



# Introduction to the Emerging Data Economy Law

1. Potsdamer Gespräch zur Datenwirtschaft  
1st Potsdam Talk about Data Economy  
– Law of Raw Data –

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# Data & Data Economy (1)

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- Data as intangible assets / goods
  - “Data is the lifeblood of economic development” – COM(2020) 66 final, p. 2
- Data
  - ISO/IEC 2382:2015, IT Vocabulary, 2121272
    - “reinterpretable representation of information in a formalized manner suitable for communication, interpretation, or processing“ → coded & (machine) readable!
  - Syntactical level → in the IT context: sequences of 0/1 → Representation in files, bitstreams, etc.
  - Recently: point of reference for legal policy considerations on “data ownership”
- Information
  - Semantical level → “(wo)man readability“
  - i.a.: reference point of data protection law, i.e. differentiation personal / non-personal data

Marked by: non-rivalry, non-exclusivity, does not wear out

## Data & Data Economy (2)

- ▶ What does the data economy want? (Digital) data or information?
  - ▶ Answer: Neither only one (isolated) nor only the other (isolated)!
  - ▶ In the end, it is all about (potentially meaningful) information, but information that is “carried” by digital data, in other words, that comes in a binary structure (coded and machine-readable)!
  - ▶ See also SWD(2017) 2 final, p. 13: “For centuries, **information** has been traded. However, with the **availability of information stored in a digital form**, data trading has drastically increased.”

### EU Data Act - Leak

#### *Article 2* *Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘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 audio-visual recording;

## Data & Data Economy (3)

- The practical starting point is the insight (COM(2020) 66 final, p. 8 f.; cf. on the other hand COM(2018) 232 final, p. 11):

„In spite of the economic potential, data sharing between companies has not taken off at sufficient scale. This is due to a **lack of economic incentives** (including the fear of losing a competitive edge), **lack of trust** between economic operators that the data will be used in line with contractual agreements, **imbalances in negotiating power**, the **fear of misappropriation** of the data by third parties, and a **lack of legal clarity** on who can do what with the data (for example for co-created data, in particular IoT data).“

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on ensuring fairness in the allocation of value across the data economy  
(Data Act)**

(Text with EEA relevance)

# Fields of Data Law

Note Art. 1 (1), (3) GDPR  
/ Art. 1 (2) ePrivacy  
Regulation-Proposal: free  
movement of data as an  
objective alongside the  
protection of individuals  
with regard to the  
processing of personal data

**Law of Data/  
Data Law  
(Part of IT Law)**

**Data Protection Law**  
(concerns only personal  
“data” (more precisely:  
*information!*); protects the  
*data subject*)

**Data Economy Law**  
(basically concerns *digitally  
structured information* and has  
precisely *this as its object*; aims  
first and foremost at its  
usability and tradability)

Subsets...  
...overlap!

**Data Regulatory Law**

- Access to data
- Data localisation bans
- Interoperability requirements
- Right to data collection-free products
- Data intermediaries
- ...

**Data Private Law**

- “Ownership” of data
- “Property” of Data
- “Data tort law”
- “Data contract law”
  - Digital Content Directive
  - Data Licensing
- ...

**EU Provisions** (Data Act,  
Data Governance Act, Free  
Flow of Data Regulation  
etc.) **make more sense  
than “member state  
solutions”** (mitigation of  
conflict of laws problems  
etc.)!



Thank you for your attention  
&  
enjoy the conference!