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FREEDOM OF WILL IS THE FUNDAMENTAL LEGAL VALUE OF THE EUROPEAN UNION

The paper is devoted to studying the concept of freedom of will as a fundamental legal value of the European Union. The topic's relevance is justified by the values guiding the direction of its development, which are the foundation for European integration processes. Freedom of will is not directly enshrined in EU legislation as a separate value; the author puts forward the thesis that it is a unifying idea that manifests in various legal institutions and principles. The provisions of key EU regulatory legal acts, including the TEU, TFEU, CFR, GDPR, and individual directives, are studied. Additionally, the practice of the Court of Justice of the European Union and scientific doctrine are analysed. The article argues that freedom of will, although not always explicitly stated, permeates EU primary law (TEU and CFR), reflected in concepts such as freedom, dignity, autonomy, and choice. The relationship between free will and the four economic freedoms of the EU (movement of goods, capital, services, and people) is analysed, demonstrating its manifestation in the possibilities of choice for consumers, businesses, and citizens. It further analyses the application of freedom of will in secondary legislation dealing with data protection law (consent in the GDPR), contract law (self-governance of parties), consumer law (informed decision-making, ban on manipulative practices), and competition law (economic freedom). The author explains that freedom of will is a foundational principle of EU obligations regarding personal sovereignty and individual autonomy. The research highlights the challenges in achieving this value due to technological advancements and the interplay between individual and societal rights.

Key words: freedom of will, European Union law, EU legal values, autonomy of will, EU legislation.

Савченко В. О. СВОБОДА ВОЛІ – ФУНДАМЕНТАЛЬНА ПРАВОВА ЦІННІСТЬ ЄВРОПЕЙСЬКОГО СОЮЗУ

Стаття присвячена дослідженню концепції свободи волі як фундаментальної правової цінності Європейського Союзу. Актуальність теми обґрунтовується тим, що цінності ЄС визначають вектор його розвитку та є основою євроінтеграційних процесів. Хоча свобода волі прямо не закріплена в законодавстві ЄС як окрема цінність, автор висуває тезу, що вона є об'єднуючою ідеєю, яка проявляється у різних правових інститутах та принципах. Для перевірки цього твердження у статті застосовуються методи аналізу документів та правового аналізу. Досліджуються положення ключових нормативно-правових актів ЄС: Договору про Європейський Союз (ТЕУ), Договору про функціонування Європейського Союзу (ТФЕУ), Хартії основних прав Європейського Союзу (CFR), Загального регламенту захисту даних (GDPR), окремих директив, а також аналізується практика Суду Європейського Союзу та наукова доктрина. Стаття доводить, що ідея свободи волі, хоч і не завжди явно виражена, пронизує первинне право ЄС (ТЕУ та CFR), знаходячи відображення в таких поняттях як свобода, гідність, автономія та вибір. Аналізується співвідношення свободи волі з чотирма економічними свободами ЄС (рух товарів, капіталу, послуг, людей), демонструючи її прояв у можливостях вибору для споживачів, бізнесу та громадян. Також розглядається реалізація принципу свободи волі у вторинному праві, зокрема у сферах захисту даних (через інформовану згоду в GDPR), договірному праві (автономія сторін), захисту прав споживачів (інформований вибір, заборона маніпулятивних практик) та конкурентного права (економічна свобода). Автор доходить висновку, що свобода волі є основоположним принципом, який лежить в основі зобов'язань ЄС щодо індивідуальної автономії, людської гідності та верховенства права. Водночас наголошується на викликах для реалізації цієї цінності, пов'язаних із технологічним прогресом та необхідністю балансування індивідуальних прав і колективних інтересів.

Ключові слова: свобода волі, право Європейського Союзу, правові цінності ЄС, автономія волі, законодавство ЄС.

Statement of the issues. The European Union is not just an economic, political, and social association of independent countries, but a community with shared values that determine the vector and paradigm of its development. It lays the foundation for European integration processes. The EU's values create a complex framework that permeates legislation and institutions and is reflected in legal norms. To a certain extent, these ideals are what all EU countries and potential members should strive towards and uphold.

