

OPEN DATA Legal aspects

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Open Access / Open Data

Differences between Open Access and Open Data

□ Two different subjects

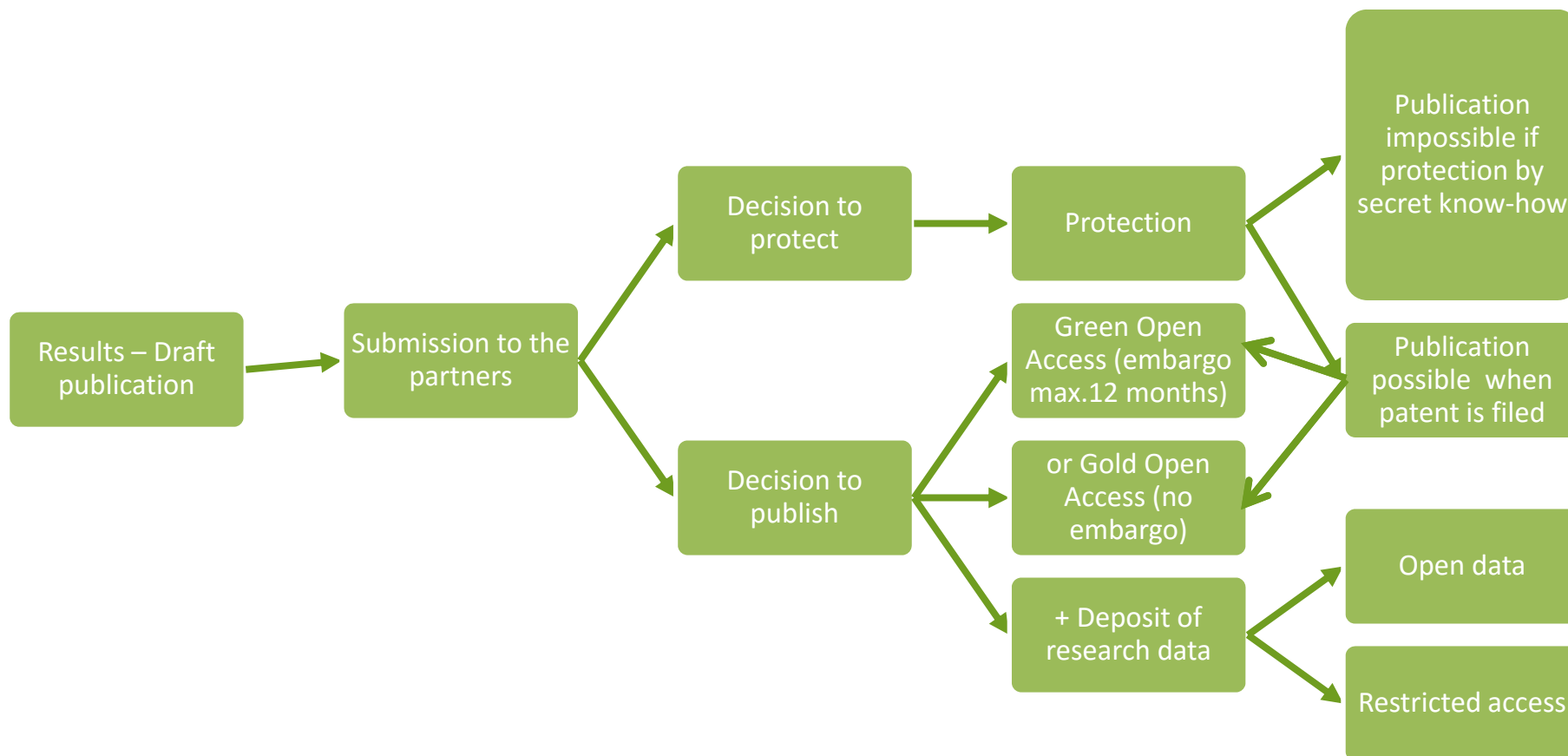
- Scientific publications => **open access**
- Data (research, transports, etc.) => **open data**

□ What's in common ?

