

25th April 2024

# Webinar: Cyber Security

## How to face threats for data and smart cities.

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AI Act  
AI Liability Directive

Revised Product Liability



DSA

DMA

Data Governance Act

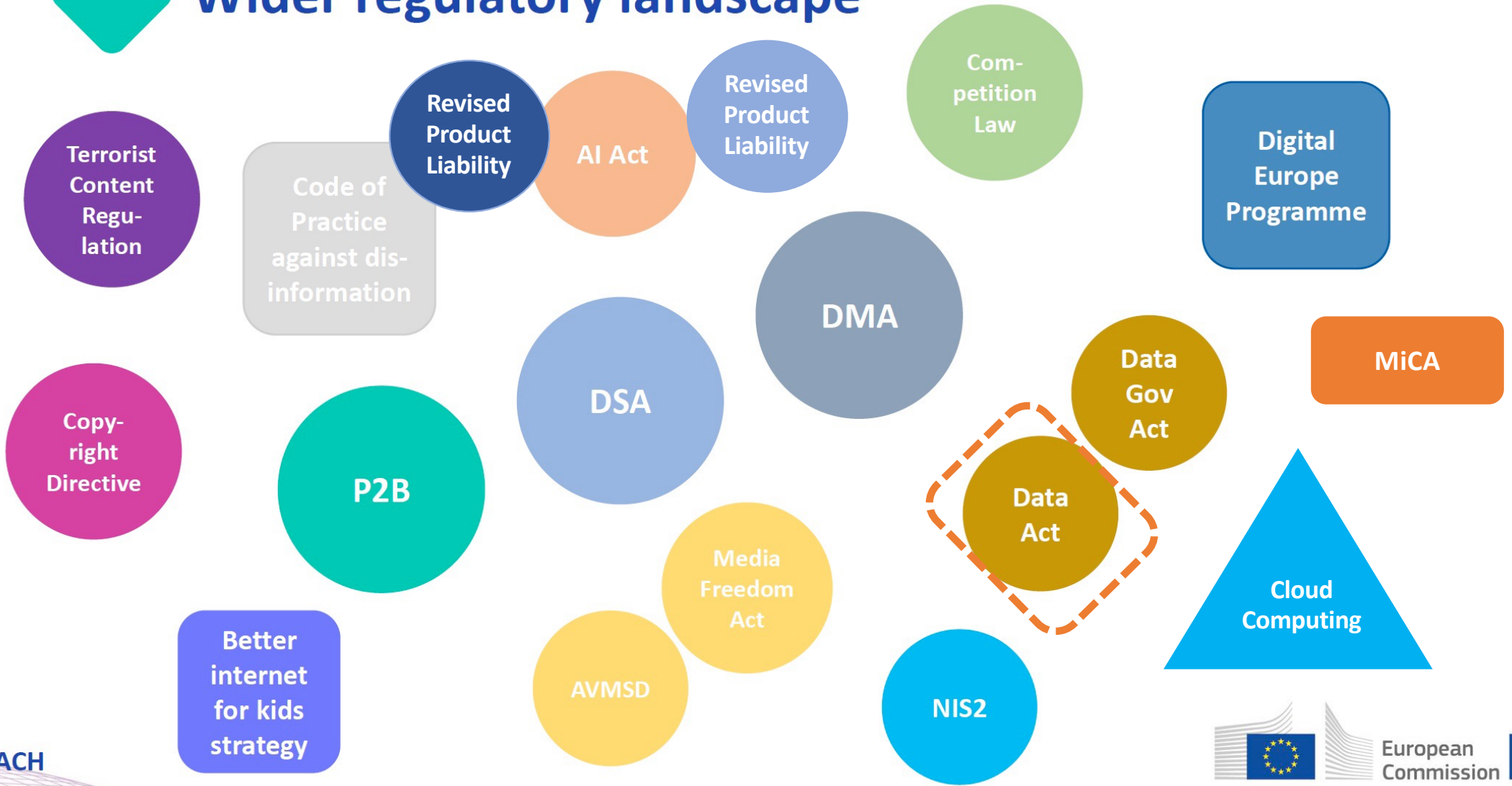
Data Act

MiCA

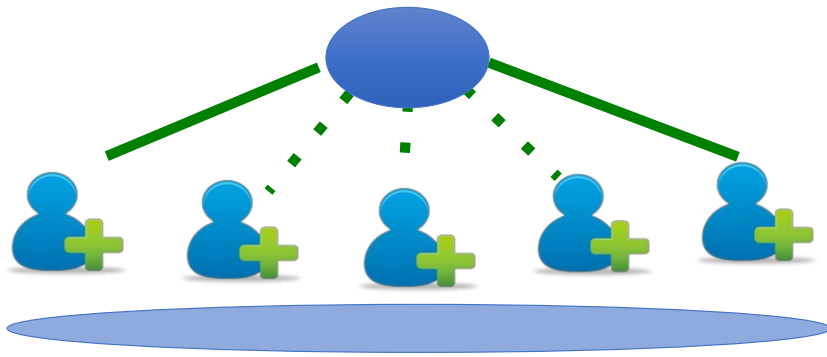
NIS



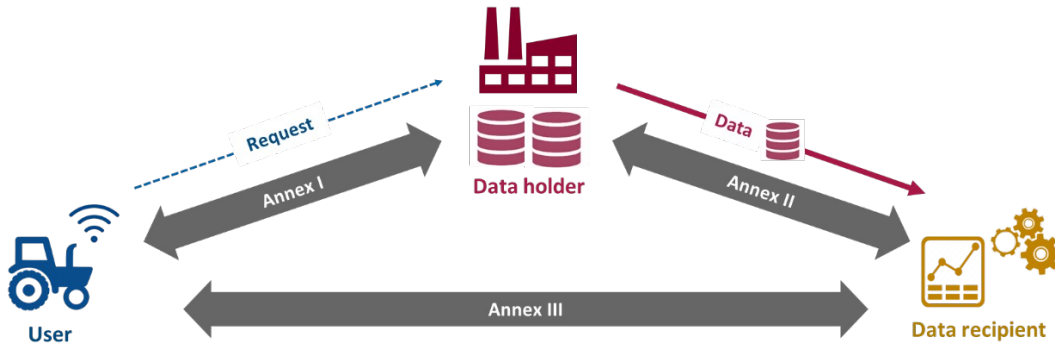
# Wider regulatory landscape



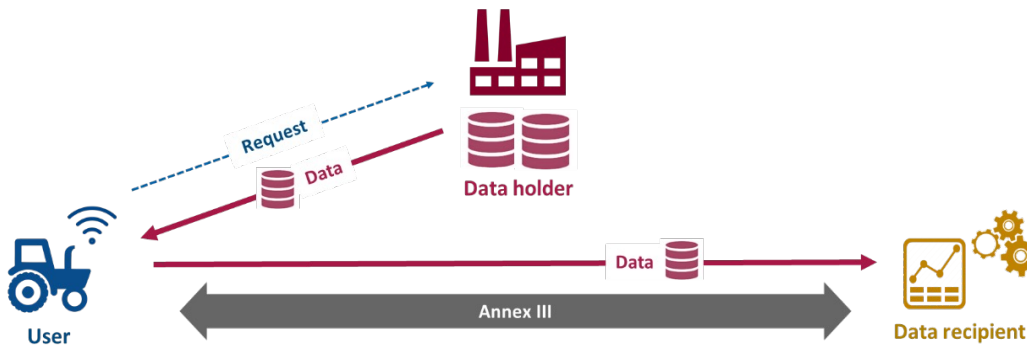
## Digital Economy is today a Platform Economy



