

Intermediaries do matter: voluntary standards and the Right to Data Portability

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data portability

- the ability of an individual to port his or her personal data from service A to service B

data portability

- strengthened control on personal data
- pro-competitive effects from the smoother flow of data
- reduced lock-in to platforms

YES,



data portability

- dangers for data security?
- burdensome costs for compliance?

BUT



© _yes_but

data portability in the GDPR

- Art. 20: «Right to Data Portability»
- three rights (De Hert et al. 2018):
 - to receive data concerning a data subject which he/she has provided
 - to transmit those data to another controller
 - to have personal data transmitted directly from one controller to another

Right to Data Portability's «grey areas»

- Art. 20(2): «right to have personal data transmitted directly from one controller to another, **where technically feasible**»

→ what does «technically feasible» mean?

Right to Data Portability's «grey areas»

- Recital 68: «[the] right to transmit or receive personal data... **should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible**»

→ data transfer: continuous or discrete basis?

Right to Data Portability's «grey areas»

- Art. 20(1): «The data subject shall have the right to receive the personal data concerning him or her, **which he or she has provided to a controller**»

→ unclear meaning of «provided»

Right to Data Portability's «grey areas»

- Art. 20(4): «the right... shall not adversely affect the **rights and freedoms of others**»

→ Graef et al. (2018): what balance with IP rights?

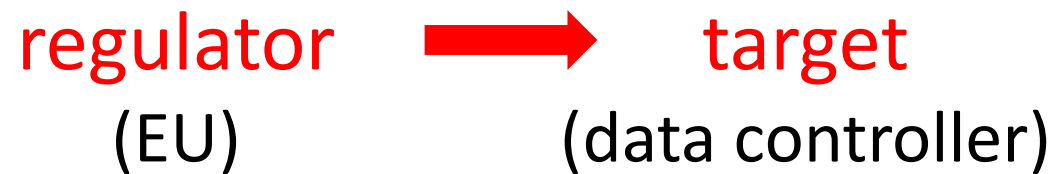
two channels of implementation

1. the choices connected to “grey areas” can be independently taken by data controllers:

regulator  target

two channels of implementation

1. the choices connected to “grey areas” can be independently taken by data controllers:



an example: the Qiy Scheme

- regulatory scheme settled by a non-profit foundation
- can be joined by non-state organisations
- judiciary, legislative and executive branches and rule enforcement procedures



Qiy Foundation

an example: the Qiy Scheme

- gives access to a standard of data sharing and portability
- requests compliance with data storage rules and limitations



Qiy Foundation

two channels of implementation

2. data controllers join one or more **voluntary regulatory schemes** to delegate some choices concerning the implementation of data portability



RIT model by Abbott, Levi-Faur and Snidal (2017)

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RIT model by Abbott, Levi-Faur and Snidal (2017)

voluntary regulatory schemes

- Abbott and Snidal (2010): **regulatory standard-setting schemes (RSS)**
 - non-legally binding standard of behaviour
 - applicable directly to private actors

research questions

- how many RSS schemes intermediating the Right to Data Portability do exist?
- what kind of actors govern them?

research questions

- how many RSS schemes intermediating the Right to Data Portability do exist? → dataset of schemes operating in the EU between 2000 and 2020
- what kind of actors govern them? → Governance Triangle model (Abbott and Snidal 2009)

