EU Data Initiatives in Context

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EU General Data Protection Regulation (2016)
DG Justice & Consumers, Directorate C
- Applies to the processing of European Economic Area personal data.
- Significant extraterritorial effect.
- Omnibus data protection regulation, applicable to the commercial and public sectors, excluding national security activities.
- Creation of European Data Protection Board.

DG Connect, Directorate H: Digital Society, Trust & Cybersecurity — Unit H2: Cybersecurity and Digital Privacy Policy
- Under revision; will become the ePrivacy Regulation.
- For most companies, currently mainly of interest for cookie provision and rules on unsolicited communication or spam.

European Commission presents its strategy for data and artificial intelligence (February 2020)

Proposal for a Regulation laying down harmonized rules on Artificial Intelligence
DG Connect

Data Governance Act
DG Connect, Directorate G: Data — Unit G1: Data Policy and Innovation
- Reuse of public sector data that is subject to certain protections.
- Rules for data intermediaries.
- Introduction of concept of data altruism.
- Creation of a European Data Innovation Board.
- Published in the Official Journal of June 3, 2022; Act applies as of September 24, 2023.

Proposal for Data Act
- Aims to maximize the value of data for the economy and society by fostering data sharing among businesses, as well as between businesses and governments. Is meant to complement the DGA.
- Commission Proposal is currently being reviewed by the European Parliament and the Council.

Proposal for European Health Data Space (EHDS). See here and here.

Digital Services Act
DG Connect, Directorate F: Digital Single Market — Unit F2: E-Commerce & Platforms
- Applies to providers of intermediary services, which include internet service providers, cloud providers, search engines, social media and online platforms, and market places; has extraterritorial effect.
- Ban on advertising to minors and based on special category of data; ban on use of misleading practices and interfaces (dark patterns).
- Determines liability regime and additional obligations related to the spreading of illegal content.
- Additional systemic risk management requirements for large online platforms with more than 45 million users.
- Additional transparency requirements for online advertising toward individual recipients; includes details on the advertising buyer and parameters used to determine the recipient to whom the ad is displayed.
- Requires very large platforms to appoint qualified compliance officers.
- Foresees the appointment of digital services coordinators in each member state and the creation of a European Board for Digital Services.
- The DSA will enter into force Nov. 16, 2022, and become applicable to organizations Feb. 17, 2024. Some provisions, however, will apply from Nov. 16, 2022, e.g., provisions on transparency reporting obligations for providers of online platforms (Article 23(2)), designation of very large online platforms (Articles 25(4-6)), and implementation, cooperation, sanctions and enforcement (Chapter 4).

Digital Markets Act
DG Competition and DG Connect, Directorate F: Digital Single Market — Unit F2: E-Commerce & Platforms
- Competition law component of the European Commission’s data strategy.
- Built around the notion of “gatekeepers,” i.e., companies that provide “core platform services” in at least three member states, meet certain thresholds of EEA turnover or market capitalization and fair market value, as well as have a minimum number of active end or business users in the EEA in the last three financial years; has extraterritorial effect.
- Core platform services include online intermediation services, search engines, social networking services, video-sharing platforms and cloud computing services.
- Gatekeepers are subject to a long list of do’s and don’ts with potential hefty fines and other remedies available to regulators.
- Ban on the combination and cross-use of personal data collected during the use of a service for the purposes of another service offered by the gatekeeper.
- Access for business users to their marketing or advertising performance data.
- Effective portability and continuous and real-time access to data provided or generated by end users, complementing the GDPR’s right to (personal) data portability.
- Foresees the creation of a Digital Markets Advisory Committee.
- The DMA will enter into force Nov. 1, 2022 and become applicable six months after that date, May 2, 2023. Specific provisions will apply directly on Nov. 1, 2022 and will kick off with the commission’s work to determine the methodology for designating gatekeepers and to lay down implementing provisions.

Proposal for renewed NIS2 Directive
DG Connect, Directorate H: Digital Society, Trust & Cybersecurity — Unit H: Cybersecurity & Digital Privacy Policy
- Expansion in scope compared to current NIS Directive.
- The NIS 2 Directive was provisionally agreed in interinstitutional negotiations in May 2022. The Directive will now be subject to formal approval by the European Parliament and the Council. It is generally expected this will happen in Q4 2022.

Proposal for a directive on the resilience of critical entities
- Expansion in scope compared to the current directive.

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