

Data Act Sachstand

David Schönwerth

Stand 08. November 2024

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Data Act – Timeline

**KOM
Entwurf**
23/02/22

**Rat
Mandat**
17/03/23

Inkrafttreten (OJEU + 20 Tage)
11/01/24
(OK: EP 09/11/23, Rat 27/11/23; OJEU Veröffentlichung
22/12/23)

2022

2023

2024

2025

2026

FR PR

CZ PR

SW PR

ES PR

BE PR

HU PR

PL PR

DK PR

EP Mandat
14/03/23

**Trilog
Prov. Einigung**
Juni 2023

Grundsätzliche Übergangszeit **20 Monate**

**Grds. Anwendbarkeit^{1,2,3} ab
12. September 25**

Die Verpflichtung gemäß Artikel 3 Absatz 1 gilt für vernetzte Produkte und die mit ihnen verbundenen Dienste, die nach dem 12. September 2026 in Verkehr gebracht wurden.

Kapitel III gilt nur in Bezug auf Datenbereitstellungspflichten nach dem Unionsrecht oder nach im Einklang mit Unionsrecht erlassenen nationalen Rechtsvorschriften, die nach dem 12. September 2025 in Kraft treten.

Kapitel IV gilt für Verträge, die nach dem 12. September 2025 geschlossen wurden.

Kapitel IV gilt ab dem 12. September 2027 für Verträge, die am oder vor dem 12. September 2025 geschlossen wurden, sofern a) sie unbefristet sind oder b) ihre Geltungsdauer frühestens 10 Jahre nach dem 11. Januar 2024 endet.

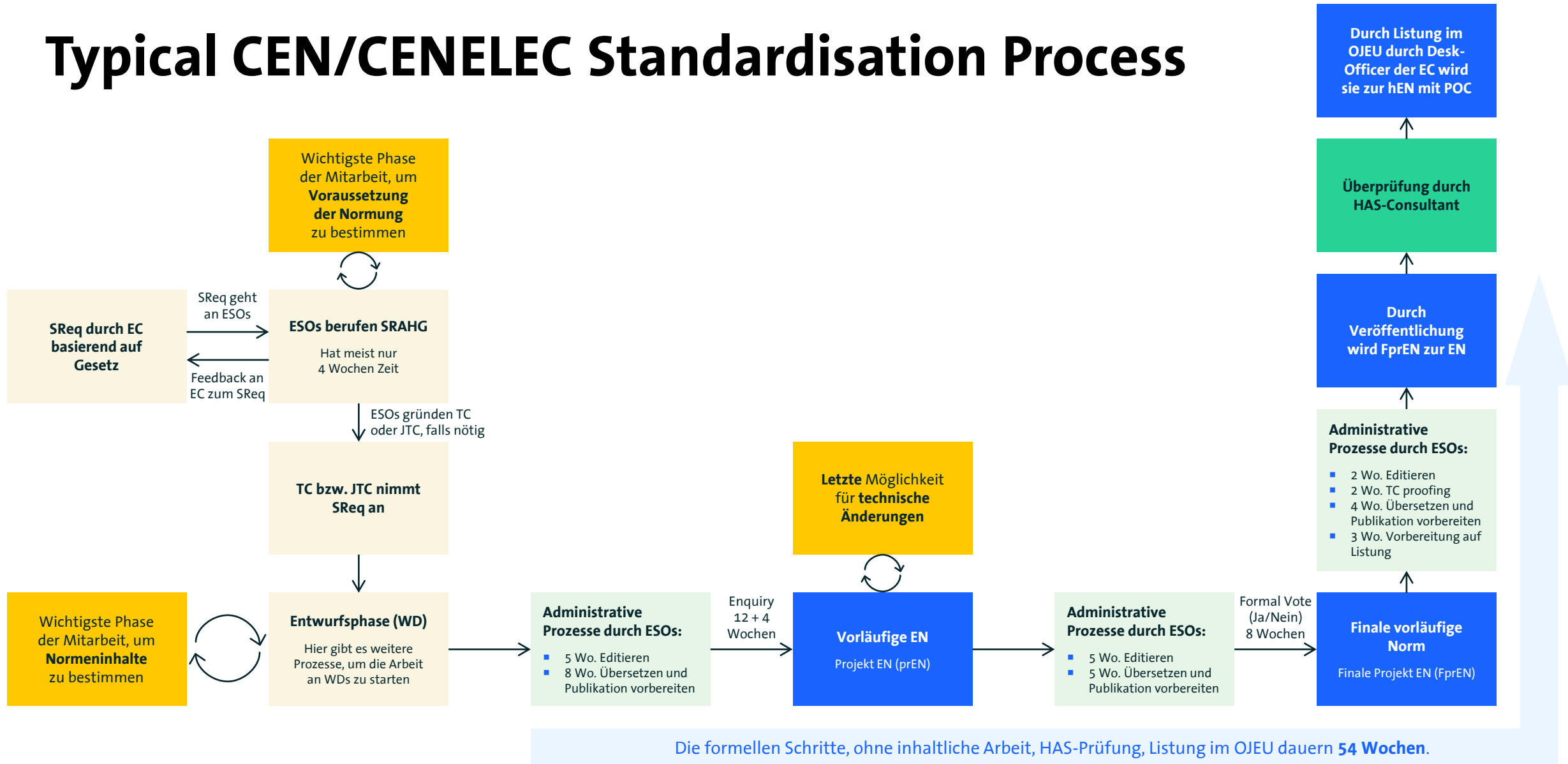
¹ Siehe insbesondere Artikel 50 Data Act für Stichtage.

² Hier und in diesem Dokument im Allgemeinen nicht berücksichtigt ist die (streitige) zeitliche Anwendbarkeit von Artikel 29 (2) Data Act. Der Bitkom trifft keinerlei Aussage zur zeitlichen Anwendbarkeit von Artikel 29 (2) Data Act. Zitat Art. 29 (2) Data Act: "Vom 11. Januar 2024 bis zum 12. Januar 2027 dürfen Anbieter von Datenverarbeitungsdiensten bei den Kunden für den Vollzug des Wechsels ermäßigte Wechselentgelte erheben."

³ Hier und in diesem Dokument im Allgemeinen nicht berücksichtigt ist die (streitige) zeitliche Anwendbarkeit von Artikel 45 (2) Data Act. Der Bitkom trifft keinerlei Aussage zur zeitlichen Anwendbarkeit von Artikel 45 (2) Data Act. Zitat Art. 45 (2) Data Act: "Die Befugnis zum Erlass delegierter Rechtsakte gemäß Artikel 29 Absatz 7 und Artikel 33 Absatz 2 wird der Kommission auf unbestimmte Zeit ab dem 11. Januar 2024 übertragen."

Owner	Deliverable	Status
EU KOM	Data Act Explained Factpage	Verfügbar
EU KOM	EU KOM Data Act FAQ Document	V1.1 Verfügbar
EU KOM + CEN/CENELEC/ETSI	Art 33 Operationalisierung („Data Spaces“)	Draft Standardisation Request fertig Diskutiert in SHRAG Feedback an EU KOM gespiegelt Final SRep bis Ende 2024 erwartet („Data Spaces“), see DA FAQ V1.1 question 70.
EU KOM + CEN/CENELEC/ETSI (?)	Art. 35 (?) („Data Processing Services“)	Unklar
		?
EU KOM + CEN/CENELEC/ETSI (?)	Art. 36 (?) („Smart Contracts“)	Unklar
EU KOM	Guidelines Art. 32 (3) last sentence („intl data transfers“)	Unklar
Expert Group on B2B Data Sharing and Cloud Computing Contracts	Model Contractual Terms + Standard Contractual Clauses	6 webinars 06/11/24 – 05/12/24
EU KOM + EDIB	Reasonable compensation guidance	After 12/09/25, see DA FAQ V1.1 question 69.
BReg	Durchführungsgesetz, insb. Aufsichtsbehörden Gebühren, Strafen Streitbeilegungsstelle	

Typical CEN/CENELEC Standardisation Process



SReq: Standardisation Request (Normungsanfrage)
ESOs: Europäische Standardisierungsorganisationen (CEN/CENELEC)
SRAHG: Standardisation Request Ad Hoc Group

TC: Technical Committee (AA – Arbeitsausschuss)
JTC: Joint Technical Committee (GA – Gemeinschaftsausschuss)
WD: Working Draft

