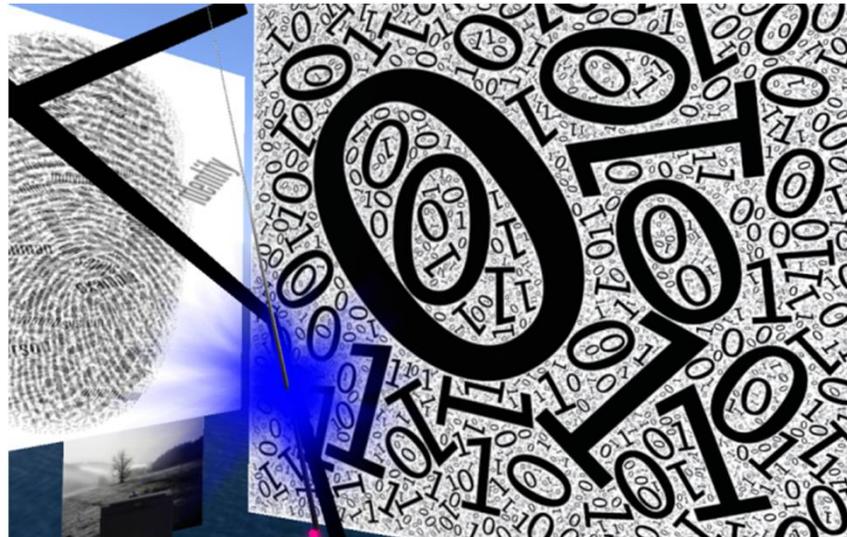
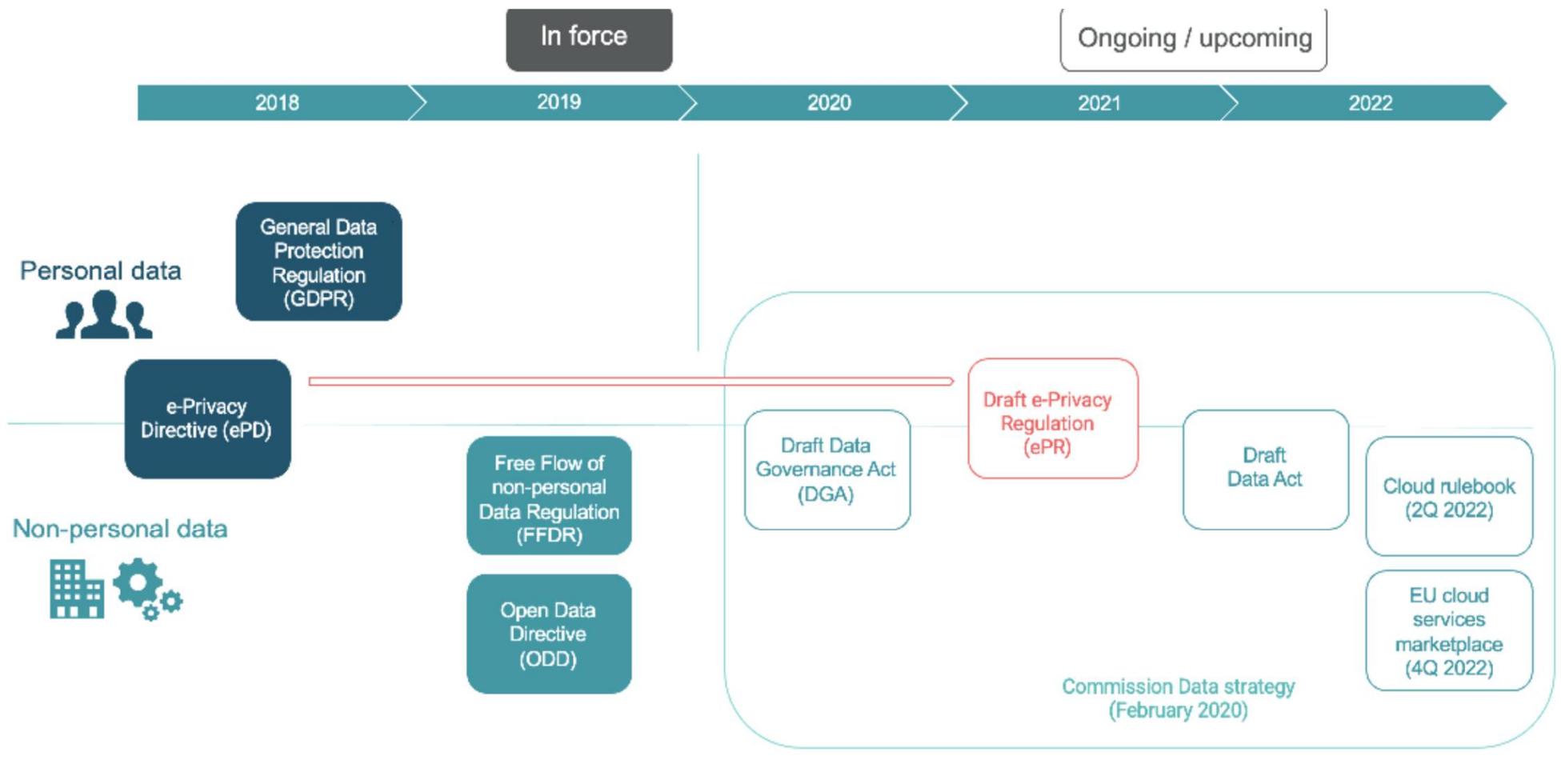


