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# EU Data Law Meets Archiving

# Journey of today

WHAT IS EU  
DATA LAW?

CHALLENGES  
FOR  
ARCHIVING

OPPORTUNITIES  
FOR  
ARCHIVING



# 1. What is EU data law?

# What is data?

- Data ≠ information
  - Data = regulated (Data protection rules...)
  - Information = free (Freedom of information as a fundamental right)
- Legal definitions of 'data'
  - 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording (Art. 2(1) DGA)
  - 'personal data' means any information relating to an identified or identifiable natural person ('data subject') (...) (Art. 4(1) GDPR)

# EU Data Protection Law

## Objectives:

- Protection of the fundamental rights and freedoms of INDIVIDUALS in particular the fundamental right to personal data protection
- Free movement of personal data within the EU/EEA (secondary?)

## EU primary law

- Article 16 TFEU (legal basis)
- Article 8 Charter (fundamental right)

## EU secondary law

- General Data Protection Regulation (2016)
- Law Enforcement Directive (2016)
- EU Institution Data Protection Regulation (2018)
- Data protection provisions for EU agencies and bodies (e.g. Europol Regulation Recast (2022))

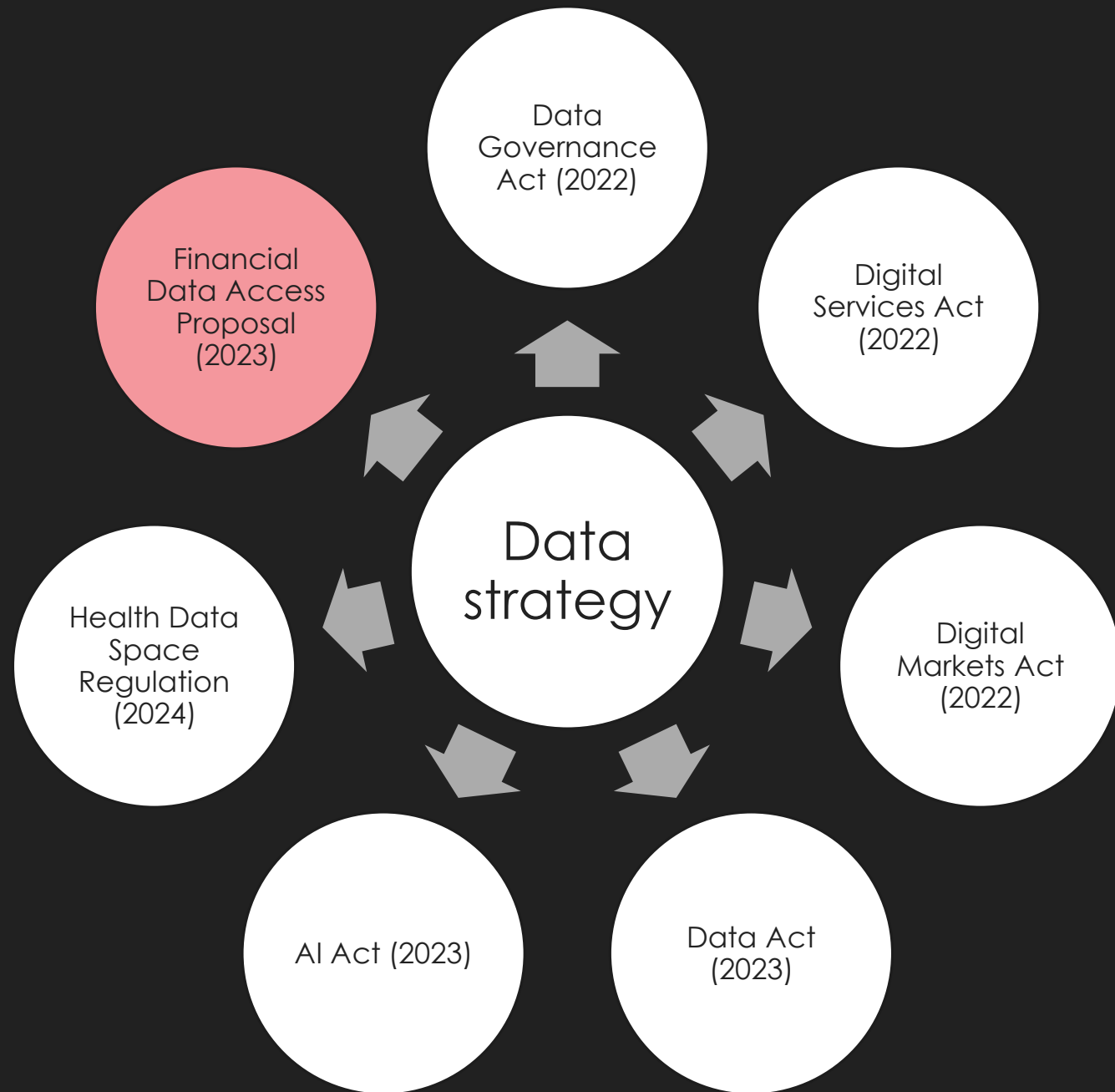
EU data protection law – 'super-law'?



