

Data Act and data monetization

Speakers



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European data strategy

Classification of the Data Act

2

Data Act

Deep dive on the Data Act and data contracts

3

Data monetization

Compliance and strategic considerations

4

Q&A

Time for questions

1 | **European data strategy**

Classification of the Data Act



EU data strategy and Data Act

Overview

EU Digital Strategy - Pillar II -
Fair and competitive digital
economy

Part is the EU data strategy (Digital
Governance Act, Data Act)

EU data strategy (COM(2020) 66 final, February 2020)

Objectives:

- **"Single European Data Space"** and **"genuine single market"** for both personal and non-personal data, including sensitive business data"
- **Improve value creation and data use.** Market participants gain access to an "almost unlimited amount of high-quality industrial data". Breaking down data silos.
- **Data spaces** are also planned (e.g. mobility data space, health data space).

Regulation (EU) 2023/2854 - Data Act

- Immediate applicability of the Data Act from **September 12, 2025**
- Further regulations applicable in stages from September 12, 2026

2 | **Data Act**

Deep dive on the Data Act and data contracts





*The Data Act affects almost **every company**, but most of them have not yet seriously considered it.*

*The Data Act must **not repeat** the drama of the General Data Protection Regulation.*

Dr. Ralf Wintergerst
Bitkom President



Today's focus:
Chapters II - IV

CHAPTER I GENERAL PROVISIONS

CHAPTER II DATA TRANSFERS FROM BUSINESSES TO CONSUMERS AND BETWEEN BUSINESSES

CHAPTER III OBLIGATIONS OF DATA HOLDERS REQUIRED TO PROVIDE DATA UNDER UNION LAW

CHAPTER IV UNFAIR CONTRACT TERMS IN RELATION TO ACCESS AND USE OF DATA BETWEEN BUSINESSES

CHAPTER V PROVISION OF DATA TO PUBLIC SECTOR BODIES (...) FOR REASONS OF EXCEPTIONAL NECESSITY

CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES

CHAPTER VII UNLAWFUL GOVERNMENT ACCESS TO AND UNLAWFUL GOVERNMENT TRANSFER OF NON-PERSONAL DATA IN THE INTERNATIONAL ENVIRONMENT

CHAPTER VIII INTEROPERABILITY

CHAPTER IX APPLICATION AND ENFORCEMENT

CHAPTER X SUI GENERIS PROTECTION UNDER DIRECTIVE 96/9/EC

CHAPTER XI FINAL PROVISIONS

Data Act

What data is recorded?

IN SCOPE & OUT OF SCOPE DATA



IN SCOPE DATA

Data generated when using connected products and connected services: so-called **product data** and **connected service data** as well as **metadata**

- Temperature, pressure, flow rate, sound, pH value, liquid level, position, acceleration or speed, battery status
- Data from embedded applications and data from applications that indicate hardware status and malfunctions
- Data from interaction with virtual assistants

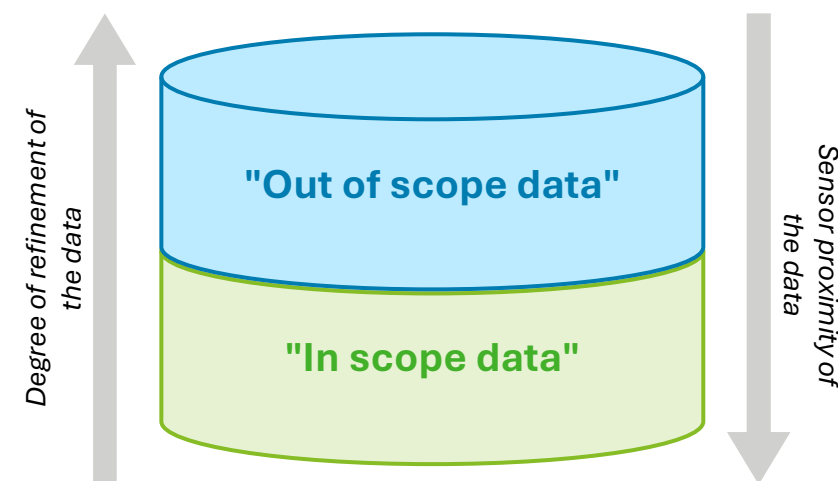


OUT OF SCOPE DATA

Recitals 15, 16 and 20

- **Purely local data** that is not stored or transmitted outside the connected product - no obligation to store data
- **"Unrelated software and content"** such as text, audio or audiovisual content that is often subject to intellectual property rights"
- **Derived data** and information: Degree of processing/refinement is decisive ("pre-processed" / "prepared" data is still in scope)

DELIMITATION ISSUES



**Difficult questions of demarcation between
In scope data and out of scope data**

Data Act

Main actors of the Data Act

DISTRIBUTION OF ROLES



User

The "purchaser, hirer or lessee" of a data-generating product or recipient of a data-generating service. See Art. 2 No. 12 Data Act



Data holder (Holder)

As a rule, the person who has de facto control over the data. De facto control primarily refers to the technical access option exercised in a lawful manner. The data controller may, for example, be the manufacturer of vehicles. See Art. 2 No. 13 Data Act.

