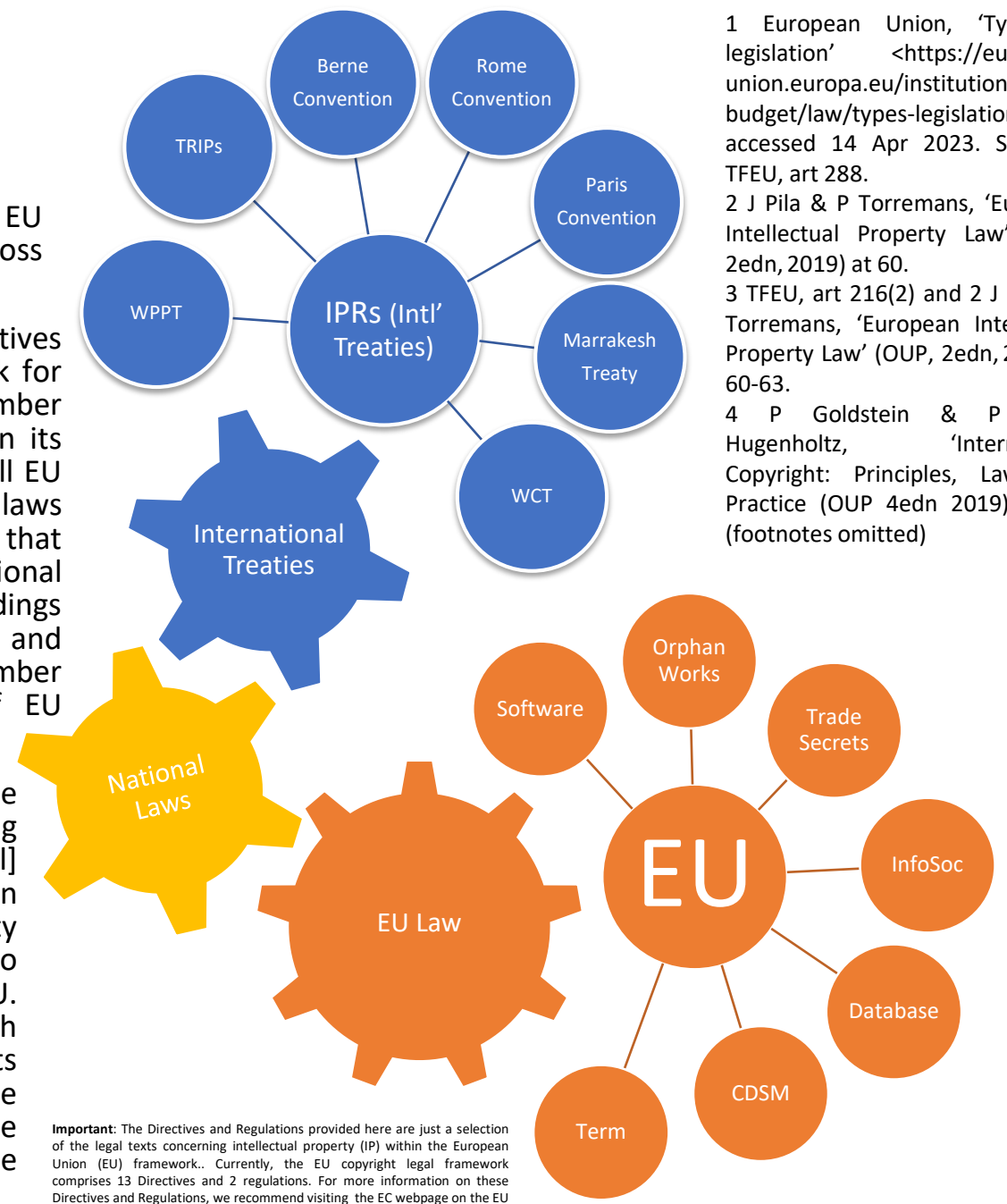


# IPRs: Relationship between Directives, National Laws and International Treaties

**Harmonization of IPRs:** Harmonization is the process of aligning national laws with EU directives and international treaties to ensure consistency and coherence across different legal systems.

