

BRIEF ON DATA GOVERNANCE ACT



Brief on EU Data Governance Act

The European Data Governance Act (“DGA”) is a key component of the European strategy for data, designed to increase trust in data sharing, strengthen data availability mechanisms, and overcome technical obstacles to data reuse. The act supports the creation and development of common European data spaces in strategic domains such as health, environment, energy, agriculture, mobility, finance, manufacturing, public administration, and skills. The Data Governance Act entered into force on 23 June 2022 and will be applicable from September 2023.

Key Points:

1. The DGA aims to create a single market for data and facilitate better data sharing across the EU, boosting innovation and competitiveness.
2. The DGA establishes rules and safeguards for the re-use of certain categories of protected data held by public sector bodies, while respecting privacy and confidentiality.
3. Data intermediation services are introduced under the DGA, providing a neutral and transparent environment for data sharing that puts individuals and companies in control of their data.
4. Data altruism encourages individuals and companies to voluntarily share their data for public interest without reward, fostering advancements in research and the development of better products and services.
5. The European Data Innovation Board (EDIB) will be established to facilitate the sharing of best practices on data intermediation, data altruism, and the use of public data that cannot be made available as open data.
6. The DGA promotes international data flows by establishing safeguards and policies for access requests from third countries concerning non-personal data, in addition to the GDPR's protections for personal data.
7. Public sector bodies can charge reasonable fees for re-use of protected data, but should incentivise re-use for scientific research, non-commercial purposes, and by SMEs and start-ups.



8. Data intermediaries are required to be legally separated from other services to ensure neutrality and avoid conflicts of interest.

9. Data altruism organisations must have a not-for-profit character, meet transparency requirements, and offer specific safeguards to protect the rights and interests of citizens and companies sharing their data.

10. The DGA empowers the Commission to create a rulebook for data altruism organisations, develop a common European consent form, and provide model contract clauses for public sector bodies and re-users when data is involved in transfers with third countries.

Overview:

Rationale

The DGA aims to provide a framework for enhancing trust in voluntary data sharing for the benefit of businesses and citizens. The potential of data is immense, with the ability to enable new products and services, improve production efficiency, and combat societal challenges. In the health sector, for example, data can contribute to better healthcare, improved personalised treatments, and cures for rare or chronic diseases. Data also serves as a powerful engine for innovation, new jobs, and a critical resource for start-ups and SMEs. However, the full potential of data remains unrealised due to obstacles such as low trust in data sharing, issues related to the re-use of public sector data, data collection for the common good, and technical barriers. To capitalise on this potential, more data must be made available, shared confidently, and be technically easy to reuse.

The DGA is a cross-sectoral instrument designed to make more data available by regulating the re-use of publicly-held, protected data, boosting data sharing through the regulation of novel data intermediaries, and encouraging data sharing for altruistic purposes. The DGA covers both personal and non-personal data, and when personal data is concerned, the General Data Protection Regulation (GDPR) applies. Inbuilt safeguards, in addition to the GDPR, will increase trust in data sharing and reuse, which is essential for making more data available in the market.

Benefits

The initiative aims to make more data available and facilitate data sharing across sectors and EU countries, benefiting European citizens and businesses. Good data management and data sharing will enable industries to develop innovative products and services, make sectors more efficient and sustainable, and train AI systems. The public sector can develop better policies, leading to more transparent governance and more efficient public services.

Examples of Benefits include:

- **Health data:** Improved personalised treatments, better healthcare, help in curing rare or chronic diseases, and savings of around €120 billion annually in the EU health sector.
- **Mobility data:** Saving more than 27 million hours of public transport users' time and up to €20 billion a year in labour costs for car drivers through realtime navigation.
- **Environmental data:** Combating climate change, reducing CO₂ emissions, and fighting emergencies such as floods and wildfires.
- **Agricultural data:** Developing precision farming, new products in the agrifood sector, and new services in rural areas.
- **Public administration data:** Delivering better and more reliable official statistics, and contributing to evidence-based decisions.

Implementation

The EU will boost the development of trustworthy data-sharing systems through four broad sets of measures:

1. Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data.
2. Measures to ensure that data intermediaries function as trustworthy organisers of data sharing or pooling within the common European data spaces.
3. Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
4. Measures to facilitate data sharing, in particular to make it possible for data to be used across sectors and borders, and to enable the right data to be found for the right purpose.