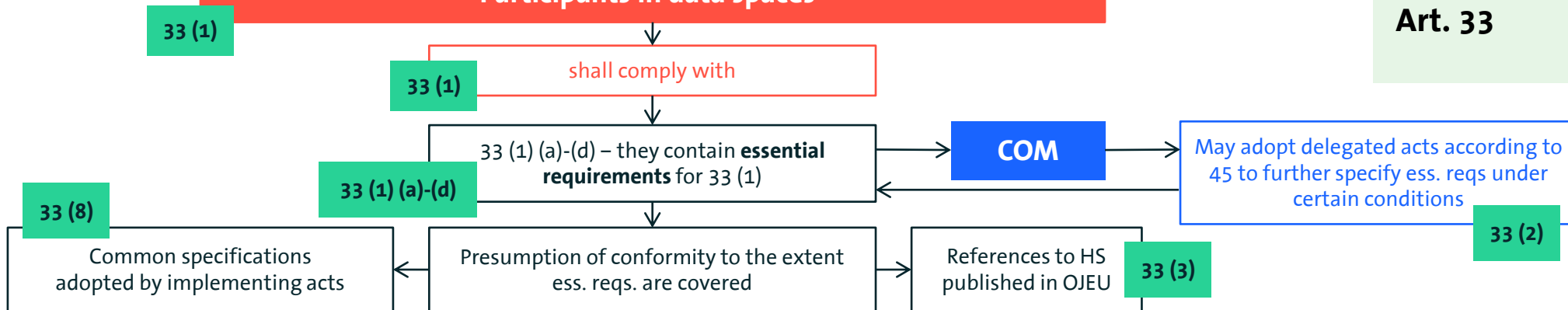
EN: Europäische Norm
hEN: harmonisierte Europäische Norm
prEN: Project EN
FprEN: Finale Projekt EN

HAS-Consultant: Harmonised Standards Consultant
OJEU: Official Journal of the EU (Amtsblatt der EU)
POC: Presumption of Conformity

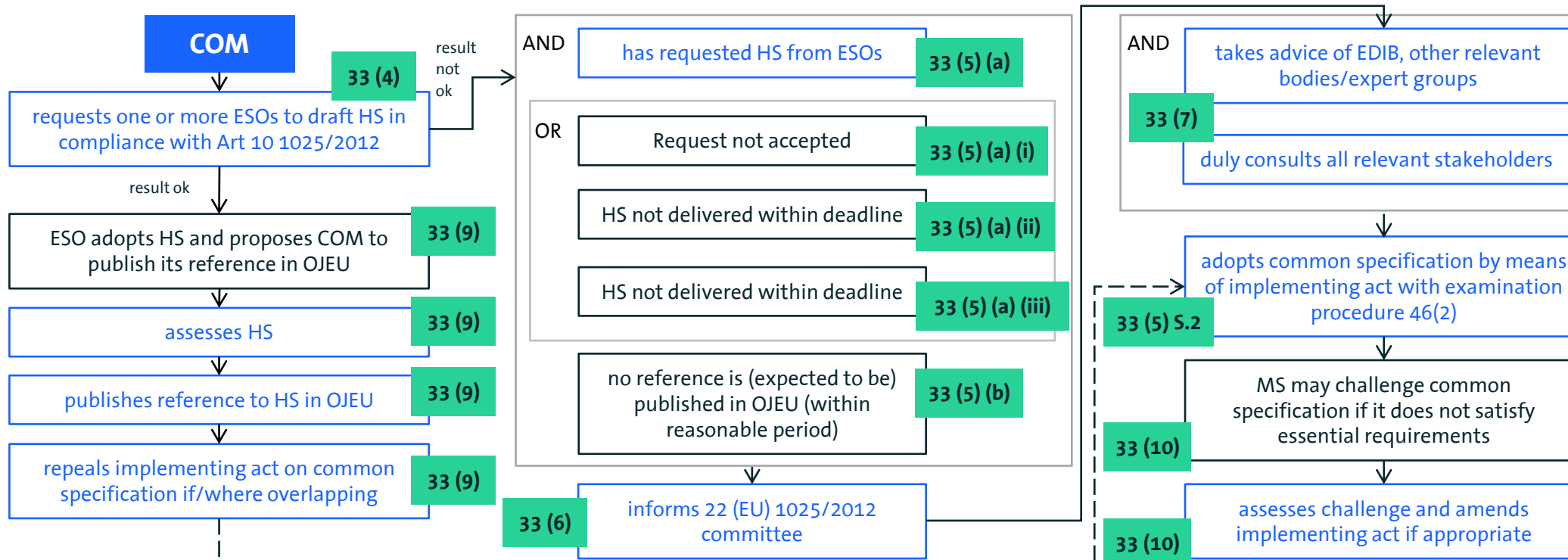
Participants in data spaces²

Art. 33

What is the obligation?



What may COM do to operationalize?

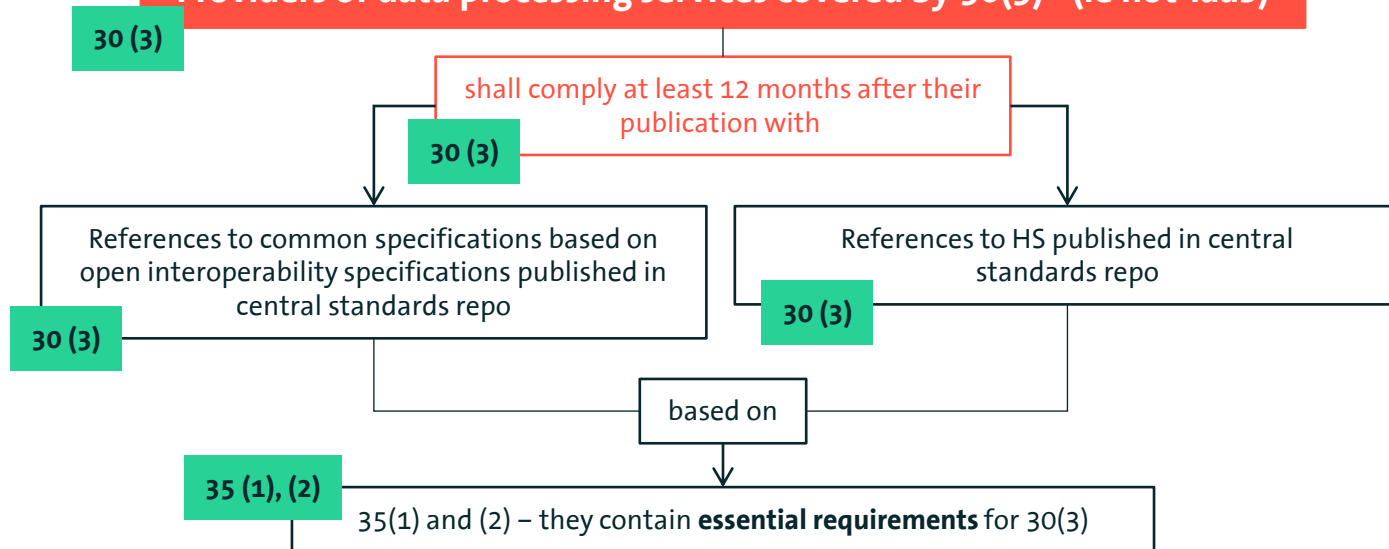


²»Participants in data spaces that offer data or data services to other participants shall comply with the following essential requirements to facilitate the interoperability of data, of data sharing mechanisms and services, as well as of common European data spaces which are purpose- or sector-specific or cross-sectoral interoperable frameworks for common standards and practices to share or jointly process data for, inter alia, the development of new products and services, scientific research or civil society initiatives: [...]« (Art. 33 (1))

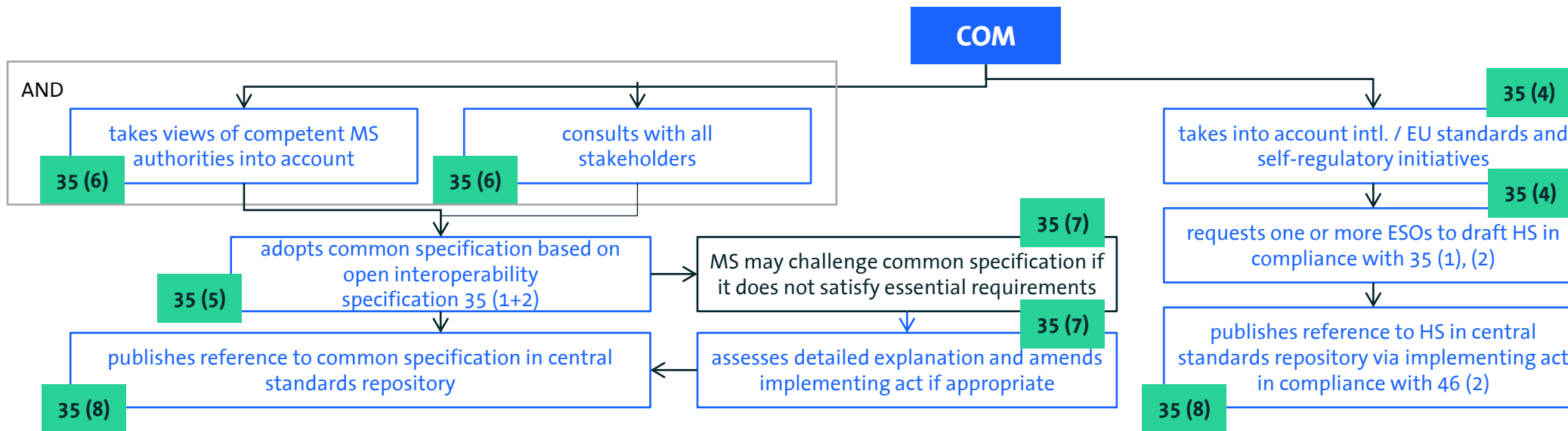
Providers of data processing services covered by 30(3)¹ (ie not-iaaS)

**Art. 30 (3) +
Art. 35**

What is the obligation?

