

## Data Governance Act –

# Reactions to the Legislative Proposal of the European Commission

### An Overview on the Stakeholders' feedback

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In November 2020, the European Commission proposed the Data Governance Act (DGA) as part of the implementation of the European Data Strategy. The objective of the proposed regulation is to create a trustworthy European Single Market for Data. The DGA contains a regulatory framework for increased share and reuse of data from the public sector, businesses, and citizens through a set of rules designed to encourage individuals to share their data in a fair and safe environment.

Research Group 4 at the Weizenbaum Institute ([Frameworks for Data Markets](#)) has taken a closer look at the DGA proposal as one of the key elements of the European Data Strategy and at the reactions it has triggered among stakeholders.

For the European Commission and researchers alike, it is crucial to observe how the various stakeholders react to the proposal. Therefore, the Commission offers a public platform on its website for the publication of feedback. [149 feedback documents from various stakeholders](#) such as different industrial sectors, tech start-ups, data intermediary projects and citizens' rights groups reached the commission. For this overview we have reviewed a representative selection of the documents and also integrated some aspects from the joint position of the EDPB/EDPS regarding the DGA proposal.

A synopsis of the different positions can be found on the following pages. **This document does not contain our opinion on the proposal.**

### MAIN POINTS OF CRITICISM

Some points of criticism appeared quite frequently in the statements from all sectors. Stakeholders very often called for more clarity regarding the relationship to the GDPR and the definition of data intermediaries set out in the DGA proposal.

All sectors would appreciate **clarity on the relationship between the DGA proposal and the GDPR** and the resulting reduction in complexity.

- The DGA proposal leaves the GDPR standards unaffected. Nevertheless, in parts the wording of the DGA proposal differs significantly from the GDPR terminology. For example, the definition of “data holder” in Art. 2(5) and “data user” in Art. 2(6) are new terms that could conflict with given GDPR principles and definitions.
- Data protection advocates have concerns that the GDPR standards will be undermined by the terminological discrepancies. They see the GDPR standards as an enabler for data sharing services, as high personal data protection standards are supposed to establish trust in such services. Data sharing service providers consider the establishment of “double standards” a problem leading to additional compliance burdens and uncertainty regarding the application of the law.

**Furthermore, all sectors demand that Art. 2 or Art. 9 should include a clear definition of “data intermediaries” or “data sharing service”.** The lack of a clear definition leads to legal uncertainty as it is not clear which data sharing services are covered by the regulation.

## Chapter I General provisions

**Art. 2 Definitions:** Criticism of the lack of clarity in the definitions comes from all sectors.

### Art. 2(1) Data

- The concept of *data* should be defined. It should be clarified if it is limited to digital data.

### Art. 2(3) Non-Personal Data

- The definition of *non-personal data* lacks clarity.

### Art. 2(5) Data Holder

- The definition of *data holder* is too unspecific. There is the idea of a separation of *data right holder* and *technical data holder* delivered in the *MyDataGlobal* statement. The organisation demands that these definitions should also be reflected in the DGA.<sup>1</sup>
- The EDPB/EDPS criticises the definition of the term *data holder* arguing that the definition is not in line with overarching GDPR standards.<sup>2</sup>

### Art. 2(10) Data Altruism

- Parts of the tech industry demand that the definition of *data altruism* should include the purpose

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<sup>1</sup> [MyDataGlobal](#)

<sup>2</sup> [EDPB/EDPS](#)

of research and development of commercial products and services in medical technology and the healthcare industry.<sup>3</sup>

#### Art. 2(12) **Bodies Governed by Public Law**

- The expression *Bodies governed by public law* is insufficient given that member states define the term differently with regards to the different organisation of the regulation of markets.<sup>4</sup>

## Chapter II: Re-use of certain categories of protected data held by public sector bodies

### Art. 5 Conditions for re-use

#### Art. 5(1) (National public sector bodies decide on the conditions for the re-use of protected data)

- Tech industry associations and large tech companies oppose this fragmented approach and suggest that conditions should be established at Union level to ensure harmonisation.<sup>5</sup>

#### Art. 5(3) DGA / corresponding recital 11 (Discretion of public bodies to impose the obligation to re-use only pre-processed data / requirement of absolute anonymisation of personal data)

- An organization of local governments demands that the non-binding provision Art. 5(3) should be mandatory for public bodies to protect citizens' digital rights.<sup>6</sup>
- Associations of the tech industry suggest a relative concept of anonymisation. They argue that the requirement of absolute anonymisation of personal data narrows the framework for data exchange unduly, as it jeopardizes the actual purpose of the further use, e.g. for machine learning or AI. Further support for this view is provided by the fact that absolute anonymization is not required by the GDPR (cf. Recital 26 GDPR).<sup>7</sup>
- Industry stakeholders demand a specification of how safeguards should be implemented.<sup>8</sup>
- Art. 5(3) can be seen as a contradiction to recital 11.<sup>9</sup> If the further use of personal data by the re-user requires prior anonymisation, this should be carried out by the authority itself before the transfer to the re-user for reasons of data protection.

