
DIGITAL SME position paper on
the European Data Governance Act

Brussels, April 2021

Introduction

Data is a key ingredient for many digital business models and innovation. It is the basis for AI models and technologies. However, especially SMEs lack access to data to develop innovative solutions.

The European Commission has published a **Proposal for a regulation on European data governance (Data Governance Act)** at the end of 2020. The Data Governance Act will be debated in the European Parliament as of April 2021. Once approved, by both the European Parliament¹ and the Council of the EU (national governments), the proposal will become binding law in all EU member states one year after its approval. With the Data Governance Act, the EU Commission wants to **create a framework that will allow Europe to become a leading data economy**, especially for industrial data. The Data Governance Act is part of a wider European Data Strategy, which will be complemented by a Data Act that will govern access to data in business-to-business (B2B) relationships.

The Data Governance Act sets the ground for **re-use in particular of public sector data and the sharing of personal and non-personal data**. Here, the proposal aims at lowering transaction costs linked to B2B and customer-to-business (C2B) data sharing by implementing a framework for **data intermediaries**. Further, it introduces and promotes the notion of “**Data altruism**”: allowing data use by individuals or companies for the common good. The Act also plans for the creation of an expert group, the ‘**European Data Innovation Board**’ which will work on best practices by Member States’ authorities. Among other tasks, this Board will advise the Commission on the governance of cross-sectoral standardisation.

The Digital Governance Act is organised along different chapters:

- Chapter I: General provisions
- Chapter II: Making public sector data available for re-use, in situations where such data is subject to rights of others.

¹ See Politico Pro 23 February 2021 Subject: POLITICO Pro Morning Tech: Niebler on the DGA — Uber aftermath — Epic Games loss: “Timeline: ITRE will have a public hearing on the DGA, likely in the end of March. Niebler’s team is aiming to finalize their draft report by March 20. If all goes according to plan, this would allow for it to be debated in the committee in mid-April, with the final vote being in early July, and a vote in plenary in mid-September.”

- Chapter III: Requirements Applicable to Data Sharing Services -- Sharing of data among businesses, against remuneration in any form.
- Chapter IV: Allowing data use on altruistic grounds.
- Chapters V – VIII: Governance structure (designation of competent authorities, Data Governance Board); Implementing acts; transitional provisions for the functioning of general authorisation scheme for data sharing providers and provides for final provisions.

DIGITAL SME Key Positions

SMEs can provide innovative solutions based on data if they have access to it. Data is a prerequisite for many digital services and new business models. European DIGITAL SME Alliance therefore welcomes the European Commission’s proposal to strengthen data sharing in the EU.

- DIGITAL SME supports EU initiatives that support a European approach to data sharing that will avoid fragmentation and that **enhance access to data for SMEs**.
- SMEs need simplified processes for data access and data access needs to be supported by interoperability and open standards. We therefore welcome this proposal, which support data sharing and data access.
- For data to be (re-)used some **important hurdles as concerns data protection, privacy, and intellectual property need to be cleared out, especially for SMEs**. SMEs need legal clarity and be sure that they will not encounter legal issues or fines when (re-)using data. Therefore, the proposed Data Governance Act needs to support the development of clear guidance from public authorities on how data can be lawfully re-used.
- The definition of “**data intermediaries**” is quite broad and the legislator **should consider clarifying it**. SMEs need legal clarity as legal uncertainty has additional costs for them.
- **We welcome the creation of a European Data Innovation Board** that consists of experts and **representatives of stakeholders, including SMEs**. The Board can help to establish a framework process for coordinated action and enhanced interoperability in the European data market. **DIGITAL SME stands ready to provide input and collaborate with the EU institutions and national administrations to support the goals of this proposal and to contribute to the European Data Innovation Board**.
- Taking into account future legislation that aims to tackle dominance of a few large data holders in legislation such as the Digital Markets Act, requirement for fair, non-discriminatory conditions for data reuse could be imposed in the future under certain conditions. In a similar manner, exclusive arrangements may be forbidden when this may be necessary due to competition concerns.

