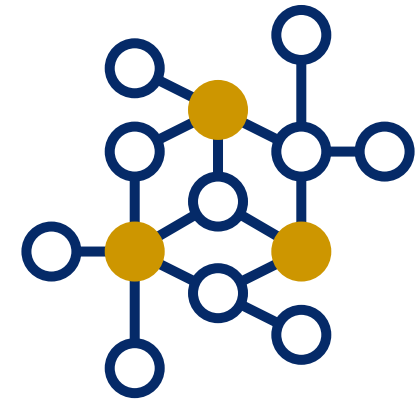

Overview of new data legislation



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April 2024



Data Governance Act (DGA) – 1/2

Regulation 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance ([Data Governance Act](#))

Legal instrument

→ Regulation

Status

✓ Adopted

Why?

- Facilitates **data sharing** by companies, individuals and the public sector
- Makes public sector data available for re-use in situations where such data is subject to rights of others
- Introduces three governance mechanisms for voluntary data sharing

Who?

Horizontal application:

- Data holders (e.g. an employer, public sector)
- Data subjects
- Data users (e.g. companies, organisations and public sector bodies)
- Data intermediation services that facilitate sharing of data (e.g. companies or public sector bodies that want to establish a commercial relationship between data holders and data users)
- Data altruism organisations

What?

→ Voluntary sharing of data

How?

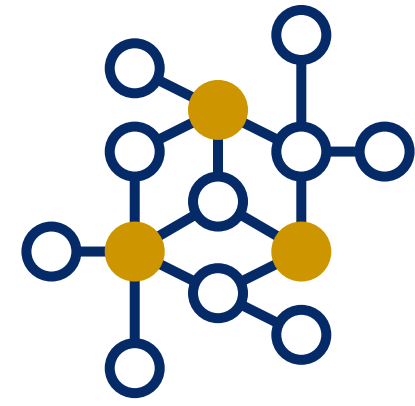
Voluntary sharing of data through 3 governance models:

1. **Re-use of public sector data**, subject to the rights of others (commercial confidentiality, statistical confidentiality, IP, personal data protected under the GDPR)
2. **Data intermediation** services, applicable to all data
3. **Data altruism**, applicable to all data

How could it be relevant to you?

- Any entity that has large data sets, e.g. insurance companies, financial companies and institutions, mobile operators
- Any entity that wants to re-use non-open public sector data, e.g. businesses and start-ups that want to use non-open public sector data in strategic domains like health, mobility, environment, energy, agriculture, finance, manufacturing, public administration and professional services
- Entities that can benefit from data altruism (i.e. voluntary sharing of data on the basis of consent or permission without seeking a reward)

➤ All sectors (specific rules for re-use of non-open public sector data)



Data Governance Act (DGA) – 2/2

Regulation 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance ([Data Governance Act](#))

👁️ Supervision?

