



# 2020 European Strategy for Data

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On 25 November 2020, the European Commission (EC) published a [proposal for Regulation on European Data Governance](#) (the Data Governance Act), which will set out a new legal framework to promote the development of common European data spaces: a Single Market for data.

The Data Governance Act is the first set of measures announced in the [2020 European Strategy for Data](#), and that it was followed by a [public consultation](#) carried out between February and May this year. EC also released a [Questions & Answers](#) document and a [Factsheet](#) on European data governance, alongside the Data Governance Act.

The Data Governance Act is the cornerstone of the EC's Data Strategy, which targets a set of changes on digital regulatory and antitrust matters, including: (i) the [EC's white paper on artificial intelligence and consultations on the Digital Services Act package](#); (ii) a 'New Competition Tool' (NCT) to allow the EC to examine and make changes in market structure; and (iii) the [EC notice on market definition](#).

Following the Data Governance Act, reviewed in Part One of this article, EC published two important legislative proposals on 15 December 2020: [the Digital Services Act \(DSA\)](#) and [the Digital Markets Act \(DMA\)](#), which are reviewed in Part Two.

Additional legislative proposals, particularly changes to the EC's enforcement of European Union (EU) competition rules, are also expected in early 2021, and they will be addressed in due course.

## Part One – Proposal for a Regulation on European data governance

The [Data Governance Act](#) proposes to establish nine common European data spaces for data sharing and pooling in strategic and critical domains, including health, environment, energy, agriculture, mobility, finance, manufacturing, public administration and skills.

For this purpose, the Act establishes three main goals:

- Sharing of public sector data: establishing a mechanism to promote the sharing and re-use of certain categories of data held by public sector bodies in EU;
- Data sharing service providers: creating a new notification and supervisory framework for the provision of data sharing services; and
- 'Data altruism': 'data altruism' means individuals or businesses voluntarily consenting to the use of data (personal and non-personal) for altruistic purposes (e.g., for scientific research or improving public service). A new framework will enable entities that collect, and process data made available for altruistic purposes to be qualified for voluntary registration upon fulfilment of some requirements and be recognized as 'Data Altruism Organizations'.

A new formal expert group is also to be created, the European Data Innovation Board, composed by EC, the European Data Protection Board, and relevant local authorities, with powers to ensure a consistent application of the Data Governance Act across all Member States, including cooperation between local relevant authorities.

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*"You don't have to share all data. But if you do and data is sensitive you should be able to do in a manner where data can be trusted and protected."*

*"The two proposals [DSA and DMA] serve one purpose: to make sure that we, as users, have access to a wide choice of safe products and services online. And that businesses operating in Europe can freely and fairly compete online just as they do offline. (...) Because what is illegal offline is equally illegal online."*

Margrethe Vestager, Executive Vice-President for A Europe Fit for the Digital Age



*The amount of data generated by public bodies, businesses and citizens is constantly growing. It is expected to multiply by five between 2018 and 2025.*

Source: European Commission

## Sharing of public sector data

The Data Governance Act establishes a set of common basic conditions for sharing and re-using certain categories of protected public sector data, namely personal data, data covered by intellectual property rights or confidentiality and that hence fall outside the scope of the [2019 Open Data Directive](#).

The Data Governance Act does not intend to create a right to re-use such data, but instead sets out the conditions under which public bodies (not including State-owned businesses or 'public undertakings') must comply when dealing with re-use of data.

These conditions, which must be non-discriminatory, proportionate and objectively justified, may include: (i) to re-use anonymized or pseudonymized data only; (ii) that the data only be disclosed under the EU General Data Protection Regulation (GDPR); or (iii) to delete commercially confidential information, including trade secrets. Exclusive agreements for re-using data must be avoided, except when necessary for the provision of a service of general interest and must be awarded under EU public procurement and State aid rules and for periods up to three years.

EC may impose further conditions on the re-use of highly sensitive non-personal data (that is, data that is not covered by GDPR), and on data transfer to third countries.

## Data sharing service providers

The Data Governance Act creates new rules addressed to intermediaries between data 'holders' (data subjects) and data users – the so-called 'data sharing service providers.'

Data sharing service providers will be obliged to submit a prior notification to the relevant local authority (to be appointed by each Member State and empowered to monitor compliance with new rules, including cooperate with other sectoral authorities).

The provision of data sharing services will have to fulfil specific requirements: (i) the collected data cannot be used for other purposes, and any metadata can be only used for the provision of that service; (ii) data sharing services must be provided by a separate legal entity from other services; (iii) data interoperability; (iv) services providers must act under a fiduciary duty towards data subjects; (v) adequate security safeguards must be in place; and (vi) service providers, which are not established within EU, must have to appoint a legal representative in one of the Member States.

