

Legal Regulation of Data (Theoretical Perspective)

Abstract

The master thesis deals with information and data, their substance and nature, with regards to whether and how it is possible to regulate these. This thesis has three objectives. First objective is to describe and analyse the legal acts, case law and academic literature dealing with information and data. The second objective is to create a theory of information suitable for the law and suggest a legislative and methodological approach to the data and information, thus answering the question whether the information and data may be subject of the legal regulation in general. The third objective is to assess so called technologically neutral approach of the legislator to the legislation which primarily regulates the technology (especially the data).

The master thesis brings the following conclusions with regards to set objectives. Firstly, neither the current legislation, nor the case law deals with the concept and methodology of information or data and uses these terms as synonyms. The academic literature lately concerns itself with this topic; however, it does not bring unified theory or methodological approach. Secondly, the thesis brings a proposal of theoretical model of information and data as it suggests examining the term “information” in two different levels of which each level has a different meaning for a different aspect of the regulation. Thirdly, the technologically neutral approach as a mean of legislation is being scrutinized. It is demonstrated that technology neutral approach is often a reason for passing a “bad law” in practice based on short analysis of four examples. The frame of reference for what is a “bad law” is Fuller’s eight distinct routes to disaster.

The need for a multidisciplinary approach to the legal regulation concerning the data and technology in general is stressed as a conclusion of this thesis. Not only the lawyers but also economists, sociologists, engineers and IT experts should take part in preparing the legislation. Simply because of the overlap of the data regulation into the economical, sociological and ethical sphere.

Key words: data, information, regulation