

Digitisation and Information Accessibility

*An overview of the EU's legislative agenda for
archiving*

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Datum

26 november 2024

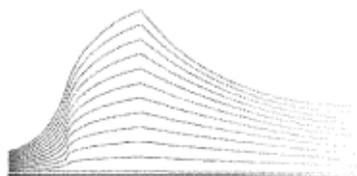
Ons kenmerk

z2024-010120

Contactpersoon

Onderwerp

Formele waarschuwing CABR



Repertoriumnummer 2024 / BSLy
Datum van uitspraak 11 december 2024
Rolnummer 2024/AR/121

Uitgifte

Uitgereikt aan	Uitgereikt aan	Uitgereikt aan
op € BUR	op € BUR	op € BUR

N°

 Niet registreerbaar

Tussenarrest

prejudiciële vragen

Bijzondere rol

Hof van beroep**Brussel****Sectie Marktenhof****19^{de} kamer A****Arrest**

Overview



1. The legal definition of data and archiving



2. The EU legal framework for archival data and accessibility



3. Key legal challenges for accessing archival data



1. The legal definition of data and archiving

A 'binary' understanding of data



Personal data
(including 'special
categories of
personal data')

Non-personal data

What are 'personal data'?

'personal data' means **any information relating to an identified or identifiable natural person** ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; (Art. 4(1) GDPR)

- ♦ **All information: objective, subjective, all content, all forms**
- ♦ **identified or identifiable= 'any means reasonably expected to be used by the controller or by any other person' (recital 26)**
- ♦ **Natural person = living person**
- ♦ **Anonymized data ≠ personal data**
- ♦ **Pseudonymized data?**