Specific comments

Chapter I – general provisions (Arts. 1-2)

It is important to align definitions etc. with other existing pieces of legislation to avoid a fragmented legal framework that could lead to unintended interactions. This applies to horizontal legislation like the GDPR, but also the PIS Directive and other areas mentioned in the legislation such as privacy and intellectual property.

Chapter II - re-use of certain categories of protected data held by public sector bodies (Arts. 3-8)

DIGITAL SME agrees with the general assumption of the proposal that the data generated by public bodies or financed by the public/tax money should be available for public use. Data is essential for digitalisation. At the same time, the usage of data needs to consider other aspects such as data protection, privacy, and intellectual property. Therefore, the data governance proposal should identify and address these concerns and support a governance infrastructure which will allow national authorities to develop clear guidance on how this data can be lawfully reused. Also, it would be important to clarify legal issues related to the usage of the outcome of data analysis based on public data.

Furthermore, within the constraints of economic and legal implications in place we consider that some of this data (or at least a clearly defined subset of it):

- Should be considered from the perspective of a public good, available to the society at large and governed by public bodies;
- Sharing of such data should be considered a public service governed by public bodies and financed as any other public service.²

We acknowledge the provision of Article 3, paragraph 3 stating that "**The provisions of this Chapter do not create any obligation on public sector bodies to allow re-use of data**", yet we also consider that access of citizens to a subset of this data - with high impact on the life of an individual - to be a basic civic right. Therefore, sharing of such data by the public sector bodies should be mandatory and free of charge (or at a reasonable administrative fee) to data users - the associated costs should be supported from the public budgets.

Examples of such data (non-exhaustive) could be basic quality of life indicators or statistics and data related to public policies (e.g., fulfillment of KPIs related to public policies). We encourage a process that could identify such a critical set of data considered to be minimal and mandatory to be shared with the society free of charge by all EU member states; at national level - public sector bodies may consider adding additional data.³

² See Cluj IT Data Intelligence Group paper on Data Governance

³ Ibid.

In addition, in order to enhance the re-use of public sector data, especially by SMEs, it is important that the mechanisms of **acquiring such data are simple, legally sound and affordable**. This needs to be reflected in **publicly available and clear terms and conditions, affordable fees, and ensuring that privacy and data protection concerns are cleared beforehand**: It is essential that the responsibility to ensure data protection, privacy and confidentiality when re-using data stays with the public operators.

Further, the re-use of certain categories of protected data held by public sector bodies needs to be supported by a **European framework that supports the public bodies in developing guidelines and uniform principles and standards for sharing the data within and across different member states**, which also clear out hurdles in terms of IPR and data protection. Re-use should not be restricted by exclusive arrangements and other burdens such as the need to clear IPR and data protection issues should be cleared out to support the re-use.

We agree that that provision of Article 7 paragraph 1 that "Member States shall designate one or more competent bodies, which may be sectorial, to support the public sector bodies which grant access to the re-use of the categories of data referred to in Article 3 (1) in the exercise of that task" will contribute to a faster and smoother implementation of public sector data sharing services.

In this context we should consider the importance and impact of (E)DIHs as go-to organizations that could fulfil the role of supporting the public bodies in sharing and reusing data. The arguments in favour of this statement are:

- Data processing, sharing and re-use are processes embedded in the larger scope of digitalization and innovation. Digitalization and innovation are core concerns of E-DIHs;
- Due to their core activities, E-DIHs are likely to attract the talent and resources that are more likely to maximize the quality of the support for the public bodies in their journey to provide data sharing and reusing services;⁴
- The E-DIHs will have the core services Test before invest and Skills and training. These core services could be pivotal in order to ensure the best adoption and implementation of data sharing services by the public bodies.