- European Data Innovation Board
- Designated national competent authorities

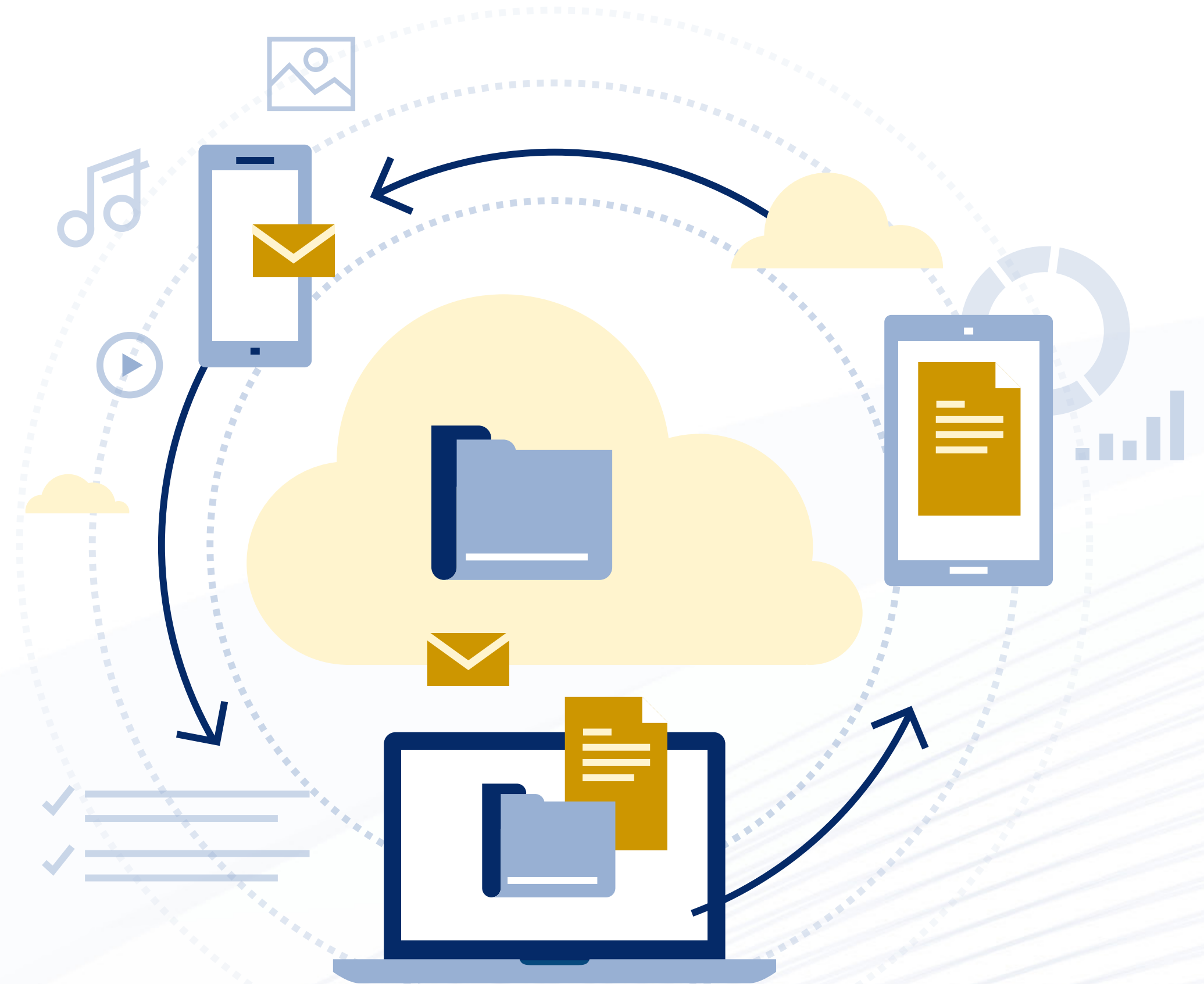
🛡️ Sanctions?

Decentralised enforcement:

- Member States will decide on penalties (and will determine the amount) and will enforce them
- Designated national competent authorities can impose penalties and sanctions against data intermediation services and data altruism organisations

🕒 When?

- Applicable as of 24 September 2023
- Chapter applicable to intermediation services existing on 23 June 2022 as of 24 September 2024





Data Act – 1/2

Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data ([Data Act](#))

Legal instrument

→ Regulation

Status

✓ Adopted

Why?

→ Provides access to data: opening up (industrial / IoT) data to the users that help create it (e.g. users of data generating devices) and maximising value of data so that more data is available for innovative use

How could it be relevant to you?

- Users of data generating devices (e.g. factory machines, smart devices, ...)
- Users of cloud services
- Parties exchanging data
- Micro enterprises and SMEs
- Creators of innovative products / services
- Aftermarket / repair services

- In all sectors (public and private)

Who?

Horizontal application:

- Product / service manufacturers
- Digital service providers
- Users (data recipients)
- Data holders that make data available to data recipients in the EU
- Public sector bodies and EU institutions, agencies and bodies

What?

Create **better access to data**: make data available

- Clarifies who can create value with data and on which terms
- Applies to data generated by the use of a product or related service that is made available to the user

How?

→ **Data sharing**

- Rules for the rights of data users of connected devices and related services to data generated by them and to share data (B2C and B2B)
 - Horizontal rules for data sharing (B2B)
- Measures to prevent abuse of **contractual imbalances** in data sharing contracts for all companies
- Access to data by public bodies in exceptional need
- Interoperability obligations, cloud switching and safeguards for international non-personal data transfers





Data Act – 2/2

Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data ([Data Act](#))

👁️ Supervision?

- Designated national competent supervisory bodies and 1 data coordinator for each Member State
- National supervisory authorities GDPR / EDPS
- National dispute settlement bodies for disputes on data sharing

🕒 When?