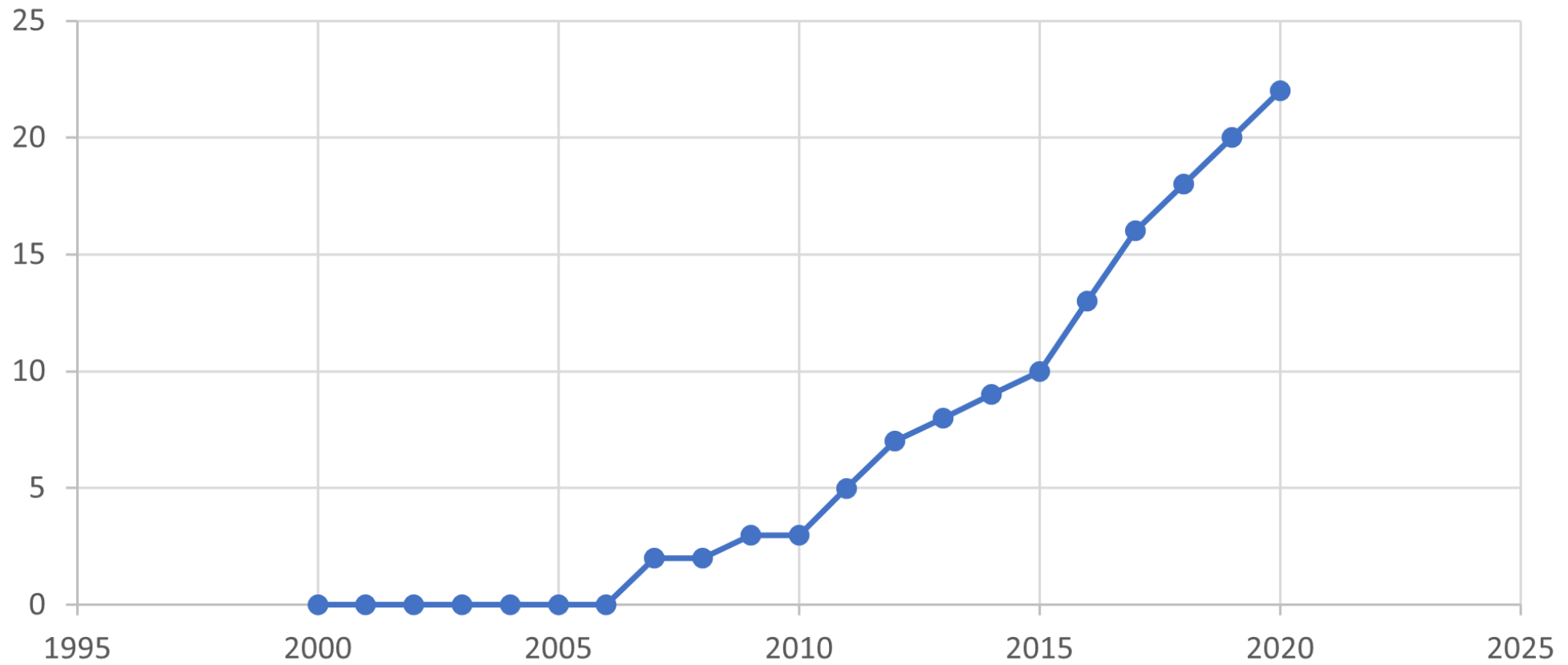
results/1

- 23 regulatory schemes found

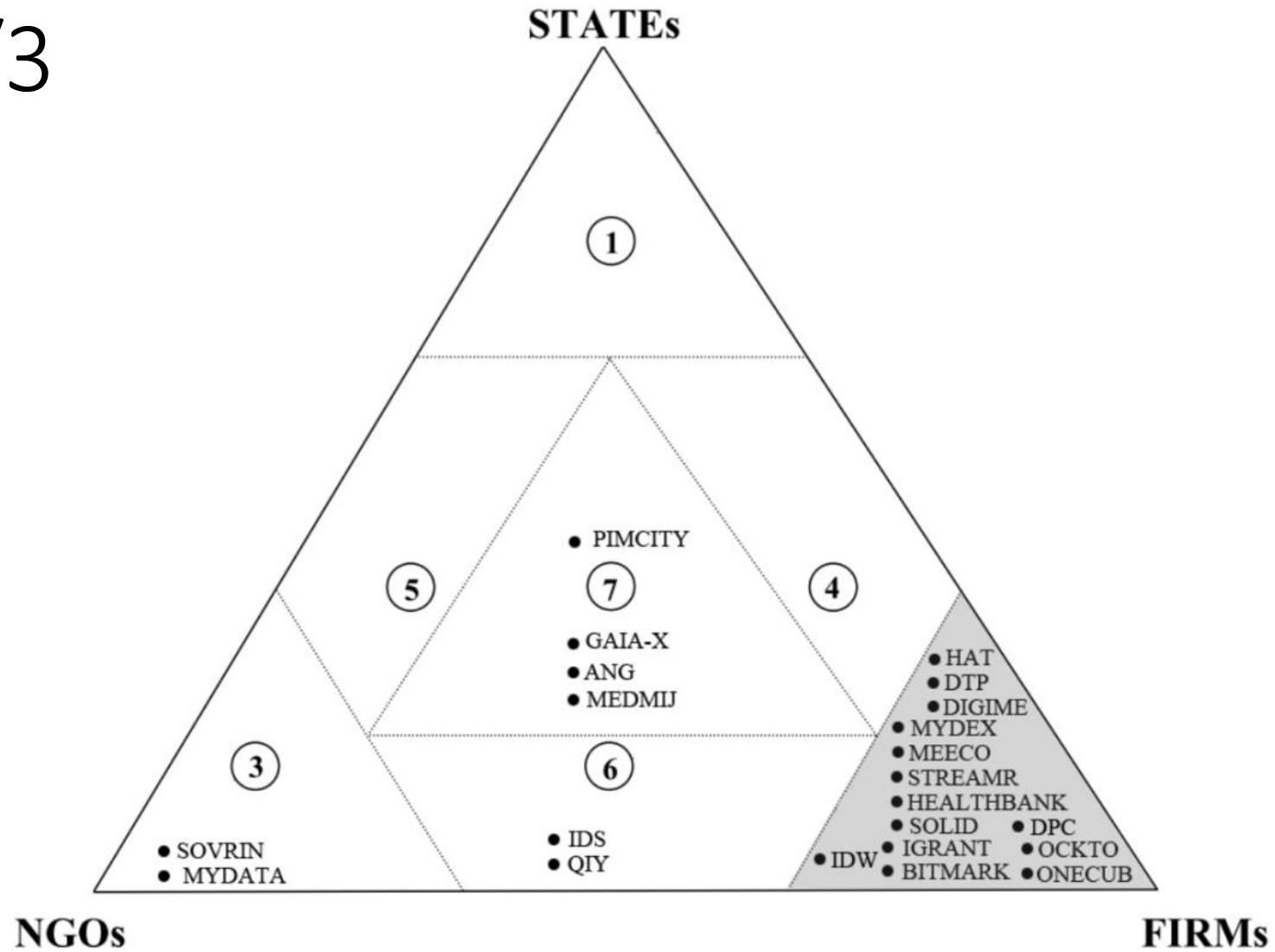
NAME	LIFE	PROMOTER	GOVERNANCE	SCOPE	SOURCES
aNewGovernance (ANG)	2018-	NGO	S+F+N	Global	[1]
Bitmark	2014-	Firm	F	Global	[1]
Data Portability Cooperation (DPC)	2019-	Firm	F	Global	[1]
Data Transfer Project (DTP)	2018-	Firm	F	Global	[1]
Digi.me	2009-	Firm	F	Global	[1]
GAIA-X	2019-	State	S+F+N	Regional	[1]
HAT-iDataswift (HAT)	2012-	Firm	F	Global	[1] [2]
HealthBank	2013-	Firm	F	Global	[1]
ID Ward (IDW)	2020-	Firm*	F	Global	[1] [2]

