

EUHUBS4DATA; DATA, AI AND THE NEW SOCIETY

Data Intermediaries and the DGA:

Understanding and complying with the DISP label

Tervel Bobev, KU Leuven CiTiP - imec
27th October, 9:30-11:00, Room 4F

IN COLLABORATION WITH



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CENTRE FOR IT & IP LAW

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Research Areas:

- Artificial Intelligence & Autonomous systems
- Data Governance
- Data Protection & Privacy
- eHealth & Pharma
- Ethics & Law
- Intellectual Property
- Media & Telecommunications
- (Cyber)security

Relevant Projects

EUHUBS4DATA



EUHUBS4DATA

- Goal: European **federated catalogue of data sources**, data-driven services, courses and solutions deployed locally by participating i-Spaces.

RE4DY

RE4DY

MANUFACTURING DATA NETWORKS

- Goal: digital continuity and sovereign data spaces across all phases of product and process lifecycle.
- Legal frameworks for industrial data spaces and cognitive digital twins.

Recent Work

WHITE PAPER ON THE DEFINITION OF DATA INTERMEDIATION SERVICES

- Analysis of individual criteria to qualify as a DIS.
- Discussion of exclusions from the definition.
- Flagging issues of legal ambiguity.

CiTIP Working Paper Series

White Paper on the Definition of Data Intermediation Services

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CiTIP White Paper 2023

KU Leuven Centre for IT & IP Law - imec

2 October 2023

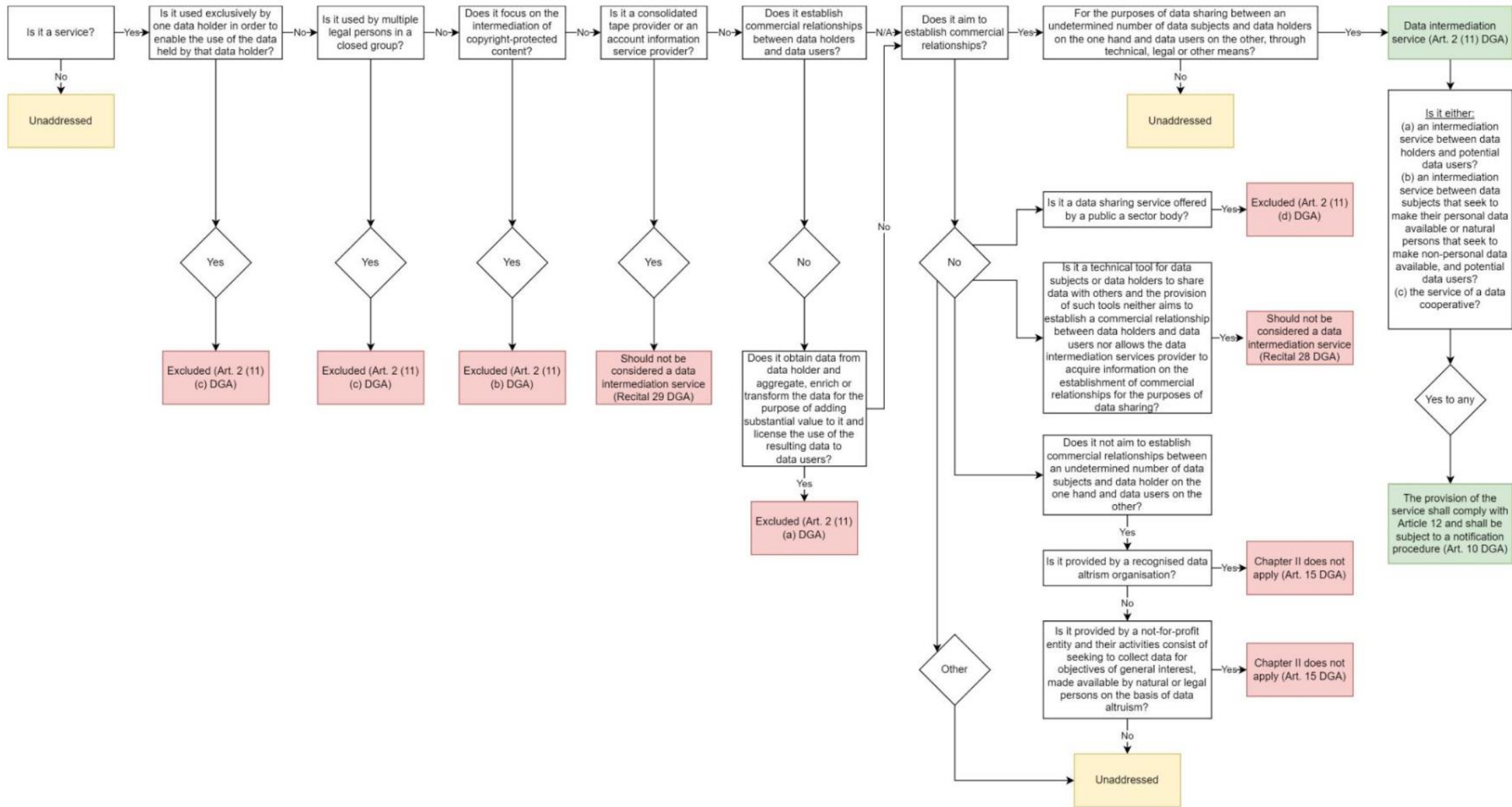


Figure 3: Is it a data intermediation service?

The Criteria for a DIS [Art. 2.(11)]

- 1. Service
- 2. which aims to establish commercial relationships
- 3. for the purposes of data sharing
- 4. between undetermined numbers of both [data subjects / data holders] + [data users].
- 5. through technical, legal, or other means.

(Some) Obligations of a DIS

- Notification Obligation [Art. 11]
- Neutrality of Service
 - Prohibition of data cross-usage [Art. 12(a)]
 - Prohibition of service ‘bundling’ practices. [Art. 12(b)]
