

Impact of the Data Act on the Agricultural Data Economy and Existing Power Imbalances

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European Agricultural Data Governance Conference by the University of Freiburg

6 December 2024, Freiburg, Germany



EU Regulations Wave and 'Brussels Effect'

Table 1: Overview of EU Legislations in the Digital Sector

<div> <div>Applicable law</div> <div>Published in the Official Journal of the European Union</div> <div>Entered into force</div> <div>Replaced by the European Commission's proposal for a new Directive</div> </div>											
Research & Innovation	Industrial Policy	Connectivity	Data & Privacy	IPR	Cybersecurity	Law Enforcement	Trust & Safety	E-commerce & Consumer Protection	Competition	Media	Finance
Digital Europe Programme Regulation, (EU) 2021/1064	Recovery and Resilience Facility Regulation, (EU) 2021/1243	Frequency Bands Directive, (EC) 1997/25/2	ePrivacy Directive, (EC) 2002/58/EC, 2017/2300/EC	Database Directive, (EU) 1996/9	Regulation for a Cybersecurity Centre, (EU) 2019/1987, 2022/2039/EC	Law Enforcement Directive, (EU) 2016/680	Product Liability Directive (EU) 2019/1781, 2022/2039/EC	Unfair Contract Terms Directive (UCTD), (EC) 1993/13	EC Merger regulation, (EC) 2006/139	Satellite and Cable Directive, (EC) 1993/62	Common VAT system, (EC) 2006/112, 2022/2039/EC
Horizon Europe Regulation, (EU) 2021/1064	InvestEU Programme Regulation, (EU) 2021/1023	Radio Spectrum Decision, (EC) 2002/978	European Statistics, (EC) 2006/223, 2022/2039/EC	Community Design Directive, (EU) 2017/1339, 2022/2039/EC	Regulation to establish a European Cybersecurity Competence Centre, (EU) 2021/1987	Directive on combating fraud and counterfeiting of non-cash means of payment, (EU) 2018/1724	Toy Regulation, (EC) 2009/48, 2022/2039/EC	Price Indication Directive, (EC) 1993/65	Technology Transfer Block Exemption, (EC) 2014/678	Information Society Directive, (EC) 2009/24	Administrative cooperation in the field of taxation, (EU) 2011/16
Regulation on a pilot regime for distributed ledger technology, (EU) 2022/995	Connecting Europe Facility Regulation, (EU) 2021/1153	Open Internet Access Regulation, (EU) 2015/755	General Data Protection Regulation (GDPR), (EU) 2016/679	Enforcement Directive (IPR), (EC) 2004/48	NIS 2 Directive, (EU) 2022/2555	Regulation on interoperability between EU information systems in the field of borders and visas, (EU) 2021/5817	European Standardisation Regulation, (EU) 2017/1001	E-commerce Directive, (EC) 2000/31, 2022/2039/EC	Company Law Directive, (EU) 2017/1333, 2022/2039/EC	Audio-visual Media Services Directive (AVMSD), (EU) 2010/13	Payment Service Directive 2 (PSD2), (EU) 2015/2366, 2022/2039/EC
	Regulation on High Performance Computing Joint Undertaking, (EU) 2021/1123, 2024/1001	European Electronic Communications Code Directive (EECC), (EU) 2018/1972	Regulation to protect personal data processed by EU institutions, bodies, offices and agencies, (EU) 2018/1726	Directive on the protection of trade secrets, (EU) 2017/643	Cybersecurity Regulation, (EU) 2019/1987	Regulation on terrorist content online, (EU) 2021/726	Radio Equipment Directive (RED), (EU) 2014/53	Unfair Commercial Practices Directive (UCPD), (EC) 2005/29	Market Surveillance Regulation, (EU) 2019/1020	Portability Regulation, (EU) 2017/1220	Digital Operational Resilience Act (DORA Regulation), (EU) 2022/2554
	Regulation on Joint Undertakings under Horizon Europe, (EU) 2021/1064	AI top-level domain Regulation, (EU) 2018/913	Regulation on the free flow of non-personal data, (EU) 2018/1807	Design Directive, (EU) 2017/1539	Information Security Regulation, 2022/2039/EC	Temporary CSAM Regulation, (EU) 2021/1232, 2022/2039/EC	eIDAS Regulation (European Digital Identity Framework), (EU) 2014/910	Directive on Consumer Rights (CRD), (EU) 2011/83	PIB Regulation, (EU) 2018/1159	Satellite and Cable II Directive, (EU) 2019/788	Crypto-asset Regulation (MiCA), (EU) 2023/1114
	Decision on a path to the Digital Decade, (EU) 2022/981	Roaming Regulation, (EU) 2022/912	Open Data Directive (ODD), (EU) 2019/1024	Compulsory licensing of patents, 2022/2039/EC	Cyber Resilience Act, 2022/2039/EC	E-evidence Regulation, (EU) 2023/1153	Regulation for a Single Digital Gateway, (EU) 2018/1724	e-Invoicing Directive, (EU) 2017/455	Single Market Programme, (EU) 2017/1080	Copyright Directive, (EU) 2019/790	Financial Data Access Regulation, 2022/2039/EC
	European Chips Act Regulation, (EU) 2022/1793	Union Secure Connectivity Programme, (EU) 2022/998	Data Governance Act (DGA Regulation), (EU) 2022/988	Standard essential patents, 2022/2039/EC	Cyber SoliBerty Act (Regulation), 2022/2039/EC	Digitalisation of cross-border judicial, (EU) 2023/2844	General Product Safety Regulation, (EU) 2022/988	Regulation on cooperation of the enforcement of consumer protection laws, (EU) 2017/2394	Vertical Block Exemption Regulation (VBEX), (EU) 2022/720	European Media Freedom Act, (EU) 2024/1108	Payment Services Regulation, 2022/2039/EC
	Establishing the Strategic Technologies for Europe Platform (STEP), (EU) 2024/738	Digital Infrastructure Act, (EU) 2024/1399	European Data Act Regulation, (EU) 2022/2854			Directive on combating violence against women, 2022/2039/EC	Machinery Regulation, (EU) 2023/1290	Geo-Blocking Regulation, (EU) 2018/2052	Digital Market Act (DMA), (EU) 2022/1925	Removal of obstacles from free movement for research, (EU) 2024/1108	Digital exam, 2023/2039/EC
	European critical raw materials act Regulation, (EU) 2024/1252	New radio spectrum policy programme (NRP), 2024	Interoperable Europe Act, (EU) 2024/993			Directive for combating sexual abuse and child sexual abuse material, (EU) 2023/1290	AI Act Regulation, 2024/1286/EC	Digital content Directive, (EU) 2019/770	Regulation on distortive foreign subsidies, (EU) 2022/2550		Regulation on combating late payment, 2022/2039/EC
	Net Zero Industry Act, 2023/2039/EC	Digital Networks Act	Regulation on data collection for short-term work, (EU) 2024/1108			Dissemination of false information, (EU) 2023/1290	Eco-design Regulation, 2022/2039/EC	Directive on certain aspects concerning contracts for the sale of goods, (EU) 2018/1721	Horizontal Block Exemption Regulations (HBER), (EU) 2022/1065		
	EU Space Law		European Health Data Space Regulation, 2022/2039/EC				AI Liability Directive, 2024/1286/EC	Digital Services Act (DSA) Regulation, (EU) 2022/2039	Platform Work Directive, 2024/1286/EC		
			Harmonisation of GDPR enforcement procedures, 2022/2039/EC					Political Advertising Regulation, (EU) 2023/900	Single Market Emergency Instrument (SMEI), 2024/1286/EC		
			Access to vehicle data, functions and decisions					Right to repair Directive, 2023/2039/EC			
			Open Data Act					Consumer protection, 2022/2039/EC			

