

MODULO 1: EUROPEAN PRIVATE LAW MAIN ISSUES

SOURCES OF EUROPEAN LAW

The legal order of the European Union (EU) is structured hierarchically, primarily distinguished between **Primary Law** and **Secondary Law**, complemented by other foundational instruments and principles that ensure its coherence and functionality.

Primary Law

Primary Law constitutes the highest rank in the legal order, serving as the constitutional foundation of the Union. This category is composed of the Founding Treaties, notably the **Treaty on European Union (TEU)** and the **Treaty on the Functioning of the European Union (TFEU)**, which establish the goals, institutional framework, and fundamental principles of the EU. The evolution of these treaties demonstrates the deepening of European integration:

- **Historical Origins:** The European project began with the **Treaty establishing the European Coal and Steel Community (ECSC)**, signed in 1951. This was followed in 1957 by the **Treaties of Rome**, which established the **European Economic Community (EEC)** and the European Atomic Energy Community (Euratom).
- **Key Treaties:** Subsequent amendments like the **Single European Act (1986)** and the **Treaty of Maastricht (1992)** progressively expanded the scope of cooperation.
- **Treaty of Lisbon (2007):** The Lisbon Treaty is of fundamental importance as it granted the **Charter of Fundamental Rights of the European Union** the same legal value as the Treaties themselves, formally enshrining fundamental rights into the constitutional core of the Union's law.

Secondary Law

Secondary Law is derived from and subordinate to Primary Law, created by the EU institutions through the exercise of the competences conferred upon them by the Treaties. The TFEU specifies several types of legal acts, with the most significant being:

- **Regulations:** A Regulation has **general application**, is **binding in its entirety**, and is **directly applicable** in all Member States. This means a Regulation becomes national law immediately upon entry into force without the need for implementing measures, ensuring uniform application across the EU (e.g., the AI Act is a Regulation).
- **Directives:** A Directive binds any Member State to which it is addressed **as to the result to be achieved**, but leaves the national authorities the **choice of form and methods** for implementation. Directives therefore require Member States to adopt national legislation (a process known as transposition) to give them effect (e.g., the Product Liability Directive).
- **Decisions:** Decisions are binding legal acts.
- **Non-Binding Acts:** The framework also includes **Recommendations and Opinions**, which, while not legally binding, carry political and interpretive weight.

General Principles and Judicial Review

The legislative process and the application of all EU law are governed by several key constitutional principles, including **subsidiarity** and **proportionality**, which are defined in the TFEU. Furthermore, the **European Court of Justice (ECJ)** plays a pivotal role in creating a body of case law that interprets and develops the application of these sources, ensuring the observance of law across the EU.

ELEMENTS OF CONTRACT

For a contract to be legally valid and enforceable, the legal system generally mandates the presence of four essential and distinct elements, which define the structure and purpose of the agreement. Should any one of these requirements be missing or fail to comply with legal standards, the contract is generally considered invalid (nullity or annulment).

1. Agreement of the Parties (Consent)

This element represents the free and conscious **expression of willingness** by the parties to enter into the contractual agreement. It requires a concurrence of declarations of will between two or more parties. The agreement must be formed without legal impediment, as the will expressed must be both free and conscious. The validity of consent can be jeopardized by **vices of will**, which lead to the contract's annulment if proven:

- **Mistake:** A false representation of a material fact.
- **Duress (Coercion):** Force or threats used to compel a party to enter into the contract.
- **Fraud:** Deception or misrepresentation used to induce consent.

2. Lawful Object (Subject Matter)

The object of the contract is the **performance** or action that the parties agree to undertake or achieve. For the contract to be valid, the object must meet strict requirements: it must be **possible** (physically and legally), **lawful** (not contrary to mandatory law or public policy), and **determined or determinable** (clearly specified or capable of being specified later).

3. Lawful Cause (Reason)

The cause represents the **economic and social function** of the contract, which is the underlying justification for the legal transaction. It is the goal the parties pursue collectively. A contract's cause must be **lawful**; if the cause is contrary to mandatory rules, public order, or morality, the contract is considered **null and void**.

4. Form

The principle of contractual autonomy allows parties the freedom to choose the form of their contract. However, in certain cases, the law requires a specific form for the contract to be valid (**Form ad substantiam**). Where the law mandates a specific form, failure to comply with this requirement renders the contract void. In other cases, the law may require a specific form not for validity, but only for the purpose of **proof** (**Form ad probationem**).

Guiding Principle: Good Faith

Beyond these four elements of validity, the entire process of contracting is governed by the overarching principle of **Good Faith**. This principle is not merely a moral obligation but a legally mandated standard of conduct that applies:

- **During negotiations** (pre-contractual liability).
- **In the interpretation** of the contract.
- **In the performance** of the contract.

INSTITUTIONS OF THE EUROPEAN UNION

The European Union's political and legal framework is overseen by a unique institutional structure designed to ensure the balance of interests among citizens, Member States, and the Union as a whole. The foundational bodies are often referred to as the "Institutional Triangle," which drives the legislative process, along with several other core bodies that fulfill executive, judicial, and financial functions .

1. The European Commission

The Commission is the **executive arm** of the EU and its political leadership. It plays the role of the **guardian of the Treaties**, ensuring that EU law is correctly applied across all Member States. Its main functions are:

- **Power of Legislative Initiative:** The Commission is typically the only institution with the power to propose new EU legislation.
- **Executive Function:** It implements EU policies and manages the Union's budget.
- **Enforcement:** It has the power to issue decisions, including those related to competition and enforcement.

2. The European Parliament

The Parliament represents the **citizens of the Union** and exercises its functions jointly with the Council. Its principal tasks include:

- **Legislative Function:** It shares the power to adopt EU laws (Regulations, Directives, Decisions) with the Council of the European Union.
- **Budgetary Function:** It participates in establishing the EU budget.
- **Oversight:** It exercises democratic control over the other institutions, particularly the Commission.

3. The Council of the European Union

The Council represents the **governments of the Member States**. It is where ministers from each Member State meet to discuss, amend, and adopt laws and coordinate policies.

- **Legislative Function:** It is the co-legislator with the European Parliament.
- **Policy Coordination:** It is responsible for coordinating the broad economic policy of the Member States.

4. The European Court of Justice (ECJ)

The ECJ ensures that, in the **interpretation and application of the Treaties**, the law is observed throughout the European Union. It is the Union's supreme judicial authority, ruling on disputes between national governments, EU institutions, and ensuring the uniform interpretation of EU law across all national courts.

Other Key Institutions and Bodies

- **The European Council:** This body is composed of the Heads of State or Government of the Member States. Its role is to provide the **necessary impetus for the development of the Union** and define its general political directions and priorities.
- **European Central Bank (ECB):** The central bank for the euro area, primarily responsible for conducting monetary policy.
- **Court of Auditors:** The external auditor of the EU, responsible for checking that the Union's budget has been implemented correctly and lawfully.

ROLE OF THE EUROPEAN COURT OF JUSTICE

The European Court of Justice (ECJ), together with the General Court, serves as the judicial pillar of the European Union, ensuring the observance of law in the interpretation and application of the Treaties. Its tasks are crucial for maintaining the unity, supremacy, and coherence of the EU legal order and for protecting the rights of individuals against Member States or EU institutions.

