



The Data Act proposal

Frankfurt Competence Center for German and Global
Regulation (FCCR)

14.03.2023

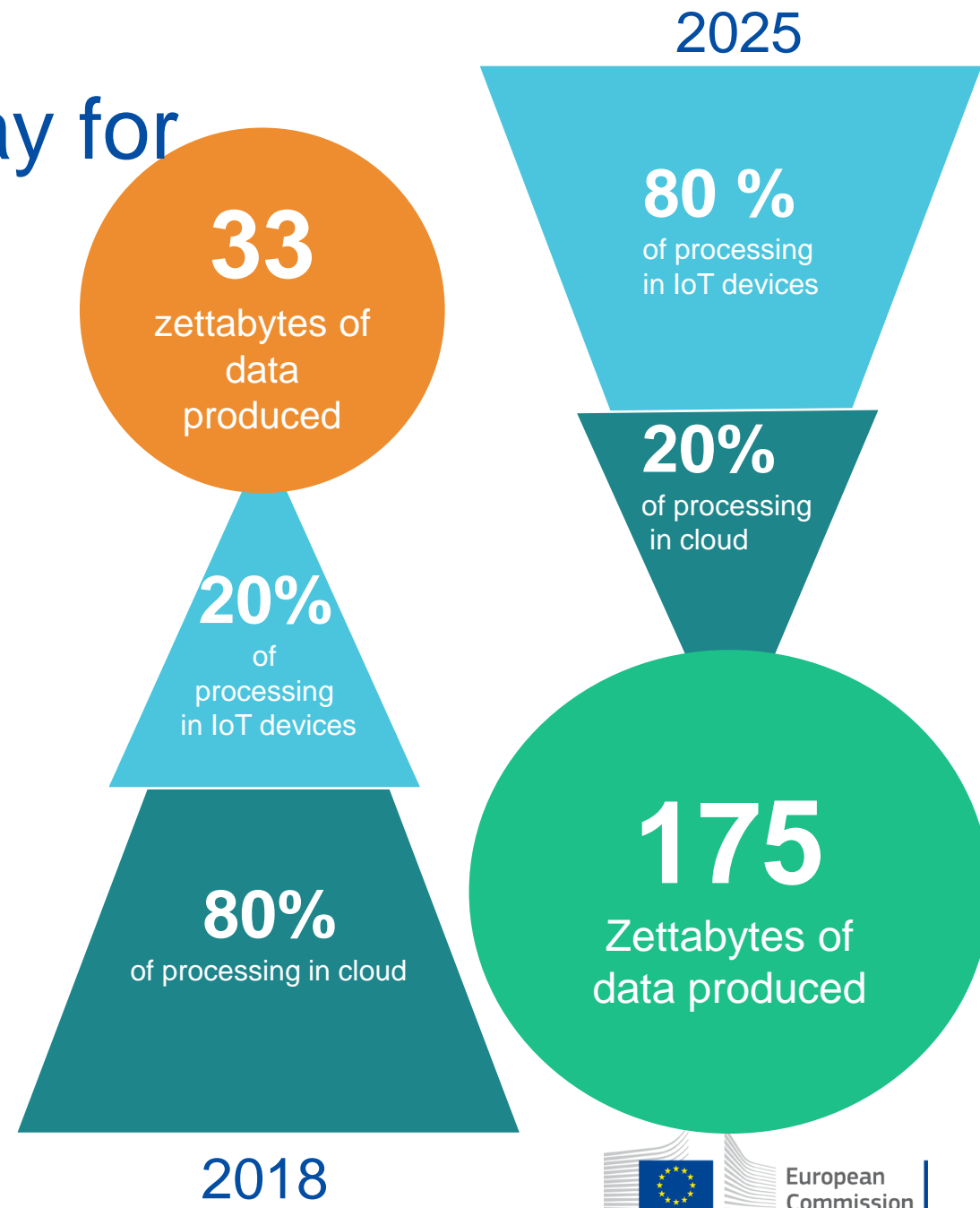
*António Biason, Legal and Policy Officer
DG CONNECT, Data Policy and Innovation Unit
European Commission*

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
- Legal, technical and organizational challenges to data sharing / re-use in Europe
- Voluntary vs compulsory data sharing
- How to unlock huge potential of data?



European strategy for data

- Vision to create a **European single market for data**
- Data can flow between sectors and countries
- Data use in full respect of European values
- Human-centric data economy and empowerment
- Data intermediaries
- Clear rules on (wider) data access and use