- Applicable as of 12 September 2025
 - Obligations to make data accessible to the user: for products and services placed on the market as of 12 September 2026
 - Chapter on unfair terms: applicable to contracts concluded on or after 12 September 2025

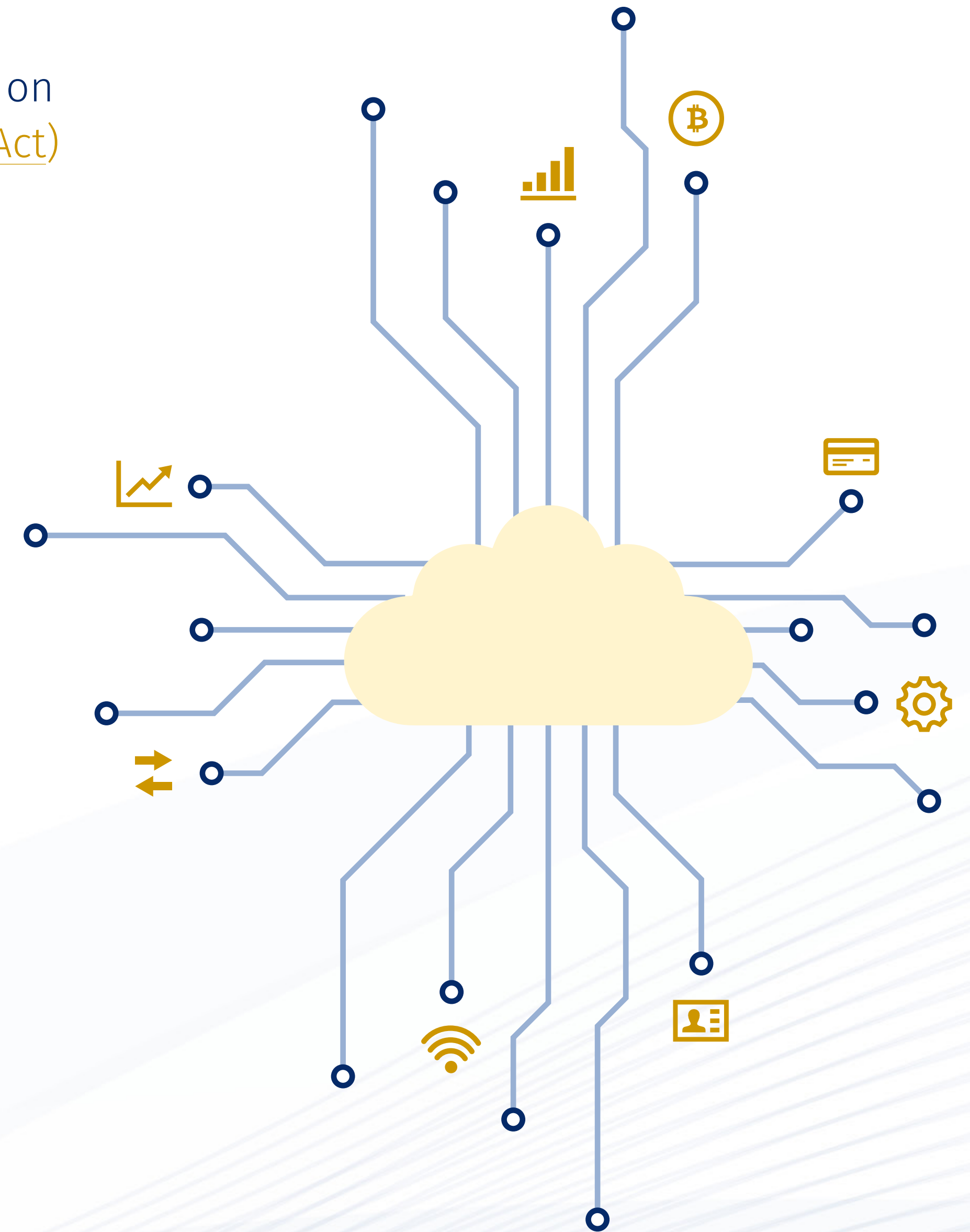
🛡️ Sanctions?

