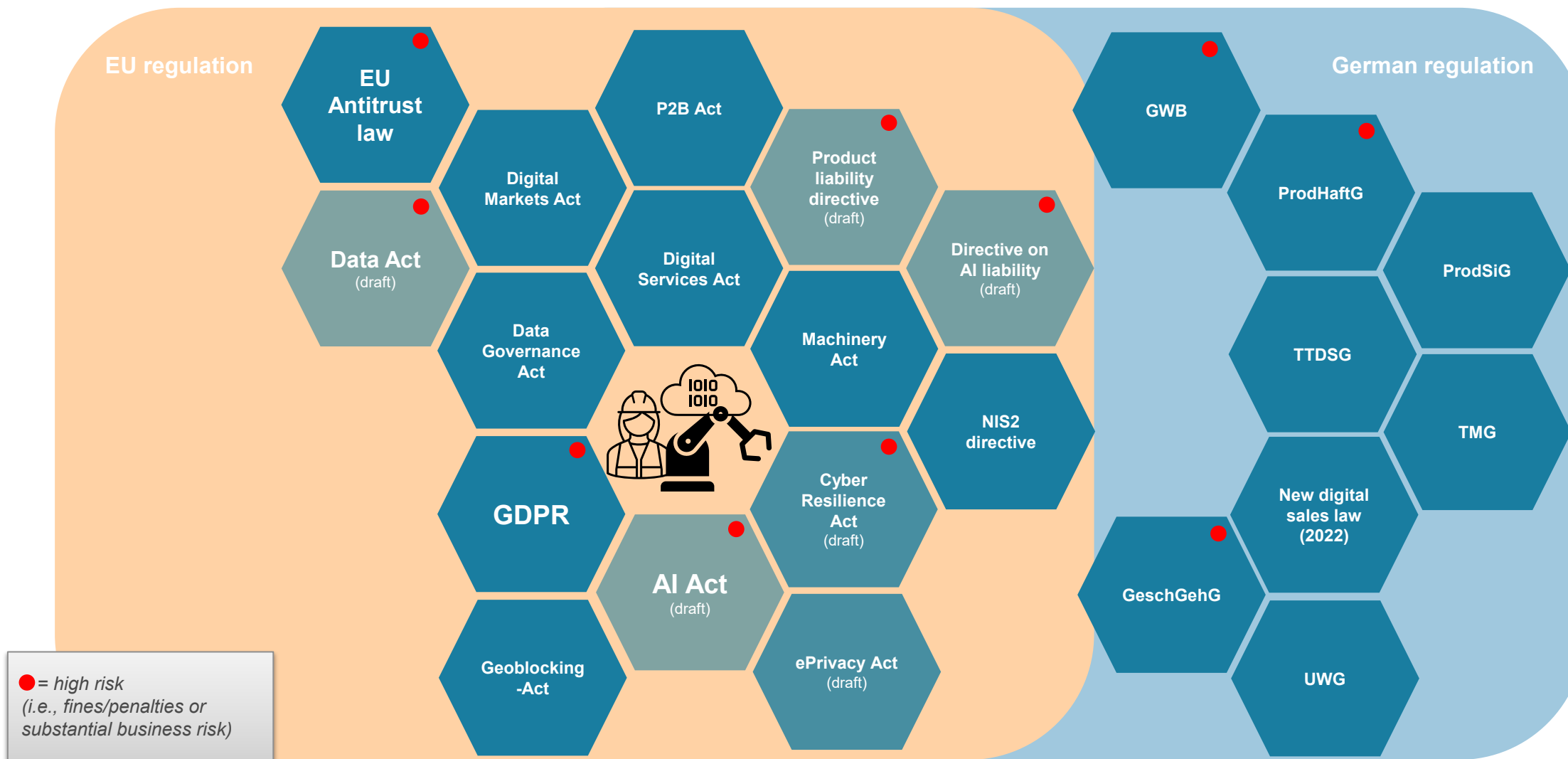


# EU Data Act: Status Update