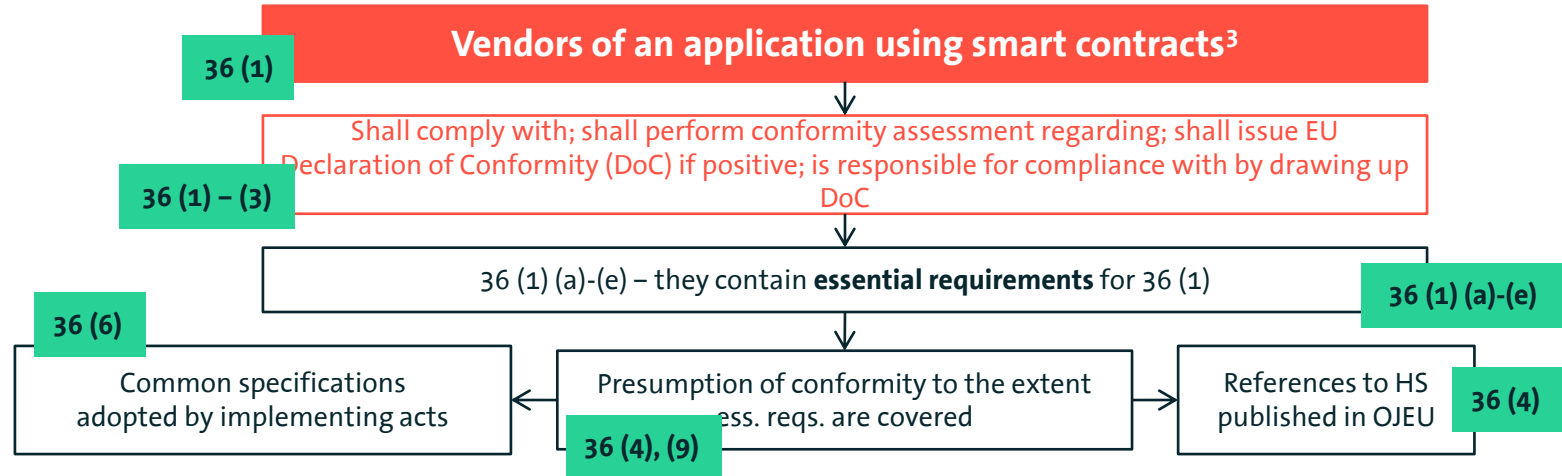


What may COM do to operationalize?

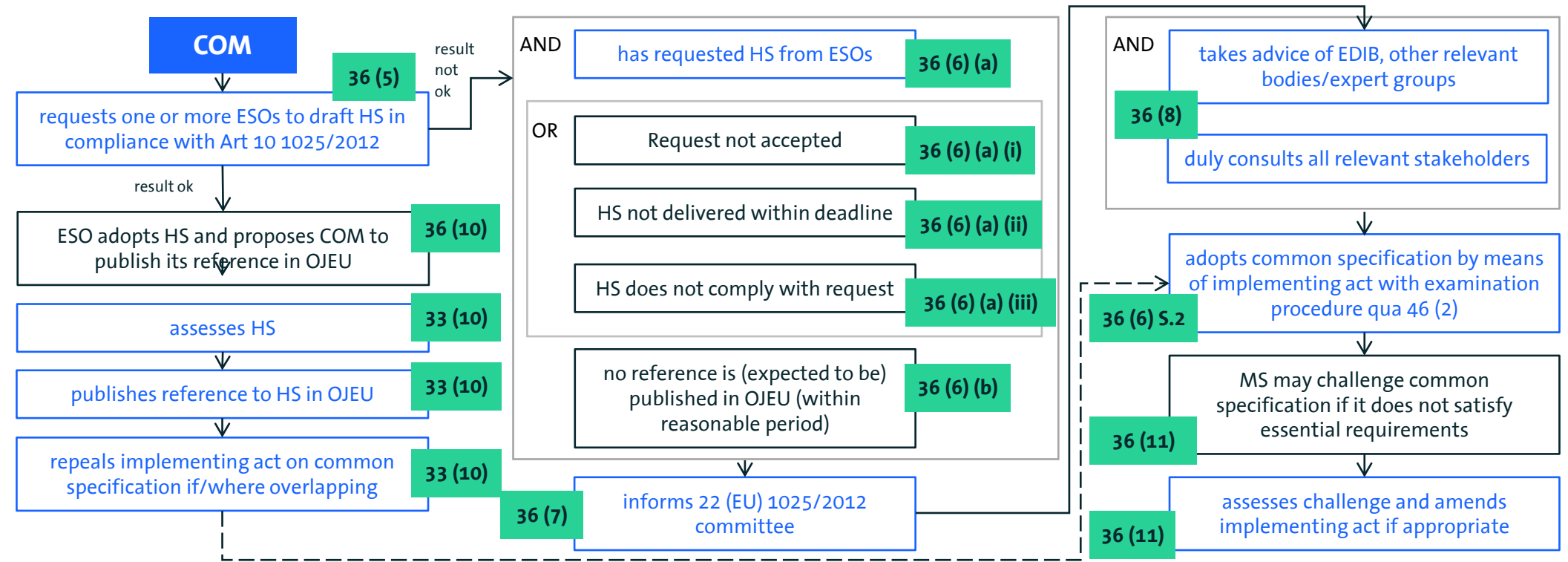


¹ »For data processing services other than those referred to in paragraph 1 of this Article [para 1: »Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall [...]«, providers of data processing services shall ensure [...] « (Art. 30 (3)).

What is the obligation?



What may COM do to operationalize?



³ »The vendor of an application using smart contracts or, in the absence thereof, the person whose trade, business or profession involves the deployment of smart contracts for others in the context of executing an agreement or part of it, to make data available shall ensure [...]« (Art. 36 (1)).

Contact

Bitkom e. V.
Albrechtstraße 10
10117 Berlin

bitkom.org



David Schönwerth

Head of Data Economy
d.schoenwerth@bitkom.org
T 030 27576-179

Bitkom vertritt mehr als 2.000 Mitgliedsunternehmen aus der digitalen Wirtschaft. Sie erzielen allein mit IT- und Telekommunikationsleistungen jährlich Umsätze von 190 Milliarden Euro, darunter Exporte in Höhe von 50 Milliarden Euro. Die Bitkom-Mitglieder beschäftigen in Deutschland mehr als 2 Millionen Mitarbeiterinnen und Mitarbeiter. Zu den Mitgliedern zählen mehr als 1.000 Mittelständler, über 500 Startups und nahezu alle Global Player.

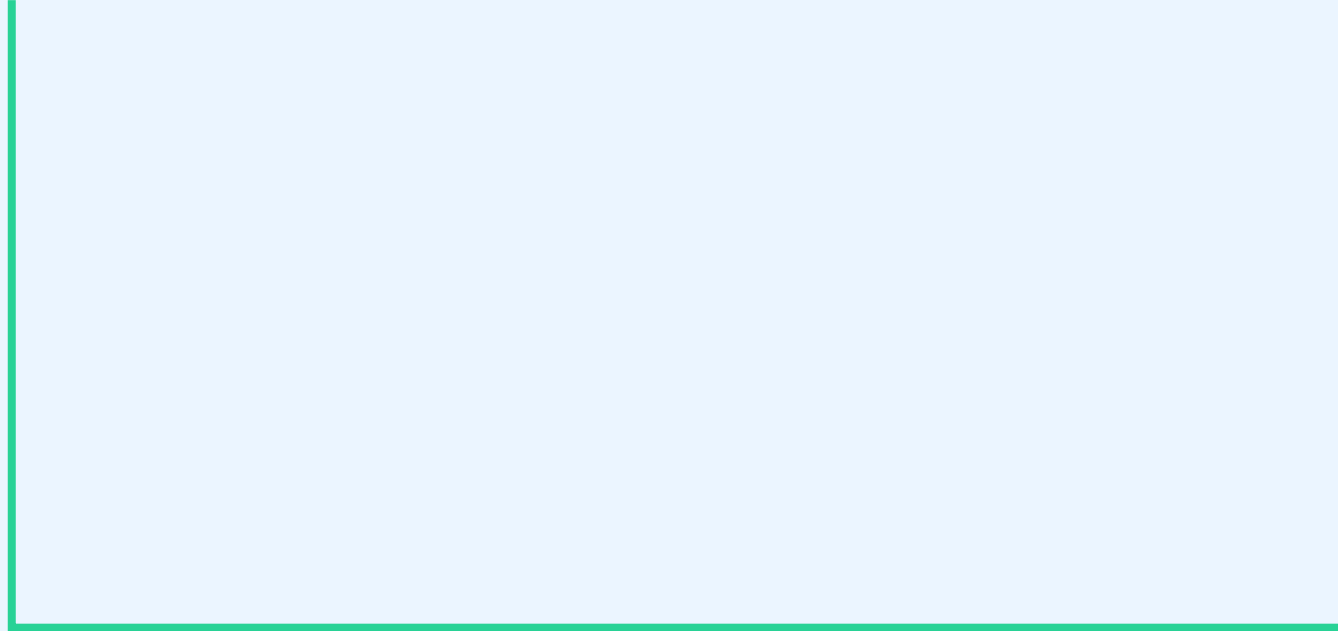
Bitkom e. V.
Albrechtstraße 10
10117 Berlin