Archival data

Sensitive
personal
data

Personal
data

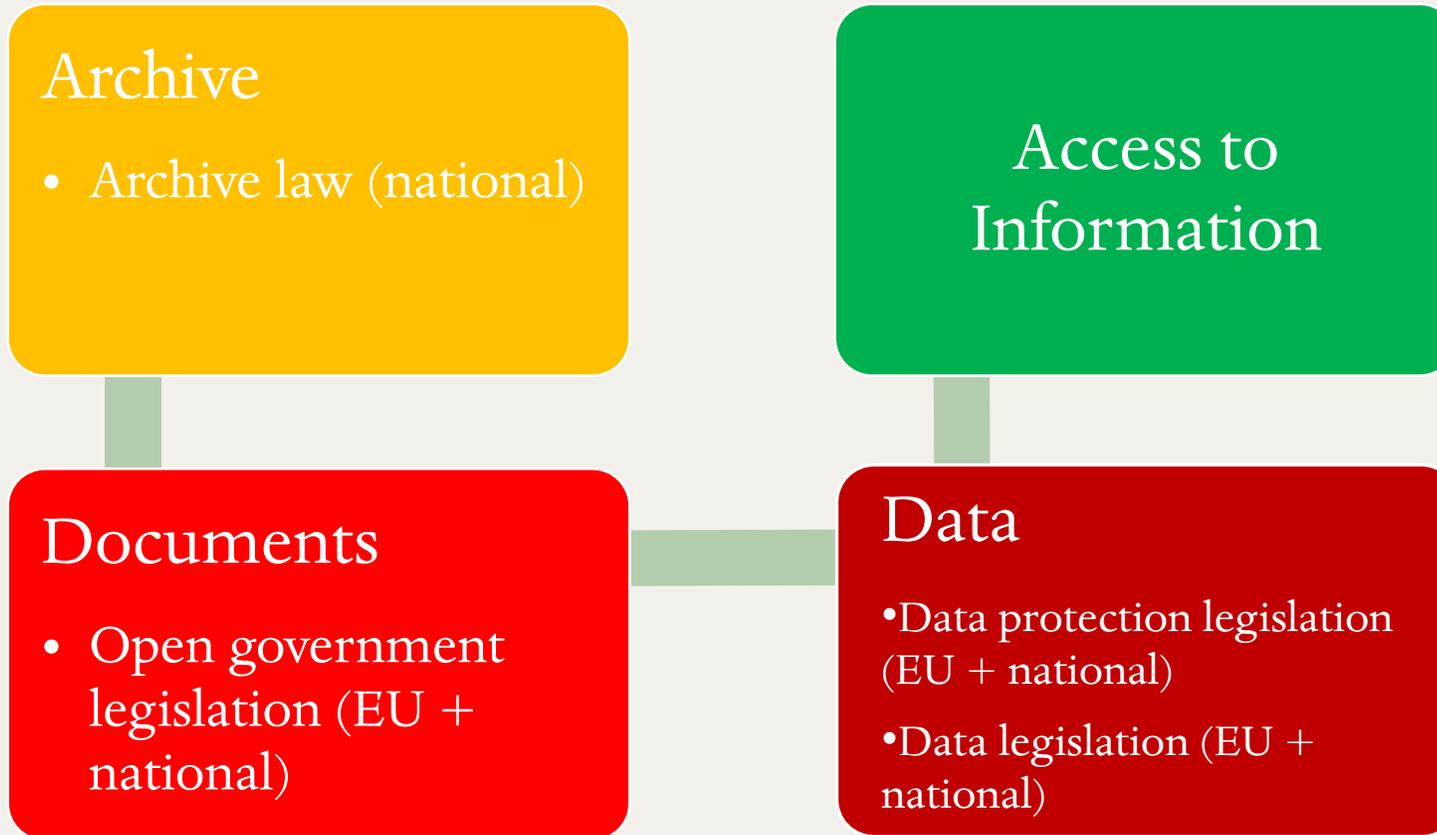
Non-
personal
data

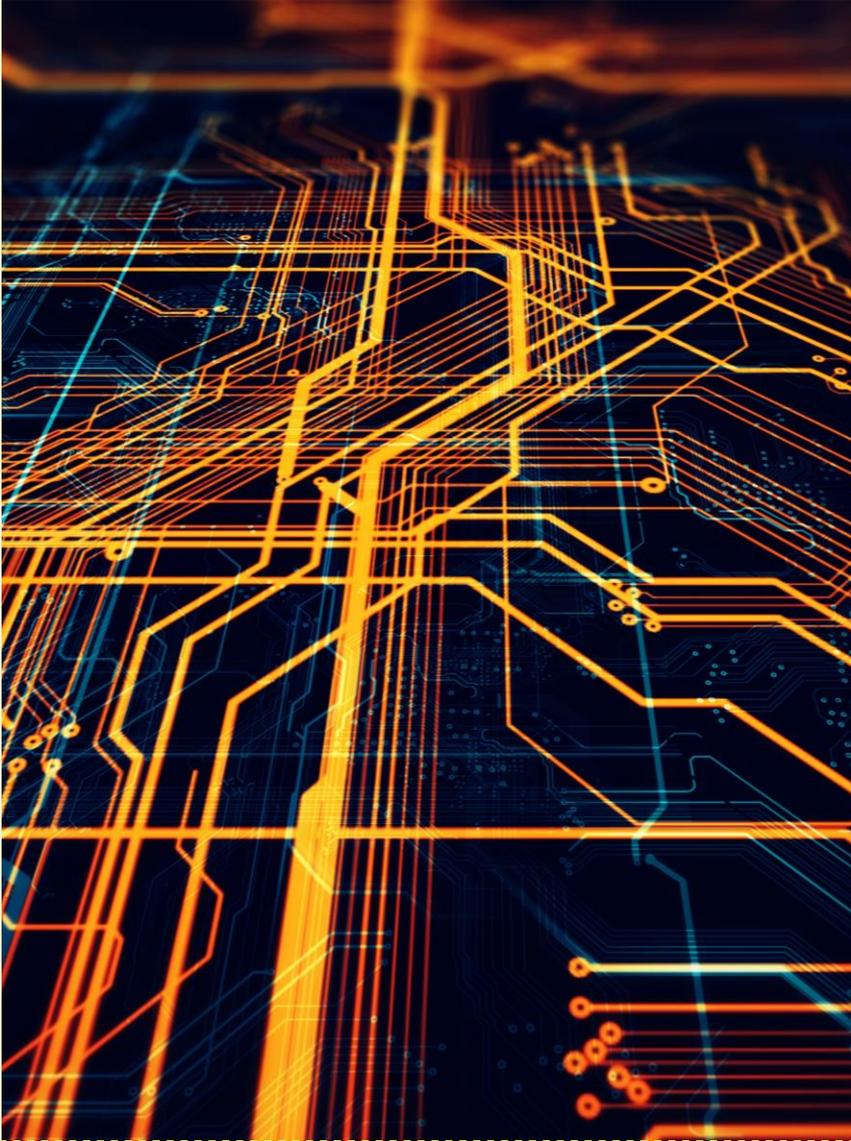
Sensitive
non-
personal
data
(national
law)