Source:

<https://www.kaizenner.eu/laws>

Relevant Legal Framework in the EU

- **Horizontal Regulations**

GDPR (2016)

Free-flow of Non-personal Data Regulation (2018)

Data Governance Act (2022)

Data Act (2023)

- **Voluntary Rule-making**

EU Code of Conduct (2018)

- **Common European Data Spaces**

Including in Agriculture (CEADS)

- **Possible Follow-up Regulation(s)**

Regulation for CEADS

Ag-data Regulation



Source:

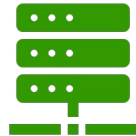
<https://integrityriskintl.com/eu-regulatory-compliance-trends-2022/>

Prominent Issues



Data Lock-ins

A-Legal ambiguities
B-Technical barriers



Fragmented Isolated Data Sets



Data Access Puzzle



Lack of Trust

General view:

*'Data ownership' problems should be regulated, but **how?***

Data Act (2023) A Framework for All Sectors

- Chapter II - B2C and B2B data sharing *upon **users'** request:*

Art. 3) *Access by design* -- **Art. 4)** *Access by request* -- **Art. 5)** *Sharing by request*

- *Chapter III – Obligations for data holders*

Art. 8) *FRAND conditions* **Art. 9)** *Compensation* **Art. 10)** *Dispute settlement*

- Chapter IV – Unfair contractual terms - **Art. 13)** *Unilaterally Imposed Unfair Terms*

- Chapter V – Public bodies' data access in exceptional situations

- Chapter VI – Switching cloud services

- **Chapter VIII –** *y (obligations for “Participants in data spaces”)*

Data Act - Chapter II: B2C and B2B Data Sharing

- **Art. 3) Access by design** – “Connected products shall be designed and manufactured in such a manner that product data and related service data ... are ... directly accessible to the user.”
- **Art. 4) Access by request** – “Where data cannot be directly accessed by the user from the connected product, data holders shall make readily available data ... accessible **to the user** easily, securely, free of charge, ... and where ... technically feasible, continuously and in real-time. This shall be done with a simple request through electronic means ...”
- **Art. 5) Sharing by request** – “Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available readily available data ... to a third party without undue delay, easily, securely, free of charge to the user, ... where relevant and technically feasible, continuously and in real-time.”