**EU Law and the difference between EU Regulations and EU Directives:** EU directives form the basis of intellectual property law in the EU. They provide a framework for national laws that govern the protection and enforcement of IPRs in each member state. While ‘a "regulation" is a binding legislative act [and] must be applied in its entirety across the EU’, ‘a "directive" is a legislative act that sets out a goal that all EU countries must achieve [and] it is up to the individual countries to devise their own laws on how to reach these goals.’ <sup>1</sup> In practical terms, a relevant legal effect of it is that Regulations may “be invoked directly by individuals in proceedings before national courts – including vertical proceedings (against the state) and horizontal proceedings (against other individual.s) – as a source of individual rights and obligations” and “directives do not penetrate automatically and directly into the legal orders of Member States, and cannot be invoked before domestic courts in the manner of EU regulations”.<sup>2</sup>

**International Treaties:** International treaties establish minimum standards for the protection and enforcement of IPRs, and are relevant to understand the functioning of IPRs in the EU. While it is clear from art 216(2) from the TFEU that [international] “agreements concluded by the Union are binding upon the institutions of the Union and on its Member States”,<sup>3</sup> the legal effects of each IP-related International Treaty must be further and individually analyzed. On the International Treaties relevant to IPR, Goldstein and Hugenholtz (2019, 60) explain that “all countries of the E.U. belong to the Berne Union, adhere to the Rome Convention, and, through membership in the WTO, are bound by the TRIPs Agreement. The E.U. and its member states have also ratified the WIPO treaties. As a consequence, the harmonized rules on copyright and neighboring rights of the E.U. tend to require member states to offer more, but not less, protection than is required by the relevant international treaties”.<sup>4</sup>



1 European Union, ‘Types of legislation’ <[https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en)> accessed 14 Apr 2023. See also TFEU, art 288.  
 2 J Pila & P Torremans, ‘European Intellectual Property Law’ (OUP, 2edn, 2019) at 60.  
 3 TFEU, art 216(2) and 2 J Pila & P Torremans, ‘European Intellectual Property Law’ (OUP, 2edn, 2019) at 60-63.  
 4 P Goldstein & P Bernt Hugenholtz, ‘International Copyright: Principles, Law, and Practice (OUP 4edn 2019), at 60 (footnotes omitted)

**Important:** The Directives and Regulations provided here are just a selection of the legal texts concerning intellectual property (IP) within the European Union (EU) framework. Currently, the EU copyright legal framework comprises 13 Directives and 2 regulations. For more information on these Directives and Regulations, we recommend visiting the EC webpage on the EU Copyright Law: <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>

## General Data Protection Regulation (GDPR)

*Regulation (EU) 2016/679:* 'This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data', and 'protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.' (GDPR, art. 1(1)(2))

## Data Act (DA - proposal)

The proposed regulation aims to lay down: 'harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients, and on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest' (DA, art. 1(1))

## Artificial Intelligence Act (AIA - proposal)

The proposed regulation aims to lay down: 'harmonised rules for the placing on the market, the putting into service and the use of artificial intelligence systems ('AI systems') in the Union; (a) prohibitions of certain artificial intelligence practices; (b) specific requirements for high-risk AI systems and obligations for operators of such systems; (c) harmonised transparency rules for AI systems intended to interact with natural persons, emotion recognition systems and biometric categorisation systems, and AI systems used to generate or manipulate image, audio or video content; (d) rules on market monitoring and surveillance.' (AIA, art. 1)

## Digital Markets Act (DMA)

*Regulation (EU) 2022/1925:* 'The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.' (DMA, art. 1(1))

## Digital Services Act (DSA)

*Regulation (EU) 2022/2065:* 'The aim of this Regulation is to contribute to the proper functioning of the internal market for intermediary services by setting out harmonised rules for a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected.' (DSA, art. 1(1))