Implimentation

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3. Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
4. Measures to facilitate data sharing, in particular to make it possible for data to be used across sectors and borders, and to enable the right data to be found for the right purpose.

Impact across the EU

The Regulation on data governance will drive innovation and job creation, placing the EU at the forefront of the second wave of data-based innovation. Society will benefit from more evidence-based policies and better solutions to societal challenges such as climate change and the COVID-19 pandemic. Businesses will benefit from reduced costs for acquiring, integrating, and processing data, lower barriers to market entry, and reduced time-to-market for novel products and services. This will enable firms of all sizes to develop new data-driven products and services.

Re-use of certain categories of data held by public sector bodies

Key Goals

The DGA aims to facilitate the re-use of protected data held by the public sector, such as personal and commercially confidential data, without compromising its protected nature. The DGA provides rules and safeguards for re-use, enabling access to valuable knowledge that cannot be re-used as open data.

How it works in practice

- **Technical requirements:** Member States must ensure that privacy and confidentiality are respected during data re-use. This can involve technical solutions (e.g., anonymisation, pseudonymisation, secure data processing environments) or contractual means (e.g., confidentiality agreements).
- **Assistance from public sector bodies:** If access to data for re-use cannot be granted, public sector bodies should assist potential re-users in obtaining consent from individuals or data holders.
- **Limited exclusive data re-use agreements:** The DGA restricts reliance on exclusive data re-use agreements to specific cases of public interest.
- **Reasonable fees:** Public sector bodies may charge fees for re-use, provided they do not exceed necessary costs. Incentives should be given for scientific research, non-commercial purposes, SMEs, and start-ups.
- **Decision-making timeline:** Public sector bodies have up to 2 months to decide on a reuse request.
- **Support from competent bodies:** Member States can choose bodies to support public sector bodies in granting access to reuse, providing secure processing environments, and advising on data storage and structuring.
- **Single information points:** Member States must establish a single information point, and the European Commission will create a European single access point with a searchable register of information from national points.

Examples

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- Findata, a Finnish social and health data permit authority, processes requests and grants access to data for re-use from various sources, such as social insurance institutions, pension registers, and population registers.
- French company DAMAE Medical is improving its LC-OCT technology for cellular resolution imaging of skin microstructures with new training data from the French Health Data Hub. The project aims to enhance the technology's capacity to identify potential signs of skin cancer and better demarcate surgical intervention areas.

Data intermediation services

Key Goals

The DGA establishes rules for data intermediaries, such as data marketplaces, to function as trustworthy organisers of data sharing or pooling within the common European data spaces. The goal is to increase trust in data sharing by ensuring the neutrality and transparency of data intermediaries while putting individuals and companies in control of their data.

How it works in practice

Data intermediaries act as neutral third parties connecting data holders and data users. They cannot monetise the data and must comply with strict requirements to ensure neutrality and avoid conflicts of interest. This involves a structural separation between the data intermediation service and any other services provided. Commercial terms for intermediation services must be independent of whether a potential data holder or data user is using other services. Any data and metadata acquired can only be used to improve the data intermediation service.

Data intermediaries must notify the competent authority of their intention to provide services. Upon receiving confirmation, they can legally operate and use the label 'data intermediation services provider recognised in the Union' and the common logo. Competent authorities monitor compliance, and the Commission maintains a central register of data intermediaries.

Examples

- Deutsche Telekom's Data Intelligence Hub offers a data marketplace for companies to securely manage, provide, and monetise information. As a neutral trustee, Telekom guarantees data sovereignty through decentralised data management. Over 1,000 users from 100+ companies are active on the platform.
- Dawex, a French company, functions as a global data marketplace, connecting data suppliers and users. It offers tools to help parties understand, assess, and communicate about data. Data users and suppliers communicate directly on its platform, and Dawex supports the negotiation of contractual agreements with model terms.
- API-AGRO, an agricultural data-sharing hub, uses Dawex technology to foster an agricultural ecosystem with a neutral intermediary. Api-Agro does not monetise data, but functions as a neutral third party connecting data holders and data users.