EU Single Data Market
COM/2020/66

Creating a single European market for data

European Data Strategy

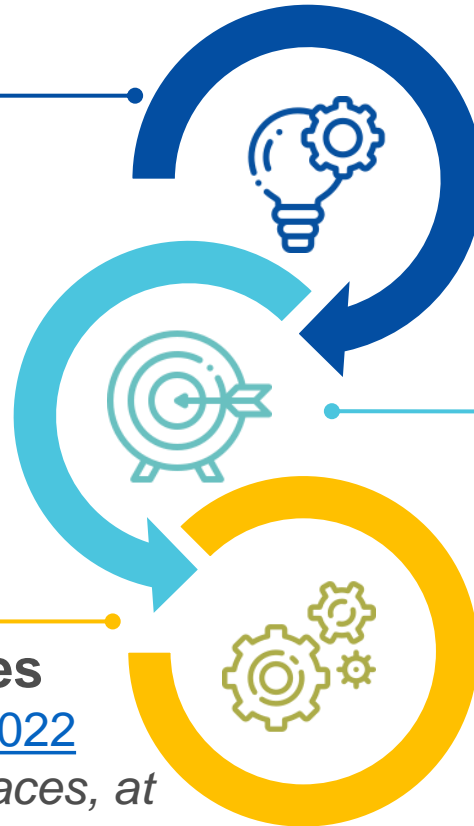
- [Published Feb 2020](#)
- *Genuine* internal data market
- Built on EU values and rules

Common European data spaces

- [Staff Working Document – Feb 2022](#)
Overview development data spaces, at request European Council
 - ✓ Horizontal aspects (concept, legislation, EU programmes/funding)
 - ✓ Sectoral/domain-specific initiatives

A cross-sectoral legislative framework

- [Data Governance Act](#) – July 2022
- [Data Act](#) – Proposal Feb 2022
- [Implementing Act on High-value datasets](#) (Open Data Directive) – December 2022



Deploying the European Strategy for Data through 4 Pillars



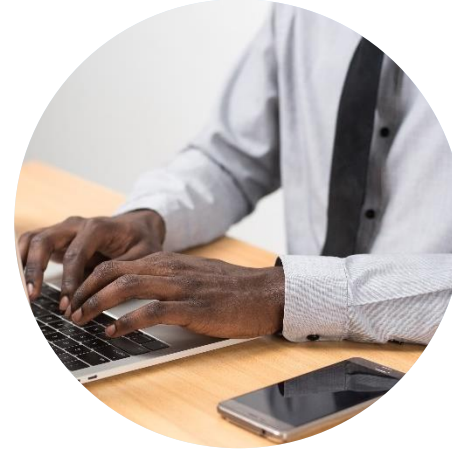
A cross-sectoral governance framework for data access and use

including a legislative framework for European data governance and other cross- sectoral measures for data access and use as part of the Data Act



Enablers

Investments in data spaces and federated cloud infrastructures



Competences

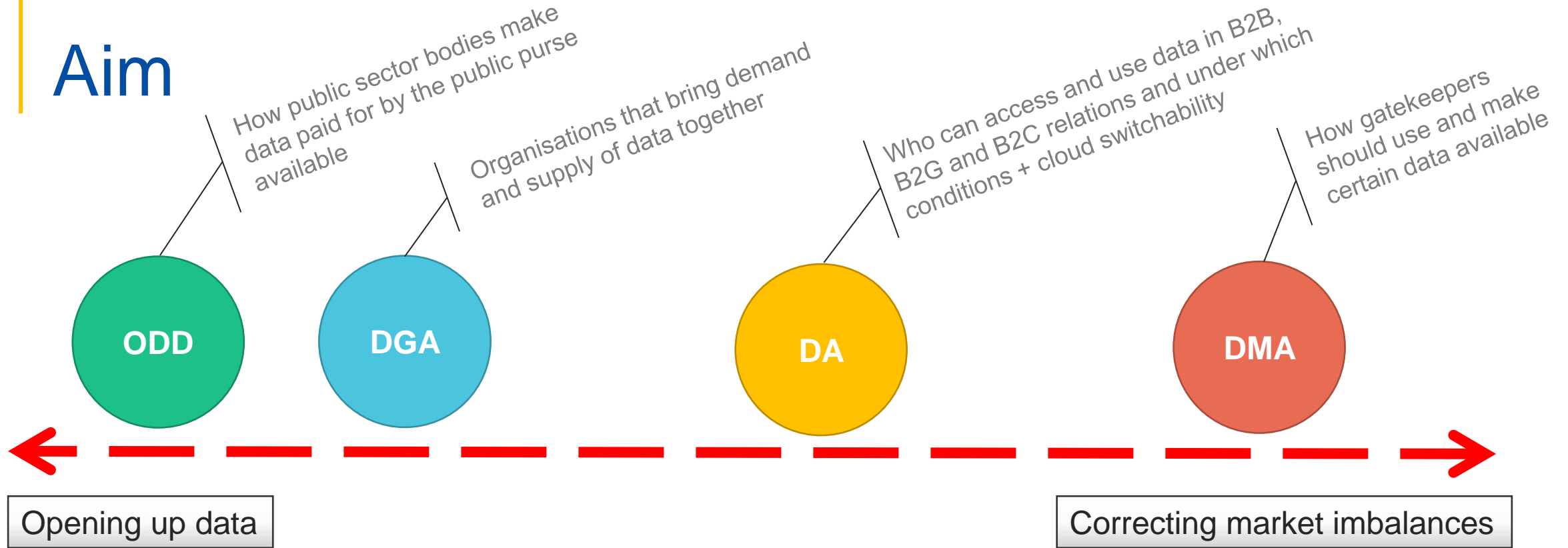
Empowering individuals, investing in digital skills & data literacy and in dedicated capacity building for SMEs.



