

KU Leuven Centre for IT & IP Law (CiTiP) – imec

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‘Data utility’ as an enabler of data spaces?

The circular economy as a case study

Ducuing, C. and Reich, R.H. - FSR Annual Conference, June 2022

**How can the developments in the data economy,
namely both data-driven business experience and legal developments,
inform the governance of Digital Product Passports (systems)?**

Governance

'Data public utilities'

Data space

Interdisciplinary research

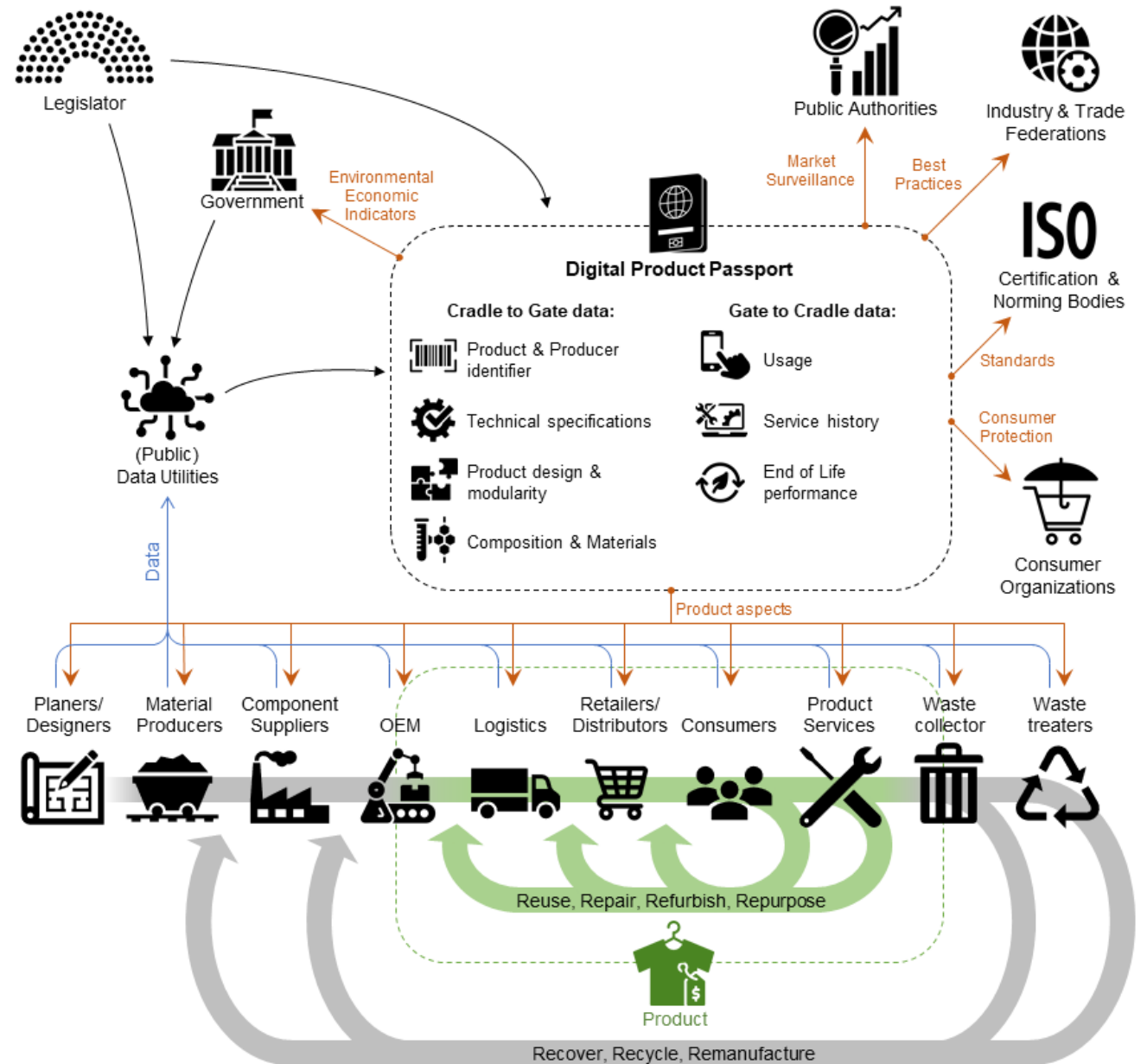
Structure

- **Introduction: DPPs at the intersection of the data and the circular economy**
- **DPPs from concept to materialization in law: an evaluation**
- **Data Public utilities**
- **Data public utilities for DPPs**

Introduction: DPPs at the intersection of the data and the circular economy

The notion of DPPs

- CE is a declared political goal
- DPPs should be a tool to close information gaps
- DPPs as one-stop shop for data coordination and information delivery
- How to realize DPPs?
 - Blockchains?
 - (centralized) Data bases?
 - Data spaces?

