

LAW FOR FOOD AND FASHION

MODULE 1 - Introduction to Law

LECTURE 1

Law

We are used to associating the word **law** with a number of other concepts such as: *authority, legislation, power, rules, sanction, punishment, directive, command, responsibility, justice, state, rights, obligations, duties* → in reality law is something less palpable than legislation or authority

➤ LAW

- is something that we have created in order to organise ourselves
- is written in the history of mankind
- is a human phenomenon strictly related to society = individuals alone don't need law
- requires a human relationship
- Aristotle used to say "*Law is order, good law is good order*" = the essence of law is not a command, but the act of bringing order
- is intended to prevent and resolve conflict by organising and describing the rights and duties in our society

➤ 2 factors of the origin of Law:

1. Organisation = people decide to behave in a certain way to pursue a specific objective
2. Compliance with the rules = people think that respecting the rule is binding, independently from the threat of a punishment

➤ Example: standing in a queue

- when people spontaneously form a queue waiting for a shop to open, they are unknowingly creating a law
- the law is = do not jump the queue, stay in the line
- for this law to exist, there is no need for external enforcement → people respect it spontaneously

➤ 2 types of Law:

1. Descriptive law = those found in natural sciences and economics, which describe how people or natural phenomena usually behave
2. Prescriptive law = rules governing how people ought to behave, gives a command

➤ Plurality of legal orders

We are subject to more systems of laws (legal orders) at the same time:

1. International organisations
2. State
3. Region or county
4. City
5. Private organisations

LECTURE 2

Sources of Law & Public and Private Law

➤ The Source of Law

Laws do not just exist → they must originate from someone or something and then be accepted by the members of the community

- **sources of law** = the authorities or the procedures from which laws derive their coercive force
- every community has its own sources of law:
 1. International organisations → treaties

2. States → legislation, case law
3. Regions and municipalities → local legislation
4. Companies, associations → contracts

➤ **Public and Private Law**

| PUBLIC LAW | | PRIVATE LAW |
|--|-----------|---|
| laws which <u>come from a public authority</u> (= State, European Union, Regions...) able to command and use their public power | | <u>regulate relationships between private subjects</u> (= individuals, associations, companies...) who do not have public power or do not exercise it |
| <u>vertical relationship</u> = public subjects can exercise their authority on the private subjects | vs | <u>horizontal relationship</u> = private subjects are equal |
| Public law can be distinguished in: <ol style="list-style-type: none"> 1. Constitutional law 2. Administration Law 3. Criminal law 4. Tax law 5. Civil procedure 6. Criminal procedure | | Private law can be distinguished in: <ol style="list-style-type: none"> 1. Contract law 2. Labour law 3. Family law 4. Business law |

➤ National legal systems in the world can be grouped into one of **2 basic systems**:

1. **COMMON LAW SYSTEM** → UK, USA, India, Australia
 - main sources of law = case law
 - importance to judicial decisions, judgments are binding for future judges
 - more dynamic development of law as it is in the hands of judges
2. **CIVIL LAW SYSTEM** → European Union, Latin America, most African and Asian States
 - main sources of law = written legislation (codes, statutes)
 - judges are bound to the law → they can't change the law, but only interpret it

LECTURE 3

The State & Public Powers

➤ **STATE** exercises most of the legal authority individuals are subject to

- vertical relationship between the central authority (the State) and the individuals
- prohibition of the use of force among individuals
- the State has the monopoly of the legitimate use of force
- political organisation characterized by **3 elements**:

1. People = citizens of the State = set of individuals to whom the state legal system attributes the status of citizen

- citizenship = legal relationship between citizen and state, be holders of rights and obligations
- how do gain citizenship:
 - ius sanguinis = child's citizenship is determined by that of his parents
 - ius matrimonii
 - ius soli = citizen because born in the territory
 - naturalisation = you are foreign and you move legally to a country, you integrate and live there for several years and then you can ask for citizenship

2. Territory = part of the earth's surface on which the citizens are stationed and over which the state exercises its authority, it includes:

- mainland
- airspace
- territorial sea → extends up to 12 maritim miles from the coast

- embassies in foreign countries
- 3. **Sovereignty** = absolute power, supreme authority
 - it doesn't recognize other powers above itself
 - intern = power on the territory
 - puppet states (ex. Cyprus) - failed states (ex. Siria, Libia)
- **CONSTITUTION** = fundamental law by which a State is governed
 - explains functioning of the State = how the public power is exercised
 - regulates the relationship between State and individuals
 - clarify the legal values on which the State is based
 - can be written or unwritten (example: United Kingdom → legal traditions)
- **Public Powers** → we have 3 main legal powers by which sovereignty is expressed
 1. Legislative power = power of law making
 - in democratic States it belongs to the Parliament, which is elected periodically by the citizens
 2. Executive power = power to apply the laws
 - exercised by the Government, which exercises it through the Public Administration (police, army, public officers, public schools, public hospitals....)
 3. Judicial power = solve problems and conflicts between subjects
 - exercised by courts (judges)
- **Separation of Power** → Montesquieu, *The Spirit of Law* (1748): if you have too much power in your hands the State won't work correctly but transform into a tyranny
 - in order to avoid despotism and tyranny the public powers must be separated → there must be a balance
 - **Checks and Balance** → as the 3 powers are independent, it is necessary to ensure this system in order to avoid that one power prevails on the other
 - example: impeachment = the process by which a legislative body initiates charges against a public official for misconduct

LECTURE 4

Conflict of Laws

- **STATE LEGAL ORDER**
 1. Constitution = fundamental law of a country
 2. Laws of the Parliaments = laws adopted by the legislator (= Parliament)
 - ordinary laws = laws of the Parliament
 3. Executive regulations of the Government
 - regulations or decretes



- **Interpretation**
 - enables the meaning of the law to be distinguished from the expression of the law that is from the language in which the provisions are written
 - rule judges and administrators have the right to interpret the law and reconstruct its meaning
 - rules of interpretations:
 1. Literal interpretation = look at the words of the law and understand the exact meaning of the words
 2. Teleological interpretation = apply the law looking at the objective and the aim of the law
 3. Systematic interpretation = you can't just look at one article, but every article must be connected to each other
- **CONTRASTS** = laws can contradict each other over time
 - in order to solve the conflict it is necessary to know:

1. what source the concerned laws belong to = at what level the law is positioned
2. when the laws concerned was adopted
3. the content of the laws

➤ **Ways to solve this contrasts:**

1. Chronological criterion
 - laws belonging to the same category or level, but approved at different times can contrast one another
 - the case can be resolved by applying the criterion of chronology
 - an old law that contrasts a new one approved at a later date is repealed by the new law and ceases to have effect
2. Hierarchical criterion
 - apply it when a law of a different category occupies a higher level in the hierarchy of legal sources
 - the law on a higher level prevails on the law on a lower level
 - the law on the lower level is declared illegitimate and then annulled
 - the Constitutional Court is in charge of ensuring that the Constitution prevails on all other laws
3. Speciality criterion
 - used when the conflict happens between a special and a general law
 - 2 laws govern the same factual situation, a law governing a specific subject matter (lex specialis) prevails a law governing only general matters (lex generalis)

LECTURE 5

Legal Status of Individuals

➤ **Legal status of individuals:**

- every legal order grants individuals a certain legal status, meaning a number of rights, freedoms and duties
 - your legal status depends on the legal order you are part of
- being citizen of one country gives you rights, freedoms and duties, which are different from those you would have if you were citizen of a different country
- being a member of a private association gives you rights, freedoms and duties, which are different from those you would have in a different association

➤ **A RIGHT** = a legal power (claim) which makes sure that something is done in the interest in the right-holder

- if you have a right then someone else will have an obligation
- someone has a duty to see that this right is honoured
- example: right to receive health, the state will have the obligation

➤ **A FREEDOM** = the ability to conduct your affairs without anyone else interference

- unlike a right, no one has a duty to oversee or enforce your freedom
- example: freedom of speech or religion

➤ **A DUTY** = the legal obligation and responsibility to carry out what the law asks

- the command can be to do something or to refrain from doing something
- example: respect the laws or pay taxes

➤ **Legal status can be categorised according to:**

1. Who has the ownership of the right freedom
2. How the rights and freedoms are exercised
3. Whether the rights and freedom can be accepted

➤ DIFFERENT TYPES OF RIGHTS AND FREEDOMS

1. Humans vs Citizens

| Human rights and freedoms | | Citizens rights and freedoms |
|---|----|--|
| = status granted to <u>all human beings</u> , no matter where they are from | | = rights which belong <u>only to citizens</u> |
| example: life, dignity, family, prohibition of torture, security, health | vs | example: vote, freedom of circulation, run for a public office |
| every legal order recognises a number of human rights <ul style="list-style-type: none"> • National constitutions • International law: <ul style="list-style-type: none"> ◦ <i>Universal Declaration on Human Rights</i> ◦ <i>United Nations Covenants on Human Rights</i> | | rights and duties of citizens are usually defined in the Constitution of the State |

2. Individual vs Collective → both individual and collective = Freedom of Speech, of Religion, of Protest

| Individual rights and freedoms | | Collective rights and freedoms |
|--|----|--|
| = rights held by individual people | vs | = rights <u>held by a group</u> of people and exercised together |
| example: life, human dignity, freedom of circulation | | example: association, family, reunion, demonstration |

3. Absolute vs Relative

| Absolute rights and freedoms | | Relative rights and freedoms |
|--|----|---|
| = <u>inviolable rights</u> - no exceptions | vs | = rights which can be <u>limited and balanced</u> with other rights |
| example: life, human dignity, physical integrity, family | | example: property, expression, association |

➤ DUTIES = civil obligation

The most common duties that States impose to their citizens and residents are:

1. respect the law
2. pay taxes
3. military service (if active)
4. vote

LECTURE 6

The Democratic Principle

➤ **DEMOCRACY** = sovereignty belongs to the people → all citizens are equal: they have the same right to vote

- all public power shall derive from a choice/decision of the people → **vote**
- those chosen to exercise a public power should be held to account for how it has been managed → **accountability**

