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WORKING PAPER

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From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Governance Act : CZ comments on chapters I, II, III and IV

Delegations will find attached CZ comments on chapters I, II, III and IV of Data Governance Act.

DGA - Questions on Chapters I, II and IV on behalf of the Czech Republic

Recital 8

- Recital 8 states: "As public undertakings are not covered by the definition of public sector body, the data they hold should not be subject to this Regulation."
- Therefore, many public undertakings in healthcare will be excluded from the Regulation, even though it is them, who hold very useful data especially from specific medical expertise. Subjects in the public sector may produce same kind of data as public undertakings and non-public subjects in healthcare. Alas, the aim of the DGA "campaign" claiming that the complex data governance, especially in the healthcare field, will contribute to providing better healthcare, improving personalised treatments, helping cure rare chronic diseases seems deceptive.
- *Why the Commission decided not to cover them in the Regulation?*

Recital 15

- Could it be viewed as an adequacy decision for non-personal data? What system would be used to declare that a third country provides a level of protection that is essentially equivalent to those provided by Union or national law for non-personal data?

Recital 36

- The idea of some broader agreement mentioned in recital 36 seems to be that those who donate their data shall be informed about what is happening with them and that they should be able to withdraw their consent to the re-use of the data at any time.
- What happens if the data has already been reused? How should the withdrawal of consent be exercised without an enormous administrative burden on the authority?

Multiple Recitals and Articles:

- What is the difference between public (Recital 19) and general interest?
- Greater legal certainty is needed regarding the scope of Chapter 2 and Chapter 3, ie. which categories of sensitive public sector data fall within the scope of Article 3 and what types of data sharing services fall within the scope of Article 9?
- We have questions about the application of Chapter 3 (Requirements applicable to data sharing services); although the definition of "data sharing" is in Article 2 of the proposal, it is not entirely clear which specific activities fall under the application of Chapter 3? In this context, it would be appropriate to define precisely the relationship of these activities (data sharing) with the obligations set out in specific legislation, in particular the GDPR Regulation, although the proposal states in the introduction that it does not affect the obligations set out in this specific legislation.

Article 2

- What is the definition of general interest? The term is used in the text several times without clarifications.
- Definition of data altruism: The regulation clearly considers a specific case of altruism - free of charge. This limits the scope of the regulation only to cases where the data donor does not demand payment for the shared data. However, altruism can take several forms, in particular: the voluntary disclosure of certain personal data, which can be of great importance, especially in healthcare, in the further processing of data (e.g. territory, place of residence of a patient with a certain disease). Furthermore, some valuable data would be voluntarily offered by various entities for further use, but with their acquisition and maintenance they still have certain costs, and therefore they would welcome at least some form of payment for such altruism. However, the regulation does not include them and European data spaces may be deprived of this data. At the same time, both forms (free and paid altruism) have been and are being discussed by various subjects in the EU. Why does the regulation not include them in the definition of altruism?
- We would like to ask for the definition of data intermediary. Would it also cover a concept of External Vehical? (https://www.cardatafacts.eu/extended-vehicle-concept/)

Article 5

- Para 5/4b: How the possibility to impose obligations to access and re-use data within the particular physical premises interplays with the regulation on free flow of data and its main principle which forbids localisation of data within EU?
- Para 10: How does the re-user ensure that the third country complies with the obligations imposed in accordance with para 7 and 8? Isn't it too burdensome for the re-user?
- Para 11: What is meant by highly sensitive data? How they are defined? Why the definition is missing in the regulation? We have some doubts that its definition and related conditions should be left to secondary legislation.

Article 6

- According to Open Data Directive, fees for allowing re-use of data are, in principle, limited to marginal costs necessary for the provision of such data. It seems that DGA proposal goes beyond that. What is the reason for it?
- Para 5 and 6: Is there an ambition to further specify how and in what form should be the information related to fees and costs published? Will there be an obligation to publish these information online and in languages other than just in a language of a respective Member State? It might be useful.

Article 7

- Para 4: The method of verifying an adequate level of legal and technical capacity of the competent bodies will be determined by the respective Member State or at the Union level?
- Do you envisage that one or more bodies supporting public sector bodies are to be public or private entities? Under what economic conditions is such an entity entitled to provide support?

Article 8

- Para 2 (second sentence): Does the proposal envisage a creation of an exhaustive list of data that are to be accessible for re-use under DGA? This could prove rather problematic to implement.
- Article 8 introduces an obligation to ensure the provision of information concerning the application of Articles 5 and 6 through a single information point. Even in combination with a recital (21), the requirements for such a single information point are not clear enough from the Regulation, although it will play an important role in the effective re-use of data under the Regulation. Shouldn´t criteria for such a single information point be set out in the Regulation more clearly, as are the criteria for the body designated under Articles 12 and 20 in Chapter V of the Regulation? We would also appreciate clarification on the possibility for public administrations to charge fees for data sharing which the proposal mentions.

DGA - Questions on Chapter III on behalf of the Czech Republic

Article 9

- What services exactly fall within the definition under Article 9 para. 1 point a) to c)? Can you provide concrete examples?

Article 10

- What are the deadlines for completing the request if a provider of data sharing services does not provide all information required under Article 10 (6)? Does the competent authority send a further request for completion or clarification of notification? Can the provider of data sharing services still start the activity according to para 4?
- If a provider of data sharing services expands its services to other Member States, does he have to submit a new notification?

Article 11

- (5): What are the conditions for the provision of services and data sharing for purposes which may not be clearly fraudulent but which are not fully in line with the declared purpose of the user (e.g. marketing research versus scientific research)? This is also gaining in importance in the context that the scope of data use is not precisely defined in the Regulation.
- (6): Insolvency affects providers, holders, users or all? If all, why should the service be provided eve n for an insolvent user?
- Can you explain more in detail point 6, for how long does DGA expect to provide guarantees for access to data in case of insolvency?