

EUH4D

EUROPEAN FEDERATION OF
DATA DRIVEN INNOVATION
HUBS

WP3 Legal and ethical aspects

The impact of the Data Governance Act

Data Strategy of the EC (Feb 2020)

Horizontal legislation

(sector-) specific
legislation



Substantive rights

Control, access and sharing rights (including data portability), incl. B2B, B2C, B2G, G2B, ...

Institutional/organisational framework

(Financial) support to (technical) data infrastructure +
Data governance regulation (DGA)

Big Five

Data Governance Act (DGA)

Governance framework for data access and use, increase trust among actors in the data value chain and promote availability of data.

Data Act (DA)

New substantive rights on data (allocation of access and/or control)

AI Act (AIA)

Regulation of different uses of AI with the aim of increasing trust in AI technology and promote their development and use in accordance with EU values

Digital Markets Act (DMA)

Regulation of “gatekeeper” companies with the aim of ensuring a fairer digital market

Digital Services Act (DSA)

Responsibilities and obligations for service providers in the online environment

The impact of the Data Governance Act (DGA)

Regulation

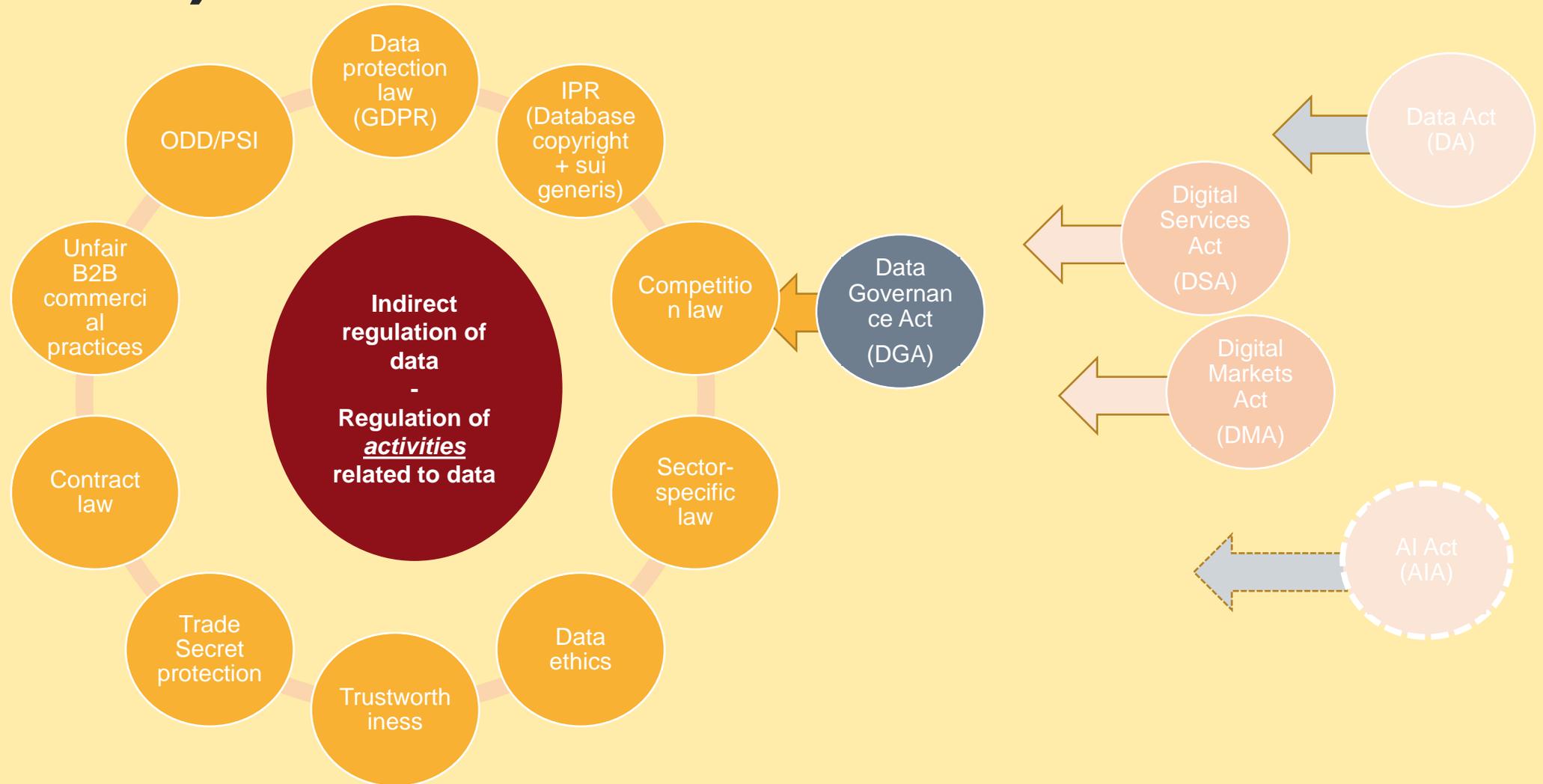
Adopted on 30 May 2022

Entered into force on 23 June 2022

Following a 15-month grace period, will be applicable from September 2023

Compliance hurdle or opportunity?

Legacy and upcoming legal and ethical frameworks related to data (context-specific!)



Definitions

- ‘**data**’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording
- ‘**data holder**’ means a legal person, including public sector bodies and international organisations, or a natural person who is not a data subject with respect to the specific data in question, which, in accordance with applicable Union or national law, **has the right to grant access to** or **to share** certain personal data or non-personal data;
- ‘**data user**’ means a natural or legal person who **has lawful access** to certain personal or non-personal data and **has the right**, including under Regulation (EU) 2016/679[GDPR] in the case of personal data, to use that data for **commercial** or **non-commercial** purposes;

Definitions

- **“data sharing”** means the **provision of data** by a data subject or a data holder to a data user for the purpose of the **joint or individual use of such data**, based on **voluntary agreements or Union or national law, directly or through an intermediary**, for example under open or commercial licences subject to a fee or free of charge;