Abramo Lincoln once said: "*Government of the people, by the people, for the people...*"

- of the people
- by the people = input legitimacy → the people agreed to do that, there is a decision of the people to do something → the population is the source of the decision

- for the people = output legitimacy → something made in the interest of the people

➤ **2 types:**

1. Direct democracy = citizens make decisions directly, without intermediation
 - example: Referendum, Popular Legislative Initiatives (= group of people suggest a new law)
2. Representative democracy = citizens elect their representative who will take decisions on their behalf
 - most democratic states have in place representative democracy, even if there are some applications of direct democracy

➤ **The right to Vote:**

Universal suffrage = extension of the right to vote to all citizens

- the vote is free and secret
- periodical elections of public offices: citizens vote for the Parliament every 10 years

➤ **The Rule of Law** = Stato di diritto

Universal suffrage is a necessary but not sufficient condition to have a democracy:

- democracy needs the rule of law = all public powers must be accountable to the law
- those who are in power must respect the law, in particular the Constitution
- the rule of law ensured the division of powers and the checks and balances between powers, which are necessary to avoid despotism
- the rule of law avoids the dictatorship of the majority and protects minorities of any kind

➤ **Pluralism** = celebrating diversity in the society (opposite = totalitarianism)

- **Pluralistic democracy** → due to the extension of the right to vote the interests represented in the parliament are diverse = pluralism
 - they are based on the principle of tolerance = differences and disagreements are not forbidden, but accepted → diversity is a richness

"I wholly disapprove of what you say, but I will defend to the death your right to say it"

Voltaire invented the **principle of tolerance** (1759)

- then it was modified by Popper *"how can we be tolerant, with the ones that aren't tolerant"*
- so we must be tolerant but until a certain point = there's a limit
- **Militant democracy** (fighting democracy) → democracy that can self-depend, we must be tolerant but there's a limit

➤ **The majority rule**

Democracy is based on the **Majority Rule** = decisions are taken by the majority = more than one-half of the votes

- if decisions were taken by unanimity, it would be almost impossible to govern → every member of the community would have a blocking right
- Rule of alternation = the majority becomes minority and vice versa
- 4 types:
 1. relative majority (simple) = the biggest group is in favour
 2. absolute majority = majority of the members, abstention count as negative votes
 3. qualified majority = you have to reach a percentage of the members
 4. unanimity majority = all members must be in favour (dictatorship)

LECTURE 7

Administrative Law

➤ **ADMINISTRATIVE LAW** → deals with the exercise of public powers by the executive in relation to private persons (including companies) and provides systems of legal protection for these persons

- provides the rules for the legitimate use of public power and offers procedures to deal with complaints
- **Social pact** = agreement you have with the State

➤ **Decisions** → the public authority applies general laws (example: environmental law, food law, construction law) in individual cases by adopting decisions

- the administrative decision is made for one specific person and applies the general provisions to the individual case
 - it is binding for the person to whom it is addressed
 - can be made on request or on initiative of the authority
- most common decisions = the decision to give or refuse permission
- decisions prescribe rights and duties to individuals

➤ **Licence** → is made of request → it gives permission to a person to do what is generally forbidden

- the granting of a licence is subject to the administrative law rules on decision making
- it may be granted under conditions and for a specified period of time

➤ **Subsidy** = an example of an administrative decisions = an entitlement to a sum of money provided by the administration authority for a specific activity for the benefit of a specific group of people or the general interest of society

➤ **Administrative Enforcement Action** = a set of physical acts taken by the administrative authority to end an infringement on the law

- it is an administrative decision that has to be notified to the persons responsible for the infringement before the measures are taken
- the infringement can be:
 - the presence of an object or a situation that is not allowed
 - an omission to do what legislation prescribes
- the public authorities will end the omission
- the offender will have to pay the costs in either case

➤ **Injunctions** = an alternative for the enforcement action = send the offender an administrative decision with the specification of their duty combined with a sum of money that they will have to pay for each day they fail to do their duty

- such a payment of money is not a fine, but a coercive sum of money = the sum of money will become larger for every period they fail to do that

➤ **Sanction** = a fixed sum of money that has to be paid for an offence already committed

- the offender cannot undo the sanction by performing his duties

LECTURE 8

Administrative Procedure

➤ **General principles of good governance**

In most legal systems, administrative authorities have to observe general principle of proper public administration (good governance) in their contact with persons and organisations

- Principles of good governance:
 - impartiality
 - transparency
 - good decision making
 - proportionality
 - accountability

➤ **Rules of administrative procedures**

Administrative procedure → relates to the rules and processes before the public administration

- when individuals apply to the public administration in order to obtain a certain decision (licence, permission, subsidy), some rules must be respected:

1. the time limit for taking a decision must be reasonable and provided by the law
2. administrative decisions must be written
3. the authority must give the person who requests the decision the opportunity to state their views

➤ **Objection to the administrative authority**

The person to whom the administrative decision is addressed has the right to submit a notice of objection to the administrative authority which made the decision

- such an objection gives the authority the obligation to reconsider its decision
- the authority has the power to change its decision based on arguments that are not part of the objections

➤ **Appeal to the judge**

As a consequence of the rule of law it is always possible to appeal to a Court by submitting a notice of appeal to that court

- the Court is independent of the administrative authorities → it can declare the administrative decision null and void
- the authority that made the decision will have to make a new one

➤ **Legitimation to act**

- the person for whom the decision is made has the rights of objection and appeal
- the same rights are given to interested parties = persons whose interest is directly affected by the decision
- the criterion of "*directly affected interest*" separated the persons who are entitled to object from persons in the general public to whom this right is denied

LECTURE 9

Criminal Law

➤ **CRIMINAL LAW** = the branch of law that defines crimes and fixes punishments for them

- also includes rules and procedures for preventing and investigating crimes and prosecuting suspected criminals
- **Crime** = an offence against the collective interest, which according to the legislator deserves a punishment

➤ **Punishment** = a sanction addressed to the transgressor of criminal laws

- punishment can be:
 - prison = a building in which people are legally held as a punishment for a crime they have committed or while awaiting trial
 - fines = penalty that requires the convicted person to pay to the public treasure a sum of money fixed by law after an offence has been committed
 - community service = unpaid work, intended to be of social use, that an offender is required to do instead of going to prison
- in the past the purpose of punishment was mainly general or special prevention
- today the purpose of punishment for most countries is rehabilitation

➤ **Elements of a Crime**

1. Criminal Act (*Actus Reus*) = in Latin "guilty act" → refers to any unlawful act that takes place = violation of a legal interest
1. Lack of justifications = self-defence; state of necessity
2. Criminal Intent = (*Mens Rea*) = in order for a criminal act to qualify as a crime, the mental state of the convicted person must be taken into consideration

→ the 3 elements must be assessed in chronological order

➤ **Criminal Code** = an inventory of crimes and punishments → it contains the definition of crimes and states the limits to the punishment that a judge can give

- the code does not contain all the offences and crimes
- the legislator makes laws on other issues and includes the definition of new crimes

➤ **Criminal Procedure**

People suspected or accused of crime shall face a criminal trial

- the Constitution provides them with a number of fundamental rights
- due process:
 1. the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are brought
 2. the alleged offender shall have adequate time and conditions to prepare a defence
 3. the formation of evidence is based on the principle of adversary hearings
 4. the judge is third and impartial
 5. guilt must be proven beyond any reasonable doubt
 6. criminal responsibility is personal

➤ **Criminal Law vs Administrative Law**

Both criminal law and administrative law protect public interest = their purpose is that individuals behave correctly in the society, as well as the public authority

- the violation of administrative law determines either an administrative sanction or an injunction
- the violation of criminal law has heavier consequences, such as the loss of freedom, heavy economic losses or the obligation to perform social works

LECTURE 10

Private Law = Law of persons

➤ **PRIVATE LAW** = the rules regulating the relationships between individuals or organisations without public power

- public authorities are not involved in these relations and disputes
- persons are free to enter into the legal relations of their choice, and they have the power to mutually influence the contents of their relation

➤ **Public authority in public law**

- the public authority intervenes:
 1. by providing legal instruments that individuals will use to regulate their relationships
 2. by preventing the abuse of private freedoms
- the public authority can be a party in a private law contract, but in this case it must be treated as any other private subject and public powers cannot be used in this relationship
- in civil law countries, private laws are collected in the civil code

➤ **Subjects of private law**

There are 2 distinctly different characters in private law:

1. Natural person = real human being = individuals
2. Legal person = non-human entity that is treated as a person for limited legal purposes = companies, associations, organizations, corporations

➤ Subjects of law are entitled to **rights and duties** → distinction between:

- Legal capacity = the capability to be a holder of rights and obligations
- Capacity to act = the capability to enter into binding obligations (= actions producing legal effects)

➤ **Representation** = a legal construct that defines that the acts and omissions of one person are deemed to be the acts and omissions of another person

- the law takes regard solely of the legal consequences for the person who is represented
- the representative does not bind itself

LECTURE 11

Law of Property

➤ **GOODS** → from a legal perspective, goods are everything that can be the object of rights

- good must:
 - have an economic value
 - be quantified (it can be limited)
 - be accessible (it can be used)
- examples of goods: house, pen, book, bottle of water, apple, software, novel, dog, cat

➤ **Categories of goods:**

1. public (streets, beach, park...) or private (house, car, clothes...) goods
2. movable (everything you can move, car...) or immovable (house, monument, street...) goods
3. material (everything that we can touch) or immaterial (ideas) goods

➤ **LAW OF PROPERTY** = ownership = the monopoly of power on a certain object

- owner has the right to enjoy and dispose things fully and exclusively within the limits and with observance of the duties established by the legal order
- rights included in property:
 - right to access the property
 - right to use
 - right to consume
 - right to transfer
 - right to exclude use by others

➤ **Ownership can be gained in different ways:**

1. invention = create something new or find something, which does not belong to anyone
2. adverse possession = ownership of property is gained by behaving like the owner for a certain period of time
3. contract = agreement between two or more parties
 - purchase (buyer - seller) or donation (donator - recipient)
 - contract of donation → donator provides something at the recipient, which has to accept or reject the gift (mom that buys clothes for the newborn)
4. inheritance = whatever one receives upon the death of someone (usually a relative) due to the laws or by will