T 030 27576-0
bitkom@bitkom.org

[bitkom.org](https://www.bitkom.org)

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Annex



Selected aspects of EU Data Strategy

Data Governance Act

In Force, applicable from Sep 23

Incl Data Intermediation Services;
fair conditions

Data Act

In Force, generally applicable from Sep 25

Incl Data Sharing, fair conditions,
interoperability

ODD: Impl. Act on High-Value Datasets

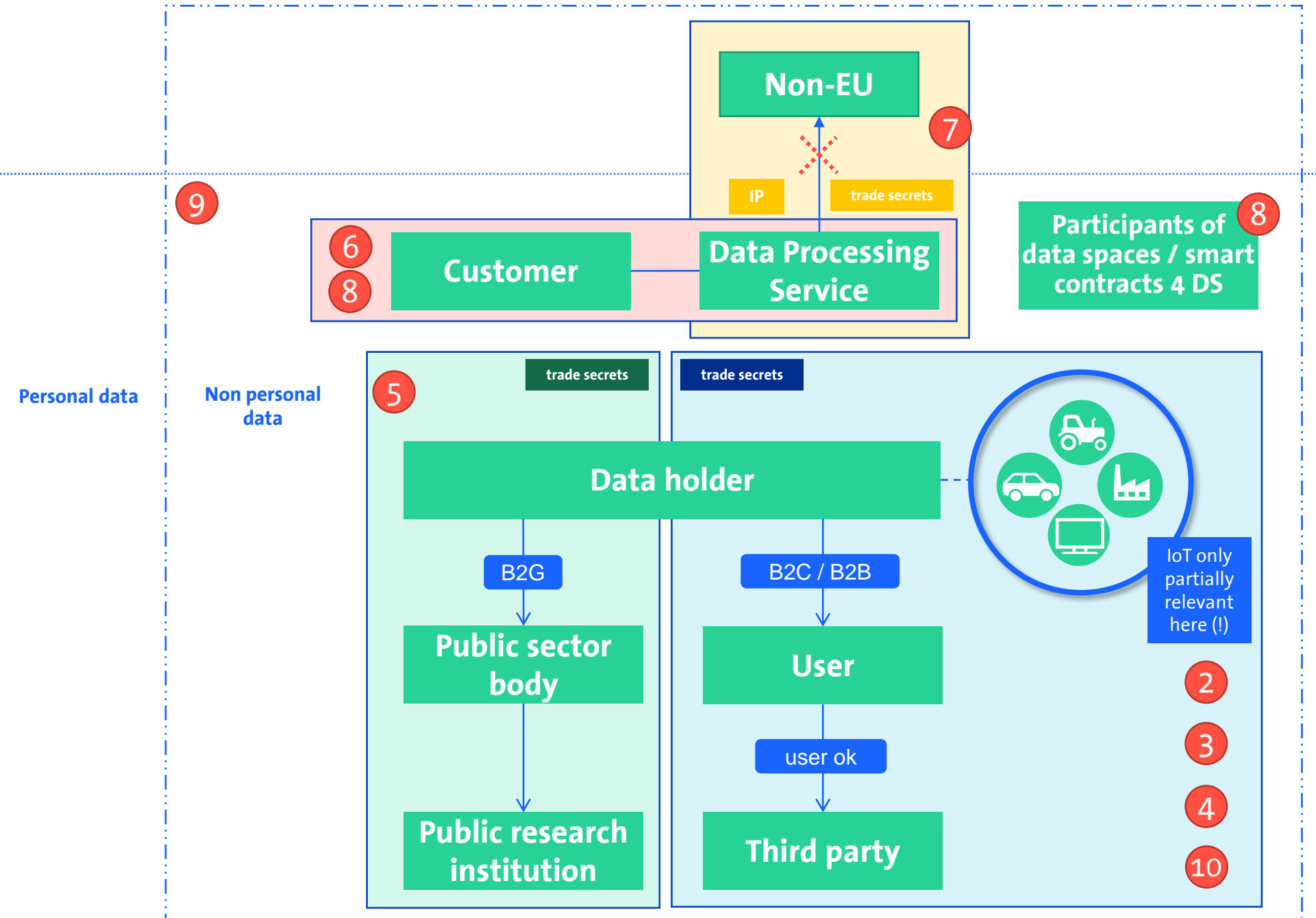
In Force

Incl Open Public Data

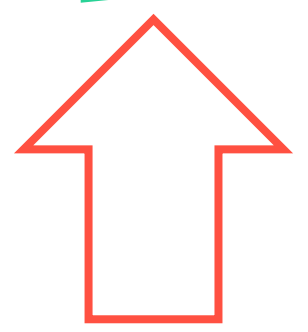
Sectoral measures, legislative and non-legislative

In Vorbereitung / laufend

Incl sectoral rules, Common European Dataspaces (DEP)

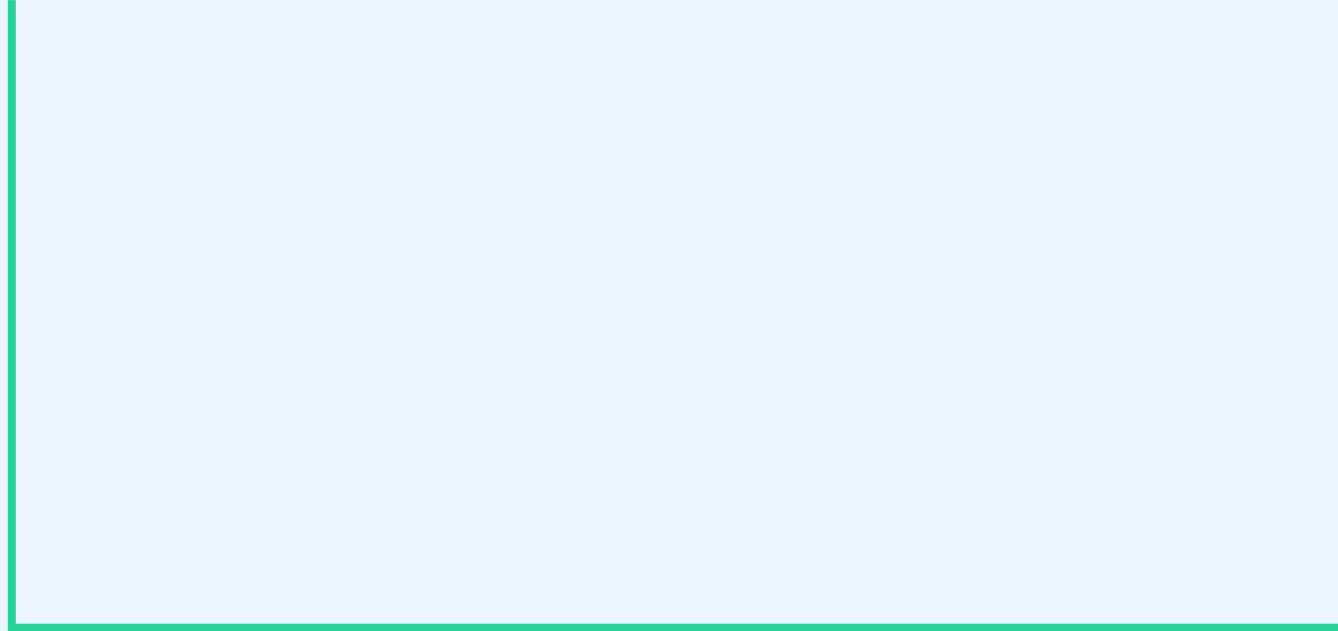


- 2 B2B & B2C DATA SHARING for products & related services
- 3 GENERAL DATA SHARING OBLIGATIONS
- 4 B2B UNFAIR TERMS
- 5 B2G DATA SHARING
- 6 DATA PROCESSING SERVICES SWITCHING
- 7 DATA TRANSFER SAFEGUARDS IN INTL CONTEXT
- 8 INTEROPERABILITY for Data Processing S. & Data Spaces
- SMART CONTRACTS FOR DATA SHARING
- 9 ENFORCEMENT ETC.
- 10 DATABASE DIRECTIVE