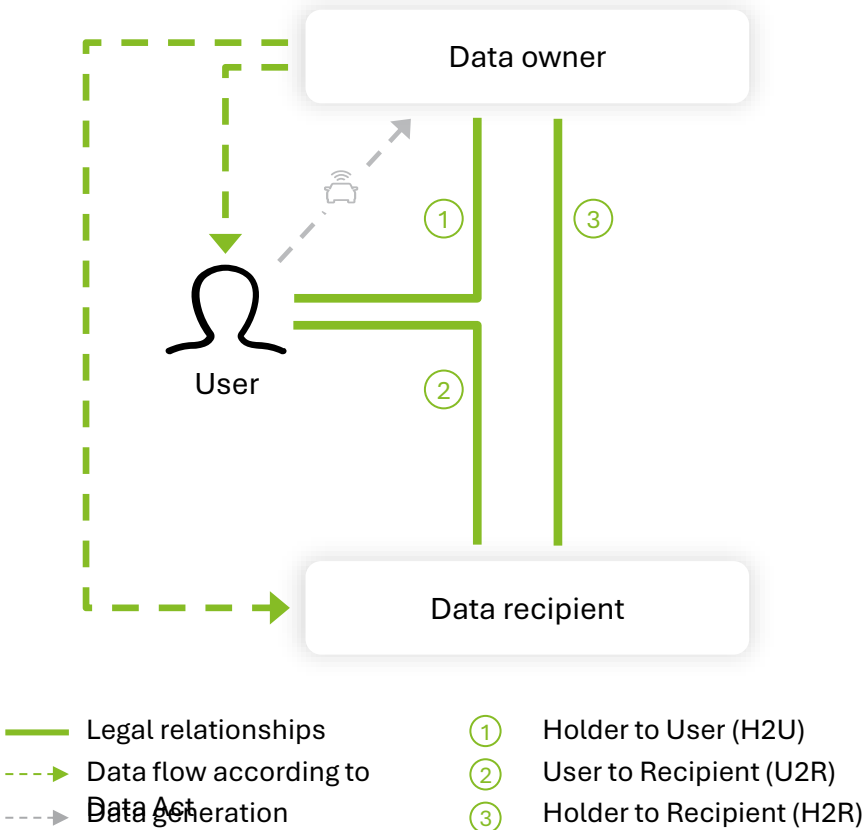


Data recipient (Recipient)

The person who receives the data from the data controller in the context of a commercial or professional activity and without being a user. See Art. 2 No. 14 Data Act.

Determination of data ownership on a case-by-case basis. Multi-level user constellations