LECTURE 12

Legal Obligations

➤ **LEGAL OBLIGATION** = relationship by which one party is bound to perform a service in favour of another party = the relationship between a **creditor** and a **debtor**

- the **debtor** has the duty to perform a certain service in favour of the creditor
- the **creditor** has the right to request a certain service from the debtor

➤ example: in a purchase there are 2 obligations:

1. giving an object → obligation 1 = the seller is the debtor, while the buyer is the creditor
2. paying a price → obligation 2 = the buyer is the debtor, while the seller is the creditor

➤ Object of the obligation

- the service must have an economic value
- the service shall consist of either:
 - doing something
 - giving something
 - not doing something

➤ **Principle of Good Faith** = a general and comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others

- example: lending something to someone and trusting him that they'll give it back
- it derives from the translation of the Latin term *bona fide*, and courts use the two terms interchangeably

➤ Sources of obligations

The main sources of obligations are:

1. contracts = exchange of obligations
2. unilateral promises = only one party is making a promise, an offeree has an obligation to fulfil the promise
3. tort = when you hurt somebody, you cause a damage, you have the obligation to refund
 - example: if you hit a car, you are then obligated to refund the damage

LECTURE 13

Law of Contracts

➤ **CONTRACT** = an agreement that creates binding obligations between the parties involved

- is a mutual exchange of promises, which the law will enforce
- to make a valid contract, there must be two or more separate and definite parties
 1. an offer → proposes the agreement
 2. an acceptance → accept the agreement
 3. the intention to create legal relations
 4. a capacity to do so → capacity to act = be able to understand the consequences of their actions (adults, tutors, mentally fine)

➤ Form of the contract

Contracts may be either oral or written

- certain classes of contracts must be concluded in writing in order to be enforceable
 - example: the sale and transfer of real estate

➤ Invalidity of the contract

The contract is invalid (**void**) = cannot be binding = **cannot produce legal consequences** from the beginning in case of:

1. one of the two parties doesn't have the capacity to act
 - example: contract between children or between people with mental disability
2. mistake → a contracting party whose consent was given by mistake can demand annulment of the contract when the mistake is essential and recognizable by another contracting party at the time of the contract's making
 - mistake must be relevant = without that mistake you would've not take part to the agreement
 - mistake must be knowable = the other part knew the mistake but didn't say anything
3. fraud = one of the two parties is lying, creating a false situation on purpose
 - example: putting older versions of iPhone in the new iPhone cases
 - if you prove the fraud you can nullify the contract

4. **force** (violence) → is ground for annulment when it consists of physical or moral restraint upon the will of a person, which induces him or her to give consent
 - example: if you don't buy my car I will tell your wife that you're cheating on her
5. the object of the contract is **illicit** = the obligations itself is illegal
 - it proves contrary to mandatory rules, public order or good morals

➤ **Non compliance with the contract** = breaking the agreement, the contract was fine but then one of the two parties did not respect the agreement

- when one of the parties fails to perform the obligation due properly, he is considered in **breach**
- the obligation to fulfil the promises made in the contract, can be upheld in a court of law
- the creditor can choose to:
 1. demand the **termination** = there is not trust anymore so you ask to end the contract + pay the damages = recover **compensation** for the end of the contract
 2. request the fulfilment of the obligation late, but requests a monetary compensation for the delay

LECTURE 14

Tort Law

➤ **TORT** = a civil wrong, cause a damage, your responsible of your wrong actions

- it happens when someone suffers **loss** or **harm** resulting in legal liability for the person who causes the damage
- who unfairly causes someone else to suffer loss or harm has the legal liability to **repair** the damage caused = the person **who causes tort** is **legally responsible**
- can be committed by:
 1. negligence = by mistake
 2. intent = intentionally → a damage is considered more serious if one can prove that the tort was made on purpose = higher reparation

➤ **Alterum non laedere** = non danneggiare gli altri = **don't cause harm to other people**

- general obligation of **Alterum non laedere** = **duty of being careful**, which we all owe to others who may foreseeably be affected by our actions
- act responsibly so that people won't suffer by your consequences
- example: drive safely, you hit your neighbour car
- such duty is **balanced by a standard test of reasonableness** that is applied so as not to extend torts to remote and generalised effects
 - to **prevent domino effect** → we take into account only the immediate consequences (immediate cause-effect)

➤ **Types of damages:**

1. **moral** = insult, defamation
2. **material** = they can be observed, physical damages

➤ **Reparation** = the consequence of tort

1. **restitution in kind** = you reestablish the situation that there was before the damage
 - you scratch the car of your neighbour, you bring it to repair and stop
2. **monetary compensation** = you give a price to the damage and pay for it

➤ **Tort and criminal responsibility**

- **criminal trial** → done by public prosecutor which will start criminal proceedings to obtain a conviction and punishment
- **civil trial** → will start on request of the civil victim

LECTURE 15

Intellectual Property

➤ **Intellectual Property Rights** → allow the creator or owner of a patent, trademark or copyright to benefit from his or her own work or investment and to protect new creations from others

- the legal protection of these new creations is thought to encourage the expenditure of additional resources, which leads to further innovation

➤ **INTELLECTUAL PROPERTY** → refers to creations of the mind, inventions, literary and artistic works, and symbols, names and images used in commerce

- is divided into 2 categories:
 1. industrial property → includes patents for invention, trademarks, industrial designs and geographical indications
 2. copyright → includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures and architectural designs

➤ **Legal Sources**

- National law
- EU law
- International law
 - *Paris Convention for Protection of Industrial Property* 1967
 - *Berne Convention for the Protection of Literary and Artistic Works* 1971
 - *Trade-related aspects of Intellectual Property Agreement* 1994
- World Intellectual Property Organization (WIPO)

➤ **PATENTS** (brevetto / licenza) = an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem

- the patent owner:
 - has the right to decide who may or may not use the patented invention for the period in which the invention is protected
 - can sell the right on the invention to someone else, who will then become the new owner of the patent
- once a patent expires, the protection ends, and an invention enters the public domain, that is the owner no longer holds exclusive rights to the invention, which becomes available for commercial exploitation by others
- all patent owners are obliged in return for patent protection to publicly disclose information on their invention
- to acquire a patent the inventor needs to file a patent application
- an invention must in general fulfil some **conditions to be protected by a patent**:
 1. it must be of practical use
 2. it must show an element of novelty, that is some new characteristic that is not known in the body of existing knowledge in its technical field
 3. the subject must be patentable under law
- the patent is granted by a national patent office or by a regional office that does the work for a number of countries
 - in the EU there is the *European Patent Office* (EPO)
- *Patent Cooperation Treaty* (PCT) provides for the filing of a single international patent application, which has the same effect as national application filed in the designated countries

➤ **TRADEMARKS** = a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise

- it provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods and services, or to authorise another to use it in return for payment
- the period of protection varies, but a trademark can be renewed indefinitely on payment of corresponding fees
- the application for registration of a trademark must be filed with the appropriate national or regional trademark office
- the sign must fulfil certain conditions in order to be protected as a trademark or other type of mark
 - it must be distinctive so that consumers can distinguish it from other trademarks identifying other products, as well as identify a particular product with it
 - it must not mislead or deceive customers or violate public order or morality
- *Madrid Agreement* → concerning the International Registration of Marks



➤ **INDUSTRIAL DESIGN** = the ornamental or aesthetic aspect of the article

- instead of or in addition to a trademark, a company may protect the distinctive features of its brand as industrial design
- to be protected under most national laws, an industrial design must be new and non-functional
- when an industrial design is protected, the owner is assured an exclusive right against unauthorised copying or imitation of the design by third parties
- in most countries an industrial design must be registered in order to be protected under industrial design law
- *The Hague Agreement* → concerning the international deposit of industrial design

➤ **GEOGRAPHICAL INDICATION** = a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin

- it can be applied to several types of products: natural, agricultural, and manufactured
- it can be used only by the producers who make their product into the designated place
- while the trademark is individual, the geographical indication is collective

LECTURE 16

Resolution of conflicts

➤ **Conflicts of private law**

The Judiciary power has the function to solve conflict between subjects

- conflict of private law will be solved by civil judges
- the law provides the rules for court cases to solve conflicts about private law
 - the rules prescribe how to begin a case and how to proceed before the court of first instance and to appeal to higher courts

➤ **Civil proceedings**

Litigants = the parties in a civil trial

1. claimant = party that initiated the legal action
 - he/she has a claim → the judge will accept or reject the claim
 - requests the defendant to perform a specific obligation:
 - do something
 - give something
 - refrain from doing something
2. defendant = litigant against whom the action is taken
 - he/she is claimed to do something

➤ Principles of civil proceedings

Civil law trials are subject to a number of principles:

1. the trial starts on request of the claimant
2. the court can answer only the questions (requests) of the claimant
3. the court can evaluate only the evidence provided by the parties

➤ International disputes between private subjects

Example: A contract that was negotiated in London between a Chinese and an American is agreed on by an exchange of signed documents in Amsterdam

- What law should apply? What Court should be in charge of solving the conflict?
 - the parties can agree to apply a certain law to the country and choose the competent court
- **International private law** = a set of rules of procedural law that regulates the relationships between physical and judicial persons of different nationalities

➤ Alternative dispute resolutions

1. Mediation

- mediators = individuals trained in negotiations, who bring opposing parties together and attempt to work out a settlement or agreement that both parties accept or reject

2. Arbitration

- the two sides select an impartial third party = arbitrator
- agree in advance to comply with the arbitrator's decision and then participate in a hearing at which both sides can present evidence and testimony
- the arbitrator's decision is usually final, and courts rarely reexamine it

MODULE 2 - EU Law

LECTURE A

International Law

➤ The International Community = community of States

- the relationship is horizontal → from a legal point of view their all equal
- at the global level there isn't a central authority, but **206 independent States**
- states don't recognise any superior authority
 - the use of force has been therefore the traditional instrument to settle disputes between states

