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## Regulatory change for data-driven business is coming: Are European lawyers ready?

The regulation of data-driven business is about to change. New EU legislation will aim to facilitate data sharing, improve freedom of access to data and create European Data Spaces for sector-specific data.

These changes will have a global impact, as anyone doing business in the EU will need to comply. Other regions such as India and China are also developing new data regulations. Legal teams will face a challenge to adapt data-driven business models and manage more complex data and digital regulation.

In partnership with Osborne Clarke, the European Company Lawyers Association surveyed over 400 General Counsel across Europe (including the UK and non-EU countries) to find out whether in-house lawyers are ready for this change.

There's a famous quote by Bill Gates who said that if he were down to his last dollar, he'd spend it on PR. I wonder if, in 2022, he'd maybe spend at least some of it on data-driven tools?

If we rewind just a few years to a world where Big Data wasn't a reality, organisational decisions were regularly informed by hunches and received wisdom. In 2022, that is simply no longer true: which markets you're in, who you're pursuing, which business models you adopt are all informed not just by experience but also by data.

What's also true is that the data regulation landscape has never been more diverse, nor has there been a greater need to understand it in order to be able to maximise benefit from it.

We hope you find our key findings and the full report thought-provoking when it comes to deciding if your business and its method are data-informed, if your compliance is in order and if you're ready for the major upcoming legal changes.



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## How is data sourced?

Almost two thirds (**61%**) of survey respondents already offer data-driven products or services and **26%** more plan to do so soon.

**70%**

data collected from own operations for pre-defined purposes

**32%**

purchased datasets

**64%**

repurposed existing internal data

**32%**

data arising from contractual or legal obligations

**82%**

external customer data

**19%**

social media or API data flow

**36%**

public data

**16%**

web-scraping

## How is data used?

Survey respondents said:

**60%**

add to existing products and services

**77%**

improve activities or processes

**35%**

enable new products and services

**33%**

enable data-driven decision making

Embracing data often means new collaborations around development and distribution of new products and services.

Who does the development work?

**68%**

in-house

**43%**

joint partnerships

**28%**

outsourcing

**25%**

arm's length group company

**19%**

jointly universities and research institutions

## What are the challenges?

Lack of access to external data is a key obstacle for **33%** of respondents; **56%** said accessing real-time data is important.

To support innovations such as machine learning and artificial intelligence (AI), policymakers aim to improve access to data. Four in ten (**40%**) businesses intend to increase their use of AI.

Currently, **24%** of businesses take an open approach to data while **27%** treat it as proprietary. The new EU data rules will make it harder to maintain a proprietary approach.

At present, often data access rights are governed by contractual provisions and only **13%** of businesses have been in a data dispute. In-house legal teams can expect more disputes to arise with the expansion of data regulation.



## How easy will it be to adapt to change?

The top obstacles lawyers face in implementing data-driven business models are:

**67%**

legal and regulatory challenges

**33%**

access to external data

**38%**

cybersecurity

**32%**

poor integration into internal company structures and processes

**36%**

lack of experience and skills

Cybersecurity will increase in scope and significance along with data flows, and should be approached from the perspective of regulatory compliance as well as operational efficiency.

Lawyers say existing EU regulation is confusing (**63%**) and too complex (**68%**). **28%** said their company was well prepared for data-driven business models.

Almost one quarter (**23%**) think the regulatory framework for data-driven business models is stable, suggesting a lack of knowledge about the coming changes.

## Do businesses take a strategic approach to data?

Only **36%** of lawyers agreed strongly that their company has a data strategy. Some (**47%**) thought about ethical and reputational angles of data usage, and **40%** use contract templates that go beyond data protection compliance.

It appears that some businesses have adopted data-driven models without a coherent overarching data strategy. Only **26%** had board-level expertise in data-driven models.

Legal teams have a role to play in ensuring data strategy is not only considered to be an issue for the IT team. With a board-endorsed, top-down approach, corporate culture can evolve to protect and harness the value of data.