## Open Data Directive (ODD)

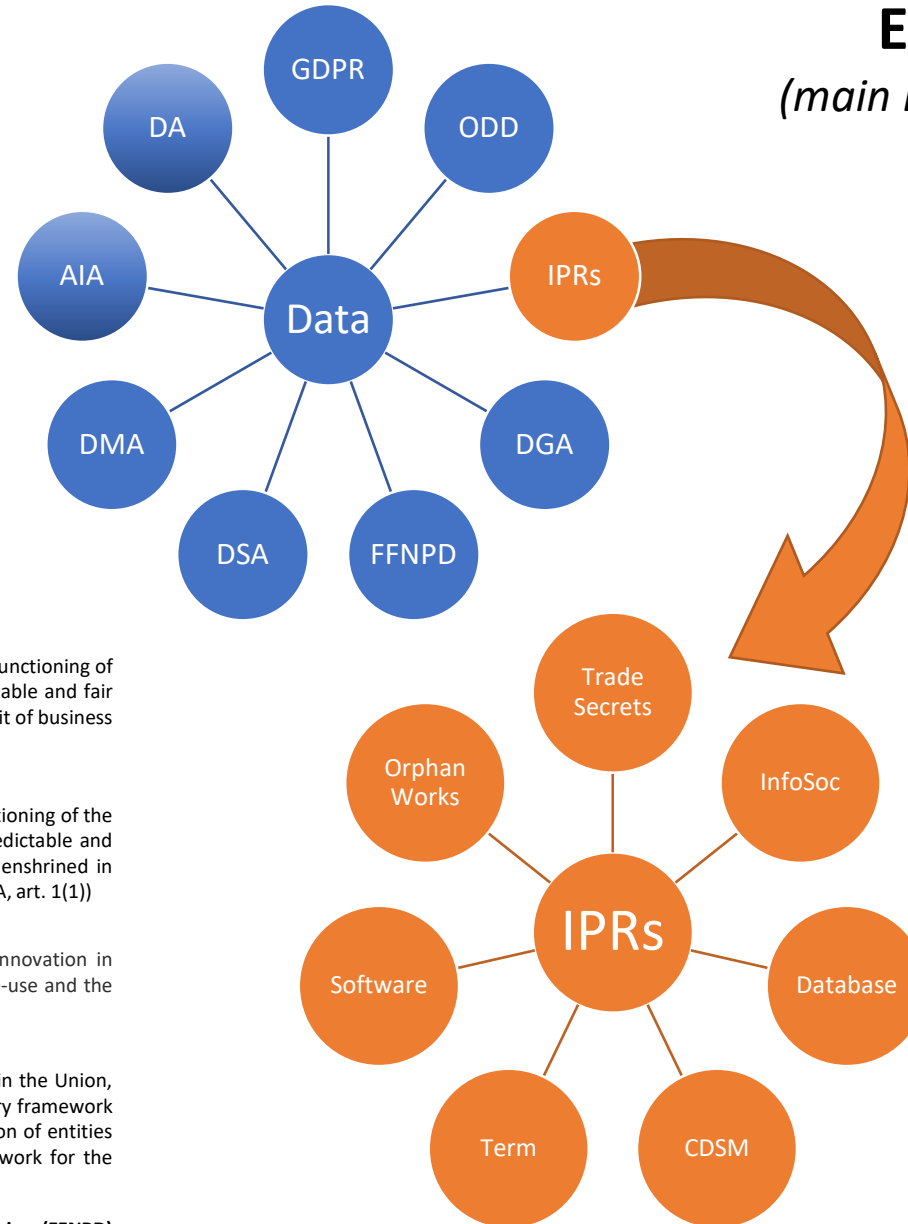
*Directive (EU) 2019/1024:* 'In order to promote the use of open data and stimulate innovation in products and services, this Directive establishes a set of minimum rules governing the re-use and the practical arrangements for facilitating the re-use of certain kinds of data. (ODD, art. 1(1))

## Data Governance Act (DGA)

*Regulation (EU) 2022/868:* 'This Regulation lays down: (a) conditions for the re-use, within the Union, of certain categories of data held by public sector bodies; (b) a notification and supervisory framework for the provision of data intermediation services; (c) a framework for voluntary registration of entities which collect and process data made available for altruistic purposes; and (d) a framework for the establishment of a European Data Innovation Board.'" (DGA, art. 1(1))

## Regulation on a framework for the free flow of non-personal data in the European Union (FFNPD)

*Regulation (EU) 2018/1807:* 'This Regulation aims to ensure the free flow of data other than personal data within the Union by laying down rules relating to data localisation requirements, the availability of data to competent authorities and the porting of data for professional users.' (FFNPD, art. 1)



# EU Legal Framework on Data

(main Directives, Regulations and Proposals)

## Trade Secrets Directive

*Directive (EU) 2016/943:* 'This Directive lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets.' (art.1(1))

## CDSM Directive

*Directive (EU) 2019/790:* 'This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter.' (art.1(1))

## Term Directive

*Directive 2006/116/EC* on the term of protection of copyright and certain related rights.

## InfoSoc Directive

*Directive 2001/29/EC:* 'This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society.' (art. 1(1)).

