



Data Governance Act

Brief overview of the articles of the impact to NMCAs

Internal working document v.0. 16th December 2020

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Background

On November 25, the Commission published a proposal for the Regulation on European data governance (Data Governance Act), a deliverable under the European Strategy for data. It aims to foster the availability of data for use by increasing trust in data. It complements the Open data and PSI Directive, and rules on HVD.

Reasons for and objectives of the proposal:

- to make public sector data available for re-use, in situations where such data is subject to rights of others.
- Sharing of data among businesses, against remuneration in any form.
- Allowing personal data to be used with the help of a ‘personal data-sharing intermediary’, designed to help individuals exercise their rights under the General Data Protection Regulation (GDPR)
- Allowing data use on altruistic grounds.

In the earlier discussions on Open data & PSI Directive, and HVD Regulation adoption proceeding, some of NMCAs have raised a concern of privacy and third party IPR issue of the certain categories of datasets listed as geospatial themes to be open for the re-use.

Data Governance Act Regulation proposal recognises that those types of data falls outside the scope of the Open Data & PSI Directive and will be governed by this Act. Hence, in this summary we shall concentrate on the chapters and articles which applies to data held by public sector bodies which are protected on grounds of:



- (a) commercial confidentiality;
- (b) statistical confidentiality;
- (c) protection of intellectual property rights of third parties;**
- (d) protection of personal data.**

Please refer your national use case falling under these grounds.
You may do that in track changes to this paper, or at the meeting verbally or via chat box.

Exceptions:

(a) data held by public undertakings; (b) data held by public service broadcasters and their subsidiaries, (c) data held by cultural establishments and educational establishments; (d) data protected for reasons of national security, defence or public security; (e) data the supply of which is an activity falling outside the scope of the public task of the public sector bodies. Without prejudice to national restrictions.

Subject matter and scope

The Regulation lays down:

- (a) conditions for the re-use, within the Union, of certain categories of data held by public sector bodies;
- (b) a notification and supervisory framework for the provision of data sharing services;
- (c) a framework for voluntary registration of entities which collect and process data made available for altruistic purposes.

Regulation set 15 definitions, available in the Annex I to this paper. It also sets prohibition of exclusive arrangements. The period of exclusivity of the right to re-use data shall not exceed three years. The award of an exclusive, including the reasons why it is necessary to grant such a right, shall be transparent and be made publicly available online.

Re-use of personal and third parties IPR data might be allowed

Provisions under the Chapter II do not create the right to re-use such data, but provide for a set of harmonized basic conditions under which the re-use of such data may be allowed. Public sector bodies, i.e., NMCAs which are competent under national law to grant or refuse access for the re-use of personal data or data holding third parties IPR shall make publicly available the conditions for allowing re-use.

Member States will need to be technically equipped to ensure that privacy and confidentiality are fully respected. This can include a range of tools, from technical solutions, such as anonymisation or processing in dedicated infrastructures operated and supervised by the public sector, to legally binding confidentiality agreements to be signed by the reuser. Whenever data is being transferred to a reuser, mechanisms will be in place that ensure compliance with the GDPR and preserve the commercial confidentiality of the data.

Competent bodies

In the task of creating conditions for re-use, public sector body **may** be assisted by the competent bodies designated by Member State. It can be sectorial body providing technical support, or assisting the public sector bodies in obtaining consent or permission by re-users. The Member States shall communicate to the Commission the identity of the competent bodies designated.



Conditions for re-use shall be non-discriminatory, proportionate, objectively justified with regard to purposes of re-use and the nature of the data, shall not be used to restrict competition. Public sector bodies may impose an obligation to re-use only pre-processed data where such pre-processing aims to anonymize or pseudonymise personal data or delete commercially confidential information, including trade secrets.

Where the re-use of data cannot be granted, the public sector body shall support re-users in seeking consent of the data subjects and/or permission from the legal entities whose rights and interests may be affected by such re-use, where it is feasible without disproportionate cost for the public sector. In that task they may be assisted by the competent bodies.

Re-use of data shall only be allowed in compliance with intellectual property rights. The right of the maker of a database shall not be exercised by public sector bodies in order to prevent the re-use of data or to restrict re-use beyond the limits set by this Regulation.

Fees

Public sector bodies which allow re-use of these categories of data **may charge fees** - non-discriminatory, proportionate, objectively justified, not restricting competition, paid online through widely available cross-border payment services, without discrimination based on the place of establishment of the payment service provider. Fees shall be derived from the costs related to the processing of requests for re-use of the categories of data. The methodology for calculating fees shall be published in advance. The public sector body shall publish a description of the main categories of costs and the rules used for the allocation of costs.

New bodies new tools. Rise to financial and administrative costs is obvious. Mainly to be borne by national authorities, some by data users, and data sharing providers.