Freedom of will, expressed as individual autonomy in decision-making, is a fundamental legal principle of the European Union, reflected in

its laws, treaties, and case law. Although freedom of will is not directly enshrined in EU law and has not been defined as a separate value, it can serve as a unifying idea, manifesting itself in various legal institutions and principles based on it.

To verify the claim that freedom of will is recognised as an EU value, we should analyse the provisions of the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union, the General Data Protection Regulation, directives, and scientific doctrine.

To establish a clear conceptual framework for this study, two main concepts are defined:

1) Freedom of will in law is part of legal ideology, which reflects a person's ability to consciously, freely and independently make and implement decisions regarding participation in legal relations. This includes decisions enacted through actions or inaction, exercising subjective rights and fulfilling obligations. Furthermore, it encompasses the capacity to bear legal responsibility for them and is the basis for forming law, its principles and institutions. Freedom of will can be considered a synonym for personal autonomy, a concept with a more established understanding in legal science. Still, the differentiation of these concepts is not the purpose of this article. At the same time, the idea of "freedom of will" should be distinguished from the concept of "freedom", which is broadly understood as the absence of restrictions;

2) A fundamental legal value is a principle and idea on which the legitimacy and functioning of the legal system are based. It is the basis for the rule of law, determines the paradigm of legislation development, and reflects society's ethical, moral, and other social values¹.

Analysis of recent research and publications. While attempts to interpret the freedoms enshrined in the EU Charter of Fundamental Rights exist, they are sporadic and demonstrate different approaches to understanding the concept of freedom of will. Specific scientific positions are mentioned, for example, on the application of the ideas of freedom as non-interference and as non-domination to the analysis of freedom of enterprise, referring to the works of E. Gill-Pedro and E. Couperus and also noted discussion on the relationship between freedom and other fundamental rights, which highlights the importance of situating freedom of will among the values of the EU. In general, the review of the literature suggests that there is an academic interest in the topic of freedom in EU law. Still, it highlights the limited development of the concept of freedom of will as a comprehensive value and the need for further research.

The article aims to check the claim that freedom of will is recognised as a fundamental legal value of the European Union by analysing the provisions of the EU's founding treaties, the Charter of Fundamental Rights, secondary legislation, and scientific doctrine.

The main part.

The idea of freedom of will in the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union (CFR)

European Union (EU) primary law does not contain norms that directly define the concept of freedom of

will. However, the term "freedom" is considered a fundamental value in the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union (CFR). The Preamble to the TEU confirms the EU's commitment to the principles of liberty, democracy and respect for human rights, fundamental freedoms and the rule of law [1, Preamble], and Article 2 of the TEU defines the paradigm of the development of the EU as an area of freedom [1, Art. 2]. Although this norm does not explain the concept of freedom and its limits, it cannot be equated solely with the ability to move freely within the EU, because freedom as a value is a complex and comprehensive concept, as will be further demonstrated.

Apart from freedom, the TEU emphasises the vital role of will: 1) By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common [1, Art. 1]; 2) Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union [1, Art. 10 (4)]; 3) ...the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task [1, Art. 44 (1)]. The phrases "empowerment" and "Member States which wish" speak to the support for the idea of the collective will of states and their citizens, and promoting the formation of European political consciousness and the expression of the will of the citizens of the Union confirms the importance of free expression of will for building democracy.

The EU's norms also reflect integral elements of freedom of will, such as autonomy and decision-making. In particular, the concept of national autonomy is reflected in the EU's obligation to respect the equality of Member States and their national identities, which are inherent in their fundamental structures, including political and constitutional frameworks, as well as regional and local self-government. Although in this case, we are discussing the collective will of the state, we should acknowledge that this will is based on the individual will of each citizen. By affirming the obligation to respect the autonomy of EU member states, we also proclaim respect for individual human autonomy.

By analogy with the above, the concept of choice and decision-making as a necessary component of freedom of will, although not directly defined in the TEU, is an integral element in developing civil society, political life, and democratic processes that presuppose choice.