Compliance hurdle or opportunity?

Scope of DGA

- Conditions for the re-use of certain data held by public-sector bodies
- Notification and supervisory framework for provision of data intermediation services
- Framework for entities that collect and process data made available for altruistic purposes
- Framework for the establishment of European Data Innovation board

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Data intermediation service

- ‘**data intermediation service**’ means a service which aims to **establish commercial relationships for the purposes of data sharing** between an **undetermined number of data subjects and data holders** on the one hand and **data users** on the other, **through technical, legal or other means**, including for the purpose of exercising the rights of data subjects in relation to personal data, **excluding** at least the following:
 - (a) services that obtain data from data holders and **aggregate, enrich or transform the data for the purpose of adding substantial value to it and license** the use of the resulting data to data users, without establishing a commercial relationship between data holders and data users; [**data brokers ?**]
 - (b) services that focus on the intermediation of **copyright-protected content**;
 - (c) services that are exclusively used by one data holder in order to enable the use of the data held by that data holder, or that are used by multiple legal persons in a **closed group**, including supplier or customer relationships or collaborations established by contract, in particular those that have as a main objective to ensure the functionalities of objects and devices connected to the Internet of Things;
 - data sharing services offered **by public sector bodies** that do not aim to establish commercial relationships;

Data intermediation services – In General

Ch.3 - Requirements applicable to data intermediation services

- Data intermediaries will function as **neutral third parties** that connect individuals and companies on one side with data users on the other.
- **They cannot monetise the data** (e.g. by selling it to another company or using it to develop their own product based on this data) and will have to comply with strict requirements to ensure this neutrality and avoid conflicts of interest.