2. The EU legal framework for archival data and accessibility

Interplay of EU and national law





EU data strategy 2020

- ♦ 'The value of data lies in its use and re-use. Currently there is not enough data available for innovative re-use, including for the development of artificial intelligence. The issues can be grouped according to who is the data holder and who is the data user, but also depend on the nature of data involved (i.e. personal data, non-personal data, or mixed data-sets combining the two.'



Brussels, 19.11.2025
COM(2025) 835 final

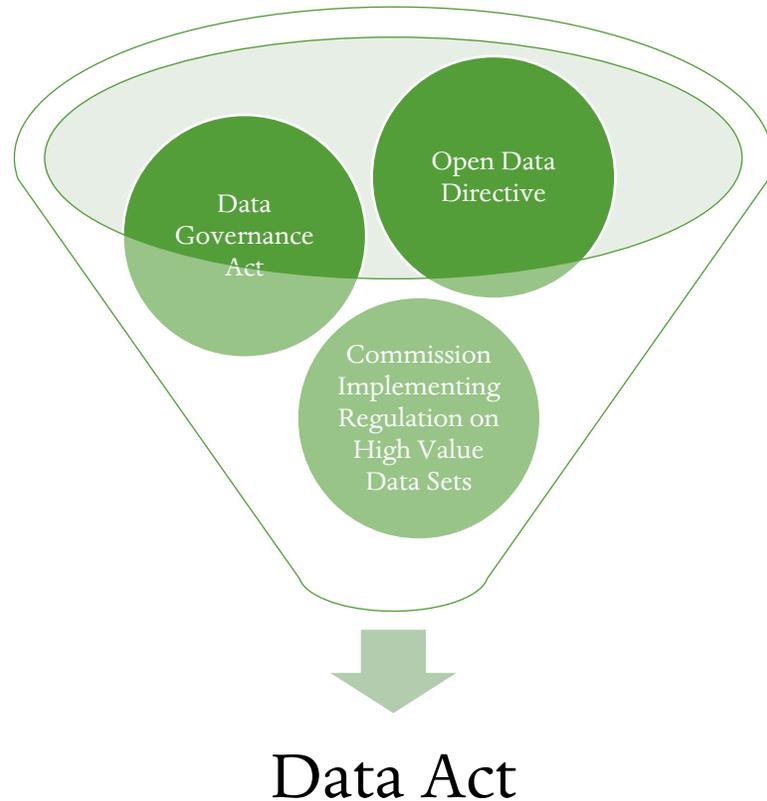
**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**DATA UNION STRATEGY
UNLOCKING DATA FOR AI**

Address	Address the 'data scarcity' problem = create more training data for AI
Address	Address the 'regulatory complexity' = simplify the rules on data access and use by changing existing legislation
Treat	Treat data as strategic asset for global competition

EU's data
policy
priorities until
2030

Digital Omnibus ('simplification')



Amend the GDPR/EUDPR

- ♦ Definition of personal data
- ♦ Definition of research
- ♦ Legal basis for AI training
- ♦ Lower protection for automated decision-making
- ♦ More exceptions for individual rights
- ♦ New rules for cookies (merge ePrivacy Directive into the GDPR)

Strategic data assets: public sector, scientific, cultural and linguistic resources

