



The Data Governance Act and the GDPR

Data Privacy Day

30 January 2022

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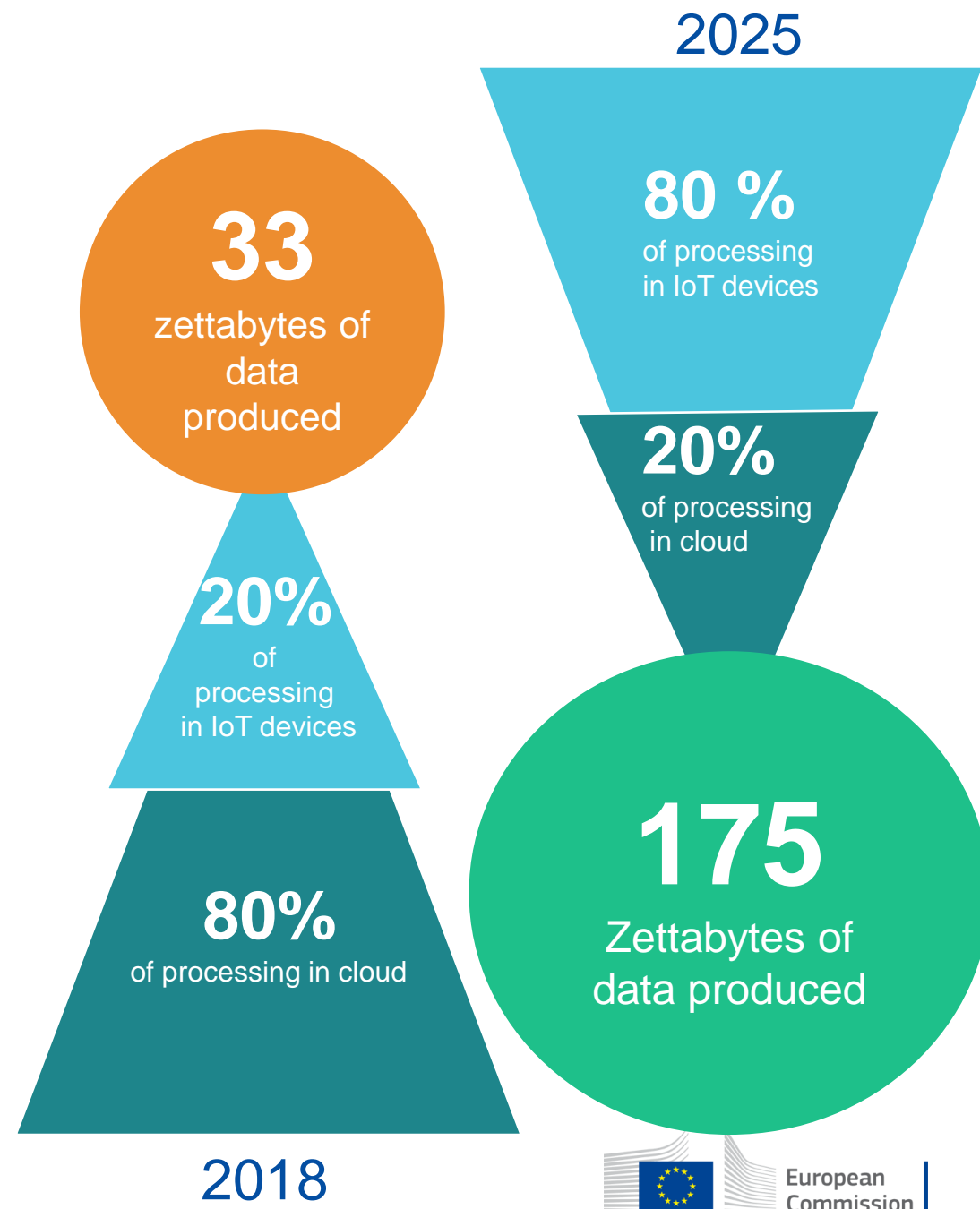
Legal and Policy Officer

Data Policy and Innovation Unit, DG CNECT

The broader picture: the European strategy for data (2020)