In addition to these definitions, the TEU encompasses other conceptual definitions that facilitate understanding of freedom at the EU

¹ There is no established, normatively defined concept of a "fundamental legal value." The definition proposed above is based on the ideas of R. Alexy, who developed his theory of constitutional rights, grounded in his understanding of legal values. See. Alexy R. A theory of constitutional rights. New York : Oxford University Press, 2010. 462 p.

level. The use of the term 'democracy' in most cases, particularly in relation to the values of the Union and the participation of citizens and national parliaments, emphasises the need for active citizenship and democracy. The consistent use of the terms 'human rights' and 'freedoms' emphasises the commitment to individual rights in the context of the Union's legal framework. Furthermore, the so-called principle of 'subsidiarity' provides that the Union may act only if the objectives of the proposed action cannot be sufficiently achieved by the Member States at central, regional or local level, thus allowing and respecting the autonomy and 'decision' of the Member States to do what they see fit.

The TEU refers to recognising the rights, freedoms, and principles in the European Union's Charter of Fundamental Rights and the European Convention of Human Rights.

Another fundamental instrument of EU primary law is the Charter of Fundamental Rights (CFR), which contains a list of individual rights and freedoms binding on all EU Member States. The Preamble explicitly states that the EU is founded on the indivisible and common values of human dignity, freedom, equality and solidarity [2, Preamble]. This is the only official list of EU values, and two logical questions arise: 1) Could freedom of will be considered a legal value of the EU if it is not explicitly stated in the CFR? 2) How do freedom of will and the freedoms specified in Chapter II of the CFR relate?

When discussing EU values, it is logical to assume that the concept of freedom of will is most fully articulated in the context of Chapter II, "Freedoms," of the CFR. This chapter enshrines some of the fundamental rights: the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and the right to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business [2, Art. 6–19]. The above rights are often proclaimed in national constitutions and civil codes as individual non-property rights, associated with the legal concept of freedom of will. Exercising an individual non-property right is sometimes impossible without exercising free will. In other situations, the exercise of free will is associated with compliance with regulatory requirements that may limit it due to the primacy of public interests over private ones [3, p. 211].

Chapter II of the CFR begins with the declaration that everyone has the right to liberty and security of person [2, Art. 6]. Personal freedom, which

combines the internal and external forms of free will (will and expression of will), is the basis for all other freedoms. Without personal freedom, freedom of thought and conscience cannot exist, and the rights to freedom of choice, freedom of assembly, and others become unenforceable.

However, freedom of will is a broader concept than the rights enshrined in the CFR as "Freedoms." For example, the values enshrined in Chapter I ("Dignity") are directly related to freedom of will and are reflected in various normative acts. In particular: 1) human dignity is inviolable and must be respected and protected at all times [2, Art. 1]; 2) taking any action that degrades human dignity is prohibited [4, Art. 7]; 3) no person shall be subjected to torture, inhuman or degrading treatment, or punishment [5, Art. 7]. Dignity is an integral attribute of personality, which is formed through the individual's subjective self-assessment. This assessment results from an individual's free will and forms the basis of their self-identification. At the same time, respect for the dignity of other persons serves as a social regulator, limiting the individual's free will by establishing norms that require an objective attitude towards others, based on their actions, according to I. Berlin's Two Concepts of Liberty suggests that the above position should be recognised as a manifestation of "negative liberty", which consists in not interfering with the autonomy of others [6, p. 170]. Although the concept of "negative and positive liberty" is subject to criticism², its application in the context of law warrants a deep study.

The few scholarly attempts to interpret the freedoms enshrined in the CFR reveal differing perspectives on understanding freedom and free will. For example, the concepts of freedom as non-interference and dominance have been applied to understanding freedom of enterprise (Article 16 CFR) [7, p. 105–110]. E. Gill-Pedro considered the right to freedom of enterprise in the context of freedom as non-domination, emphasising that the conditions for doing business are determined by applicable law to prevent unreasonable control by the state, combat monopolies and unfair competition [8]. In contrast, E. Couperus emphasises that, in the context of new court decisions, freedom of entrepreneurial activity should be viewed through the concept of freedom as non-interference, potentially affecting the balance between economic freedom and the regulation of public interests [9].