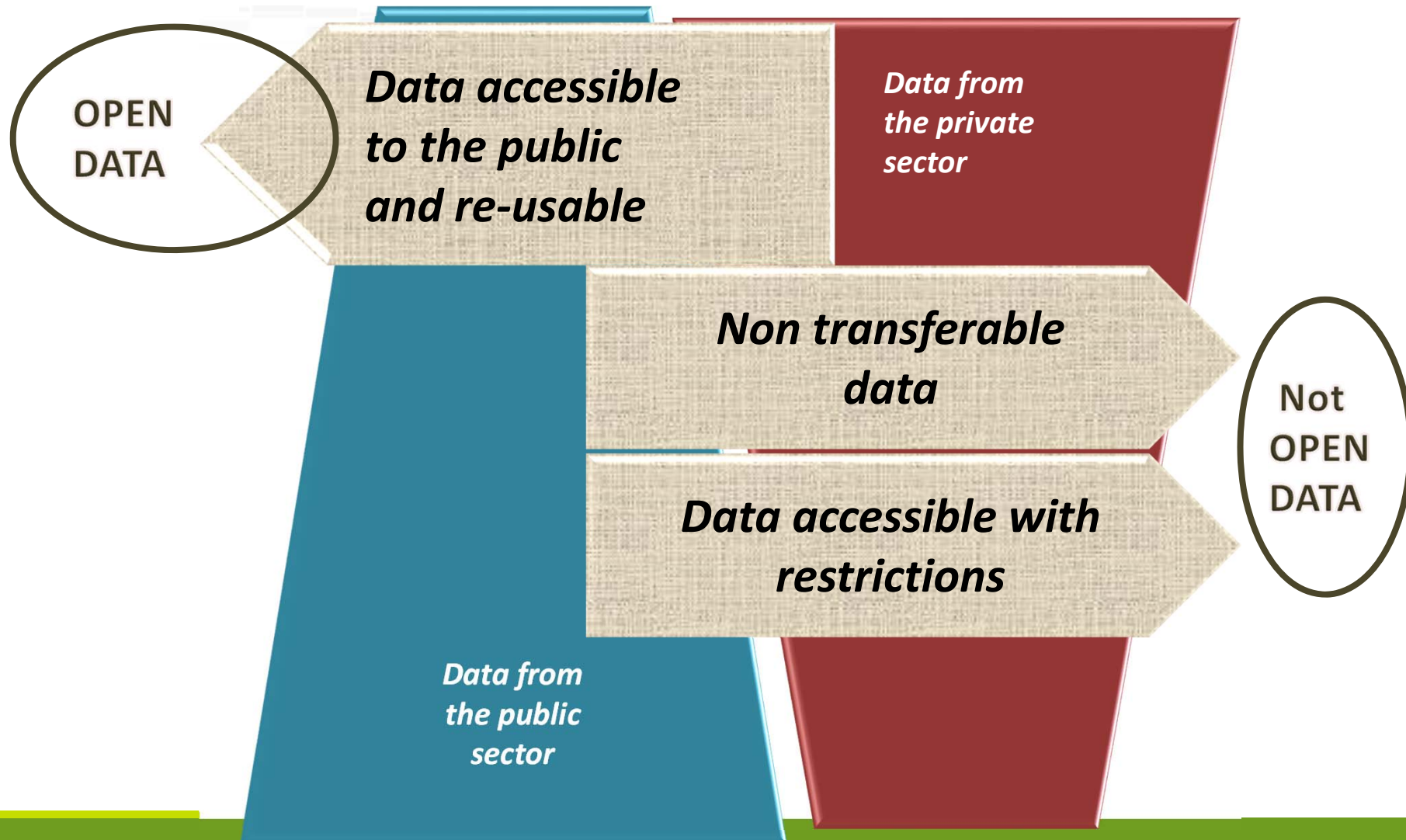
- An access that is an online access
- An access that is free of charge (publications) or without unjustified charges (marginal cost)
- An access that enables reuse of content for any purpose



Open access is compatible with protection of results



Open data : what are we talking about ?