Chapter III - requirements applicable to data sharing services (Arts. 9 -14)

The roles of SMEs as innovators needs to be taken into account when proposing regulation. Thus, any regulatory measure needs to be checked on how it translates to actual use cases and the daily business practice of SMEs, including very innovative ones that may already develop data-reliant services. The proposed law should also take into account practical cases of data sharing launched

⁴ Ibid.

by companies on the ground⁵, and ensure that these types of successful models will not be negatively impacted.

The definition of “**data intermediaries**” is quite broad and the legislator **should consider clarifying it** to avoid any potential negative impact on innovative data-driven business models by SMEs in a developing data market. SMEs need legal clarity as legal uncertainty has additional costs for them. In the current emerging data economy, there are many data-based business models and data sharing formats, involving both public and private actors. The regulator must avoid stifling innovation in the market and creating uncertainty. Recital 22⁶ specifies the limitations to whom this applies, but this may need further clarification. Innovative business models which could be considered data intermediaries should not be hindered with this proposal and legal uncertainty needs to be avoided, especially for SMEs.

As for the **notification procedure for data intermediaries**, this has to be as low threshold and low-burden as possible. Also, administrative fees need to be proportionate and not discourage new business models from development.

As regards the **ex-post monitoring of compliance**, this is generally welcome as a less burdensome approach. However, national authorities may impose penalties with retroactive effect. These should be proportionate and take into consideration the size of the provider and the severity of the breach, rather than treating SMEs in the same way as large companies.

Chapter IV. Data altruism (Art 15-22)

We welcome the application of the register of recognized data altruism organizations as an instrument of trust and transparency in data sharing. The status of “**data altruism organization recognized in the Union**” being valid in all the European Union will even the chances of data altruism organizations to be visible and provide valuable data not only on a regional level but also at a global

⁵ <https://www.digitalsme.eu/smart-lifts-a-success-story-of-sme-digitalisation-through-standards/>

⁶ Providers of data sharing services (data intermediaries) are expected to play a key role in the data economy, as a tool to facilitate the aggregation and exchange of substantial amounts of relevant data. Data intermediaries offering services that connect the different actors have the potential to contribute to the efficient pooling of data as well as to the facilitation of bilateral data sharing. Specialised data intermediaries that are independent from both data holders and data users can have a facilitating role in the emergence of new data-driven ecosystems independent from any player with a significant degree of market power. This Regulation should only cover providers of data sharing services that have as a main objective the establishment of a business, a legal and potentially also technical relation between data holders, including data subjects, on the one hand, and potential users on the other hand, and assist both parties in a transaction of data assets between the two. It should only cover services aiming at intermediating between an indefinite number of data holders and data users, excluding data sharing services that are meant to be used by a closed group of data holders and users.

level.⁷ A single or harmonized “European data altruism consent form” to reduce the costs of obtaining consent and facilitate data portability is welcomed.

Chapter VI - European Data Innovation Board (Art 26-27)

We welcome the creation of a European Data Innovation Board that consists of experts and representatives of stakeholders, including SMEs. The Board can help to establish a framework process for coordinated action and enhanced interoperability in the European data market. The Board could also liaise with the European Data Protection Board and provide guidance on how to anonymise data and in which areas industry standards, e.g., for interoperability and data formats may be most needed. It can help to formulate answers to important questions, such as the use of mixed data sets and questions related to IPR. It needs to liaise with EDIHs and standardization organisations. SMEs need simplified processes for data access and data access needs to be supported by interoperability and open standards. We therefore welcome this proposal, which can help to set up a governance structure to support data sharing and data access. Finally, the Board could help to ensure that distributed data sharing policies, which will be facilitated by blockchain and similar technologies are considered to find solutions for making available data. These technologies will allow citizens to keep the right to share their data or not. This is an interesting trend for democratizing data sharing and ensuring the democratic public value of data.

⁷ Ibid.