

1 February 2021

Feedback on a proposal for a “Regulation on European Data Governance”

ACCIS, the Association of Consumer Credit Information Suppliers represents the largest group of credit reference agencies in the world, bringing together 42 members across 28 European countries and 8 associate and affiliate members from all other continents. The vision of ACCIS is “Enabling individuals and businesses to take informed decisions and conduct secure, trustworthy and efficient financial operations”.

FEBIS is the federation of leading Business Information Services Providers. Today it has developed into an organization comprising about 140 full members involved in providing credit management solutions and business information services of national and international importance. Supported by a combined workforce of over 27.000 employees, FEBIS members and associate members analyze over 1,300 million entities annually for over 1.6 million customers (businesses of all sizes and economic sectors), providing these clients with business information enabling them to assess the risk of a potential or existing commercial contract and other commercial services on all economical agents in Europe.

oOo

1. ACCIS and FEBIS welcome the opportunity to provide feedback on the European Commission’s proposal for a Data Governance Act (the “DGA”) COM (2020) 767.
2. We agree that the European Union needs to strengthen data sharing mechanisms, to increase the availability of data and thus facilitate the creation of new products and services for the benefit of European consumers and businesses. ACCIS and FEBIS welcome the Data Governance Act as we see this initiative as a step in the right direction.

Comments on data intermediation

3. ACCIS and FEBIS represent a category of specialized intermediary that administers a mechanism enabling credit information collection, processing and further disclosure to users of data, as well as value added services based on such data. That intermediary is known as a Credit Reporting Service Provider (CRSP). CRSPs aim primarily at improving the quality and availability of data for financial and non-financial creditors to make better-informed decisions.
4. The definition of intermediation services under Article 9 (1)(a) is very broad and may, theoretically, cover almost any facilitation of data exchange between data holders and potential data users. We note that, in the recitals (22 in this case), some data sharing services are excluded from the definition, including the intermediation “*between a closed group of data holders and users*”. In order to reinforce legal certainty, we would recommend that intermediation services are defined more clearly in the articulated text, with basis on the exemptions mentioned in the recitals, for example, as “*services provided for the purpose of intermediating data between an indefinite number of data holders and data users, excluding services that aggregate, enrich or transform the data and licence the use of the resulting data*”.
5. We consider that the role of data sharing intermediaries in enhancing the interoperability of the data that they receive from data holders for further reuse will be a critical success factor of this new category of entities. The regulation foresees that the intermediary will convert the data it has received if the data user so requests (Art. 11(4)), possibly for a reasonable price. Competent authorities must ensure compliance with this obligation.

6. As defined in the Regulation, the services provided by data cooperatives are not data sharing services *stricto sensu* in the sense that they will not make data available themselves. Rather, they will act as “legal advisers” for data subjects, sole entrepreneurs and SMEs and advise these parties in their relationships with business and personal data intermediaries. Whilst agreeing that services providers by data cooperatives should be subject to a notification regime, we think that it makes better sense to address data cooperatives separately from other data sharing intermediaries.

Comments on reuse of data held by public sector bodies

7. We support, in particular, that the DGA will open up data held by public sector bodies which are currently unavailable, including for reasons of commercial or statistical confidentiality. As noticed in the accompanying Impact Assessment relatively few public sector bodies currently have mechanisms in place that allow the re-use of such data.
8. As a case in point, the economic relief measures to overcome the impacts of the COVID-19 pandemic have produced swathes of new data that public sector bodies have not made available for re-use, for example, for corporate credit scoring or risk of default assessment, although they are very important for businesses to manage their trade credit and avoid “cascade liquidations”.
9. We note that the provisions on the reuse of “protected” data held by public sector bodies “*do not create any obligation on public sector bodies to allow re-use of data*” (Article 3 (3)) and that “*public sector bodies [...] are competent under national law to grant or refuse access for the re-use of one or more categories of data [...]*” (Article 5 (1)). Although these provisions are consistent with the Open Data Directive, they are not ambitious enough. The DGA will only unlock the value of data if public sector bodies that hold restricted data for - say - commercial or statistical confidentiality are mandated to open such data up. Subjecting public sector bodies to an obligation to open up currently unavailable data would create a right for companies to access such data. It would also be in keeping with the general principle that “*data that has been generated at the expense of public budgets should benefit society*”, even if, in some cases, data access fees may be required as a result of the development work required to make the data reusable. As technical and legal requirements will be more important for “protected” PSI than for “open PSI”, public bodies will have to be encouraged by Member States to develop such access and reusability.
10. We thank the European Commission in advance for its consideration of our submission, and we look forward to engaging further in the future and participate in webinars, workshops etc. on the issue.