

Bird & Bird

Legal strategies for a well-structured agricultural data space

Digital Transformation of the Agricultural Value Chain – Opportunities, Challenges and the Role of Science

Track 2 – Governance for Agricultural Data

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Overview



- European Strategy for Data
- International Data Spaces Association – designing the data economy
- Some further examples
- Conclusion

European Strategy for Data

European Strategy for Data (19 Feb 2020)

- Governance framework for data access and use (Data Act in 2021)
- EU rules and values respected
- Investments in Europe's data capabilities and infrastructures
- Competences and skills of individuals and SMEs
- **Common European data spaces in nine strategic areas** such as **agricultural**, industrial manufacturing, mobility, health, and energy sectors

Common European agriculture data space

- Neutral platform for sharing and pooling agricultural data
- Enhance the sustainability performance and competitiveness of the agricultural sector
- Processing and analysis of production and other data (e.g. earth observation or meteorological data) for precise and tailored application of production approaches at farm level

Further EU guidance

- Declaration of cooperation "A smart and sustainable digital future for European agriculture and rural areas" (see https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=58563)
- Code of conduct for sharing agricultural data by contractual agreement (2018) (see https://www.ecpa.eu/sites/default/files/document_s/AgriDataSharingCoC_2018.pdf)



- 110 members from more than 20 different countries
- Started in Germany, regional IDS Hubs in the Czech Republic, Finland, France, Greece, Italy, the Netherlands, and Spain
⇒ A true European initiative
- IDSA and its member organizations participate in more than 20 European research projects, mainly in the **Horizon 2020 program**
- Integral part of **GAIA-X** ⇒ "Federated Data Infrastructure for European Ecosystems"

Communities

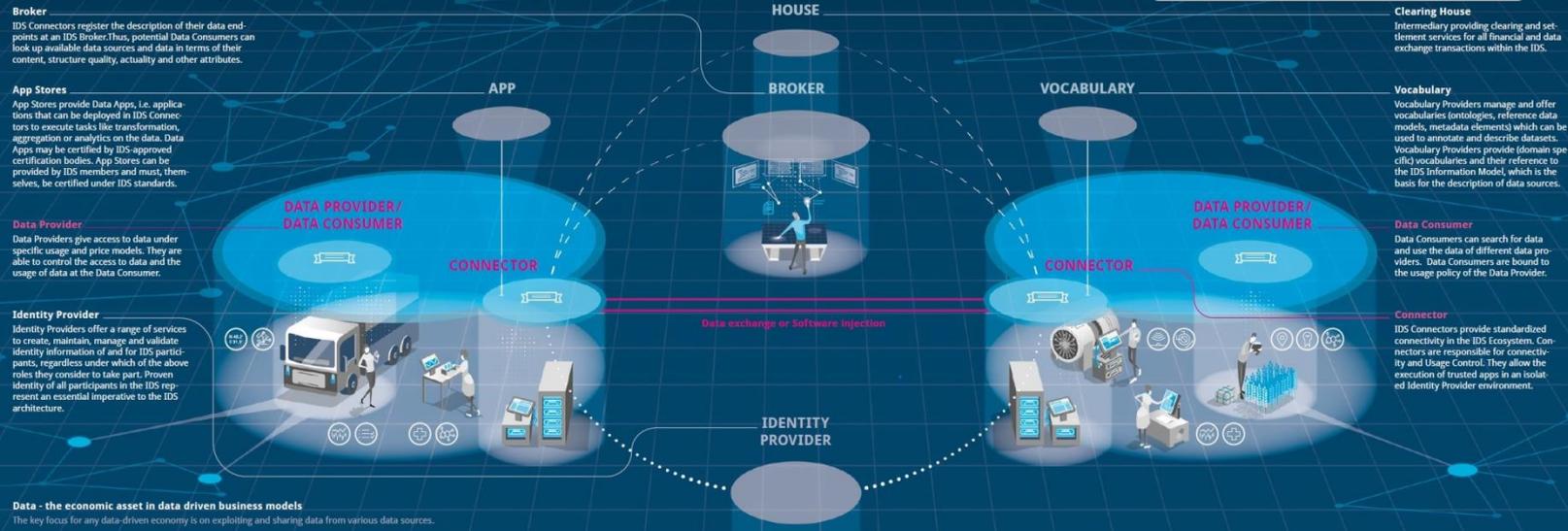
- Validate and proliferate IDS approach, technology and eco-system
- Continuous development of IDS Reference Architecture based on practical experience