Data altruism

Key Goals

Data altruism involves individuals and companies voluntarily sharing data without reward for the public interest. The Data Governance Act aims to create trusted tools for easy data sharing that benefit society while ensuring that data is handled by trusted organisations based on EU values and principles. This will enable the creation of large data pools for analytics and machine learning, including across borders.

How it works in practice

Entities can register as 'data altruism organisations recognised in the Union' if they are not-for-profit, meet transparency requirements, and offer safeguards for citizens and companies sharing data. They must comply with the rulebook, which outlines requirements and recommendations.

A common European consent form for data altruism will allow uniform data collection across Member States, providing legal certainty for researchers and companies.

Examples

- MyData Global aims to empower individuals by improving their right to self-determination regarding their personal data, providing a trusted interface for members to give consent for specific data usage.
- The Smart Citizen platform allows citizens to share data on noise levels and pollution in their homes, providing valuable information for mapping noise and air quality and developing targeted solutions.
- The German Corona-Datenspende-App collected data from fitness bracelets and smartwatches to monitor potential Covid-19 hotspots by analysing heart rate, body temperature, blood pressure, and sleeping patterns. Itise data, but functions as a neutral third party connecting data holders and data users.

European Data Innovation Board

Key Goals

The primary objective of the European Data Innovation Board (EDIB) is to facilitate the sharing of best practices and encourage collaboration in the areas of data intermediation, data altruism, and the use of public data that is not suitable for open data release. Additionally, the EDIB aims to prioritise the development and implementation of cross-sectoral interoperability standards to promote seamless data sharing and usage across the EU.

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How it works in practice

The EDIB will be composed of representatives from various entities, including:

Member State competent authorities responsible for data intermediation and data altruism,

1. The European Data Protection Board,
2. The European Data Protection Supervisor,
3. The European Union Agency for Cybersecurity (ENISA),
4. The European Commission,
5. The EU SME Envoy/representative appointed by the network of SME envoys,
6. Other representatives of relevant bodies (selected through a call for experts by the Commission).

The EDIB will operate through at least three sub-groups:

1. A sub-group comprising representatives of Member State competent authorities, focusing on sharing best practices and coordinating efforts,
2. A sub-group dedicated to technical discussions on standardisation, portability, and interoperability of data, ensuring seamless data exchange across the EU,
3. A sub-group for stakeholder involvement, promoting engagement and cooperation between various stakeholders in the data ecosystem.

Examples

The EDIB will have the authority to propose guidelines for common European data spaces. For instance, it can recommend measures to ensure adequate protection for data transfers outside of the Union, thereby safeguarding the privacy and security of data shared across international borders.

International data flows

Key Goals

The primary objective of the international data flows policy, as acknowledged in the European strategy for data of February 2020, is to adopt an open yet assertive approach towards international data transfers. By unlocking the significant socioeconomic potential of the vast amount of data generated within the EU, the policy aims to boost the international competitiveness of the Union, contribute to economic growth, and support post-COVID recovery. The DGA plays a crucial role in strengthening the open strategic autonomy of the European Union while promoting trust and confidence in international data flows.

How it works in practice

While the GDPR provides safeguards for personal data in the context of international data flows, the DGA establishes similar protections for access requests from third countries concerning non-personal data. These safeguards apply to all scenarios and provisions outlined in the DGA, including public sector data, data intermediation services, and data altruism constellations.

Re-users in third countries must ensure the same level of protection for the data as required by EU law and accept the respective EU jurisdiction. If necessary, the Commission may adopt additional adequacy decisions for the transfer of public protected data for re-use concerning non-personal data access requests from a third country. These adequacy decisions will be similar to those made for personal data transfers under the GDPR.

Furthermore, the DGA empowers the Commission to provide model contract clauses for public sector bodies and re-users when public sector data is involved in data transfers with third countries. This helps ensure that international data flows are governed by clear, consistent standards that protect the rights and interests of all parties involved.

ABOUT THE FIRM

MK Fintech Partners Ltd is a Maltese licensed VFA Agent (virtual financial assets agent). Our team comprises dedicated experts who provide advisory, licensing and registrations of activities related to Fintech, Crypto, Blockchain and Investment.

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