➤ The International legal order

Horizontal relations between states → there is no central authority

- equal sovereignty of States (regardless of their size, population and power)
- spontaneous respect of rules → there is no authority in charge of enforcing international rules

➤ The 3 main legal functions are decentralized

1. Law making → 2 sources of laws in international community:

- treaties = agreements between states
 - in order to make a treaty: negotiate the text, sign the text, and rectify the text
 - ratification = legal procedure by which a state makes a treaty bind to himself
- customary law = general practice, legal traditions and pattern behavior which after a long time they become binding as laws
 - example: law of navigation

2. Law enforcement

- countermeasures = economic sanctions / military operations

3. Solving disputes

- arbitration

➤ STATES = primary subjects of international law

- international law was created in the first instance by the states and for the states
- states have full capacity of law
- the State is composed by 3 elements, that must exist in concrete:
 1. people = citizens
 2. territory = mainland, internal waters, sea and air
 3. sovereignty = supreme power or authority

→ when these elements are present a state is born

➤ The Role of Recognition

- recognition has not legal effect on the international personality of the entity
- recognition has political meaning = recognising states are ready to accept the new state in the international community
- principle of effectiveness = you need power
- thanks to the political relations with recognising states, the new state can consolidate its sovereignty
 - example: Kosovo

➤ INTERNATIONALS ORGANIZATIONS = other subjects of international law

- created after WWI because of the need of cooperation among nations
- instrument in the hand of the state to strengthen their cooperation and achieve a common goals
- IO are provided with resources and some autonomy from member states
- example: UN, EU, NATO, WTO...

➤ INDIVIDUALS

- after WW2 and the spread of new ideologies human beings gained legal rights and duties in international legal order
- this happened in particular in 2 areas of international law:
 1. Human rights = all individuals of the world are provided with certain basic rights
 - life, personal integrity, no discrimination, family, propriety...
 2. International criminal law = all individuals of the world are obliged to refrain from breaching of international law
 - crimes against humanity, genocide, aggression, war crime...

LECTURE B

Use of force in International Law

➤ Law governing the use of force

- Jus ad bellum → explains when a States can use force, when war is legal between states
- Jus ad bello → regulates how force can be used
 - humanitarian law = it disciplines how war shall be conducted

➤ Use of Force - HISTORICAL BACKGROUND

War was a standard way to resolve conflicts between communities

Until WW2 when something changed → atomic bomb

➤ After the disaster of WW1, States made their first efforts to limit war

- creation of **The League of Nations** = international organizations which purpose was peace
 - introduced a procedure in which, before starting a war, they had to wait a cooling-off period of 3 months and try to find a compromise, if they did not reach any they could start a fight
- **Paris Pact** (1928) proposed by France and the USA on the banning of war

➤ After WW2 we decided to create the **United Nations**

- composed by **193 States**
- General Secretary = Antonio Guterres
- **Security Council** = 15 states which aim is to maintain peace
 - 5 are permanent, the winners of WW2: US, UK, France, Russia, China
 - 10 are elected every year
- **General Assembly** = 1 representative for every Member State, space of discussion, they propose but can't take any decisions
- **UN Charter** = treaty which established the United Nations
 - main points in Article 2

➤ **Art. 2 of the UN Charter: Prohibition of the use of force**

- **war is illegal** → Members shall settle their international disputes by peaceful means, so that international peace, security and justice are not endangered
- all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations

➤ **2 exceptions to the general prohibition of the use of force**

- **Art. 51** of the UN Charter → **self-defense** = right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations
- **Art. 42** of the UN Charter → the Security Council **authorizes an attack**: may take an action by air, sea, or land forces as necessary to maintain or restore international peace and security
 - example: Libyan war

➤ **SELF-DEFENSE** = the lawful reaction to an armed attack

- **armed attack** = an aggression against the territorial integrity and political independence of a State
- the attack must be of such magnitude that one cannot repel it otherwise → must be a significant attack
- attack can come from: states but also other subjects such as insurgents and terrorist organizations
 - example: 9/11 → Al Qaeda → the US with these excuse attacked Afghanistan because BinLaden and Al Qaeda were hosting there = he war was legal
- defense must be proportional to the offense and the necessary to respond to it
 - it should then respect human rights and the law of war, it should continue until the Security Council intervenes
- the concept of self-defense can be easily manipulated to start illegal wars

➤ **Development of the concept of self-defense**

- Collective self-defense = any state has the right to use force in support of another State which has suffered an armed attack
 - example: NATO agreement
- Defense against armed infiltration and indirect aggression = a State can always defend itself in case of attack from infiltration troops or group of volunteers supported by a foreign government
- Humanitarian intervention = the use of force to stop atrocities abroad is not clearly legitimate
 - example: war in Kosovo (1999) → there was an extermination of the community by the Serbs, they asked the Security Council to intervene, not every State agreed but for humanitarian intervention they still intervened, although the UN didn't authorize it
 - political manipulation because it can become an excuse to authorize illegal attacks
 - example: Georgia (2008) → 2 regions where we have russian minorities, the Russian president said they were discriminated so they wanted to intervene for humanitarian reasons so they attacked = manipulation because there was not a real discrimination
- Pre-emptive self-defense = attacking a state before it might attack is not allowed

- example: US and UK attacked Iraq with the excuse they were creating mass bomb, in reality it wasn't true → it was an illegal attack

LECTURE C

Legal nature of the European Union

The process of European Integration

➤ EUROPEAN UNION = a political organization composed of states and individuals

- is the result of an integration process, which has started more than 60 years ago and is still ongoing
- even if the EU might seem a State because we have a currency (Euro) + has laws which prevail on national laws + Parliament (elected every 5 years) + citizenship
 - it's not a State because it does not have an original and independent sovereignty
 - it is only an international organization created by the Member States
- the EU can't emancipate from the Member States:
 - it exercises only the powers that the Member States decided to transfer it
 - is not able to self- determine

➤ Why did Europeans create the EU

Europeans after WW2 had to deal with the problem of war

- they had to find a new way to pursuit peace
 - *Perpetual Peace*, Kant (1795) "*Peace is not just the absence of war (this is a longer truce), real peace is the impossibility of war*"
- in order to make war impossible, states shall recognise the authority of common institutions above themselves

➤ Schuman declaration

After the disaster of WW2 and totalitarianism, the Europe of sovereign nations was in ruins

- **Robert Schuman** (French Minister of Foreign affairs) made a famous declaration on **9th May 1950** "*Schuman declaration*"
 - he stated that we had to change the approach, speaking about peace was not enough, we needed to create a new european order where we have to reconciliate France and Germany
 - France and Germany were fighting for steel and coal, so they decided that instead of discussing they could share the production by creating a community which will manage the resources → create little by little the **European Federation** open to the participation of the other countries of Europe
 - Europe will **not be made all at once**, or according to a single plan → it will **be built through concrete achievements** which first create a *de facto solidarity*
 - this project was not only a Franco-German project but the proposal to join was addressed to all the states of Europe, the countries which joined were:
 1. France
 2. Germany
 3. Italy
 4. Belgium
 5. The Netherlands
 6. Luxemburg
 - the UK was invited but refused → Churchill advocated the idea of the European Federation, they didn't want to share sovereignty → they will join later to recover after war

➤ European integration

- **1950: Schuman Declaration** → European Federation
- **1951: Paris Treaty** → European Steel and Coal Community

- **1957: Rome Treaties** → **European Economic Community**
- 1979: direct election of the European Parliament
- **1985: Schengen agreement** → no border control, they won't check your passport
- 1986: European Single Act
- **1992: Maastricht Treaty** → European Community becomes **European Union** + creation of a single European currency (Euro)
- 1997: Amsterdam Treaty
- 2001: Nice Treaty
- **2004: enlargement of the EU to eastern Europe** → we welcomed states such as: Hungary, Balcanic Countries, Poland, Czech Republic, Slovakia, Cyprus...
- **2007: Lisbon Treaty** → last updates of the EU
- **2016: Brexit referendum** → UK leaves (finalizes it in 2020)
- **2020: establishment of the European Recovery Fund** (European Public Debt)

➤ European Enlargement Process

- **Schuman Declaration** → 6 founding countries:
 1. France
 2. West Germany
 3. Italy
 4. Belgium
 5. The Netherlands
 6. Luxemburg
- first enlargement in 1973 → Ireland, UK, Denmark
- 1981 → Greece
- 1986 → Spain and Portugal
- 1995 → Finland, Sweden, Austria
- 2004 → Baltic countries (Lithuania, Latvia, Estonia), Poland, Hungary, Slovakia, Czech Republic, Malta, Cyprus, Slovenia
- 2007 → Romania, Bulgaria
- 2013 → Croatia
- 2020 → UK leaves
- running to become new Member States: Serbia, North Macedonia, Albania, Moldavia, Ukraine, Turkey
 - EU is dealing with big problems nowadays, some Member States are turning into dictatorship so for the moment they want to resolve problems and then enlarge



LECTURE D

Values of the EU *Objectives of the EU*

➤ **VALUES of the EU** → represent what the Union is

The EU and its Member States share a number of values, which define what the EU is and stands for

- **Article 2 of the Treaty on the European Union:** *“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”*
- today some European states are not respecting these values, in particular the value of the rule of law = whoever has a public power must respect the law (Constitution)
 - Hungary in conflict with the EU because to keep the power they changed the Constitution

- illiberal democracy = you do have elections, but the Constitution was changed to abolish the division of power so that the Government can have the control over the Parliament and the Courts + pluralism and civil rights are limited
- **Poland** in conflict with the EU because the leading party "*Freedom and Law*" changed ordinary laws in order to steal the Judiciary power, and limit their power
 - they passed a law by which judges had to retire earlier, so most of them were forced to retire, and their free spots were assigned to friends of the Government
 - they created a new Disciplinary Chamber (special tribunal who control if judges are acting well) so judges who were not in line with the Government were punished, persecuted and discriminated

➤ Protection of EU Values

Respecting the values of the EU is one of the necessary conditions to fulfill in order to join the Union