Data needs to be managed carefully in contractual negotiations and intellectual property strategies may need to be developed in view of the new environment. Environmental implications of data-driven products and services should be considered, and their carbon emissions should be minimised.



## How are different sectors approaching data regulation?

Sectors differ in their approach to adopting data-driven business models, depending on the different challenges and market conditions they face.



### Energy and Utilities

- The sector faces the challenge of decarbonising while maintaining balance between supply and demand
- Almost one quarter (**24%**) had no plans to introduce data-driven products and services
- Only **11%** of those that offer or plan to offer data-driven products/services aim to use data to improve decision-making
- **47%** have a proprietary approach to data, the highest of any sector
- Responses indicated a knowledge gap around legal issues, data strategy and governance
- **36%** lack internal experience and skillsets



### Financial Services

- **60%** already offer data-driven products or services and a further **30%** plan to introduce them
- The focus is on improving existing services (**70%**) rather than providing new innovation (**24%**)
- What expertise do companies have?
  - 39%** board-level expertise
  - 43%** data strategy
  - 54%** consider ethical and reputational aspects of data
  - 50%** will increase use of artificial intelligence
- **77%** see legal and regulatory frameworks as a challenge to implementing data-driven business models
- This is the sector with the most negative view of the current EU legal/regulatory framework:
  - 4%** well-structured
  - 7%** clearly understandable
  - 4%** supports data-driven business models
- Responses indicated frustration with regulation



### Life Sciences and Healthcare

- **58%** already offer data-driven products and services - a further **25%** plan to soon
- **52%** plan to use data to provide new products or services - the highest of any sector
- **91%** of those that offer or plan to offer data-driven products/services use customer-provided datasets
- **61%** use purchased databases - double the cross-sector level
- **57%** of respondents had been involved in strategic acquisition of data - the highest of any sector
- Key challenges for the sector:
  - 76%** legal and regulatory
  - 58%** lack of experience and skills
  - 52%** access to external data
  - 49%** cybersecurity risks
  - 46%** sector-specific challenges
- Only **10%** said their company is well prepared for data-driven business models



### Real Estate and Infrastructure\*

- **70%** already offer data-driven products and services and **15%** more are planning to introduce this
- The sector is rapidly digitising, from data-driven construction to digital tools for tenants and occupiers
- **69%** of companies that offer or plan to offer data-driven products/services plan to collect, analyse, process and sell data as a commodity
- **81%** repurpose existing internal data
- **22%** have already been involved in data disputes
- As an unregulated sector, legal and regulatory challenges were less of a challenge
- **29%** saw the regulatory framework as stable, but new data access rights could have a significant impact
- The sector may need a stronger top-down approach to data strategy and governance going forward

\* There was a smaller number of responses from REI businesses compared to other sectors, which may have impacted on these results. See full report Methodology.



### Retail and Consumer Goods

- Only **49%** of respondents were already using data-driven business models
- **82%** use external customer-provided data sets
- **42%** use freely-available public data
- **32%** use data from social media and other applications via APIs
- Key concerns:
  - 60%** legal and regulatory obstacles
  - 46%** poor integration into internal company structures and processes
  - 42%** lack of experience and skills
  - 29%** internal data utilisation
  - 27%** cybersecurity risk
- **39%** were negative about their business' readiness for digital transformation - the least confident sector