USER-CENTEREDNESS



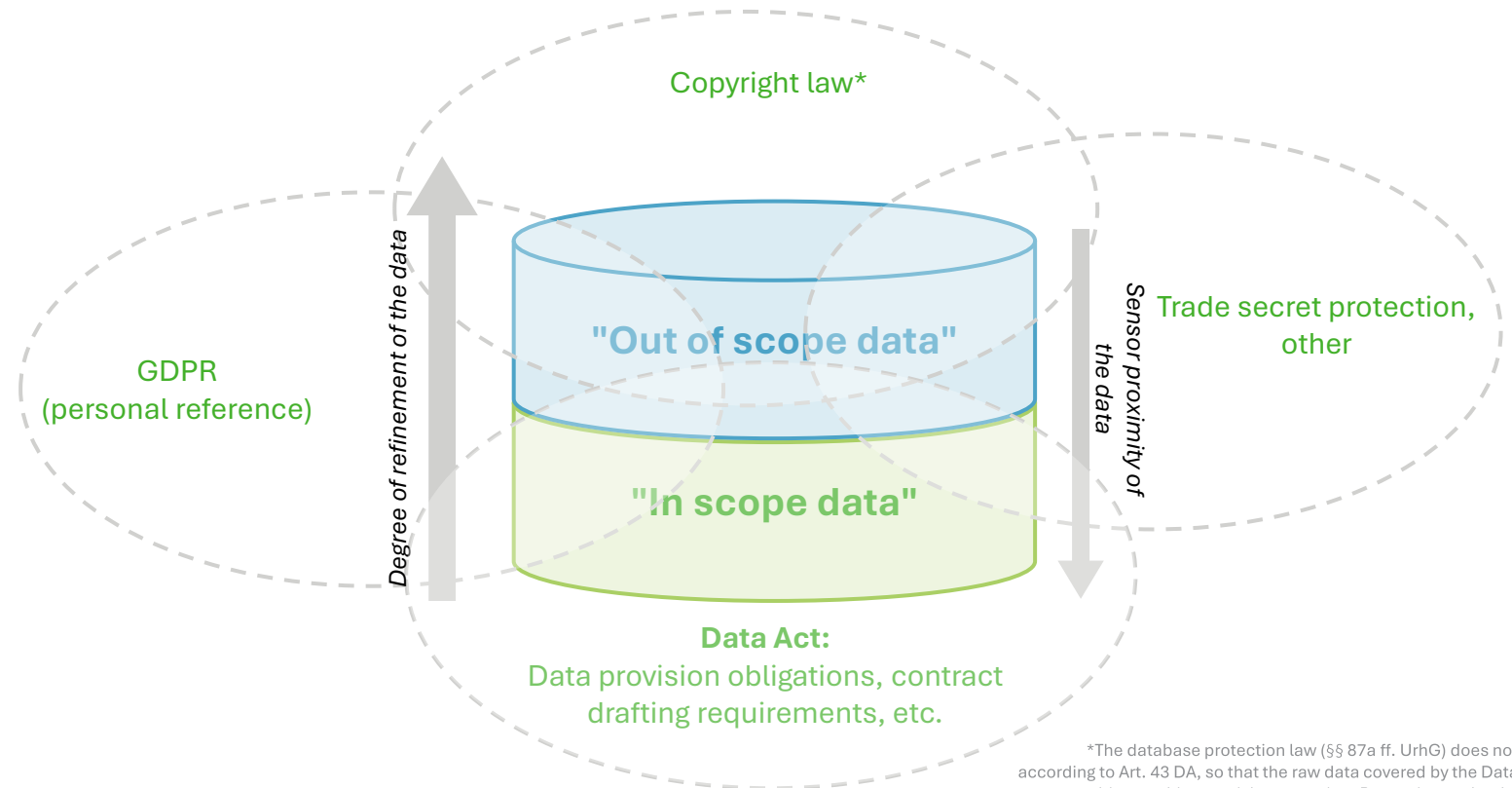
Data Act

Establish compliance

STRATEGY

- Strategy required to protect various interests
 - GDPR, trade secret protection, others
- Legal consequences of violating the Data Act: Fines of up to 20 million euros or four percent of group turnover

CONFLICTS OF INTEREST



*The database protection law (§§ 87a ff. UrhG) does not apply according to Art. 43 DA, so that the raw data covered by the Data Act is not subject to this copyright protection. Protection under the UrhG remains in place if the data stored in the database does not fall within the scope of the Data Act.

Data Act from different perspectives

Challenges and opportunities

PERSPECTIVE OF THE DATA OWNER

From September 12, 2025: "Access at Request"

- **Data transfer obligation for "readily available data"**, i.e. product or related service data that a data controller receives or can receive from the user without disproportionate effort (see Art. 2 No. 17 Data Act)
- **Pre-contractual information obligations** in the case of direct contractual partnerships (Art. 3 para. 2 Data Act)
- **License-in**: Drafting of contracts to secure own data usage rights (cf. Art. 4 para. 13 Data Act)
- **Trade secret protection**: implementation of protective measures and communication with authorities

From September 12, 2026: "Access by design"

- Design and provision of networked products and services for simple and secure direct user access to **product data and associated service data**.

PERSPECTIVE OF THE USER

- Users can be both natural and legal persons
- Data must always be made available to users **free of charge**
- Observe **contractual obligations** for data access or transfer
- To be **licensed to** the data owner - data in exchange for use of the product / associated service (**no prohibition of tying**)

PERSPECTIVE OF THE DATA RECIPIENT

- **Data pools** of data owners offer new business areas and markets
- Sector-specific regulations expected for **data rooms**
- Observe **contractual obligations** for data access or disclosure; in particular, comply with the **purpose** of data disclosure
- Restriction not to develop a networked product from data that **is in competition** (see Art. 4 para. 10 DA)

Data Act

Take action

GAIN AN OVERVIEW OF DATA

Contract design

- **License-In:** Securing rights of use
- **License-Out:** regulate conditions, modalities and purposes of data provision and use