Is your organisation in position to allow the re-use of data from the scope of this Act (personal & third parties IPR data)?

Would it be your interest?

Single information point

Member States shall ensure that all relevant information is available through a single information point which shall receive requests for the re- and shall transmit them to the competent public sector bodies/competent body. The single information point shall make available by electronic means a register of available data resources containing relevant information describing the nature of available data. Requests for the re-use of such data shall be granted or refused by the competent public sector bodies within a reasonable time, and in any case within two months from the date of the request. Any natural or legal person affected by a decision of a public sector body or of a competent body, as the case may be, shall have the right to an effective judicial remedy against such decision before the courts of the Member State where the relevant body is located.

Providers of data sharing services

Conditions for providing data sharing services are set in article 11. These providers will have to comply with a number of requirements, in particular the requirement to remain neutral as regards the data exchanged. Any provider of data sharing services who intends to provide the intermediation services e.g., between data holders which are legal persons and potential data users, shall submit a notification to the competent authorities which has to be established by Member States for the carry out the tasks related to the notification framework and shall communicate to the Commission the

identity of those designated authorities. The competent authority shall monitor and supervise compliance of providers of data sharing services with Act.

This instrument aims to increase trust in sharing personal and non-personal data.

Other novelties

Chapter IV facilitates data altruism (data voluntarily made available by individuals or companies for the common good). It establishes the possibility for organisations engaging in data altruism to register as a 'Data Altruism Organisation recognised in the EU' in order to increase trust in their operations. In addition, a common European data altruism consent form will be developed to lower the costs of collecting consent and to facilitate portability of the data (where the data to be made available is not held by the individual).

Chapter V sets out the requirements for the functioning of the competent authorities designated to monitor and implement the notification framework for data-sharing service providers and entities engaged in data altruism. It also contains provisions on the right to lodge complaints against the decisions of such bodies and on the means of judicial redress.

Chapter VI creates a formal expert group (the 'European Data Innovation Board') which will facilitate the emergence of best practices by Member States' authorities in particular on processing requests for the re-use of data which is subject to the rights of others.

Chapter VII allows the Commission to adopt implementing acts concerning the European data altruism consent form.

Chapter VIII contains transitional provisions for the functioning of general authorisation scheme for data sharing providers and provides for final provisions.

Annex I – definitions

(1) **'data'** means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;

(2) **'re-use'** means the use by natural or legal persons of data held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the data were produced, except for the exchange of data between public sector bodies purely in pursuit of their public tasks;

(3) **'non-personal data'** means data other than personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679;

(4) **'metadata'** means data collected on any activity of a natural or legal person for the purposes of the provision of a data sharing service, including the date, time and geolocation data, duration of activity, connections to other natural or legal persons established by the person who uses the service;

(5) **'data holder'** means a legal person or data subject who, in accordance with applicable Union or national law, has the right to grant access to or to share certain personal or non-personal data under its control;



- (6) **'data user'** means a natural or legal person who has lawful access to certain personal or non-personal data and is authorised to use that data for commercial or non-commercial purposes;
- (7) **'data sharing'** means the provision by a data holder of data to a data user for the purpose of joint or individual use of the shared data, based on voluntary agreements, directly or through an intermediary;
- (8) **'access'** means processing by a data user of data that has been provided by a data holder, in accordance with specific technical, legal, or organisational requirements, without necessarily implying the transmission or downloading of such data;
- (9) **'main establishment'** of a legal entity means the place of its central administration in the Union;
- (10) **'data altruism'** means the consent by data subjects to process personal data pertaining to them, or permissions of other data holders to allow the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services;
- (11) **'public sector body'** means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
- (12) **'bodies governed by public law'** means bodies that have the following characteristics: (a) they are established for the specific purpose of meeting needs in the general interest, and do not have an industrial or commercial character; (b) they have legal personality; (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
- (13) **'public undertaking'** means any undertaking over which the public sector bodies may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it; for the purpose of this definition, a dominant influence on the part of the public sector bodies shall be presumed in any of the following cases in which those bodies, directly or indirectly: (a) hold the majority of the undertaking's subscribed capital; (b) control the majority of the votes attaching to shares issued by the undertaking; (c) can appoint more than half of the undertaking's administrative, management or supervisory body;
- (14) **'secure processing environment'** means the physical or virtual environment and organisational means to provide the opportunity to re-use data in a manner that allows for the operator of the secure processing environment to determine and supervise all data processing actions, including to display, storage, download, export of the data and calculation of derivative data through computational algorithms.
- (15) **'representative'** means any natural or legal person established in the Union explicitly designated to act on behalf of a provider of data sharing services or an entity that collects data for objectives of general interest made available by natural or legal persons on the basis of data altruism not established in the Union, which may be addressed by a national competent authority instead of the provider of data sharing services or entity with regard to the obligations of that provider of data sharing services or entity set up by this Regulation.