# EU data strategy 2020

- 'The aim is to **create a single European data space** - a genuine single market for data, open to data from across the world - where personal data as well as non-personal data, including sensitive business data, are secure and businesses also have easy access to an almost infinite amount of high-quality industrial data, boosting growth and creating value, while minimizing the human carbon and environmental footprint.'
- '**The value of data lies in its use and re-use. Currently there is not enough data available for innovative re-use,** including for the development of artificial intelligence. The issues can be grouped according to who is the data holder and who is the data user, but also depend on the nature of data involved (i.e. personal data, non-personal data, or mixed data-sets combining the two).'





# EU data law

	Data law 'stricto sensu'	'Digital Rule Book'
Objective	to harness (economic) potential of data) (mixed/non-personal)	to create a fair digital (data) market
Legislation (New)	Data Governance Act (2022) Data Act (2023) European Health Data Space Regulation (2024) ...	Digital Services Act (2022) Digital Markets Act (2022) Artificial Intelligence Act (2023) ...
Legislation (Existing)	Free Flow of Data Regulation (2018) Open Data Directive (2019)	EU Single Market legislation (Competition law...)



# Data and other areas of EU law



Human rights law



EU IP law (e.g.  
Digital Copyright  
Directive)



ePrivacy law (e.g.  
ePrivacy  
Directive)



