

State of Tax, Legal & People

Impact of the EU's data strategy on business operations

24 September 2024



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Agenda

1. EU Digital Strategy
2. Data Act
 - Introduction
 - Business impact
3. Overview of tax landscape
 - Developments
 - Taxation of the digital economy
 - What's next
4. Digital Services Tax
 - Introduction
 - Scoping and example
 - News
 - How to prepare
5. Key take aways
6. Closing



01

EU Digital Strategy



EU Digital Strategy - Objectives



A safe and secure digital world



Small businesses and industry have access to data



Everyone can participate in digital opportunities



Ensure a level playing field between banks/non-banks



Ensure that the digital economy pays its fair share of taxes



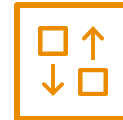
Start-ups & SMEs have access to digital tech



SMEs can compete in the digital world on fair terms



Public services are readily available online



Reinforcing administrative cooperation on exchange of tax information



Ensure that profits are taxed where companies have a significant digital presence



Innovative infrastructures converge to work together



Research on sustainable, energy and resource efficient innovations



All organizations can ensure cybersecurity

Regulatory & tax landscape

28 September 2022
AI Liability Act
Proposal published

14 December 2022
FSR & Pillar Two
Entry into force

16 January 2023
NIS2
Entry into Force

18 April 2023
Cyber Solidarity Act
Proposal published

23 March 2023
**Distributed Ledger
Technology Pilot**
Results published

Q1 2024
**Cyber Resilience
Act**
Entry into force

Q3 2024
MiCA
*Expected compliance
Mandated*

Q4 2024
DAC8
*Crypto-Asset
Reporting Framework*

17 January 2025
DORA
Compliance mandated

Q1 2025
AI Act
Expected full compliance mandated

Q3 2025
Data Act
Applicability

2029
FASTER
Estimated entry
into force

2022

2023

2024

2025

2026

1 November 2022
DSA
Entry into Force

1 November 2022
DMA
Entry into Force

June 2023
**Platform work
Directive**
Adoption by the Council

12 September 2023
**New Late Payment
Directive**
Proposal published

24 September 2023
Data Governance Act
Entry into Force

10 May 2023
**General product
safety Regulation**
Entry into force

1 October 2023
CBAM
Entry into Force

Q4 2023
**EU-US Data Privacy
Framework**
Entry into force

8 November 2023
eIDAS 2.0
Provisional agreement reached
by Council and Parliament

1 January 2024
CESOP
Entry into force

**Proposal for amendments
expected in 2023 for:
PSD2 (PSD3)**

**Legislative proposal
expected in 2023 for:
New Open Finance
Framework**

2025
Accessibility Act
National implementation

2024/2025(?)
**New DSTs? Or other
measures absent of P1?**

2026
Digital Euro
Estimated adoption

2026
**Right to Repair
Directive** Estimated
entry into force

**Between 2024-
2028: ViDA and
local e-compliance
requirements**
Estimated entry
into force

Tech in the spotlight

Google loses €2.4bn EU antitrust case for favouring its own shopping service



Canada Enacts Digital-Services Tax Amid Risks of U.S. Trade Retaliation

TECH

Apple must pay 13 billion euros in back taxes, EU's top court rules

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Home > News > Data Act enters into force: what it means for you

NEWS ARTICLE | 11 January 2024 | Directorate-General for Communication | 2 min read

Data Act enters into force: what it means for you



Google LLC [+ Add to myPT](#)

Google wins appeal against €1.5bn EU competition fine

EU's General Court annuls financial penalty against search giant in legal victory for Big Tech in the bloc



02

Data Act



Data Act - Poll

Question

- A) Text goes here
- B) Text goes here
- C) Text goes here

Data Act

IoT

Healthcare
devices

Alexa

Are you prepared?

