



## Course Outline

<b>Course number</b>	<b>RTL105</b>					
Course title	<b>Privacy and Data Protection</b>					
Credit points	3 ECTS					
Total hours	80					
Contact hours	24					
Independent studies	56					
Course level	Masters					
Prerequisites	None					
Category	Mandatory	X	Restricted elective		Free elective	X

### COURSE RESPONSIBLE

<i>Name</i>	<i>Academic degree</i>	<i>Academic position</i>
Edina Harbinja	LLB, LLM, PhD, PGCBM	Guest Professor

### COURSE TEACHERS

<i>Name</i>	<i>Academic degree</i>	<i>Academic position</i>

### COURSE ABSTRACT

With the advent of the Internet and emerging technologies, more information has the capacity to stray beyond the sphere of control of its owners than ever before. The development has been closely followed by concerns over the privacy and data protection of information owners. This course comparatively and critically examines the legal aspects of privacy and data protection through the prisms of regulation, practice and academic scholarship. Data protection and privacy stems from fundamental values enshrined in several international instruments, such as the European Convention on

Human Rights or the Universal Declaration of Human Rights. These renditions have taken on a new facet of interpretation in the context of data-focused economies. The gamut of economic and social benefits must be balanced with short and long-term risks to individuals and organizations alike. In turn, the European Union states have agreed on several major regional norms, such as Directives 2002/58/EC and 2006/24/EC, as well as the General Data Protection Regulation coming into force May 2018.

The issue of data protection and privacy becomes more complicated as it reaches the subsidiarity levels of structures closest to enforcing the norms. The borderless nature of the data domain denotes potentially transnational consequences for any decisions taken by state regulators. Together with various differences in interpretation and capacity, the current lack of privacy and data protection harmonisation among various states is a point of contention. Concurrently, states are seeking the correct way to balance the interests of private parties, in spite of disparity in bargaining power. Within the European Union, all parties involved must comply with accountability principles and retain Data Protection Impact Assessments to various degrees before and after the creation of contractual relations. The same parties also hold responsibility for data breach notifications. Issues further delve into data interaction with the general public and individuals, via targeted advertising from private parties, or surveillance from the state. This course delves into the aforementioned themes by tracing their development from inception to contemporaneity in doctrine and practice, critically appraising current paradigms in light of new technological praxis and discoveries.

## GRADING CRITERIA

<i>Criteria</i>	<i>Weighting</i>
1. Individual assignment	40%
2. Final exam	60%

## COURSE REQUIREMENTS

The first piece of assessment is a 2000-word essay. Students will have to pick a legal challenge in data protection and critically analyse the relevant law and the challenges the application of the law entails. Students should consult on their essay topic with their lecturer during the course of their study in order to ensure that the topic chosen is appropriate.

Length: 2000 words (excluding the title page, footnotes, bibliography and any annexes).

Rules:

1. The essay (including the footnotes) must be formatted according to the guidelines indicated in the Master Thesis Manual (available on the Intranet).
2. All essays will go through the plagiarism control program. Therefore, please make sure that all sources are properly cited.

3. Although you are encouraged to include your own opinion/thoughts, these should be backed up to with reference to the relevant literature. Please do not make a compilation of the existing sources.

4. The essay must be submitted via Intranet.

5. This is an individual piece of work.

In the exam, students will be required to answer essay and problem questions. All topics taught are examinable.

#### **COURSE PLAN – MAIN SUBJECTS**

<i>No.</i>	<i>Main subjects</i>	<i>Planned hours</i>
1	Introduction to privacy and data protection	2
2	Main legal and institutional frameworks of privacy and data protection in the EU and the US	4
3	Key data processing principles and requirements in data protection	4
4	The notion of consent in data protection	2
5	Data subject rights	2
6	Data transfer requirements, standard contractual clauses and binding corporate rules	2
7	Material and territorial scope of the GDPR	2
8	The data protection authorities, data protection officers and incident response requirements	2
9	Privacy in electronic communications 1 – ePrivacy Directive (Regulation)	2
10	Privacy in electronic communications 1 – online behavioural advertising	2