 - Partition of intermediation services into separate legal entity. DISP may only offer DIS and tools/services for the *specific purpose* of facilitating the exchange of data. [Arts. 12(a) and 12(e)]
- Fair, transparent, and non-discriminatory access to intermediation service [Art. 12(f)]
- Ensure reasonable continuity of intermediation service in case of insolvency [Art. 12(h)]
- Ensure interoperability (of data and of DIS) [Art. 12(i)]
- Technical, legal, organizational measures against unlawful non-personal data transfer or access. [Art. 12(j)]
- Measures to ensure security of data; *highest* security of competitively-sensitive information.
- Fiduciary duty towards individual data subjects, obligation to act in data subjects’ best interests [Art. 12(m) and Recital 33]

Notable Exclusions from the Definition

- Services Obtaining Data for the Purpose of Adding Substantial Value
 - Data is aggregated/enriched/transformed -> result directly licensed by service provider to data user.
 - Data can only be sourced from data holders, not data subjects?
- Services that focus on intermediation of copyright-protected content.
- Single-holder and closed-group services.
- Public sector data sharing services that do not aim to establish commercial relationships.
- Exception: Recognized data altruism organisations in public registers + not-for-profit entities collecting data for general interest objectives, insofar as the collected data is made available on basis of data altruism.

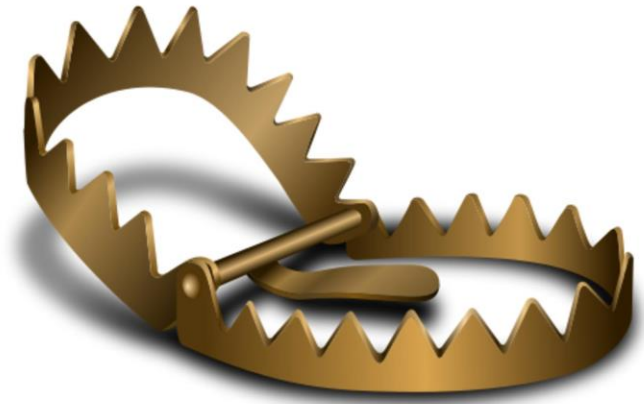
Some Points of Uncertainty

- What is the threshold for a ‘closed group’ under the DGA?
 - Any contractual barriers whatsoever?
 - Contractual accession pursuant to majority or unanimous group approval?
 - Only contractual novation possible?
 - Implications for governance models of associations/cooperatives?
- Which additional tools and services are permissible for a DISP?
 - DGA’s listing is non-exhaustive.
 - Space for sector-specific new and complementary elements (Recital 3).