Decentralised enforcement:

- National supervisory authorities under GDPR can impose **(administrative) fines** (in line with the GDPR) for non-compliance
- Sectoral authorities competent for specific sectoral data exchange
- Designated national competent authorities can impose **penalties and implementing measures**

Centralised enforcement for Union institutions:

- EDPS can impose **administrative fines**





Digital Markets Act (DMA) – 1/2

Regulation 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector ([Digital Markets Act](#))

Legal instrument

→ Regulation

Status

✓ Adopted

Why?

- Addresses the negative consequences arising from platforms acting as digital “gatekeepers” to the internal market
- Promotes better competition in digital markets

What?

The DMA lays down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present

How could it be relevant to you?

- Providers of core platform services (gatekeepers), e.g.
 - online intermediation services
 - online search engines
 - social networks
 - video sharing platforms
 - operating systems
 - web browsers
 - cloud computing systems
 - ...
- Businesses interacting with these services
- All sectors, but mainly digital sector

Who?

Vertical application:

Applies to:

- **Gatekeepers**, companies that provide code platform services (i) in at least 3 Member States, (ii) turnover threshold, (iii) minimum number of active users
- **Core platform services**
 - a. online intermediation services
 - b. online search engines
 - c. social networks
 - d. video sharing platforms
 - e. number of independent interpersonal communication services
 - f. operating systems
 - g. web browsers
 - h. virtual assistants
 - i. cloud computing systems
 - j. online advertising services by an undertaking that provides any services listed in a) to i)

Does not apply to:

- a. electronic communications networks
- b. electronic communications services other than interpersonal communication services, e.g. internet access services





Digital Markets Act (DMA) – 2/2

Regulation 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector ([Digital Markets Act](#))

How?

Gatekeeper platforms will have to:

- allow third parties to interoperate with the gatekeeper's own services in certain specific situations
- allow their business users to access the data that they generate in their use of the gatekeeper's platform
- provide companies advertising on their platform (i) with tools and information to verify ad inventories and (ii) with information on prices for a given ad and advertising services
- allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform
- allow installation of third-party apps and app stores on OS
- have FRAND conditions of access to app store for business users
- facilitate data portability
- allow uninstalling of any pre-installed software or app

Gatekeeper platforms may no longer:

- engage in self-preferencing in ranking
- engage in tying practices
- restrict users from unsubscribing or switching between apps and services while using the gatekeeper's OS
- prevent consumers from linking up to businesses outside their platforms
- use sensitive information from business users when competing with them
- combine personal data from different services or for delivering targeted advertising
- impose most-favoured nation clauses
- restrict business users from complaining to public authorities
- require business users to use, offer or interoperate with an identification service of the gatekeeper

The DMA also introduces specific data-related obligations:

- not to combine data from different core platform services
- to provide information to advertising companies and publishers
- to submit independent data audits to the EC
- not to use business and end user data
- to provide access to data
- to allow data portability

When?

- Entry into force: 1 November 2022 (20 days after publication)
- Applicable as of 2 May 2023 (6 months after entry into force)

Supervision?

- Commission for initiation of proceedings with a view to the possible adoption of decisions
- Digital Markets Advisory Committee for the provision of opinions to the Commission

Sanctions?

Exclusive centralised enforcement by the European Commission:

- **Periodic penalty payments** not exceeding 5% of the average daily turnover in the preceding financial year per day
- **Fines** in case of a non-compliance decision up to 10% of the total turnover in the preceding year





Digital Services Act (DSA) – 1/2

Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services ([Digital Services Act](#))

Legal instrument

→ Regulation

Status

✓ Adopted



Why?

- Amends outdated eCommerce Directive of 2000 and aligns it with developments in digital technologies and business models and new societal challenges that have emerged since (e.g. hate speech, fake news, ...)
- Creates a safer and trusted online environment, adopting different responsibilities for different types of services and introduces more transparency, accountability and regulatory oversight in the EU digital landscape

How could it be relevant to you?

- Any provider of intermediary services in B2C and B2B markets
e.g. internet access providers, cloud and webhosting services, ...
- Digital advertising players
e.g. ad networks, social tools, agencies, ...
- Traders selling via online market places
e.g. (second-hand) online marketplaces, social media platforms, app stores
- All sectors, but mainly digital sector

Who?