Europe has everything to play for

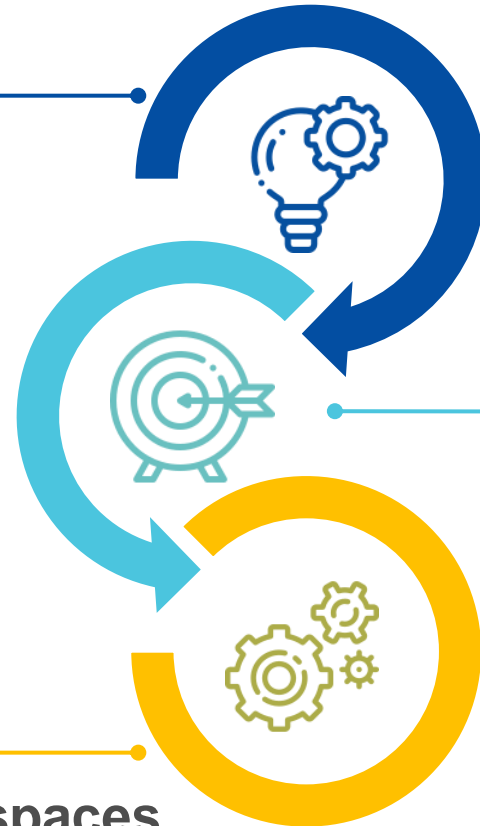
- Data can transform all sectors of the economy and is crucial for AI
- Data can contribute to tackle societal challenges such as climate change, health, mobility, etc.
- Data can make our lives and work easier and better



Creating a single European market for data

European Data Strategy

- Adopted Feb 2020
- Built on EU rules and values



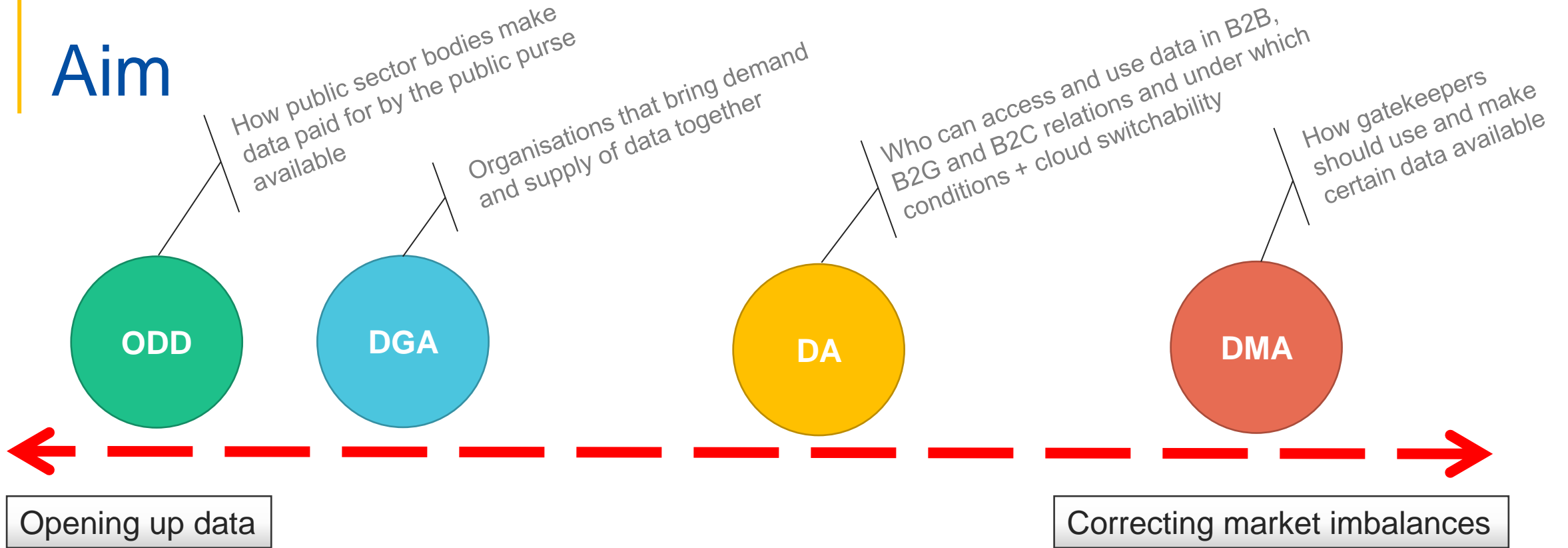
A cross-sectoral legislative framework

- Data Governance Act – Nov 2020
- Digital Markets Act – Dec 2020
- Data Act – Feb 2022
- Impl. Act on High-value datasets – Jan 2023