EV

Smart
thermostat

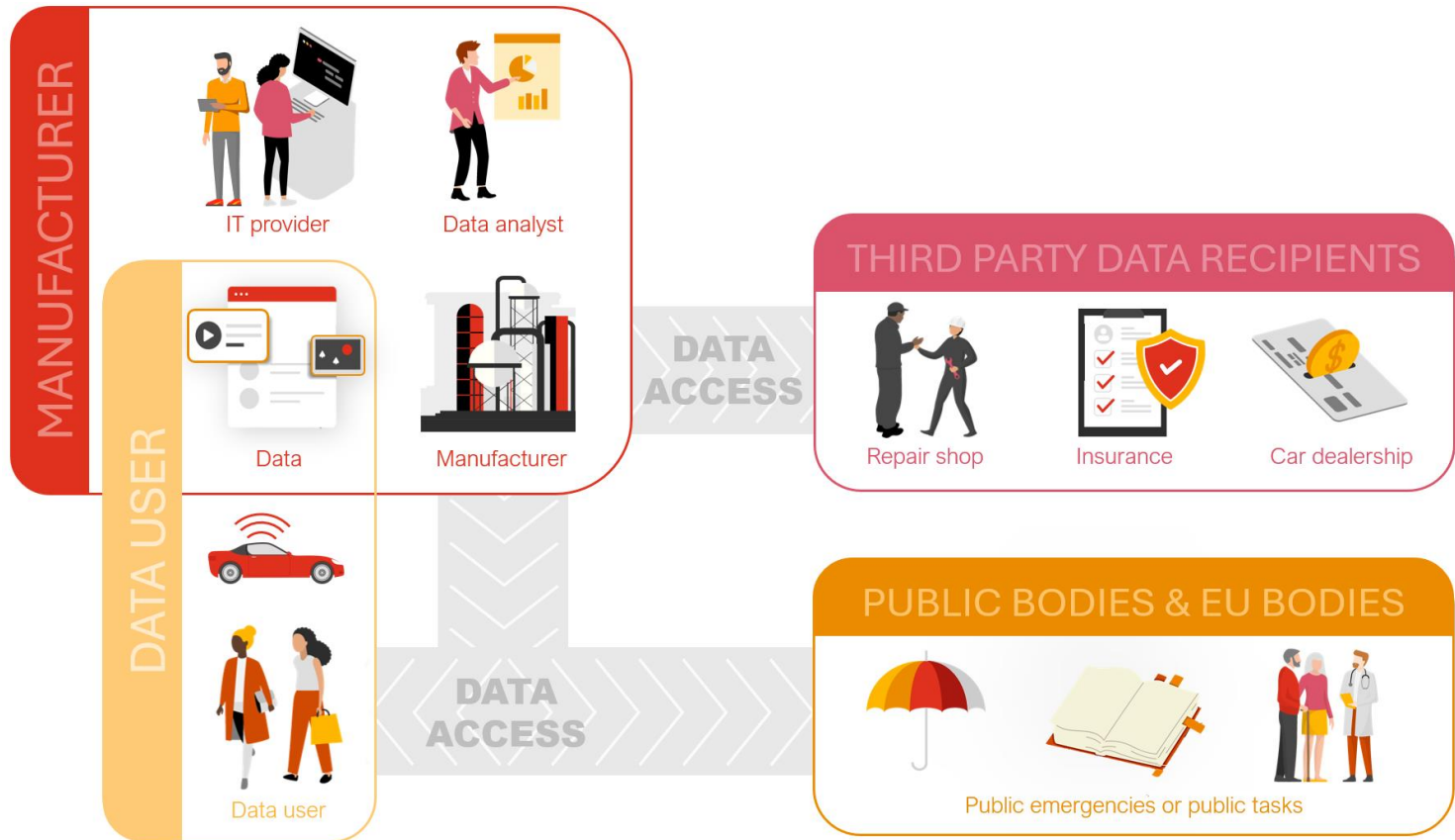
Smart
doorbell



Data Act in Short

Why	Ensure fair access to and sharing of data , fostering innovation, competition, and value creation across industries --> true value of data remains unused	Rec. 6
What	<ul style="list-style-type: none">• Sharing of data generated by connected devices, between B2B, B2C and B2G• Fairness in data economy• User control and Data portability requirements – accessibility by design.• Service provider (cloud) switching and Interoperability	Art. 1(1)
Who	Businesses manufacturing and parties using connected devices or related services, governmental institutions and data processing service providers.	Art. 1(3)
How	<ul style="list-style-type: none">• Designing and manufacturing connected products and related services to enable data sharing and interoperability, in a safe and secure way.	Art. 1(1)
Where	<ul style="list-style-type: none">• Data holders/users within the EU, Non-EU business offering goods/services to users in the EU	Art. 1(1), 2
When	12 September 2025	Art. 50
Enforcement	<ul style="list-style-type: none">• For violations that relate to personal data: fines of up to €20 million or 4% of the total worldwide annual turnover.• Member states determine the sanctions for other violations. In the Netherlands, the fines might be up to € 1.03 million or 10% of the total annual turnover.	Art. 40(4) Art. 6 Data Act Implementing Law (as proposed)

Data Act – stakeholders en data flows



Overview: What needs to be adjusted...

... in terms of Governance, Management and Data



Data Governance

Processes: Adjusting and defined processes and steps that regulate and optimize the management and use of data in order to meet the requirements of the EU Data Act.

Roles and responsibilities: Defining roles that are responsible for ensuring compliance with the EU Data Act and reviewing this through regular checks.

Standards: Defined norms, standards, regulations and sectoral data provisions that guarantee the consistency, quality, interoperability and protection of data.

sets the framework for



Data Management



Data collection



Processing



