



DOT Europe position paper

DOT Europe Position on the Data Governance Act

Introduction

DOT Europe, the trade association representing leading digital, online and tech companies in Europe, welcomes the Data Governance Act's (DGA) objectives to create an enabling framework for data sharing between the different actors of the data economy. We strongly believe that sharing data in a responsible and concerted manner can have great benefits for the European economy and society. Innovation in data analytics, cloud computing and Artificial Intelligence (AI), have tremendously increased the value that can be drawn from data, and creates benefits for businesses and consumers alike. Increased access to data also means increased access to economic and social opportunities, which are needed more than ever today as Europe recovers from the COVID-19 crisis.

To fully realize the benefits of data and advance Europe's digital goals, the Data Governance Act should set out an innovation-friendly framework that will facilitate data-sharing under clear rules that benefits all European companies, and ultimately create an enabling environment for data innovation.

Increasing the amount of data available for (re)-use

Over the past year alone, we have seen how increasing access to public sector data can contribute to solving society's most pressing issues from healthcare to the environment. Public-sector held data can be a source of economic growth and competitiveness and can present a great potential of innovation if it is made available in ways that promote its usability across the EU.

In addition, DOT Europe members support the principle that data should be "*as open as possible, as closed as necessary*". That is why we support the DGA's provisions outlined in Chapter II, aiming to make more data held by the public sector available. This will complement the range of data made available under the Open Data Directive, create new opportunities for innovation and research, and support European efforts and competitiveness in the field of AI.

To achieve these goals, **public-sector datasets should be made available in ways that promote their usability across the EU**, for instance by using API technologies and machine-readable formats. Indeed, ensuring that high-value datasets from different Member States can be combined and analysed without any re-formatting or other reworking is critical to making them usable at a practical level and promoting a harmonized Single Market in data.





Offering the best set of tools and incentives for data sharing

DOT Europe believes that the DGA is an opportunity to provide companies operating in Europe with the best set of tools to conduct voluntary data sharing activities, in full respect of EU laws and values. The objectives of Chapter III to guarantee access to data sharing services that are fair, transparent and non-discriminatory will certainly encourage trust in data sharing.

Yet, we believe that the DGA should give individuals and organisations the possibility to choose the data sharing mechanisms that best fit their activities and objectives. The DGA should not put more requirements on existing B2B data-sharing services that are enabling European companies to voluntarily share data. This would be in contradiction with the initial objective of the European Commission to promote voluntary data sharing and would impose new obligations on companies and potentially discourage data sharing.

In that sense, the alternative data sharing model envisioned by the DGA can successfully complement the data sharing mechanisms that exist on the market and unlock the ability for more European actors to benefit from the power of data. These different data sharing models should ultimately create confidence for all market players to see the benefits that can be derived from proactively opening up some of their data under certain terms and conditions.

Consequently, **clarification of the scope of Chapter III is necessary to ensure that the DGA is not covering those existing closed B2B models while ensuring legal certainty for European businesses.** As currently drafted, it could create ambiguity as to what constitutes a “data intermediation service” and risks capturing many services that are not truly data sharing services. Recital 22 already provides a helpful clarification of what should be considered as a data intermediary in the DGA.

Guaranteeing the free flow of non-personal data

The free flow of data across borders should be encouraged and supported through the Data Governance Act. The ability to transfer and access data around the world is critical to all economic sectors and companies of all sizes. European companies rely on international data flows to enhance their competitiveness on the global stage. Cross-border data flows and access to global digital services are essential to stimulate innovation and growth for European companies of all sizes. To ensure that data transfers can continue to take place, in full respect of EU rules and values, it is important to clarify the interplay between the DGA and the regulation on the free flow of non-personal data as well as the GDPR.

In addition, existing international agreements on Intellectual Property already provide adequate protection for non-personal data protected by IP and trade secrets. The introduction of what appears to resemble “adequacy decisions” for the international transfer of non-personal data, as stated in the Article 5, could create potentially unnecessary legal barriers. We therefore encourage the European Commission to consider these before creating new requirements and we caution against unjustified restrictions to international data flows, which can significantly limit the technology choice of EU data re-users and their potential to innovate. Data re-users should be able to leverage the best available





technologies and service providers, regardless of their location to remain competitive in a global digital economy.

Finally, **the DGA should also not implement data localisation requirements that would create new costs for companies, have a direct impact on consumers, and go directly against the goal of leveraging the data sharing and collaboration opportunity.** Any restrictions related to international access and/or the transfer of data outlined in article 30 should only apply to “highly sensitive public sector data”, the scope of which should be narrowly defined to exclude non-personal commercial data.

Clarifying the interplay between the DGA and the GDPR

DOT Europe members welcome the focus of the DGA on fostering non personal public data usage through the creation of data spaces. DOT Europe strongly believes that a distinction should be kept between the non-personal data provisions under the DGA and the personal data provisions which are covered by the GDPR. **In order to avoid legal uncertainty, personal data requirements should not be included in the DGA.** The interplay between the provisions outlined in the DGA, and the purpose limitation enshrined in the GDPR should be clarified. When it comes to data altruism for example, additional security and ethical implications should be carefully considered before it can be accessed by third parties. Any inconsistency with the GDPR should be avoided and the EU data protection rules set should be seen as an enabler, not an obstacle in the further development of the data-driven economy.

Supporting the use of cloud technologies

The DGA text proposed by the Commission suggests that “a secure processing environment” can only be provided by a public sector body. This would exclude the possibility of using cloud-based technologies, which are typically provided by third parties, i.e., cloud service providers. Cloud computing is the backbone of data driven innovation (AI, machine learning, data analytics). Preventing the use of such technologies will ultimately defeat the purpose of the DGA to unleash the potential of data and foster data driven innovation. As stated by the European Union Agency for Cybersecurity (ENISA) cloud services can be more secure, robust, scalable, and cost effective than those available on premise. To address this unintended consequence, **the legislation should focus on the control of the data and environment by public sector bodies rather than on the ownership of the physical infrastructure.**

Limiting IP-related assertions in standardisation

The European Data Innovation Board foreseen by the DGA will play an important role in advising on standards to adopt for data sharing activities. In this context, DOT Europe would like to highlight that **IP-related assertions, such as broad IP license policies and other disincentives to assertions that**





have beleaguered standards in other areas, should be avoided or limited regarding data standardisation efforts. In addition, close coordination with international standardisation bodies is necessary, to ensure global alignment and prevent further fragmentation in this area.

Our recommendations:

- More public sector-held data should be made available in ways that promote their usability by companies of all sizes across the EU.
- The scope of Chapter III should be clarified to make sure that all data sharing models, including the one created by the DGA, can work together and complement each other.
- The free flow of data across borders should be guaranteed and any restriction be strictly limited to 'highly-sensitive public sector data'.
- A clear distinction should be kept between the non-personal data provisions in the DGA and personal data provisions covered by the GDPR.
- The DGA should focus on the control of the data by public sector bodies rather than the ownership of the physical infrastructure to foster the use of cloud technologies.
- IP-related assertions should be limited regarding data standardisation efforts.