**COURSE PLAN – SESSIONS**

<i>Session</i>	<i>Session subjects and readings</i>	<i>Lecture/seminar</i>
1	<p><b>Lecture 1: Introduction:</b></p> <ol style="list-style-type: none"> <li>1. Module layout, aims and assessment</li> <li>2. Defining privacy and data protection</li> </ol> <p>Recommended Readings:</p> <p>Lynskey: <i>The Foundations of EU Data Protection Law</i> (OUP, 2016), chapter 1 and 4</p> <p>European Union Agency for Fundamental Rights: <i>Handbook on European data protection law</i> (FRA, 2018), chapter 1</p> <p>Warren, S. and L. Brandeis, 'The Right to Privacy' (1890) 4 <i>Harvard Law Review</i> 193.</p> <p>Additional Readings:</p> <p>Bygrave: <i>Data Privacy Law: An international Perspective</i> (OUP, 2014), chapter 1 and 2</p> <p>Cohen, Julie E., 'Turning Privacy Inside Out' (April 12, 2018). <i>Theoretical Inquiries in Law</i> 20.1. Available at SSRN: <a href="https://ssrn.com/abstract=3162178">https://ssrn.com/abstract=3162178</a></p> <p>Nissenbaum, Helen F., 'A Contextual Approach to Privacy Online' (2011). <i>Daedalus</i> 140 (4), Fall 2011: 32-48. Available at SSRN: <a href="https://ssrn.com/abstract=2567042">https://ssrn.com/abstract=2567042</a></p> <p>Solove, Daniel J., 'I've Got Nothing to Hide' and Other Misunderstandings of Privacy'. <i>San Diego Law Review</i>, Vol. 44, p. 745, 2007; <i>GWU Law School Public Law Research Paper No. 289</i>. Available at SSRN: <a href="https://ssrn.com/abstract=998565">https://ssrn.com/abstract=998565</a></p>	<p>Lecture  (Dr Harbinja)</p>
2	<p><b>Lecture 2: Main legal and institutional frameworks of privacy and data protection in the EU</b></p> <ol style="list-style-type: none"> <li>1. International and European data protection instruments</li> <li>2. Key institutions: international organisations, regulators, courts</li> </ol> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: <i>Handbook on European data protection law</i> (FRA, 2018), chapter 1</p> <p>Bygrave: <i>Data Privacy Law: An international Perspective</i> (OUP, 2014), chapter 1</p> <p>Edwards: <i>Law, Policy and the Internet</i> (Hart Publishing, 2018), chapter 3 and 4</p> <p>Additional Readings:</p> <p>Kuner: <i>Transborder Data Flows and Data Privacy Law</i> (OUP, 2013), chapter 2 and 3</p>	<p>Lecture  (Dr Harbinja)</p>

	Murray: Information technology law: the law and society (OUP, 2019), chapter 20	
3	<p><b>Lecture 3: Main legal and institutional frameworks of privacy and data protection in the US</b></p> <ol style="list-style-type: none"> <li>1. Federal laws and policies</li> <li>2. State privacy laws in the US</li> </ol> <p>Recommended Readings:</p> <p>Bygrave: Data Privacy Law: An international Perspective (OUP, 2014), chapter 1 and 4</p> <p>Congressional Research Service, Data Protection Law: An Overview, March 25, 2019, pages 3 - 40</p> <p>Additional Readings:</p> <p>Nissenbaum, Helen F., 'A Contextual Approach to Privacy Online' (2011). Daedalus 140 (4), Fall 2011: 32-48. Available at SSRN: <a href="https://ssrn.com/abstract=2567042">https://ssrn.com/abstract=2567042</a></p> <p>Prosser, W. 'Privacy' (1960) 48 California Law Review 383.</p> <p>Schwartz, Paul M., 'Property, Privacy, and Personal Data'. Harvard Law Review, Vol. 117, Vol. 7, p. 2055, May 2004. Available at SSRN: <a href="https://ssrn.com/abstract=721642">https://ssrn.com/abstract=721642</a></p>	Lecture (Dr Harbinja)
4	<p><b>Lecture 4: Key data processing principles and requirements in data protection 1</b></p> <ol style="list-style-type: none"> <li>1. The concept of personal data</li> <li>2. Processing of personal data</li> </ol> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 2</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Additional Readings:</p> <p>Article 29 Working Party, Opinion 4/2007 on the concept of personal data (WP 136), 20 June 2007, at: <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf</a></p> <p>Purtova, Nadezhda, 'The Law of Everything. Broad Concept of Personal Data and Future of EU Data Protection Law', 2018, Law, Innovation and Technology 10(1). Available at SSRN: <a href="https://ssrn.com/abstract=3036355">https://ssrn.com/abstract=3036355</a></p> <p>Harbinja. Edina, 'Post-mortem privacy 2.0: theory, law, and technology', International Review of Law, Computers &amp; Technology, 31:1, 26-42, DOI: 10.1080/13600869.2017.1275116</p>	Lecture (Dr Harbinja)

