



14 November 2023

## EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

### *“Brussels Privacy Symposium on the EU Data Strategy”*

Opening remarks

Wojciech Wiewiórowski  
European Data Protection Supervisor

## Introduction

Let me start by thanking the Future of Privacy Forum and the Brussels Privacy Hub from the VUB for organizing and inviting me for this 7th edition of the Brussels Privacy Symposium.

To Jules, Gabriela, Gianclaudio, and all the others involved in the organisation of this event, I congratulate you on this initiative. I hope that the discussions we will have today will foster ways forward for data protection in a world where data sharing and AI have become the big buzzwords, often overshadowing the importance given to fundamental rights.

We are gathering today to discuss the EU's "data strategy architecture" and its related legislative initiatives. **Trying to make sense of how all these new chapters in the EU's digital rulebook will fit together is certainly a worthwhile endeavour.** It is an exercise which we at EDPS have also been engaged with for some time now and I have to confess it is **not always easy**.

One thing I have learned early on, however, is that we need to avoid putting all of the new EU "data laws" into one big "alphabet soup". For example, the DMA and DSA are very different from DGA and Data Act in terms of their scope, objectives and approach. The AI Act is a completely different animal, which aims to address risks to fundamental rights posed by AI systems. If we want to make sense of this legal framework, **it would be useful to identify commonalities, but it is equally important to remain mindful of their distinct characteristics.**

Second, to understand how the EU's new "digital rulebook" interacts with EU data protection law, one must keep in mind that **data protection law has been given a special place in the EU legal order.** The fundamental right to data protection is directly protected by EU primary law. A recent [Opinion](#) by CJEU Advocate General Szpunar stresses that "the right of natural persons to the protection of personal data [enshrined in Article 16 TFEU] is of singular importance compared with the other fundamental rights included in the Charter".

So when discussing the "new data laws", we have to keep in mind that **a comprehensive data protection framework adopted on the basis of Article 16 TFEU already exists,** consisting of the GDPR, the ePrivacy Directive, LED and EUDPR. **Each of the new 'data laws' will need to fully comply with those instruments, to the extent they are applicable.**

The data protection legal framework might soon be complemented with the **Regulation on procedural rules for the enforcement of the GDPR. Speaking of enforcement: one of the biggest challenges ahead for the EU's digital rulebook, in my view, is going to be its enforcement.** The challenges I am referring to here are not those challenges which we all

face as regulators, trying to be as impactful as possible with the limited resources at our disposal. Rather, a very big challenge is going to be about ensuring regulatory consistency.

There are two factors in particular that drive this need for consistency:

First, while the processing of personal data is central to the activities, business models and technologies regulated by each Act, **data protection authorities are not designated as the main competent authorities**. Enforcement is entrusted - either completely or to a very significant extent - to authorities whose missions primarily concern policy objectives other than data protection or privacy. Those new bodies will have to take into account the views of data protection authorities insofar as processing of personal data is concerned.

Second, even though each Act pursues its own objectives, several provisions explicitly regulate processing of personal data, **sometimes even explicitly referring to GDPR definitions, concepts and obligations**.

As EDPS, we have consistently pointed to the **need for structured cooperation in order to ensure a consistent and coherent regulatory approach** in practice. I am happy to observe that several initiatives are already being undertaken at national level, for example in France and the Netherlands, to foster cooperation between competition authorities, data protection authorities, and sectoral regulators.

**We will need more initiatives of this nature - also at EU level** - if we want to deliver to citizens all the benefits that EU data strategy aims to offer. **We cannot hope to achieve the objectives of the EU data strategy if we work in silos.**

The CJEU ruling from last July in the case involving the Bundeskartellamt and Meta also highlights the need for different regulators to be able to cooperate efficiently and effectively. What does this mean in practice? Let's start by looking at the Digital Services Act (DSA)

## **DSA**

As you know, the DSA and the GDPR pursue **different, yet complementary objectives**. While the GDPR aims to protect individuals with regard to the processing of personal data, the DSA aims to specifically tackle certain societal harms such as the spread of illegal content, online disinformation and other societal risks.

At the same time, the DSA **contains several provisions that will affect the processing of personal data** by online platforms, including rules on **online advertising, recommender systems** and the **protection of minors**. Moreover, a number of provisions specifically refer

to the protection of personal data as well as **definitions and concepts under the GDPR**, such as “profiling” and “special categories of data”.

Given the strong interplay with EU data protection law, it is essential to ensure a consistent and coherent regulatory approach across both instruments in practice. **I regret that the DSA does not provide for the structured cooperation that was called for** by both the EDPS and EDPB. To ensure consistency “on the ground”, but also to rip the benefit of synergies between the DSA and the GDPR to ensure a ‘safer digital future’, **we need to make full use of the avenues of cooperation provided by the DSA, as well as the advisory powers of the EDPB.**

## DMA

Let us also look at the DMA. Similarly to the DSA, the DMA and the GDPR also pursue **different purposes**. The DMA is a competition law instrument that aims to ensure contestability and fairness of digital markets where ‘big players’ (gatekeepers) are present.

At the same time, the DMA contains several **provisions that impact the processing of personal data** by so-called gatekeepers, including rules on the combination of personal data across services, as well as on data portability, data sharing, and interoperability. Under the DMA, GDPR-aligned consent is also front and centre.

This calls for a close cooperation between the Commission, sole enforcer of the DMA, and data protection authorities. Both the **EDPS and the EDPB are members of the High-Level group** of digital regulators established under the DMA. An explicit part of the mission of the High-Level Group is promoting a consistent regulatory approach across different regulatory instruments, which is to be welcomed. At the same time, the High-Level group has an important limitation: it is explicitly prevented from being involved in, or otherwise provide advice on, ongoing proceedings or investigations conducted under the DMA, which is the sole prerogative of the Commission<sup>1</sup>. Given the CJEU’s rulings in Bundeskartellamt and bpost, it is clear that additional mechanisms to ensure consistency and coordination in concrete cases are likely to be necessary.

---

<sup>1</sup> Article 2(2) of the Commission decision of 23.3.2023 on setting up the High-Level Group for the Digital Markets Act

## Conclusion

In these opening remarks I was barely able to scratch the surface of how this complex web of new EU regulations impacts on and interacts with EU data protection law. Importantly, I did not have time to touch on the many data protection implications of the DGA, the Data Act, and the sectoral common European data spaces they deem to open up. But I am confident that the first panel will provide some answers to these questions.

What I can assure you is that the **EDPS will remain vigilant. We need to ensure that the data protection standards that were fought for throughout many years will not be adversely impacted** by the new rules. If we work together, I am confident we will be able to find ways to ensure that individuals can both reap the benefits of our increasingly digital economy and enjoy optimal protection of their fundamental rights.

I wish you all a very enriching day.