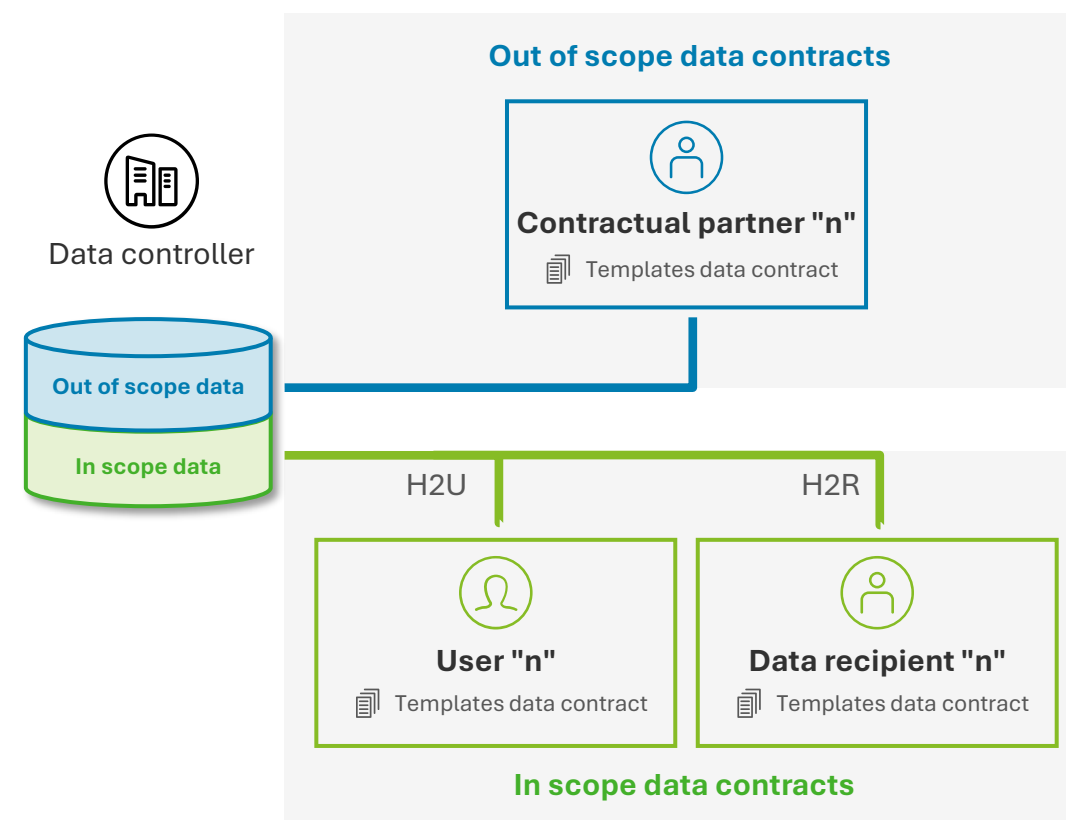
Observe requirements / fair conditions:

- Provision of data to data recipients under "fair, reasonable and non-discriminatory conditions" (**FRAND conditions**) and **transparently** (see Art. 8 para. 1 Data Act).
- Contractual B2B regulations are subject to **GTC control** (Art. 13 Data Act)
- Observe **pricing** requirements (Art. 9 Data Act) Details on pricing follow
- Trade secret protection / TOMs (see Art. 4, 5 Data Act)
- Embedding in a **contract management system (CMS)** recommended

Model contract clauses:

- Commission has published first drafts of model contract clauses (MCTs) (Art. 41 Data Act).