Rollout of common European data spaces

in crucial economic sectors and domains of public interest, looking at data governance and practical arrangements.

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

GDPR and FFoD ensure data protection and free flow of data across the board

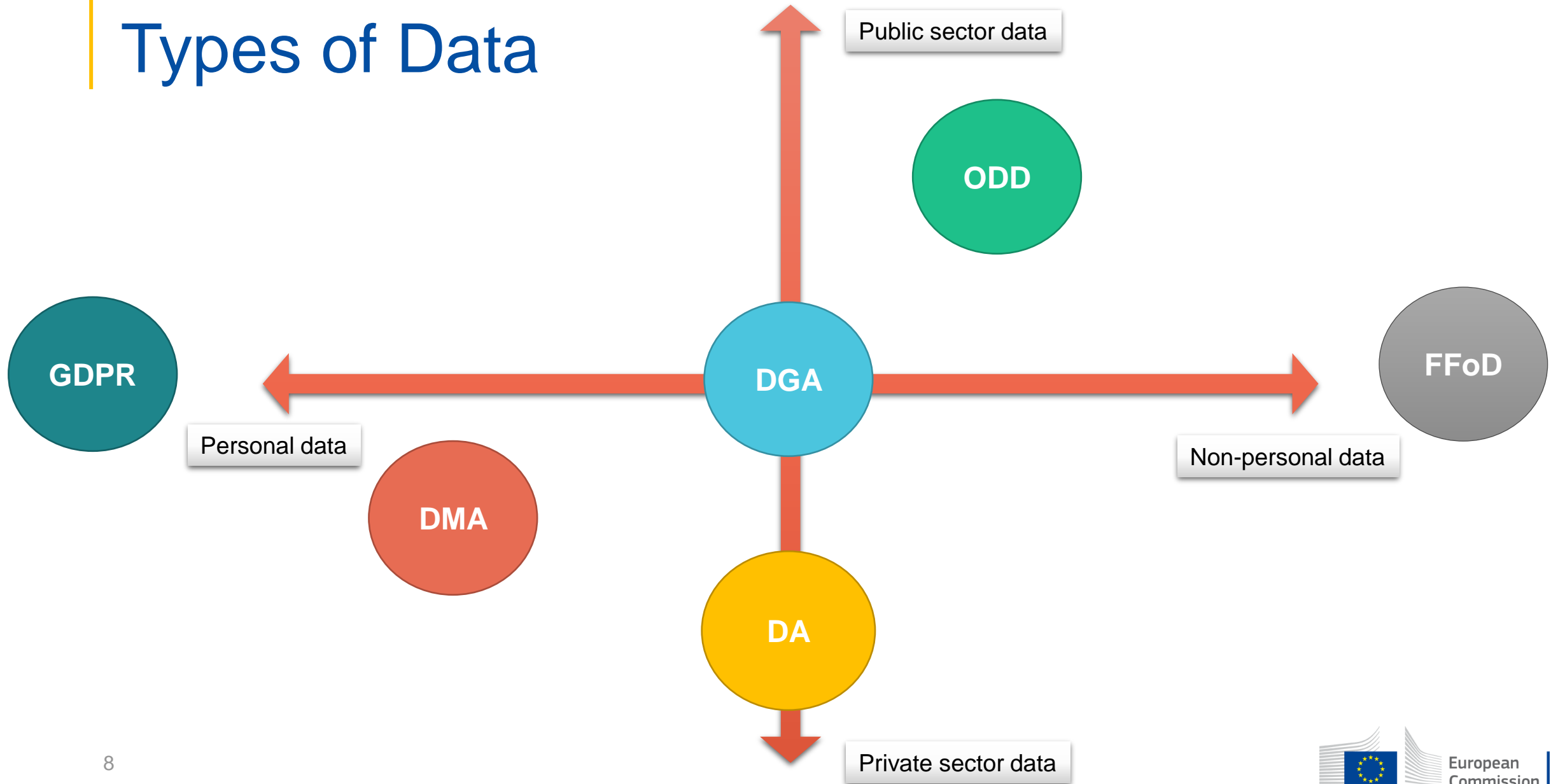
For the processing of personal data, GDPR *always* applies