1. Preliminary Rulings (Uniform Interpretation)

The **Preliminary Ruling Procedure** is the most important task of the ECJ, establishing a vital **dialogue and collaboration** between the ECJ and the national courts of the Member States.

- **Mechanism:** A national court may, and sometimes must, refer questions to the ECJ concerning the **interpretation of EU law** (Primary or Secondary Law) or the **validity of acts** adopted by EU institutions.
- **Goal:** This procedure serves to ensure the **uniform interpretation** and application of EU law throughout all Member States, preventing national courts from giving divergent meanings to the same legal provisions.

2. Infringement Procedures (Enforcement against Member States)

The ECJ has the task of determining whether a Member State has failed to fulfill an obligation under the Treaties.

- **Initiation:** This action is usually brought by the **European Commission**, acting as the "guardian of the Treaties," but can also be brought by another Member State.
- **Scope:** This procedure is frequently used when a Member State fails to correctly or timely **implement a Directive** into its national legal order.

3. Actions for Annulment (Review of Legality)

The ECJ reviews the legality of acts adopted by the Union institutions.

- **Mechanism:** This action allows Member States, the European Parliament, the Council, and the Commission to challenge the legality of a Regulation, Directive, or Decision that they believe violates the Treaties or fundamental principles.
- **Result:** If the ECJ finds the act illegal, it is **annulled**, meaning it is considered void from the beginning.

4. Actions for Failure to Act (Checking Institutional Inertia)

The ECJ ensures that institutions do not avoid their legal duties.

- **Mechanism:** This action allows institutions or Member States to bring proceedings against an EU institution (such as the Commission or the Council) for **failing to act** when the Treaties require them to do so.

5. Actions for Damages (Institutional Liability)

The Court also rules on actions seeking **compensation for damage** caused by the institutions or their servants in the performance of their duties.

DEFINITION OF A CONTRACT

Based exclusively on the provided file, the contract is defined as a specific legal instrument used to structure and manage relationships between autonomous parties.

The definition provided states:

“The contract is an agreement between two or more parties to constitute, regulate or extinguish a legal patrimonial relationship.”

This concise definition can be broken down into three crucial, interconnected concepts that determine the nature and legal effect of the agreement:

1. Agreement and Autonomy

The contract is fundamentally an **agreement**, which requires the convergence of the will—or **consent**—of the parties involved. This implies a mutual, free, and conscious expression of willingness. The agreement must be reached **between two or more parties**, establishing the requirement of a legal plurality of subjects. This foundation rests upon the principle of **contractual autonomy**, which grants the parties the freedom to determine the content of the contract, provided that they respect the limits established by the law. Once a contract is properly formed, it assumes the **force of law between the parties**, meaning the terms agreed upon become legally binding obligations.

2. Patrimonial Purpose

The relationship established by the contract must be a **legal patrimonial relationship**. This key qualifier means that the subject matter of the agreement must be susceptible to **economic evaluation**. Therefore, a contract deals with rights and obligations that can be quantified or expressed in monetary terms, distinguishing it from non-patrimonial agreements (such as a marriage agreement or a pact of honor).

3. Functions (Constitutive, Regulatory, Extinctive)

The definition encompasses the three primary legal functions a contract can perform:

- **To Constitute:** To create new rights and obligations between the parties.
- **To Regulate:** To modify or introduce rules governing an already existing legal relationship.
- **To Extinguish:** To terminate or bring an end to a pre-existing legal relationship.

Finally, for this defined agreement to be legally valid, it must adhere to the four essential requirements for validity: the **Agreement of the Parties (Consent)**, a **Lawful Object**, a **Lawful Cause**, and the required **Form** (when mandated *ad substantiam*). This entire process, from negotiation to performance, is further governed by the overarching principle of **Good Faith**, which guides the interpretation and execution of the agreement

EUROPEAN LEGISLATIVE PROCEDURE

The **Ordinary Legislative Procedure** (formerly the "co-decision procedure") is the standard method for adopting the majority of EU laws. It places the European Parliament and the Council on equal footing as co-legislators.

The phases of the procedure are organized as follows:

1. Legislative Proposal

- **The Initiative:** The process typically begins with a proposal from the **European Commission**, which represents the interests of the EU as a whole.
- **External Requests:** While the Commission has the primary right of initiative, the **European Parliament** (under Article 225 TFEU), the **Council**, the **European Council**, or **EU citizens** can request that the Commission submit a proposal.
- **Stakeholder Consultation:** Before presenting a proposal, the Commission often consults "stakeholders," such as businesses, civil society, and governments, to refine the text.

2. First Reading

- **European Parliament:** The Parliament discusses and votes on the Commission's proposal. It can either **approve** the text as is or **amend** it.
- **The Council:** The proposal then moves to the Council.
 - If the Council **approves** the Parliament's version, the act is adopted, and the process ends.
 - If the Council **amends** the text, it sends its version back to the Parliament with an explanation. This marks the beginning of the **Second Reading**.

3. Second Reading

- **European Parliament Action:** Within three months, the Parliament must act on the Council's version.

- **Adoption:** The act is adopted if the Parliament approves the Council's text or fails to take a decision.
- **Rejection:** If the Parliament rejects the Council's text, the law fails.
- **Further Amendment:** The Parliament can modify the text again and pass it back to the Council. The Commission provides its opinion on these new amendments.
- **Council Decision:** The Council has three months to respond to the Parliament's new amendments.
 - If the Council **approves** all amendments, the proposal is adopted.
 - If the Council **disagrees**, a **Conciliation Committee** is convened.

4. Conciliation Phase

- **The Committee:** This body consists of an equal number of representatives from the Council and the Parliament, with the Commission acting as a moderator.
- **Outcome:**
 - If they **fail to agree** on a "joint text" within six weeks, the proposal is not adopted.
 - If they **agree on a joint text**, it proceeds to the final stage.

5. Third Reading

- **Final Approval:** Both the Parliament and the Council must approve the joint text produced by the Conciliation Committee.
- **Result:** If both institutions approve it, the act is adopted; if either fails to do so, the proposal is rejected.

INVALIDITY OF CONTRACTS

The invalidity of a contract is the legal consequence when a contract fails to meet the legal requirements essential for its valid formation, execution, or function. Invalidity generally takes two primary forms: **Nullity** (or Voidness) and **Annulment** (or Voidability).

Nullity (Voidness)

Nullity represents the most severe form of invalidity, rendering the contract legally nonexistent *ab initio* (from the beginning). A contract is null when it violates fundamental, mandatory legal rules that are meant to protect general public interests.

The main causes of nullity include:

- **Missing Essential Elements:** The contract is null if it lacks one of the four essential elements required for a contract's existence: **agreement of the parties, lawful object, lawful cause, or form** (when required *ad substantiam* for validity).

- **Unlawfulness:** The contract is null if its **cause** or **object** is **unlawful**, meaning it is contrary to mandatory rules, public order, or morality. This addresses agreements that fundamentally subvert societal legal standards.
- **Other Legal Provisions:** Any other specific cases where the law explicitly states that the contract is null.