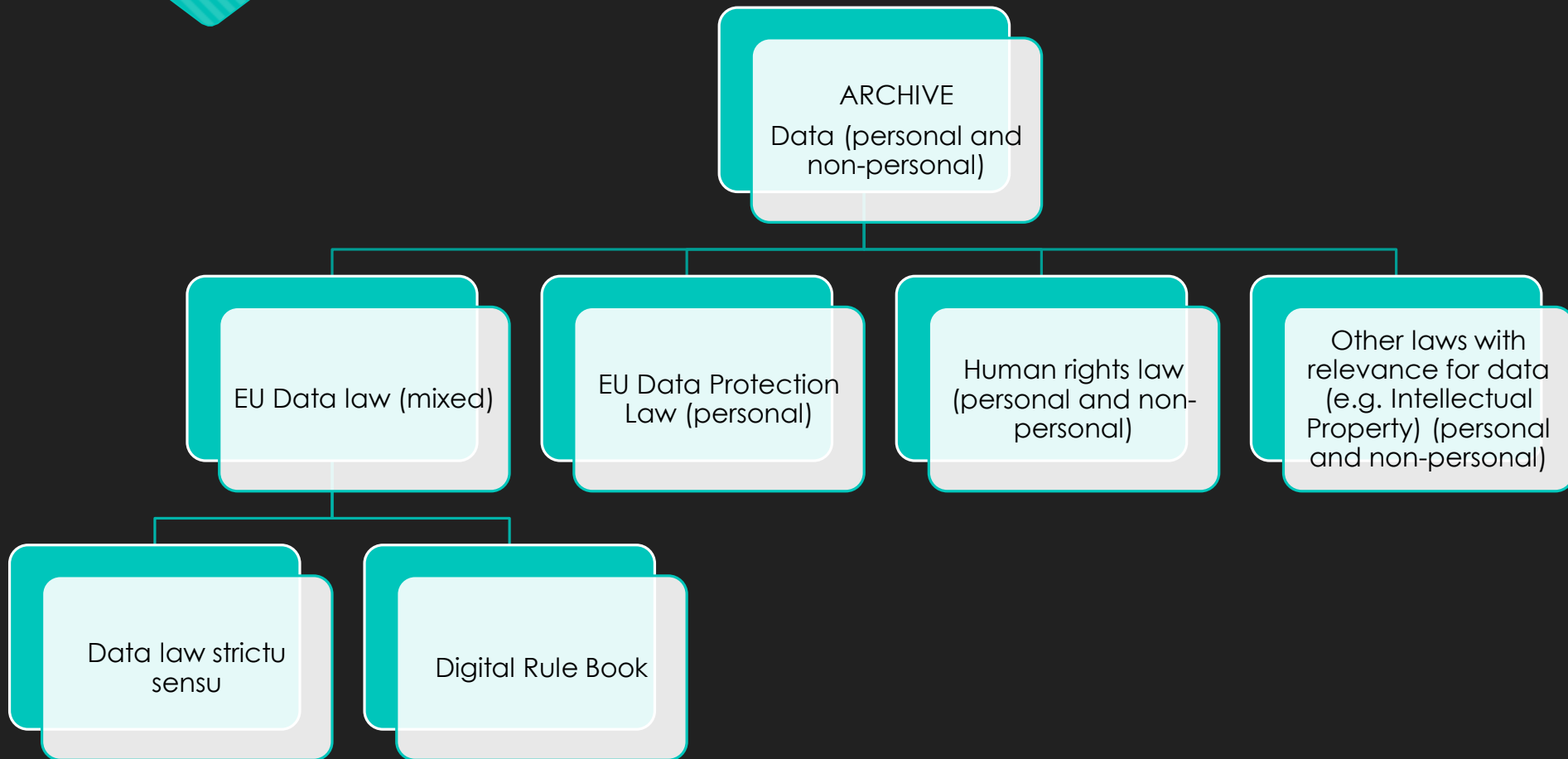
EU Cybersecurity  
law (e.g NIS-II  
Directive)



...

## 2. Challenges of EU data law for archiving

# #1: Understanding what law applies to what data



# #1: Challenges for archiving

- Amount of legislation with relevance for data
- Unclear boundaries between the different pieces of legislation
- Uncertain interplay when different legislations apply simultaneously
- Newness of legislation (lack of case law/authoritative guidance)

## #2: EU data law x EU data protection law

Same regulatory matter (data) – different objectives

Distinction based on personal data/non-personal data



## #2: Principle of EU data law: Subsidiarity to EU data protection law?

Art. 1(3) Data Governance Act

Union and national law on the protection of personal data shall apply to any personal data processed in connection with this Regulation. In particular, this Regulation is without prejudice to Regulations (EU) 2016/679 and (EU) 2018/1725 and Directives 2002/58/EC and (EU) 2016/680, including with regard to the powers and competences of supervisory authorities. In the event of a conflict between this Regulation and Union law on the protection of personal data or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data shall prevail. This Regulation does not create a legal basis for the processing of personal data, nor does it affect any of the rights and obligations set out in Regulations (EU) 2016/679 or (EU) 2018/1725 or Directives 2002/58/EC or (EU) 2016/680.