GDPR

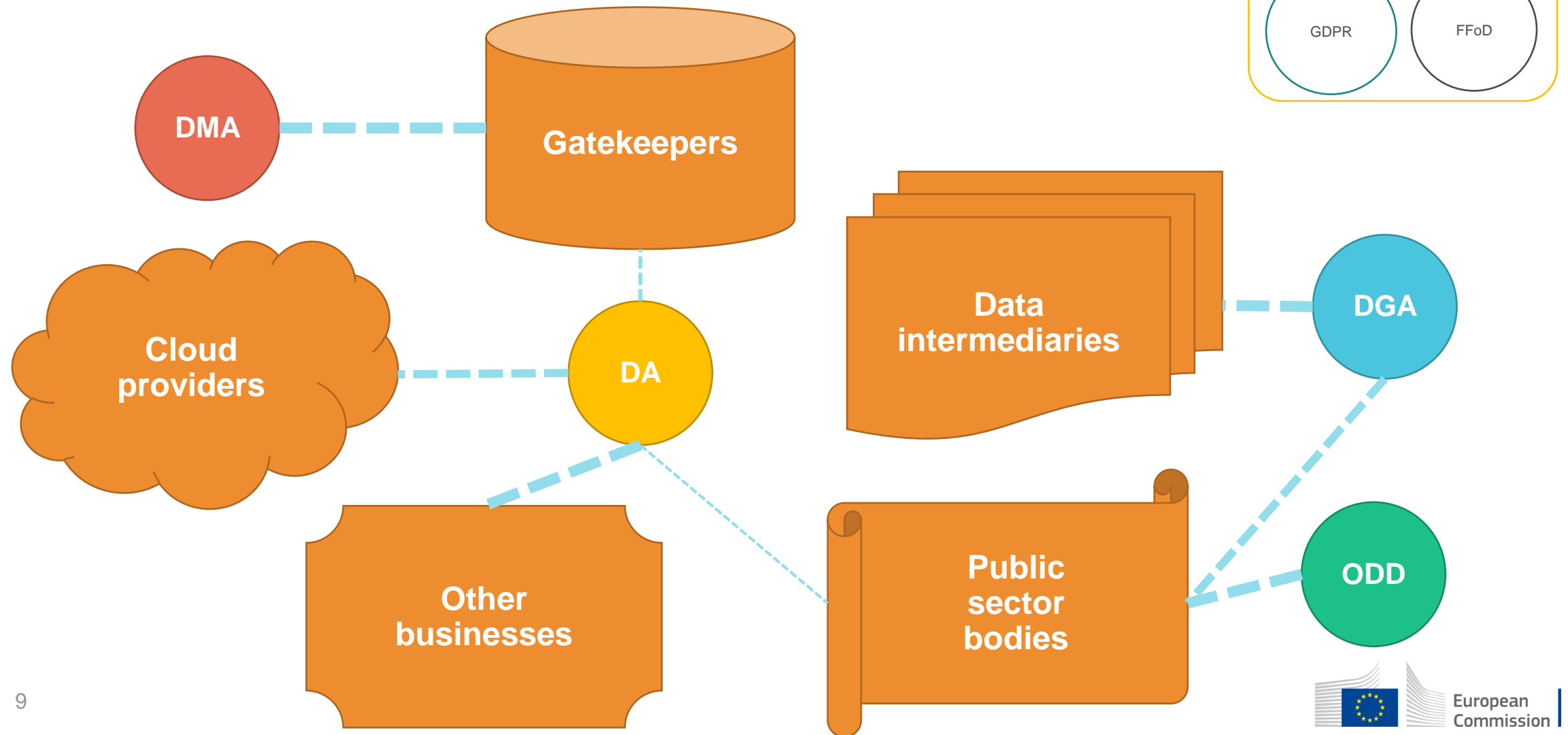
FFoD

Data localisation requirements in the Union, introduces basis of CoC for cloud service providers

Types of Data



Regulated actors



The Data Act

European Council conclusions 21 October 2021

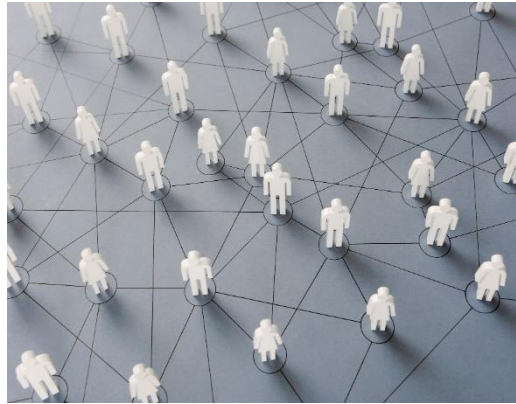
“The European Council stresses the importance of making rapid progress on other existing and future initiatives, in particular:

unlocking the value of data in Europe, notably through a comprehensive regulatory framework that is conducive to innovation and facilitates better data portability, fair access to data and ensures interoperability”



“Regulate *who* can use *what* data, and under *which* conditions”

Ensure **fairness** in
the allocation of
data value



Make more data
available while
safeguarding
incentives for **data**
generation



Unlock the value
of Europe's
industrial data



Help the EU to
become a **global**
leader in the data
economy



Data Act: Scope of rights and obligations

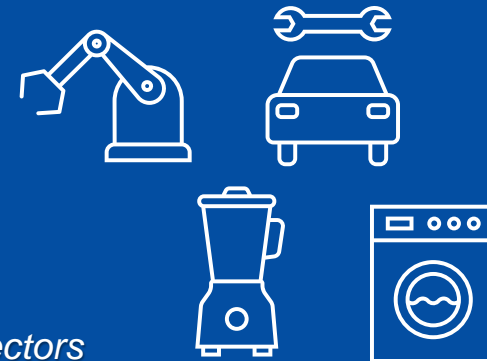
Better access to IoT data

Manufacturers of IoT objects need to allow access & can use the data

↓
Users of IoT objects get right to access and port data

↓
3rd parties can use the data to offer services (SMEs get special conditions)