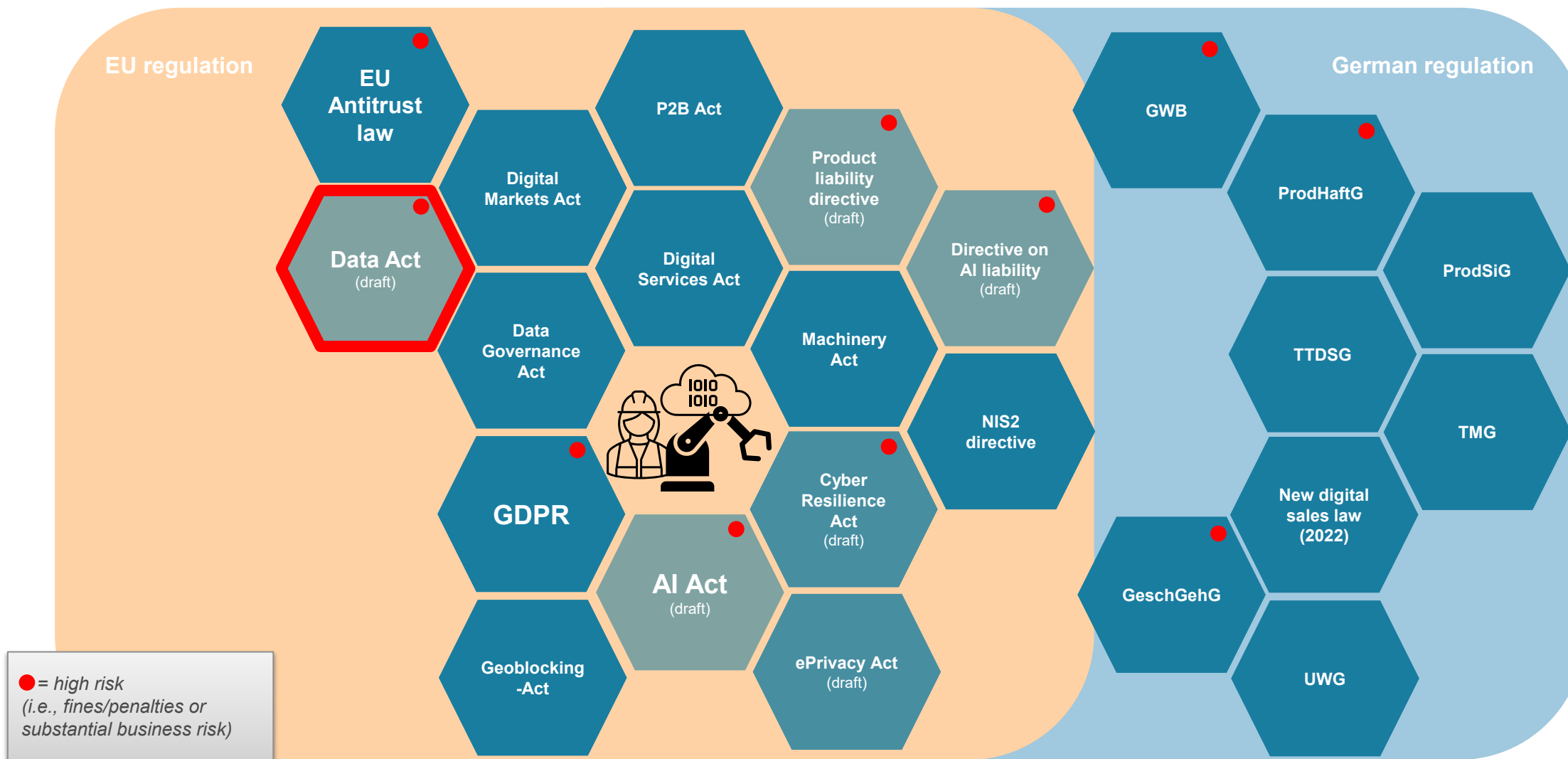
*ICC CLP Commission Meeting  
19 October 2023*