Validation



Storage



Providing



Data Strategy



Data Architecture: Selection of a suitable infrastructure that enables the structured collection, storage, processing and analysis of data, as well as easy access to it.



Maturity assessment: Assessment method to determine the maturity level of an organization's data strategy components and identify areas for improvement.



Roadmap: Defining data strategy objectives and activities to achieve them as well as adaptability to respond to possible changes.



Measurement and evaluation: Recording, analyzing and evaluating key figures in order to assess the performance of the established processes and the effectiveness of the measures taken.

is part of

along



Three Lines of Defense (LoD)

1st LoD - Risk responsibility:

Identification of risks and development of internal controls to mitigate risks


2nd LoD - Risk control

Monitoring the effectiveness of the measures implemented

3rd LoD - Risk protection

Internal CLIENT processes to ensure the effectiveness of the first and second LoD

Overview

Impact Assessment	<ul style="list-style-type: none">• Identification of business segments affected by the Data Act	
Workstream: Access Management (Technology & Data) 	<ul style="list-style-type: none">• Systems & Data Mapping• Access Process	Workstream: Governance
Workstream: Production and Service Design	<ul style="list-style-type: none">• Access by Design• Interoperability• IP Management	<ul style="list-style-type: none">• Setting up Data Act Governance functions & operations
Workstream: Customer service and User Experience	<ul style="list-style-type: none">• Customer Interaction and Customer Information• Contract Management• Consent Management	
Workstream: Business Development Monetization	<ul style="list-style-type: none">• Counselling business departments on new business models• Define model to calculate access fees (Art 9)	
Project Management	<ul style="list-style-type: none">• Coordination for the project teams, including managing activities, stakeholders, resources, milestones, risks, and KPIs.• Assumption: Necessary information and stakeholders are available	