Rules for IoT data also frame data sharing in other sectors



Tackle contractual unfairness



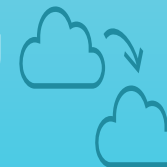
Companies are prohibited from unilaterally imposing unfair contractual clauses related to data sharing on SMEs

Make business data available for the common good



Companies must make data available to public sector bodies in case of emergencies and other exceptional needs

Easier switching between cloud services



Cloud service providers must ensure easy switching conditions for customers



Facilitate data flows through technical standards and interoperability

The European Commission may adopt technical specifications if necessary to ensure interoperability

Use of data in an Internet of Things context (B2B & B2C)

Before



User
(individual or company)

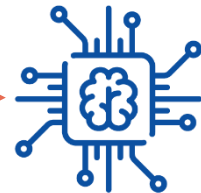
Limited
application
of portability

Little to no
interaction



Manufacturer

Various obstacles
for data sharing
(technical, legal, etc.)



Third Party

After



User
(individual or company)

Enhanced
access and
transparency

Granting access to
data for improved
services



Manufacturer

Clear and fair rules
on data use

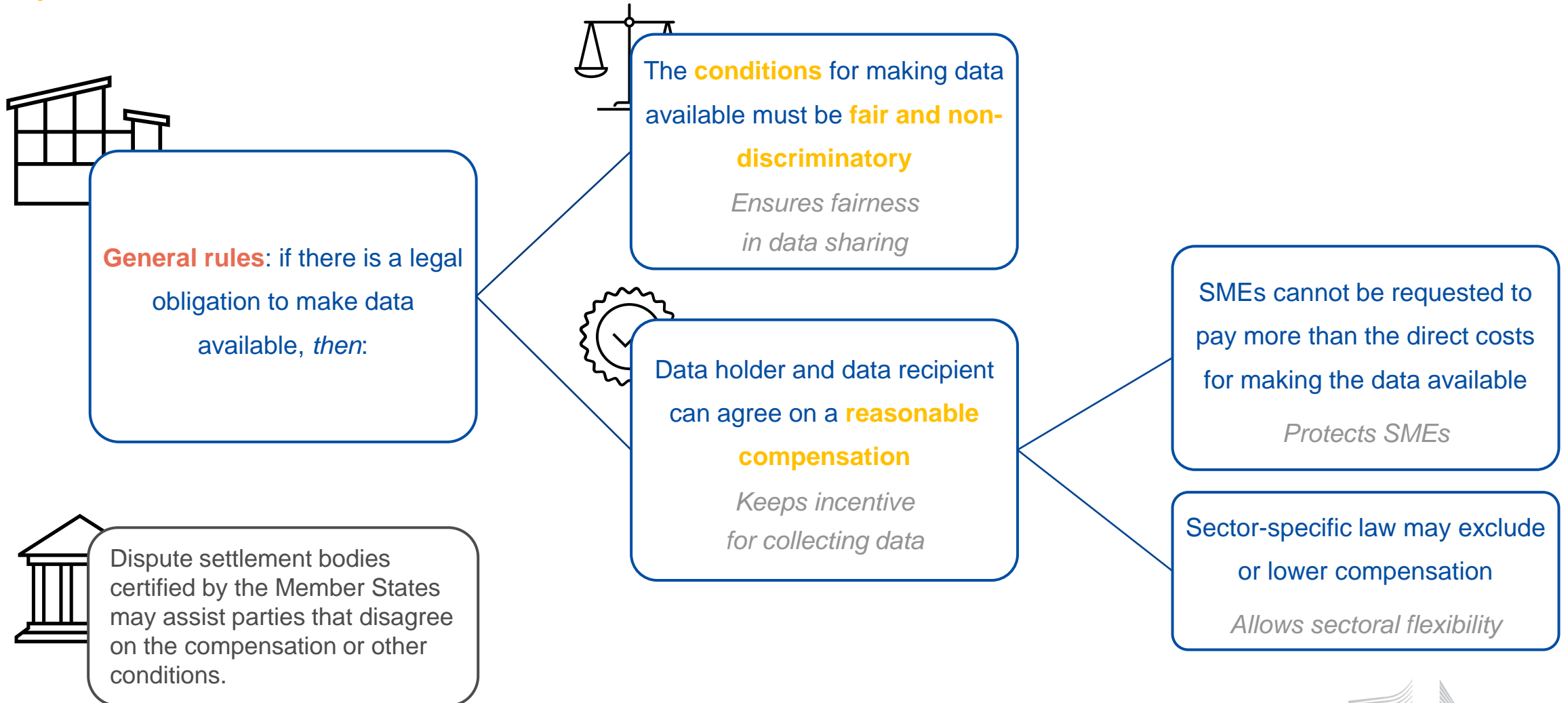


Third Party

Rules on IoT data – Chapter II

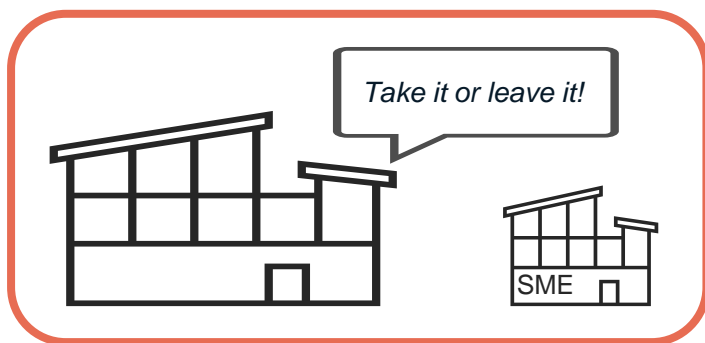
- ***Design and information obligation*** to enable easy access (Art 3)
- ***User*** can directly access data from the data holder (access right - Art 4)
- ***Third party*** selected by the user can directly access data from the holder (portability right – Art 5);
- ***Third party restrictions***
 - DMA gatekeepers are not entitled (rely on voluntary contracts with the product manufacturer) – Article 5(2); 6(2)(d);
 - May only use the data for the agreed purposes, in particular not pass them on, Article 6(1), 6(2)(b), (c);
 - May not use the insights gained from the data to develop a competing product.

Conditions for making data available between businesses

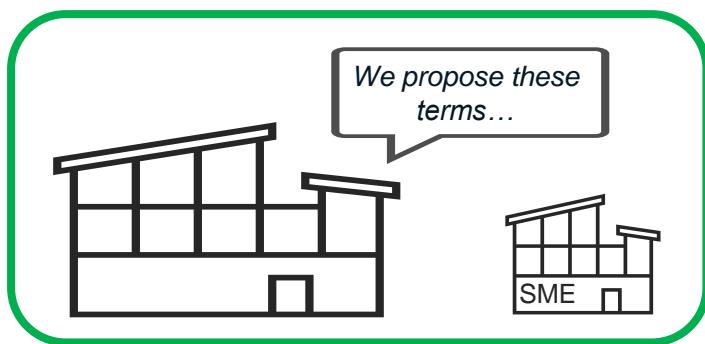


Unfairness test for B2B contracts:

Unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise **are non-binding**.



From this situation...



...to an actual negotiation.

General provision on unfairness concerns clauses which

- Grossly deviate from good commercial practice in data access and use and are contrary to good faith and fair dealing.

Listed clauses that are always/presumed unfair (examples)

- Exclude or limit liability of the imposing party
- SME prevented from using contributed data or exploiting their value
- Unreasonably short termination conditions

Model contractual terms

- Developed and recommended by the Commission to assist parties in drafting contracts based on fair terms.

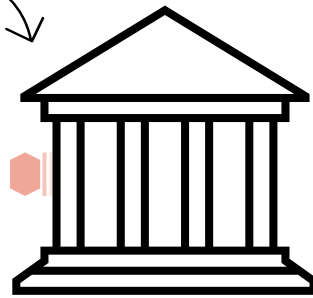
Proportionate, limited and predictable business-to-government rules

Data is requested based on an exceptional need:

- a) to respond to a public emergency (*free*)
- b) to prevent or to address the aftermath of a public emergency (*cost + margin*)
- c) for other exceptional needs (*cost + margin*)

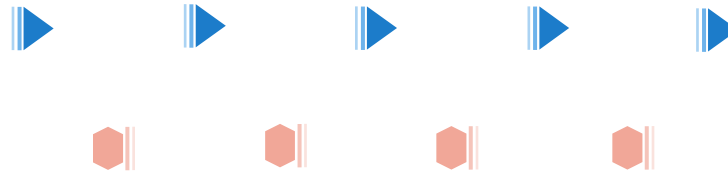
Public sector body must demonstrate the exceptional need

Data is destroyed after use

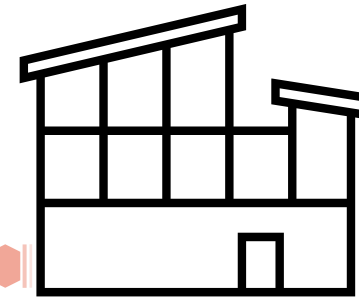


Public sector body

Public sector body requests data based on an exceptional need



Private sector body makes data available



Private sector

Private sector will benefit from streamlined procedures and from the "once-only principle"

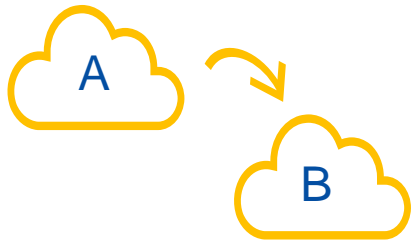
If request is valid, data must be made available

Improving trust in and performance of

Data processing services

&

Interoperability and standards



Minimum requirements will ensure **easier switching** between providers of data processing services for customers



Providers of data processing services must **prevent unlawful data access** and transfer based on requests from third countries



Increase **interoperability** by facilitating the development of common specifications to address the lack of harmonised **standards** and technical specifications

What is the Data Act going to change?