Common European data spaces

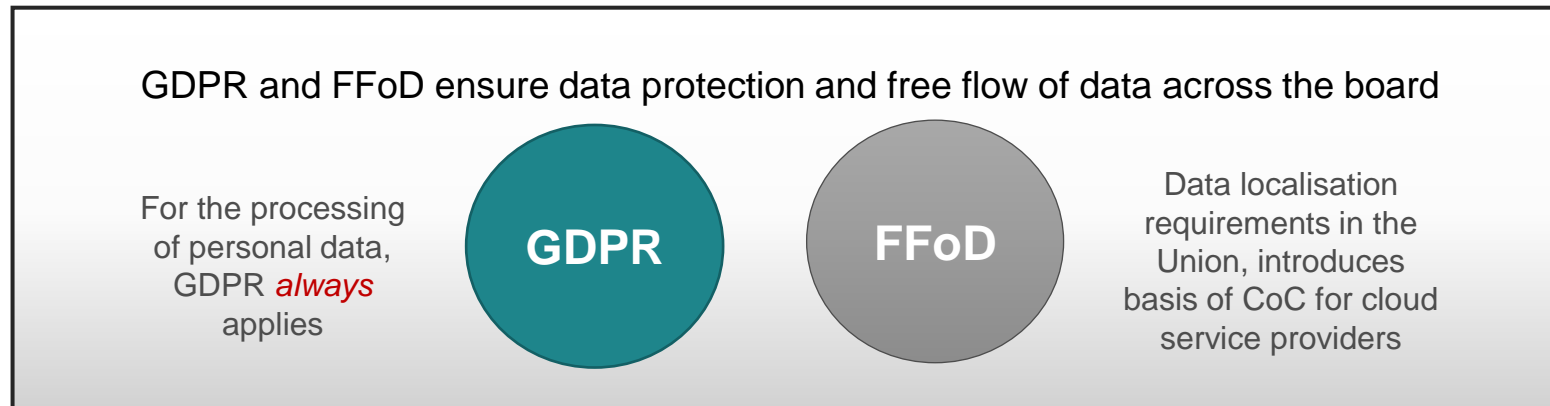
- Staff Working Document – Feb 2022
- Horizontal aspects + sectoral initiatives
- EU funding + programmes

