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Position Paper on the Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act) – 2020/0340 (COD)

Berlin, 16 November 2021

In November 2020, the European Commission presented its proposal for the European Data Governance Act, which is set out to regulate the provision of (non-personal) data for different purposes. The regulation is intended to provide the framework for a European data economy and to create legal certainty for companies using non-personal data. In July 2021, the responsible ITRE committee of the European Parliament adopted an amended version of the provisioned Data Governance Act and started trilogue negotiations with the European Council.

eco – Association of the Internet Industry has [participated](#) in the discussions on the draft regulation and put forward several aspects, which the industry regards as critical for a successful regulation for the use of non-personal data in its initial statement in January¹. We would like to use this opportunity to highlight some points which we believe need to be further discussed.

▪ **Manageable obligations for the use and re-use of data**

eco advocates that the obligations for the use and re-use of data in a business context must be manageable and unbureaucratic for companies and providers of data. In this context, the use and re-use of personal data are already governed by the General Data Protection Regulation (GDPR) of the European Union, which provides a comprehensive framework for the processing of said data. As for non-personal data, there are still restrictions through licensing and copyright obligations. eco argues that the intended Data Governance Act should aim to reduce the barriers to using data as much as possible to avoid restrictive regulation that impedes competition for European companies. In addition, eco stresses that the processing or transfer of non-personal data should be subject to comprehensible and appropriate rules.

The road both the Parliament and the Council seem to be taking in subjecting non-personal data to the same rules as personal data is problematic from an industry point of view. The rules for the processing of personal data are understandably strict and require safeguards and investments from companies to adhere to the implied protection of fundamental rights. However, this should not lead to the conclusion that

¹ [Statement on the EU Commission's Draft Regulation on European Data Governance \(Data Governance Act\) – COM\(2020\) 767 final](#)



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non-personal data should be treated equally since this would raise questions about the level of protection of personal data and would make the differentiation between non-personal and personal data futile.

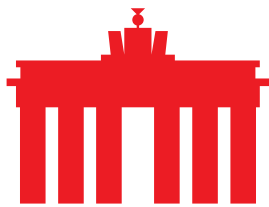
While the governance of non-personal data should not converge with that of personal data, this does not preclude that a level playing field for non-personal data should be created. The provisions for the creation of such a level playing field are already addressed in the draft regulation. The need for clarification should focus specifically on the aspect of the transfer of data, in particular from public data pools, to third countries and its monetization in the respective companies.

With special regard to the processing of non-personal data in these sensitive cases, particular attention should be paid to the legal framework set up through the Data Governance Act, which should be preserved in the final decision thereof – namely in Article 5. In addition, it should also be clear that the security requirements for the processing of sensitive non-personal data should be checked against the background of other legislation currently in development on the European level so as to ensure legal consistency.

- **Regulation for data intermediation services must be proportionate**

Data intermediation services or data sharing services should be regulated in a way that would promote and foster their use and allow both companies and citizens to easily access them while still allowing for enough space for creating added value and innovation through other means or services around them. Creating transparency is an important factor for these respective data intermediation services. eco understands that a legal framework and certification procedures for certain data intermediation services can support building trust. However, this should not preclude the possibility for other companies and actors to provide intermediation services. In this light, the amendments on Article 11 of both Parliament and Council show a significant improvement of the intended regulation of data intermediation services.

Notwithstanding the fact that data intermediation services are now able to enjoy more flexibility, it has to be stated that the legislative frameworks provisioned for them still need adjustment in order to ensure an open and competitive market for data intermediation services and their integration in larger platforms for digital identities. eco recommends keeping the threshold for single sign-on services, which may replace customer logins and associated privacy settings, at a feasible and manageable level so as to enhance competition in the market and allow new services an easy entry to the market. This should certainly not preclude also allowing certified and sophisticated data intermediation services in the market, as is intended in the regulation. eco calls into question, however, whether the proposed framework provided by both Parliament and Council actually meets this requirement of the Internet industry.



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▪ Conclusion

With the amendments, the Parliament and the Council address one of the major setbacks of the Commission's proposal for the Data Governance Act and allow data intermediation services to grow and scale their business models. This, however, is still accompanied by bureaucratic regulation and over-encompassing rules for the handling of non-personal data, which eco considers challenging for the Internet industry. In this light, eco sees the particular need for further discussions on the obligations for non-personal data. In the opinion of eco, it would be desirable for the Data Governance Act to promote and support the use of data in a unified way. Data sharing services should be regulated in a way that allows both businesses and citizens to easily access them. Creating value and innovation through data and data-driven business models should be the main emphasis for the Data Governance Act.

About eco: With over 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995 eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. eco's key topics are the reliability and strengthening of digital infrastructure, IT security, and trust, ethics, and self-regulation. That is why eco advocates for a free, technologically-neutral and high-performance Internet.