

## Comment

# on the planned *Data Act* of the European Commission<sup>1</sup>

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on behalf of

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The EU's planned *Data Act* aims to facilitate public sector access to private sector data in the public interest ("B2G"). The Act is also intended to promote the exchange of data from business to business ("B2B").

We - the undersigned stakeholders - welcome this intention and comment on the design of the planned *Data Act* as follows:

1. The *Data Act* should improve the legal framework for the establishment of neutral data trustees.

The aim of data trustees is to facilitate the exchange of data between companies ("B2B") as neutral third parties (new intermediaries in the sense of the DGA) or to enable the "sharing" of data, i.e. the joint use of data by companies. Yet, data trustees do not currently have sufficiently clearly cut - i.e. designed by means of rights and obligations typical of trustees - scope. The concept of neutrality or "independence" of a data trustee is of central importance for the implementation of data trustees and should therefore be clarified as a legal concept. The independence of a trustee is an essential prerequisite for the safeguarding of privacy and the protection of personal data.

2. In particular, the provisions of data protection (EU-GDPR) on consent for the use of data as well as on the purpose limitation of the uses of data should allow for an extended interpretation for neutral data trustees. Ensuring the purpose limitation of data use is an unwieldy but important instrument in terms of data protection. At the same time, however, supplementary and accompanying instruments are needed for data trustees that make the purpose limitation interpretable in the sense of a guarantee that continues to have an effect.

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<sup>1</sup> This statement is based on the pre-published *Inception Impact Assessment* for the draft law. [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13045-Data-Act-&-amended-rules-on-the-legal-protection-of-databases\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13045-Data-Act-&-amended-rules-on-the-legal-protection-of-databases_en) [25.8.2021]

Such data protection guarantees could be, on the one hand, the above-mentioned independence of the data trustee and, on the other hand, *codes of conduct, certification mechanisms* or, where applicable, *purposes or standards recognised under Community law*. In addition, the *obligation to carry out a data protection impact assessment* and the *involvement of data protection supervisory authorities* can play an important role, as can *(technical) procedures* that allow consent to be revoked at any time or instruments that ensure the transparency of the respective data processing for the data subjects without restriction.

The option of transferring the right of consent to a neutral data trustee (and only to such a trustee) is also needed- for the purpose of enabling B2B data use, to which the trustee can consent vicariously.

3. Similarly, the provisions of the EU Data Protection Regulation (EU-GDPR) on the permissibility of the processing of data - currently very narrowly interpreted - should be open to extended interpretation exclusively with a view to the tasks of neutral data trustees.

In this context, the data protection guarantees described above, in particular the guarantee of the independence of the data trustees, are indispensable and of central importance for the protection of the fundamental rights to privacy and the protection of personal data. Nevertheless, neutral data trustees can only establish themselves on the market and generate demand if they also take over certain data processing procedures. These include the pseudo- or anonymisation of data, ensuring the integrity of the data through conversions that safeguard its existence (and, as far as required, data-migratability), but also generic quality assurance processes through standardisation and the provision of generic options for legally compliant evaluation of the data.

4. There is also an urgent need for a data access clause that complies with the concerns of the GDPR or a mandatory consent option for the use of data by public research or - in the sense of the approach chosen in the Data Governance Act for "sectors" of data use - for certain areas of public research that allows neutral data trustees to pass on "B2B" data to publicly funded scientific institutions - for the purpose of research.

Publicly funded science needs access to the data that future neutral intermediaries, e.g. data trustees, aggregate and pass on in order to fulfil its mission of generating added scientific value.

The undersigned stakeholders consider the option of creating neutral data trustees, as envisaged by the draft EU DGA, as a great opportunity in the context of a European path of digitisation. They look forward to the draft Data Act with excitement and optimism.