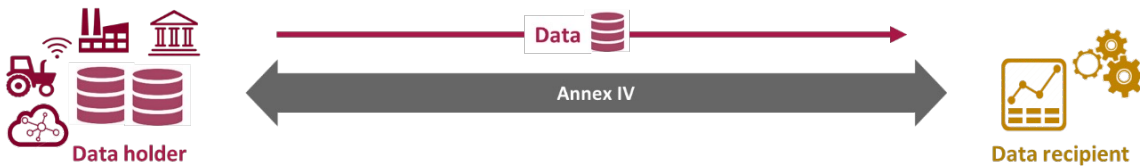
Trilateral data sharing scenario (mandatory for data holder)



Retrieve-and-transfer via Article 4

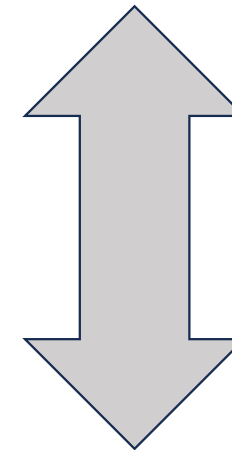


Bilateral (voluntary) data sharing scenario



© ALI-ELI Data Economy Principles

Monetising  
Data



Contracts

Practices

Design

Mobilising  
Data Value

## 1- Perspectives on data rights

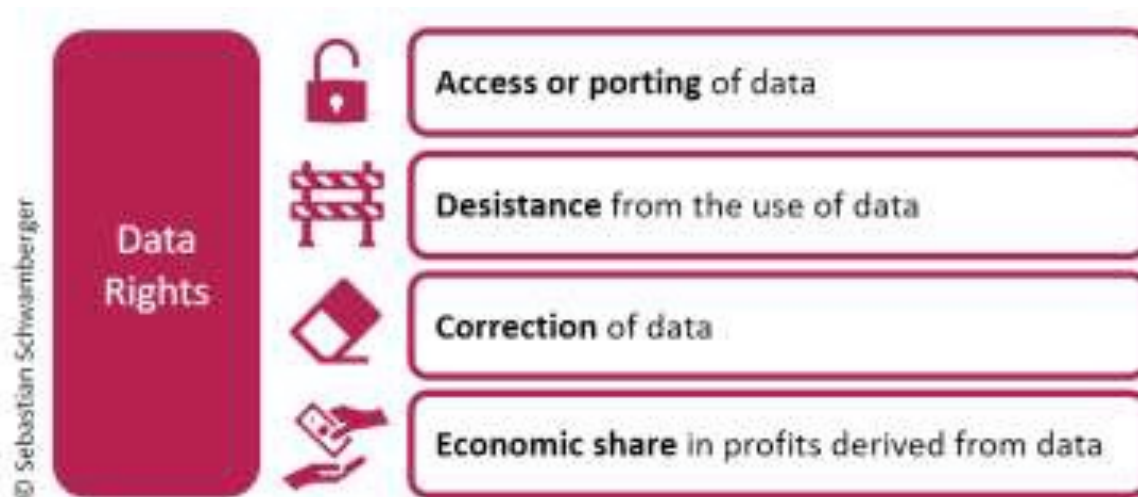
*Recital 4, Recital 5 Data Act*

a harmonised framework specifying **who** is entitled to use product data or related service data, **under which conditions** and **on what basis**

users of a connected product or related service in the Union can access, in a timely manner, the data generated by the use of that connected product or related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the obligation on data holders to make data available to users and third parties of the user's choice in certain circumstances

This Regulation should **not be interpreted as recognising or conferring any new right on data holders to use data generated** by the use of a connected product or related service.