Preparing for the Data act – key take-aways

1. Identify Affected Products and Services	2. Analyze Data Flows and Sharing	3. Review Legal and Contractual Obligations	4. Assess Compliance with Other (EU) Laws (GDPR)	5. Data Governance and Strategy
<ul style="list-style-type: none"> • Scope: Review your product portfolio to see which devices or services are sold or used in the EU. • Data Generation: Identify which products generate data during their usage in the EU. This includes non-personal data (device logs, usage statistics) and personal data (such as video feeds). 	<ul style="list-style-type: none"> • Internal Data Use: Map how your company uses the data collected from these products. • External Sharing: Identify if you share data with third parties, such as service partners, EU-based entities, or customers. 	<ul style="list-style-type: none"> • Existing Contracts: Analyze whether your existing contracts (with EU customers, service providers, or distributors) address data ownership, access, and sharing. • Remediation: Include the European Commission's model framework agreements where applicable to ensure you're compliant with the data-sharing provisions. 	<ul style="list-style-type: none"> • GDPR: If your products collect personal data, you also need to comply with the GDPR (General Data Protection Regulation). This includes obtaining consent, providing data security, and enabling users to exercise their data rights. • Overlap: The Data Act and GDPR overlap, especially when it comes to personal data sharing and security. 	<ul style="list-style-type: none"> • Data governance: mechanisms to handle data access requests, ensure data security, and monitor compliance. • Three Lines of Defense: Ensure your first line (operations and product teams) can identify data-related risks, your second line (compliance and risk teams) can monitor them, and your third line (internal audit) can independently review your controls.
<p>→ Create a product data inventory listing what data each product collects and whether it's personal or non-personal.</p>	<p>→ Map data flows from collection to sharing, both within and outside your organization, to see how the Data Act's sharing obligations might apply.</p>	<p>→ Update contracts to include clear terms on data-sharing obligations, responsibilities, and security.</p>	<p>→ Perform a GDPR compliance review for all personal data your products generate in the EU.</p>	<p>→ Develop or update your data governance framework to reflect these responsibilities, ensuring that compliance is a shared responsibility across your organization.</p>

03

Overview of tax landscape



Developments over the past years

- Concerns about unfair tax competition and improper tax planning led to several initiatives/measures
 - G20/OECD Base Erosion and Profit Shifting Project ("**BEPS**"), based on three pillars (2015)
 - EU Anti-Tax Avoidance Directives ("**ATAD**")
 - Additional unilateral anti-arbitrage measures (e.g., in NL: anti-transfer pricing mismatch rules)
 - EU Directive on Administrative Cooperation ("**DACs**")
 - Country-by-Country Reporting ("**CbCR**") rules
 - EU Transfer Pricing Directive Proposal (2023)
- Within existing company tax framework
 - Measures do not address:
 - Where should MNE be taxed?
 - How much should MNE be taxed?

Taxation of the digital economy

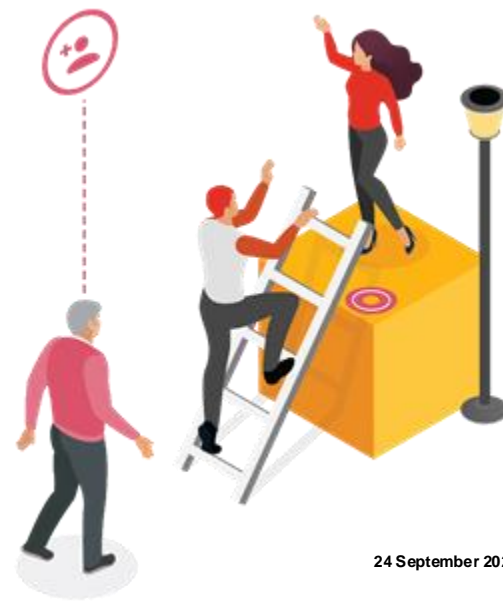
- Addressing the tax challenges of the digitalization of the economy (2021)
- OECD Inclusive Framework BEPS 2.0 Project
 - **Pillar One** (where to tax?): Re-allocation business profits to market jurisdictions (Amount A)
 - **Pillar Two** (for how much?): 15% Global Minimum Tax
- Various countries unilaterally introduced digital levies (**digital services taxes**, etc.) (2016-2021)
- Within EU:
 - Digital levy (2018 Digital Tax Package; withdrawn)
 - Pillar One Directive (anticipated)
 - Pillar Two Directive (2022; adopted)
 - Business in Europe: Framework for Income Taxation ("**BEFIT**") (2023; pending)
 - Own Resources Package (2021, 2023)