Aim

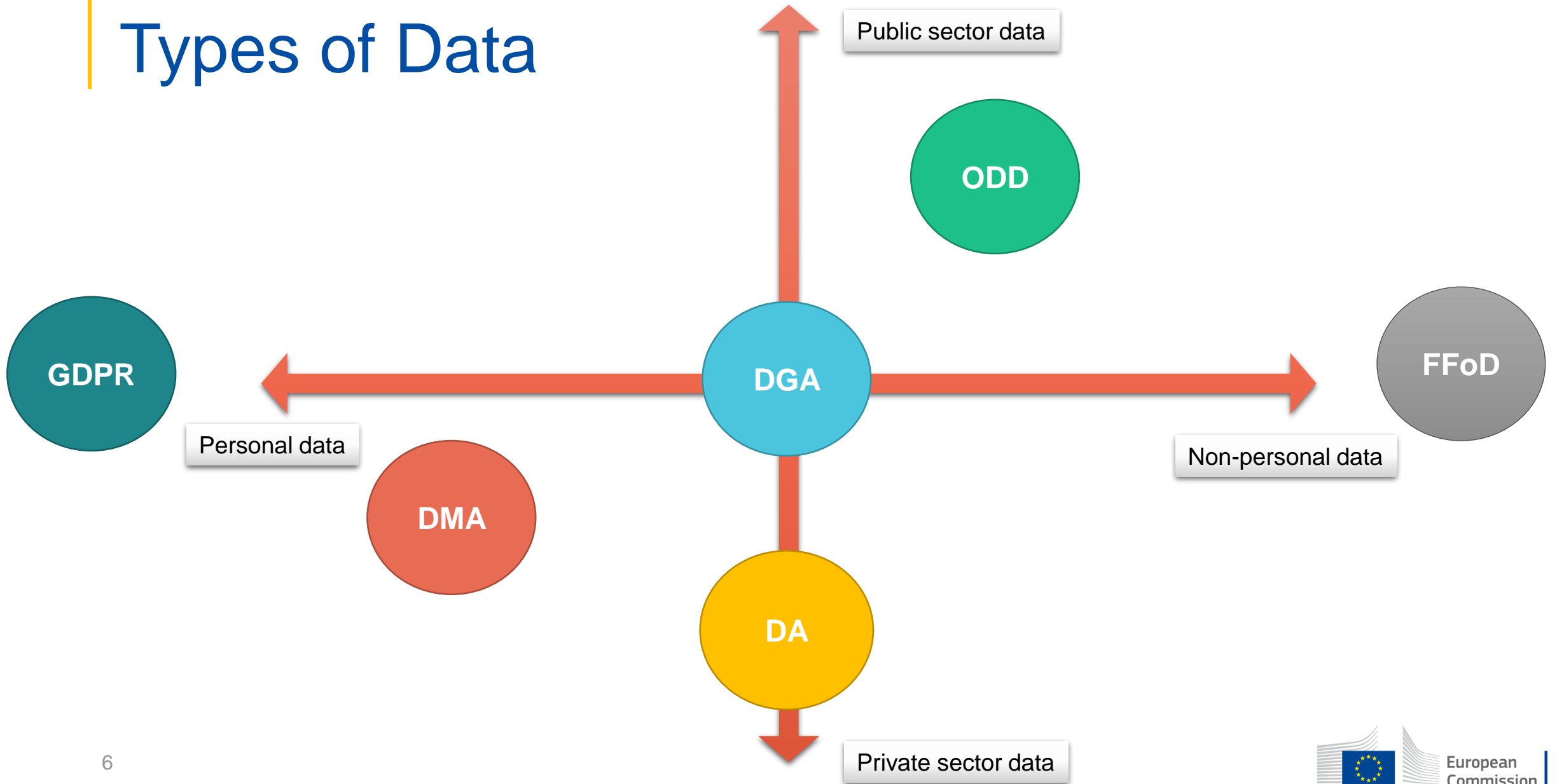


- DA Data Act
- DMA Digital Markets Act
- DGA Data Governance Act
- ODD Open Data Directive
- FFoD Free Flow of Data Regulation
- GDPR General Data Protection Regulation