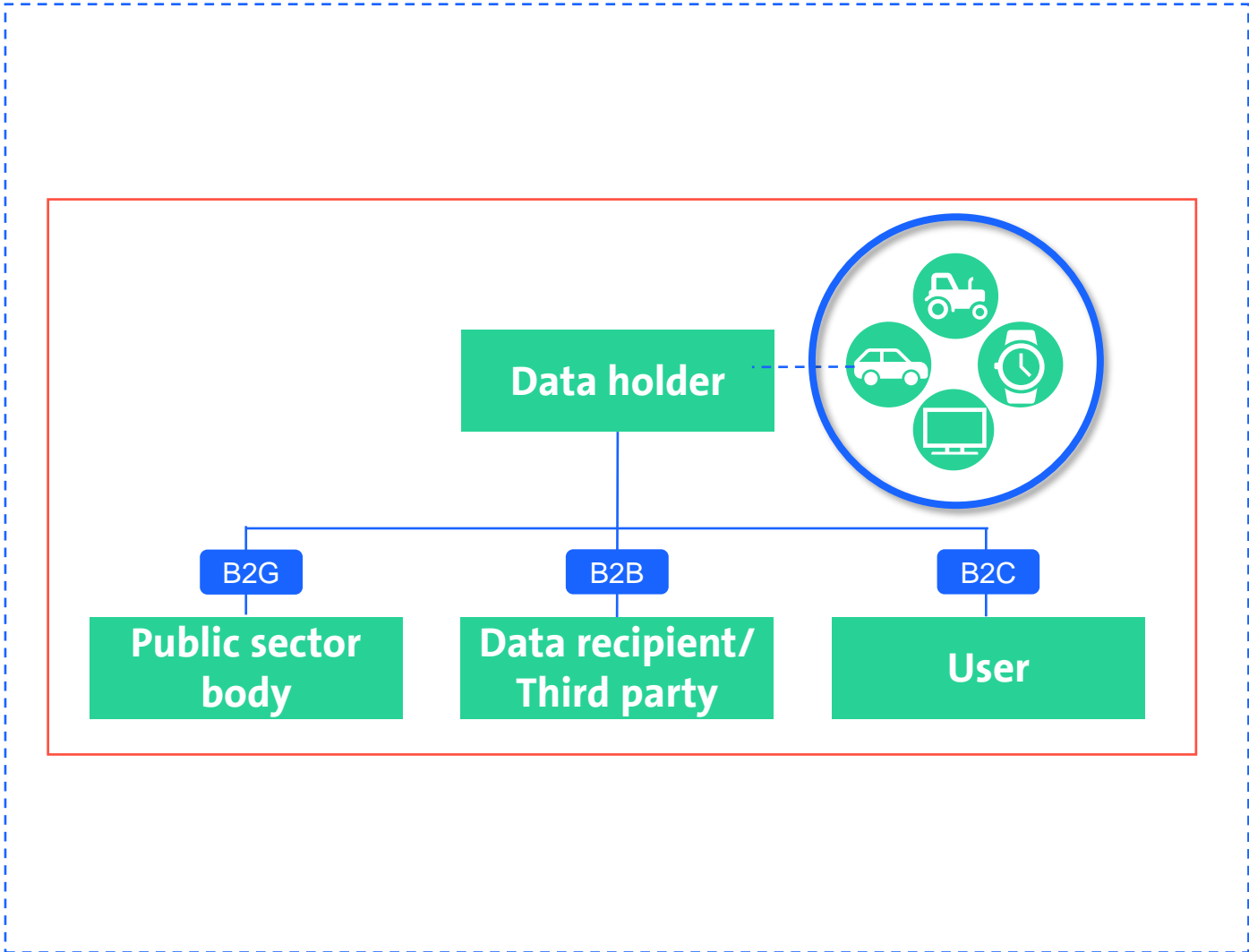
Fokus heute

Kapitel 2



Selected important subjects

- Personal data
- Non-personal data
- Trade secret data
- IP-relevant data



B2B & B2C DATA SHARING for products & related services

GENERAL DATA SHARING OBLIGATIONS

B2B UNFAIR TERMS

B2G DATA SHARING

DATA PROCESSING SERVICES INTEROPERABILITY

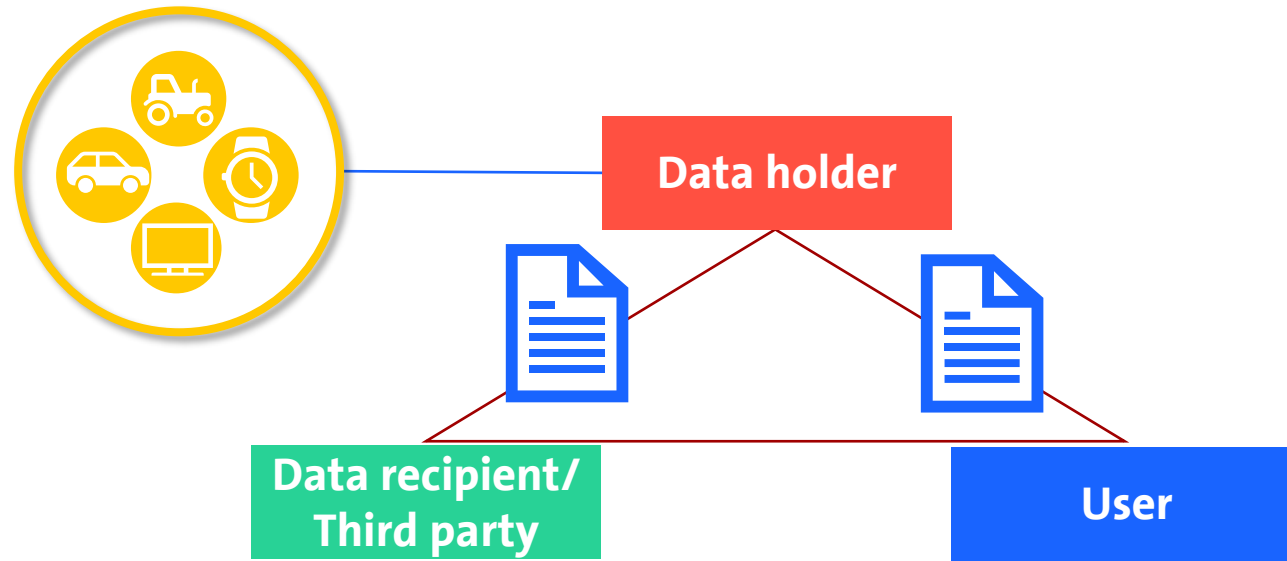
DATA TRANSFER SAFEGUARDS IN INTL CONTEXT

INTEROPERABILITY REQs FOR DATA SPACES

SMART CONTRACTS FOR DATA SHARING

DATABASE DIRECTIVE

Chapter 2 – general framework



Chapter 2 – general framework

'readily available data' means product data and related service data that a data holder lawfully obtains or can lawfully obtain from the connected product or related service, without disproportionate effort going beyond a simple operation;



'data holder' means a natural or legal person that has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation adopted in accordance with Union law, to use and make available data, including, where contractually agreed, product data or related service data which it has retrieved or generated during the provision of a related service;

Data holder



**Data recipient/
Third party**

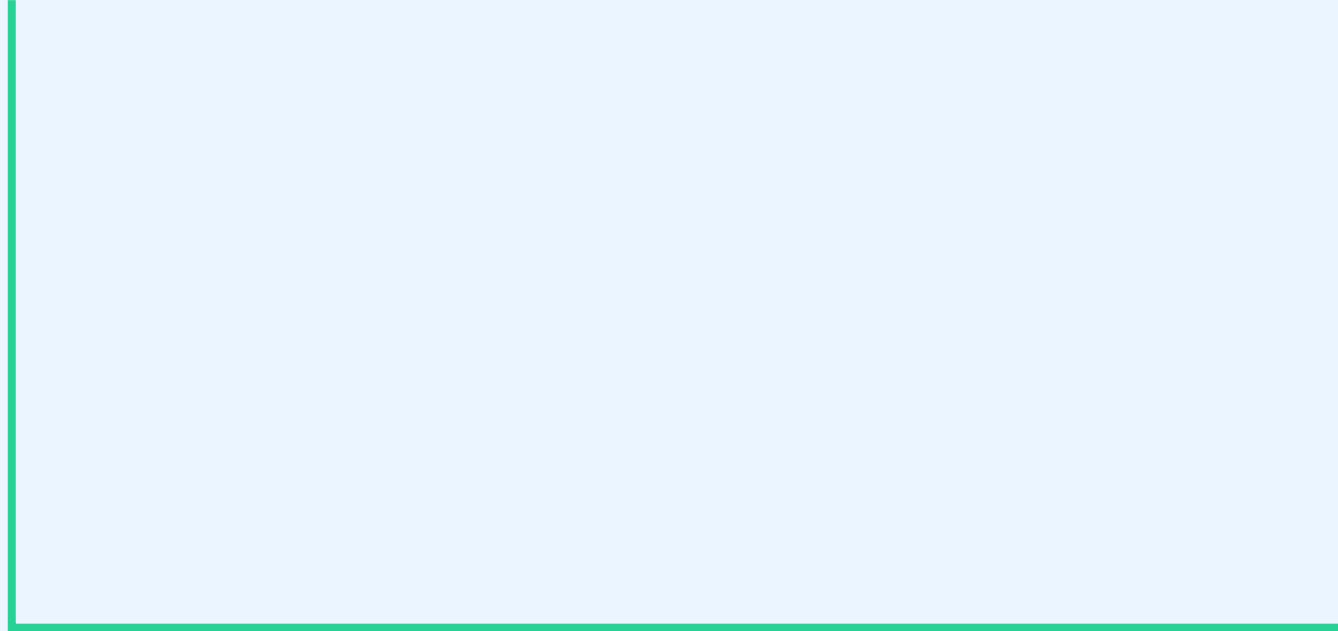
User

'data recipient' means a natural or legal person, acting for purposes which are related to that person's trade, business, craft or profession, other than the user of a connected product or related service, to whom the data holder makes data available, including a third party following a request by the user to the data holder or in accordance with a legal obligation under Union law or national legislation adopted in accordance with Union law;