Harmonized rules on data access and use to **unlock the potential of the EU's industrial data**



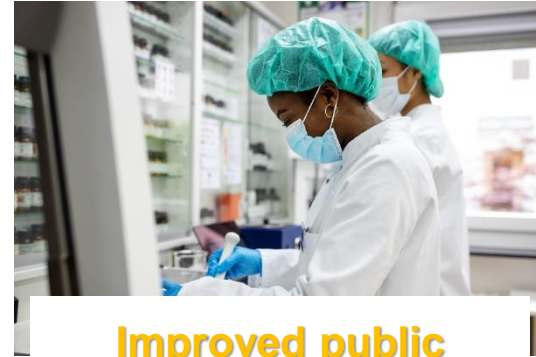
New data-based business opportunities



Empower individuals and companies using connected products and related services



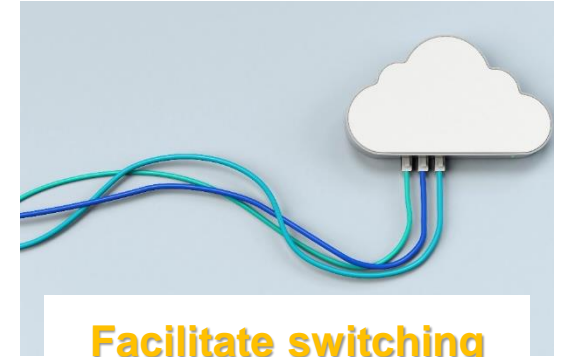
More transparency and control as well as better decisions over data



Improved public service delivery, including effective response to public emergencies