<https://digital-strategy.ec.europa.eu/en/policies/data-governance-act-explained#ecl-inpage-l4ihlqt9>

Data intermediation services – Art. 10

- ...the following data intermediation services shall comply with Article 12 and shall be subject to a notification procedure [Art.11]:
 - a) intermediation services between **data holders** and **potential data users**, including making available the technical or other means to enable such services; those services may include **bilateral or multilateral exchanges*** of data or the **creation of platforms or databases enabling the exchange or joint use of data**, as well as the **establishment of other specific infrastructure** for the interconnection of data holders with data users;

Data intermediation services Art. 10

-the following data intermediation services shall comply with Article 12 and shall be subject to a notification procedure [Art.11]:
 - b) intermediation services **between data subjects** that seek to make their personal data available or **natural persons** that seek to make **non-personal data** available, and **potential data users**, including making available the technical or other means to enable such services, and in particular enabling the exercise of the data subjects' rights provided in Regulation (EU) 2016/679 [GDPR];
 - c) data cooperatives

Data intermediation services (Recitals)

- Examples of data intermediation services include data **marketplaces** on which undertakings could make data available to others, **orchestrators of data sharing ecosystems** that are open to all interested parties, for instance in the context of common European data spaces, as well as **data pools** established jointly by several legal or natural persons with the intention to license the use of such data pools to all interested parties in a manner that all participants that contribute to the data pools would receive a reward for their contribution. (Rec. 28)

Data intermediation services (Recitals)

- **Other services that do not aim to establish commercial relationships**, such as repositories that aim to enable the **re-use of scientific research data** in accordance with open access principles should **not be considered to be data intermediation services** within the meaning of this Regulation.

Data intermediation services (Recitals)

- where data sharing occurs in a [B2B] or [B2C] context, data intermediation services providers should offer a novel, 'European' way of data governance, **by providing a separation in the data economy between data provision, intermediation and use.** (Rec. 32)

Data intermediation services (Recitals)

- Specialised data intermediation services that are independent from data subjects, data holders and data users could have a facilitating role in the emergence of new data-driven ecosystems independent from any player with a significant degree of market power, while allowing non-discriminatory access to the data economy for undertakings of all sizes, in particular SMEs and start-ups with limited financial, legal or administrative means.
- (Rec. 27)

NOT intermediation service

- Data brokers and cloud services that do not aim to establish commercial relationships between the data holders and users. (advertising brokers, data consultancies, or providers of data products)
- Serving to a closed group
- Enabling access to **scientific research data** without **establishing commercial relationships**
- Intermediary of **copyright-protected content**
- Browsers and email service providers
- account information service providers under the PSD2 Directive

NOT intermediation service

- data sharing services offered **by public sector bodies** that do not aim to establish commercial relationships
- Data exchange platforms that one data holder exclusively uses to enable the use of data they hold.
- Platforms developed in the context of objects and devices connected to the Internet of Things (for functionalities of the connected object or service)
- data altruism org.
- financial services data largely regulated by existing sector-specific legislation.*

Rules applicable to DIS

Licence requirement

- Data intermediaries will need to meet licence conditions designed to ensure their independence and restrict their re-use of data and metadata.

Notification requirement

- **Notification requirement for data intermediation services providers**
- Any person that intends to provide the data intermediation services must submit a notification of such intention to the designated competent public authority of the relevant EU member state. Such notification will grant data intermediation services providers the right to start offering their services within the EU. The following kinds of data intermediation services are subject to the notification procedure:
 - Intermediation services between data holders and potential data users. This includes bilateral or multilateral exchanges of data or the creation of platforms or databases enabling the exchange or joint use of data as well as the establishment of other specific infrastructure for the interconnection of data holders with data users.
 - Intermediation services between data subjects that seek to make their personal data available or non-personal data available and potential data users.
 - Services of data cooperatives. These include data cooperatives that support individual or small and medium-sized enterprises to negotiate terms and conditions for data processing.

Neutrality of data intermediaries

- Data intermediation services providers are required to remain neutral such that they must not use data for their own purposes. To achieve neutrality, data intermediaries must distinguish their data sharing services from their other commercial operations and are prohibited from using the data exchanged for any other purposes.
- The data intermediation service should be provided through a legal person that is separate from other activities of the intermediary.
- Moreover, data intermediation services providers are required to ensure fair price of their services.

separate legal person

- *...provided through a legal person that is **separate** from other activities of the intermediary.*
- Subsidiary?
- Affiliate?
- Totally independent undertaking?

➔ It may be surmised that the wording “**from other activities of the intermediary**” leaves out the option of totally independent entity.

- The concept of separate **legal person** includes associations, foundations or any recognised legal entity under the domestic law.

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**Engage to detect,
create and valorize the
opportunities!**

Thank you!

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