

May 2022

Statement on the Proposal for a Data Act by the European Commission

The German Council for Scientific Information Infrastructures (RfII) has recognised with interest the European Commission's proposal for a "Regulation on harmonised rules on fair access to and use of data" of 23 February 2022, also referred to as Data Act. The RfII would like to submit suggestions to this proposal from the perspective of science and research. In September 2021 the RfII has already made initial recommendations on the design of the Data Act as part of the consultation phase on the Inception Impact Assessment.¹

The RfII regrets that its request for a broad research clause, which would facilitate access to privately held data for publicly organised science and research, has not found its way into the present draft of the Data Act (in the following referred to as DA-D). In the opinion of the RfII, both sides – the companies granting access as well as the public good – would benefit greatly from scientific access. Therefore, the RfII would like to give further suggestions on the DA-D to make better use of the potential that lies in improved research access to privately held data, especially in data from private companies.

With regard to the drafted fifth chapter, which sets up regulations on the B2G data exchange, the RfII proposes two modifications and, thirdly, proposes a general suggestion:

1. Enabling access to data beyond “exceptional needs”

According to the DA-D, science and research are supposed to be granted access to privately held data if an emergency or crisis situation has occurred. The RfII assesses this requirement of a declared "exceptional need" as problematic. It remains unclear which exact institution (in the draft: state, international organisation) determines this "exceptional need". Also, indicators for defining the specific occasion or a threshold value from which on a state of emergency is given, are lacking. The RfII proposes a modification of the Act to allow science access to privately held data in its own right and within research adequate settings. This kind of access would enable science and research more properly to contribute to solving major societal challenges in general (e.g. combating pandemics, adapting to global warming, handling demographic changes etc.) and in an anticipatory manner.² The RfII also recommends to anchor a right to data access for science and research institutions on the basis of a public interest already in the Data Act - and not only in a second step via upcoming sector-specific regulations.

¹ RfII (2021) – Statement on the proposed Data Act of the European Union in view of the inception impact assessment published on this subject, Göttingen 2021; <https://rfii.de/?p=6977> (last accessed on 10.05.2022).

² Wissenschaftsrat (2015) – Grand Societal Challenges as a Topic for Science Policy; https://www.wissenschaftsrat.de/download/archiv/4594-15_engl.html (last accessed on 10.05.2022).

This could be achieved, for example, through an amendment within the Data Act by explicitly emphasising under Article 15 that public bodies and even more explicitly: publicly organised scientific institutions are allowed to access data on the basis of a justified general "public interest".³ The term "public interest" is common in the legal systems of the EU member states. Through this approach public bodies in generally would achieve a flexible and appropriate range of access to data. Data access for science and research should then be granted sector-specific via legitimated and quality assured bodies, e.g. certified data trustees (see section 3).⁴ Public bodies requesting data – including publicly organised science and research – will then have to guarantee in a legally binding manner that the requested data will neither be passed on to third parties nor used for commercial purposes without the explicit authorisation of the data holders or data producers. The body requesting the data has to give account of the scientific use of the data upon request.

Likewise, the DA-D could emphasise that a regulated access to privately held data beyond specific emergency situations is of great importance for the common good. This could be more strongly highlighted in the Data Act, for example in the recitals. Against this background, it could also be made clear that beyond the Data Act further regulations of data access are possible or even desirable (e.g. at member state level). In this context, the protection of corporate trade secrets and business models must be taken into account appropriately (see above).

2. Limiting costs for data access on part of science

In the view of the Rfll, care should be taken in the regulations under Article 20 to ensure that publicly funded science and research does not have to reimburse the companies that provide data for more than an expense allowance. Furthermore, the costs must be proven transparently. Cost neutrality for the companies providing the data should be the goal here. If the request for data access is made according to the scope 15 b and c (i.e. inter alia for the prevention of an emergency situation), it should be legally excluded that companies are allowed to charge a "reasonable margin" for the provision of data, which goes beyond a mere compensation for expenses. Such regulations would both help to compensate for the efforts made by the companies and take into account the essential contribution that science and research make to the common good. The Rfll sees a certain risk in the proposed regulations in DA-D to enable private companies charging prohibitive fees, which would result in making scientific requests for data

³ The Think Tank Open Future also argues in this direction: Open Future Policy brief #2.2 – Data Act: Business to Government Data Sharing.

⁴ On the regulation of data trustees, see, among others Louisa Specht-Riemenschneider/ Wolfgang Kerber (2022) – Designing Data Trustees. A Purpose-Based Approach; <https://www.kas.de/documents/252038/16166715/Designing+Data+Trustees.pdf/3523489b-2611-a12a-f187-3e770d1a9d94> (last accessed on 10.05.2022). In the German science system, accredited research data centers (FDZ) perform comparable functions and regulate, for example, the access of scientists to data from the Federal Bank (Bundesbank), social insurance institutions, statistical offices or large panel studies. In this context, the FDZ also decide, depending on the research purpose and justification of the research interest, on questions considering the design of access (remote or local) and the depth of access (granularity and degrees of anonymisation and/or pseudonymisation of data sets). The Rfll considers this solution, which is established in the area of economic and social data, to be transferable to other sectors and scientific fields.

access more difficult or even preventing these from the beginning. The Council also pleads for avoiding any direct or indirect incentives for developing lucrative business models for data provision by private companies at the expense of the public sector – and to the detriment of science and research.

3. Considering the needs of science in sector-specific regulations

The Rfll suggests to formulate sector-specific data access regulations within the course of the development of the European Data Spaces, that are designed to be research-friendly and can promote voluntary incentives for B2G data exchange. In that respect, the Rfll welcomes the approach of the EU Commission to allow access to health data on the basis of public interest in the recently published proposal for a Regulation on the European Health Data Space. The Rfll will further observe the developments around the establishment of the European Data Spaces.⁵

In this context, the Rfll would like to draw attention to the regulations of the Data Governance Act (DGA) on "new intermediaries" (approved by the European Parliament on April 6, 2022). The Council sees a high potential in developing data trustees in the field of B2G: as neutral bodies to collect data access requests as well as to reconcile diverging interests of data holders/data producers and data users. The Rfll argues, that data trustees would also be advantageous for companies that potentially provide data, as they would not be confronted with a multitude of singular, ad hoc requests from public bodies for data access and data processing. The Rfll would also welcome the further development and testing of potential data trustee models – with special regard to the already existing research data centers (Forschungsdatenzentren – FDZ) for long lasting data collecting scientific projects (e.g. panel studies) and numerous data-intensive public institutions in Germany.⁶ These centers already operate under very high security standards. Data trustees can also help private companies to develop and set standards in the area of interoperability and data quality, which at the same time protect the business models and trade secrets of the companies providing the data. Therefore, the Rfll recommends that the potential of intermediaries previously mentioned in the Inception Impact Assessment on the Data Act should be referred to again within the final version of the Data Act. This could be done by at least considering the potential role of intermediaries in the recitals of this Act.

⁵ European Commission (2022) – Proposal for a Regulation of the European Parliament and of the Council on the European Health Data Space; https://ec.europa.eu/health/publications/proposal-regulation-european-health-data-space_en (last accessed on 10.05.2022).

⁶ See remarks in footnote 4.

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