BUILD A CLAUSE LIBRARY



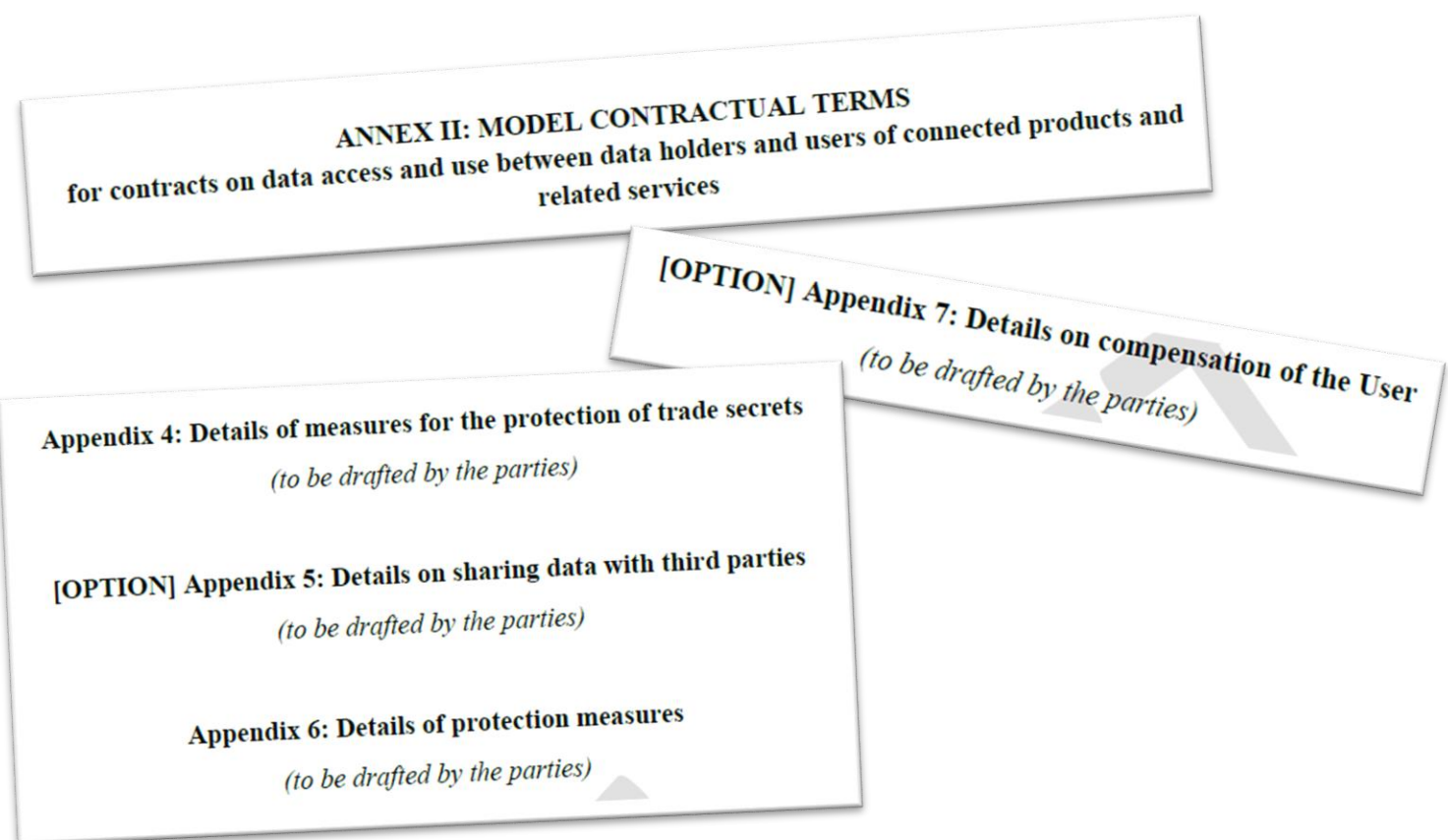
Data Act

Model contract clauses and FAQs

DRAFTS ARE AVAILABLE

- The **Model Contractual Terms** (MCTs) are to be made available before 12.9.2025 - **currently draft versions**
- Mainly aimed at B2B constellations
- **FAQ** - a new version is to be made available soon
- Consultations and presentations by the EU Commission are taking place - also on other Data Act topics (e.g. SCCs on cloud switching)

TO BE CUSTOMIZED



3 | **Data monetization**

Compliance and strategic considerations

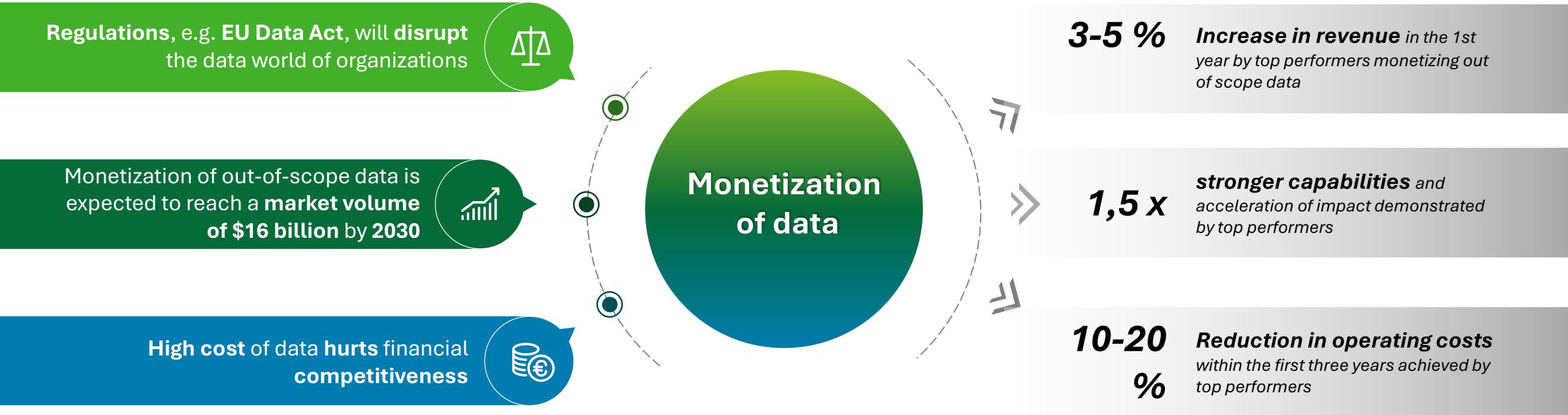


Data monetization is critical for businesses

The market dynamics of data monetization will increase rapidly, so being a pioneer will lead to significant improvements in several aspects