- Member States are bound to respect the values of the EU otherwise they may be subject to a sanction
- actions which can be taken are:
 1. **Political sanction** (art. 7 TEU) → on initiative from the EU Parliament, Commission or the Member States, the Council can deprive the Member State concerned of its voting rights
 - unanimity rule = all states must be in favor
 - its not working because when they start this procedure Hungary or Poland will defend each other
 - the Union doesn't work with unanimity rule but only with the majority
 2. **Judicial sanction** (art. 258-260 TFEU) → an infringement procedure can be launched in front of the European Court of Justice in cases of non-compliance of a national law with EU law and EU values in individual and specific cases
 - example: Poland has been economically sanctioned a lot because of their many national laws against the rule of law
 3. **Financial sanction** → new regulation on a general regime of conditionality for the protection of the Union budget (2020)
 - the state loses access to the European Funds = losing billion of euros
 - more effective sanction

➤ OBJECTIVES of the EU → explain what the Union does

- the EU was given more and more objectives, which cover today the full range of policies
- objectives can be achieved in different ways:
 1. through a transfer of competences to the Union
 - Member States give power to the Union = receiving sovereignty
 2. the Union simply coordinates national policies in a certain area

➤ preliminary objective:

- **Art. 1 of the Treaty on the European Union** (TEU) → *Ever closer Union* = process ongoing towards a stronger and closer integration
 - "*By this Treaty, the Member States establish among themselves a European Union, hereinafter called The Union*"
 - EU getting more and more united
 - decisions are taken as openly as possible and as closely as possible to the citizens

➤ 4 objectives:

1. Art. 3,2 TEU → **Areas of Freedom, Security, and Justice**
 - "*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*"
 - abolishment of internal frontiers and creation of a common external frontier
 - common asylum and immigration policy

- cooperation in field of civil and criminal justice
- 2. Art.3.3 TEU → **Internal Market**
 - “ *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* ”
 - internal market = area where we have free circulation of:
 - people → go wherever you want in Europe, no need of Visa to circulate, you can stay in a place as much as you want and you can't be discriminated
 - goods → no obstacles to trade
 - services → your degree is recognised everywhere in Europe
 - capitals → transfer of money freely
 - prohibition of discrimination
 - mutual trust and recognition
- 3. Art. 3.4. TEU → **Economic and Monetary Union**
 - “ *The Union shall establish an economic and monetary union whose currency is the Euro* ”
 - monetary policy = how much currency there is in circulation by the Central Bank
 - economic (fiscal) policy = collecting and distributing money
 - Monetary union = transfer of monetary sovereignty to the EU → there is a single currency, a single monetary policy and a European Central Bank
 - Economic union = coordination of national fiscal policies
 - since 2020 creation of European public debt in order to finance the recovery fund
- 4. Art. 3.5. TEU → **External action**
 - “ *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* ”
 - coordination of national foreign policy
 - common trade policy
 - high representative of the Union for Foreign Affairs and Security Policy

LECTURE E

EU institutions

➤ The EU institutional framework

Institutional framework = institutions of the Union = internal bodies, organizational structure which will allow the EU to work

- the institutional framework **aim to**:
 - promote its values
 - advance its objectives
 - serve its interests, those of its citizens and those of the Member States
 - ensure the consistency, effectiveness and continuity of its policies and actions
- *principle of institutional balance* = each institution shall act within the **limits of the powers conferred** on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them
 - cannot step in the competences of another institution
- *principle of loyal cooperation* = the institutions shall **practice mutual sincere cooperation**

➤ The EU institutions

- the EU has **7 institutions**:
 1. the European Parliament → Brussels / Strasbourg / Luxembourg
 2. the European Council → Brussels
 3. the Council → Brussels / Luxembourg
 4. the European Commission → Brussels / Luxembourg
 5. the Court of Justice of the European Union → Luxembourg

6. the European Central Bank → Frankfurt
 7. the Court of Auditors → Luxembourg
- there are, however, many more **internal bodies**: Economic and Social Committee, Committee of the regions, EU agencies, European Investment Bank, etc..

➤ Classifications

- Political Institutions vs Technical Institutions
 - P: the people or the parliament choose the members of the institution via an election
 - T: members chosen because of their abilities, usually independent
- Supranational Institutions vs Intergovernmental Institutions
 - S: look at the common european interest
 - I: look after the national interest

| | POLITICAL | TECHNICAL |
|--------------------|-----------------------------|---|
| SUPRANATIONAL | Parliament Commission | European Central Bank European Court of Justice Court of auditors |
| INTERGOVERNAMENTAL | Council European Council | |

1. European Parliament

- directly elected by the European citizens by universal suffrage every 5 years
- composed of 705 MEPs = 704 members plus the President
- MEPs are grouped by political affiliation, not by nationality
- has 3 main functions:
 1. legislative function with the Council
 2. democratic scrutiny together with all EU institutions
 3. establishing the EU budget, together with the Council

2. European Council

- it is a meeting / a summit composed of:
 - the Heads of state or government of the Member States (Italy = Meloni)
 - the President of the European Commission
 - the President of the European Council
- decides the political agenda of the EU
- usually meets 4 times a year
 - but the President can convene additional meetings to address urgent issues
- generally decides issues by consensus, but by unanimity or qualified majority in some cases
 - only the heads of state/government can vote
- it appoints the EU High Representative for Foreign Affairs and Security Policy

3. Council

- council of ministers = composed of the one minister for each Member States
- 10 configurations (general affairs, external affairs, economic affairs, justice, environment...)
- 3 main functions:
 1. legislative function, together with the European Parliament
 2. establishing the EU budget, together with the European Parliament
 3. executive functions (in some areas)
- to be passed, decisions usually require a qualified majority: 55% of countries (with 27 current members, this means 15 countries) representing at least 65 % of total EU population

4. European Commission

- is the executive body of the EU

- is a political independent institution → the guardian of the EU Treaties and puts forward the general interest of the organization
- has several functions:
 - it is alone responsible for drawing up proposals for new European legislation
 - it implements the decisions of the European Parliament and the Council of the EU
 - verifies that EU law is properly applied in all the member countries
 - represents the EU internationally
- the Commission is composed of a President and team of Commissioners
 - the President defines the political direction for the Commission, which enables the Commissioners together to decide strategic objectives
- directorates-General (DGs) are responsible for specific policy areas

➤ **Appointing the President**

- the candidate is put forward by national leaders in the European Council, taking account of the results of the European Parliament elections
- he / she needs the support of a majority of members of the European Parliament in order to be elected

➤ **Selecting the team**

- the Presidential candidate selects potential Vice-Presidents and Commissioners based on suggestions from the EU countries
- Parliament votes on whether to accept the entire team of Commissioners
- finally, they are appointed by the European Council

5. European Court of Justice (CJEU)

- ensures the correct interpretation and application of EU law
- each judge is appointed for a renewable 6-year term, jointly by national governments.
- has 3 functions:
 1. solving disputes:
 - infringement procedure against a Member States, which is violating any EU laws on initiative by the Commission or any other Member State
 - annulment procedure against any act of the EU adopted in contrast with the Treaties on initiative by any EU institution or Member State
 2. prejudicial function → request for a preliminary ruling by any national judge to know the right interpretation or application of EU law in the specific case
 3. advisory function → request for an opinion on initiative of any other EU institution or Member State

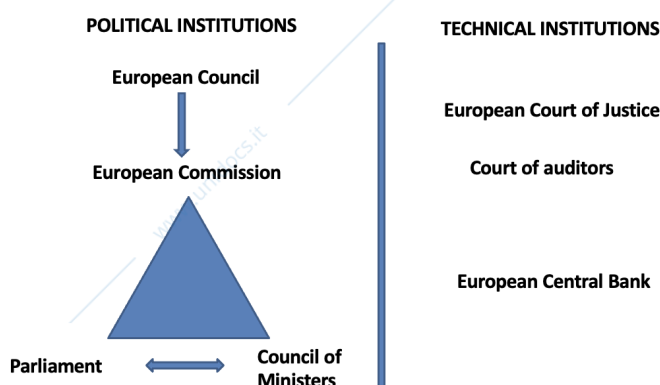
6. European Central Bank

- in charge of the monetary policy of the euro area
- it pursues price stability

7. Court of Auditors

- monitors EU revenue and expenditure
- verify that EU funds are properly raised, spent, get value for money and are accounted for

➤ **Institutional System in the EU:**



LECTURE F

Principles of EU law➤ **Principle of Conferral**

The EU acts only within the limits of the competences that EU countries have conferred in the Treaties

- competences not conferred on the EU by the Treaties thus remain with EU countries
- every action of the Union requires a legal basis in the EU Treaties

➤ **Division of competences**

Under the EU Treaties it is possible to identify 3 types of competences:

1. **Exclusive Competence** → areas in which only the EU can adopt legal acts
2. **Shared Competence** → areas in which either the EU or Member States can adopt legal acts
 - to the extent that the EU exercises its shared competence, the Member States are not free to exercise their competence, but may do so again once the EU ceases to exercise the competence = *pre-emption effect*
3. **Parallel and Supporting Competence** → areas in which both the EU and the Member States may act
 - action by the EU does not prevent the Member States from taking action of their own and the Treaties explicitly prohibit harmonization of laws

| Exclusive | Shared | Parallel and Supporting |
|-----------------|-------------------------|-------------------------|
| Monetary policy | Agriculture and fishing | Culture |
| Trade | Energy | Tourism |
| Anti-trust | Transport | Education |
| Custom Union | Immigration | |

➤ **Principle of Subsidiarity**

- it aims to:
 - ensure that decisions are taken as closely as possible to the citizens
 - ensure that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level
- it is the principle whereby the EU does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level
- the Commission shall take into account the regional and local dimension of all draft legislative acts and to make a detailed statement on how the principle of subsidiarity is respected

➤ **Principle of Proportionality**

- the action of the EU must be limited to what is necessary to achieve the objectives of the Treaties
- the content and form of the action must be in keeping with the aim pursued

➤ **Principle of Loyal Cooperation**

- the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties
- the Member States shall:
 - take any appropriate measure to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union
 - facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives

LECTURE F

Sources of EU law➤ **The EU Legal Order**

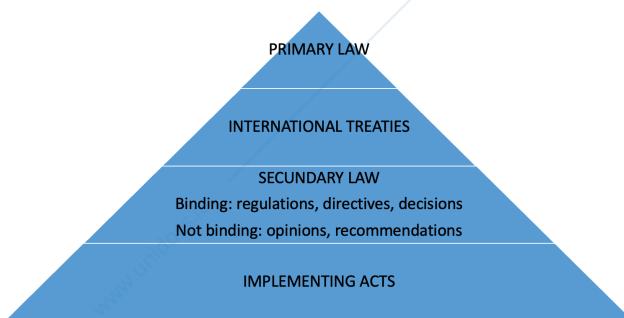
The legal order is divided into:

1. **Primary legislation:**
 - Treaty on the European Union, Treaty on the functioning of the European Union
 - EU Charter of fundamental rights
 - Principles of EU law

2. Secondary legislation:

- Regulations
- Directives
- Decisions
- Recommendations
- Opinions

➤ Hierarchy of EU Laws



1. EU PRIMARY LAW

➤ EU Treaties = binding agreements between EU member countries

- they set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries
- every action taken by the EU is founded on Treaties
- *Treaty on European Union* (TEU)
- *Treaty on the Functioning of the European Union* (TFEU)
- **Art. 48 TEU** provides rules to amend the Treaties → Treaty change
 - ordinary procedure:
 - proposal by the Commission / the Parliament / a Member State
 - convention
 - intergovernmental conference and signature
 - ratification by all Member States
 - special legislative procedure → to reform the internal action of the Union or to extend co-decision and vote by majority in the Council
 - proposal by the Commission / the Parliament / a Member State
 - the European Council decides by unanimity
 - acceptance by the Member State

➤ EU Charter of Fundamental Rights

- brings together the most important personal freedoms and rights enjoyed by citizens of the EU into one legally binding document
- the Charter was declared in 2000, and came into force in December 2009 along with the Treaty of Lisbon
- **purpose** = promote human rights within the territory of the EU
- many of the rights that are contained in the Charter were previously set out in:
 - the EU Treaties
 - the European Convention on Human Rights
 - case law of the Court of Justice of the European Union
 - National Constitutions
- **Legal force** of the EU Charter = it has the same legal power as an EU Treaty

- it is superior to national law
- is directly applicable and produces direct effects
- it only applies when EU institutions or national bodies (particularly national governments) are implementing European Union law
- **Content** of the EU Charter → divided into 6 chapters:
 1. **Dignity**
 - dignity, life, integrity of the person
 - prohibition of torture and inhuman and degrading treatment
 2. **Freedoms**
 - respect for private and family life
 - freedom of thought, conscience and religion
 - freedom of expression and information
 - freedom of assembly and of association
 3. **Equality**
 - prohibition of discrimination
 - cultural, religious and linguistic diversity
 - right of the child
 4. **Solidarity**
 - social security and social assistance
 - health care
 5. **Citizen's Rights**
 - right to vote and to stand as a candidate
 - right to good administration
 - freedom of movement and of residence
 - diplomatic and consular protection
 6. **Justice**
 - right to an effective remedy and to a fair trial
 - presumption of innocence
 - right of defence

2. EU SECONDARY LAW

- **Regulations** → are of general application, binding in their entirety and directly applicable
 - must be complied with fully by those to whom they apply
 - are directly applicable in all the Member States as soon as they enter into force and do not need to be transposed into national law
- **Directives** → are binding, as to the result to be achieved, upon any or all of the Member States to whom they are addressed, but leave to the national authorities the choice of form and methods
 - national legislators must adopt a transposing act or 'national implementing measure' to transpose directives and bring national law into line with their objectives
 - individual citizens are given rights and bound by the legal act only once the transposing act has been adopted
 - Member States are given some discretion, in transposing directives, to take account of specific national circumstances, transposition must be effected within the period laid down in the directive
- **Decisions** → are binding in their entirety
 - where those to whom they are addressed are stipulated (Member States, natural or legal persons), they are binding only on them, and address situations specific to those Member States or persons
- **Recommendations and Opinions** → do not confer any rights or obligations on those to whom they are addressed
 - they provide guidance as to the interpretation and content of Union law

- the Union may address a recommendation to one or more Member States
- institutions request the opinion of other institutions before making a decision

LECTURE H

Direct effect and primacy of EU law

➤ The Direct Effect of European Law

- *Principle of Direct Effect* → enables individuals to immediately invoke a European provision before a national judge
 - this principle only relates to certain European acts
 - it is subject to several conditions
 - it ensures the application and effectiveness of European law in EU countries

➤ The Van Gend en Loos case

- the direct effect of European law has been enshrined by the Court of Justice in the judgment of *Van Gend en Loos* of 5 February 1963
- in this judgment, the Court states that European law engenders obligations for EU countries and rights for individuals
- individuals may therefore take advantage of these rights and directly invoke European acts before national courts

➤ Horizontal and vertical direct effect

There are two aspects to direct effect:

1. Vertical direct effect → is of consequence in relations between individuals and the public authority
 - individuals can invoke a European provision in relation to the public authority
2. Horizontal direct effect → is consequential in relations between individuals
 - an individual can invoke a European provision in relation to another individual

➤ Direct effect of primary legislation

- if primary legislation is concerned (EU Treaties) the Court of Justice established the principle of the direct effect in the Van Gend & Loos judgment
- it laid down the condition that the obligations must be precise, clear and unconditional

➤ Direct effect of secondary legislation

- Regulations → always have a direct effect
- Directive = an act addressed to EU countries and must be transposed by them into their national laws
 - in certain cases the Court of Justice recognises the direct effect of directives in order to protect the rights of individuals
 - therefore, the Court laid down in its case-law that a directive has direct effect when its provisions are unconditional and sufficiently clear and precise and when the EU country has not transposed the directive by the deadline.
- Decisions → may have direct effect when they refer to an EU country as the addressee

➤ Primacy of EU Law

Principle of the Primacy of EU Law → is based on the idea that where a conflict arises between an aspect of EU law and an aspect of law in an EU country (national law), EU law will prevail

- if this were not to be the case, EU countries could simply allow their national laws to take precedence over primary or secondary EU legislation, and the pursuit of EU policies would become unworkable
- has been proclaimed by the European Court of Justice in the *Costa v ENEL* case (Case 6/64)
- in these cases, the Court clarified that the primacy of EU law must be applied to all national acts, whether they were adopted before or after the EU act in question
- with EU law becoming superior to national law, the principle of primacy therefore seeks to ensure that citizens are uniformly protected by an EU law across all EU territories
- the primacy of EU law only applies where EU countries have ceded sovereignty to the EU

LECTURE I

Environmental Law➤ **Trail Smelter dispute**

Smelter in Canada was causing huge smokes which were reaching the American lands and farms

- farmers protested, the American government agreed so they had an **arbitration between US and Canada on 11 March 1941**
- Canadian smelter was declared responsible, so Canada had to pay money to America
- Court of Justice proclaimed that States can pollute as long as they don't pollute other States
 - **ban on transboundary pollution**
 - *"In accordance with the principles of international law no State has the right to use or permit the use of its territory in a way that causes damage resulting from the emission of fumes on the territory of another State or on goods and persons located there, when this has significant consequences and when the damage is demonstrated by clear and convincing evidence"*

➤ **The Development of International Environmental Law**

- in the 70s technology and economic development were having a big impact of environmental disasters
- deforestation, animal species were disappearing
- world was divided because of the Cold War
- **Declaration of the United Nations Conference on the Human Environment** adopted on 16 June 1972 in Stockholm by the UN Conference on the Human Environment
 - recognition of the right to a healthy environment and principle of responsibility for any environmental effects caused by their actions
- at the end of the Cold War (1990s) the UN starts to focus on climate and environment
- United Nations "Conference on Environment and Development" (UNCED) of Rio de Janeiro in 1992. It adopted the **United Nations Framework Convention on Climate Change** (UNFCCC)
 - beginning of the COPS (Conference of the Parties)
 - the parties of this Treaty meet every year with the aim to discuss about climate change and environment disasters, what they can do to contain it
- The **Kyoto Protocol** was an international agreement adopted at COP 3 (1997), which commits states to reduce greenhouse gas emissions.
- The **Paris Agreement** = a legally binding international treaty on climate change
 - adopted by 196 Parties at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016
 - aim = limit global warming to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels
 - to achieve this long-term temperature goal, countries aim to reach a global peak of greenhouse gas emissions as soon as possible to achieve a climate neutral world by mid-century

➤ **The principles of international environmental law**

1. Obligation for each State of prevention environmental damage
2. Cooperation obligation between states and related procedural obligations
3. Principle of sustainable development
 - has to do with intergenerational solidarity = act in a way will give a chance to the next generation
4. Principle of common but differentiated responsibilities
 - not all States are the same, some states polluted much more than others
5. Precautionary principle
 - forces a State to take all the precautions to make an activity less dangerous to avoid an environmental disaster

6. Principle of internalization of costs (“polluter pays”) → relevant with COP27 (Sharm el Sheik)
- creation of a international fund, States put money for the States that are mostly affected from climate change

➤ **The origins and evolution of the European Union's environmental policy**

- Paris Summit of October 1972
- First Action Program for the Environment of November 1973
 - followed by other 6 action programmes until 2020
- explicit provision in the European Single Act (1987) of a community environmental policy
- subsequent amendments to the Treaties, up to the Lisbon Treaty (2009)

➤ **The protection of the environment and the general objectives of the Union**

- **Art. 3.3 TEU** → in listing the objectives of the Union, mentions:
 - “ *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 ”*
- **21.2 TEU** → among the purposes of the Union's external action there is that of:
 - “ *contributing to the development of international measures aimed at preserving and improving the quality of the environment and the sustainable management of world natural resources, in order to ensure sustainable development ”*