Annulment (Voidability)

Annulment is a less severe form of invalidity. Unlike nullity, an annulled contract is initially valid and produces legal effects, but its validity can be challenged and terminated by the party whose interests were violated. Annulment is typically triggered when the contract violates rules designed to protect a single contracting party (e.g., incapacity or impaired consent).

The main causes of annulment include:

- **Legal Incapacity:** The contract is subject to annulment if one of the parties lacked the necessary **legal capacity** to act (e.g., a minor or legally incapacitated adult).
- **Vices of Will:** The contract may be annulled if the consent expressed by one party was **vitiated** (impaired) by factors that prevent the formation of a free and conscious will:
 - **Mistake:** A material and recognizable error concerning the contract's object or nature.
 - **Duress (Coercion):** The use of threats or psychological force to compel consent.
 - **Fraud:** Deceptive conduct or misrepresentation used to trick a party into entering the contract.

Consequences and Legal Action

The mechanisms for asserting these two types of invalidity differ significantly:

- **Nullity:** An action for nullity can be brought by **anyone** who has an interest in challenging the contract, and the legal action is **not subject to a statute of limitation** (it is imprescriptible). A null contract cannot be cured or ratified.
- **Annulment:** An action for annulment can only be brought by the **party protected by the rule** (e.g., the party who was coerced or incapacitated), and the action is **subject to a statute of limitation** (a fixed legal period). An annulled contract, however, may be subject to a process of validation if the protected party voluntarily gives up their right to annul it.

GOOD FAITH IN THE CONTRACT

The principle of **Good Faith** (or *bona fides*) is a fundamental legal and ethical standard that permeates the entire lifecycle of a contract, transcending its specific, technical clauses. It is not merely a moral exhortation but a legally binding principle that mandates honest, loyal, and equitable conduct between the parties involved.

The principle of Good Faith operates across three distinct phases of the contract:

1. Pre-Contractual Phase (Negotiations)

The duty of good faith applies even before the contract is officially formed, specifically during the negotiation period. In this phase, parties must behave loyally and honestly while negotiating the terms of the agreement.

- **Duty of Information:** Parties are obligated to disclose any relevant information that could affect the other party's decision to enter the contract, particularly those facts that the other party could not reasonably discover on their own.
- **Duty not to Break Off Negotiations Unjustifiably:** Parties must not interrupt negotiations without a **justified reason**, especially when the negotiations have progressed to the point where the other party reasonably relies on the formation of the contract.
- **Consequence of Violation:** Violation of good faith in the negotiation stage leads to **pre-contractual liability** (*culpa in contrahendo*). The breaching party must compensate the injured party for the **reliance interest**, which covers the expenses incurred due to the failed negotiation (e.g., travel costs, consultation fees) and the lost opportunity to engage in a profitable contract elsewhere.

2. Interpretive Phase (Interpretation)

Once the contract is concluded, good faith is a crucial canon for interpreting the parties' agreed terms. The rule is that the contract must be **interpreted according to good faith**, which means that the terms should be construed not just by their literal meaning, but by what reasonable and loyal parties would expect in that specific transaction. This allows the judiciary to seek the true, shared intent of the parties beyond semantic ambiguities.

3. Performance Phase (Execution)

The principle of good faith governs the actual performance of the contractual obligations. It requires that the duties be carried out with **diligence and loyalty**, ensuring that the execution of the contract is fair and cooperative.

- **Duty of Disclosure and Cooperation:** Parties must cooperate to facilitate the performance of the contract and disclose any information that arises during the performance phase that might affect the other party.
- **Avoiding Exorbitant Burdens:** The principle acts as a limit against demanding excessive or abusive performance from the counterparty, even if technically permitted by the literal terms of the contract.

In essence, good faith transforms the contractual relationship from a rigid, self-interested technical arrangement into a dynamic, cooperative one, ensuring that the contract is performed not just legally, but ethically and fairly.

THE FORMATION OF A CONTRACT

The formation of a contract is the process through which two or more parties formally reach an **agreement** that creates, modifies, or extinguishes a legal patrimonial relationship. The typical process involves the exchange of an **Offer** and an **Acceptance**.

The Offer

The offer is the proposal or declaration made by one party (**the offeror**) that contains all the essential elements of the prospective contract (agreement, object, cause, and, if required, form) and expresses the offeror's final will to be bound upon receiving acceptance.

- **Requisite Elements:** For an offer to be valid, it must be **complete** (contain all necessary terms) and convey the **firm intention** to contract.

The Acceptance

The acceptance is the declaration made by the other party (**the offeree**) that expresses their agreement to the terms of the offer.

- **Conformity:** The acceptance must be **fully compliant** with the terms of the offer. Any acceptance that alters, adds to, or modifies the terms of the original offer is not a true acceptance; rather, it constitutes a **counter-offer**, which reverses the roles of the parties and requires the original offeror to accept the new terms.

The Conclusion of the Contract: The Knowledge Rule

The contract is typically concluded at the moment when the party who made the offer **receives knowledge** of the other party's acceptance. This is known as the **Knowledge Rule**.

- **Presumption of Knowledge:** To protect the offeror from the difficulty of proving subjective knowledge, the law often establishes a **presumption of knowledge**: the acceptance is legally presumed to be known when it arrives at the address or domicile of the offeror. This shifts the burden of proof to the offeror to demonstrate that, through no fault of their own, they were unable to read or access the acceptance.

Alternative Forms of Formation

While the offer-acceptance model is the standard, contracts can also be formed through other mechanisms:

- **Contracts Concluded by Performance:** In some cases, particularly for contracts where immediate execution is necessary or customary, the offeree may start executing the performance **without prior notice of acceptance**. In this scenario, the contract is concluded at the time and place the performance begins, though the offeree must subsequently notify the offeror of the beginning of the execution.
- **Contracts with Obligations for One Party Only:** For agreements where only the offeror undertakes an obligation (e.g., a promise to donate), the contract is usually concluded simply by the **failure of the offeree to reject** the offer within a reasonable period.

The entire formation process is, as mentioned, governed by the duty of **Good Faith**, which is crucial during the pre-contractual negotiations.

PRINCIPLES OF A CONTRACT

Contract law is based on fundamental principles that govern the creation, content, interpretation, and enforcement of agreements, reflecting a balance between individual autonomy and legal compliance.

1. Contractual Autonomy (Freedom of Contract)

This is the foundational principle, meaning that parties are free to determine the content of the contract within the limits imposed by law. It includes:

- **Freedom to Contract:** The freedom to decide whether or not to enter into a contract.
- **Freedom of Form:** The freedom to choose the form of the contract, unless the law mandates a specific form (*ad substantiam*).
- **Freedom of Content:** The freedom to negotiate and determine the specific terms and clauses of the contract.

2. Principle of Legally Binding Effect (*Pacta Sunt Servanda*)

Once a contract is validly formed, it has the **force of law between the parties**. This means the parties are bound to perform their agreed-upon obligations and cannot unilaterally withdraw or modify the contract unless authorized by law or by mutual consent. This principle ensures the security and reliability of transactions.