## #2: Challenges for archiving

**Distinguishing personal from non-personal data**

- Anonymisation
- Risk assessment

**Data transfers: Data law extends the essential equivalence system (fundamental rights logic) to non-personal data**

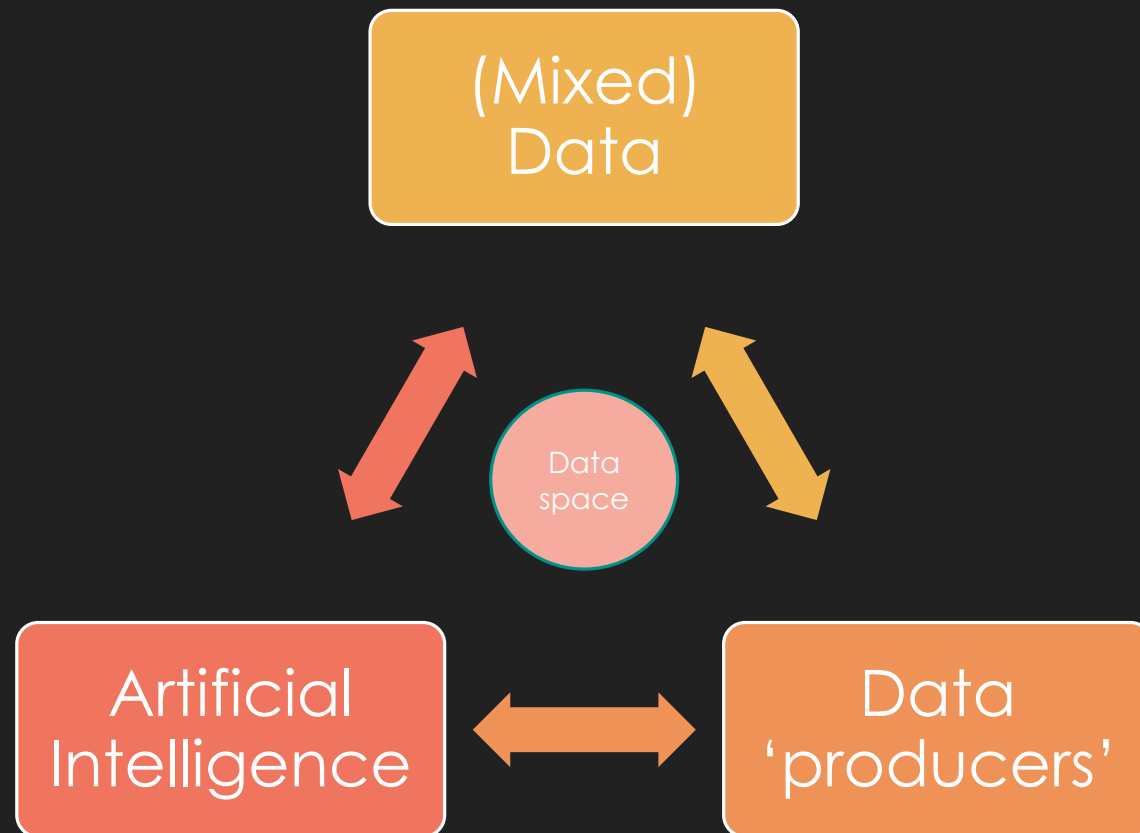
**Purpose specification/purpose limitation in mixed data sets**

**Enforcement (different regulators on the same matter)**



# 3. Opportunities of EU data law for archiving

# #1: Facilitating data sharing – the concept of ‘data spaces’



- Data governance models/mechanisms ('data intermediary')
- Interoperability
- More access to data via EU Data law
- Templates for contracts/requirements for contracts

→ Legal frameworks: Data Governance Act, Data Act, Health Data Space Regulation

# #1: Data Spaces envisioned by the European Commission

European Open  
Science Cloud  
(EOSC Portal)

Industrial  
Manufacturing  
Data Space

Green Deal  
Data Space

Mobility Data  
Space

Health Data  
Space  
(Proposal)

Financial Data  
Space  
(Proposal)