Horizontal application:

Applies to:

- **Providers of intermediary services:** mere conduit, caching, internet access providers
- **Hosting services:** cloud and webhosting services
- **Online platforms:** online marketplaces, app stores, social media platforms
- **VLOPs: Very Large Online Platforms:** platforms reaching more than 10% or 450 million consumers in the EU
- **VLOSEs: Very Large Online Search Engines:** search engines reaching a number of average monthly active recipients of the service in the EU equal to or higher than 45 million

Does not apply to:

- any service that is not an intermediary service
- any requirements imposed in respect of such a service, irrespective of whether the service is provided through the use of an intermediary service



Digital Services Act (DSA) – 2/2

Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services ([Digital Services Act](#))

🗣️ What?

The DSA lays down harmonised rules on the provision of intermediary services in the internal market. In particular, it establishes:

- a. a framework for the conditional exemption from liability of providers of intermediary services
- b. rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services
- c. rules on the implementation and enforcement of this Regulation, including as regards the cooperation of and coordination between the competent authorities

The DSA applies to “intermediary services”, i.e. three types of information society services: mere conduit, caching and hosting. The DSA introduces “(very large) online platforms and online search engines” as a subcategory of hosting. The DSA sets out the obligations based on the intermediary concerned: it includes basic obligations for all providers of intermediary services and adds additional obligations depending on each kind of intermediary service.

🔗 How?

- Liability regime and additional obligations re illegal content
- Transparency requirements
- Measures to counter illegal goods, services or content online (trusted flaggers)
- Effective safeguards for users
- Systemic risk management requirements if +45 million users
- Additional transparency requirements (e.g. advertising)
- Restrictions on targeted advertising
- Appointment of qualified compliance officers
- Access to data on key platforms for researchers
- Codes of conduct and technical standards to become compliant

👁️ Supervision?

- European Board for Digital Services
- National Digital Services Coordinators (BIPT jointly with VMR, CSA and Medienrat)

🕒 When?

- Entry into force: 16 November 2022 (20 days after publication)
- Applicable as of 17 February 2024 (however, certain provisions will apply as from 16 November 2022, e.g. the provisions related to the transparency reporting obligations of online platforms, delegated acts, and the designation of very large online platforms and very large online search engines)

🛡️ Sanctions?

(Partly) Centralised enforcement for VLOPs and VLOSEs by the European Commission:

- **Periodic penalty payments** not exceeding 5% of the average daily turnover in the preceding financial year per day
- **Fines** in case of a non-compliance decision up to 6% of the total turnover in the preceding year

Decentralised enforcement at Member State level: Member States will decide on penalties applicable to infringements of the DSA by providers of intermediary services under their jurisdiction (with a maximum 6% of the annual income or turnover) and impose them.



Artificial Intelligence Act (AIA) – 1/2

European Commission: Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence ([Artificial Intelligence Act](#))

Legal instrument

- Regulation

Status

- Commission proposal published on 21 April 2021
- Common position of the Council on 6 December 2022
- Negotiating position of the European Parliament on 14 June 2023
- Political agreement of the European Parliament and the Council of 9 December 2023
- Officially adopted by the European Parliament on 13 March 2024

How could it be relevant to you?

- AI systems
- General purpose AI models
- Providers of AI systems
- Deployers of AI systems
- Importers of AI systems
- Distributors of AI systems
- Product manufacturers
- EU authorised representatives
- In all sectors (public and private)

Why?

Enacting harmonised rules for the development, placement on the market and use of AI systems in the EU

Who?

Horizontal application:

Applies to:

- **providers** developing an AI system or a general-purpose AI model, or having an AI system or GPAI developed and placing it on the market or putting it into service, under its own name or trade mark whether for payment or free of charge
- **deployers** of AI using an AI system under their authority

But also: importers, distributors and product manufacturers.

Does not apply to:

- Under certain conditions, public authorities of a third country nor to international organisations when acting in the framework of cooperation or international agreements concluded at national or European level for law enforcement and judicial cooperation with the EU or with its Member States.
- Use in the course of a personal, non-professional activity.

What?

Artificial Intelligence System (AI system), defined as: “a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”

General Purpose AI Model (GPAI), defined as: “an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable to competently perform a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications, except AI models that are used for research, development or prototyping activities before they are released on the market.”

Exceptions → see next page





Artificial Intelligence Act (AIA) – 2/2

European Commission: Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence ([Artificial Intelligence Act](#))

Exceptions:

The Regulation does not apply to certain AI systems (and/or AI models) under certain conditions *e.g.* in the context of military, defence and national security purposes, scientific research and development, used for purely non-professional activities, released under free and open licences etc.

