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Statement on the proposed Data Act of the European Union in view of the inception impact assessment published on this subject

The Data Act aims to make it easier for the public sector to get access to privately held data in the public interest (Business to Government – B2G). It also seeks to promote the sharing of data between companies (Business to Business – B2B).

With regard to the subsequent formulation of the Act, the German Council for Scientific Information Infrastructures (RfII) suggests that the European Commission

- recognises in principle the need of science and research for access claims to privately held data (data held by private companies),
- and that the Commission considers these claims in the individual paragraphs of the Data Act.

So far, science and research are sometimes faced with considerable hurdles in gaining access to privately held data, especially data from private companies. It is not uncommon for researchers to have to negotiate individually with companies on this matter or to obtain research access to company data only as so-called "embedded researchers". This means that researchers only have access to data under conditions set by the companies and often also without knowledge of the algorithms that have been used to generate and process the data.¹ These and similar practices do not meet the European understanding of good scientific practice. In the opinion of the German Council for Scientific Information Infrastructures (RfII), these practices also do not contribute to the best scientific use of this data for the public interest – for example to solve major societal challenges. Therefore, a research clause for the purposes of publicly organised science and research – which at the same time ensures the protection of company secrets – should be introduced into the Data Act.

In the final Data Act, it should be clearly outlined to what extent publicly funded research falls under the scope of application with regard to the B2G regulations. If research is addressed in general in the Act, it makes sense to include all publicly funded research institutions - and not to differentiate according to the legal forms of research organisations. Should the establishment of new intermediaries (according to the Data Governance Act) be intended in the B2G context, the RfII argues for these intermediaries to be designed in a research-friendly manner.

¹ This problem has been explained in detail by the Big Data working group of the RatSWD, among others: RatSWD (2019) – Big Data in social, behavioural, and economic sciences. Data access and research data management. RatSWD Output 4 (6). On data services in this area and efforts to create or facilitate access for science and research, cf. RfII (2021) – Nutzung und Verwertung von Daten im wissenschaftlichen Raum, chapter 2.4 (in German only). An English version of this position paper will soon be available on www.rfii.de.

In view of the research data centres (Forschungsdatenzentren – FDZ) that already exist in Germany and those that are already in planning as part of the federal government's data strategy, it should be avoided that the creation of new intermediaries at the European level leads to the duplication of structures or to unclear responsibilities.

The Rfll advocates using the Data Act as a regulatory instrument to promote the development of cross-sectoral interfaces between business, society and science. This could, for example, consist of support/funding measures to test new forms of cooperation such as data trusts. Similarly, the European General Data Protection Regulation should be interpreted (or, if necessary, modified) in such a way that it supports approaches of public interest-oriented and reliable data trusts. For example, there should be the possibility of blanket consent by data providers to a fiduciary-type disposal of data and its disclosure within a sufficiently broad framework.² In addition, data protection supervisory authorities at the national level could work towards further harmonisation or even concretisation of legal interpretation, which would facilitate the emergence of data trust solutions. Only in this way can the innovation potential inherent in increased data exchange be optimally used for the benefit of all parties involved. This can be seen, for example, in research with artificial intelligence (AI) and the development of innovative technologies and AI-applications. Building appropriate structures of trusted intermediaries through data trustee agencies can help to create fair access regulations that build on European values in data protection and scientific freedom.

Further efforts by the European Commission to foster data sharing should be increasingly accompanied by quality assurance measures. In the context of Open Data and Open Access, the Rfll has already referred to the quality aspects to be taken into account in a statement of March 2019.³ The Council also made clear that the overarching regulatory goal for data sharing should be the promotion of high value data sets. With regard to the Data Act, it seems useful that at least the FAIR principles should also be provided as a guideline for data held by private and commercial companies. Of course, the FAIR principles are only a minimum requirement for scientific use and exploitation of data, but they can be regarded as a first step to push the cross-sectoral sharing of high-quality data, i.e. data that can also be used scientifically.

The Rfll welcomes the Commission's intention to improve the access of small and medium-sized enterprises to the data of global and sometimes market dominating companies by creating framework conditions for fair and symmetrical contractual relationships. The Rfll also emphatically appreciates the planned measures to facilitate the switching of cloud services and to raise the ability to migrate between different services and service offerings. For research, the ability to switch and migrate data sets, which in part also embody the methodological memory of entire disciplines and fields as knowledge repositories, is of existential importance. In its position paper on “Nutzung und Verwertung von Daten im wissenschaftlichen Raum“ the Rfll

² The Rfll has already referred to the liability issues arising in this context and the need for an accompanying establishment of viable insurance solutions for data trusts in a statement on the draft of the European Data Governance Act. See Rfll (2021) – Statement on the proposal for a Data Governance Act (DGA) by the EU Commission.

³ Rfll (2019) Statement on current developments concerning Open Data and Open Access.

states that actors from publicly funded research must be able to retain permanent access to the data they feed in, even if commercial providers enter or are used. Therefore, the sustainability of data archiving and the access to data must not be lost even if a commercial service provider/partner is sold or becomes bankrupt or if unprofitable services are discontinued. The RfII believes that these recommendations can also be applied to the requirements of B2B relationships in cases where market relationships are currently not symmetrical.⁴

The German Council for Scientific Information Infrastructures (RfII) was established by the Joint Science Conference (GWK) of the Federal Republic of Germany to provide advice on the enhancement of scientific information infrastructures and related topics of the digital turn in science and humanities. In putting forward its reflections on these issues, the RfII attaches great importance to a well-balanced consideration of the sometimes overlapping needs of science, public administration, and industry, as well as relating aspects of the international co-operation.

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⁴ Cf. RfII (2021) – Nutzung und Verwertung von Daten im wissenschaftlichen Raum, chapter 4.2 as well as recommendation 5.5.