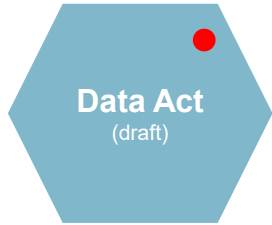
Christian Steinberger  
*General Counsel, Rechtsanwalt*

# Overview of EU and German regulation (non-exhaustive)



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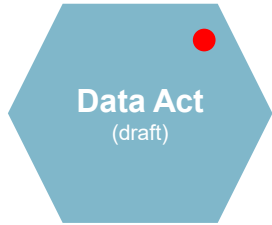




# Agenda



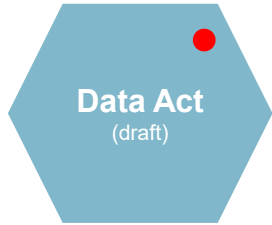
- 1. Context & motivation**
- 2. Key elements**
- 3. Basic scenarios**
- 4. Critical aspects**
- 5. Outlook**



# Agenda



- 1. Context & motivation**
2. Key elements
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## Context & motivation

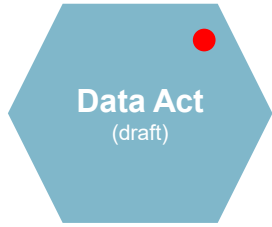


The Data Act shall ensure **fairness** in the digital environment, stimulate a **competitive data market**, open **opportunities for data-driven innovation** and **make data more accessible for all**.

It will lead to new, **innovative services** and more competition in the aftermarket services and repairs of connected objects.

This **last horizontal building block** of the **Commission's data strategy** will play a key role in the digital transformation, in line with the 2030 digital objectives.

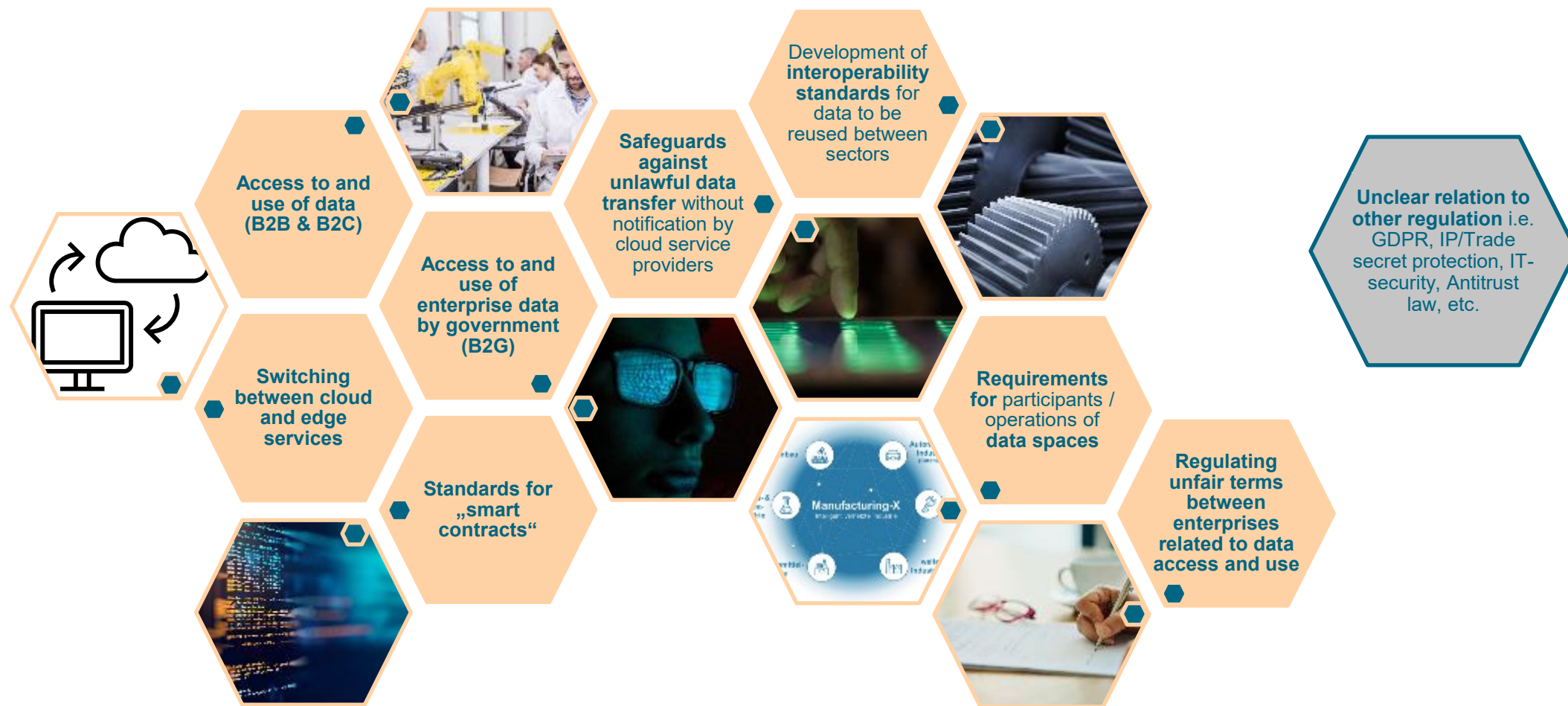
*Excerpt from the press release of the EU Commission of 23.02.2022 available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1113](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1113)*



