

## FEEDBACK ON THE PROPOSAL FOR A REGULATION

## ON EUROPEAN DATA GOVERNANCE

Knowledge Centre  
Data & Society

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## 1. Introduction

This report contains the feedback from the Flemish Knowledge Centre Data & Society (KCDS) to the European Commission's Directorate-General for Communications Networks, Content and Technology on its proposal for a "Regulation on European Data Governance". The KCDS focuses on the interplay between data, AI and society. It enables socially responsible, ethical, and legally appropriate implementations of AI in Flanders.

The KCDS aims to enable Flemish companies, policymakers, regulators, and citizens to achieve the greatest social and/or economic benefits of AI. It brings together diverse representative organisations/stakeholders and facilitates the creation of tools, advice, and recommendations. It comprises three existing research centers: [imec-SMIT \(Vrije Universiteit Brussel\)](#), [imec-MICT \(Ghent University\)](#) and [the Centre for IT & IP Law \(KU Leuven\)](#). [The Flemish Department on Economy, Science and Innovation](#) funds the initiative.

## 2. General remarks

We appreciate the Commission's efforts to encourage the sharing of data and to harmonise the rules for common data spaces. Belgium being a federal state, Flanders wants to strongly pursue digitisation and a data economy in the coming years. The Data Governance Act (DGA) is also for Flanders a crucial piece of legislation to achieve this strategy.

In the text, we identify many positive elements, such as: enabling more data sharing between companies; supporting the reuse of protected public sector data for commercial or non-commercial purposes; and facilitating data altruism. We are also pleased to see that with the data innovation board a platform for strategic consultation is being created. All these proposals contribute to strengthening the digital single market, which is necessary given the added value this matter can bring to the European GDP. It also opens the door for policy makers in other parts of the world to follow Europe's lead.

With the DGA, the Commission is taking a big step in the right direction and we would like to make a few additions.

### GDPR

The DGA uses a very broad definition of data. Due to this broad definition, the legislation applies to both non-personal data and personal data covered by the GDPR. As a result, the scope of the DGA is unclear, which may cause uncertainty for companies. If the definition is retained, there must be a clear alignment with the GDPR.

It should also be avoided that conflicts arise between the two legal texts in the future. There is a contradiction in the true nature of both texts which could potentially cause problems. The GDPR is most often perceived as limiting data sharing to the essential minimum, while the DGA aims for the opposite encouraging more data sharing. A good alignment between both texts is therefore important in this area.

### **Conditions for reusing public sector data**

- The text contains a number of restrictions concerning the sharing of highly sensitive non-personal data with countries outside the EU. However, these data are vaguely defined in the text. Given the possible consequences of restrictions, such as blocking data transfers with a country that has a data regime that conflicts with the conditions of the EU, it is necessary that this definition is clearly developed. This will enable European companies to make the necessary preparations.
- Member States should also offer sufficient support to entrepreneurs, SMEs and innovators who want to work with public sector data, for example through information campaigns, a data utility company<sup>1</sup> and practical guidance. The Commission could investigate to what extent this is already happening in the Member States and make recommendations based on the findings.

### **Data Sharing intermediaries**

- Chapter III highlights the concept of data sharing intermediaries by which trust in sharing personal and non-personal data and lower transaction costs linked to B2B and C2B data sharing is intended. This section contains a definition of what is meant by 'data sharing', but an exact definition of the data sharing intermediaries is not provided. A clear definition is needed to have a good understanding of the scope.
- The Data Sharing Intermediaries can play an important role in creating more confidence to share data and consequently allow more data to circulate. The intermediaries will be confronted with a difficult balancing act. Will they rather help to facilitate a data marketplace, or rather hinder and discourage certain business models. The text does not make it clear how the Commission intends to meet this challenge.
- The European Commission wants the market of data sharing intermediaries to flourish. That is obviously a healthy ambition, but it is unclear how the Commission intends to achieve it. The 'data sharing intermediary' activities of companies must be strictly separated from any

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<sup>1</sup> Note that the Flemish Government has issued the foundation of a government data utility company as a response to the difficulties experienced in sharing data during the COVID-19 crisis.

other activity of the companies concerned. This is necessary to convince data holders to share their data. But this is insufficient to allow the market to flourish, given the power of dominant foreign players such as Amazon Web Services. The Commission will have to consider additional measures to create more competitiveness.

### **Data Altruism**

Encouraging individuals and companies to make data available on a voluntary basis is a concept we fully support. Although the idea in itself will most likely have a small impact. The European Commission should consider incentives that encourage voluntary data sharing. Tax cuts or administrative simplification could be ways in which altruism could be triggered.

It should also be carefully considered whether the process is not too burdensome. A registration procedure and transparency and security obligations are necessary, but with the additional certification mentioned in the text, the process may require too much effort for SMEs. To encourage altruism, it seems important to us that the burden is kept to a minimum. Finally, the Commission can also play a role in encouraging altruism initiatives at the national level of the Member States.

### **Data Innovation Board**

We consider the part of the proposal on the introduction of a Data innovation board a very interesting addition. Such a platform can play an important role. Therefore, it is important that the composition of the board is balanced and diverse and that the selection of the board members is well thought-out. For example, SMEs and entrepreneurs must also be given a place at the table.

## **3. Concluding remarks**

In this report, the Knowledge Centre Data & Society provided feedback on Regulation on European Data Governance, issued by the European Commission on the 25th of November 2020. We believe that with this text, subject to some adjustments, the European Commission can achieve its objective of fostering the availability of data by both increasing trust and by strengthening data-sharing mechanisms across the EU. However, the DGA is only one part of the puzzle. We look forward to the completion of the process. We wish the Commission every success in processing all the feedback and in publishing the final draft. We stand ready to engage further in the near future.