General Limitations of the Data Act

■ General limitations:

- ✓ Data Act will apply 20 months after – September 2025.
- ✓ Art 3(1) will apply 32 months after
- ✓ Chapter II is not applicable to SME data holders;

Art. 7: “Chapter II shall not apply to data generated through the use of connected products manufactured or designed or related services provided by **a microenterprise** (10 persons and EUR 2 million turnover) and **small enterprise** (50 persons and EUR 10 million turnover) ...”

The same shall apply to ... **medium-sized enterprise** (250 persons and EUR 50 million turnover) for less than one year and to connected products for one year after the date on which they were placed on the market by a medium-sized enterprise.”

Limitations of the Data Act from the Sectoral Perspective

- **Sectoral limitations**: Definitions: 'product', 'related service', 'user', 'readily available data'
 - Ø Art. 1(12): **'user'** means a natural or legal person that owns a connected product [IoT device] or to whom temporary rights to use that connected product have been contractually transferred, or that receives related services;
 - Ø Art. 1(6): **'related service'** means a digital service, ..., which is connected with the product at the time of the purchase, rent or lease in such a way that its absence would prevent the connected product from performing ... its functions.;
 - Ø Art. 1(13): **'data holder'** means a natural or legal person ... to use and make available data, including, where contractually agreed, product data or related service data which it has retrieved or generated during the provision of a related service.

Data Act (2023) – Sectoral Implications

Significant Development: Data Access and Sharing Rights

Scope: machine-generated data if user owns device

Remaining issues: Other ag-data + Re-use of data?

Data Re-use and Power Imbalances

Exclusive Control

vs

Complete Openness

Limits the Potential of Big Ag-data

Hampers Further Innovation

Free-riding

Distorts Data Collection Incentives

Trade Secrets & IP Rights Problems

- **Farmers** (as the weakest party in the data access puzzle)
 - Whether farmers should have a say on data re-use decisions?
 - Whether landowners have a say?
 - Whether farmers/landowners need to get a share from 'reasonable compensation' or other revenue?
- **Data holders**
 - How to keep their incentives and interests?
- **Access seekers** (rethinking essential facilities doctrine)
 - Rivals' access for re-use purposes
 - Potential rivals' access requests
 - Impartial parties' access requests
- Whether there must be an eased way of access for SMEs/Startups?



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AI for Sustainable
Food Systems
Ethical, Legal, Societal Aspects

Common European Agricultural Data Space - Key Points

- Aim: unlocking the potential of data-driven economy
- CEADS envisions a network of interoperable Data Sharing Initiatives (DSIs) with Key goals:
 - Innovation, efficiency, responsible data sharing, inclusivity
- **A Decentralised Approach** based on around 400 already existing data-sharing initiatives mapped across Europe.
- Only a ***catalogue of data sets*** by listing data holders & data intermediaries

Possible Follow-up Sectoral Regulation(s)

- **Regulation for Agricultural Data** - Agriculture Specific Data Act ?
- **Regulation on Common European Agricultural Data Space**

(Example: Proposal for a Regulation on the European Health Data Space - COM/2022/197 final)

The solution should cover a trilogy

- Legal framework (not limited to user rights: principles/guidelines for data re-use via CEADS)
- Data standards/interoperability obligations (not limited within CEADS) &
- Data governance infrastructure (CEADS) to facilitate data re-use



The most recent publication: Updating the EUCC

<https://www.nature.com/articles/s41599-024-03710-1>



Humanities & Social Sciences
Communications



ARTICLE

<https://doi.org/10.1057/s41599-024-03710-1>

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Check for updates

The future of agricultural data-sharing policy in Europe: stakeholder insights on the EU Code of Conduct

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In 2018, the EU Code of Conduct of Agricultural Data Sharing by Contractual Agreement (EUCC) was published. This voluntary initiative is considered a basis for rights and responsibilities for data sharing in the agri-food sector, with a specific farmer orientation. While the involved industry associations agreed on its content, there are limited insights into how and to what extent the EUCC has been received and implemented within the sector. In 2024, the Data Act was introduced, a horizontal legal framework that aims to enforce specific legal requirements for data sharing across sectors. Yet, it remains to be seen if it will be the ultimate solution for the agricultural sector, as some significant agricultural data access issues remain. It is thus essential to determine if the EUCC may still play a significant role to address sector-specific issues in line with the horizontal rules of the Data Act. During six workshops across Europe with 89 stakeholders, we identified how the EUCC has been (1) received by stakeholders, (2) implemented, and (3) its future use (particularly in response to the Data Act). Based on the workshop results and continued engagements with researchers and stakeholders, we conclude that the EUCC is still an important document for the agricultural sector but should be updated in response to the content of the Data Act. Hence we propose the following improvements to the EUCC: 1. Provide clear, practical examples for applying the EUCC combined with the Data Act; 2. Generate model contractual terms based on the EUCC provisions; 3. Clarify GDPR-centric concepts like anonymisation and pseudonymisation in the agricultural data-sharing setting; 4. Develop a functional enforcement and implementation framework; and 5. Play a role in increasing interoperability and trust among stakeholders.

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Thank you for your

attention!

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