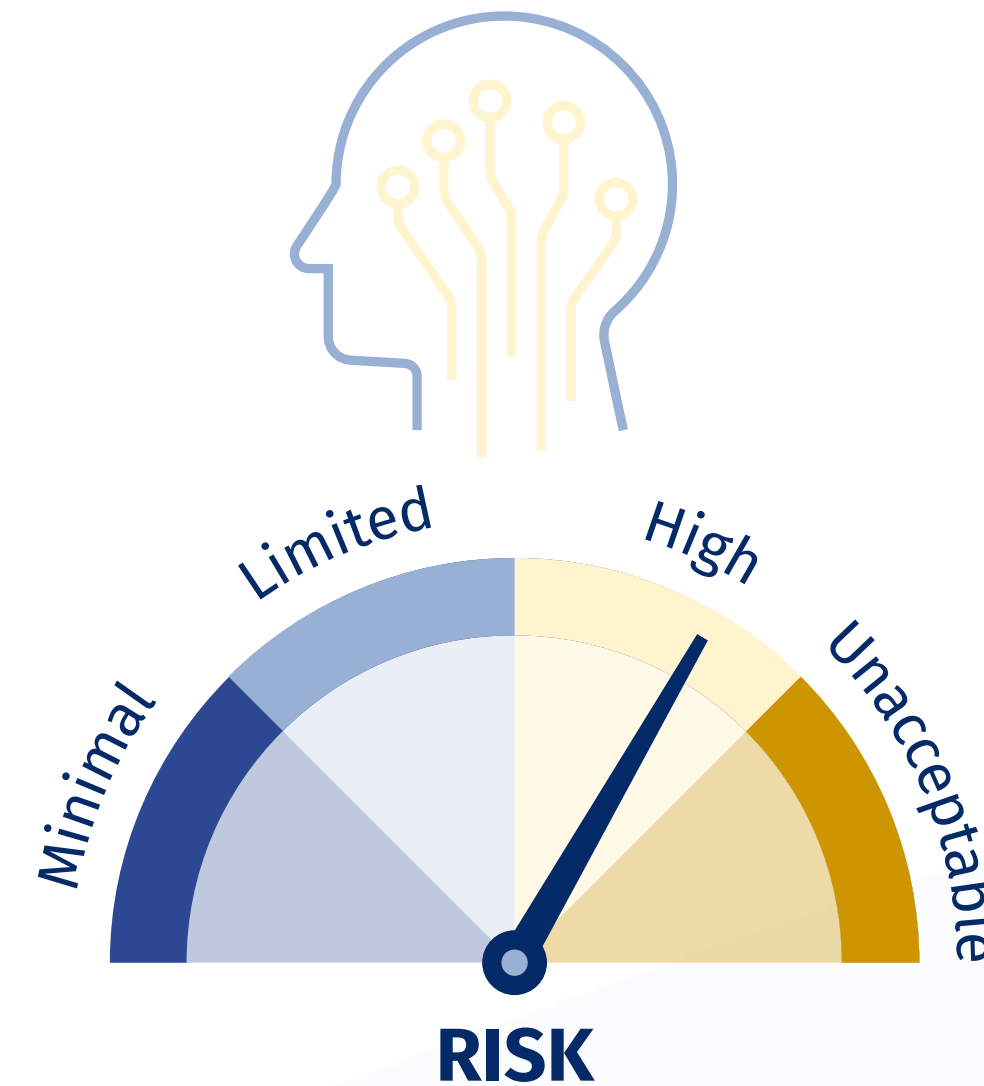
How?

The AI Act takes a **risk-based approach** and introduces a classification of various AI systems and GPAI. Different risk levels (minimal, limited, high and unacceptable risk) for AI systems and (no) systemic risk for GPAI come with **different requirements and obligations**

E.g. prohibited AI practices such as social scoring, real-time remote biometric identification in publicly accessible spaces for the purpose of law enforcement etc.

E.g. compliance with several strict mandatory requirements for high-risk AI systems (fundamental rights impact assessment, conformity assessment procedure, post-market monitoring system etc.).

E.g. transparency obligations for certain AI-systems, including AI-systems with limited risk.



When?

The AIA was formally adopted by the European Parliament on 13 March 2024. Most provisions will be applicable 24 months after the entry into force of the AIA (probably in May 2024).

Supervision?