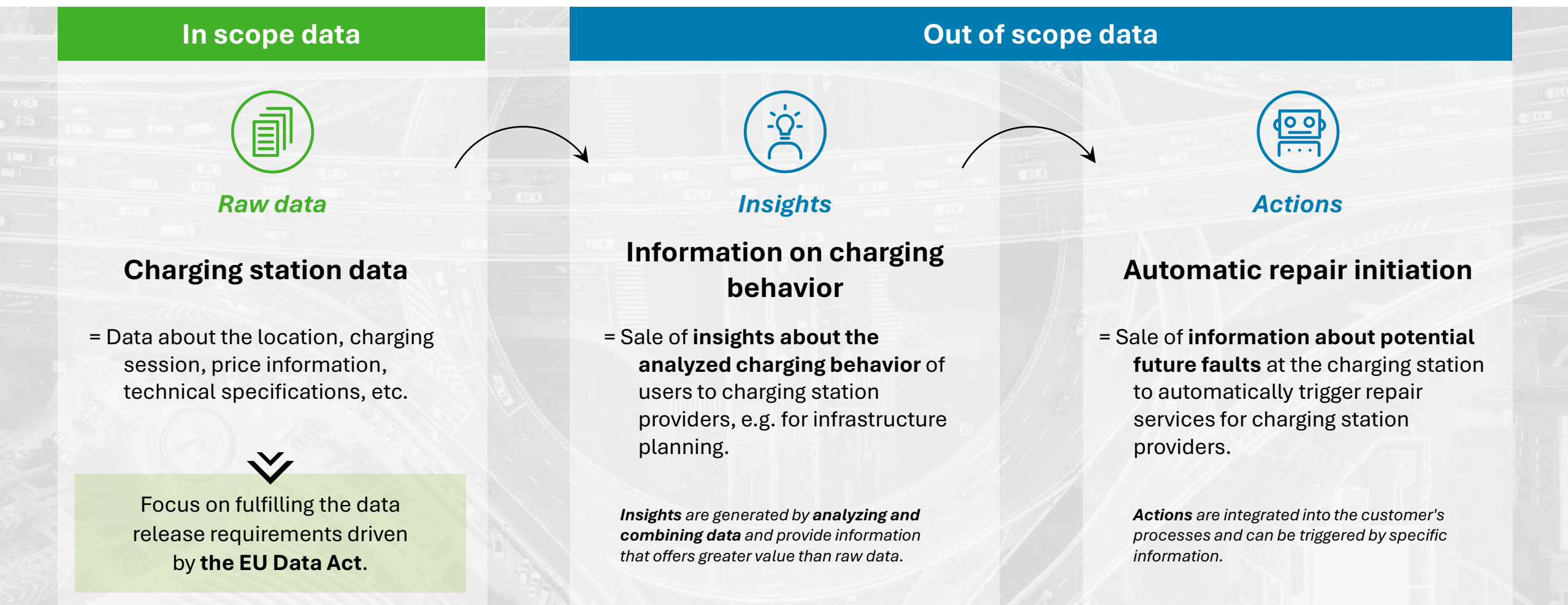
Three pervasive issues create a significant need and opportunity for change in companies' **data profitability**

Becoming a pioneer will lead to significant improvements in **sales** and **business efficiency**