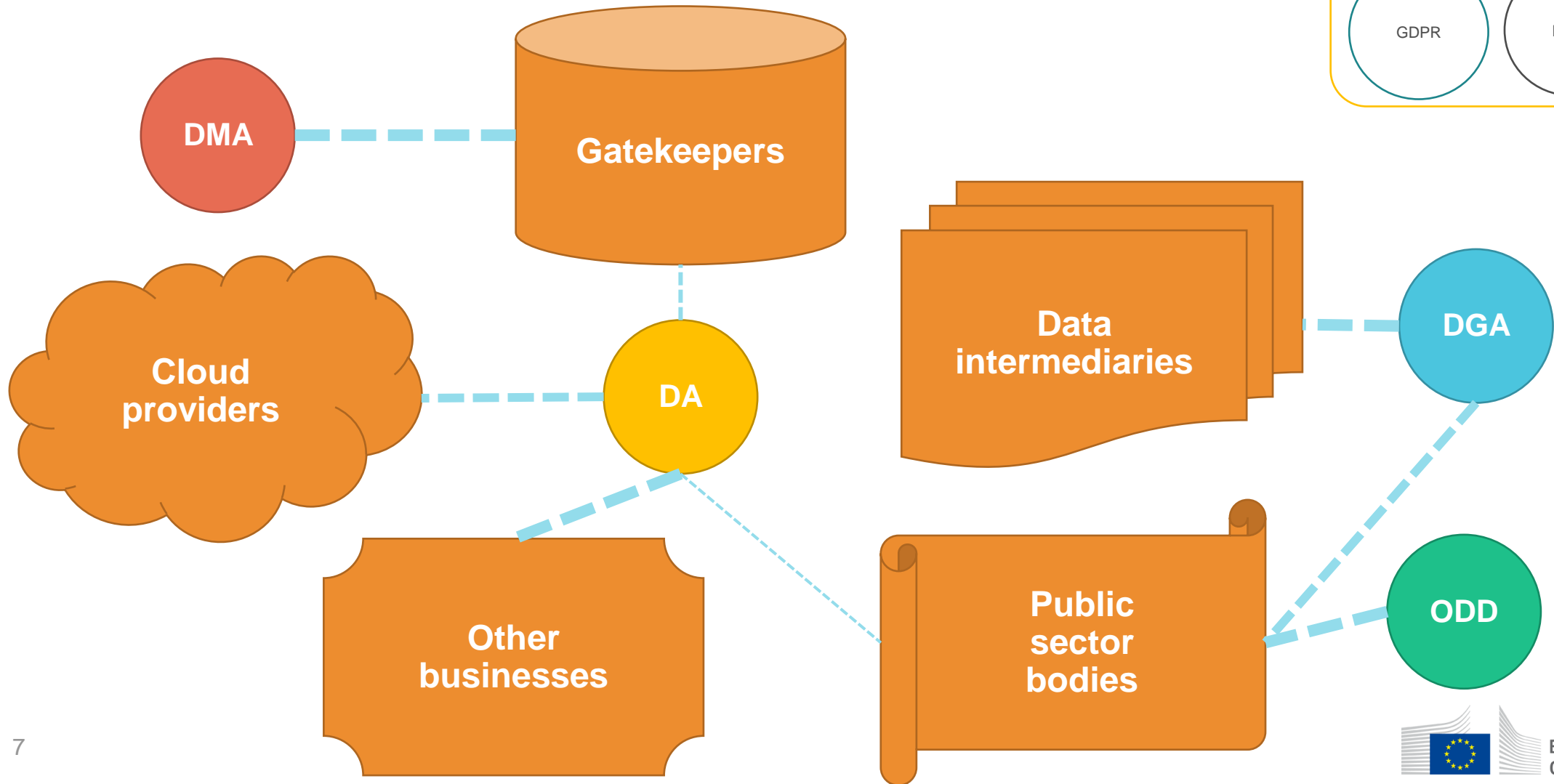
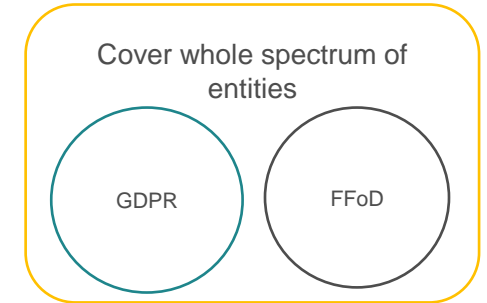
Legend



Types of Data



Regulated actors



The Data Governance Act

Key dates

Proposal
adopted by the
Commission

- 25 November 2020
([COM\(2020\)767](#))

Council
position

- 1 October 2021
([Council
mandate](#))

Published
in the
Official
Journal

- 3 June 2022
([Final legal
text](#))

EP position

- 16 September
2021 ([Niebler
report](#))

Political
agreement

- 30 November
2021

Application

- 24 September
2023



“With the Data Governance Act, we are defining a common approach to data sharing – the European way.”



We are facilitating the flow of growing industrial data across sectors and Member States to help Europe become the world's number one data continent. We are doing so by building trust, putting the individuals and companies who generate data in the driving seat, so they remain in control of the data they create. In a nutshell: we are building an open yet sovereign European Single Market for data.”

*Thierry Breton
Commissioner for the Internal Market*

DGA: general objectives

- Increase trust in **voluntary data sharing**
- Strengthen mechanisms to **increase data availability**
- **Overcome technical obstacles** to the reuse of data
- Create an **alternative for the current business models** around data

Vision



A Single Market for data

The four pillars of the DGA

Leveraging the potential of data for the economy and society



Pillar 1:

Re-use of **sensitive data** held by **public sector bodies**



Pillar 2:

Framework for new **neutral data intermediaries** in the Single Market



Pillar3:

Corporate and individual **data altruism** for purposes of general interest



Pillar4:

Co-ordination and interoperability:
European Data Innovation Board

Horizontal framework for the creation of a single market for data

General interplay with the GDPR

Article 1(3)