➤ **EU environmental policy**

- Environmental policy = a shared competence between the Union and the Member States
 - the criterion for the division of competences is the principle of subsidiarity
- the **objectives** of the Union's environmental policy, explained in art. 191.1 TFEU, are:
 - safeguarding, protecting and improving the quality of the environment
 - protection of human health
 - wise and rational use of natural resources
 - international promotion of measures designed to solve environmental problems at a regional or global level and, in particular, to combat climate change
- **procedures** → the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191

➤ **Integration principle**

Art. 11 TFEU: “ *The needs related to environmental protection must be integrated into the definition and implementation of Union policies and actions, in particular with a view to promoting sustainable development ”*

➤ **EU Emission Trade System (ETS)**

- **EU ETS** = the world's first international emissions trading system, set up in 2005
- works on the *cap and trade principle*
 - a cap is set on the total amount of certain greenhouse gases that can be emitted by the installations covered by the system
 - the cap is reduced over time so that total emissions fall
 - within the cap, installations buy emissions allowances, which they can trade with one another as needed
 - the limit on the total number of allowances available ensures that they have a value
- after each year, an installation must surrender enough allowances to fully cover its emissions, otherwise heavy fines are imposed
- if an installation reduces its emissions, it can keep the spare allowances to cover its future needs or else sell them to another installation that is short of allowances

➤ **Green Deal**

- on 11 December 2019, the Commission presented a communication on the **European Green Deal** that sets out a detailed vision to make Europe the first climate-neutral continent by 2050:
 - safeguard biodiversity
 - establish a circular economy and eliminate pollution
 - boosting the competitiveness of European industry and ensuring a just transition for the regions and workers affected
 - includes a 2030 emissions reduction target of net 55 % compared to 1990 level
- **EU climate law** (2021) → decarbonisation targets become legally binding for the Union and the Member States
- **Environmental governance** for the reduction of emissions: the Commission will monitor whether Member States are reducing the emissions of CO₂ at a sufficient rate
- **Sustainable Europe Investment Plan** → EU investment plan for the implementation of the Green Deal
 - the EU will mobilize up to €1 trillion of public and private capitals by 2030 to finance the process of decarbonisation
- the access to the **Next Generation EU** is conditional to the pursuit of decarbonisation policies in the Member States
- **EU taxonomy** = classification system establishing a list of environmentally sustainable economic activities
- external action for the green deal:
 - environmental clauses in trade agreements + carbon border adjustment mechanism (CBAM)

LECTURE L

EU Privacy Law

➤ Data and Personal Data

1. **Personal Data** = any information relating to an identified or identifiable natural person
 - identifiable natural person = 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.
 - example of these sensitive information = bank accounts, health issues, sexual orientation, political orientation, religious beliefs → private data because they lead to discrimination
2. **Genetic Data** = personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person
 - result from an analysis of a biological sample from the natural person in question
 - example: blood, color of skin, hair
3. **Biometric Data** = personal data resulting from specific technical processing relating to the physical, physiological or behavioral characteristics of a natural person
 - allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data.
 - example: height, weight, shape of your face, fingerprints
4. **Digital Data** = any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording

➤ EU charter of fundamental rights

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

- how to process data fairly or unfairly?
 - data must be collected for a given purpose, if you use it in a different way it's unfair
 - consent = when you apply you accept to share your personal data
 - legitimate purposes to collect personal data → example: body temperature collected during covid
- 3. compliance with these rules shall be subject to control by an independent authority
 - independent authority = public authority which are not elected

➤ EU competence on the protection of personal data

Article 16 TFEU → everyone has the right to the protection of personal data concerning them

- 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

➤ Right to be Forgotten

- in 1995, the Council passed Directive 95/46 on the Protection of Individuals with regard to the processing of personal data and on the free movement of such data
 - the directive was drafted in the 90s when the Internet did not exist in its current form
- in *Google Spain SL v. Agencia Española de Protección de Datos*, the Court of Justice of the European Union (CJEU) interpreted the Directive as creating a presumption that Google must delete links to personal information from search results at the request of a data subject unless a strong public interest suggests otherwise
 - a person was very upset because when he googled his name on google the first results was an article on a spanish newspaper, which reported an old news of him making a crime
 - the journal "*L'Avanguardia*" didn't want to cancel the article, so they asked Google if they could remove the article from the highlights since it had passed many years
 - the Court of Justice obliged Google to delete links to personal information from search results at the request of a data subject unless a strong public interest suggests otherwise

➤ General Data Protection Regulation (GDPR)

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

- the regulation is an essential step to strengthen individuals fundamental rights in the digital age and facilitate business by clarifying rules for companies and public bodies in the digital single market
- a single law will also do away with the current fragmentation in different national systems and unnecessary administrative burdens.
- it's the only relevant text about privacy
- every company has to comply with the GDPR

➤ Legal basis for data processing

The GDPR requires a legal basis for data processing:

"In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis"

➤ 6 legal basis and processing of data

1. **Consent of the data subject** = any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her
 - example: when you access a new website in EU you must accept or reject cookies
 - consent can given with: a firmature, with a click, verbally

2. **Contract** = processing is necessary to satisfy a contract to which the data subject is a party
 - when you create an account on social media you sign a contract
3. **Legal Obligation** = you need to process the data to comply with a legal obligation
 - it is compulsory to share a given info
 - if you want to vote you have provide your personal info
4. You need to process the data to **save somebody's life**
 - example: car accident, you lost consciousness, so the doctors can get your ID and Health card to treat you
5. Processing is necessary to perform a task in the **public interest** or to carry out some **official function**
 - in Italy police is allowed to request your ID
6. You have a legitimate interest to process someone's personal data
 - **other legitimate reasons** which are not considered by the GDPR, you have to prove why the justification is legitimate

➤ Principles of GDPR

1. **Transparency** → the collection of data must remain transparent = clear privacy policy explaining the type of data you collect and the reason you're collecting it.
 - whoever takes data must explain transparently for what he will use it
2. **Purpose limitation** → the collection of personal data can be done only for a specific purpose
 - it can last for as long as necessary to complete that purpose
 - specify a given purpose + the type of use and purpose
3. **Data minimization** → it is possible to process only personal data that are needed to achieve the processing purposes
 - use the least data possible for a given purpose
4. **Accuracy** → every reasonable step must be taken to erase or rectify data that is inaccurate or incomplete
 - individuals have the right to request that inaccurate or incomplete data be erased or rectified within 30 days
 - information can't be processed with mistakes
 - example: spell your name wrongly, mistake with your age/gender...
5. **Integrity and confidentiality** → personal data must be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures
 - you transfer data just to a specific subject, companies can't transfer data to other companies without authorization
 - can your instagram info be transferred to facebook? → yes because they are the same company
6. **Storage limitation** → organizations need to delete personal data when it's no longer useful
 - this storage limitation will vary between industries and the reasons that data is collected

➤ Data retention

Judgment Commissioner of An Garda Síochána and others (2022)

- EU law precludes national legislative measures which provide, as a preventative measure, for the general and indiscriminate retention of traffic and location data relating to electronic communications, for the purposes of combating serious crime
- data retention is 6 years

➤ Transfer of personal data outside the EU

According to the GDPR transfers of personal data outside of the EU are prohibited unless an adequate safeguard can be used:

1. EU Commission's adequacy decisions → the EU Commission concluded that a country's data protection laws are essentially equally good as the GDPR
 - only if the EU Commission establish that the data are transferred into a safe state with high protection levels
 - EU Commission = Privacy Shield
 - example: EU data can't be transferred to North Korea, Afghanistan...
2. EU Standard Contracting Clauses (SCC)
 - standard contracting clauses between data exporter and data importer
 - private agreement between data exporter and data importer
 - the owner of data in EU, makes a deal with the data exporter in the US
 - they are both obliged to make sure that the data must respect the European standard of protection

➤ **EU-US Privacy Shield** = was a framework for regulating transatlantic exchanges of personal data for commercial purposes between the European Union and the United States

➤ *Schrems II Judgment 2020*

Maximilian Schrems → activist for human rights, he started huge cases against Meta

- he called for the Irish Data Protection Commissioner to stop transferring personal data to its headquarters in the US, because the personal data, both in transit to and when stored in the US, could be accessed by US intelligence agencies (CIA)
- he complained with the Irish because data moved to the US were violating the EU standard of protection + violation of GDPR and EU-laws
- the EU Court of Justice was asked to verify what Schrems was arguing about
 - they investigated and found out that the US were not respecting the EU standard of protection
 - realized that US laws had several shortcomings that impede the protection of personal data and violate the GDPR.
 - they established it was illegal, so the flow of data between EU and US was suspended = they declared the **Invalidation of the EU-US Privacy Shield**
- US Foreign Intelligence Surveillance Act (FISA) = the US national security laws which regulate US authorities access and use of personal data imported from the EU into the US, they do not have the controls to adequately protect EU data subjects that may become the target of national security investigations
- EU can access to our data only for terrorism or crimes, while in the US, CIA can do whatever they want, access all the data freely and people cannot complain or protest
- EU Standard Contracting Clauses (SCCs) → only way to transfer EU data to the US
 - META can still transfer data to the US, but they will be legally responsible if the American Authority had access to EU data → sanctioned pay heavy fines

➤ **Strict conditions for the SSCs**

In *Schrems II* the Court posed strict conditions for the transfer of data under the **Standard Contractual Clauses**

- companies must ensure that the recipient country has equivalent data protection to that of the EU
- a company that makes data available for potential cross-border transfer shall assess the recipient country's level of compliance with the GDPR
- obligation of the data exporter to ensure adequate protection of the data before exporting any data
- the recipient is obliged to inform the exporter of any impediments to its compliance to the SCC's
- if the existence of local surveillance laws that would impede the alignment with the GDPR, then the exporter must stop the transfer and end the contract
- if the data exporter fails its obligations under the SCC, the lead supervisory authority must intervene and may prohibit the transfer

LECTURE M

Freedom of Speech Online

➤ Digital Market Evolution

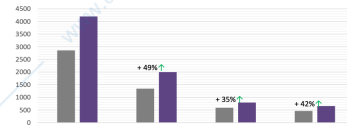
The growing importance of the digital market can be seen as one of the most important changes of our era