## 1- Perspectives on data rights



The extent to which that party is the subject of the information coded in the data, or is the owner or operator of an asset that is the subject of that information;



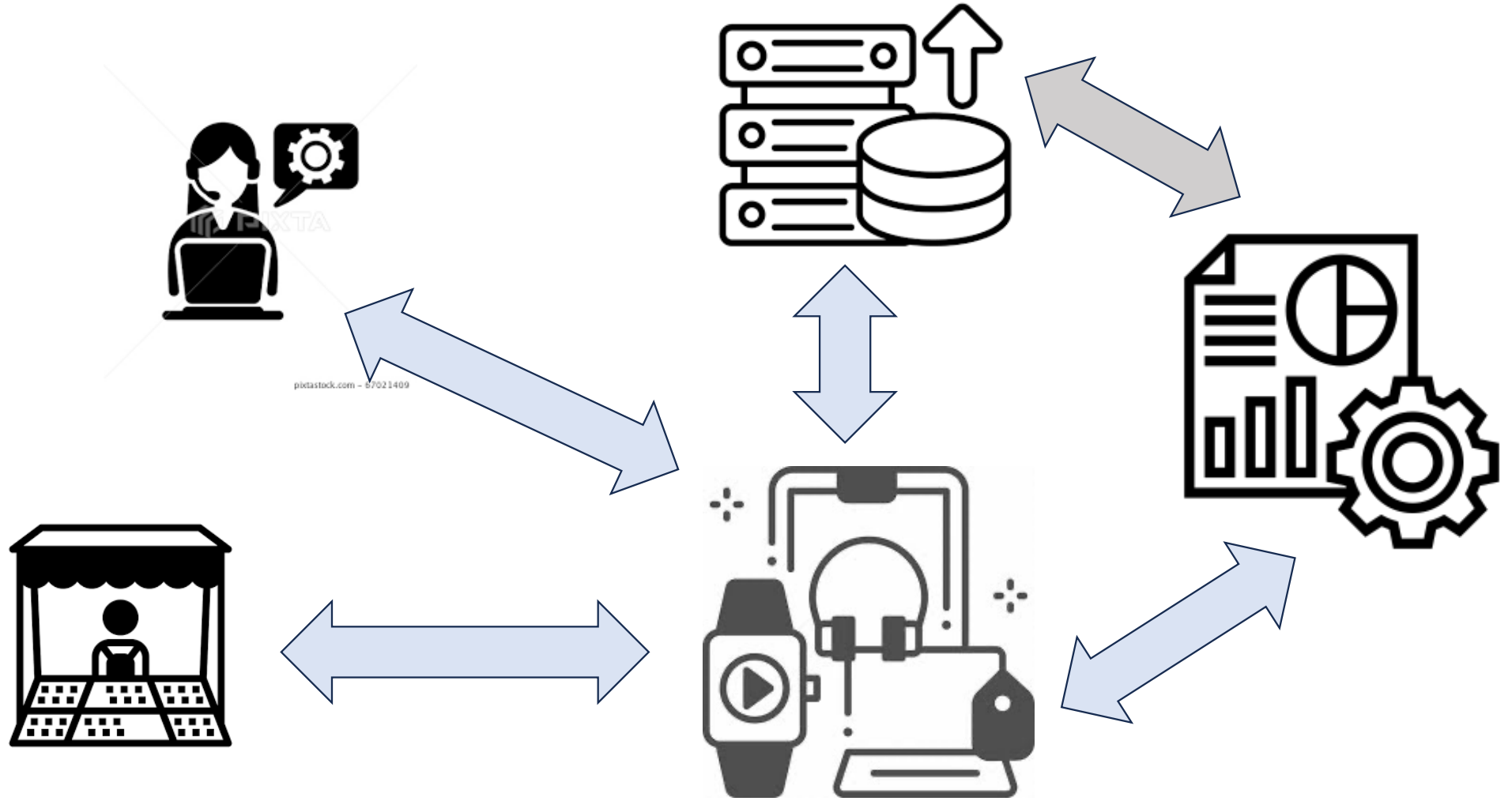
The extent to which the data was produced by an activity of that party, or by use of a product or service owned or operated by that party;



The extent to which the data was collected or assembled by that party in a way that creates something of a new quality; and



The extent to which the data was generated by use of a computer program or other relevant element of a product or service, which that party has produced or developed.





