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# **Panel on cloud services, interoperability and standardization**

TILT & TILEC Workshop on the  
Data Act

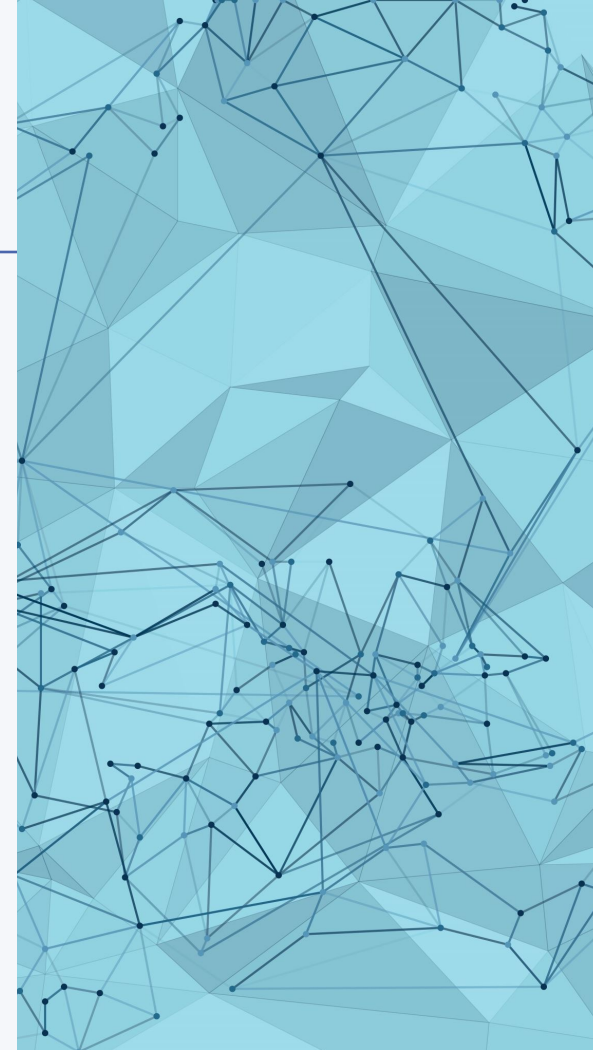
Tilburg, 4 October 2022



Horizon Europe project

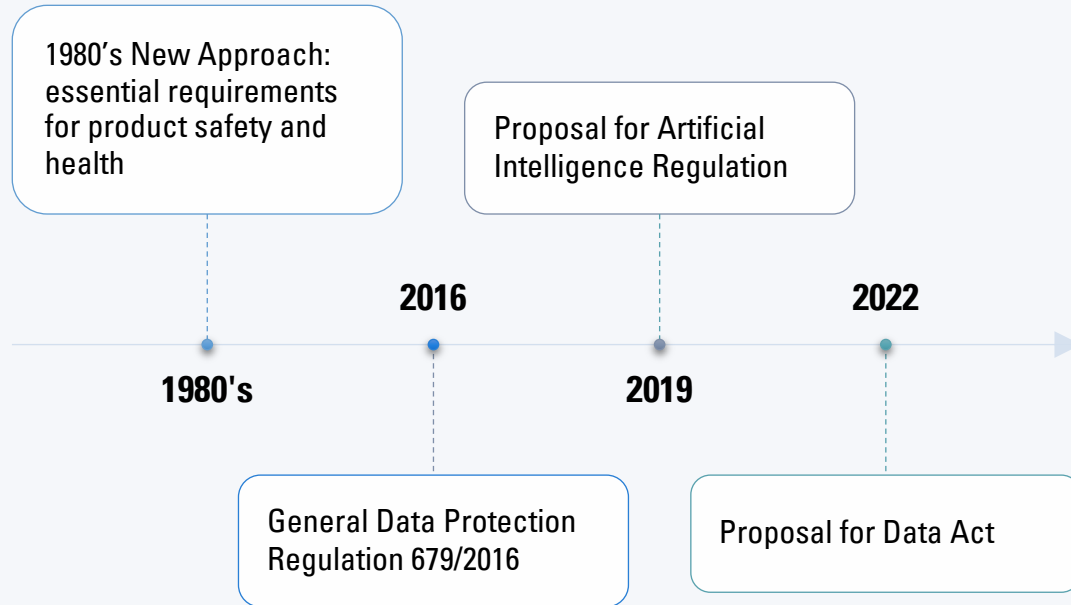
# A technical standard is..