‘Public-sector reference datasets under the Open Data Directive will be scaled up. The high value datasets have to be made available free of charge, through application programming interfaces (APIs), in a machine-readable format and, where relevant, provided as a bulk download. In 2026, the Commission will propose to expand the list of high-value datasets to cover *legal, judicial, administrative and other data*. This will be beneficial for start-ups and SMEs. The Commission will also monitor whether further datasets should be added’



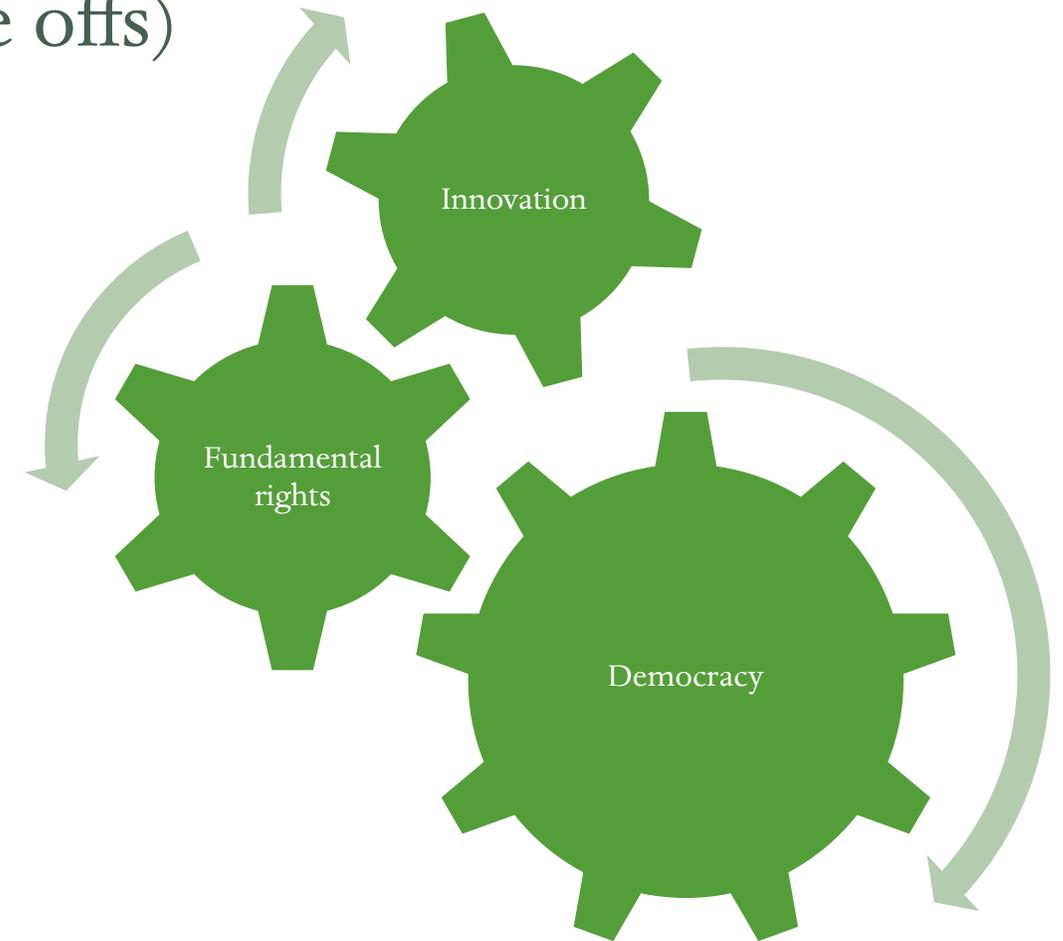
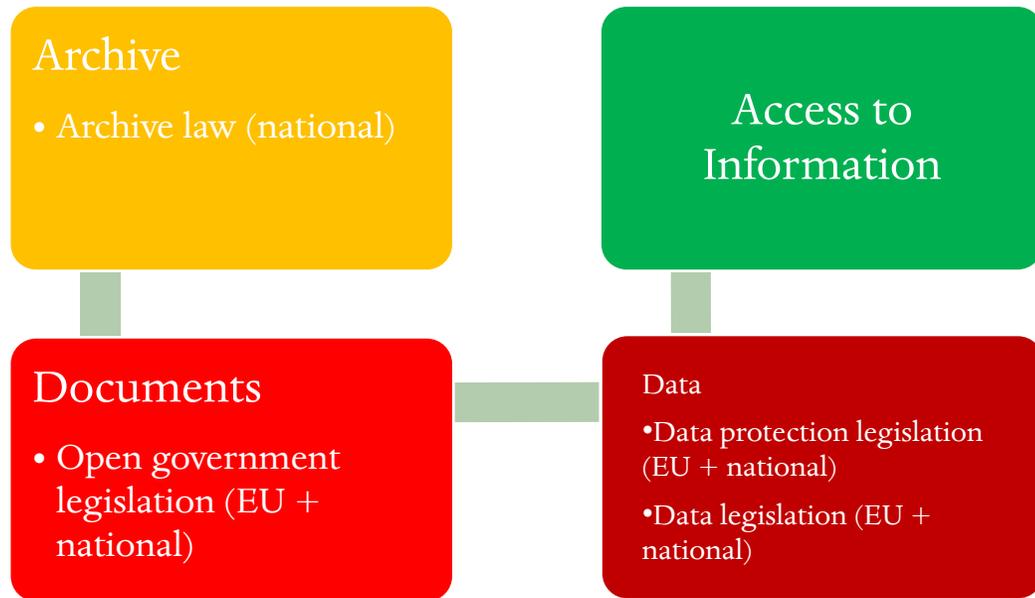
Digital Fitness Check