### 3.- Consumer Data – Consumer protection measures in data sharing

Information and transparency

Clear and comprehensible manner

Design requirements

Complaint lodging

Exercise of request to share

Unfair Terms

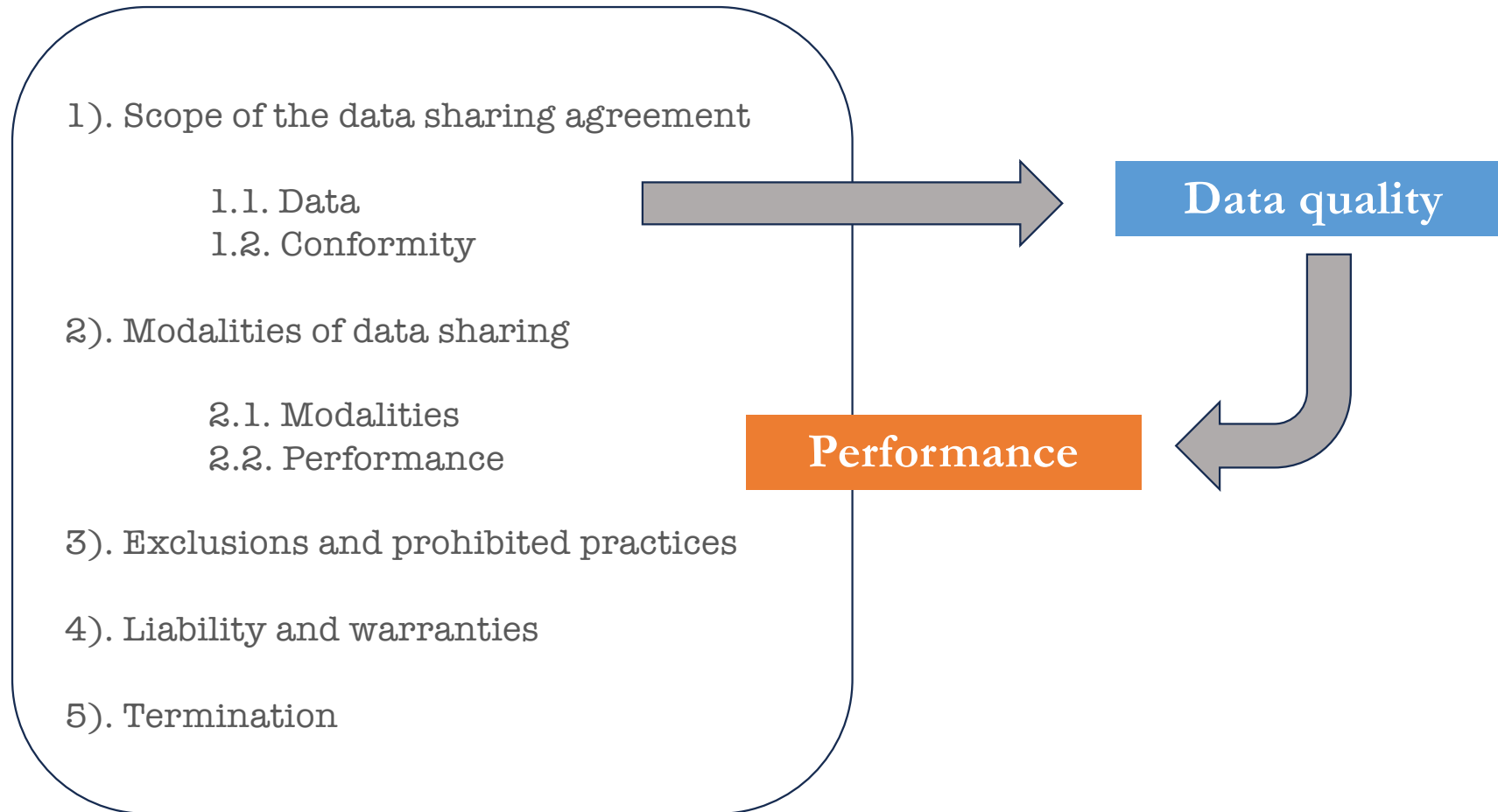
*Users and data holders may contractually restrict or prohibit accessing, using or further sharing data, if such processing could undermine security requirements of the connected productt*