3. Principle of Cause and Lawfulness

Every contract must have a **lawful cause**, which is its justifiable economic and social function. The cause must not be contrary to mandatory legal rules, public order, or morality. This principle ensures that the law only recognizes agreements that serve a legitimate purpose within the legal and ethical framework of society.

4. Principle of Good Faith

As previously detailed, this principle mandates that parties must act with **loyalty, honesty, and fairness** throughout the entire contractual relationship:

- **In the Pre-contractual Phase (Negotiations).**
- **In the Interpretation of the Contract.**
- **In the Performance (Execution) of the Contract.**

5. Principle of Patrimony

The contract must concern a **legal patrimonial relationship**, meaning the object of the agreement must be susceptible to **economic evaluation** or quantification. This distinguishes legally enforceable contracts from purely social or moral agreements.

6. Principle of Relative Effect

The contract generally produces legal effects **only between the contracting parties** and does not, as a rule, affect third parties. This is the principle of the relative effect of the contract. However, the law provides

exceptions to this principle, such as the **Contract in Favor of a Third Party** (where the parties agree that a third party will benefit from the contract), which is permissible.

DEFINITION AND FUNCTION OF TORT LAW

Tort Law, often referred to as **Civil Liability** or **Extra-contractual Liability**, is the legal system that provides a remedy for damage suffered by an injured party when that damage is caused by the unlawful conduct of another party, **outside the context of a pre-existing contractual relationship**.

Definition and Key Elements

The core function of Tort Law is established by the general clause of civil liability, which stipulates that any intentional or negligent act that causes **unjust damage** to another party obligates the person who committed the act to **compensate** the injured party.

The system requires proof of the following elements:

- **Damage:** A loss or harm suffered by the injured party (e.g., personal injury, property damage, economic loss). The damage must be **unjust** (unjustified by law).
- **Causality:** A direct link must be established between the action (or omission) of the defendant and the damage suffered by the injured party.
- **Fault (Intention or Negligence):** The conduct of the defendant must be attributable to them through either **intention** (the act was committed knowingly and willingly) or **negligence** (the failure to observe the required level of care, prudence, or skill).
- **Imputability:** The wrongdoer must have the **capacity to understand and intend** their actions at the time the act was committed.

Functions of Tort Law

Tort Law traditionally and primarily serves two main functions, although its role is evolving in the context of new technologies like AI:

1. Compensatory Function (The Primary Function) The fundamental role of Tort Law is to **compensate** the injured party for the damage suffered. The goal is to restore the victim, as much as possible, to the position they would have been in had the harmful event not occurred. Compensation is paid by the wrongdoer, who is held liable for the damage caused by their fault.

2. Deterrent/Preventive Function (Secondary Function) By imposing liability and the obligation to compensate, Tort Law aims to **deter** individuals and organizations from engaging in harmful conduct. The threat of financial responsibility encourages potential wrongdoers to adopt higher standards of care and caution in their activities, thereby preventing future instances of unjust damage.

Evolution of Tort Law and AI (Risk Allocation)

In the context of modern activities and AI, Tort Law is evolving to incorporate a function of **risk allocation**, often achieved through the application of **Objective Liability** (Liability without Fault):

- **Objective Liability:** In cases involving inherently dangerous activities or high-tech systems (like the operation of high-risk AI), liability can be imposed even without proof of fault (negligence or intention) on the part of the operator or producer.
- **Deep Pocket and Distributive Justice:** The shift towards objective liability is often rooted in theories like the "**Deep Pocket Theory**" and "**Distributive Justice**," which justify placing the burden of damage on the party best able to bear the financial cost (e.g., a wealthy corporation) or on the party who benefits economically from the risk-creating activity (e.g., the AI provider). This shift aims to ensure that victims are compensated effectively while efficiently distributing the unavoidable costs of modern risks across the entire society that benefits from the technology.

DEFINITION AND PRINCIPLES OF TORT LAW

Tort Law, also known as **Civil Liability** or **Extra-contractual Liability**, is the fundamental legal mechanism that addresses harm caused to an individual outside of any pre-existing contractual relationship. Its primary function is to provide a remedy for the damage suffered by an injured party when that damage is caused by the unlawful or culpable conduct of another. The core rule of Civil Liability establishes the obligation to compensate:

"Any intentional or negligent act that causes unjust damage to another party obligates the person who committed the act to compensate the injured party."

This system rests upon the required presence of several key elements or principles, which must be demonstrated for liability to be established:

A. Key Elements of Liability

1. **Damage:** The injured party must have suffered a loss or harm, which can be personal injury, property damage, or economic loss. Crucially, this damage must be **unjust** (unjustified by law or a lawful cause).
2. **Causality:** A direct and relevant causal link must be proven between the specific conduct (action or omission) of the defendant and the damage suffered by the injured party.
3. **Fault (Intention or Negligence):** The act committed by the defendant must be attributable to them through fault, which encompasses two degrees:
 - **Intention (Willful Misconduct):** The act was committed knowingly and willingly with the aim of causing the resulting damage.
 - **Negligence:** The failure to exercise the required level of care, prudence, or skill that would be expected in a given situation.
4. **Imputability:** The defendant must possess the **capacity to understand and intend** their actions at the time the act was committed. This ensures that legal responsibility is only assigned to those who can appreciate the consequences of their conduct.

B. Functions of Tort Law

Tort Law serves multiple functions within the legal system, which are being profoundly influenced by technological advancements like Artificial Intelligence (AI):

1. **Compensatory Function (Primary):** The primary and traditional goal is to **compensate** the victim. By obligating the wrongdoer to pay damages, the system seeks to restore the injured party to the financial or physical position they occupied before the harmful act occurred.
2. **Deterrent/Preventive Function (Secondary):** The imposition of liability acts as a **deterrent**, encouraging individuals and organizations to adopt higher standards of safety and caution. The threat of financial responsibility incentivizes preventative action, thereby reducing the incidence of unjust damage.
3. **Risk Allocation Function (Evolutionary):** In the modern context, especially concerning inherently dangerous activities or complex AI systems, Tort Law is evolving to incorporate **Objective Liability** (liability without fault). This shift is driven by principles like:
 - **Deep Pocket Theory:** Places the financial burden of risk on the party best able to bear it (e.g., a large corporation) or to insure against it.
 - **Distributive Justice:** Aims to distribute the inevitable costs of modern risks across the societal group that benefits from the activity (e.g., users or consumers of the technology). This ensures victims are compensated even when proving specific fault is technically difficult, as is often the case with opaque AI systems.

DIFFERENCE BETWEEN STRICT LIABILITY AND VICARIOUS LIABILITY IN TORT LAW

Both **Strict Liability** and **Vicarious Liability** are forms of **Objective Liability** (Liability without Fault) that deviate from the standard requirement of proving the defendant's personal fault. However, they differ fundamentally in the **basis** upon which liability is imposed.

Strict Liability (Objective Liability)

Strict Liability, or **Objective Liability**, is imposed based on the **risk** created by a particular activity, product, or system, regardless of the personal fault of the operator or producer.