5	<p><b>Lecture 5: Key data processing principles and requirements in data protection 2</b></p> <p>1. European data protection principles</p> <p>2. Rules on lawful processing</p> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 3 and 4</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>EDPB, Guidelines 07/2020 on the concepts of controller and processor in the GDPR</p> <p>Additional Readings:</p> <p>Bygrave: Data Privacy Law: An international Perspective (OUP, 2014), chapter 4</p> <p>Article 29 Working Party, Opinion 1/2010 on the concepts of "controller" and "processor", at: <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169_en.pdf</a></p>	Lecture  (Dr Harbinja)
6	<p><b>Seminar 1: The notion of consent in data protection</b></p> <p>1. The definitions of consent</p> <p>2. Problems with this concept</p> <p>Recommended Readings:</p> <p>Article 29 Working Party, Opinion 15/2011 on the definition of consent (WP187), 13 July 2011, at: <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2011/wp187_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2011/wp187_en.pdf</a></p> <p>Article 29 Working Party, Guidelines on consent under Regulation 2016/679, at: <a href="https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=623051">https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=623051</a></p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Additional Readings:</p> <p>Clifford, Damian and Graef, Inge and Valcke, Peggy, 'Pre-Formulated Declarations of Data Subject Consent – Citizen-Consumer Empowerment and the Alignment of Data', Consumer and Competition Law Protections, CiTiP Working Paper 33/2017. Available at SSRN: <a href="https://ssrn.com/abstract=3126706">https://ssrn.com/abstract=3126706</a></p>	Seminar  (Dr Harbinja)
7	<p><b>Seminar 2: Data subject rights</b></p> <p>1. The right to be informed, the right to rectification and the right to erasure</p> <p>2. The right to restriction of processing, the right to data portability, the right to object, automated individual decision – making</p>	Seminar  (Dr Harbinja)

	<p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 6</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Additional Readings:</p> <p>Veale, Michael and Binns, Reuben and Ausloos, Jef, When Data Protection by Design and Data Subject Rights Clash (February 20, 2018). International Data Privacy Law (2018) doi:10.1093/idpl/ipy002. Available at SSRN: <a href="https://ssrn.com/abstract=3081069">https://ssrn.com/abstract=3081069</a> or <a href="http://dx.doi.org/10.2139/ssrn.3081069">http://dx.doi.org/10.2139/ssrn.3081069</a></p> <p>Jones, Meg and Ausloos, Jef, The Right to Be Forgotten Across the Pond (September 21, 2012). 2012 TRPC, Journal of Information Policy, Volume 3 (2013), pg. 1-23. Available at SSRN: <a href="https://ssrn.com/abstract=2032325">https://ssrn.com/abstract=2032325</a> or <a href="http://dx.doi.org/10.2139/ssrn.2032325">http://dx.doi.org/10.2139/ssrn.2032325</a></p> <p>Edwards, Lilian and Veale, Michael, Slave to the Algorithm? Why a 'Right to an Explanation' Is Probably Not the Remedy You Are Looking For (May 23, 2017). 16 Duke Law &amp; Technology Review 18 (2017). Available at SSRN: <a href="https://ssrn.com/abstract=2972855">https://ssrn.com/abstract=2972855</a> or <a href="http://dx.doi.org/10.2139/ssrn.2972855">http://dx.doi.org/10.2139/ssrn.2972855</a></p>	
8	<p><b>Seminar 3: Data transfer requirements, standard contractual clauses and binding corporate rules</b></p> <ol style="list-style-type: none"> <li>1. Data transfers, adequacy</li> <li>2. Standards contractual clauses and binding corporate rules – examples</li> </ol> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 7</p> <p>Kuner: Transborder Data Flows and Data Privacy Law (OUP, 2013), chapter 6 and 8</p> <p>Additional Readings:</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Bygrave: Data Privacy Law: An international Perspective (OUP, 2014), chapter 4</p> <p>Greenleaf, Graham, International Data Privacy Agreements after the GDPR and Schrems (January 30, 2016). (2016) 139 Privacy Laws &amp; Business International Report 12-15; UNSW Law Research Paper No. 2016-29. Available at SSRN: <a href="https://ssrn.com/abstract=2764864">https://ssrn.com/abstract=2764864</a></p> <p>European Commission, Decision on the adequate protection of personal data by the United Kingdom - General Data Protection Regulation, 28 June 2021</p>	Seminar (Dr Harbinja)
9	<p><b>Lecture 6: Material and territorial scope of the GDPR</b></p> <ol style="list-style-type: none"> <li>1. Territorial scope and jurisdiction</li> </ol>	Lecture (Dr Harbinja)