## Directive on the legal protection of databases

*Directive 96/9/EC:* 'This Directive concerns the legal protection of databases in any form.' (art.1(1))

## Directive on Orphan Works

*Directive 2012/28/EU:* 'This Directive concerns certain uses made of orphan works by publicly accessible libraries, educational establishments and museums, as broadcasting well as by archives, film or audio heritage institutions and public-service organisations, established in the Member States, in order to achieve aims related to their public-interest missions.' (art. 1 (1))

## Directive on the legal protection of computer programs

*Directive 2009/24/EC:* 'In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.' (art. 1 (1))

**Important:** The Directives and Regulations provided here are just a selection of the legal texts concerning intellectual property (IP) within the European Union (EU) framework.. Currently, the EU copyright legal framework comprises 13 Directives and 2 regulations. For more information on these Directives and Regulations, we recommend visiting the EC webpage on the EU Copyright Law: <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>

**‘Processing shall be lawful only if and to the extent that at least one of the following applies’ (art 6(1)):**

Consent

- ‘the data subject has given consent to the processing of his or her personal data for one or more specific purposes’

Performance of a contract

- ‘processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract’

Compliance with a legal obligation

- ‘processing is necessary for compliance with a legal obligation to which the controller is subject’

Protection of vital interests

- ‘processing is necessary in order to protect the vital interests of the data subject or of another natural person’

Public interest

- ‘processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller’

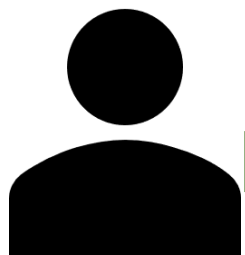
Legitimate interest

- ‘processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.’



Data protection authority

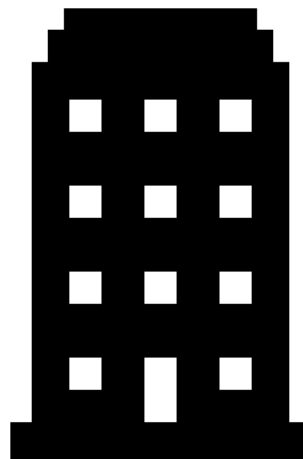
Data subject



Personal data



Data controller



Data processor(s)



Lawfulness, fairness and transparency

Purpose Limitation

Data minimisation

Accuracy

Storage limitation

Integrity and Confidentiality

Accountability

Personal data shall be 'processed lawfully, fairly and in a transparent manner in relation to the data subject'

Personal data shall be 'collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes'

Personal data shall be 'adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed'

Personal data shall be 'accurate and, where necessary, kept up to date'

Personal data shall be 'kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed'

Personal data shall be 'processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures'

'The controller shall be responsible for, and be able to demonstrate compliance with' the previous items

Principles

# GDPR applies to personal data:

Processed by a controller or processor in the EU

Of data subject in the EU for specified activities and the controller and processor are not established in the EU

In the context of the activities of an establishment of a controller or a processor in the EU, even if the processing is not in the EU

Which form part of a filing system or are intended to

Wholly or partly processed by automated means

Arts 2 and 3, GDPR

## GDPR, art. 3 Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or (b) the monitoring of their behaviour as far as their behaviour takes place within the

Union. 3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

## Scope of the GDPR (material and territorial scopes)

### GDPR, art. 2 Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data: (a) in the course of an activity which falls outside the scope of Union law; (b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU; (c) by a natural person in the course of a purely personal or household activity; (d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

# Rights of the Data Subject



Transparent information, communication and modalities for the exercise of the rights of the Data Subject (art 12)

Right of access by the data subject (art 15)



Right to rectification (art 16)

Right to erasure ('right to be forgotten') (art 17)



Right to restriction of processing (art 18)

Right to data portability (art 20)



Right to object (art 21)

## Applicable Restrictions (art 23(1) and (2), GDPR)

Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights [...] when such a restriction **respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:**

- national security;
- defence;
- public security;
- the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- the protection of judicial independence and judicial proceedings;
- the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in [selected] cases;
- the protection of the data subject or the rights and freedoms of others;
- the enforcement of civil law claims.

In particular, any legislative measure referred [above] shall contain specific provisions at least, where relevant, as to:

- the purposes of the processing or categories of processing;
- the categories of personal data;
- the scope of the restrictions introduced;
- the safeguards to prevent abuse or unlawful access or transfer;
- the specification of the controller or categories of controllers;
- the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- the risks to the rights and freedoms of data subjects; and
- the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.