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TESI DI DOTTORATO NEI SETTORI DI DIRITTO INTERNAZIONALE, DIRITTO DELL'UNIONE EUROPEA E DIRITTO INTERNAZIONALE PRIVATO

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Abstract della tesi di dottorato:

INTERNET DATA PRIVACY IN EUROPEAN UNION PRIVATE INTERNATIONAL LAW

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In the last decade, online flows of personal data soared as technological development allowed people to communicate, inform themselves, share, and trade through the internet. In order to regulate the processing of such data, several States issued legislation with a view to establishing rights and duties of both data subjects and data controllers. Nonetheless, the innate trait of the internet is its ubiquitousness, which requires both such regulation to be supranational in origin and scope, and Private International Law (PIL) methodology to be applied whenever disputes in civil and commercial matters arise and cover aspects which are not directly addressed by said harmonised or uniform legislation.

In order to properly tackle the issue of PIL implications in such kind of disputes, the first part of this work addresses the *origins* of the right to the protection of personal data in order to define and circumscribe the research context. Although this right – which is labelled 'data privacy' in order to overcome territorial definitions – is nowadays approached very differently at the two shores of the Atlantic Ocean, it is undisputed that the United States approach to privacy is at the origins of the current concept of data privacy. Therefore, this work tackles the issue of the evolution of the concept of privacy by addressing its theoretical construction and arguing that the US paradigm of 'separation' *vis-à-vis* 'control' is possibly at the very origin of the current separation of data privacy from privacy worldwide. The evolution of data privacy on the European continent is then addressed. The research conducted in this part of the work is necessary because the ranking of substantive rules within the legal order they stem from also influences the PIL analysis that courts make in order to assess jurisdiction and applicable law in the dispute they are confronted with, with special regard to the applicability of foreign law or hierarchically higher rules contained in the legal order of the forum.

The second part of this work addresses the matter of *jurisdiction* under the Brussels-Lugano regime, by considering both current rules and those that will regulate the matter once Regulation (EU) 2016/679 (General Data Protection Regulation) will become applicable. Preliminarily, the issue of territoriality in internet-related disputes and that of the nature of the international element which triggers the PIL question are addressed. With regard to jurisdiction, lacking special rules on jurisdiction in Directive 95/46/EC (Data Privacy Directive) and in any current data privacy instrument, it is submitted that Regulation (EU) No

1215/2012 (Brussels Ia) is deputed to regulate the determination of the competent national courts. Whenever a case does not fall within the scope of EU PIL, Italian PIL rules have been taken as an example in order to give a full picture to the readers. In light of the upcoming applicability of the General Data Protection Regulation, an assessment of the new rules on jurisdiction is carried out, both in light of their coordination with the Brussels Ia Regulation and with the Lugano regime.

The third and final part of this work deals with the matter of the *applicable law*. Differently from the approach on jurisdiction, the Data Privacy Directive contains a rule titled 'National law applicable'. In this work, it is argued that such a rule does not function as a PIL rule, but instead falls within a subtype of overriding mandatory rules that prevent PIL rules from functioning. However, given the fact that both the Data Privacy Directive and the upcoming General Data Protection Regulation do not to cover all aspects of a data privacy dispute, it is argued that the regimes of Regulations (EC) No 593/2008 (Rome I) and No 864/2007 (Rome II) are still potential candidates for the determination of the applicable law. On the one hand, by mirroring the approach of the Brussels regime, it will be argued that the relevant rules of the Rome I Regulation in data privacy matters are those on the law applicable to contractual obligations in presence and in absence of a choice-of-law agreement, and those protecting consumers. On the other hand, it will be argued that the exclusion of the matter of the violation of private life from the Rome II regime (Article 1(2)(g)) prevents the application of such legal instrument in data privacy disputes as well: lacking a legal tool of supranational origin, applicable PIL rules have to be found in national legal orders. Finally, in light of the analysis made, this work provides the readers with a proposal for the amendment of the Rome II Regulation in view of the broadening of its scope of application towards the inclusion of data privacy.

It is to be highlighted that this investigation only regards private-to-private disputes, such as those concerning the legal relationship between data controller and data subject which arises out of online sales, internet surfing, social networking, etc. Even though, in the view of the author, such relationships may well entail some relevant geopolitical consequences which derive on the underlying dynamics of the internet, it is also to be underline that considerations regarding States in the exercise of their sovereign powers – such as issues related to public security and national security – are excluded from the scope of this work.