

# Position Paper

## Bitkom's Principles for the Data Governance Act

27.01.2021

Page 1

If done right, the European Commission's initial proposal on the Data Governance Act (DGA) has the potential to be an important step towards a European data economy. While previous discussions about the use of data have focused primarily on the important topic of data protection, there is an increasing awareness for the innovative potential of data, which is why we welcome that the DGA addresses all types of data (personal, non-personal, government sector and specific data sets). In order to accelerate the digital transformation of European economies, the data economy has to be enabled with a clear and harmonized framework. For that, existing regulations - sector specific and others - need to be carefully assessed to determine which rules are fit for purpose, which need amending and which should be developed into a broader rulebook for the EU's data economy. It should also be highlighted that the aim is not to have a single integrated data space but to connect various initiatives for data sharing – also across different domains – on a technical level to ensure their interoperability.

While the DGA can only be a step in this direction, we welcome the initiative and aim to comment in detail based on the following 12 principles:

### I. **Regulatory Framework: Enable innovation-friendly data economy**

Strong data protection is already in place in the EU's Digital Single Market (DSM). Now, it needs to be complemented with innovation-friendly data policies based on self-determined and contract-based data handling. We are convinced that the necessary precondition for efficient data management is the promotion of free and fair competition between all market players, in which companies can develop their own ideas and use databased applications irrespective of their size. An appropriate balance must be struck between the legitimate interests of the data producer and the data user. In addition to big data exchange, sharing of high-quality data sets on a voluntary basis should also be promoted (as envisaged by the European Commission). The success of data intermediaries as well as data altruistic organizations is depending on an enabling framework that further incentivises data sharing while avoiding a crippling corset of regulation that could have adverse effects on intermediary services.

### II. **Data spaces: Taking different setups and structures into account**

The DGA is laying the groundwork for the development of common data spaces in strategic sectors. While we believe that data intermediaries and data altruism can expand data sharing, we are also convinced that different frameworks, setups and

Bitkom  
Bundesverband  
Informationswirtschaft,  
Telekommunikation  
und neue Medien e.V.  
(Federal Association  
for Information Technology,  
Telecommunications and  
New Media)

**Benjamin Ledwon**

**Head of Brussels Office**

P +32 2 60953-21

b.ledwon@bitkom.org

**Rebekka Weiß, LL.M.**

**Head of Trust & Security**

P +49 30 27576 161

r.weiss@bitkom.org

Albrechtstraße 10  
10117 Berlin  
Germany

President  
Achim Berg

CEO  
Dr. Bernhard Rohleder

governance structures need to be the future basis for these data spaces (vertical approach). By narrowing the scope, the DGA will avoid restricting other possible setups of data spaces. The DGA should also take initiatives such as GAIA-X / the upcoming European Alliance for Industrial Data and Cloud and the European Cloud Federation into account (e.g. with regard to the conditions set out for data sharing intermediaries who use/ offer underlying Cloud infrastructure) to actively build a coherent framework on the basis of existing initiatives – avoiding building parallel rules.

### III. **Specify definition and scope: Be aware of sector specificities**

There are many ways of exchanging and sharing data with various established models in place. The regulation has to be clear what form of data transmission it intends to regulate. Unclear definitions and scope will lead to undermining existing and necessary data sharing models, some of which are already widely used. Existing rules need to be re-assessed to determine which already build a functioning framework for specific sectors and where additional regulation is needed.

Different sectors have different ways and needs for exchanging data. The proposal is fully aware of these specificities and intends to outline general and horizontal rules for data intermediaries. In the course of further negotiations, industries should not be lumped together but rather interoperability between domain be ensured. Moreover, data intermediaries are only one model for sharing data which can have clear benefits for specific applications but is part of a larger landscape. While it should be thought what strategic advantages data trustees can bring in specific sectors (such as health or research), entrepreneurial freedom and an innovation friendly framework have to be maintained.

### IV. **Access to public data: Building a comprehensive, coherent and systematic framework**

Access to data in the public sector has a positive impact on the economy and society at large. Existing initiatives should be further encouraged by the DGA. In order to tap the greatest possible potential from open government data, close cooperation and networking of all actors involved is required, i.e. between data providers and data consumers. Many relevant public actors are not yet connected in a comprehensive and systematic way. An intensified exchange between open government data entities throughout Europe is necessary for making better use of existing offers. Furthermore, without an understanding on the required formats and some standardization with regard to data the improved accessibility of data will fall short of the objective. The DGA should also address the issue that different standards at a national level – in some cases even at a federal level - create market barriers and fragmentation, thus must be avoided in favour of standards developed within European standardisation organizations (while also keeping existing international standards in mind). In addi-

tion, we support the aim to harmonize the description of data (= metadata), so that data sets, including their usage possibilities, speak the same language not only with regard to their format when being offered for sharing on data spaces.

**V. Interoperability and data transfer: Balance Standardization and Agility**

Although we support efforts to use standards as a tool for improved data transfers and interoperability, standardization that is too strong can also block innovation. Particularly in an agile domain such as IoT, it is vital to allow players to also experiment with new methods for data encoding, transmission etc. for the sake of progress. Standardization should be applied for mature existing offerings and should always be aimed for, while encouraging innovation at early stages without imposing particular standards.

The multitude of (technical) possibilities for data provision leads to a very heterogeneous data offer as well as to different usability of data. In order to facilitate access and use of sensitive open government data, there is a need for harmonised and standardised technical implementation. Standardisation is essential, particularly with regard to the formats and systems used. The European Data Innovation Board can play a key role for the purposes of advising the European Commission on relevant (cross)-sectoral standards that can reduce technical barriers to data sharing in a time efficient way. To that end, we stress that the new European Data Innovation Board should closely cooperate with European and international standardisation bodies (see further details on the setup of the EDIB below). Public administration needs to address relevant issues, such as the collection and processing of data, early on when IT systems are procured.

