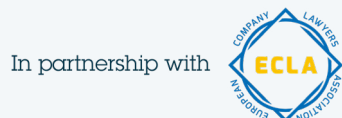


Data-driven business models: the role of legal teams in delivering success



Key findings

- How is data sourced? >
- How is data used? >
- What are the challenges? >
- How easy will it be to adapt to change? >
- Do businesses take a strategic approach to data? >
- How are different sectors approaching data regulation? >
- **NEW** How can in-house lawyers anticipate and prepare for change? >
- **NEW** What are the implications of legal change for DDBMs? >
- **NEW** Six key questions for in-house legal teams to consider now >
- Seizing opportunities starts with the right approach >



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.

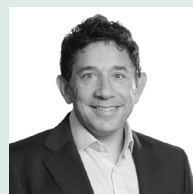
In partnership with Osborne Clarke, the European Company Lawyers Association surveyed over 400 General Counsel across Europe (including the UK and non-EU countries) to find out whether in-house lawyers are ready for this change.

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.

67%

33%

38%

32%

36%

Do businesses take a strategic approach to 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.

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



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



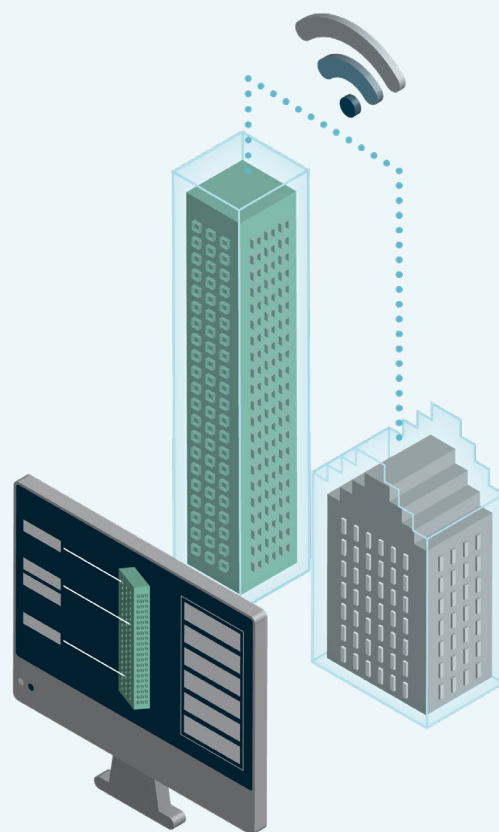
Transport and Automotive

- 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

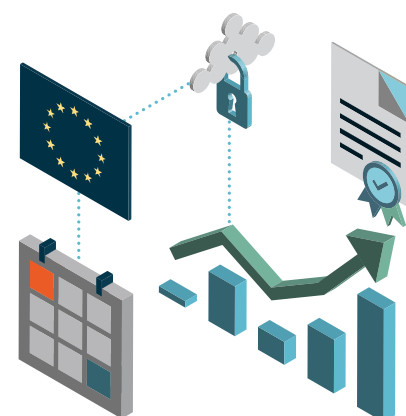


How can in-house lawyers anticipate and prepare for change?

NEW CONTENT

The expansion of EU data regulation will have many practical implications for in-house legal teams. The new data landscape will be more complex, with wider scope, but will also create new opportunities. Lawyers will play a vital role in developing new data-driven business models.

What are the opportunities offered by the new EU legislation, and what are the key issues to consider?



Timeline for compliance

Start date for application

April 2023

Final text delivered: October 2022

Applies granular obligations and restrictions on designated gatekeepers to digital markets and the biggest online platforms.

Read more in Chapter 2.14 [➤](#)

Final text delivered: October 2022

Reshapes regulation of online content and services.

Read more in Chapter 2.14 [➤](#)

24 September 2023

Final text delivered: 3 June 2022

Defines governance mechanisms for sharing data, especially in the public sector. Regulates data intermediaries. Creates new ways to 'donate' data for the public good. Sector-specific data pools are also planned.

Read more in Chapter 2.13 [➤](#)

Late 2024

Final text expected: Late 2023

Establishes a cross-sectoral governance framework for data access and use, changing the environment for data-driven business models in the EU.

Read more in Chapter 2.2 [➤](#)

Late 2025

Final text expected: Late 2023

Creates a full regulatory framework for AI used in the EU. Shaped around the level of risk created by different applications of AI.