- “Union and national law on the protection of personal data **shall apply** to any personal data processed in connection with this Regulation.
- In particular, this Regulation is **without prejudice** to Regulations (EU) 2016/679 and (EU) 2018/1725 and Directives 2002/58/EC and (EU) 2016/680, including with regard to the powers and competences of supervisory authorities. In the event of a conflict between this Regulation and Union law on the protection of personal data or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data **shall prevail**.
- This Regulation does not create a legal basis for the processing of personal data, nor does it affect any of the rights and obligations set out in Regulations (EU) 2016/679 or (EU) 2018/1725 or Directives 2002/58/EC or (EU) 2016/680.”
- The interplay is further clarified in recitals 4, 6, 7, 8, 15, 26, 30, 31, 35, 44, 46, 50, 51 and Articles 5(6), 9(2), 10(b) and 25(3).

A closer look at the DGA and the GDPR

Pillar 1: Re-use of sensitive public data

- **Complementary to Open Data Directive:**
It covers data that can **only be used under certain conditions**, because others have rights on that data (personal data, trade secrets, confidential business information, IP)
- Building on national access regimes: where re-use happens, it should do so in a harmonised manner, **subject to conditions**
- Leaves room for MS, but aims to **create at least one contact point (single information point)** for liaison between re-users and public sector bodies/competent bodies

Objective:

More data on the market, safely.

Examples:

*Findata (FI), Centre d'accès sécurisé aux données (FR),
Forschungsdatenzentren (DE)*

Pillar 1 (re-use of sensitive public data) and the GDPR

- Member States will have to ensure that public sector bodies are technically equipped to **ensure the protected nature of data is preserved**.
- Conditions for reuse publicly available must be non-discriminatory, proportionate and objectively justified – Art 5 (2)
- To **grant access for the re-use of data**, the PSB may require:
 - Anonymisation of personal data – Art 5 (3) (a) (i)
 - Access and re-use of data within a secure processing environment – Art 5 (3) (b) and (c)
 - PSD has the right to verify processing (Art 5 (4)); re-use conditional on signature of confidentiality agreement (Art 5 (5))
- PSB should **support re-user to seek consent** – Art 5 (6)

Pillar 2: Data sharing intermediaries ‘European style’

Principles and requirements for **novel intermediaries for B2B and C2B data sharing – the ‘orchestrators of the common European data spaces’**

- Support **voluntary data sharing, preserving control** over the data by companies and individuals
- **Strict neutrality requirement** (cannot monetise the data shared through them)
- Should be established in Europe or have a legal representative in a MS.

Measure:

Notification to competent authorities in MS before functioning

Examples:



Dawex (FR),



Databroker (BE),



Meeco (BE)



European
Commission

Pillar 2 (data intermediaries) and the GDPR

Article 10 (b) – specific category of data intermediation services providers that offer services to data subjects

The provision of the following data intermediation services shall comply with Article 12 and shall be subject to a notification procedure: (...)

“(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;”

[cf. Art 12 (m) and (n)]

Pillar 3: Individual & corporate data altruism

Not-for-profit data altruism organisations have the option to register as
'Data Altruism Organisations recognised in the Union'

- Individuals and companies could share their data for the common good, without direct reward
- Data altruism entities: constituted to meet objectives of general interest, transparency
- European data altruism consent form to facilitate the collection of data

Measure:

Voluntary registration with competent authorities in MS

Examples:



Corona Datenspende-App (DE)

Pillar 3 (data altruism) and the GDPR

- **Consent / “Broad” consent for scientific research purposes**
- **European consent form** – Modular approach – EDPB consulted – Art 25
- **Rulebook for recognized data altruism organizations** – Art 22
- Examples of **further safeguards**:
 - Secure data processing environments
 - Oversight mechanisms such as ethics councils
 - Technical tools to withdraw or modify consent at any moment
 - Means for data subjects to stay informed about the use of the data they made available

Pillar 4: Co-ordination and interoperability: the European Data Innovation Board (EDIB)

- **Advising and assisting** the Commission in developing a consistent practice for re-use, data intermediaries and data altruism entities;
- **Governance of technical standardisation** to enhance interoperability;
- **Facilitating the cooperation of the work of national competent authorities** for enhanced data use.

Measure:

Establishing the **European Data Innovation Board** as expert group

Thank you!

Let's stay in touch:
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