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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 - Presidency non-paper

Delegations will find in annex a Presidency non-paper on Data Governance Act in view to Telecommunications and Information Society Working Party on 4 March 2021.

Data Governance Act – Presidency non-paper

High-level discussion note

The main objective of the proposal is to increase trust in data sharing by regulating intermediary organisations bringing together data demand and supply.

1. Data sharing service providers (Chapter III)

The objective of the Chapter is to regulate the market for intermediation services that aim (and claim) to keep data holders (data subjects or companies) in full control over the data they want to share and not aim for capturing value from the data transacted.

By setting in place a neutrality requirement for such service providers, the proposal offers a European approach towards data, which serves as a trustworthy alternative to the currently prevalent practices and business models around the handling of data.

Digital ecosystems and common European data spaces need “orchestrators” that organise participants in the data spaces, set specific rules of participation (within the limits of the law). They thus take a role that gives them oversight over a market and influence on market participants’ behaviour within that market.

On the consumer side, “personal data spaces” are needed as an infrastructure for a human-centric data economy. There are significant benefits of each individual having a “personal data space” and the option to allow apps and services to process data from that space (e.g. more services to re-use existing data about one person, catering for federated machine learning, possibility for individuals to better track usage of their personal data).

Questions for discussion:

- Do we agree on the need for such services – for B2B situations and for consumers?
- How do we see the risk that we are fostering novel types of platforms that reproduce existing issues with technology platforms?

2. Data altruism (Chapter IV)

The aim of this chapter is to boost altruistic data sharing both by individuals and companies, by providing a “trust mark” through registration for non-profit entities that comply with the transparency requirements laid out in the proposal. The flexible voluntary nature of the registration would allow for the compliant entities to gain even more trust, while leaving other organisations already active in the altruistic data sharing to continue their operations, thus maximising the potential of data altruism.

Questions for discussion:

- Should the proposal be reinforced by including requirements for national policies, structures and processes for data altruism in the Member States?
- Should there be a possibility for Member States to include public data and public sector bodies in data altruism?

- Should there be a possibility for for-profit organisations to be eligible to register as recognised data altruism organisations?

3. European Data Innovation Board (Chapter VI)

The objective of the European Data Innovation Board (EDIB) is to create a European-level governance mechanism for data. It would, on one hand, foster the development of cross-sector interoperability, and on the other hand it would facilitate the emergence of best practices in the areas covered by the proposal. It could also evolve into a political steering actor for the data economy.

Questions for discussion:

- EDIB as an expert group could be divided into sub-groups. Should there be more clear structural separation between the groups?
- What other institutional forms should be considered for the EDIB?
- How should the representation of industry be ensured?

4. International provisions (Article 5 and Article 30)

The international provisions of the proposal follow the open, but assertive approach announced in the Data Strategy. The objective of Article 5 is to ensure that the protection of the publicly held non-personal data protected by third party rights travels with such data in case they are re-used in a third country (where necessary because of the level of sensitivity of the data, with the additional safeguards laid down in sectoral rules). This is an important safeguard in the shift from the open-closed dichotomy that has been prevalent in publicly held data so far. These types of data are currently not available in any other jurisdictions; Europe is a forerunner by permitting the re-use of such data with this unprecedented ambition. Additionally, Article 30 aims to prevent transfers of non-personal data held in Europe that would result in a conflict with Union rules.

Questions for discussion:

- Should protected publicly held data, which pertain to European citizens and companies and are collected and stored by European public sector bodies, be afforded additional safeguards when transferring to third countries? If so, how?
- What should be the mechanism and what body should be responsible to evaluate whether an access request from a third country would cause a conflict with Union law or the law of the relevant Member State?
- Should Article 30 also shield explicitly data from transfer or access for purposes other than those for which they were shared?