	<p>2. Material scope</p> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 1 and 7</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Additional Readings:</p> <p>Korff, Douwe, The Territorial (and Extra-Territorial) Application of the GDPR With Particular Attention to Groups of Companies Including Non-EU Companies and to Companies and Groups of Companies That Offer Software-as-a-Service (August 19, 2019). Available at SSRN: <a href="https://ssrn.com/abstract=3439293">https://ssrn.com/abstract=3439293</a> or <a href="http://dx.doi.org/10.2139/ssrn.3439293">http://dx.doi.org/10.2139/ssrn.3439293</a></p> <p>Purtova, Nadezhda, ‘The Law of Everything. Broad Concept of Personal Data and Future of EU Data Protection Law’, 2018, Law, Innovation and Technology 10(1). Available at SSRN: <a href="https://ssrn.com/abstract=3036355">https://ssrn.com/abstract=3036355</a></p>	
10	<p><b>Seminar 4: The data protection authorities, data protection officers and incident response requirements</b></p> <ol style="list-style-type: none"> <li>1. DPAs</li> <li>2. DPOs</li> <li>3. Data breach notifications</li> </ol> <p>Recommended Readings:</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), chapter 5 and section 6.2.</p> <p>Bygrave: Data Privacy Law: An international Perspective (OUP, 2014), chapter 5</p> <p>Additional Readings:</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 4</p> <p>Greenleaf, Graham, Independence of Data Privacy Authorities: International Standards and Asia-Pacific Experience (December 13, 2011). Computer Law &amp; Security Review, Vol. 28, Issues 1 &amp; 2, 2012; U. of Edinburgh School of Law Working Paper No. 2011/42. Available at SSRN: <a href="https://ssrn.com/abstract=1971627">https://ssrn.com/abstract=1971627</a> or <a href="http://dx.doi.org/10.2139/ssrn.1971627">http://dx.doi.org/10.2139/ssrn.1971627</a></p>	Seminar (Dr Harbinja)
11	<p><b>Lecture 7: Privacy in electronic communications 1 – ePrivacy Directive (Regulation)</b></p> <ol style="list-style-type: none"> <li>1. Introduction to e-Privacy – definitions and scope</li> <li>2. E-Privacy principles and requirements</li> </ol> <p>Recommended Readings:</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 5</p> <p>European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018), section 9.1.</p>	Lecture (Dr Harbinja)



	<p>Additional Readings:</p> <p>Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)</p>	
12	<p><b>Lecture 8: Privacy in electronic communications 1 – online behavioural advertising</b></p> <ol style="list-style-type: none"> <li>1. Cookies</li> <li>2. Traffic and location data, meta data</li> <li>3. Behavioural advertising and micro-targeting</li> </ol> <p>Recommended Readings:</p> <p>Edwards: Law, Policy and the Internet (Hart Publishing, 2018), chapter 5</p> <p>Opinion 2/2010 on online behavioural advertising  <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp171_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp171_en.pdf</a></p> <p>Opinion 2/2010 on online behavioural advertising and Opinion 04/2012 on Cookie Consent Exemption, <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2012/wp194_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2012/wp194_en.pdf</a></p> <p>Working Document 02/2013 providing guidance on obtaining consent for cookies <a href="https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp208_en.pdf">https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp208_en.pdf</a></p> <p>Additional Readings:</p> <p>Zuiderveen Borgesius, Frederik, Singling Out People Without Knowing Their Names – Behavioural Targeting, Pseudonymous Data, and the New Data Protection Regulation (February 16, 2016). Available at SSRN: <a href="https://ssrn.com/abstract=2733115">https://ssrn.com/abstract=2733115</a> or <a href="http://dx.doi.org/10.2139/ssrn.2733115">http://dx.doi.org/10.2139/ssrn.2733115</a></p> <p>Wachter, Sandra, Affinity Profiling and Discrimination by Association in Online Behavioural Advertising (May 15, 2019). Berkeley Technology Law Journal, Vol. 35, No. 2, 2020, Forthcoming. Available at SSRN: <a href="https://ssrn.com/abstract=3388639">https://ssrn.com/abstract=3388639</a> or <a href="http://dx.doi.org/10.2139/ssrn.3388639">http://dx.doi.org/10.2139/ssrn.3388639</a></p>	<p>Lecture (Dr Harbinja)</p>