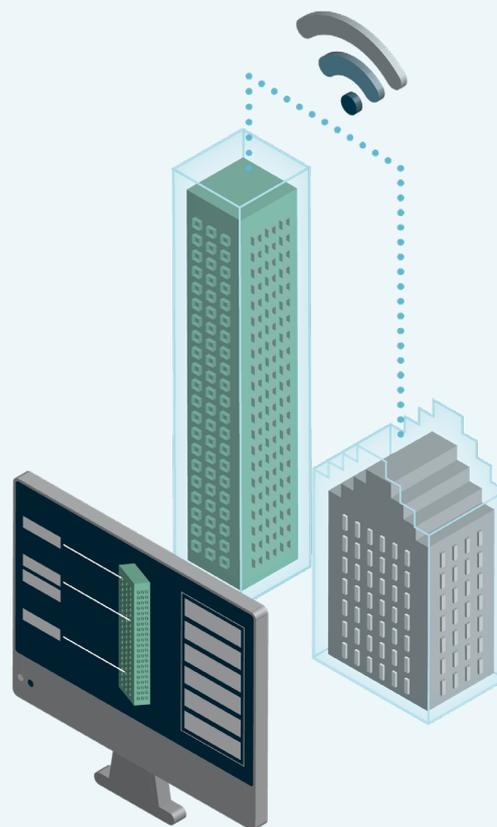
### Transport and Automotive

- **52%** already offer data-driven products and services – a further **40%** plan to do so soon
- **52%** see real-time data as important
- Key obstacles include:
  - 67%** legal and regulatory challenges
  - 47%** cybersecurity
  - 44%** lack of experience and skills
  - 40%** access to external data
  - 35%** poor integration into internal company structures and processes
- **21%** consider the current legal and regulatory framework to be supportive of data-driven business models and **38%** consider it to be stable
- Only **15%** consider their company to be well prepared for the legal challenges of data-driven business models



### Technology, Media and Communications

- **87%** offer data-driven products and services; a further **11%** plan to do so
- **84%** develop data-driven products/services using an in-house team/division
- **32%** use a group company that operates at arm's length
- The biggest obstacles in implementing data-driven business models:
  - 80%** legal and regulatory
  - 52%** cybersecurity
  - 38%** poor integration into company structures
  - 33%** uncertainty about business model
- Only **40%** have a data strategy in place
- **47%** think about ethical and reputational aspects of data
- **43%** have board-level expertise on data-driven business models
- Sector-specific regulation in coming years may reshape the market



## Seizing opportunities starts with the right approach

The pandemic has accelerated digital innovation, putting in-house counsel at the heart of this transition. Legal teams need strategic vision and new skills to cope with the complexity of data-driven business models and increased scope of data regulation.

It is recognised that the current regulatory framework can be an obstacle to implementing data-driven business models. But by taking a pro-active and creative approach to the challenge of data-driven business models, legal teams can put themselves at the heart of innovation in their business. Moreover, as well as new obligations new regulation creates new opportunities, legal rights and protections that in-house counsel should be alert to.

Legal teams can help drive the success of data-driven business models in 4 key ways:

### 1 Shaping data strategy and governance

How is data used within the business? How is its value protected? How can it be applied creatively? Legal teams can help develop board-endorsed, top-down data strategy and governance policies to help drive data consciousness throughout an organisation.

### 2 Rethinking traditional legal team roles

Lawyers will need to embed themselves in teams that are designing data-driven business models. An agile approach will be key, working in close collaboration with other areas of the business on an iterative process of improvement.

### 3 Strategically framing compliance

Regulatory compliance can be turned into a key business driver and differentiator. The trend towards ever-higher fines and stronger enforcement powers means that the legal context for data-driven business models can no longer be an afterthought.

### 4 Leveraging new opportunities

New legislation creates new rights. In-house counsel who take a proactive approach will be better able to protect the interests of the business through greater access to data, compensation if the business suffers harm from another's infringement, fairer competition and more.

By taking the approach of 'compliance by design' and embedding themselves completely within the structures for innovation, legal teams can enable their business to better navigate disruption and ensure the success of data-driven business models for the future.



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## About ECLA

The European Company Lawyers Association (ECLA) was founded in 1983 and is the umbrella organization of 22 different national associations of in-house counsel working in companies and organisations. For more than 39 years, ECLA has been committed to the profession of company lawyers throughout Europe and accounts for approximately 68,000 professionals in its network and represents more than 150,000 company lawyers across Europe.

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References to the law in Part 2 of this report are up to date as at 1 March 2022, unless stated otherwise.

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