

Subject: Data Governance Act – foster data sharing mechanisms that benefit society as a whole

Dear Attaché,

I write on behalf of BEUC, the European Consumer Organisation, regarding the Data Governance Act (DGA), ahead of the trilogue meetings planned for November-December 2021.

We welcome Council's work on the proposal and consider it has brought improvements to the original text, especially when it comes to clarifications on the interplay between the Data Governance Act and the General Data Protection Regulation (GDPR).

However, we would like to draw your attention to the following points which are still of our concern:

The notion of 'general interest' still requires further clarifications, particularly in the context of cross-border data sharing

The DGA proposal provides that data subjects and other data holders can make data available for 'purposes of general interests' and gives public research, healthcare, combating climate change and improving mobility as examples of such purposes. However, it is not clear how 'general interest' should be understood in the context of the notion of 'public interest' in the GDPR (*Article 6(3), GDPR*), which serves as possible legal basis for the processing of personal data. Are these concepts interchangeable, if not – how do they interact? Despite that the DGA is a regulation which is expected to be directly applicable, it leaves room for the Member States to define what would be considered a 'general interest' (*Article 16 (a), DGA proposal*). This could also be particularly problematic in the context of cross-country use of data, if two countries have diverging 'general interest' concepts.

The concept of data altruism should be linked with the notion of 'public interest' and the application of this concept to non-personal data should be clarified

Firstly, in the context of data altruism, lack of definition of 'general interest' (*Article 2 (10), DGA proposal*) might be misleading to consumers, as there are no clear legal benchmarks to check against the presence of such a 'general interest' ('altruism washing') and, in some cases, the interpretation of what constitutes a 'general interest' might differ at national level. Since the concept of data altruism is closely linked with the GDPR's regime for data re-use in public interest, BEUC strongly recommends using the notion of 'public interest' instead of 'general interest' in the context of data altruism.

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Secondly, the DGA applies both to personal and non-personal data, however, when it comes to the concept of altruism, only re-use of personal data is explained, while how altruism will apply to non-personal data is not clear and is barely mentioned. It is important to introduce additional safeguards specifically for non-personal data, particularly if such non-personal data are the result of the anonymisation of personal data and thus information originally related to individuals, to make sure that data of consumers is not used beyond their permission for other than initially stated purposes. In addition, strong data anonymisation standards should be required to ensure high protection of non-personal data.

Competent authorities will need additional resources to deal with increased data sharing activities and the enforcement of the DGA

The DGA proposal is expected to deliver fairer data processing practices and regulate the behaviour of actors engaged in data sharing. This will create an increased need of engagement of the Data Protection Authorities (DPAs), as well as the fact that the more data will be shared, the more breaches will occur. Given that the recent assessments showed that many Member States across the EU still lack resources to enforce the GDPR, BEUC expresses its concern on the timeliness and quality of the oversight what can be provided on the enforcement of the upcoming Data Governance Act, as well as other legal frameworks in the digital sector. We call on the Member States to increase resources and strengthen capacities of the competent authorities.

Thank you very much for taking our views into account in your discussions.

We are available for any further information you might require.

Yours sincerely,

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