## COURSE LEARNING OUTCOMES

This course has the following main learning outcomes:

### Knowledge:

Upon successful completion of the course students will have:

1. Knowledge of theories that underpin the right to privacy and data protection and the philosophical origins of the notion of privacy;
2. Knowledge and understanding of the key concepts underpinning data protection law, how data protection law works in practice, and of salient legal and regulatory issues within the field, including data processing principles, data subject rights and compliance;
3. Enhanced knowledge of comparative, global and regional privacy and data protection standards and legal mechanisms;
4. Understanding of some of the main challenges to privacy today, including online advertising, AI and big data;
5. Ability to analyse practical situations of possible privacy violations and identify redress mechanisms.

**Skills:**

Upon successful completion of the course students will acquire:

6. Legal research skills allowing them to engage in independent research;
7. Communication and Presentation skills to develop and present a complex legal argument;
8. Skills necessary to apply the knowledge acquired to case studies;

**Competencies:**

Upon successful completion of the course students will have:

9. Intellectual competencies of analysis, evaluation, synthesis and application to evaluate the logic, validity and relevance of complex legal and philosophical arguments relating to data protection;
10. Ability to work autonomously within the complex and specialised area of data protection law;
11. Ability to critically analyse similarities and differences between the EU data protection frameworks and comparable international regimes.

***By completing the study course and successfully passing examination, the student will be able to:***

<b><i>Learning outcomes</i></b>	<b><i>Evaluation criteria</i></b>		
	<b><i>(40-69%)</i></b>	<b><i>(70-89%)</i></b>	<b><i>(90-100%)</i></b>
<b><i>Knowledge</i></b>	The student has acquired only basic knowledge of the course subject. The student lacks understanding of some of the core issues of the course subject.	Overall, the student's knowledge complies with the expectations. However, there are issues that the student does not fully understand.	The student has demonstrated in-depth knowledge and understanding of the issues related to the course subject.
<b><i>Skills</i></b>	The student has demonstrated only basic level of skills.	The student has demonstrated good skills.	The student has demonstrated excellent skills.

<b>Competences</b>	The student can apply the knowledge only at a basic level. The student struggles with assessment and evaluation of legal issues. The student can identify the relevant legal norms. However, the student cannot correctly apply them.	The student can apply the knowledge at a reasonably good level. However, the student does not have the necessary level to be able to fully apply the acquired knowledge independently. The student has some problems to correctly apply the legal norms.	The student is able to apply the knowledge independently and correctly. The student can assess and evaluate legal issues, identify the relevant legal norms, and correctly apply them.
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*Please analyse the contribution of defined grading criteria to learning outcomes. Number of grading criteria and learning outcomes should correspond to previously defined one.*

<b>Grading criteria</b>	<b>Learning outcomes</b>										
	<b>1.</b>	<b>2.</b>	<b>3.</b>	<b>4.</b>	<b>5.</b>	<b>6.</b>	<b>7.</b>	<b>8.</b>	<b>9.</b>	<b>10.</b>	<b>11.</b>
Individual assignment	x	x	x	x		x	x	x	x	x	x
Final exam		x	x	x	x		x	x	x	x	

## **COURSE LITERATURE**

### *Compulsory literature*

<b>No.</b>	<b>Author, year, title, publisher</b>
1	Lynskey: The Foundations of EU Data Protection Law (OUP, 2016)
2	European Union Agency for Fundamental Rights: Handbook on European data protection law (FRA, 2018)
3	Bygrave: Data Privacy Law: An international Perspective (OUP, 2014)

### *Additional literature and sources*

<b>No.</b>	<b>Author, year, title, publisher</b>
6	Murray: Information technology law: the law and society (OUP, 2019)
7	Kuner: Transborder Data Flows and Data Privacy Law (OUP, 2013)
8	Edwards: Law, Policy and the Internet (Hart Publishing, 2018)