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NOTE

From:	Presidency
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act) - Progress report

I. INTRODUCTION

1. The Commission adopted the proposal for a Regulation on European data governance (Data Governance Act, DGA) on 25 November 2020¹. It is the first of a set of measures announced by the Commission in the 2020 European strategy for data².

¹ doc. 13351/20.

² [COM/2020/66 final](#).

2. The aim of the Commission proposal, based on Article 114 TFEU, is to foster the availability of data for use by increasing trust in data intermediaries and by strengthening data-sharing mechanisms across the EU. More specifically, the instrument addresses the following situations: i) making public sector data available for re-use, in situations where such data is subject to rights of others; ii) facilitating data sharing among businesses, against remuneration; iii) allowing personal data to be used with the help of a ‘personal data-sharing intermediary’, designed to help individuals exercise their rights under the General Data Protection Regulation (GDPR); and iv) allowing data use on altruistic grounds.
3. In the European Parliament, the proposal was assigned to the Committee on Industry, Research and Energy (ITRE). The rapporteur for the file is Angelika Niebler (EPP, Germany). The ITRE committee has not adopted its report yet.
4. The European Economic and Social Committee and the European Committee of the Regions were requested to provide their opinions on the proposal on 11 December 2020 and 21 December 2020, respectively. The European Economic and Social Committee delivered its opinion on 27 April 2021 and the opinion of the European Committee of the Regions is expected to arrive in the second quarter of 2021.
5. On 10 March 2021 the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) issued a joint opinion on the proposal³.

³ [EDPB-EDPS Joint Opinion 03/2021](#).

II. WORK WITHIN THE COUNCIL

6. In the Council, the examination of the proposal has been carried out in the Working Party on Telecommunications and Information Society (hereinafter: WP TELECOM). The WP TELECOM started discussing the proposal under the DE Presidency during its meetings on 30 November 2020 and on 9 and 15 December 2020. In addition to this, during the informal ministerial video conference of telecom Ministers on 7 December 2020, a dedicated policy debate on the proposal was held, during which the Ministers welcomed the initiative and provided a political steer for further work.
7. The analysis of the proposal was continued in the WP TELECOM under the PT Presidency during the meetings held on 5, 21 and 28 January 2021, 4 and 25 February 2021, 4 March 2021, 13, 16 and 22 April 2021, and 11 May 2021. The PT Presidency also provided the delegations with two non-papers clarifying a number of questions and doubts raised by the delegations during the meetings and submitted in writing. Furthermore, the PT Presidency organised two workshops with the participation of different stakeholders from the sector. On 14 April 2021 the first workshop was held on the topic of novel types of data intermediaries facilitating in particular voluntary data sharing, corresponding to the provisions of Chapter III of the proposed regulation. The second workshop took place on 7 May 2021; it was devoted to the practical aspects of the re-use of certain categories of protected publicly held data, which are covered by Chapter II of the proposal. Both the non-papers and the workshops were highly appreciated by the delegations and were praised for providing much needed clarifications on how some of the proposed provisions could work in practice.
8. The PT Presidency issued its first compromise text of the regulation on 22 February 2021⁴. The document contained a limited number of changes to the Commission proposal, clarifying the scope and the wording of some of the definitions, and providing further clarity on the application of the provisions on the reuse of certain categories of protected data held by public sector bodies, as well as the provisions concerning data sharing services and data altruism.

⁴ doc. 6297/21.

9. On 30 March 2021 the PT Presidency issued its second compromise text⁵, based on the input from the Member States, as well as addressing the key concerns included in the joint opinion of the EDPB and the EDPS on the Commission proposal. The main changes in the text were as follows:
- a) In Chapter I the Presidency sought to clarify the relationship of the DGA with the GDPR and other relevant legislation, with a clear delineation additionally made throughout the whole text between situations where personal data is concerned (pertaining to 'data subjects'), and situations where non-personal data is meant (data held by 'data holders'). Furthermore, a reference to national laws on the protection of personal data was added to reflect the fact that such national laws can be adopted under the GDPR, and it has been made explicit that the Data Governance Act does not create a legal basis for the processing of personal data.
 - b) In Chapters II and III further clarity was provided on the scope of application and the practical implications of certain provisions concerning the reuse of public sector data and data sharing services.
 - c) In Chapter IV the Presidency included a new article obliging the Member States to define national policies for data altruism and specifying the advisory role of the European Data Innovation Board in this respect.
 - d) In Chapter VIII some changes were made to clarify the procedures applicable in cases where data holders are requested to comply with a decision of a court or of an administrative authority of a third country requiring transfers or access to non-personal data held in the Union.

⁵ doc. 7111/21.

10. The reactions of the Member States to the second Presidency compromise were largely positive. Based on this feedback, the Presidency has identified the following issues that still need to be addressed:
- a) As regards the re-use of protected public sector data, it is necessary to further clarify the relationship of the DGA with other legislation. While the Presidency has introduced numerous changes clarifying the link between the DGA and the GDPR, some concerns remain, for example in relation to the interplay between the DGA and the national laws on access to documents. Moreover, certain administrative aspects of the provision of protected public sector data, e.g. the deadlines for public sector bodies to reply to requests, will need some further analysis and fine-tuning.
 - b) The definition and the provisions concerning data sharing service providers require further clarification. Possible alignment with the definitions and the terminology already established by other international organisations, such as the OECD, could be envisaged (e.g. 'data intermediaries' in place of 'data sharing services'), and the scope of these provisions will require some fine-tuning, in particular clarifying precisely which entities are covered by the proposal and which ones are not. This is necessary in order to ensure that the requirements of the DGA apply to all relevant actors.
 - c) The provisions concerning national policies on data altruism require further reflection. In particular, it will be necessary to ensure that the DGA does not create a new hard obligation for Member States to develop fully-fledged national policies on data altruism, while providing at the same time scope for the necessary organisational and/or technical arrangements to facilitate data altruism at the national level.

- d) The exact nature, structure and tasks of the European Data Innovation Board will need further discussion. It may be necessary to envisage a more effective and detailed structure of the Board whereby one part of it would consist of competent authorities from the Member States that exchange information on the enforcement of the DGA, while another part would consist of stakeholders that would provide guidance, advises and inputs into the development of the European data economy, in particular as regards cross-sectoral cooperation and interoperability.
- e) Finally, there are still some open questions concerning the provisions on international access and transfer of data in Articles 5 and 30 of the DGA, which will require further discussion and analysis.

11. On 19 May 2021 the Presidency issued its third compromise text⁶, addressing both the concerns identified above and other issues raised by the delegations in their written comments. The compromise was presented in WP TELECOM on 20 May 2021, and discussions on the recitals and the first two chapters were started.

12. The Presidency intends to continue the work on the DGA until the end of its term.

III. CONCLUSION

The COREPER is invited to take note of this progress report from the Presidency, with a view to submitting it to the TTE Telecom Council at its meeting on 4 June 2021.

⁶ doc. 8894/21.