# Agenda



1. Context & motivation
- 2. Key elements**
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# Key elements



Access to and  
use of data  
(B2B & B2C)

Access to and  
use of

Safeguards  
against  
unlawful data  
transfer without  
notification by  
cloud service  
providers

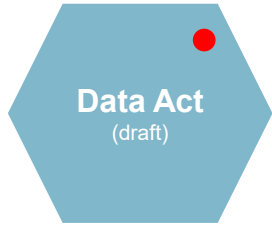
Development of  
interoperability  
standards for  
data to be  
reused between  
sectors

Unclear relation to  
other regulation i.e.  
GDPR, IP/Trade  
secret protection, IT-  
security, Antitrust  
law, etc.

= Requirements on **product- & service design**  
for „connected products“ and „related services“

Standards for  
„smart  
contracts“

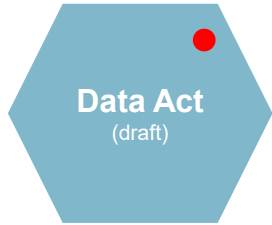
Regulating  
unfair terms  
between  
enterprises  
related to data  
access and use



# Agenda



1. Context & motivation
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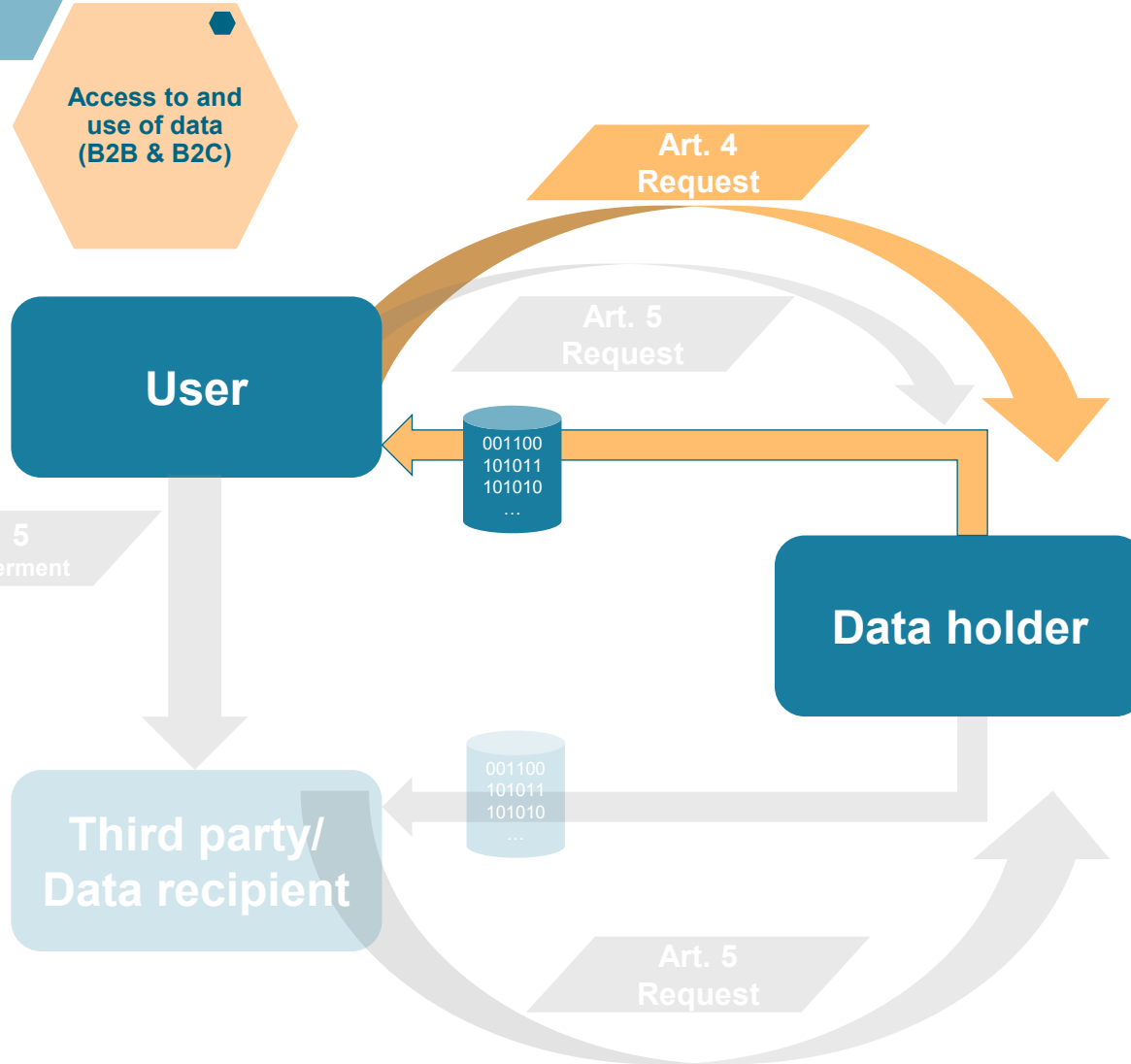
## Basic scenarios

### Art. 3 para. 1 Data Act



“**Connected products** shall be designed and manufactured, and **related services** shall be designed and provided, in such a manner that **product data** and **related service data**, including the **relevant metadata** necessary to interpret and use the data, are,

- by default,
- easily,
- securely,
- free of charge,
- in a comprehensive, structured, commonly used and machine-readable format, and,
- where relevant and technically feasible, directly accessible to the user.”