Unfair Commercial Practices

*Data holders shall not make the exercise of choices or rights under this Article by the user unduly difficult, including by offering choices to the user in a non-neutral manner or by subverting or impairing the autonomy, decision-making or choices of the user via the structure, design, function or manner of operation of a user digital interface or a part thereof.*



## 4.- Critical points in B2B data sharing contracts: sources of unfairness



## 5.- MCT and unfairness

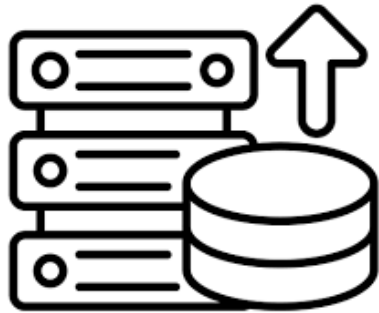
*Study on model contract terms and fairness control in data sharing and in cloud contracts and on data access rights*

*promoting voluntary data sharing through recommended model contractual clauses that are **presumed to achieve certain fairness objectives**. Model clauses are only useful in situations where the data holder and the data recipient have identified compatible business purposes and are convinced of the mutual benefit of data sharing*

*Recital (111) - Those model contractual terms should be primarily a **practical tool to help** in particular SMEs to conclude a contract. When used widely and integrally, those model contractual terms should also have the beneficial effect of **influencing the design of contracts** regarding access to and the use of data and therefore **lead more broadly towards fairer contractual relations when accessing and sharing data**.*



*Art. 13.3 Data Act: good commercial practice*



## Standardization and automation

- a). Smart contracts: B2C? B2B? C2B?
- b). Simplified icon-based contracts
- c). Consumer protection compliance  
(*ELI principles: protection, information, explanation, reflection, reversion*)

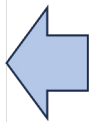
Liability: mistakes, malfunctioning  
and breach of contract  
(*rebuttable presumption?*)

Defective product: loss of data



# ELI Guiding Principles on ADM in Europe

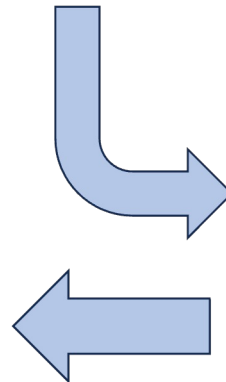
- Guiding Principle 1: Law-compliant ADM.
- Guiding Principle 2: Non-discrimination against ADM.
- Guiding Principle 3: Attribution of decisions adopted by ADM
- Guiding Principle 4: Disclosure that the decision-making is automated.
- Guiding Principle 5: Traceable decisions.
- Guiding Principle 6: Reasoned decisions
- Guiding Principle 7: Allocation of risks to the operator
- Guiding Principle 8: No limitations to the exercise of rights and access to justice
- Guiding Principle 9: Human oversight/action
- Guiding principles 10: Human review of significant decisions
- Guiding Principle 11: Responsible ADM
- Guiding Principle 12: Risk-based approach for ADM



**UNCITRAL WG IV on E-Commerce**  
*Use of AI in international trade*



**EU Proposals**  
*AI Liability Directive*  
*Revised Directive on Defective Product*  
*Pilot project on Novel forms of contracting*