- European AI Office
- European AI Board
- National authorities, such as market surveillance authorities, national data protection authorities, notified bodies etc.

Sanctions?

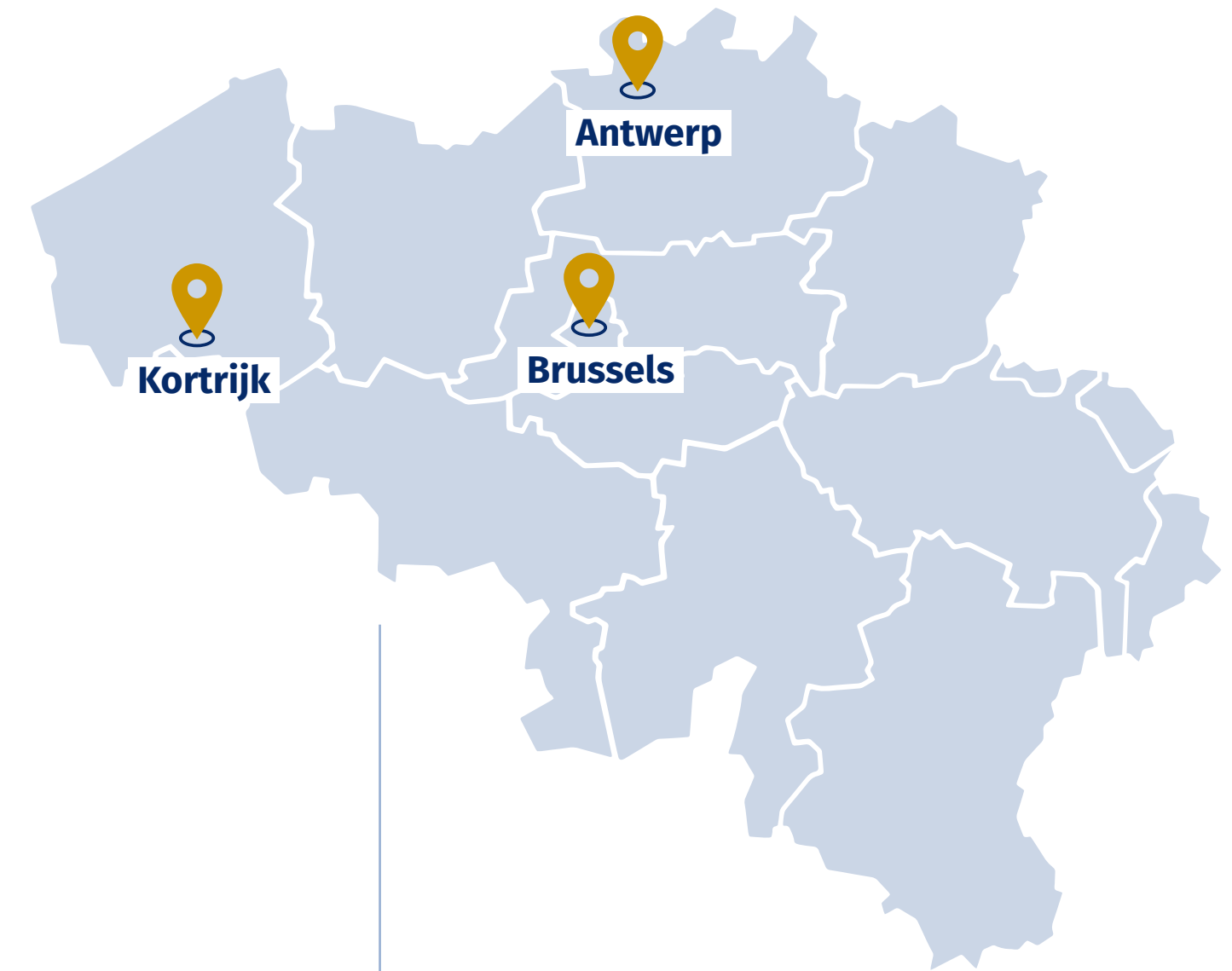
Decentralised enforcement mostly by the market surveillance authorities:

- Corrective measures to bring into compliance, withdraw or recall AI systems
- Administrative fines of varying scales (up to EUR 35 million or 7% of the worldwide annual turnover, whichever is higher), depending on the severity of the infringement (more proportionate caps for SMEs and start-ups).

Member States will need to lay down rules on penalties and administrative fines.



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