- **Basis of Liability:** The foundation is the **dangerousness or inherent risk** of the activity itself. The law determines that if a party engages in an activity that carries an elevated risk, they should be responsible for the resulting harm, even if they exercised the utmost care.
- **Proof Required:** The injured party must prove only the **damage** and the **causal link** between the activity (or product) and the damage. They **do not** need to prove that the defendant was negligent or intended the harm.
- **Application (in the file's context):** This form of liability is essential in the context of the **New Product Liability Directive (2024)**, which expands the definition of "product" to include standalone software and digital services. This directive enforces **objective producer liability**, ensuring that the producer of a defective high-risk AI system is liable for harm, making it easier for victims to receive compensation without having to prove the producer's specific negligence, thereby focusing liability on risk management.

Vicarious Liability (Indirect Liability)

Vicarious Liability, often referred to as **Indirect Liability**, is imposed based on the **relationship** between the liable party and the actual tortfeasor, not the inherent risk of the activity.

- **Basis of Liability:** The foundation is a specific **legal relationship** (e.g., employer-employee, master-servant, parent-child) that justifies holding one party responsible for the wrongful acts committed by the other party. The liability shifts from the tortfeasor (the person who committed the act) to the responsible party (the person with the "deepest pocket").
- **Proof Required:** The injured party must prove the **fault** of the tortfeasor (e.g., the employee was negligent) and the **causal link** between the tortfeasor's act and the damage. The employer is then held liable *for* that employee's proven fault.
- **Application (in the file's context):** This concept is implicitly utilized when the law seeks to hold the party with greater control and resources responsible. The file notes that in the evolving system of liability, the party best able to bear the loss (the "deep pocket") often assumes the risk, which frequently means the employer or the principal is held liable for the actions of their servants or employees, regardless of whether the employer themselves was negligent in supervision.

In summary, the key difference is the legal rationale: **Strict Liability** is about **who controls the risk** (the user/producer of the dangerous activity), while **Vicarious Liability** is about **who controls the actor** (the employer/master).

WHAT IS INTERPRETATION

In a legal context, **interpretation** is the crucial process of determining the precise meaning and scope of a legal text, rule, or declaration of will. This process is essential because legal texts — whether a statutory provision, an international treaty, or a clause in a contract — are often drafted in general terms and must be applied to specific, unique circumstances. The file highlights two primary contexts for interpretation: the interpretation of **contracts** and the interpretation of **EU Law**.

1. Interpretation in Contract Law

The primary goal of contract interpretation is to ascertain the **true, shared intention** of the contracting parties, extending beyond the literal meaning of the words used in the agreement.

- **The Guiding Canon: Good Faith:** The central rule of contract interpretation is that the contract **must be interpreted according to good faith**. This means that the interpreter (often a judge) must construe the terms in a way that is consistent with the honest, loyal, and equitable conduct expected of reasonable parties. Good faith prevents a party from exploiting semantic ambiguities to gain an advantage that was clearly not within the original shared intent.
- **Seeking the True Intent:** Interpretation should not stop at the literal meaning of the words. It must consider the **behavior of the parties**, both before (during negotiations) and after the conclusion of the contract, to determine what they truly meant to agree upon.

2. Interpretation in European Union Law

The need for interpretation in EU law is paramount to ensure the functioning and consistency of the internal market across all Member States.

- **The Role of the European Court of Justice (ECJ):** The ECJ is vested with the specific task of ensuring that, in the **interpretation and application of the Treaties**, the law is observed.
- **The Preliminary Ruling Procedure:** This crucial mechanism relies entirely on interpretation. It allows a national court to refer a question to the ECJ concerning the **interpretation of EU law** (Treaties, Regulations, Directives). The ECJ then provides a binding interpretation of that law.
- **Goal: Uniformity:** The purpose of this judicial interpretation is to achieve the **uniform interpretation and application** of EU law across all Member States. By providing a single authoritative interpretation, the ECJ prevents national courts from applying the same EU law differently, which would otherwise lead to a fragmented legal system.

In both contexts, interpretation serves as the critical bridge between the abstract language of legal texts and the concrete realities of individual cases, ensuring that law is applied consistently, fairly, and in accordance with its intended purpose.

MODULO 2: ARTIFICIAL INTELLIGENCE, POLICY, ETHICS AND REGULATIONS

AI DEFINITION AND EXPECTATIONS IN EU POLICY

The defining profile of Artificial Intelligence (AI) is complex, as there is no single normative or scientific definition. In its broadest sense, AI is defined as the attempt to create machines "capable of performing tasks that require intelligence when performed by humans". This includes devices that imitate the human brain's capabilities, where functions are determined by the integrated action of billions of elements similar to neurons.

A more technical definition developed by the **High-Level Expert Group on AI (AI HLEG)** describes AI systems as software (and potentially hardware) systems designed by humans. These systems, when given a complex goal, act in physical or digital dimensions by:

- Perceiving their environment through data acquisition.
- Interpreting collected data, whether structured or unstructured.
- Reasoning about knowledge or processing derived information.
- Selecting the best actions to achieve the specified goal.

These systems can use symbolic rules or learn numerical models, and they can adapt their behavior by analyzing how past actions affected their environment.

Expectations in EU Policy: The EU views AI-based technologies as a means to improve lives across nearly every sector. Expectations include:

- **Personal Sphere:** Enhancing transportation, personalized education, assistance to vulnerable people, and healthcare.
- **Workplace:** Alleviating tedious and repetitive tasks.
- **Global Challenges:** Addressing climate change, logistics, and nutrition. The overarching goal is to ensure these technologies are "human-centered and trustworthy" while protecting health, safety, and fundamental rights.

EVOLUTION OF EU POLICY

The evolution of EU policy regarding the digital landscape and AI has transitioned from narrow economic regulation to a broad ethical and legal framework.

- **Early Digital Single Market (DSM):** The DSM originated years ago with the transition from analog to computational systems. Initial EU interventions focused on practical economic hurdles, such as electronic payments (Directive 2007/64/EC) and cross-border transactions to ensure a "level playing field" for all payment systems.
- **The "Europe 2020" Strategy:** Launched in 2010, this strategy aimed for "smart, sustainable, and inclusive growth". It introduced the "Digital Agenda for Europe" to accelerate high-speed internet rollout and reap the benefits of a unified digital market.
- **Shift to Ethics and AI:** As AI techniques began to underpin the digital market, the EU added an "ethical dimension" to its economic objectives. A pivotal moment was the 2017 European Parliament Resolution on civil law rules on robotics, which debated the "legal personality" of robots and liability for damages.
- **Intensification (2018–2020):** Policy accelerated with the 2018 "Artificial Intelligence for Europe" communication and the 2019 resolution on a comprehensive industrial policy for robotics. By 2020, the focus sharpened on civil liability and the creation of a "European agency" for AI

WHITE PAPER ON AI

The **Commission's White Paper of February 19, 2020 (COM(2020)0065)**, represents a definitive step in the EU's "stock-taking" of the digital market and AI. It highlights the necessity of moving beyond fragmented rules to a cohesive European approach.