## 'Data altruism'

The Data Governance Act provides a legal framework for voluntary registration of entities that collect, and process data (personal and non-personal data) made available for altruistic purposes. In order to qualify for registration, a data altruism organization must fulfil certain criteria, including being a non-profit organization. Data altruism organizations that are not established in EU must appoint a legal representative in EU. Each Member State must appoint one or more local authorities to keep the register of data altruism organizations and monitor compliance with the requirements applicable to data altruism organizations.

## Part Two – the Digital Services Act and the Digital Markets Act

As part of the European Digital Strategy, Shaping Europe's Digital Future, DSA and DMA will address new challenges that have surfaced with digital developments. At the same time, these Acts will ensure users, consumers and businesses to continue to benefit from digital developments. DSA and DMA have two main goals:

- To create a safer digital space in which the fundamental rights of all users of digital services are protected (DSA's goal); and
- To establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally (DMA's goal).

### Digital Services Act (DSA)

DSA establishes a set of new, harmonized EU-wide obligations for digital services that connect consumers to goods, services, or content, ranging from simple websites to internet infrastructure services and online platforms.

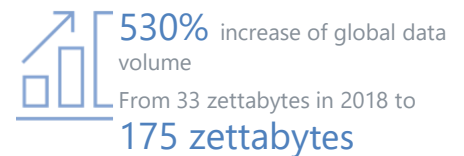
The DSA's rules mainly concern online intermediaries and platforms, such as online marketplaces, social networks, content-sharing platforms, app stores as well as online travel and accommodation platforms.

The new obligations are addressed according to services' size and impact. Platforms that reach more than 10% of the EU's population (45 million users) are considered systemic in nature and will be subject to a new control framework and specific obligations to control their own risks.

In a nutshell, DSA includes:

- Rules for the removal of illegal goods, services or content online and safeguards for users whose content has been erroneously deleted by platforms;
- New obligations for very large platforms to take risk-based action to prevent abuses;
- Wide-ranging transparency measures, including on online advertising and on the algorithms used to recommend content to users;
- New powers to examine how platforms work, including upon facilitating access by researchers to key platform data; and
- New rules on traceability of business users in online marketplaces, to help track down sellers of illegal goods or services.

This new accountability framework will be followed by an innovative cooperation network of public authorities – board of national 'Digital Services Coordinators' – with special powers in supervising very large platforms including the power to sanction them directly.



Source: European Commission

There are more than **10,000** platforms in the EU

**90%** of those are small and medium sized enterprises

**40%** of companies that sell products online do it through online marketplaces (Eurostat, 2019)

**7** out of the world's ten largest companies are digital market players

Source: European Commission

## Digital Markets Act (DMA)

DMA is addressed to gatekeepers of 'core platform services', e.g., social networking, video-sharing platforms, communication services, operating systems, clouds, and advertising, with (i) a systemic role in the internal market and that (ii) function as bottlenecks between businesses and consumers. These criteria will be met if a company has:

- A strong economic position, significant impact on the internal market and is active in multiple EU countries – presumed so if the annual turnover equals or exceeds €6.5 billion or the market capitalization equals or exceeds €65 billion;
- A strong intermediation position, meaning that it controls an important gateway for business users towards final consumers – presumed so whenever their services count with more than 45 million monthly active users and 10,000 yearly active users in the previous year; and
- An entrenched and durable position in the market, meaning that it is stable over time – presumed so if the two criteria above have lasted the past three years.

Despite these presumptions are rebuttable, service providers must, in any case, notify the EC if they meet the thresholds above. If defined as a "gatekeeper", companies will have to comply with a clearly defined set of obligations and prohibitions, including:

- Prevent to treat services/products offered by the gatekeeper itself more favorably in ranking than similar services/products offered by third parties on the gatekeeper's platform;
- Ensure interoperability with the gatekeeper's platform to third parties;
- Share, in compliance with privacy rules, data that is provided or generated through business users' and their customers' interactions on the gatekeepers' platform;
- Provide companies advertising on their platform with the tools and information necessary for advertisers/publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper;
- Allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform;
- Prevent consumers from un-installing any pre-installed software or app if they wish so.

In case of infringement of the DMA's rules, gatekeepers may be subject to fines up to 10% of the company's total worldwide annual turnover, and periodic penalty payments up to 5% of the average daily turnover. In case of systematic infringements, additional remedies may be imposed, including, non-financial remedies, e.g., the divestiture of (parts of) a business.

## Next steps

The Data Governance Act, DSA and DMA will be discussed and passed by the European Parliament and the Council of Ministers in the [ordinary legislative procedure](#). Once approved, which should occur until at least the third quarter of 2021, they will be directly applicable across the EU.

The far-reaching nature and characteristics of DSA and DMA suggest that these statutes may set the benchmark for digital services globally, similarly to what GDPR meant to privacy laws worldwide.