COMMUNITIES



Service platforms

Smart Services



Connected physical platforms

Smart Products

Technological infrastructure

Smart Spaces

INTERNATIONAL DATA SPACES ASSOCIATION – Key principles



Reference Architecture Model

- Requirements for secure and trusted data exchange in business ecosystems
- 4 partial architectures:
 - Business architecture
 - Data and service architecture
 - Software architecture
 - Security architecture

IDS Connector

- Central technical component
- Secure data exchange and data sharing

Certification

- Compliance with IDS standards
- IEC 62443, ISO 27001



Participant
Certification

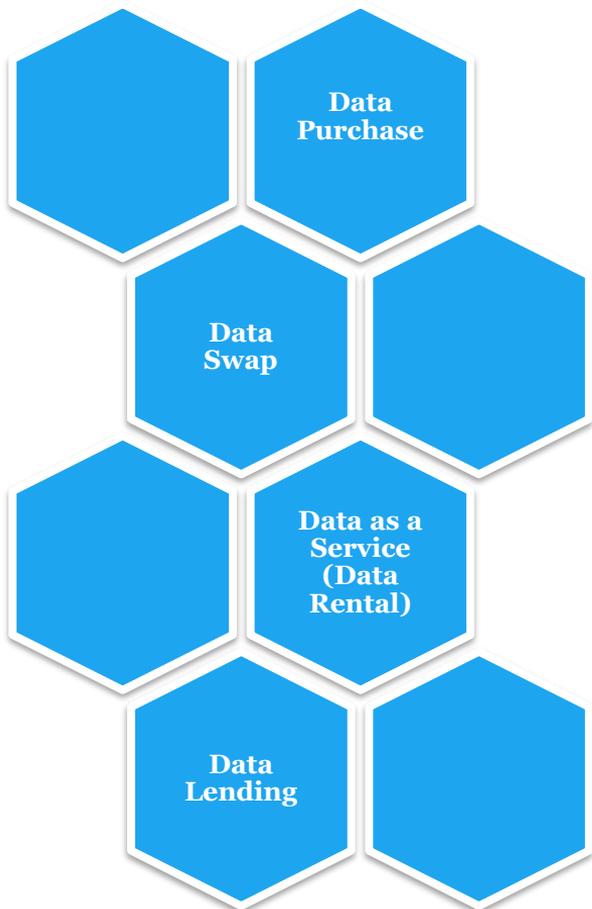


Digital
Certificate



Technical
Certification

The landscape for data contracts



	Data Purchase	Data Swap	Data as a Service (Data Rental)	Data Lending
Contractual model	Transfer of data against one-off payment	Transfer of data without monetary consideration (e.g. data as consideration)	Transfer of data in return for a monthly fee; indefinite until notice of termination or specific contract term	Transfer of data without any monetary or other form of consideration (e.g. data, feedback reports, etc. as consideration)
Duration	Indefinite contract term	Indefinite contract term	Indefinite until notice of termination or expiration of specific contract term	Indefinite until notice of termination or expiration of specific contract term
Usage rights	<ul style="list-style-type: none"> • Exclusive or non-exclusive • Geographically limited or unlimited • Restriction to agreed usage purposes 	<ul style="list-style-type: none"> • Exclusive or non-exclusive • Geographically limited or unlimited • Restriction to agreed usage purposes 	<ul style="list-style-type: none"> • Exclusive or non-exclusive • Geographically limited or unlimited • Restriction to agreed usage purposes 	<ul style="list-style-type: none"> • Exclusive or non-exclusive • Geographically limited or unlimited • Restriction to agreed usage purposes
Licensing duration	Perpetual/ unlimited in time	Perpetual/ unlimited in time	Temporary (end of licensing by termination or expiration of specifically agreed contract term)	Temporary (end of licensing by termination or expiration of specifically agreed contract term)
Sublicensing	<ul style="list-style-type: none"> • Sublicensable subject to contractual qualification, OR • prohibition of sublicensing 	<ul style="list-style-type: none"> • Sublicensable subject to contractual qualification, OR • prohibition of sublicensing 	<ul style="list-style-type: none"> • Sublicensable subject to contractual qualification, OR • prohibition of sublicensing 	<ul style="list-style-type: none"> • Sublicensable subject to contractual qualification, OR • prohibition of sublicensing
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Sui generis right of database maker	<ul style="list-style-type: none"> • Data Consumer's general prohibition to reproduce, distribute and publish significant parts of database • The same applies to repeated and systematic actions with regard to insignificant parts of database • Parties are free to agree otherwise 	<ul style="list-style-type: none"> • Data Consumer's general prohibition to reproduce, distribute and publish significant parts of database • The same applies to repeated and systematic actions with regard to insignificant parts of database • Parties are free to agree otherwise 	<ul style="list-style-type: none"> • Data Consumer's general prohibition to reproduce, distribute and publish significant parts of database • The same applies to repeated and systematic actions with regard to insignificant parts of database • Parties are free to agree otherwise 	<ul style="list-style-type: none"> • Data Consumer's general prohibition to reproduce, distribute and publish significant parts of database • The same applies to repeated and systematic actions with regard to insignificant parts of database • Parties are free to agree otherwise
Usage types	Known and unknown types of use depending on contractual restriction	Known and unknown types of use depending on contractual restriction	Known and unknown types of use depending on contractual restriction	Known and unknown types of use depending on contractual restriction