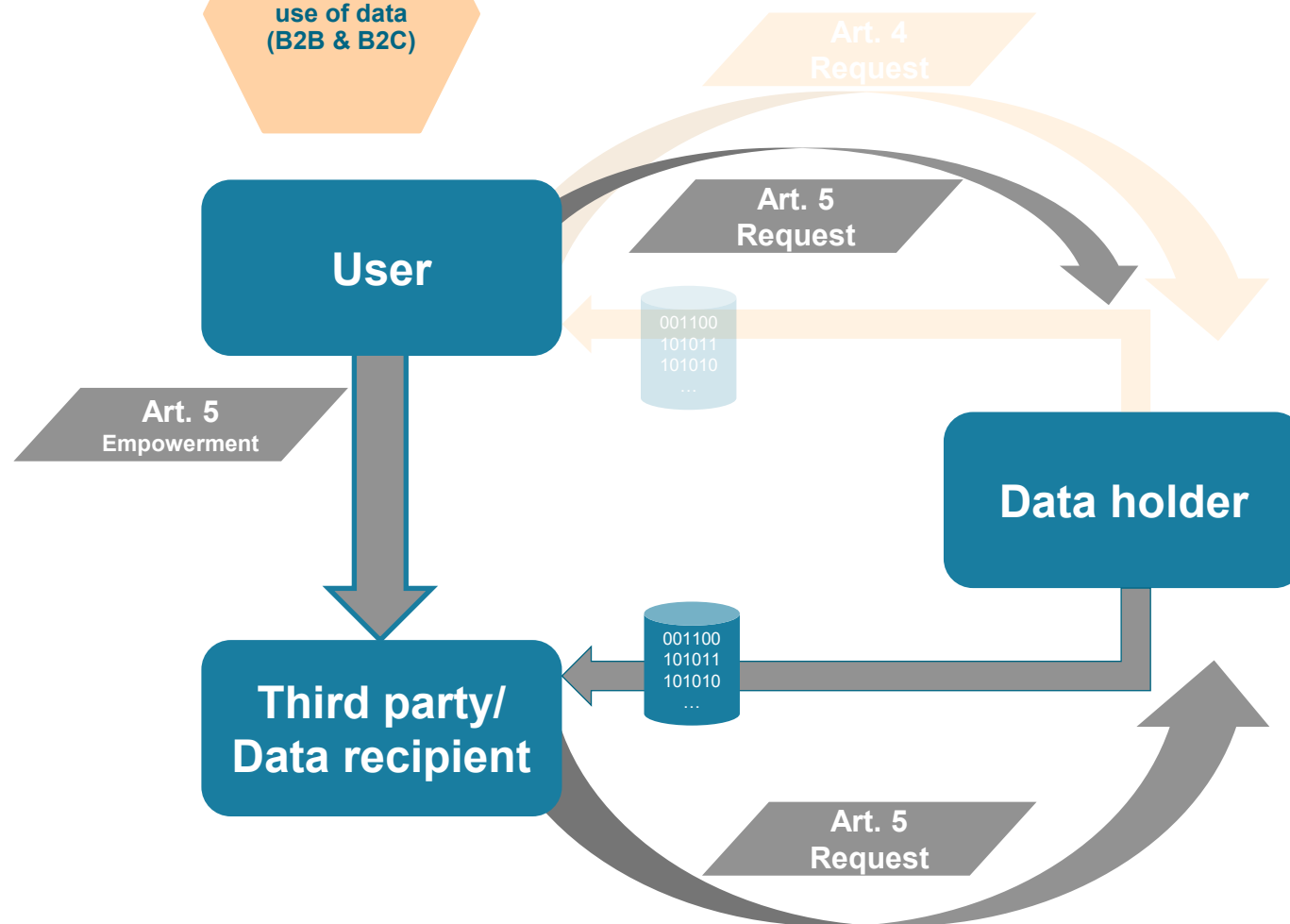
**Art. 4 para. 1:** „Where data cannot be directly accessed by the user from the connected product or related service [→ effect on product and service design, see Art. 3], **data holders** shall make **readily available data**, as well as the **metadata** that is necessary to interpret and use that data, **accessible to the user without undue delay, easily, securely** and in a **comprehensive, structured, commonly used and machine-readable format**, **free of charge** and, where relevant and technically feasible, of the **same quality as is available to the data holder, continuously** and in **real-time**. This shall be done on the basis of a simple request through electronic means where technically feasible.”

**Art. 5 para. 1:** „Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available **readily available data**, as well as the **metadata** that is necessary to interpret and use that data, to a third party, without undue delay, **free of charge to the user**, [...]”  
→ compliance with **Artt. 8, 9 Data Act**.

Data Act  
(draft)

## Basic scenarios

Access to and  
use of data  
(B2B & B2C)



**Art. 4 para. 1:** „Where data cannot be directly accessed by the user from the connected product or related service [→ effect on *product and service design*, see *Art. 3*], **data holders** shall make **readily available data**, as well as the **metadata** that is necessary to interpret and use that data, **accessible to the user without undue delay, easily, securely** and in a **comprehensive, structured, commonly used and machine-readable format**, **free of charge** and, where relevant and technically feasible, of the **same quality as is available to the data holder, continuously** and in **real-time**. This shall be done on the basis of a simple request through electronic means where technically feasible.”

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→ compliance with **Artt. 8, 9 Data Act**.