'user' means a natural or legal person that owns a connected product or to whom temporary rights to use that connected product have been contractually transferred, or that receives related services;

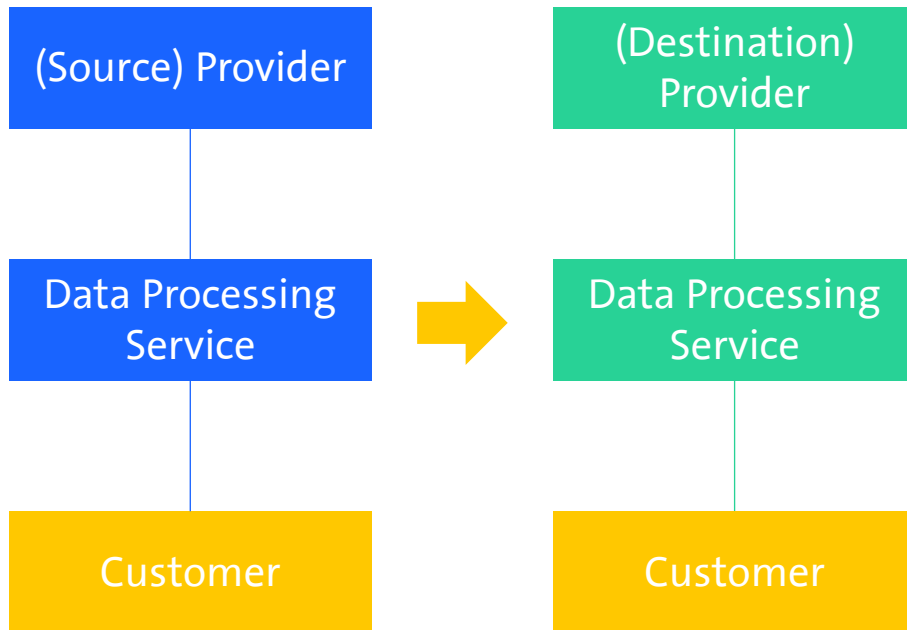
Art. 4 (1) Where data cannot be directly accessed by the user from the connected product or related service, data holders shall make readily available data, as well as the relevant metadata necessary to interpret and use those data, accessible to the user without undue delay, of the same quality as is available to the data holder, easily, securely, free of charge, in a comprehensive, structured, commonly used and machine-readable format and, where relevant and technically feasible, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.

Kapitel 6

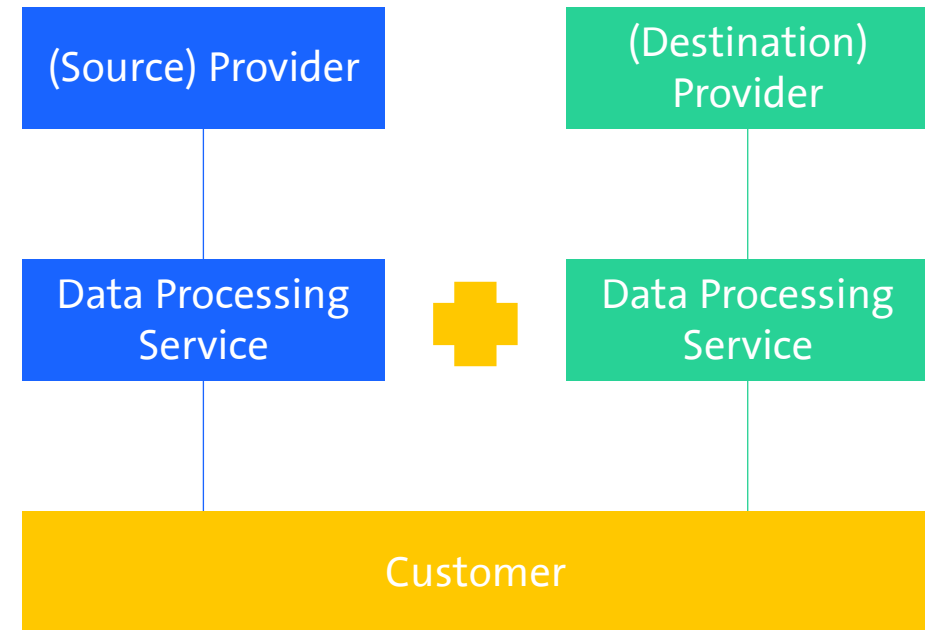


Kapitel 6

Portability



Interoperability



Ausgewählte Definitionen

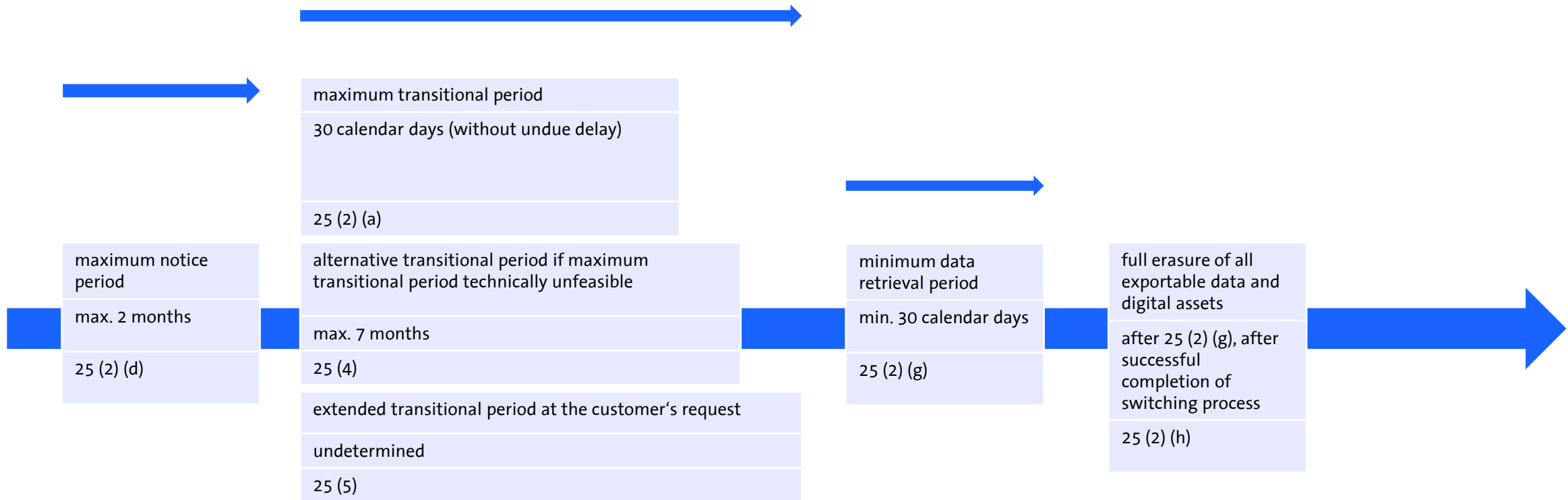
'data processing service' means a digital service that is provided to a customer and that enables ubiquitous and on-demand network access to a shared pool of configurable, scalable and elastic computing resources of a centralised, distributed or highly distributed nature that can be rapidly provisioned and released with minimal management effort or service provider interaction (Art. 2 (8))

'switching' means the process involving a source provider of data processing services, a customer of a data processing service and, where relevant, a destination provider of data processing services, whereby the customer of a data processing service changes from using one data processing service to using another data processing service of the same service type, or other service, offered by a different provider of data processing services, or to an on-premises ICT infrastructure, including through extracting, transforming and uploading the data (Art. 2 (34))

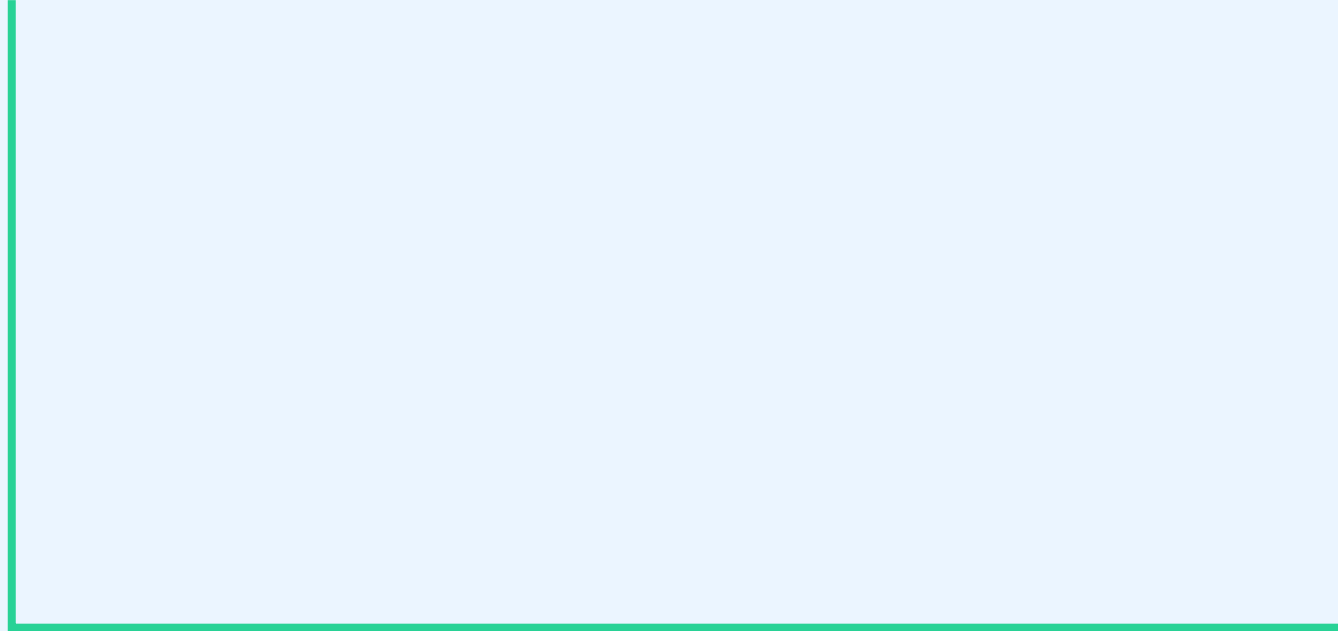
'functional equivalence' means re-establishing on the basis of the customer's exportable data and digital assets, a minimum level of functionality in the environment of a new data processing service of the same service type after the switching process, where the destination data processing service delivers a materially comparable outcome in response to the same input for shared features supplied to the customer under the contract (Art. 2 (37))