results/2

Number of data portability RSS schemes available in the EU

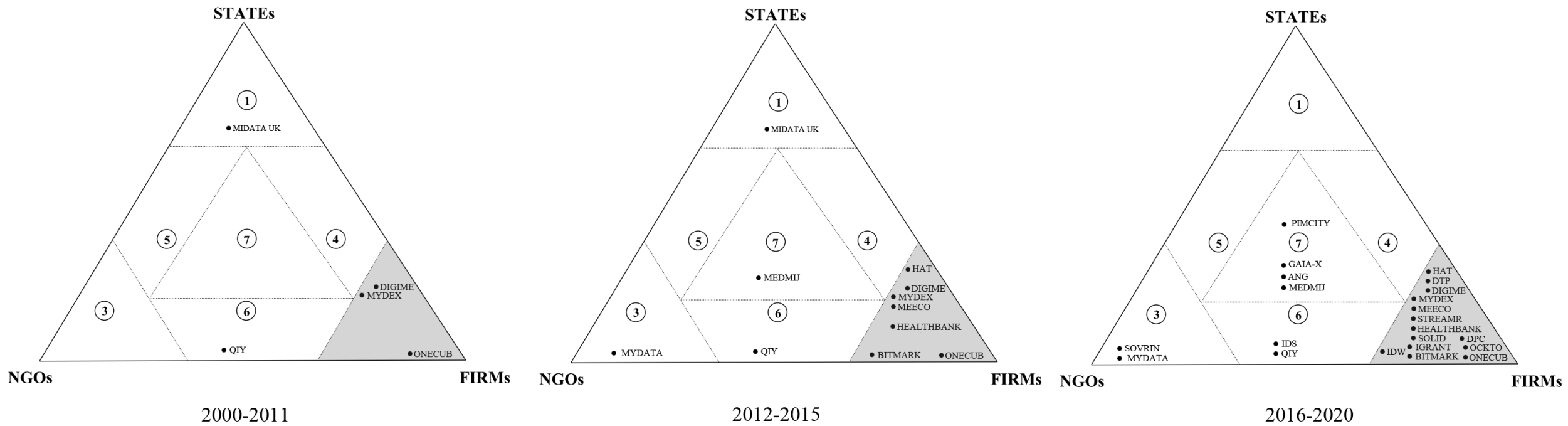


results/3



Governance Triangle on personal data portability in the EU in 2020

results/3



Evolution of the data portability Governance Triangle in EU

results/4

- the majority of schemes has global scope (they accept members without geographical limitation)
- dominance of firm-driven initiatives
- growing number of schemes
- no significant effect of GDPR adoption

conclusions/1

- regulation of data portability existed way before GDPR
- complementarity between public and private regulation
- necessity of accountability mechanisms?

conclusions/2

- Data Governance Act: provisions on “data sharing services” and “data altruism organisations” concern data portability RSS schemes
- further research:
 - qualitative impact on the implementation of the right
 - number of organisations participating in the RSS schemes

Thank you for the attention!

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