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<sup>3</sup> [Bitkom e.V.](#)

<sup>4</sup> [Deutsche Börse Group](#)

<sup>5</sup> [Information Technology Industry Council, IBM and Bitkom e.V.](#)

<sup>6</sup> [Eurocities.](#)

<sup>7</sup> [Bitkom e.V.](#) and [BDI.](#)

<sup>8</sup> [Vodafone Group](#); [Information Technology Industry Council](#); [MEDTech Europe.](#)

<sup>9</sup> [EON SE.](#)

### Art. 5(10) (Transfer to third countries)

- Non-European tech industry players demand that the norm should consider international agreements.<sup>10</sup>

### Art. 6 Fees (ability for public sector bodies to charge fees to recover their own costs)

- There is a need for clarification regarding the interplay of fees under the Open Data Directive (ODD) and DGA. If an overlap occurs, the types of expenses to be included are broader for data acquired under DGA conditions than under ODD ones.<sup>11</sup>
- On the one hand, there are calls to create a regime where fees do not exclude or prevent market access for SMEs, start-ups and others who have a legitimate interest in the re-use of the data.<sup>12</sup> On the other hand, it is demanded that fees are the same for every firm regardless of size.<sup>13</sup>

## Chapter III Requirements applicable to data sharing services (Intermediaries)

### Art. 9 Providers of data sharing services

- Various stakeholders argue that a clear formulation of the scopes in Art. 9 (1) (a) and (b) is missing. Exceptions should be made in the legal text itself and not merely in the **recital 22**.
- Organisations promoting data intermediary solutions argue that the scopes should be expanded to avoid the establishment of data sharing services outside the regulation. Especially Art. 9 (1) (b) should include data sharing services that empower the data subject beyond GDPR compliance.<sup>14</sup>

### Art. 10 Notifications

- More transparency is seen as a trust building measure by organizations promoting the development of intermediary solutions. Therefore, Art. 10 should be expanded and include information about the class or classes of services described in Art. 9.<sup>15</sup>

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<sup>10</sup> [Centre for Information Policy Leadership and Information Technology Industry Council](#).

<sup>11</sup> [Ministry of Government Administration and Reform \(Norway\)](#).

<sup>12</sup> [Ministry of Government Administration and Reform \(Norway\)](#).

<sup>13</sup> [Center for Data Innovation](#)

<sup>14</sup> [MyDataGlobal](#)

<sup>15</sup> [MyDataGlobal](#)

- Industry stakeholders demand that there should be no application of the obligations of Art. 10 and Art. 11 to a company which is already the data holder of certain data that it may use for its own business purposes or for the fulfilment of other obligations.<sup>16</sup>

#### Art. 11 Conditions for providing data sharing services

- The requirements are seen as unrealistic by different companies considering the huge amount of data that is being processed.<sup>17</sup>
- There are calls to integrate another clause into Art. 11 that ensures interoperability between the data sharing services.<sup>18</sup>

#### Art. 11(1) Structural separation: (Providers may not use data for which they provide intermediary services)

- It is brought forward that the structural separation prohibits data intermediaries from improving data quality as this requires the processing of data. It is also mentioned that as a consequence of the structural separation, public institutions must organise data sharing via a third party.<sup>19</sup>

#### Art. 14 Exceptions (Provision that Chapter III does not apply to data altruist organizations)

- NGOs that advocate for open access to knowledge on the web demand that collaborative knowledge projects should be explicitly recognised as “general interest” endeavours.<sup>20</sup>

### Chapter IV Data Altruism

- In general, the concept of data altruism is well received. However, it is criticized that the administrative requirements and the existing accountability requirements of the GDPR (registration, transparency requirements, monitoring) are extremely complex. Concerns are raised that the double deontology could discourage data controllers from processing personal data for altruistic purposes.<sup>21</sup>

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<sup>16</sup> [EON](#)

<sup>17</sup> [Here Technologies](#)

<sup>18</sup> [MyDataGlobal](#)

<sup>19</sup> [MyDataGlobal](#)

<sup>20</sup> [Wikimedia](#)

<sup>21</sup> [IBM](#).

## Art. 22 European data altruism consent form

- It is criticised that the consent form does not do justice to current and future complexity.<sup>22</sup> Tech associations request that sector-specific consent forms should be introduced.<sup>23</sup>

### Art. 22 (3) (Requirement in the context of the provision of personal data that the consent form allows to give and withdraw consent for a specific data processing operation)

- It is noted that it is not clear how the withdrawal of consent will be handled.<sup>24</sup>
- In particular, it is pointed out that conflicts with medical device regulations arise when individuals revoke their consent to data use in the context of machine learning, thereby changing the data basis for AI systems used in medical devices.<sup>25</sup>
- The relationship of the consent form and the notion of 'consent' under the GDPR (cf. Article 6(1) (a) GDPR) remains unclear.

## Chapter VI European Data Innovation Board (EDBI)

### Art 26 European Data Innovation Board (Composition of the EDBI)

- The following stakeholders criticise not having the opportunity to regularly participate in the EDIB in a formal setting: industry stakeholders<sup>26</sup>, local governments<sup>27</sup>, EEA EFTA States<sup>28</sup>.
- Data Sovereignty Now recommends that the EDIB is further complemented by a Data Exchange Board that will focus more on the tactical and operational level.
- It is noted that the EDBI must not undermine the position of the European Data Protection Board.<sup>29</sup>

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<sup>22</sup> [MEDTech Europe](#)

<sup>23</sup> [Bitkom e.V.](#)

<sup>24</sup> [Eurocities.](#)

<sup>25</sup> [BDI.](#)

<sup>26</sup> [BDI.](#)

<sup>27</sup> [Eurocities.](#)

<sup>28</sup> [Ministry of Government Administration and Reform Norway.](#)

<sup>29</sup> [Verbraucherzentrale Bundesverband.](#)