At this research stage, it becomes clear that the concept of freedom of will is broader than the rights defined in the CFR as "Freedoms". Therefore, it cannot be said that the legal idea of freedom of will

² See. Dimova-Cookson M. Rethinking positive and negative liberty (routledge innovations in political theory). London : Routledge, 2019. 252 p.

is equivalent to freedom as a legal value of the EU. Freedom of will is a more fundamental concept, manifesting in the context of equality, solidarity, justice, and other related principles.

In addition to these clearer examples, the recognition of the role of freedom of will is implicitly stated in several vital rights and fundamental principles of EU law. The principle of respect for dignity (Art. 2 TEU and Art. 1 CFR) serves as the basis for recognising people's autonomy through their ability to make choices [10]. The rights to liberty and security of person (Article 6 CFR, Article 5 ECHR) protect the subjective freedom of the individual from arbitrary interference and the limitation of their autonomy to preserve the possibility of exercising their will. Similarly, freedom of thought and conscience (Article 10 CFR, Article 9 ECHR) guarantees each individual the inner freedom of will necessary to formulate thoughts, beliefs and take action. The freedom to conduct business (Article 16 CFR), which includes the right to take the initiative in economic activities and enter into contracts, underscores the value of individual freedom in economic relations [11].

Analysing the content within the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union reveals a multifaceted approach to freedom and autonomy in both documents, without juxtaposing them. For instance, the TEU claims "freedom" as one of the EU's values and objectives. This entails establishing a framework of security, justice, and freedom as a structured entity. The recognition of the "will" of the Member States to create the Union and the "political will" exercised by citizens emerges from the contours and limits defined in the democratic nature of the Union framework treaty. Unlike the TEU, the CFR provides a detailed and concrete description of an individual's right to self-determination, enumerating autonomy-enabling rights that allow individuals to control various aspects of their lives. The debate effectively represents the plurality of scholarly understandings of the relationship between freedom and its fundamental rights. Moreover, it portrays pluralistic relations between liberty to act and will, defining the values of the European Union.

Suppose the TEU indirectly recognises freedom of will as a necessary element of collective and public will for functioning democratic principles and fundamental rights. In that case, the CFR fills this gap by enshrining a detailed catalogue of rights to self-determination. These two documents complement each other, as the TEU provides a fundamental basis of values and goals. At the same time, the CFR expands the practical scope, outlining specific rights and freedoms that ensure the implementation of these principles in human life within the EU. The rights enshrined in the Charter

of Fundamental Rights have become the basis for updating the norms of national legislation. Moreover, these norms align with similar human rights enshrined in other countries' bills. In particular, we could observe similar structures in the Constitution of Ukraine and the Civil Code of Ukraine, which enshrine individual non-property rights even before the proclamation of the European integration path. This provides grounds for discussing the similarities between countries and supranational institutions in understanding fundamental human rights.

The TEU and CFR offer an essential structure for exercising rights and freedoms, although the focus differs in nuances. It is observed that the aggregated framework of the TEU, which encompasses a system of treaties reflecting the will of the Member States, captures the dominant political will and the sentiment of the people towards the Union, as reflected in its power politics and identity. At the same time, the CFR focuses on the essence of self-determination and decision-making in social, economic, and political life, scrutinising the intricate structuring of these elements.

Neither TEU nor CFR employs the definition of freedom of will; yet, this concept is articulated in various legal norms. For example, the guarantees of freedom of conscience and expression, freedom of occupation, and, perhaps most strikingly, the requirement of free and informed consent in medicine, as laid down in the CFR, demonstrate the concept of self-determination. That is, informed and independent decisions about contracting for medical treatment, forming an opinion, and even choosing a career are permissible and empower individuals. Hence, the TEU lays the groundwork for the governance environment, focusing on the philosophical foundation for why the law and policy of the European Union must respect, acknowledge, and actively defend these foundational personal liberties that grant the prerogative of free will.