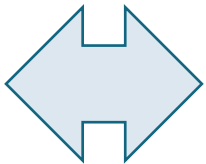


DPPs from concept to materialization in law: an evaluation

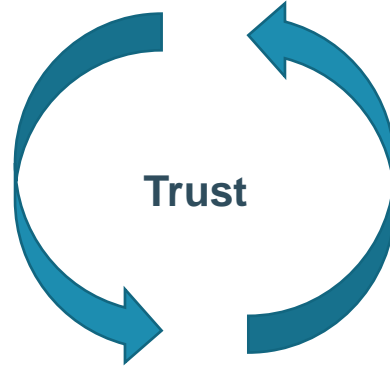
Challenges arising with DPPs

1

Open access to data

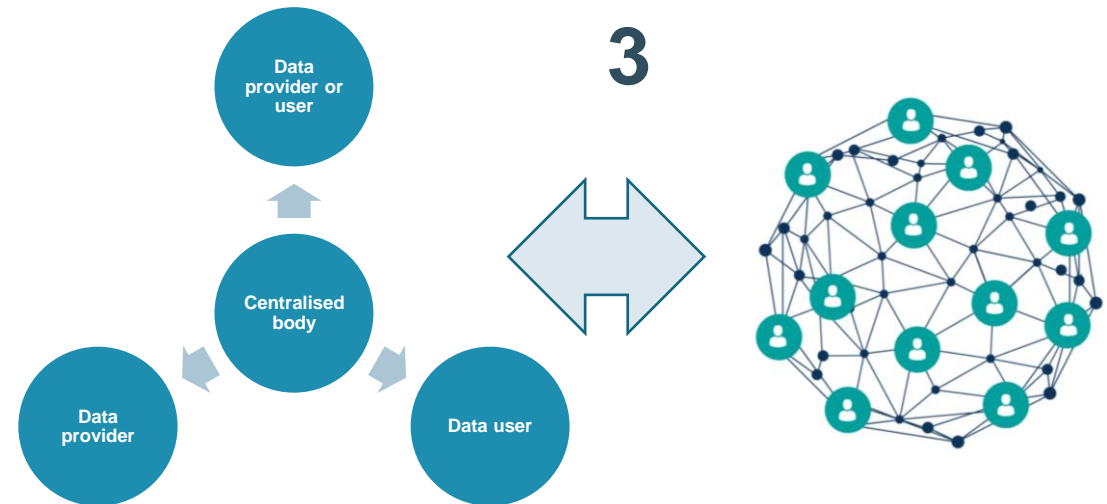


Protection of 'data' (pers., IPR, trade secrets)