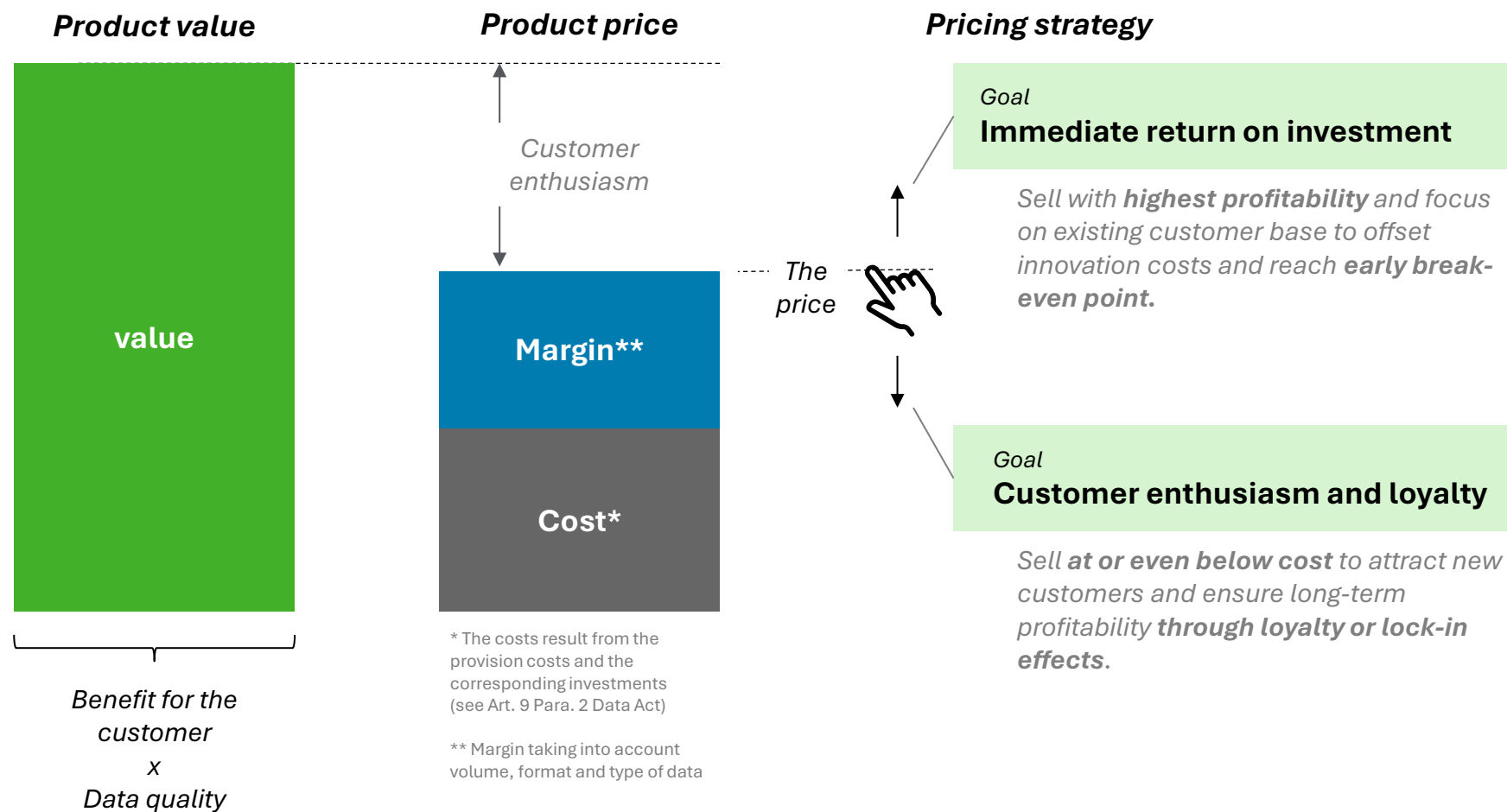
Example to differentiate the data

The practical example of charging station data can be used to show how in-scope data and out-of-scope data differ from each other



Fair pricing of raw data

The EU Data Act requires "fair" pricing, which can be defined by assessing costs and a value-based margin



Pricing mechanisms for fair pricing of raw data

Basically, three pricing mechanisms can be compared, which focus on a different weighting of the primary factors for pricing

	<div><div>Uniform pricing</div><div>Fixed margin and cost distribution across all data products</div><div>$Price_R = \frac{(Margin_{AllP} + Cost_{AllP})}{No. of Request_{AllP}}$</div><div><div>PROS</div><ul style="list-style-type: none">Simple and consistent pricing structureMinimal effort in price evaluation<div>CONS</div><ul style="list-style-type: none">Overlook opportunities for value-based pricingPotentially overprice simple requests and underprice complex requests</div></div>	<div><div>Driver-based pricing</div><div>Adjustment of margins and costs based on the complexity of the data request</div><div>$Price_{R(P)} = \frac{(Margin_P(Driver) + Cost_P(Driver))}{No. of Request_P}$</div><div><ul style="list-style-type: none">Fairer pricing in relation to effortAllows for higher margins on complex dataRequires valuation for each requestTransparency required as pricing is otherwise opaque to customers</div></div>	<div><div>Driver and volume-based pricing</div><div>Consideration of complexity and volume to ensure scalability and customized pricing</div><div>$Price_{R(P)} = \frac{(Margin_P(Driver) + Cost_P(Driver, Vol.))}{No. of Request_P}$</div><div><ul style="list-style-type: none">Balance between fairness and profitabilityCaptures both higher-margin opportunities and economies of scaleRequires robust systems for evaluating and pricing requestsTransparency required as pricing is otherwise opaque to customers</div></div>
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Examples from the market

Various companies are already using the enormous amount of data collected, tapping into new sources of revenue and increasing their competitive advantage at the same time



Direct monetization of data



How?

Generate **new revenue streams** that focus on the direct sale of data, insights, etc.

Examples of products / services that monetize data directly:



Skywise Core [X]

- Collects and analyzes **flight data**
- Provides airlines with insights into aggregated industry benchmarks and **operational insights**



EcoStruxure

- Access to a range of **services, subscriptions** and **solutions** tailored to different industries and requirements
- **Energy and sustainability data** to **optimize usage, costs**, etc.
- Plant data to optimize **maintenance**



Optum

- Monetizes their **proprietary consumer data**
- Customers are providers, payers, government agencies and life science organizations



Walmart Luminate

- Provides insights into **anonymized customer behavior, product perception**, etc.
- Offers suppliers the ability to **optimize** their **supply chain** through a subscription-based model



Mercedes Benz Data

- Monetizes **data from their vehicles & analyzed insights**
- E.g. insights on parking and road safety analysis
- One success story is the collaboration with the city of Freiburg to **optimize public parking spaces**.