The place of freedom of will among the four freedoms in the EU

The principle of the four freedoms is based on the understanding that barriers to interaction between states must be removed to strengthen cooperation. The principle of the four freedoms of the EU (freedoms of goods, capital, services, and people) is accompanied by the concept of freedom of will, which focuses on a person's capacity to act independently of external factors. This part of the research aims to analyse the role, place, and dynamics of free will within the operational framework of the EU's four freedoms by examining the scope of freedoms and constraints that EU frameworks impose on individual choices.

The free movement of goods is the foundation of the EU customs union, entailing the elimination of tariffs and quotas between member states, as well

as cooperation on the mutual recognition of product standards, which ensures that goods meeting the requirements of one member state can be sold on the market of other member states [12, p. 40]. Consumers today enjoy a vast array of products, which aligns with the basic tenet of freedom of will, where an individual makes a decision and choice. However, this freedom is subject to restrictions that Member States may impose to protect essential public interests, such as health, environmental protection, or consumer safety [13]. Furthermore, measures such as equivalent quantitative restrictions (MEQR) and the current interpretation of the European Court of Justice (ECJ) demonstrate the difficulty of achieving an entirely unhindered movement of goods. The significant volume of intra-EU trade in goods, which accounts for a substantial share of the European Union's GDP, demonstrates the economic size of the EU.

In this case, freedom of will is manifested depending on the subject: 1) the consumer's freedom of will consists in the ability to choose goods freely and is carried out by making a purchase decision; 2) the freedom of will of sellers and manufacturers consists in choosing the place of sale and production of goods – in the EU countries or outside the internal market; 3) the freedom of will of traders allows them to choose the ways of moving goods within the internal borders of the EU.

The freedom of movement of capital enables the flow of funds within the EU, facilitates cross-border trade, favors the mobility of workers, facilitates the collection of capital necessary for the start-up and growth of business entities and the functioning of an integrated, open and efficient internal market, which is of interest to all EU citizens [14, 44]. According to the Briefing European Added Value in Action, this enables individuals and companies to open bank accounts, buy shares in companies, and invest in real estate outside their own countries, which should improve the efficiency of capital allocation within the EU, increase returns on personal investments, and facilitate cross-border activities [15]. Expanding the possibilities of choice in using financial resources is also related to the concept of freedom of will, as it broadens the options for decision-making and creates new avenues for their implementation. Although the Maastricht Treaty imposes certain restrictions on capital movement, this freedom is characterised by a broad spatial framework, as it enables movement between EU members and other countries.

The manifestation of freedom of will in the freedom of capital movement depending on the subject: 1) the freedom of citizens consists in making financial decisions regarding the choice of the country in which to open bank accounts, where and which stocks to buy, real estate, etc.; 2) the

freedom of investors consists in making investment decisions without national restrictions on money transfers, etc.; 3) the freedom of borrowers allows them to attract financing on more favorable terms.

The freedom of services encompasses the unhindered ability to offer services in EU countries by establishing a permanent business presence in another member state or providing services temporarily in another member state. S. Vasilopoulou notes that this phenomenon enhances competition in the services industry, increases the availability of services to consumers, and creates new employment opportunities within the EU; citizens have greater choice regarding the providers of services, as well as the freedom to provide their services within different Member States, consistent with the concept of freedom of will in professional and economic activity [16]. Citizens of the EU can take up employment in another Member State and enjoy the same benefits as local employees without needing a work permit. EU citizens' support for this freedom remains high, reflecting its benefits for individual opportunities and mobility.

The manifestation of freedom of will in the free movement of capital: 1) companies and self-employed persons can set up a permanent base in another Member State under the same conditions as nationals of that State (freedom of establishment); 2) companies and self-employed persons established in one Member State can temporarily offer their services in another Member State without having to set up a permanent base there, which requires a prohibition on discrimination and often includes mechanisms for the mutual recognition of professional qualifications, such as the freedom to provide services across borders.