Kap.	Art.	Summary
6	23 DPS („betrifft Data Processing Services“)	soll Wechsel von „data processing services“ vereinfachen qua Maßnahmen in Art. 25-27, 29+30 <ul style="list-style-type: none"> ▪ Hürden bei Anbieterwechsel sollen abgeschafft werden ▪ <i>(pre-)commercial, technical, contractual and organisational nature</i>
6	24 DPS	regelt, welche Artikel nur für den source provider gelten (23,25,29,30,34)
6	25 DPS	regelt, dass und wie Verträge ausgestaltet werden müssen
6	26 DPS	enthält Informationspflichten
6	27 DPS	enthält eine good faith obligation (für alle beteiligten Parteien)
6	28 DPS	enthält weitere Informationspflichten
6	29 DPS	regelt die graduelle Abschaffung von Wechselkosten
6	30 DPS	regelt technische Aspekte des Wechsels für a) IaaS und b) nicht-IaaS-Services
6	31 DPS	regelt Ausnahmen für custom-built services und Trialsoftware
6	32 DPS	(Internationale Datentransfers – Kapitel 7)
7	33 Data Spaces	regelt die Teilnahme an Data Spaces, u.a. durch Standards und/oder Common specifications
8	34 DPS	Nicht nur Switching von Data Processing Services, sondern auch parallele Nutzung → Interoperabilität; Auch mit Auswirkungen auf Switching Charges
8	35 DPS	Implementierung von Kapitel 6 durch Standards und/oder Common specifications
8	36 Smart Contracts	regelt das Anbieten von Smart Contracts for Data Sharing, u.a. durch DoC, Standards/common specs und <u>Marktüberwachungsregime</u>

Ausgewählte Klauselvorgaben mit Fristrelevanz



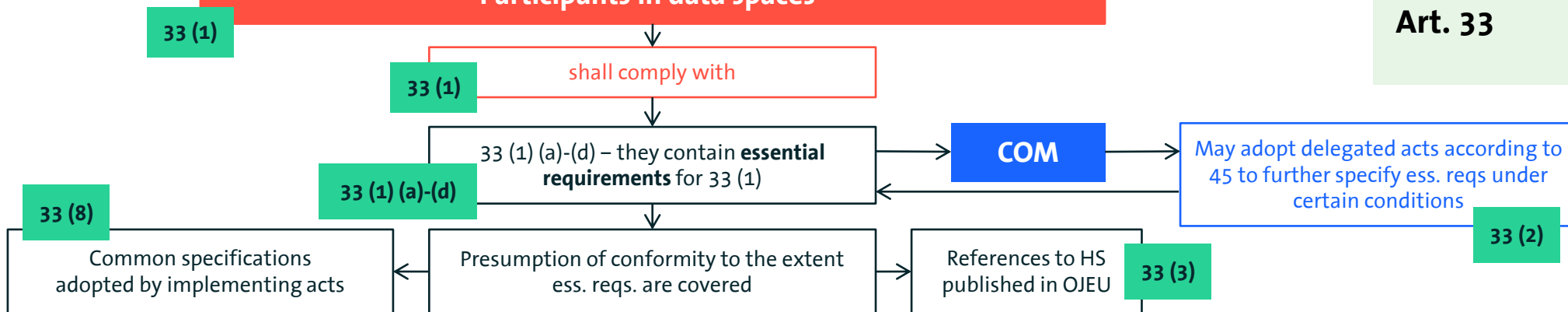
Kapitel 8



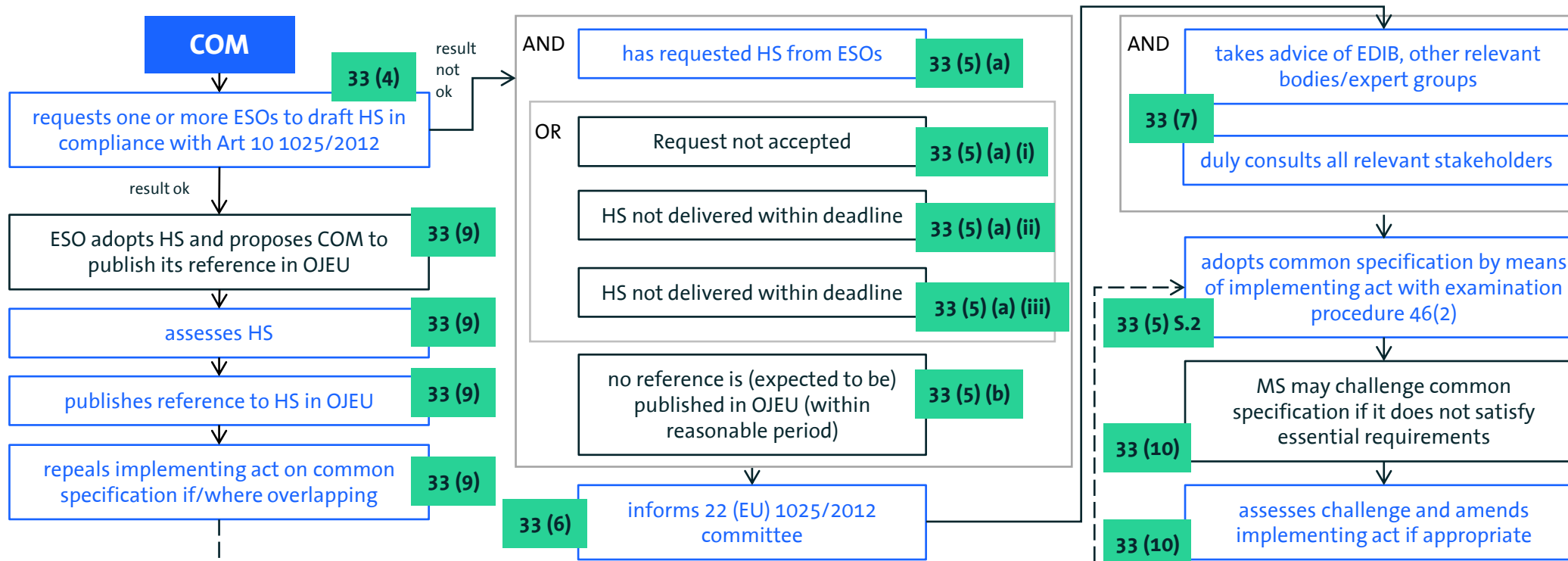
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Art. 33

What is the obligation?



What may COM do to operationalize?

