



Feedback to the European Commission on the Proposal for a Regulation on European data governance (Data Governance Act)

We welcome the publication of the proposal for the Data Governance Act (DGA) and the ambition to foster availability, sharing and use of data while retaining trust and protecting fundamental rights.

In 2019 we have co-authored the “[Vision for a Shared Digital Europe](#)” digital policy framework. It is based on the assumption that digital technologies should facilitate a society that is equitable and democratic, where basic liberties and rights are protected, where strong public institutions function in the public interest, and where people have a say in how things work. We base our feedback on this policy framework and its four principles: enabling self-determination, cultivating the commons, decentralising infrastructure and empowering public institutions.

In our policy framework document, we note that digital technologies can support commons-based alternatives to the market that create substantial economic and social value. Developing digital spaces that are managed as a commons with appropriate governance structures is essential to creating a digital environment that is democratic and supports values at the heart of European societies. Broadly understood, the Open Access model, employed for sharing both data and other types of resources has been successfully developed throughout Europe and beyond. Yet it is largely lacking from the data-sharing frameworks that are at the heart of the Data Governance Act.

In the remainder of our submission, we focus on discussing the proposal from a perspective that acknowledges the fundamental role played by Open Access Commons-based data sharing in the overall data ecosystems.



In addition to these comments, we want to acknowledge the risk posed by including personal data in the scope of the proposal, which as a result might present a challenge to the GDPR, with its framing of data as tied closely to fundamental rights. In this regard, we would like to reference comments submitted by Access Now and EDRI.

The role of Open Access Commons-Based Initiatives in the European Data Sharing Ecosystem

Open Access Commons (OAC) data sharing is an important and well-established model of data sharing that has been successfully developed over the last three decades. Open Access Commons are shared resources that are available for anyone to use and reuse under certain predefined conditions. Examples of digital Open Access Commons include projects like [Wikipedia](#) (including sister projects such as [Wikidata](#) or the [Wikimedia Commons](#)), academic open access repositories, open source code repositories or cultural heritage data aggregators like [Europeana](#).

In the Open Access Commons model of data sharing, data is either in the public domain or freely licensed. Europe has made significant policy commitments to this type of open sharing of data and content through the rules introduced by the Open Data Directive, though research data sharing policies in the European Research Area and in the form of the cultural heritage portal Europeana. FAIR data principles are one of several key policy formulations of such Open Access Commons-based data sharing, and they are rightfully referenced as a key building block in the Explanatory Memorandum.

Yet this Open Access Commons based data sharing model missing from this policy proposal. The only references to open data sharing are made in connection with provisions on re-use of certain categories of protected data held by public sector bodies in Chapter II (which regulate only a narrow aspect of sharing of public sector information). The two “new” data sharing frameworks that are codified by the DGA in Chapters III (Data Sharing Services) and IV (Data Altruism) are introduced without accounting for the existence of Open Access Commons based data sharing.

This omission is problematic as OAC based data sharing is a model that already enables innovation, economic growth and competition, while also ensuring important collective rights, such as access to knowledge and information, education or culture and heritage. If one of the

goals of the European Data Strategy is to ensure flow and reuse of data, then it should be acknowledged that in certain cases the OAC based data sharing model is valid and sufficient. These are areas of application where the objective of achieving greater availability does not require increasing trust through new data-sharing mechanisms.

By charting a European data governance landscape that centers on the twin mechanisms of Data Sharing Services and Data Altruism the DGA risks painting an incomplete picture that does not account for the full versatility of data sharing.

Open Access Commons based data sharing is incompatible with both regulatory frameworks introduced by the DGA. Firstly, the term data sharing and the definition of Data Sharing Services in Article 9 are extremely broad and capture a very wide range of Data Sharing Services. However, the vast majority (but not all) OAC data sharing initiatives are non-commercial in nature and, based on the conditions established in Article 14 will not fall within the scope of Data Sharing Services as defined in Chapter III of the DGA.

OAC based data sharing initiatives are conceptually much closer to Data Altruism, the other framework introduced by the act. The definition of Data Altruism in Article 2 of the proposed regulation seems to subsume Open Access Commons based data sharing under the new concept of Data Altruism: *After all the mechanism of “data holders [...] allow[ing] the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services” accurately describes one of the core mechanisms underpinning OAC-based data sharing.*

Yet OAC-based data sharing is fundamentally incompatible with the rules defined for “recognized Data Altruism organisations” that are introduced in Chapter IV of the DGA. This incompatibility arises from the rules on transparency introduced in Article 18: Complying with these requirements would require open access platforms to monitor their users, the uses and the purposes of the uses made of any data they share. This is incompatible with the core tenet of Open Access Commons based sharing that relies on the acceptance of pre-defined (licensing) terms but does away with direct transactional relationships between the stewards (data holders) and users of the commons-based resources.

As a result of this mismatch between the fundamental mechanics of Open Access Commons based data sharing and Data Altruism (as conceived in Chapter IV of the DGA), OAC based



initiatives would be excluded from being recognized as Data Altruism organisations. Given the lack of a positive recognition of the Open Access Commons model in the act, this would effectively degrade them to the status of “non-recognized data sharing organisations”, implying a lack of trustworthiness.

We do not believe that it can be in the interest of the European legislator to degrade the trust in OAC data sharing projects that over the years have developed successful collaborative models for ensuring the availability of high quality data and information. Resources like Wikipedia, Wikidata, Europeana, OpenStreetMap and various OpenAccess repositories for academic publications and data are among the most trustworthy resources publicly available online. Much of this trust is derived from their open nature and the fact that they are managed or maintained as commons. The European legislator would be ill-advised to undermine the position that these resources play in the online (data) ecosystem.

We feel that a comprehensive European data strategy - and with it a European model for data governance as proposed in the DGA - must acknowledge the role of Open Access Commons based initiatives in the European data ecosystem. This should go beyond exempting OAC based data sharing from the requirements imposed on other data governance models. Instead, OAC based data sharing should be included as a separate type of data governance.

In this context we also acknowledge that, no matter what model is employed, increased access to data should not be a goal in itself and greater availability and reuse of data is not always beneficial for the society. We would therefore also welcome, within the European Data Strategy, efforts to create new policies for situations where open and commons-based data sharing is not a model that ensures trust and protection of rights. We acknowledge that a need for additional regulatory safeguards will most likely arise at the intersection of Open Access Commons based data sharing and personal data.