Key aspects of the White Paper's approach include:

- **Balanced Regulation:** It stresses the need for "ad hoc European civil law regulations" to uniformly manage the use of AI across the Union. The goal is to regulate without hindering scientific and technological progress.
- **Trustworthy AI:** The paper aims to create a framework for AI that is based on European values and fundamental rights.
- **Identifying Risks:** It acknowledges that while AI offers immense benefits, it also presents risks that require legal adaptation to ensure the law "keeps pace" with scientific progress.
- **Addressing the "Regulatory Gap":** The White Paper and subsequent 2020 resolutions addressed the "unpredictability" of self-learning AI behavior, noting that existing frameworks like the Product Liability Directive (85/374/EEC) were insufficient for the new generation of autonomous robots.

AI ACT: LAW APPROACH

The AI Act (approved June 13, 2024) was designed to replace a "fragmented and sectoral approach" with a "general regulatory perspective".

- **Risk-Based Approach:** This is the cornerstone of the regulation. It distinguishes between AI systems based on their potential to cause harm.
 - **High-Risk Systems:** These are defined by their "significant potential... to cause harm or prejudice... in a random manner". Factors include the severity of possible damage, the degree of autonomy, and the context of use.
 - **Prohibited Practices:** The Act explicitly bans certain AI practices deemed unacceptable.
- **Horizontal and Harmonized Framework:** Instead of just sector-specific rules, the Act establishes a unified legal framework for the development, market placement, and use of AI across the entire Union.
- **Human-Centered and Trustworthy:** The approach intended to promote AI that respects the Charter of Fundamental Rights of the EU, including democracy and the rule of law, while simultaneously supporting innovation

MAIN POINTS OF THE AI ACT

The AI Act establishes several harmonized rules to govern the lifecycle of AI systems. The main points include:

- **Uniform Legal Framework:** It sets standard rules for placing AI systems on the market, putting them into service, and their ongoing use.
- **Generative AI Regulation:** Specific provisions are included for generative AI models, which are considered the "new frontier of technology".
- **Strict Obligations for High-Risk AI:** Operators of high-risk systems must follow specific requirements and are subject to strict monitoring.
- **Transparency Requirements:** The Act introduces transparency rules for certain AI systems to ensure users know they are interacting with an AI.
- **Market Monitoring and Enforcement:** It outlines rules for market surveillance, governance, and the enforcement of these regulations.
- **Innovation Support:** While regulating, the Act includes measures to support innovation to ensure Europe remains competitive in the global AI race

LIABILITY OF DAMAGE CAUSED BY AI

The PDF outlines a **dual-track mechanism** for liability, distinguishing between systems based on their risk level.

- **Strict Liability for High-Risk Systems:** Operators of high-risk systems are subject to strict liability for physical or virtual damage. They cannot evade liability by claiming they acted with due diligence; the only exception is proving *force majeure*.
- **Fault-Based Liability for Low-Risk Systems:** For systems not classified as high-risk, liability is based on the traditional criterion of fault. However, a "presumption of fault" may apply, and the operator must prove they complied with specific "duties of care" (e.g., proper selection of the system, monitoring, and installing updates) to exonerate themselves.
- **Operator Definitions:**
 - **Front-end operator:** The person who exercises control over the risk and benefits from the system's functioning.
 - **Back-end operator:** The person who defines technical characteristics and provides essential support services. They are often held jointly and severally liable.
- **Compulsory Insurance:** The EU proposes a mandatory insurance scheme for high-risk AI, similar to motor vehicle insurance, to ensure compensation for victims even if the damage was caused by autonomous activities.
- **Revision of Product Liability:** The EU suggests updating the **Product Liability Directive** to include digital content and services, and possibly reversing the burden of proof for AI-related damages.

FRAMEWORK CONVENTION

The documents highlight the EU's active participation in establishing a global legal standard for AI through specific international treaties.

- **Council of Europe Convention:** The EU has been engaged in negotiations for the **Council of Europe Convention on AI and human rights** (referenced as \$COM/2022/414\$ final)¹.
- **Foundational Alignment:** This convention and associated EU regulations are designed to be consistent with the **European Convention on Human Rights (ECHR)**².
- **Protection of Rights:** The primary objective of these framework efforts is to ensure that AI development respects human dignity, democracy, and the rule of law³.
- **Integration with EU Law:** The framework is intended to complement existing EU protections, such as the **Charter of Fundamental Rights of the European Union**, ensuring that technological progress does not bypass established human rights protections

INTERNATIONAL INITIATIVE ON THE REGULATION OF AI

The EU views the regulation of AI not just as an internal necessity, but as a global strategic priority.

- **Global Leadership:** The EU recognizes a "global race" for AI and aims to exercise leadership by setting high standards for "trustworthy AI".

- **Comparison with Global Peers:** The documents note that other major powers, including the **United States, Japan, China, and South Korea**, are already developing their own legal rules for robotics and AI.
- **Standard Setting:** A key goal of the EU's initiative is to promote its own rules—particularly regarding **civil liability**—at an international level to create a global benchmark.
- **Economic Risk Mitigation:** The EU acknowledges that if it fails to act promptly, it risks being forced to comply with standards imposed by other global markets, which may not align with European values.
- **Priority Status:** "International aspects" are specifically listed as one of the 14 key priority areas in the European Parliament's resolution on AI regulation

IS THE CURRENT EU LEGISLATION ON AI SUFFICIENT?

The consensus across the documents is that previous legal frameworks were **insufficient** to handle the unique challenges posed by AI, leading to the creation of the AI Act.

- **The "Legislative Gap":** The **Product Liability Directive (85/374/EEC)** was found to be inadequate for modern AI. While it covers products, it struggles with the "unpredictability" of AI behavior caused by self-learning capabilities and autonomous decision-making.
- **Legal Uncertainty:** The documents state that a "fragmented and incomplete Community framework" created confusion and legal uncertainty for both developers and consumers.
- **Horizontal vs. Sectoral:** While sector-specific laws (like those for criminal law or education) exist, the EU determined that a **horizontal, harmonized legal framework** (the AI Act) was necessary to provide a uniform level of protection across the Union.
- **Liability Limitations:** Current fault-based liability regimes are considered insufficient because they place an unfair burden on victims to prove negligence in complex "black box" AI systems.
- **GDPR Complementarity:** While the **GDPR** provides robust protection for personal data, it is not designed to regulate the safety, transparency, or specific mechanical risks of AI systems. Therefore, the AI Act was created to **complement** the GDPR for holistic governance.
- **Continuous Evolution:** The framework is described as one that must "continuously evolve" with technological progress, suggesting that while the AI Act is a major step, the legal landscape will require ongoing adaptation

ENTIRE FOCUS ON AI ACT

The **AI Act** (Regulation (EU) 2024/1689) is a comprehensive legislative framework designed to regulate artificial intelligence within the European Union. Below is a general presentation of its definition, goals, and structure.

1. Definition of AI Systems

The Act defines an **AI system** as a machine-based system that is designed to operate with varying levels of autonomy. Key characteristics include:

- **Capability to Infer:** It can derive models or algorithms from inputs and data to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.
- **Techniques:** These systems use machine learning or logic- and knowledge-based approaches to achieve explicit or implicit objectives.
- **Adaptiveness:** They may exhibit self-learning capabilities that allow the system to change while in use after deployment.