BIG DATA AND THE PROTECTION OF FUNDAMENTAL RIGHTS



Dr.ssa Maria Luce Mariniello – Autorità per le garanzie nelle comunicazioni

THE EU LEGAL FRAMEWORK



THE GENERAL DATA PROTECTION REGULATION - GDPR

- Replaces the patchwork of 28 national data protection laws based on the [Data Protection Directive \(DPD\)](#) by one single framework directly applicable throughout the whole EU
- Applies both to companies established in the EU and to companies not established in the EU but that offer their services in the EU or that monitor the behaviour of individuals in the EU
- Includes a right to **data portability**
- Contains new obligations for companies, for instance notifying personal data breaches and designating a **data protection officer (DPO)**
- Sets up a **one-stop-shop** whereby companies only have to deal with a single national data protection authority (DPA) in cross-border data protection cases
- Establishes a new **European Data Protection Board (EDPB)** bringing together the heads of national DPAs (replacing the Article 29 Working Party) and with the power to adopt binding decisions
- Contains fines up to 4% of the total worldwide turnover of a company European DPAs are delivering guidelines to help companies comply with the GDPR.

Definitions in the GDPR

Personal Data

Any information that can directly identify a person (e.g. full name) or that can indirectly identify them (e.g. date of birth). 'Personal data' include: identification numbers, location data and online identifiers such as IP addresses and cookie identifiers

Data Controller

The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. (e.g. a bank)

Data Processor

Those entities (natural or legal persons) and companies that process personal data on behalf of a controller (e.g. a cloud service provider)

Data Protection Officer (DPO)

Art. 37 of the GDP requires controllers and data processors (dealing with data treatment od a large scale) to designate a DPO which is responsible of informing and advising the controller or processor, especially in the context of data protection impact assessments; monitoring compliance with the GDPR; and cooperating with the supervisory authority.

Personal data processing under the GDPR

Under the GDPR the processing of personal data is only lawful if the individual has given their consent, or if it is necessary:

for the performance of a contract;

to comply with a legal obligation;

to protect the vital interests of the individual;

for the performance of a task carried out in the public interest; and

for the purposes of the legitimate interests of the controller or a third party, if they are not overridden by the interests or the rights and freedoms of the individual.

Further processing of personal data for a purpose which is different from the purpose for which the data was initially collected (e.g. personal data provided for the performance of a contract is further used to provide targeted advertising) is possible if the new purpose is compatible with the original one.

To assess the compatibility of those purposes, factors such as any link between both purposes, the context of the collection, the possible consequences of the further processing for individuals, and the existence of adequate safeguards such as encryption should be considered.