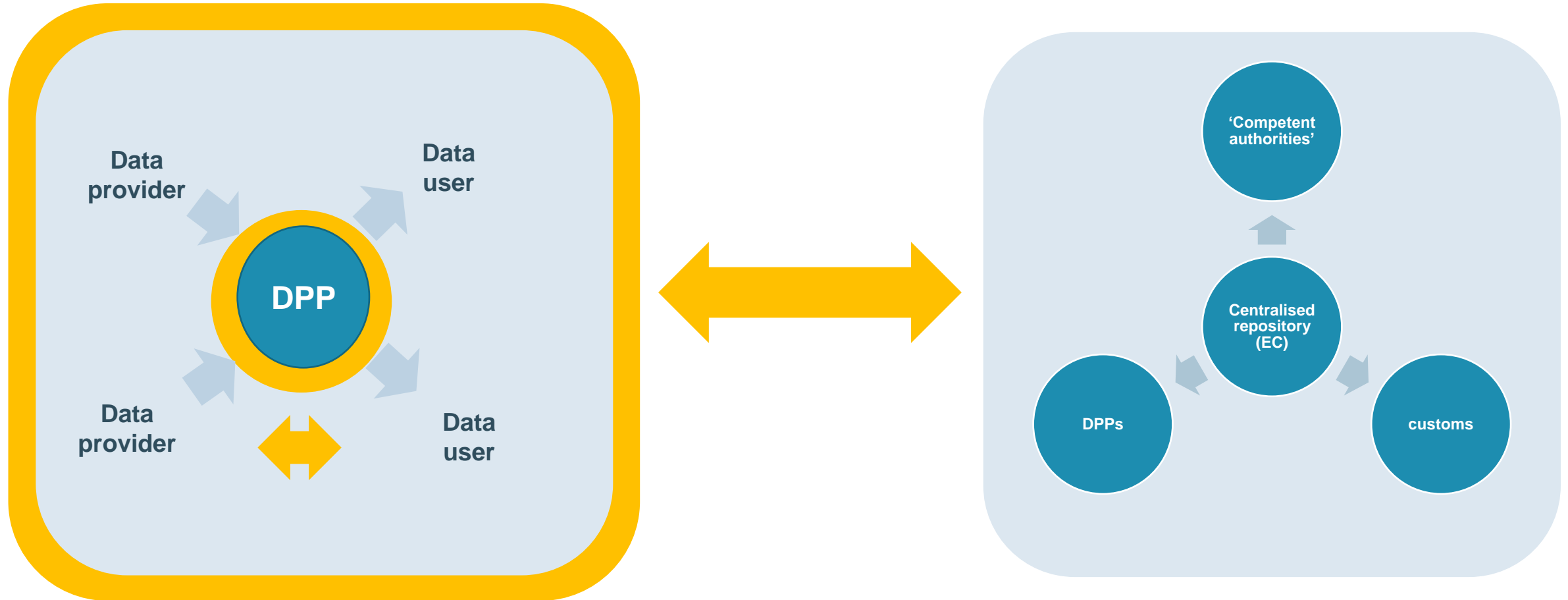


2

3



A critical analysis of the legislative proposals



Identification of objectives applicable to DPPs (systems) and to governance

- Should allow for a broad range of data-related activities to be conducted in a **flexible** manner, which is **adaptable** to its environment
- Should recognize and enable **coordination** and **intermediation tasks**, which lie at the core of DPP systems
- Should ensure data & information quality and suitability of D&I with the respective needs → **CE** and **data professionalism + enforcement** mechanisms
- Should reflect and embed the **CE objectives**
 - Political project...
 - ... to channel the economy towards the **general interest**...
 - ... based on the **market economy**

Data Public utilities

'Public utility'

i.e., French “Service public industriel et commercial” (SPIC)

1. Public service

- i. (Political) decision to assume control over the satisfaction of a need deemed of general interest
- ii. For which private initiative is inappropriate / insufficient

2. Public service principles

- i. Equality / non-discrimination
 - ii. Continuity
 - iii. Accessibility
 - iv. Neutrality
 - v. Transparency
 - vi. Trust(worthiness)

3. Industrial or commercial

(>< administrative SPA)

Economic (to some extent) object, financing and operation

Data Public utility

1. Explicit involvement of States in the data economy

- Data-related public services
- E.g. Belgium, France, ...



2. Online platforms as infrastructure that should be regulated as public utilities?

- Scholarly discussion (Rahman, 2018; Montero & Finger, 2021; Busch 2021)
- PU as a normative construct

3. Actors increasingly regulated, essentially, as public utilities

- DGA, Chapter II – public data intermediaries
- DGA, Chapter III – private data intermediaries
- PU as an implicit legal source

Data public utilities for DPPs

Lessons learned from data public utilities

New upsurge of 'public utility' with data & the digital environment

- Illustrates the change in the political agenda wrt the digital environment

The lessons learned from the history of PSBs' data sharing obligations

- Infrastructure as a set of relations, processes, and imaginations" (Kingsbury, 2019)

Data intermediation as an activity increasingly deemed of general interest

- Various types of data, data providers, users, purposes
- Platform as a governance model?

	Data space Legislative proposals model	Data (space) public utility	Blockchain technology
Flexibility and adaptability	unclear in the current proposal	through public-private logic	inflexible (public BC), flexible (private BC)
Coordination and intermediation	very complex through regulation	designed to provide intermediation services	no balancing (public BC), balancing of interests (private BC)
Trust	conflicts through the dual role as regulator and platform operator	independence positively affects trustworthiness	trust (public BC), limited trust (private BC)
Data professionalism	no (maybe in the medium run)	by entrusting a private actor in the field	N/A
General interest	EC is legally bound to serve the general interest	(purely) private business case vs. regulation with compensation	High energy demand might undermine the sustainability goal
Market-likeness	EC is alien to market-likeness	public utilities can operate as economic players	BC could be market-based operated

Conclusions

- **Governance of DPPs should be adaptable and flexible and should allow for a contextual balancing of the legitimate interests of the stakeholders**
- **Data public utilities are mainly entrusted with data intermediation tasks**
- **Conceptual match between the governance elements needed for DPPs and what (data) public utilities can deliver**
- **Further research necessary on:**
 - **Search for an overall framework for DPPs and the role of data public utilities therein**
 - **analysis of the legitimacy of the EC to regulate DPPs**
 - **emergence and regulation of data(-related) public utilities**

Thank you for your attention!

Do you have any questions or comments?

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