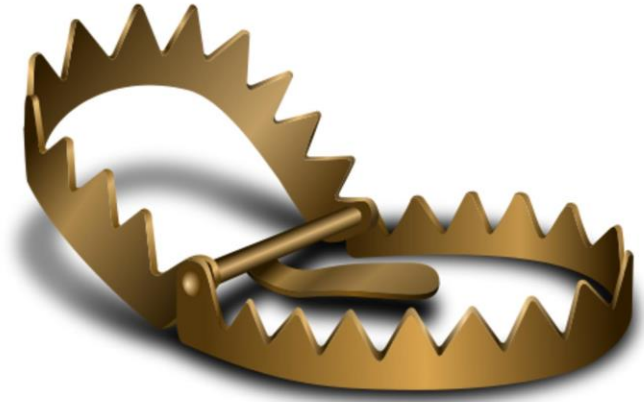
Common Misconceptions with the DGA

- **WRONG:** If I don't like being a DISP, I can simply choose not to register as one.
- **RIGHT:** The DISP regime is **mandatory**. If you carry out DISP activities, you have no choice but to comply. Failure leads to fines by national authorities.



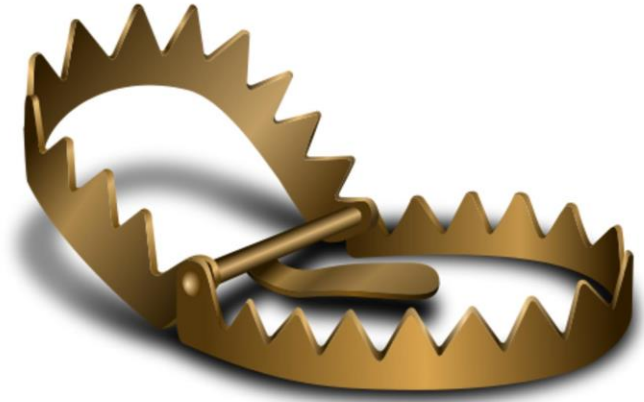
Common Misconceptions with the DGA

- **WRONG:** My DISP needs to be an independent legal entity.
- **RIGHT:** MY DISP must be a **separate** legal entity. Subsidiaries, shared boards of directors, etc. are not inherently prohibited.



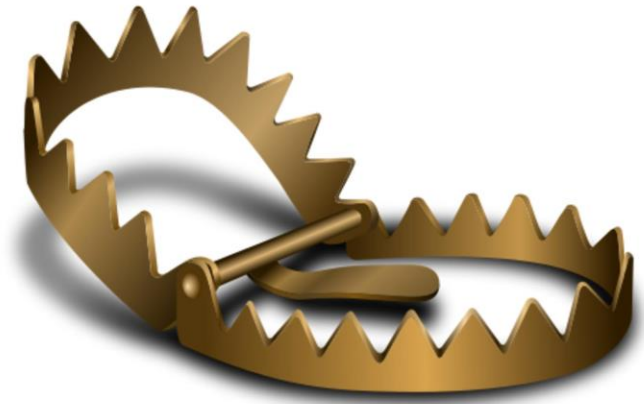
Common Misconceptions with the DGA

- **WRONG:** If I don't charge anything, I am not offering a 'service'. Public/outside remuneration will pay my bills, and I will escape the DGA!
- **RIGHT: Case-by-case analysis** necessary for every organization's activities. Even mere reimbursement of costs by an entity other than the recipient of a service may be considered 'consideration for a service'.



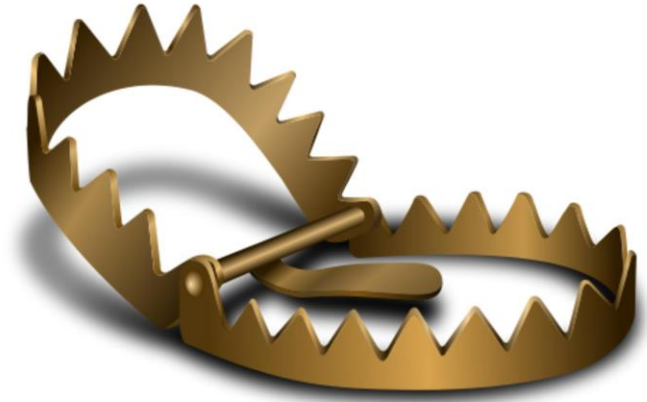
Common Misconceptions with the DGA

- **WRONG:** If I don't charge anything, I will escape the commercial relationship criterion as a DISP!
- **RIGHT:** The commercial relationships criterion refers to the relationships between [data holders/subjects] and [data users], NOT to the capacity of the DISP itself. Also, commercial relationships can be on either a paid or a free basis (cf. DMA Recital 40).



Common Misconceptions with the DGA

- **WRONG:** Either [data holders/subjects] **or** [data users] have to be undetermined for there to be an undetermined number of them.
- **RIGHT: Both** [data holders/subjects] **and** [data users] must **simultaneously** be undetermined for there to be an undetermined number of them.



Thank you!

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