Taxation of the digital economy

- Pressure points:
 - Political pressures
 - Demarcation: what is the "digital economy"?
 - Unilateral measures potentially discriminatory – counter measures
 - Pillar One re-scoping (Amount A)
 - Unilateral measures rollback workstream (until year-end 2024)
 - Multilateral Convention on Amount A at a standstill (mid-2024);
 - OECD Inclusive Framework v. United Nations
 - UN Resolution on a UN Framework Convention on International Tax Cooperation (2023)

What next?

- Digital services taxes revival?
- Coordinated incentives to further EU policy ambitions?
 - Interplay with Pillar Two
 - Interplay with US and China subsidy policies
- Sustainability of the two-Pillar tax reform?
 - Impact on competitiveness
 - Impact on developing countries



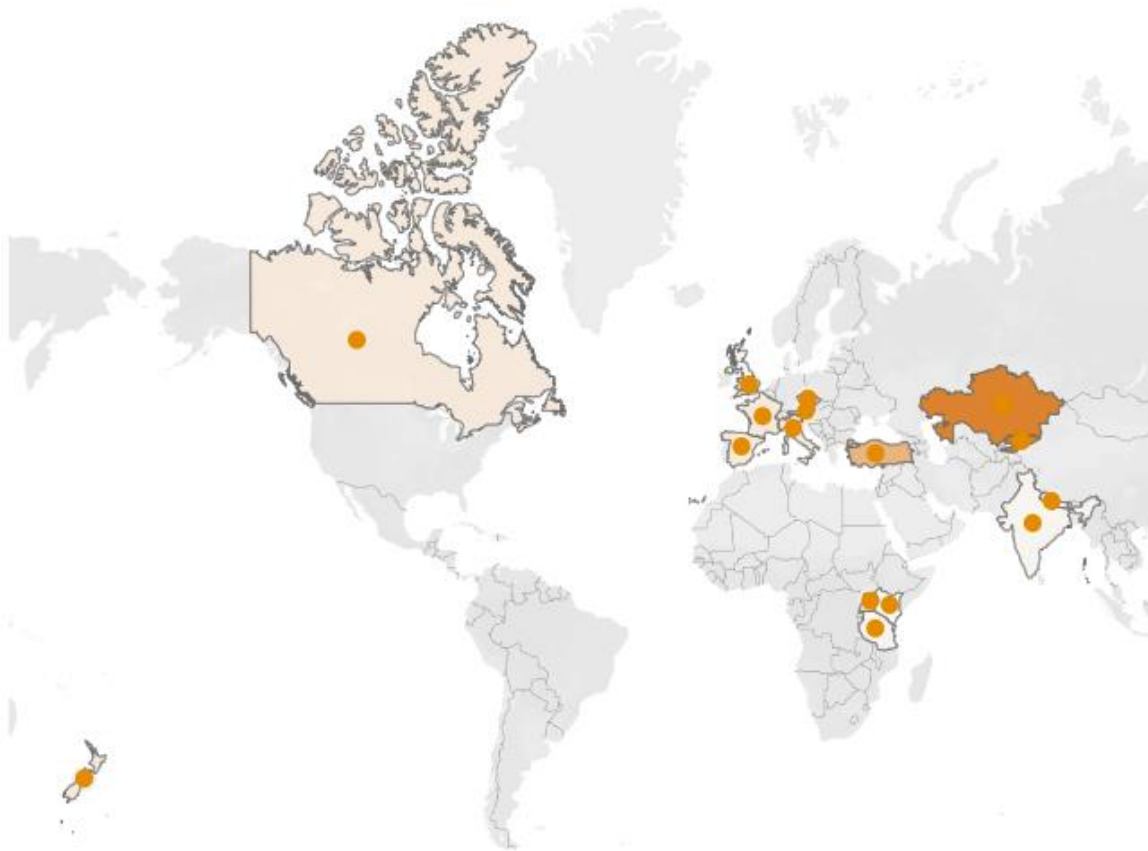
04

DSTs in detail



Digital Services Tax – why consider it now?

