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LIBE Committee hearing on the Data Governance Act

Remarks by European Data Protection Supervisor

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I am delighted to have the honour of addressing the LIBE Committee today.

I am here not only as European Data Protection Supervisor (EDPS), but also on behalf of Andrea Jelinek, Chair of the European Data Protection Board (EDPB), to present the Joint EDPS-EDPB Opinion on the Commission's Proposal for a Data Governance Act (DGA).

The DGA is a particularly relevant legislative initiative both for the 'data protection community' and for the Union at large, so we have to get it right.

Let me say that the EDPS has shown sympathy for the other parts of the digital package i.e. the Proposal for a Digital Markets Act (DMA) and the Proposal for the Digital Services Act (DSA). On the contrary, we have many issues to raise on the proposal for a Data Governance Act (DGA).

The EDPS and the EDPB acknowledge the legitimate objective of the DGA to improve the conditions for data sharing in the internal market. At the same time, the protection of personal data is an essential and integral element for trust in the digital economy.

The explanatory memorandum of the Proposal states, "*the interplay with the legislation on personal data is particularly important. With the General Data Protection Regulation (GDPR) and ePrivacy Directive, the EU has put in place a solid and trusted legal framework for the protection of personal data and a standard for the world.*"

We could not agree more with this statement. However, we consider that, despite these intentions, **the Proposal entails significant inconsistencies with the GDPR**, notwithstanding the statement in the recital that the DGA is "without prejudice" to the GDPR.

General concerns

In order to resolve these inconsistencies, **we urge the European Parliament to carefully consider the following aspects.**

(1) the subject matter and scope of the Proposal

The Joint Opinion calls for a horizontal provision in the substantive part of the DGA, Article 1, clarifying that the GDPR is not affected.

(2) the definitions/terminology used in the Proposal

In particular, we have jointly called for a definition, in the legal text, of the term “permission” to process data which does not raise consistency issues with the GDPR, and to clarify without any ambiguity the ‘personal’ character of the right to data protection.

(3) the legal basis for the processing of personal data

The text must clarify that, in so far as personal data is concerned, **the processing shall always be based on the appropriate legal basis under Article 6 GDPR.** Therefore, **all DGA provisions that might indicate otherwise must be amended.**

As currently drafted, the Proposal is not always clear on whether it refers to personal or non-personal data, a circumstance which might raise legal uncertainties on the applicable rules.

Sectorial aspects

The EDPB and the EDPS have significant concerns regarding ‘vertical’ (more ‘sectorial’) issues, in particular:

- the use of data held by public sector bodies;
- data sharing service providers; and
- the processing of personal data for “data altruism”.

(1) *Reuse of data held by public sector bodies*

The Open Data Directive, along with the GDPR, already provides for appropriate mechanisms allowing the sharing of personal data held by the public sector bodies. Furthermore, the interface of the DGA with the Open Data Directive raises legal uncertainties due to lack of inconsistencies.

The reuse of personal data held by public sector bodies may only be allowed if it is grounded in EU or Member State law.

We therefore recommend aligning Chapter II of the Proposal with the GDPR and with the Open Data Directive, thus providing a coherent legal framework for the reuse of data held by public sector bodies.

(2) On data sharing service providers

The Joint Opinion notes that the issue of unclear terminology is particularly prominent and that the data protection safeguards are not sufficiently specified.

The vetting regime leading to EU labelling as data sharing provider should be more protective for citizens. The DGA should provide more **checks and safeguards for individuals, notably taking into account GDPR accountability tools** such as codes of conduct and certifications.

(3) On data altruism

In our Joint Opinion, we recommend to clearly define the purposes of general interest envisaged by the DGA and to make a clear distinction between:

- consent given in relation to scientific research;
- further processing for scientific or historical or statistical purposes; and
- the processing of data for purposes of general interest.

Considerations similar to the ones made for data sharing providers are made for the Data Altruism Organisations recognised in the Union.

More broadly, it is necessary to set out how the provisions in Chapter IV relate to the GDPR and in particular the GDPR's notion of consent.

Oversight

The competences and powers of the independent data protection authorities must be respected, as required by the GDPR and Regulation (EU) 2018/1725.

The requirement of effective independent oversight also results from Article 16 TFEU, Article 8 of the Charter and the case law of the CJEU.

We therefore recommend that **the DGA designates the data protection authorities as the main competent authorities for the supervision and enforcement on data sharing providers and data altruism organisations**, as well as in the context of Chapter II of the DGA.

Similar considerations apply to the competences that are to be attributed to the EDPB and not to the Commission expert group under Article 26 DGA.

Conclusion

Both the EDPS and the EDPB remain available to provide further clarifications.

We would welcome that recommendations provided in the Joint Opinion are taken into account by the co-legislators as they aim to bring more legal certainty and increase citizens' trust and to not water down the data protection principles and rules.

I now look forward to interacting with the Committee and answering your questions.

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