international cooperation or agreements for law enforcement and judicial cooperation.