Getting started – things to consider

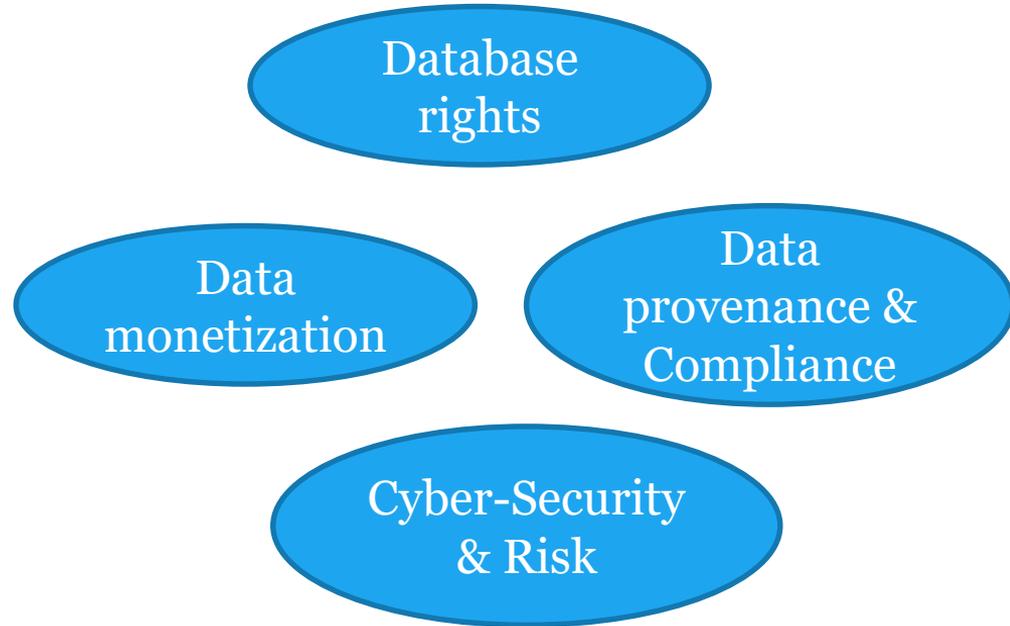


Data Provider (= data licensor)

- Data licensing 1:1 and 1:n
- Paid / free of charge?
- Purchase, swap, rental, lending?
- Warranties for data quality?
- Risk and limitation of liability

Data Consumer (= data licensee)

- Designated usage rights
- Exploitation – AI training
- Onward licensing
- Indemnities for data compliance issues



iSHARE – a consorted data sharing platform

- Started in 2016, available since July 2018
- Improve exchange of data between organisations in Dutch logistics sector
- Low entry barriers for data sharing
- Empower new forms of collaboration in chains
- Active data input from **Hutchison Ports ECT Rotterdam** and **Port of Rotterdam**
- International Data Spaces Association and iSHARE join forces in accelerating implementation of data sovereignty in Europe