- ♦ All digital legislation of the EU is to be reviewed (Personal data, non-personal data, cybersecurity, EIDAS...)
- ♦ Planned for 2026



3. Key legal challenges for accessing archival data

Challenge I: Lack of alignment between laws impacting archival data: a need for 'balancing' (not trade offs)



Challenge II: Unstable legal framework

Key EU legal frameworks for the archive are now being discussed for reforms (Open Data, Data Governance, Data Protection) → more public sector data should be freely available, including as high value data sets

Reforms are exclusively driven by concerns for innovation, leaving aside the protection of fundamental rights → new approach towards new technologies – no more precautionary approach but ‘move fast and break things’

Opportunities?

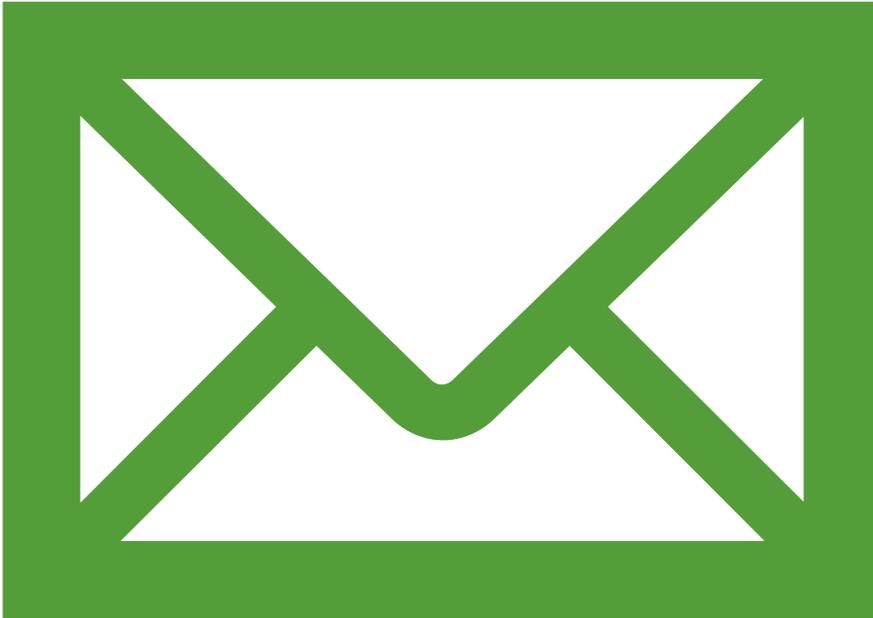
Key takeaways

Data are everywhere and the legal categories are broad.