The manifestation of freedom of will in the free movement of capital depending on the subject: 1) service providers are free to choose whether to establish themselves permanently or to offer services temporarily in other Member States, gaining access to new customer bases; 2) consumers are free to choose service providers from other Member States, benefiting from potentially greater choice, specialised skills or better prices. The “will” is the decision to offer or purchase services across borders.

The free movement of people (labour) enables EU citizens to live, work, study, or seek employment in any EU Member State without discrimination based on nationality. This liberty is probably most closely associated with the concept of “freedom of will” and the decisions related to life that an individual makes. In this situation, a linkage can be observed with individual non-property rights, such as the domestic right to a place of residence and the right to movement.

The ability to move freely enables people to choose where they live and work, potentially leading

to improved career prospects, personal development, and cultural enrichment; as EU citizens have the right to seek work, reside, and enjoy equal rights in other Member States, this freedom of movement is particularly valuable [16]. However, this freedom is not unconditional, as individuals must demonstrate that they are workers, students, or have sufficient financial resources to stay for more than three months. Restrictions may also be imposed for reasons of public order, public security and health. Potential obstacles, such as language barriers, cultural differences, and the recognition of professional qualifications, may also affect the practical exercise of this freedom.

The relation between ‘freedom of will’ and freedom of movement is the most direct and immediate. Citizens can freely select to reside, study, work, or retire in any EU member state according to their individual goals. Their wills are articulated in important life decisions such as relocation and employment activities within the Union.

Freedom of will in secondary law and various areas of EU law

Freedom of will also manifests in the EU's secondary legislation norms. We examine four key areas—data protection, contract law, consumer protection, and competition law—and focus on how each one interprets and respects autonomy through specific mechanisms and rules.

Regarding data protection, the EU General Data Protection Regulation (GDPR) serves as a benchmark for legislation on data governance within the EU, aiming to empower individuals

through self-determination by upholding their fundamental rights and granting control over their data. EU regulations on data protection focus on the individual's will and control over their data, protection of natural persons about the processing of personal data emphasises individual control, as the processing of data must always be lawful, fair, and transparent, and often requires consent that is freely given, specific, informed and unambiguous.

The processing of personal data is permitted only where the data subject has consented to processing their data for one or more specific purposes [17, Art. 6(1)(a)]. Consent must be freely given, and a specific, informed, and unambiguous indication of the wish to agree to processing personal data [17, Art. 4(11)]. This definition inherently includes key elements of autonomous decision-making.

Article 7 of Regulation (EU) 2016/679 of the European Parliament and of the Council sets out the conditions for the validity of consent: 1) freely given: consent must be free from coercion, pressure or significant negative consequences in case of refusal and comply with the principle of "necessity" (can this relationship exist without consent to data processing); 2) specific: consent must relate to one or more clearly defined purposes, about which the data subject has been informed in advance; 3) informed: data subjects must receive clear, concise and understandable information before they give consent (purposes of processing, types of data collected, right to withdraw consent, information about automated decision-making, potential risks, etc); 4) unambiguous: consent must be confirmed

Table 1

Manifestation, place and value of free will within each of the four freedoms in the EU

Title	Manifestation of free will	A place of free will	The value of free will
Free movement of goods	Consumers have a wider range of products to choose from thanks to the elimination of tariffs and trade barriers. Businesses have the freedom to sell their products in member countries.	Primarily in the economic sphere, influencing consumer choice and business opportunities within the single market.	Freedom to choose from a broader range of products and freedom for businesses to decide where to sell their goods, following EU rules. This is linked to the idea of increased opportunities and autonomy in economic decisions.
Free movement of capital	Individuals and businesses can invest, save and move money across EU borders without restrictions.	In the financial and economic area, which affects investment decisions and financial planning.	Freedom of choice regarding the management and investment of financial resources throughout the European Union, thereby increasing financial autonomy.
Free movement of services	Service providers can offer their services in any EU country, and consumers can choose from a broader range of service providers.	In the economic and professional area, which affect both the demand and supply of services in the EU.	Freedom for individuals and companies to decide where to offer and consume services, increasing professional and consumer freedom.
Free movement of people	EU citizens have the right to live, work, study and look for work in any EU member state without discrimination.	First of all, in people's personal and professional lives, which in turn affects their choices of residence, career, and education.	The freedom to make fundamental life choices about where to live and work is an essential aspect of individual autonomy in the EU.