- standard' means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
- (a) 'international standard' means a standard adopted by an international standardisation body;
- (b) 'European standard' means a standard adopted by a European standardisation organisation;
- (c) 'harmonised standard' means a European standard adopted on the basis of a request made by the Commission for the application of Union harmonisation legislation;
- (d) 'national standard' means a standard adopted by a national standardisation body



Regulation 1025/2012, Article 2(4)

# Standardisation as regulatory technique in the EU



## Modes of integration of standards in EU law (I)

- 1. Standards as *nudge*:
- Reference to the concept of standard, without legal effects
- E.g. General Data Protection Regulation – Article 43(9)

**“The Commission may adopt implementing acts laying down technical standards for certification mechanisms and data protection seals and marks, and mechanisms to promote and recognise those certification mechanisms, seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).”**

# Modes of integration (II)

- Reference to harmonised standards and legal effects
  - The law provides the essential requirements
  - Technical details → specified in European (harmonised) standards
  - Standards published in the Official Journal EU
  - Complying with the harmonised standard offers a presumption of conformity with the EU law provision



# Example: Toy Safety Directive 2009/48/EC

- New Approach type of law
- Article 10: essential safety requirements
- Article 13
  - Presumption of conformity
  - *Toys which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the requirements covered by those standards or parts thereof set out in Article 10 and Annex II.*

# Modes of integration (III): the AI Act Proposal

- New Approach *Plus*: a role for technical specifications
  - Article 40  
Harmonised standards
  - High-risk AI systems which are in conformity with harmonised standards or parts thereof the references of which have been published in the Official Journal of the European Union shall be presumed to be in conformity with the requirements set out in Chapter 2 of this Title, to the extent those standards cover those requirements.
- Article 41 Common specifications
  - 1. Where harmonised standards referred to in Article 40 do not exist or where the Commission considers that the relevant harmonised standards are insufficient or that there is a need to address specific safety or fundamental right concerns, the Commission may, by means of implementing acts, adopt common specifications in respect of the requirements set out in Chapter 2 of this Title. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(2).
  - 2. The Commission, when preparing the common specifications referred to in paragraph 1, shall gather the views of relevant bodies or expert groups established under relevant sectorial Union law.
  - 3. High-risk AI systems which are in conformity with the common specifications referred to in paragraph 1 **shall be presumed to be in conformity with the requirements set out in Chapter 2 of this Title, to the extent those common specifications cover those requirements.**
  - 4. Where providers do not comply with the common specifications referred to in paragraph 1, they shall duly justify that they have adopted technical solutions that are at least equivalent thereto.

# Standardisation in the Data Act proposal

**3. For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.**

**4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the service type concerned, the provider of data processing services shall, at the request of the customer, export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.**

- Article 26 : Technical aspects of switching between providers of data processing services

Paragraph 3: obligation to ensure compatibility with European standards or open interoperability specifications (adopted by COM in delegated act or implementing act)

Paragraph 4: if no such standards/specifications exist: commonly used format is acceptable



# Standardisation in the Data Act proposal II

- Essential Requirements for Interoperability
  - Operators of data spaces must comply with:
    - Essential Requirements for Data, data sharing mechanisms, services (Article 28)
    - Specific requirements for European standards and open interoperability specifications for processing services (Article 29)
- Essential Requirements for Smart contracts for data sharing
- Recital 79: standards and specifications for re-usable data structures and models, vocabularies, taxonomies, code lists, and others.

# Standardisation in the Data Act proposal III

## Commission powers:

1. To issue a standardisation request for harmonised standards to European Standardisation Organisations in line with Regulation 1025/2012 – Article 10: Implementing act (291 TFEU)
2. To adopt open technical specifications via implementing acts (291 TFEU) - see principles of 1025/2012 Regulation
3. To adopt delegated acts to further specify essential requirements (art. 26(2)) – (Art. 290 TFEU)

Presumption of conformity – article 26(3)

-> AI Act Proposal mode of standards integration in EU law

## Annex II Regulation 1025/2012- principles

Openness  
Consensus  
Transparency  
Relevance  
Maintenance  
Availability  
Neutrality  
FRAND

# Standardisation in the Data Act proposal IV

- Overall standardisation plays a key role to achieve the legislative goals
- Standards remain voluntary
  - No specific standards are mandated
  - But: Obligation for services to be 'compatible with European standards or open interoperability technical specifications, where these exist' [Explanatory Memorandum, p.16]
- New Approach model: essential requirements + harmonised standards = presumption of conformity
- A (new) role for technical specifications → leveraging *de facto* standards



**encrypt**

**Thank you**

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