



On behalf of the Center for Data Innovation (Transparency Register #: 367682319221-26), we are pleased to submit this feedback on the European Commission's proposal for a regulation on European Data Governance (Data Governance Act).

OVERVIEW

On November 25, 2020, the European Commission released the Data Governance Act (DGA) one of its first measures to support the European strategy for data. The DGA aims to foster data sharing by increasing trust in data intermediaries and strengthen data sharing mechanisms of public and private personal and non-personal data.

The goal of the DGA is to enable greater data sharing among public and private sector entities. Its key components include:

- Fostering reuse of certain categories of protected public sector data, such as confidential data (chapter II);
- Establishing a notification and compliance framework for providers of data sharing services (chapter III);
- Creating a voluntary registration regime for entities engaged in data altruism (i.e., voluntary sharing of personal and non-personal data for general interest purposes), such as scientific research (chapter IV);
- Establishing that both the notification and registration regimes will be monitored and implemented by a competent authority with the power to impose administrative and financial penalties in case of non-compliance with the rules, subject to judicial review (chapter V).
- Creating a European Data Innovation Board charged with advising and assisting the Commission in developing best practices and facilitating cooperation between member states.

The DGA is a positive step forward in outlining a framework to enhance data sharing in the EU and promote data-driven innovation, however further clarification will be necessary to ensure data protection and competition laws do not prevent firms from sharing data, to safeguard trade with non-EU countries, and to prevent the public sector from charging excessive fees for data access.

KEY STRENGTHS OF THE DGA

Data enables firms to make better decisions, create new products and services, and automate processes. In addition, data is a key input to train machine learning algorithms, thus making it a necessary ingredient for firms to make use of artificial intelligence (AI). However, data collection and curation can be costly and requires significant time and investments. Accordingly, data sharing is an



appropriate tool to increase efficiency and avoid the need to collect the same data twice. Therefore, the DGA is a welcome proposal to establish a clear framework for how the public and private sector can share data and make data more accessible.

The DGA also introduces the concept of data altruism to recognize that individuals and organizations often make data available for reuse for the common good. By establishing an EU-wide framework for fostering data sharing for altruistic purposes, the EU may be able to increase data sharing and use. In addition, the DGA's proposal to have industry stakeholder participation in the "European Data Innovation Board" is welcome as industry often already has the required skills and knowledge to implement data-sharing solutions (e.g., the Data Transfer Project).¹

OPPORTUNITIES TO IMPROVE THE DGA

The European Commission should improve the DGA by clarifying which data firms can share to ensure data protection and competition laws do not prevent firms from sharing data, safeguarding trade with non-EU countries, and preventing the public sector from charging excessive fees for data access.

CLARIFY WHICH DATA FIRMS CAN SHARE

The DGA does not specify which data firms can share—it only specifies that firms must comply with existing laws, including data protection laws and competition laws. In the absence of clear guidelines, firms might be reluctant to share data to avoid violating data protection rules or being accused of engaging in an anti-competitive practice.² The European Data Protection Supervisor should be tasked with working in partnership with the European Data Innovation Board to provide guidance and clarification on how to share data without violating the General Data Protection Regulations (GDPR), as well as advising the European Commission on potential updates to the GDPR to facilitate data sharing. In addition, the European Commission should update the Horizontal Cooperation Guidelines to provide more guidance on data-sharing and pooling agreements among competitors, especially as often these agreements can boost innovation across an entire sector.³

¹ Data Transfer Project. <https://datatransferproject.dev>.

² Yves-Alexandre de Montjoye, Heike Schweitzer, and Jacques Crémer, "Competition policy for the digital era," May 20, 2019, <https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1>.

³ Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions, A European strategy for data, February 19, 2020, p. 14. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0066&from=EN>.



SAFEGUARDING TRADE WITH NON-EU COUNTRIES

The DGA is designed to foster data sharing within the EU, but it also would allow transfer of sensitive non-personal data to non-EU countries under certain conditions, namely that these countries offer similar levels of protection. Unfortunately, as the EU has shown with the GDPR, it has used such restrictions in the past to significantly restrict data transfers to non-EU countries that do not exactly replicate its laws. For example, the EU could restrict transfers of non-personal data based on small differences in copyright law. Such restrictions would significantly limit data sharing as well as digital trade, and the benefits of this trade for businesses, consumers, and countries. Rather than requiring the European Commission to make a positive finding of similar levels of protections in non-EU countries to allow transfers, the Commission should allow all transfers to non-EU countries by default, unless the Commission designates a country as insufficiently safeguarding legitimate EU interests or if the non-EU country imposes its own restrictions on sharing similar data with the EU.

PREVENTING EXCESSIVE FEES ON PUBLIC SECTOR DATA

The DGA enables public sector bodies to charge fees for the re-use of data. While it may be appropriate at times to charge for access to public sector data, to maximize data-sharing, those fees should not exceed costs. In addition, the policies for deciding whether and how to assess fees for public sector data should be non-discriminatory (e.g., impose the same fees regardless of firm size or physical presence in the EU) and transparent to avoid public sector bodies from selectively applying fees to certain datasets based on the user.

EXPAND OPPORTUNITIES TO PARTICIPATE IN DATA ALTRUISM

The DGA establishes a framework for organizations to facilitate the collection, sharing, and use of data for altruistic purposes. Unfortunately, the DGA contains restrictions that would limit participation in these efforts. Notably, the DGA would require that all data altruism organizations be non-profit entities. Such a restriction would prevent many existing businesses which have strong connections to large numbers of users from operating under the DGA's data altruism framework. For example, for-profit companies seeking to share data to improve health outcomes would not be allowed to participate. The Commission should not assume that a non-profit organization is necessarily altruistic nor that a for-profit organization is not.

The DGA also proposes creating a "European data altruism consent form" to streamline the ability of data subjects to consent to data processing of their personal information. While the goal of a streamlined consent form is admirable, it will be important to sufficiently test and validate the design of such a form to ensure it does not inhibit data sharing.



CONCLUSION

The DGA is an important initiative to foster data sharing but the European Commission should continue to refine the proposal to avoid unintended consequences that would be at odds with its stated goals.