2. Goals of the Regulation

The primary purpose of the AI Act is to improve the functioning of the internal market while promoting the uptake of **human-centric and trustworthy AI**. Its core objectives include:

- **Protection of Rights:** Ensuring a high level of protection for health, safety, and fundamental rights, including democracy, the rule of law, and environmental protection.
- **Harmonization:** Establishing a uniform legal framework across the Union to prevent market fragmentation caused by diverging national rules.
- **Innovation Support:** Boosting innovation and employment by providing legal certainty and specific measures to support small and medium enterprises (SMEs) and startups.
- **Safety:** Protecting against the harmful effects of AI systems while ensuring the free movement of AI-based goods and services.

3. Body and Structure of the Act

The Act is structured into several chapters and articles that establish a risk-based approach to regulation. Key components include:

- **Chapter I: General Provisions:** Outlines the subject matter, scope, and key definitions.
- **Chapter II: Prohibited AI Practices:** Lists AI applications that are banned in the Union because they pose an unacceptable risk (e.g., subliminal techniques that distort behavior).
- **Chapter III: High-Risk AI Systems:** Sets strict requirements for AI systems that pose significant risks to health, safety, or fundamental rights, including rules on risk management, data governance, and human oversight.
- **Chapter IV: Transparency Obligations:** Establishes rules for certain systems to ensure users are aware they are interacting with an AI (e.g., for biometric categorization or emotion recognition).
- **Chapter V: General-Purpose AI Models:** Provides specific rules for models that can perform a wide range of distinct tasks, including obligations for providers of models with systemic risks.

- **Chapter VI: Measures in Support of Innovation:** Mandates the creation of **AI regulatory sandboxes** to allow for testing innovative AI under strict oversight before market placement.
- **Governance and Enforcement:** Establishes bodies like the **European Artificial Intelligence Board** and the **AI Office** to support implementation and monitor compliance.
- **Penalties:** Sets out rules for administrative fines and other penalties for non-compliance.

FOCUS ON THE ENTIRE WHITE PAPER

The 2020 White Paper on Artificial Intelligence, titled "**Artificial Intelligence: a European approach to excellence and trust**," represents a pivotal moment in the EU's digital strategy¹. It lays out a dual-pillar framework aimed at fostering AI development while ensuring high standards of safety and ethics².

1. Definition of the White Paper on AI

The White Paper is a strategic policy document issued by the European Commission that outlines a comprehensive vision for AI in Europe³.

- **A "European Approach":** It defines a specific path for AI that is human-centric, ethical, and sustainable, distinguishing it from other global models⁴.
- **Dual Strategy:** It defines its scope through two distinct but interconnected frameworks: an "**Ecosystem of Excellence**" and an "**Ecosystem of Trust**"⁵.
- **Risk-Based Definition:** It introduces a methodology for classifying AI systems, focusing specifically on "high-risk" applications that require stricter oversight⁶.

2. Goals of the White Paper

The primary mission of the White Paper is to ensure Europe becomes a global leader in AI while maintaining its unique values⁷.

- **Developing Excellence:** A major goal is to mobilize the entire value chain, from research and innovation to the deployment of AI in SMEs and public services⁸.
- **Building Public Trust:** The document aims to create a "predictable and certain" legal environment so that citizens and businesses feel safe using AI technologies⁹.
- **Single Market Alignment:** It seeks to prevent the fragmentation of the digital single market by proposing a unified set of rules for all Member States¹⁰.
- **Technological Sovereignty:** A key objective is to reduce dependence on non-EU technologies and foster a strong domestic industrial base for AI¹¹.

3. Body and Structure of the Document

The White Paper is structured into thematic sections that address the legal, economic, and ethical dimensions of AI¹².

- **The Ecosystem of Excellence (Action Plan):** This section details how the EU will invest in AI.
 - **Cooperation:** Working with Member States to align national strategies¹³.
 - **Research:** Establishing world-class research and testing centers¹⁴.
 - **Skills:** Bridging the skills gap through education and training programs¹⁵.
- **The Ecosystem of Trust (Regulatory Framework):** This section proposes the future legal requirements for AI.
 - **Scope of Regulation:** Defining which AI systems should be considered high-risk (e.g., healthcare, transport, or law enforcement)¹⁶.
 - **Mandatory Requirements:** Proposing rules for high-risk AI regarding training data quality, record-keeping, transparency, and human oversight¹⁷.
 - **Conformity Assessments:** Establishing mechanisms to verify that high-risk systems comply with safety and privacy standards before entering the market¹⁸.
- **Liability and Safety:** A dedicated portion of the body analyzes whether existing safety and liability rules (like the Product Liability Directive) need to be adapted for AI-specific risks, such as opacity and autonomy¹⁹.

MODULO 3: ARTIFICIAL INTELLIGENCE, PRIVACY AND INTERSECTION BETWEEN AI AND OPEN DATA

GDPR PRINCIPLES

The General Data Protection Regulation (GDPR) is the foundational law on data protection in the European Union, establishing a comprehensive set of principles that govern how personal data must be processed. These principles are not mere guidelines but legally binding requirements that organizations must adhere to, forming the core of data protection in the age of Artificial Intelligence.

The file explicitly mentions several key principles that are paramount in the context of AI development and deployment:

1. **Principle of Lawfulness, Fairness, and Transparency:** Personal data must be processed lawfully, fairly, and in a transparent manner in relation to the data subject. This requires that processing activities are based on a legitimate legal ground, are not misleading, and that data subjects are clearly informed about how their data is being used.
2. **Principle of Purpose Limitation:** Personal data must be collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes. This is a crucial principle for AI, as it limits the ability of developers to repurpose large datasets originally collected for one purpose (e.g., medical treatment) for a completely different AI training purpose (e.g., commercial prediction models).
3. **Principle of Data Minimization:** Personal data must be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed. This requires AI developers to design systems that use the smallest amount of data necessary to achieve the desired outcome, minimizing the risks associated with large-scale data processing.
4. **Principle of Accuracy:** Personal data must be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that are inaccurate are erased or rectified without delay. This is particularly relevant for AI, as inaccurate or biased training data can lead to inaccurate, unfair, and discriminatory outputs.

5. **Principle of Storage Limitation:** Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.
6. **Principle of Accountability:** This is an overarching principle requiring the data controller (the entity determining the purpose and means of processing) to be **responsible for, and able to demonstrate compliance** with, all the other principles. The controller must implement appropriate technical and organizational measures to ensure and prove that data processing is compliant.

PRIVACY AND DATA PROTECTION AS A FUNDAMENTAL RIGHT IN EUROPE

In the European Union, the protection of personal data is not merely a policy goal but a strictly protected fundamental right.

- **Legal Foundations:** This right is explicitly enshrined in **Article 8(1) of the Charter of Fundamental Rights of the EU** and **Article 16(1) of the Treaty on the Functioning of the EU (TFEU)**.
- **Universal Scope:** It applies to every natural person regardless of their nationality or place of residence.
- **Human-Centric Design:** European law mandates that the processing of personal data should be "designed to serve mankind".
- **Proportionality:** While fundamental, the right to data protection is not absolute; it must be balanced against other rights, such as freedom of expression or the right to conduct a business, in accordance with the principle of proportionality.
- **Democratic Safeguard:** Robust data protection is seen as essential for building the public trust necessary for the digital economy and a democratic society to function.