Archival data is heavily regulated in the EU and at national level.

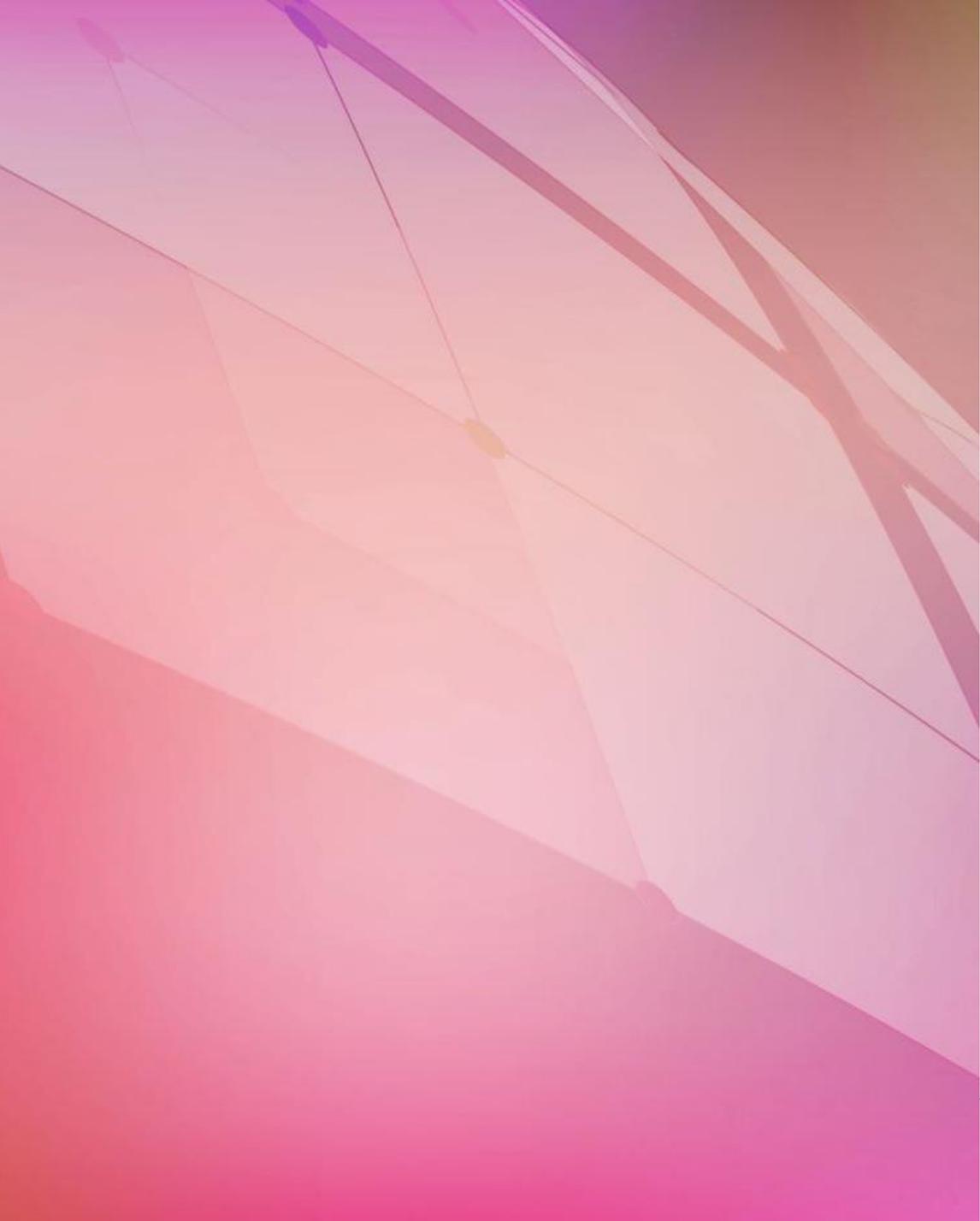
Access to information requires alignment between the different levels of rules, that is currently not there.

The EU policy paradigm for data regulation is changing to a focus on innovation.



Questions?

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