**Countries
that
already
have a
DST...**



Digital Services Tax in a nutshell

Why

Initial EU proposal: **fight against tax planning** and fill the gap between where **profits are taxed and where value is created**

What

Tax levy on revenues generated with certain (in scope) digital activities

Who

MNCs performing 'in scope' activities in relevant jurisdictions (global/local thresholds apply)

How

Determine revenues traceable to a jurisdiction (eg based on IP addresses) linked to online advertisement, online marketplaces and user data

When

Live for some years in various (EU and non-EU) jurisdictions (e.g. UK, France, Spain, Italy, Canada, Italy), but now that P1 (Amount A) is more likely to fail, general expectation is that more (EU) jurisdictions will follow/resurface DSTs...

Enforcement

Comparable to other enforcement methods in relation to direct/indirect taxes

Digital Services Tax – scope & example

Potential scope of DSTs



Online placement of advertising



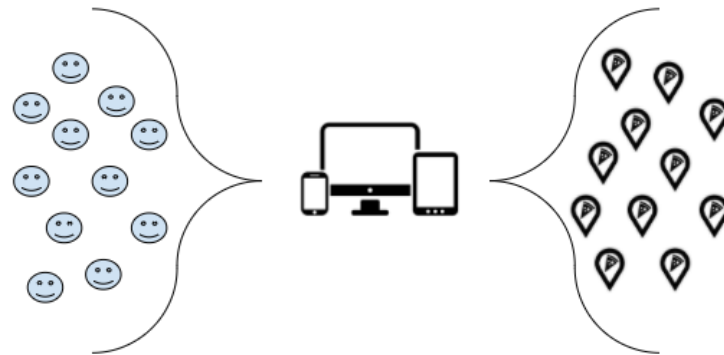
Sale of collected user data



Digital platforms that facilitate interactions between users

Example:

MNC hosts an online food delivery platform



Digital Services Tax in the media



Q FINANCIAL TIMES

WORLD US COMPANIES TECH MARKETS CLIMATE OPINION WORK & CAREERS LIFE & ARTS HOW TO SPEND IT

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Google to pass cost of digital services taxes on to advertisers

US tech group to charge additional fees in the UK, Turkey and Austria

Amazon Passes France's Digital Services Tax on to Vendors

Canada Enacts Digital-Services Tax Amid Risks of U.S. Trade Retaliation

How to prepare?

- 1 Impact assessment
- 2 Review payment flows and legal set-up
- 3 DST policy
- 4 (Prepare for) controversy?

05

Implementation & impact



Key takeaways



Impact: Know what and how new legislation impacts your organisation



Implementation: With many overlapping regulations – follow an integrated approach



Timing: Start timely!

Questions?



Closing

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Evaluation

- How would you rate this webinar on a scale from 1 to 10?
- The content was relevant. (Totally agree/Agree/Neutral/Disagree/Totally agree)
- Do you have any suggestions and/or comments?
- Do you have specific questions and would you like us to contact you?

Contact



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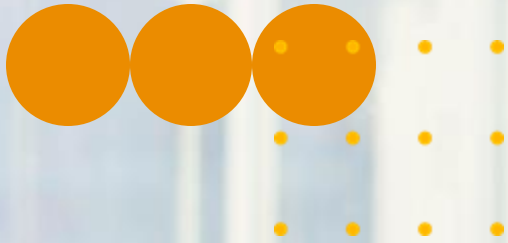


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Thank you!



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