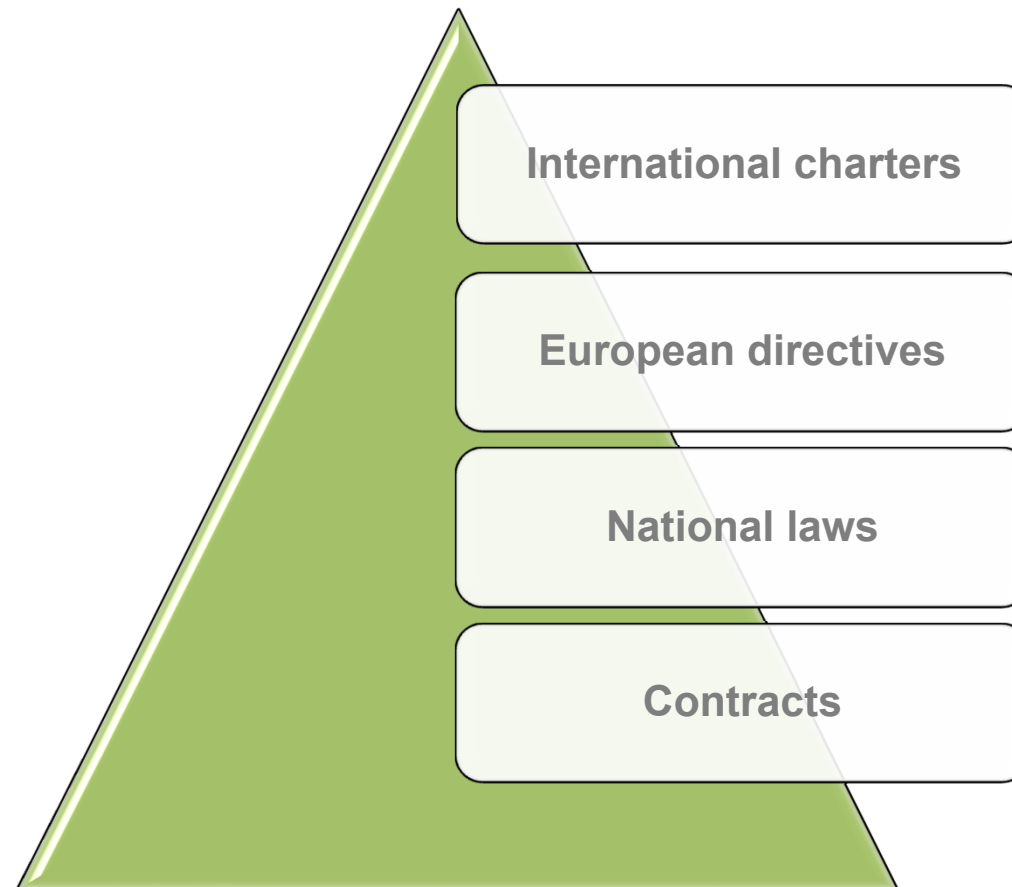


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Overview of the regulation on Open Data

Open data

Different regulations with different levels



Open Data

Lots of specific regulation depending on the nature of the data
to care about **BEFORE** opening the data

- Personal data
- Statistical confidentiality
- Rights on databases
- Communication of environmental data
- Medical secrecy
- And other...

Open Data for research

OECD Principles and Guidelines for Access to Research Data from Public Funding (April 2007)

Contains a definition of research data :

Factual records (numerical scores, textual records, images and sounds) used as primary sources for scientific research, and that are commonly accepted in the scientific community as necessary to validate research findings. A research data set constitutes a systematic, partial representation of the subject being investigated.

This term does not cover the following: laboratory notebooks, preliminary analyses, and drafts of scientific papers, plans for future research, peer reviews, or personal communications with colleagues or physical objects (e.g. laboratory samples, strains of bacteria and test animals such as mice).

>> But this text is not binding

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European legislation on Open Data

Open data – European rules (1)

Directive 2003/98/EC and directive 2013/37/EU concerning the re-use of public sector information (PSI)

Concerns :

1. Documents (any content whatever its medium or any part of the content) => data, reports, studies, decisions, minutes
2. Held by a public sector body

>> these documents shall be reusable and anyone can request access to such documents

Re-usable

means usable for other puposes than the initial purpose
= commercial and non-commercial purposes

Open data – European rules (2)

Are excluded of this re-use right :

- Documents held outside a public task
- Documents for which third parties hold IP rights
- Documents relating to the protection of national security, statistical confidentiality, commercial confidentiality
- **Documents held by educational and research institutes**

When re-use is required = the public body has to give an answer within a period of 20 working days (or 40 if the request is complex)

No obligation to provide a certain file format.

Licence conditions are possible (but may not be restrictive, discriminatory or exclusive) => shall be OPEN

Open data – European rules (3)

If fees are claimed for the re-use of the open data, the costs shall be limited to the marginal costs.

Those minimal requirements of the 2 directives must have been adopted in national law of the member states of the Union in 2015.

In France :

The law goes further : the open data also applies to research organism and universities : all documents produced have to be in open data and free of charge for the user.



In the T4F grant agreement :

No obligation of open access (publication) but it is not forbidden

No obligation of open data but it is not forbidden

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Before opening : check-lists

Before opening data (1/3)



1. About the source of data :
 - Am I the producer of data ?
 - If not, has the provider allowed re-use ?
 - Yes => does the re-use licence allow open data ?
 - No => I have to contact the provider

2. About the data :
 - Are there personal data ?
 - Are there geographical data ? See « Inspire » Directive
 - Is the data linked with national security subject matters ?
 - Is the data regulated by a specific regime ?

Yes : contact a lawyer

Before opening data (2/2)



3. If I create a database, I have to :
 - Anonymise personal data
 - Separate different data types in order to be able to propose for re-use some data and not other (management of access rights)

4. If the database is created in partnership :
Agree with the partners on the dissemination rules =>
agree on a data management plan

5. If I can propose a re-use to the public => a good practice is to propose a license in order to :
 1. Limit my liability
 2. Set conditions of re-use (must be OPEN)
 3. Respect institutional policy

Choose a license (see your institutional policy)



ODBL 1.0

<http://opendatacommons.org/licenses/odbl/>



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Adapt — remix, transform, and build upon the material



Thank you