

Commission Tables Data Governance Act

On 25 November 2020, the European Commission proposed a Regulation on data governance (Data Governance Act) to better exploit the potential of ever-growing data in a trustworthy European framework (the **proposed Regulation**). The proposed Regulation is the first of a set of measures announced in the 2020 European strategy for data (available [here](#)).

According to the Commission, the proposed Regulation offers a new form of data governance and establishes an alternative model to the data-handling practices of the big technology platforms. This model is based on the neutrality and transparency of data intermediaries as organisers of data sharing or pooling. In particular, the proposed Regulation is structured along four pillars:

1. Re-use of public sector data

Chapter II of the proposed Regulation creates a mechanism for re-using specific categories of protected public sector data which is conditional on the respect of the rights of others (notably on the grounds of protection of personal data, but also protection of intellectual property rights and commercial confidentiality). The proposed Regulation prohibits exclusive use of such data and sets out conditions for re-use (including a requirement that re-use must be non-discriminatory, proportionate and objectively justified).

Importantly, the re-use of such data falls outside the scope of Directive (EU) 2019/1024 (the “Open Data Directive”). Rather than creating the right to re-use such data, the proposed Regulation creates a set of harmonised conditions under which the re-use of such data may be allowed. Public sector bodies that would allow this type of re-use will have to be technically equipped to ensure that data protection, privacy and confidentiality are preserved. Member States will have to set up a single contact point so as to support researchers and innovative businesses in identifying suitable data, and are required to establish structures designed to support public sector bodies with technical means and legal assistance. The proposed Regulation bans exclusive re-use rights, subject to exceptions. Allowing the re-use of data may be subject to a fee.

2. Data sharing services providers as “trusted intermediaries”

Second, the proposed Regulation aims to foster the availability of data by increasing trust in intermediaries. Under the proposed Regulation intermediaries for data sharing would have to register with national authorities.

Data sharing services providers will have to comply with several requirements; in particular, the need to remain neutral as regards the data exchanged. Providers will have an obligation to keep data sharing services separate from other commercial operations and not to monetise the data generated through the intermediary activities. Access to data held by an intermediary should be based on criteria that are “fair, transparent and non-discriminatory”. In addition, the proposed Regulation imposes an additional requirement for obtaining consent: if the intermediary “provides tools for obtaining consent from data subjects or permissions to process data made available by legal persons, it shall specify the jurisdiction or jurisdictions in which the data use is intended to take place”.

According to the Commission, this approach aims to ensure that data sharing services function in an open and collaborative manner, while empowering natural and legal persons by giving them an overview of and control over their data.

3. Data altruism

The proposed Regulation also provides a framework for sharing data on “altruistic grounds”. Individuals and organisations can engage in data altruism and register on a voluntary basis as a “Data Altruism

Organisation recognised in the EU” in order to increase trust in their operations. Also, a common European data altruism consent form will be developed so as 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).

4. European Data Innovation Board

Finally, the proposed Regulation creates a formal expert group, the European Data Innovation Board, which will facilitate the emergence of best practices by Member States’ authorities. The Board should consist of representatives of the Member States and the Commission as well as representatives of relevant data spaces and specific sectors (such as health, agriculture, transport, and statistics). Moreover, the European Data Protection Board (i.e., an independent EU body which advises on the application of EU data protection rules) should be invited to appoint a representative to the European Data Innovation Board.