Access to and  
use of data  
(B2B & B2C)

Art. 4  
Request

Art. 5  
Request

User

Art. 5  
Empowerment

Data holder

Third party/  
Data recipient

Art. 5  
Request

**Art. 4 para. 1:** „Where data cannot be directly accessed by the user from the connected product or related service [→ effect on product and service design, see Art. 3], **data holders** shall make **readily available data**, as well as the **metadata** that is necessary to interpret and use that data, **accessible to the user without undue delay, easily, securely** and in a **comprehensive, structured, commonly used and machine-readable format**, **free of charge** and, where relevant and technically feasible, of the **same quality as is available to the data holder, continuously** and in **real-time**. This shall be done on the basis of a simple request through electronic means where technically feasible.”

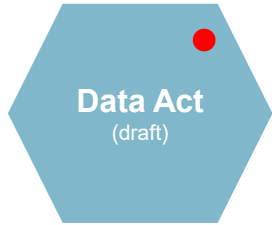
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→ compliance with **Artt. 8, 9 Data Act**.

„SME  
privilege“

“The **obligations** of this Chapter [II; Art. 3-7 Data Act] shall **not** apply to data generated by the use of **products manufactured or related services provided by enterprises that qualify as micro or small enterprises**, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, *provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro or small enterprise and where the micro and small enterprise is not subcontracted to manufacture or design a product or provide a related service.*

The **same shall apply to** data generated by the use of products manufactured or related services provided by **enterprises that qualify as medium-sized enterprises** as defined in that same Recommendation, for either medium-sized enterprises **that meet the threshold of that category for less than one year** or that where it concerns **products that a medium-sized enterprise has been placed on the market for less than one year.**”





# Agenda



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“Design flaws” of the Data Act have not completely been eliminated (but some improvements were made):

- **No adequate distinction** between business-to-business (**B2B**; capital goods industry) and business-to-consumer (**B2C**; Consumer Goods Industry);
- **Horizontal regulatory approach** ("one size fits all") instead of a sectoral approach ("tailor made" / "custom fit");
- **"User"-centric approach** [= customer is king and decides upon the use of “its” data as well as its fate – including monetization in customer relation];
- **No fundamental reciprocal data access/data exploitation right for "data holder";**
- **Unclear/indefinite legal terms;**



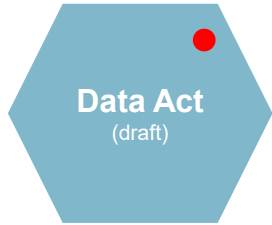
*New: definition of  
„product data“*

“Design flaws” of the Data Act have not completely been eliminated (but some improvements were made):

- Far-reaching **restriction of freedom of contract** in B2B;
- **Protection of IP / trade and business secrets is not sufficiently ensured and extremely complex** in practice;
- **Application exemptions and transitional periods are too short** or only practicable to a limited extent;
- The **sanctions framework** has not yet been quantified;
- **No satisfactory differentiation / synchronization to other applicable regulations** (e.g. GDPR, antitrust law, cyber security legal acts, etc.).

A blue, multi-pointed starburst graphic with a jagged, sunburst-like shape.

**New:**  
„handbrake  
mechanism“



# Agenda



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5. **Outlook**

**June 2023: Trilogue agreement**

**→ Not yet adopted by Council and EP**

## What is next?

- **Adoption envisaged: Q4/2023**  
→ **general applicability: 20 months** after coming into effect
- **Close monitoring of the status of the procedure**  
(→ *final text of the Regulation*)
- **Inform those responsible for product and service design as early as possible**
- **Assessing the opportunities and risks of the data economy on a company-by-company / individual basis**
- **Identify specific solution scenarios**  
(e. g., data rooms, **model conditions of the EU Commission**, etc.)

## Contact

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A close-up photograph of a gloved hand holding a wrench. The hand is wearing a black nitrile glove with a red stripe at the wrist. The wrench is a combination wrench, with the open end showing a hexagonal nut. The background is blurred, showing other mechanical parts.

**Thank you**  
**Thank you**  
for your attention!