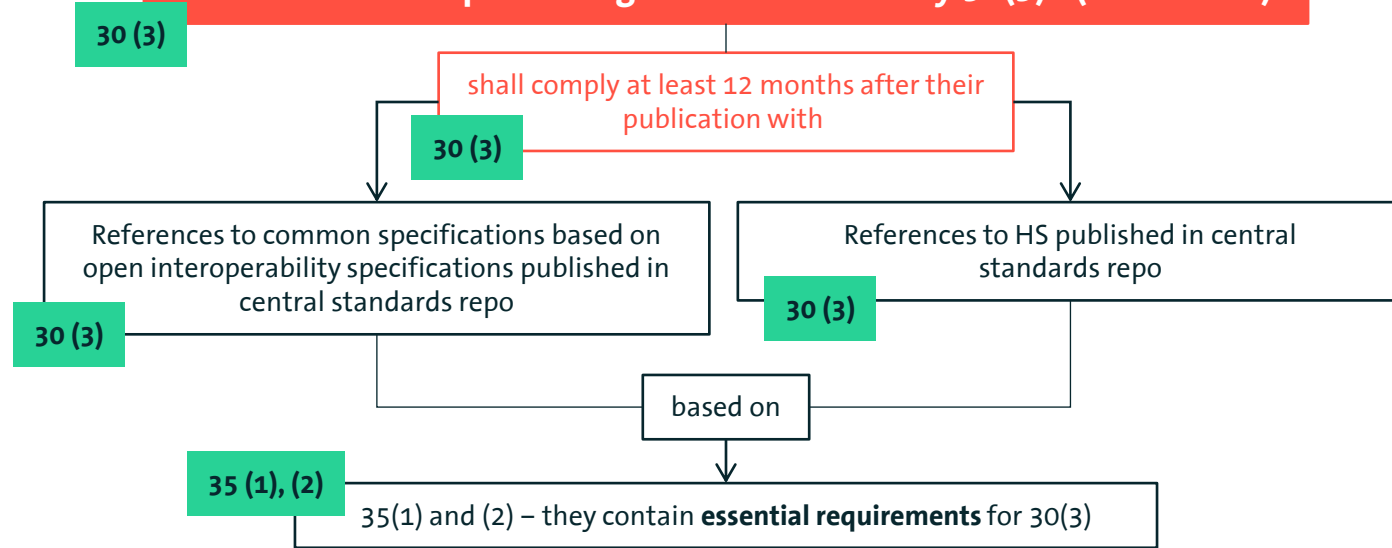


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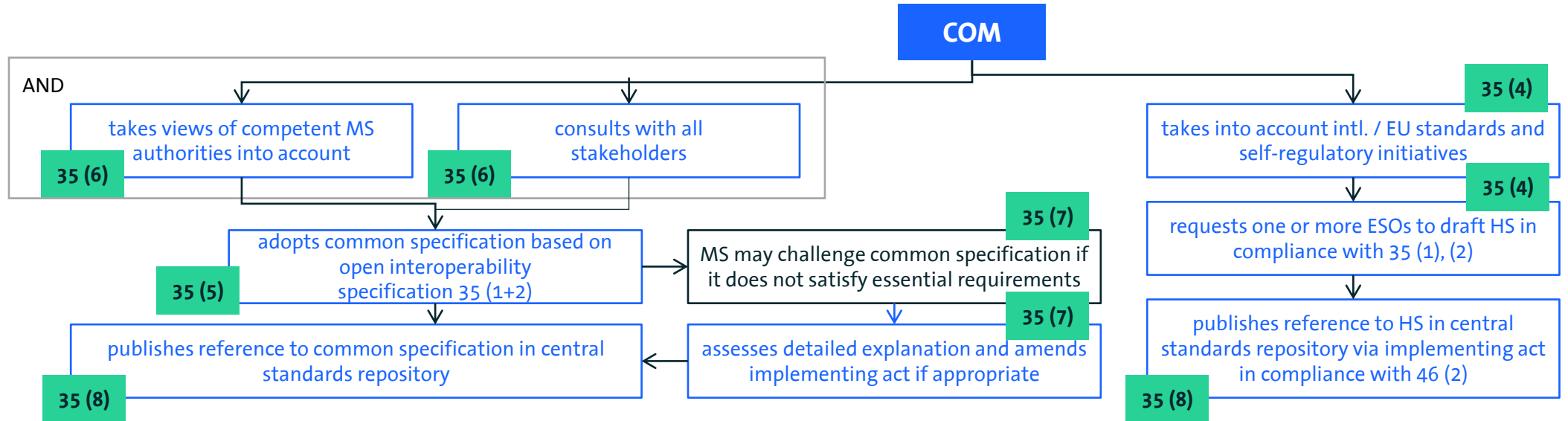
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**Art. 30 (3) +
Art. 35**

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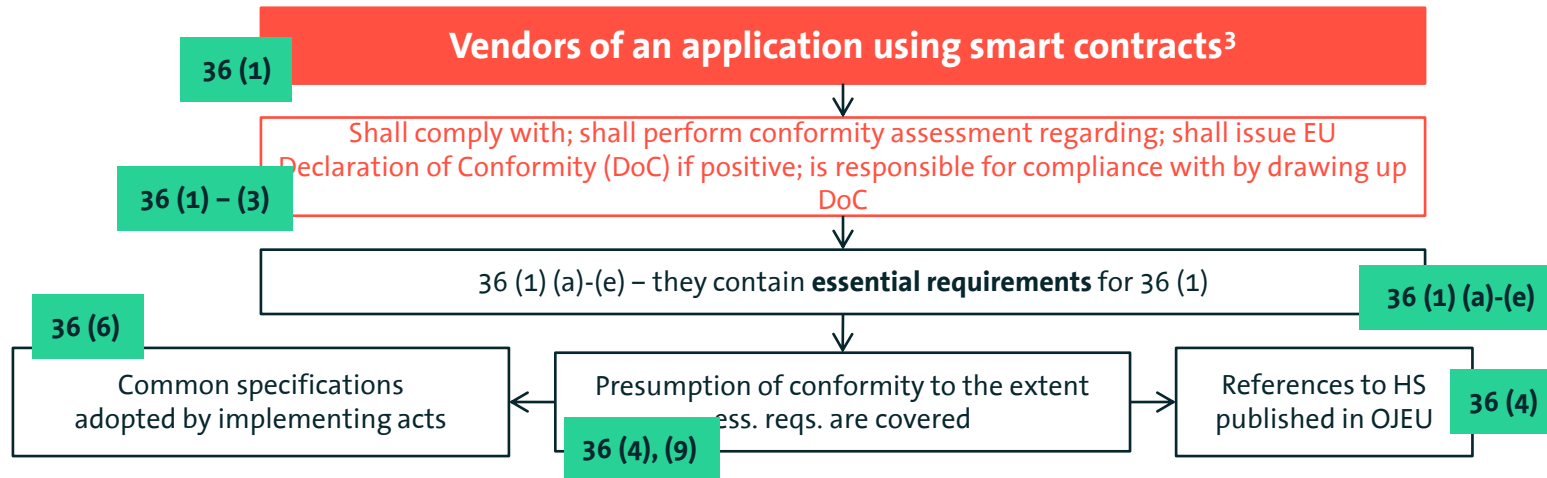


What may COM do to operationalize?

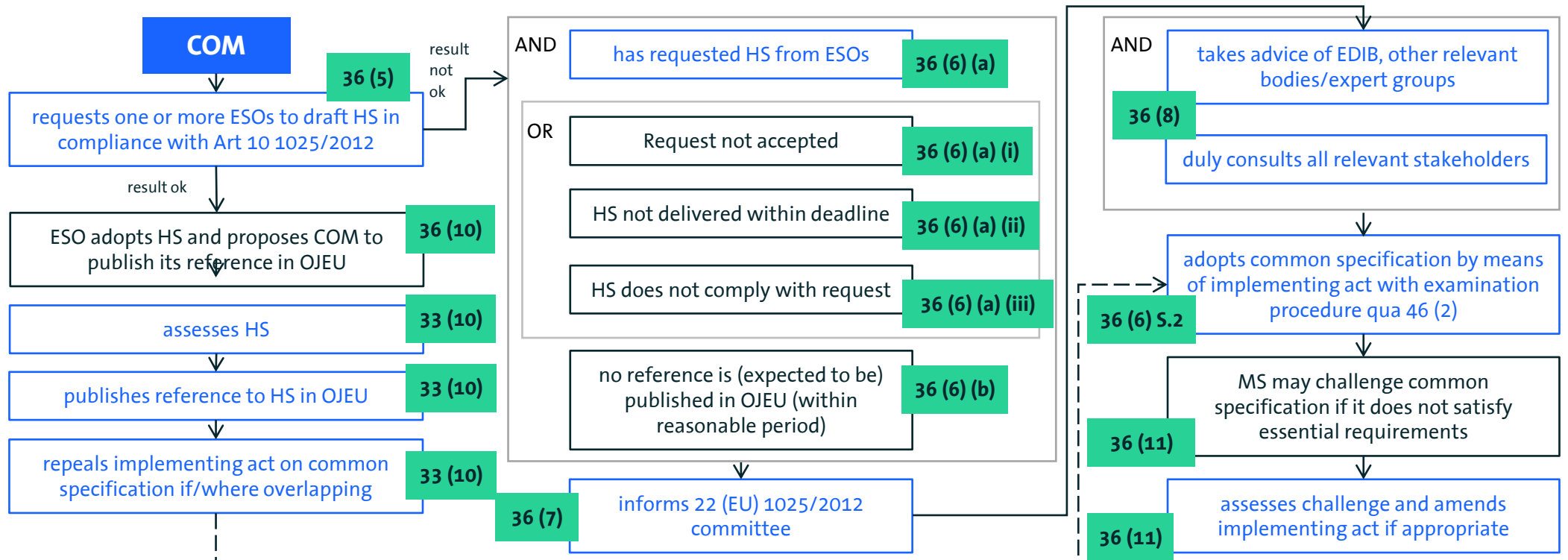


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What is the obligation?



What may COM do to operationalize?



Use Cases (all chapters)?

**Consent &
Compliance**

**Data Sharing
Technology**

**Metadata
Management**

**Data Sharing
Contracts**

**Data Sharing
Matchmaking**

**Trade Secret & IP
Protection**

**IoT Services
Development**

**Cloud
Orchestration &
CloudOps**

Contact

Bitkom e. V.
Albrechtstraße 10
10117 Berlin

bitkom.org



David Schönwerth

Head of Data Economy
d.schoenwerth@bitkom.org
T 030 27576-179

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Bitkom e. V.
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10117 Berlin

T 030 27576-0
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