by explicit positive action, and silence, pre-ticked boxes, or inaction do not constitute valid consent; 5) withdrawal: data subjects have the right to withdraw consent at any time, and this process should be as easy as giving consent, and individuals should be informed of this right before giving consent; 6) demonstrable: the controller bears the burden of proving that valid consent has been obtained [17, Art. 7].

The CJEU's decisions on consent, such as in the *Planet49* and *Orange Romania* cases, have clarified the strict standards required to ensure that consent under the GDPR genuinely reflects the data subject's free will. The GDPR thus underlines the EU's commitment to upholding individual autonomy and people's freedom of choice regarding their personal information in the digital age.

Regarding contract law, the principle of *pacta sunt servanda* and the fulfilment of contract obligations come from the free will exercised by the parties when they are willing to contract and execute their respective commitments. This principle guarantees commercial certainty and reliability, enabling business affairs based on the assumption that people may bind themselves of their own volition. This freedom, however, hinges on the validity of the consent given by the parties. In this context, the law specifies the necessary elements for granting genuine assent, ensuring the absence of coercion, deception, or undue influence.

In the case of *Orange Romania*, the CJEU determined that pre-checked boxes do not represent valid consent under EU data protection laws, emphasising the necessity for a clear, affirmative, and unmistakable indication of consent [18].

Moreover, autonomy in international agreements permits the selection of the applicable contract law (*lex contractus*) and the forum for dispute resolution, utilising liberal individualistic principles that consider the parties as the best evaluators of their interests. In EU law, freedom of contract is regarded as a fundamental legal principle closely associated with exercising business activities, which is enshrined in Article 16 of the CFR. This correlation captures the predominant economic dimension of freedom of contracting within the EU's legal system, as reflected in EU private international law instruments, such as the Rome I Regulation, particularly in Article 3.

EU consumer law also aims to safeguard consumers' freedom of choice. The Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD) prohibit misleading and aggressive commercial practices that can potentially distort consumers' economic behaviour and their ability to make informed decisions [19].

The CRD outlines improved pre-contractual information obligations for distance contracts (such as online sales) and off-premises contracts (like doorstep sales). Traders are required to deliver precise and understandable information about essential elements, including the main features of the goods or services, the total price (which includes taxes and delivery fees), payment and delivery terms, the trader's identity along with their contact information, and the existence and terms of the right of withdrawal [20]. The UCPD enhances this by banning misleading omissions, hiding crucial information, and mandating transparency about commercial purposes (banning covert marketing), along with other measures [21].

Besides providing information, the UCPD specifically targets practices that purposely compromise consumer autonomy through deceit or coercion. Therefore, Article 5 establishes a broad ban on unfair commercial practices that violate the requirements of professional diligence and can significantly alter consumers' economic behaviour [22]. Article 6 prohibits misleading actions and spreading false information; Articles 8 and 9 prohibit aggressive behaviours such as harassment, coercion, or undue influence that violate the consumer's freedom to choose [22].

In addition, Annex I to the UCPD outlines a list of practices considered unfair under all circumstances, without requiring an assessment of their likely consequences for the average consumer in each case. In particular, this list includes practices that undermine informed choice through false claims of limited availability (paragraph 7), misleading endorsements or authorisations (paragraphs 3, 4), promotion of similar products (paragraph 13), false claims of medicinal properties (paragraph 17), false prize promotions requiring payment (paragraphs 29/31), billing for goods not ordered (paragraph 21), etc.

EU competition law, primarily embodied in Articles 101 and 102 of the TFEU, intersects with the concept of free will through economic freedom.