**VI. Framework for data intermediaries: Focus on what is actually needed in the market**

In general, we support the EC's aim to incentivize voluntary data sharing by establishing a horizontal framework for data intermediaries that can lead to trust and a more competitive environment among service providers. Data intermediaries can help building a new and trustworthy framework for data exchange in the EU. We welcome that the proposed rules focus on trust and neutrality for intermediaries. However, the framework should not impose a restrictive regulatory corset for data intermediaries more than what is necessary to ensure neutrality and trustworthiness. The foreseen notification for providers of data sharing services envisages various obligations and includes costs for compliance, development (creation of own entity) and potential violations and thus creates administrative burden but lacks incentives in return: An imminent positive effects, specifically on smaller players in the market with regard to scale, are not the logical consequence from this proposal. There is neither a certification or public register foreseen that could help raising transparency or interest of in-

dustry or public sector into data intermediary services that have notified themselves in accordance with the proposal.

With regard to the conditions set out for data intermediary service providers, the overarching goal should be to enhance trust and uptake of these services, but continue to allow innovative use cases. While we agree that the neutrality of data intermediary service providers is key, we believe the notion of “structural separation” between the data sharing service and any other services provided needs to be clarified: e.g. it is common practice that data market places offer today analytical tools for companies to enrich/analyze their data alongside the possibility to share it then with other interested parties through the intermediation service. If the provision of analytical tools “on top” were to be prohibited under the proposal, existing intermediary service providers would be stripped away from possibilities to differentiate themselves from competitors by offering additional services and would become “sharing-only” intermediaries. While we fully agree that intermediaries should not use the data exchanged for any other services, businesses should still have the possibility to make use of additional services offered by intermediary services when using these platforms.

**VII. Framework for Data Altruism: Make it work by providing legal basis**

In principle, we recognize the objective set out in the DGA with regard to Data Altruism as sensible. For the objective of successfully facilitating the processing of personal data for altruistic purposes, the EU Commission should create an exception in the GDPR or at least a privilege for this purpose and should also create a separate legal basis for the training of algorithms for artificial intelligence applications in that context. The EU Commission could further define and clarify that a later change of purpose in the context of further processing needs a compatibility check but no separate authorization. With regard to the European consent form for data altruism, the DGA should provide for the option of regulating criteria for other consent forms that deviate from the DGA’s proposed consent form. This should include a certification process in order to adequately take into account the complexity of different sectors and developments in the future.

**VIII. Allow for free flow of data: Improve legal certainty**

The data economy requires clear rules and legal certainty when it comes to exchanging and sharing data. The GDPR has established a legal framework for personal data, but more certainty is needed with regard to non-personal and mixed data sets. As it was established in the Free Flow of Data regulation, free flow of data inside the EU should be guaranteed by default and only restricted in very rare and clearly defined

exceptional cases. Moreover, friction for data flows with judiciaries outside the EU should be as little as possible.

**IX. IP: Shielding provisions and their implementation require legal clarity**

The DGA introduces the need for the European Commission to adopt “IP adequacy decisions”. We urge the European Commission to take into account long-standing international agreements such as the Berne Convention or the TRIPs agreement that have brought together a number of like-minded countries on IPR protection. Against this background, more clarity from the European Commission is required on data transfers to third countries under the DGA in case there is no such adequacy decision, and when such adequacy decision is needed, which countries will be assessed in priority and how long the process for adopting adequacy decisions for the types of data covered by the DGA will be.

**X. A streamlined enforcement structure: Avoid bureaucratic overload**

There is a risk that the proposed model of competent authorities checking and authorizing data sharing for a clearly defined purpose is creating a bottleneck. The data economy is agile and dynamic, therefore quick decision-making and clear competencies are required. It could be considered to set up a risk-based model for which applications of data sharing explicit consent has to be asked for. In order to achieve legal certainty, there should be clear procedures and deadlines to facilitate quick and reliable decisions. Bureaucratic overload and uncertainty should be avoided at all times. In order to ensure a level playing field for all companies, regardless of their country of origin, consistent oversight and harmonized interpretation across Europe is needed.

**XI. Connect with existing rules and initiatives: Building a coherent framework**

Enabling the data economy is a moving target. There are many ongoing initiatives, proposals and projects in parallel. The DGA should take into account ongoing initiatives, such as Gaia-X and the upcoming Cloud Federation, when it comes to addressing for instance rules on interoperability. The Data Innovation Board can be an excellent opportunity to bring together data experts with different backgrounds and actively include experience from industry stakeholders, be open and inclusive to any company operating in Europe and taking into account developments at international level. Active involvement of industry stakeholders should be an integral part of the Board, in the same vein as it is e.g. in the European Commission or EDPB. In that regard, it is unclear how and in what sense “relevant data spaces” will be involved as part of the Board. With regard to the GDPR, it should be examined whether there are provisions under the GDPR which stand in the way of setting up data intermediaries.

**XII. Ensure strategic foresight: Take future developments into account**

## Position Paper Principles on the Data Governance Act

Page 6|6

Given that the handling of data is becoming a competitive factor, for instance when it comes to the further development and establishment of current technological developments such as blockchain and artificial intelligence, negotiators should find ways to make data accessible in a harmonised, unbureaucratic, agile, user friendly, secure and data protection compliant manner. The Data Governance Act can be instrumental in driving an important paradigm shift towards embracing the potential of data for the common good along the principles of openness, participation and transparency.

Bitkom represents more than 2,700 companies of the digital economy, including 2,000 direct members. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.