Better and more efficient public services and policies



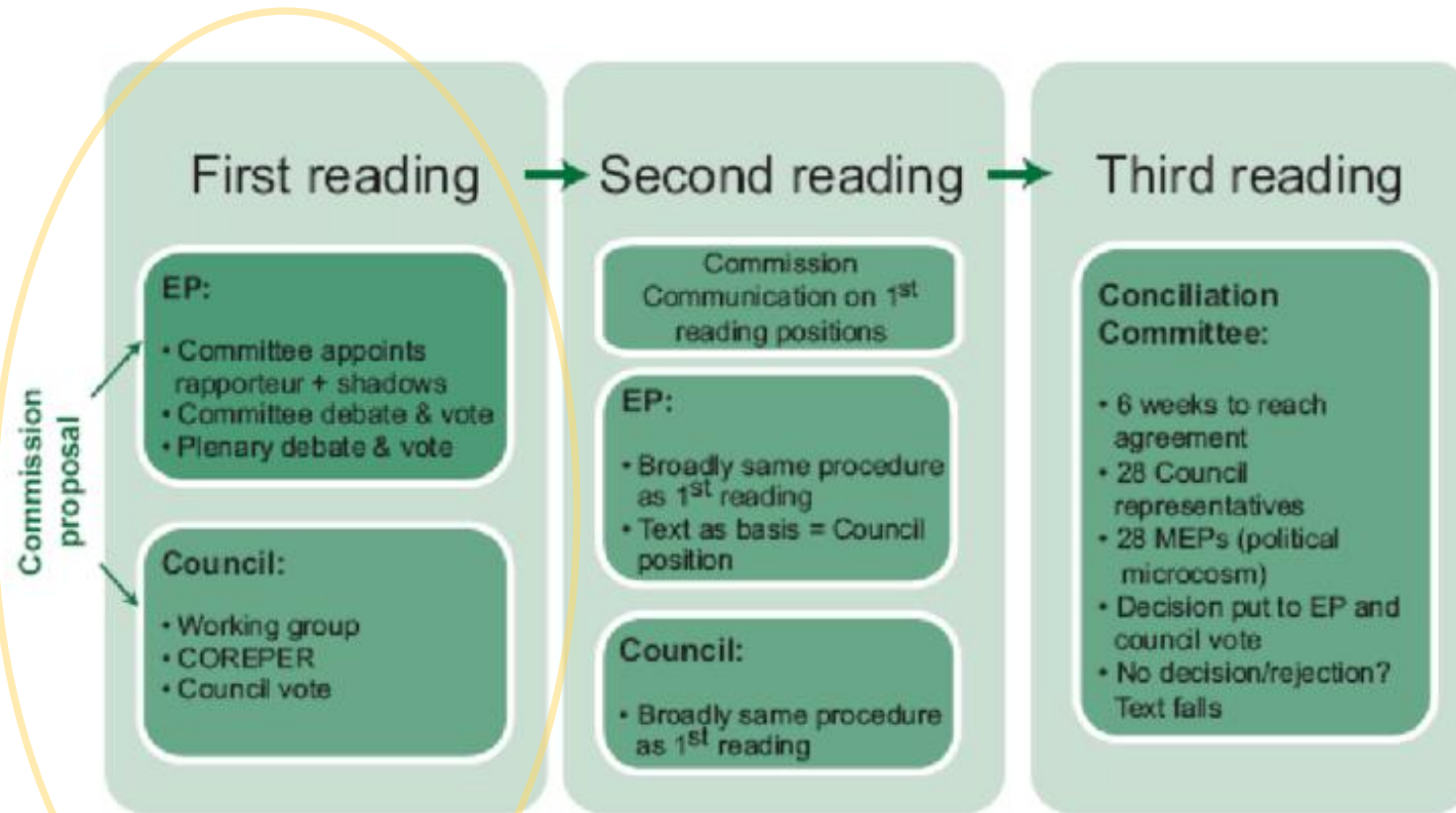
Facilitate switching for cloud users



Multi-vendor, interoperable and federated cloud/edge services market

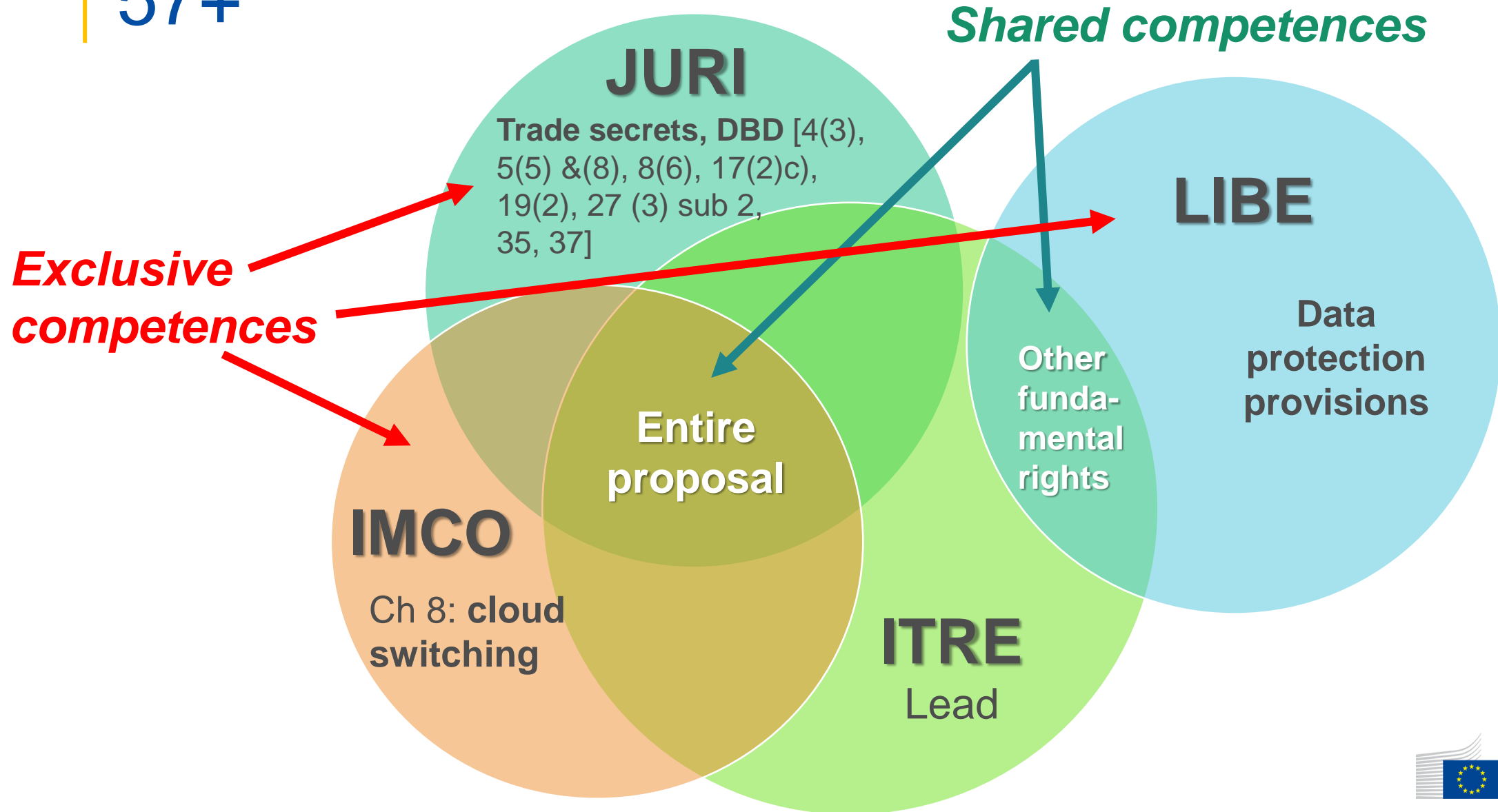
State of play of negotiations

Ordinary legislative procedure | European Parliament (europa.eu)



Informal discussions ("trilogues") between the 3 institutions throughout the procedure (usually)
Agreement possible **at any stage** of the procedure:
2009-present: 81% of legislation agreed at the first reading stage

Data Act – EP committee competences: Rule 57+



Interinstitutional state of play

European Parliament:

- The lead committee (ITRE) as well as other committees involved (IMCO, JURI and LIBE) presented its draft report and received +/- 1800 amendments from all political groups.
 - ITRE committee vote adopted its report on 9 February with 59 votes in favour, 0 against and 11 abstentions
 - Plenary debate and vote on 14 March

Council:

- FR Presidency presented and held first round of discussions with Member States in the Telecom Council Working Party;
- CZ Presidency presented three compromise proposals and a progress report
- SE Presidency presented two additional compromise proposals; SE Presidency has the ambition to **obtain Coreper mandate in March 2023**.



Thank you for your attention

antonio.biason@ec.europa.eu