Compliance with the Data Act

Our recommendations for action summarized

Compliance with the Data Act requires careful preparation and efficient processes.

1

Data classification

Identify the data and trade secrets covered by the Data Act.
For what own purposes is data used?

2

Verification processes

Adjustment of access authorizations and authorization processes in coordination with the processes for data protection law

3

Protection of business secrets

Implementation and adaptation of technical and organizational measures (TOM) to protect sensitive data

4

Contract management

Adaptation and optimization of existing contracts and contract templates to the requirements of the Data Act / license-in and license-out

5

Data monetization

Seize opportunities - as a user, data recipient and data owner. For example, marketing out-of-scope data (value added: "insights", "actions")

4 | Q&A

Questions?





**Thank you very
much**
for your attention

Let's drive the topics of Data Act and data monetization forward together!

Further questions or suggestions? Feel free to contact us!



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**Further information on
the EU Data Act**



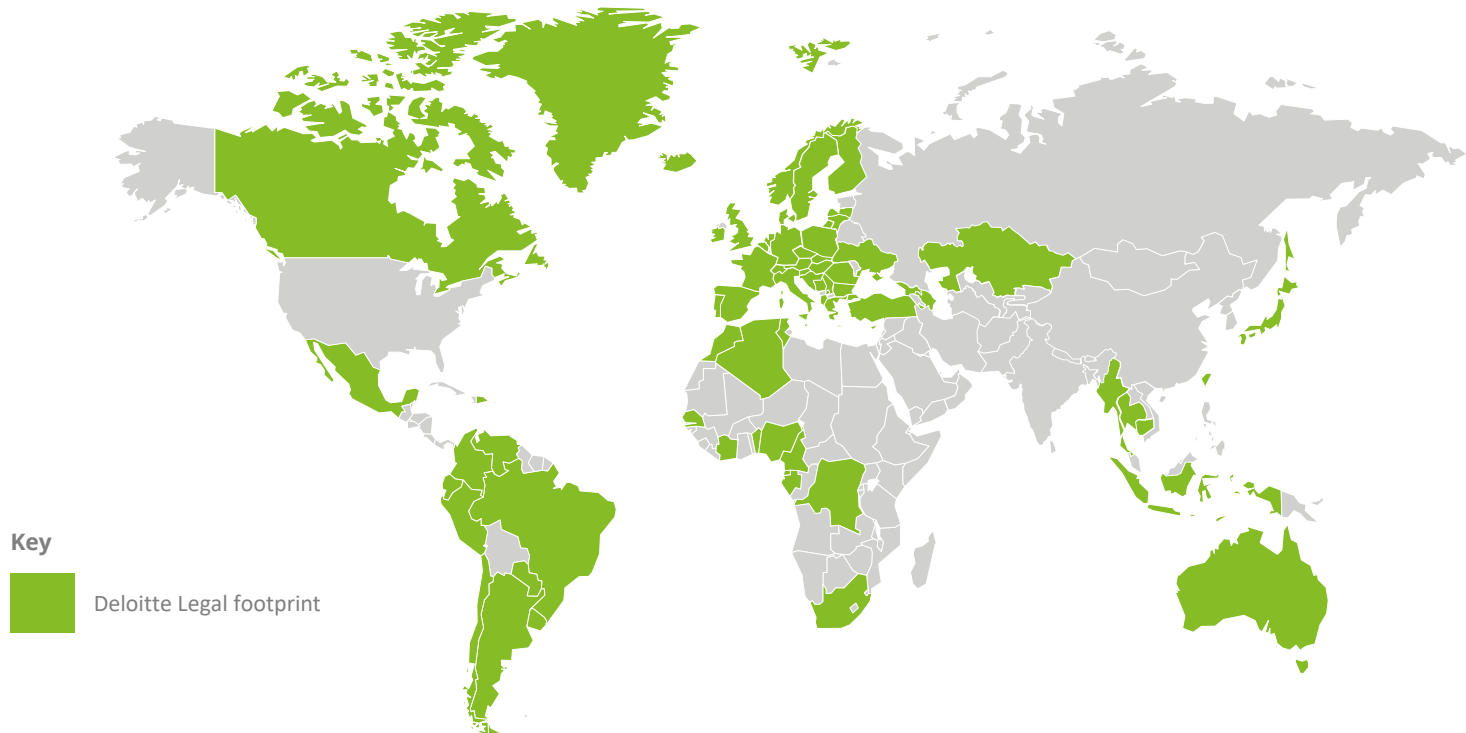
**Publication on the
direct
monetization of AI
& data
(release in summer
2025)**

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