INTERNATIONAL DATA
SPACES ASSOCIATION



iSHARE



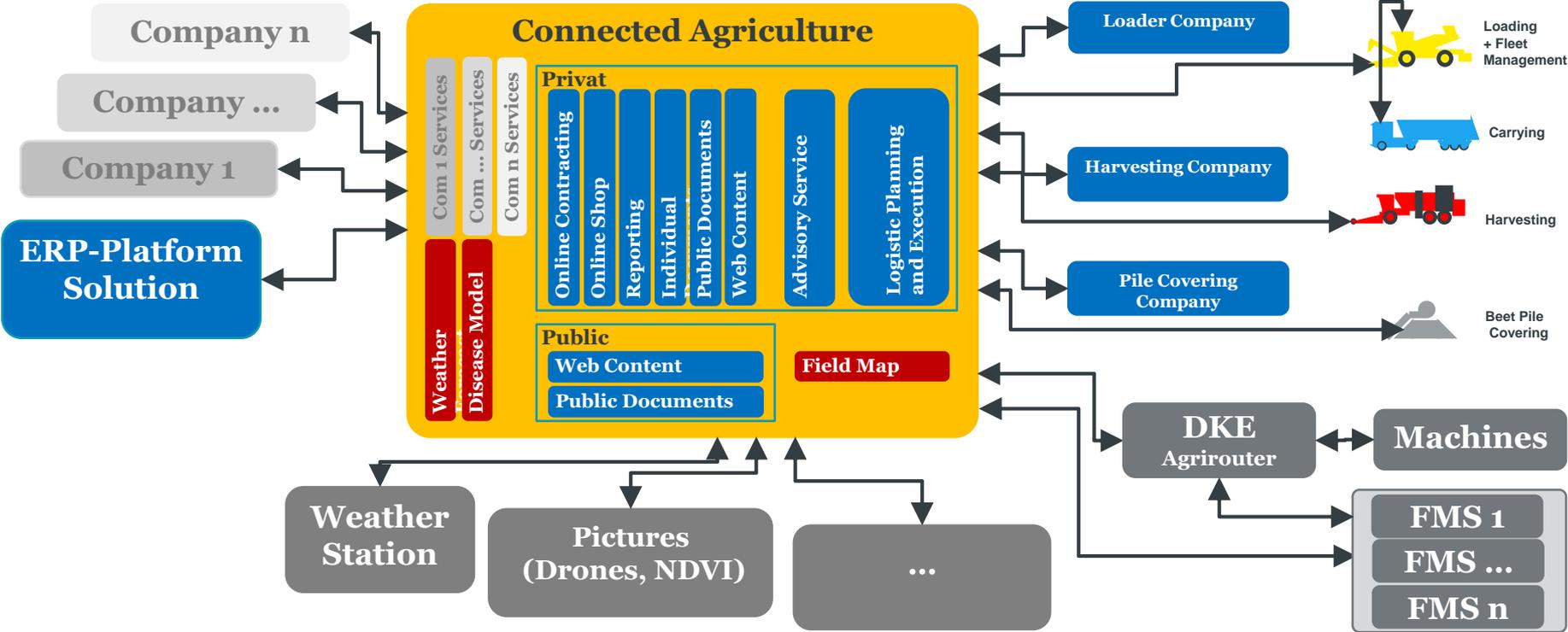
Port of Rotterdam | Digital LAB

Digital services to optimise port operations and the supply chain



HUTCHISON PORTS
ECT ROTTERDAM

Connected Agriculture – a corporate example of an European solution provider



Conclusion



- High demand and great potential for data spaces
- Benefits of confederated approach
- Framework to include
 - Reference architecture
 - Certifications
 - Template contracts
- Robust Cyber-Security

"Very well known among peers for his wide-ranging expertise in technology matters [...] excels at advising clients on a variety of contentious and non-contentious technology-related issues."

- Who's Who Legal, 2020

"Alexander Duisberg impresses peers with his broad practice and comes highly recommended for his work in IT, data protection and digitalisation. Market commentators say, 'He has an excellent profile and is a great all-rounder'."

- Who's Who Legal, 2019

Thank you & Bird & Bird



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