Article 16 of the CFR recognises the freedom to conduct a business under Union law and relevant national laws and practices. This right includes engaging in economic activities, making business decisions, and competing in the market. Similar to the case of the CJEU, this right consists of the ability to enter into contracts, select business partners, determine sale prices, and allocate business assets [23]. Nevertheless, this freedom is constrained by the prior conditions that must be complied with to safeguard the essence of liberty, while upholding the public interest and the rights and freedoms of others (Art. 52(1) CFR). Additionally, Article 101 TFEU prohibits forming agreements and collusive bidding between economic operators whose object or effect

is to prevent or limit competition in any way in the internal market. Dominance in the market by one or more undertakings is prohibited under Article 102 TFEU, which regulates the abuse of the dominant position.

Summary. As the analysis illustrates, the concept of freedom of will is an unspoken yet fundamental value that underlies the European Union's legal framework. Although not explicitly stated, it binds other rights and values in some manner, the

Table 2

Conceptualisation and protection of freedom of will in different areas of EU law

Feature	Data Protection (GDPR)	Contract Law	Consumer Protection (UCPD/CRD)	Competition Law
Core Autonomy Concept	Informed Consent / Data Control / Informational Self-Determination	Party Autonomy / Freedom of Contract	Informed Choice / Decisional Autonomy / Freedom from Manipulation	Economic Freedom / Freedom to Conduct a Business
Primary Legal Basis	GDPR Art 4(11), 6, 7; Art 8 CFR	General Principles; Rome I Regulation; Art 16 CFR (indirectly)	UCPD; CRD; Art 38 CFR	Art 16 CFR; Art 101–102 TFEU
Key Protection Mechanism(s)	Strict consent validity rules; Strong data subject rights (access, withdrawal etc.); Transparency obligations	Freedom of choice (default); Mandatory protective rules (weaker parties); Judicial review of terms	Information duties; Prohibition of unfair/aggressive practices (inc. Blacklist); Right of withdrawal	Balancing test (Art 52(1) CFR); Prohibition of anti-competitive conduct; Market regulation
Main Beneficiary/ Subject	Data Subject (Natural Person)	Contracting Parties (with specific focus on weaker party e.g., consumer, employee)	Consumer (Natural Person acting outside trade/profession)	Undertakings (Natural/Legal Persons); Market Structure; Consumers (indirectly)
Key Limitations/ Challenges	Power imbalance; Conditionality ('consent or pay'); Dark patterns; Enforcement complexity	Mandatory rules (consumer, employment); Public policy; Unequal bargaining power; Standard form contracts	Information asymmetry; Cognitive biases; Deceptive/manipulative practices; Enforcement consistency	Public interest objectives; Market fairness; Protection of competitors/consumers; Proportionality

significance of which lies in the fact that they appear to be a form of enabling condition or structure for the exercise of free will, rather than the essence of freedom itself.

While freedom of will is not codified as a single, overarching value, the EU legal framework integrates numerous elements that enable it. Examples include the fundamental right to free movement and the detailed requirements for valid consent in personal data processing, partly defined by 'free will'. Freedom of will is a linchpin in nurturing European devotion to individual autonomy, human dignity, and the rule of law and governance.

Freedom of will underscores the importance of choice in the control the EU seeks to provide citizens over managing their personal data, economic life, and everyday decisions. In business, such attention is further marked by the principles of voluntary participation in financial activities, which include, but are not limited to, freedom of contract and the right to conduct a business. The well-developed structure of consent found in the GDPR indicates an attempt, highly relevant to the current technological context, to ensure people can exercise control over their information in the digital world. Additionally, the focus on voluntariness highlights the importance

of responsibility, which can only be attributed to acting based on a freely made decision.

Despite its significance, the concept of free will remains challenging to ensure within the European legal framework. Advancements in technology, particularly in artificial intelligence and the extensive reach of online platforms, create additional pathways for sophisticated forms of coercion that call into question genuine individual choice in the information domain. Sociological factors, disparities, and the challenge of balancing personal and social interests also impede the realisation of the legal concept of free will. The EU is taking steps to respond, particularly through the Artificial Intelligence Act and the Digital Services Act. These are important, but the scope of their impact over time is a topic for a different study.

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