The protection of privacy and personal data holds a distinguished status in the European legal order, being enshrined as an autonomous and fundamental human right.

Constitutional Recognition

The right to data protection is formally recognized in **Article 8 of the Charter of Fundamental Rights of the European Union**. This Charter has the same binding legal value as the Founding Treaties of the Union (TEU and TFEU), making data protection a **constitutional principle** of the EU legal system.

The recognition in Article 8 states that:

- Everyone has the right to the **protection of personal data** concerning him or her.
- 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 to have access to data which has been collected concerning him or her and the **right to have it rectified**.

The Right to Privacy (Broader Context)

While Article 8 concerns the specific right to data protection, it is supported by the broader right to **respect for private and family life**, as articulated in **Article 7 of the Charter** and **Article 8 of the European Convention on Human Rights (ECHR)**. The European Court of Human Rights (ECtHR) has historically developed jurisprudence recognizing that the collection and storage of personal data, even by private entities, impacts an individual's right to privacy.

Autonomous and Horizontal Effect

The legal order considers data protection not merely a derivative of the right to privacy but an **autonomous right**. This right must be respected by all EU institutions and Member States when implementing EU law. Furthermore, its effect is **horizontal**, meaning it applies not just to public authorities but also to private companies and organizations that process personal data, which is the mechanism that subjects global tech companies and AI developers to the GDPR.

PRINCIPLE OF DATA PROTECTION IN THE CONTEXT OF AI

The integration of AI systems introduces specific challenges to traditional data protection principles, requiring a specialized approach.

- **Technological Neutrality:** GDPR is "technologically neutral," meaning its principles apply to AI processing just as they do to traditional databases.
- **Data Protection by Design and Default (Article 25):** Organizations must embed privacy protections into the very architecture of AI systems from the earliest development stage.
- **Automated Decision-Making (Article 22):** Data subjects have the right not to be subject to decisions based solely on automated processing—including profiling—if it produces legal or similarly significant effects.
- **Explainability:** Transparency requires that individuals be given "meaningful information about the logic involved" in AI decisions.
- **Minimization in Training:** AI models must be trained using the minimum amount of personal data necessary, often requiring techniques like pseudonymization or the use of synthetic data.

IMPACT OF GDPR ON AI

The GDPR serves as a major regulatory hurdle and a quality standard for AI development, influencing how algorithms are trained and deployed.

- **Extraterritorial Impact:** Any AI provider targeting the EU market or monitoring EU citizens must comply with GDPR, regardless of where the company is based.
- **Risk-Based Approach:** Both GDPR and the AI Act adopt a "risk-based approach," mandating stricter controls for high-risk processing activities.

- **Inhibiting Bias:** GDPR requires technical and organizational measures to prevent discriminatory effects based on sensitive categories like race, religion, or health during AI processing.
- **Data Subject Rights:** AI systems must be built to support rights such as data portability and the "right to be forgotten," which can be technically challenging for trained neural networks.
- **Sanctions:** Non-compliance carries heavy penalties—up to €20 million or 4% of global turnover—creating a strong incentive for "compliance-by-design" in AI startups.

RISKS OF THE USE OF AI

The documents identify several high-level risks associated with the large-scale use of AI systems.

- **Lack of Control and Transparency:** The "black box" nature of some AI makes it difficult for individuals to understand or challenge how their data is being used.
- **Mass Surveillance and Profiling:** AI enables the tracking and profiling of natural persons on an unprecedented scale, potentially infringing on the "private and family life" recognized in the Charter.
- **Inaccuracy and Discrimination:** Flawed data or biased algorithms can lead to inaccurate decisions that unfairly disadvantage certain groups.
- **Cybersecurity Risks:** AI systems can be vulnerable to new types of attacks, leading to large-scale data breaches that jeopardize integrity and confidentiality.
- **Circumvention of Rights:** Rapid technological developments may outpace legal protections, creating a risk that fundamental rights are bypassed by the sheer speed and scale of automated processing.

FOCUS ON THE ENTIRE GDPR (GENERAL DATA PROTECTION REGULATION)

Definition of the GDPR

The GDPR, formally known as **Regulation (EU) 2016/679**, is the primary European Union law governing the protection of natural persons regarding the processing of personal data and the free movement of such data.

- **Technological Neutrality:** The regulation is designed to be technologically neutral, meaning its protections apply to data processing regardless of the techniques used, including automated and manual systems.
- **Territorial Scope:** It applies to data controllers and processors established in the EU, as well as those outside the EU if they offer goods or services to, or monitor the behavior of, individuals located within the Union.
- **Legal Personality:** It treats data protection as a fundamental right belonging to every natural person, irrespective of their nationality or place of residence.

2. Goals of the Regulation

The GDPR was enacted to modernize and unify data protection across Europe, pursuing several key objectives:

- **Protecting Fundamental Rights:** The primary goal is to protect the fundamental rights and freedoms of natural persons, particularly their right to personal data protection.
- **Harmonization Across the EU:** It aims to remove obstacles to the free flow of personal data within the Union by ensuring an equivalent and consistent level of protection in all Member States.
- **Serving Mankind:** The regulation emphasizes that the processing of personal data should be "designed to serve mankind" and must be balanced against other rights according to the principle of proportionality.
- **Developing the Digital Economy:** By creating a strong and coherent framework backed by enforcement, the GDPR seeks to build the public trust necessary for the digital economy to thrive.
- **Empowering Individuals:** It ensures natural persons have control over their own personal data and provides legal certainty for individuals, economic operators, and public authorities.

3. The Body and Structure of the GDPR

The GDPR is a comprehensive legal text organized into several chapters that detail the rules, rights, and responsibilities of all parties involved in data processing.

- **Foundational Principles (Chapter II):** Establishes the core rules for processing, including lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, confidentiality, and accountability.
- **Rights of the Data Subject (Chapter III):** Outlines the specific powers individuals have over their data, such as:
 - **Transparency and Information:** The right to be informed about how data is used.
 - **Access and Rectification:** The right to see and correct one's data.
 - **Erase:** The 'right to be forgotten'.
 - **Data Portability:** The right to move data between services.
 - **Protection from Automated Decisions:** Rights regarding profiling and solely automated decision-making.
- **Controller and Processor Obligations (Chapter IV):**
 - **Privacy by Design and Default:** Requires organizations to embed privacy protections into system architectures from the start (Article 25).
 - **Security of Processing:** Mandates technical and organizational measures to protect data.
- **Independent Supervisory Authorities (Chapter VI):** Mandates that each Member State establish independent authorities to monitor and ensure compliance.

- **The European Data Protection Board (Chapter VII):** Establishes the "Board" as a Union body with legal personality to ensure consistent application of the regulation throughout the EU.
- **Sanctions and Remedies (Chapter VIII):** Defines the consequences for non-compliance, which can include fines of up to **€20 million or 4% of global annual turnover**.