Energy Data  
Space

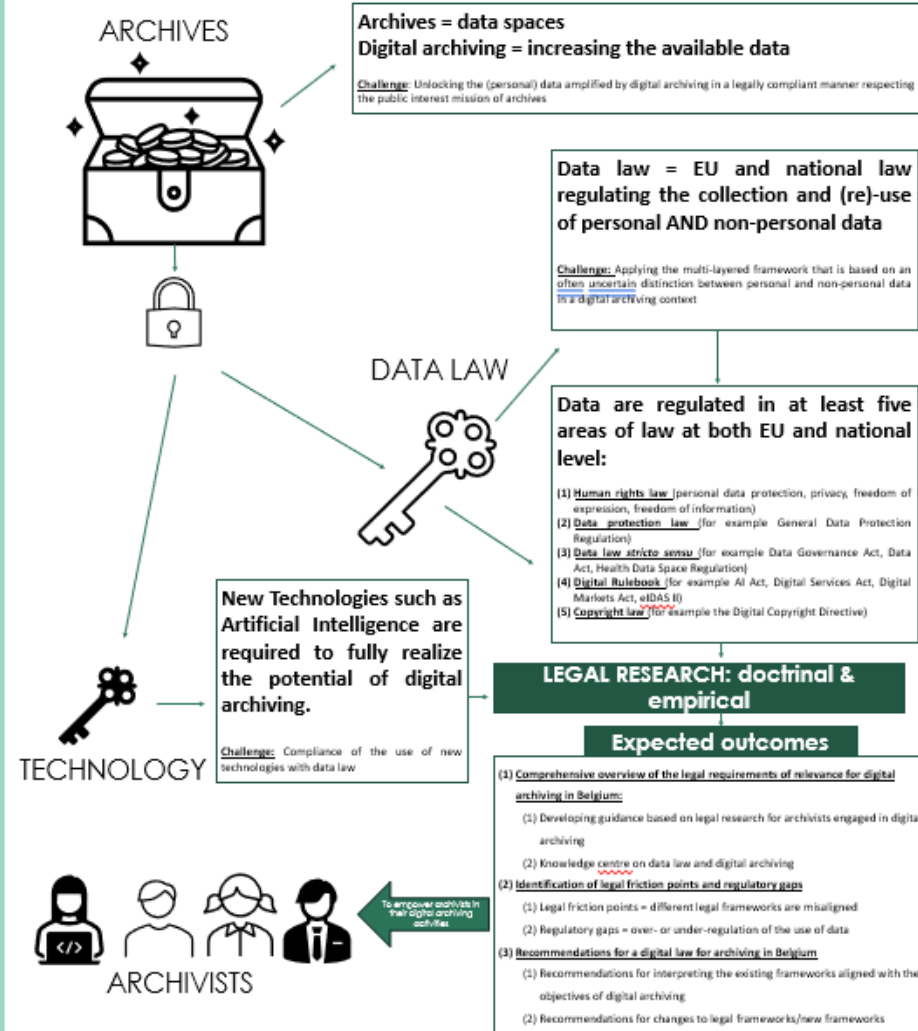
Agriculture  
Data Space

Public  
administration  
data space

Skills Data  
Space



# DigiL4Arch - Digital law for archiving (FED-tWIN Project)



## Contact

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## #2: Voluntarily donating data – ‘data altruism’

- ‘‘data altruism’ means the **voluntary sharing of data on the basis of the consent of data subjects to process personal data pertaining to them**, or permissions of data holders to allow the use of their non-personal data without seeking or receiving a reward that goes beyond compensation related to the costs that they incur where they make their data available for objectives of general interest as provided for in national law, where applicable, such as healthcare, combating climate change, improving mobility, facilitating the development, production and dissemination of official statistics, improving the provision of public services, public policy making or scientific research purposes in the general interest (Art. 2(16) DGA)
- DGA offers the opportunity for Member States to further develop the concept of data altruism & offers a legal framework for data altruism organization
- For consent – European altruism consent form (to be developed by the European Commission)

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