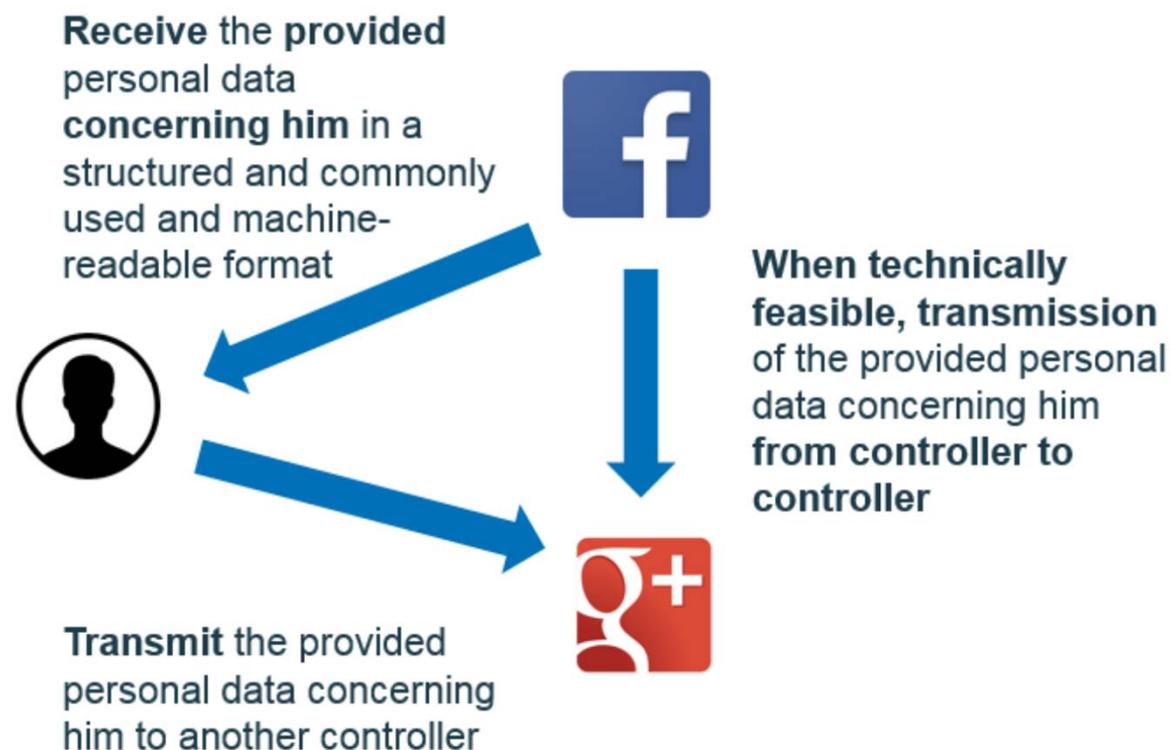
GDPR – Focus on data portability

Under the GDPR, individuals have the right to:

receive in a **“machine readable format”** the personal data concerning them and which they provided to the controller; and **transfer that data to another controller.**

When **“technically feasible”**, individuals also have the **right to have the data transferred directly from controller to controller.**

Right to data portability of a social network user



GDPR and the Second Payment Services Directive (PSD2)

The PSD2 updates the EU rules on electronic payments to:

- promote the development and use of innovative online and mobile payments; and
- make European payment services safer.

PSD2 requires banks to **allow third parties**, such as innovative financial technology companies (**Fintechs**), to **access the account data of customers who authorise it**.

EXPLICIT CONSENT

ART. 94 PSD2

Article 4 (11) and 9 GDPR

THE EU DATA STRATEGY

The European strategy for data aims at creating a single market for data that will ensure Europe's global competitiveness and **data sovereignty**.

European Strategy for Data

A common European data space, a single market for data



Communication "A European Strategy for data" - COM(2020) 66 final

Data Governance Act

Data Act

Data Governance Act

Voluntary sharing of both **personal** and **non-personal data** between data holders and data users across the EU

Reuse of certain categories of public sector data which is subject to the rights of others (e.g. intellectual property, confidentiality, privacy). These data categories are not covered by the Open Data Directive (ODD, Tracker), which lays down rules on open data and the reuse of public sector data.

Notification and supervisory framework for the provision of data sharing services by data intermediaries, including allowing personal data to be used with the help of a “personal data-sharing intermediary” in compliance with the GDPR

Altruism - allow data use and data sharing on altruistic grounds (i.e. without reward for purely non-commercial usage in the public interest) by creating a framework for the voluntary registration of entities which would collect and process data made available for altruistic purposes by individuals or companies

This framework offers an **alternative model to the current handling practices offered by big tech platforms**. Public bodies and companies will only be ready to share data if they have the certainty that their data will not be used by data sharing service providers for any other uses than the ones specifically agreed on.

DATA ACT

- Making data generated by the use of a product or a related service available to the user of that product or service. This means that users (both individuals and businesses) would benefit from a new right to access the data generated from the use of connected devices.
- Making data available by data holders to third party data recipients at the request of a user. In practice, the draft Data Act would establish an enhanced data portability right, complementing the existing one under article 20 of the GDPR
- Making data available by data holders to public sector bodies or EU institutions, based on an exceptional need “for the performance of a task carried out in the public interest”. This would imply mandatory business-to-government (B2G) data sharing in exceptional instances (e.g. public emergencies)

The draft regulation also aims to:

- Ease the switching of providers of data processing (e.g. cloud and edge) services.
- Put in place safeguards against unlawful data transfer without notification by cloud service providers.
- Provide for the development of interoperability standards for data to be reused between sectors.