**ELI Algorithmic Project**  
*ADM-readiness test on B2C*

**AI system**

*Affected interests –  
seriousness*

*Risk – probability*

*Risk – intensity*

**RISK-BASED APPROACH**

*Principles*

**Human oversight**

**Robutness and safety**

**Privacy/data governance**

**Transparency**

**Diversity**

**Social and environmental  
well-being**

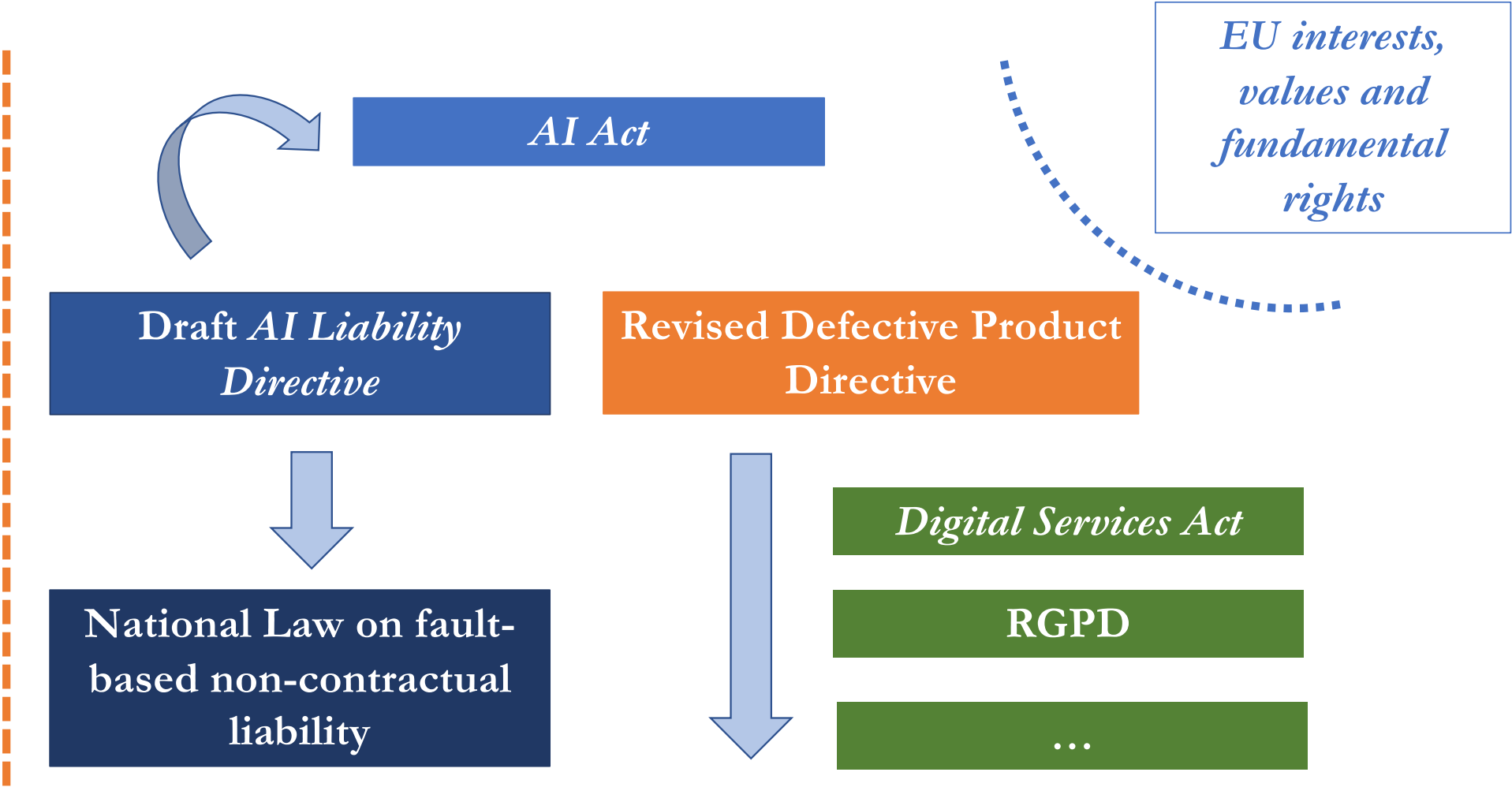
*Levels*

**Prohibited**

**High-risk**

**Others**

Sectoral legislation



Draft *AI Liability Directive*

National Law on fault-based non-contractual liability

*AI Act*

Revised Defective Product Directive

*Digital Services Act*

RGPD

...

*EU interests, values and fundamental rights*

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