Read more in Chapter 2.7 [➤](#)

What are the implications of legal change for DDBMs?

NEW CONTENT

Particular data-driven business models bring their own specific challenges, which will evolve along with data regulation. Let's consider some examples...

Connected products

- Making products that can connect to the internet brings many legal implications
- The linear contractual relationship between manufacturer, dealer, customer and user is complicated by the provision of an ongoing, online service
- Launching connected products may require a different approach to risk management, data protection, contractual terms, insurance and certification

Where can I find out more?

ECLA report: Chapter 2.4 >

UK Secure by Design policy >



Digital twins in the built environment

- Digital twins representing a particular building or area can monitor operations and maximise efficiency and performance
- As a collaborative project involving multiple stakeholders, digital twins require clear governance frameworks covering liability, intellectual property rights and data issues
- Compliance should be designed into digital twins from the outset to avoid unnecessary costs and delay

Where can I find out more?

ECLA report: Chapter 2.8 >

New Age of Data in Real Estate report >

Managing legal risk in buildings insight >

Smart Cities page at osborneclarke.com >

Smart cities and data protection insight >



Selling a service, not an asset – digital twins

- Suppliers use digital twins to sell a service provided by an asset, requiring a close relationship between supplier and client
- An application of Internet of Things technology, digital twins use machine data that is currently outside data regulation frameworks
- The proposed EU Data Act would extend data regulation to non-personal machine data used for digital twins, creating data access rights

Where can I find out more?

ECLA report: Chapter 2.6 >



Open banking and data-driven business models

- Open banking enables customers to share their data with regulated third parties, so they can access more and better products and services
- The sector has grown through mandating bank participation and standardising technology
- Open banking could be extended to include insurance, loans, mortgages, investments and pensions as well as payment accounts

Where can I find out more?

ECLA report: Chapter 2.3 >

Webinar on open banking from Future of FS week >



Ransomware attacks

- A cybersecurity strategy should address operational impact, reputational damage, financial loss and legal liability
- Different countries interpret the GDPR differently and other legal and regulatory obligations also apply
- Investigations should address relevant issues without increasing legal liability

Where can I find out more?

ECLA report: Chapter 2.9 >

Cybersecurity in IT contracting insight >

ECFB webinar on cyber governance >



Six key questions for in-house legal teams to consider now

NEW CONTENT

1 How will our in-house counsel's role develop?

The scope of data regulation is set to widen, requiring increased legal expertise to shape data-driven business models. In-house teams will be integral to the transition, but new skills and a practical approach are required.

[Read more in Chapter 2.1](#) ➤

4 Will the EU Data Act cause IP issues for us?

The proposed EU Data Act would widen data access rights, but the draft legislation says legal protection of trade secrets should be unaffected. You will need to be clear how new laws impact you and take steps to protect your IP.

[Read more in Chapter 2.11](#) ➤

2 Is our approach to data pooling watertight?

Combined datasets bring many benefits, but they also need a clear understanding of legal or contractual restrictions. Good data governance and close co-operation between data scientists, business stakeholders and lawyers should mitigate risk.

[Read more in Chapter 2.5](#) ➤

5 Is our DDBM a carbon liability?

Data centres are energy-intensive and could undermine your organisation's net zero strategy. Procurement of IT services should address green issues and include clear contractual obligations. Embodied carbon and end-of-life management should also be considered.

[Read more in Chapter 2.12](#) ➤

3 Do we have a holistic approach to cybersecurity?

Appointing a Chief Information Security Officer (CISO) is a starting point, not an end point in cybersecurity. Everyone on a company board has responsibility to manage cybersecurity, including preparing an appropriate response to future cyber incidents.

[Read more in Chapter 2.10](#) ➤

6 Are we overly focused on Europe?

Data regulation in other markets such as the US, India and China is developing rapidly. If your business plans to expand into new regions, it is important to stay up to date on the regulatory frameworks and enforcement within other countries.

[Read more in Chapter 2.15](#) ➤



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.





About Osborne Clarke

Osborne Clarke is an international legal practice with over 300 Partners and more than 1080 lawyers in 26 locations. As the experts in transformational change, we help clients tackle the issues they're facing today, and prepare for the ones they will face tomorrow.

In partnership with



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.

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: osborneclarke.com/verein

These materials are written and provided for general information purposes only. They are not intended and should not be used as a substitute for taking legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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

Project Cooperation:

European Company Lawyers Association (ECLA) & Osborne Clarke

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