- in recent years, **e-commerce** has undergone a marked boost in terms of both sales and turnover, becoming an essential component of the global retail trade
- data published by Statista and the World Bank show that by 2025 digital trade in China will grow by 49%, in Europe by 42% and in North America by 35%

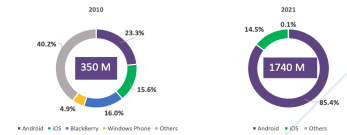
➤ The digital market isn't just limited to e-commerce

- a branch of the digital market that has become quite important in recent years is the **mobile sector**
- according to GSMA $\frac{2}{3}$ of the world population currently uses a mobile phone, about 85% of all people aged 13 and over
- at market level, on the hardware production side, the sector is extremely dynamic and competitive
- for the software market is different → over the last decade, the market has been reduced to just two main suppliers, creating a duopoly: Google Android (Alphabet) and iOS (Apple) together representing 99% of the market

E-commerce sales in major areas of the world (\$ bln)



The evolution of the operating systems market (2010-2020)

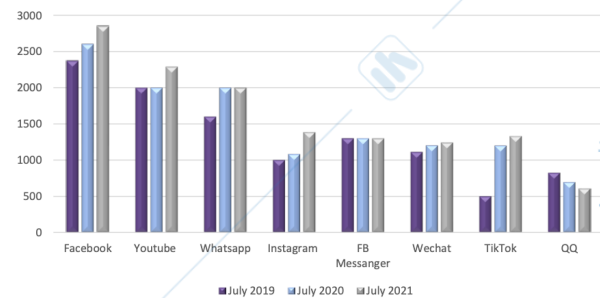


➤ The Social Network Market

The **social network sector** includes a wide range of services that sometimes have quite different characteristics

- market dynamics show how classic social networks (Facebook), video sharing platforms (YouTube, TikTok) and personal communication media (WhatsApp, WeChat, Telegram) are actually in direct competition between them, and aim to expand their services to get as close as possible to the tastes of the public, gain new users by subtracting them from rivals and prolonging the time of use
- in 2021 the social media with the highest number of users is still Facebook, with about 2.9 billion users (+ 20.1% compared to 2019)
- followed by YouTube with 2.2 billion users in 2021 (+ 14.6% in two years)
- WhatsApp (2 billion users)
- Instagram (1.4 billion users)
- at 1.2 billion total users is TikTok which, launched in 2016, quickly climbed the market rankings thanks to the innovative video sharing service, managed by very advanced artificial intelligence algorithms

Active users globally on social platforms (in millions)

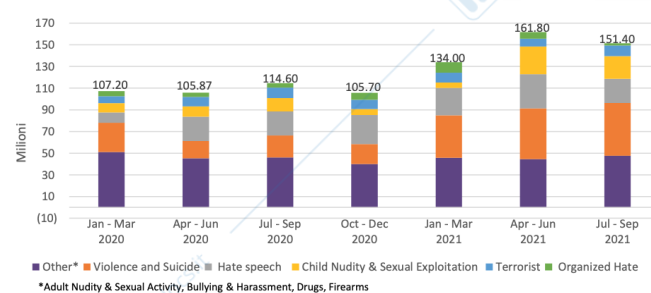


➤ Fake News and Harmful Content

According to the latest data of Eurobarometer (2021), 71% of Europeans encounter fake news online several times a month (30% every day)

- those who seem to be most exposed are young people, which in 63% of the cases say that they encounter fake news at least once a week
- data disseminated by Facebook shows that, in the last quarter 2021, the social network acted against over 151.4 million content pieces of this kind
- in terms of numbers, the most troubling issue is related to violence and suicide

Content removed from Facebook for reasons of



- another extremely worrying problem is that of the contents related to child nudity' and sexual exploitation

➤ Political Manipulation

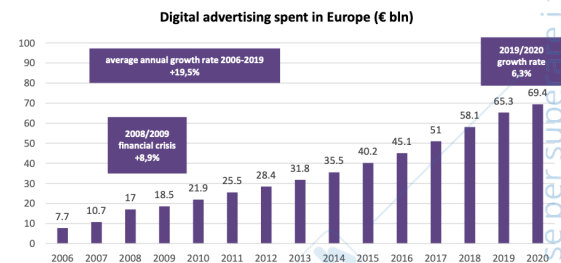
example: **Cambridge Analytica Scandal**

- in the 2010s, personal data belonging to millions of Facebook users was collected without their consent by British consulting firm Cambridge Analytica, predominantly to be used for political advertising
- the data was collected through an app called “*This Is Your Digital Life*” → asked a series of questions to build psychological profiles on users
 - it harvested the data of up to 87 million Facebook profiles
- Cambridge Analytica used the data to provide analytical assistance to the 2016 presidential campaigns of Donald Trump
- Cambridge Analytica was also widely accused of interfering with the Brexit referendum

➤ Digital Advertisement

Digital advertising has experienced a continuous growth during the last 15 years

- average annual growth of about +20% from 2006 to 2019
- in 2020, despite the pandemic crisis, it recorded a growth of 6.3%



➤ Freedom of Expression and EU Law

Article 11 EUCFRs → *Freedom of expression and information*

1. everyone has the right to freedom of expression, this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers
2. the freedom and pluralism of the media shall be respected

➤ Limits of Freedom of Speech

Freedom of speech is a relative right, not absolute, because it has some limits:

1. private interest → limited to protect people privacy or reputation
2. public health → people cannot sell product which are supposed to help but in reality they're not true
3. public order → racism, sexism, ideas or opinions which may cause hate or discriminations are forbidden
4. public morality → immoral content, subjective limit

➤ **Balancing Test** = legal procedure to follow to limit freedom of speech in a reasonable and safe way

3 step test:

1. **Step 1** → any restriction on a right must be prescribed by law
2. **Step 2** → the restriction must serve one of the prescribed purposes listed in the text of the human rights instrument
3. **Step 3** → the restriction must be proportional and necessary to achieve the prescribed purpose
 - respect of the principles of proportionality and necessity

➤ The **EU Digital Services Act (DSA)** regulates the obligations of digital services that act as intermediaries in their role of connecting consumers with goods, services, and content

- aims:
 - give better protection to users and to fundamental rights online
 - establish a powerful transparency and accountability framework for online platforms
 - provide a single uniform framework across the EU
- the DSA entered into force on 16 November 2022
- mega data = huge quantity of data which give information about a big group of people

- digital services include a large category of online services, from simple websites to internet infrastructure services and online platforms
- the rules specified in the DSA primarily concern online intermediaries and platforms
- for example: online marketplaces, social networks, content-sharing platforms, app stores, and online travel and accommodation platforms

➤ The **Digital Markets Act** includes rules that govern gatekeeper online platforms

- **Gatekeeper** = digital platforms with a systemic role in the internal market that function as bottlenecks between businesses and consumers for important digital services
 - able to connect a big number of people and provide services
 - very populated online platforms which aim is to influence the behavior of the entire system (example: Amazon)
 - protects competition between markets, to avoid monopoly

➤ **KEY POINTS**

1. **Measures to counter illegal content online**, including illegal goods and services
 - the DSA imposes new mechanisms allowing users to flag illegal content online, and for platforms to cooperate with specialized trusted flaggers to identify and remove illegal content
 - trusted flaggers = organizations which work as watchers, they look for illegal contents and then report them to the gatekeepers
2. New rules to **trace sellers on online marketplaces**, to help build trust and go after scammers more easily
 - Gatekeepers are obliged to keep trace of their goods, to make sure they are not made in illegal ways or made by exploited children → know the origin of their products
 - a new obligation by online market places to randomly check against existing databases whether products or services on their sites are compliant
 - sustained efforts to enhance the traceability of products through advanced technological solutions
3. **Effective safeguards for users**, including the possibility to challenge platforms' content moderation decisions based on a new obligatory information to users when their content gets removed or restricted
4. Wide ranging **transparency measures for online platforms**, including better information on terms and conditions, as well as transparency on the algorithms used for recommending content or products to users
5. New obligations for the **protection of minors on any platform in the EU**
 - under new rules, providers of online platforms that are accessible to minors will be required to put in place appropriate measures to ensure a high level of privacy, safety and security of minors, on their services
 - the new rules will ban targeted advertising to minors based on profiling using the personal data of users of their services when they can establish with reasonable certainty that the recipient of the service is a minor.
6. **Obligations for very large online platforms and search engines** to prevent abuse of their systems by taking risk-based action, including oversight through independent audits of their risk management measures
 - platforms must mitigate against risks such as **disinformation or election manipulation, cyber violence against women, or harms to minors online**
 - these measures must be carefully balanced against restrictions of freedom of expression, and are subject to independent audits
7. A **new crisis response mechanism in cases of serious threat for public health and security** crises, such as a pandemic or a war

- emergency power given to the EU Commission to take action against a Gatekeeper for public health or security to limit a certain freedom of speech
- in these cases, the Commission, may adopt a decision, requiring one or more providers of very large online platforms or of very large online search engines to take one or more of the following actions:
 - assess whether, and if so to what extent and how, the functioning and use of their services significantly contribute to a serious threat as referred
 - identify and apply specific, effective and proportionate measures to prevent, eliminate or limit any such contribution to the serious threat
- 8. **A ban on using dark patterns** on the interface of online platforms, referring to misleading tricks that manipulate users into choices they do not intend to make
 - example: travel insurances when your buying a ticket
- 9. New **provisions to allow access to data to researchers of key platforms**, in order to scrutinize how platforms work and how online risks evolve
- 10. Users will have **new rights**, including:
 - a right to complain to the platform
 - seek out-of-court settlements
 - complain to their national authority in their own language
 - seek compensation for breaches of the rules
- 11. A unique **oversight structure**
 - the EU Commission will be the primary regulator for Gatekeepers (very large online platforms, reaching 45 million users)
 - other platforms will be under the supervision of Member States where they are established
 - the Commission will have enforcement powers similar to those it has under antitrust proceedings
 - an EU-wide cooperation mechanism will be established between national regulators and the Commission