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Joint calls to the EU co-legislators to promote fair access to data for research purposes through the Data Act

We, associations of universities and university libraries, formulate recommendations to the co-legislators engaged in the interinstitutional negotiations for the adoption of the Data Act to ensure that this piece of EU legislation promotes fair access to data for research purposes.

Introduction

Our associations and members are fully committed to supporting and guiding the digital transformation and welcome the focus at European level on ensuring Europe becomes fit for the digital age. We acknowledge the urgency of securing policies and legislation to constructively shape the digital transformation, including digital policies and legislation pursued by the EU and primarily targeted at the commercial for-profit sector.

Scientific knowledge and technology are the engines of knowledge-based societies. Universities and those that engage in their creation and dissemination through research, education and innovation are central to achieving this, with digital tools and approaches acting as key enablers and levers. We therefore warmly welcome, first, the European Commission's proposals for data and digital technologies regulations that have been prepared in such a way that they accommodate the differences between the for-profit commercial sector and the non-profit scientific knowledge sector, including universities, and, second, the amendments by co-legislators which further clarify and strengthen proposals along the same approach.

In February 2022, the [European Commission proposed rules on fair access to and use of data](#) in a so-called Data Act. According to the provisions under Chapter V, data must be made available to public bodies, including public universities and research organisations, in case of exceptional need. The public bodies that request data access under these provisions can also share them with organisations "in view of carrying out scientific research or analytics compatible with the purpose for which the data was requested" (Article 21).

We welcome that the [European Parliament](#) and the [Council](#) supported these provisions, that are crucial for enabling and supporting research, in their positions adopted in March 2023. We acknowledge the efforts made by the European Parliament's rapporteur, MEP Pilar del Castillo Vera, shadow rapporteurs, rapporteurs for opinion, as well as by the Czech then Swedish presidencies of the Council to find compromises for strengthening further the provisions on data access for research purposes. We now call on the co-legislators to maintain the following improvements in the final text and to ensure that, where relevant, scientific knowledge is not treated in the same way in the non-profit sector as it is in the for-profit commercial sector.

Reasonable compensation for data access

We welcome the provisions that limit the compensation for making data available to the costs of making the data available when data is requested for research purposes. The European Parliament accordingly proposed amendments to Recital 44 and Article 9. We urge the co-legislators to align Article 20 with this principle and ensure that the compensation does not exceed the technical and organisational costs of making the data requested available.

Since public bodies can request data access based on exceptional need, in relation either to a public emergency or to a task in the public interest, data holders, regardless of their size, shall not be entitled to "a reasonable margin" (as in Article 20 in the Commission's proposal) especially when the data access is requested for research purposes. Unclearities of what reasonable means here could create

loopholes and give data holders opportunity to impose high costs on public bodies and research organisations.

Personal data

Access to, and reuse of, data must comply with the fundamental right to the protection of personal data and therefore complement, and comply with, the related applicable rules, including the General Data Protection Regulation (Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016). Therefore, we support the position of the Council in its elaboration on the interplay between the Data Act and existing rules on the handling of personal data in Recital 7.

An exclusion of personal data from the scope of the provisions on business-to-government data sharing (Chapter V), as proposed by the European Parliament, would instead be severely detrimental to data sharing for research purposes. Health research would be particularly affected by such a narrow scope despite their core contributions to addressing public emergencies like pandemics.

Objection to the transmission of data to research organisations

We note that data holders can “decline or seek the modification of the request” introduced by public bodies to access their data, as per Article 18 in the Commission’s proposal. We also recognise the fair right of the data holders to be notified of the transmission of their data requested in case of exceptional need to research organisations and that the reuse of this data for research purposes must be strictly in line with the purposes for which the data was requested.

We are concerned that the European Parliament’s amendment to Article 21(3) introducing the possibility for data holders to object to the transmission of data to “individuals or organisations in view of carrying out scientific research” would be redundant with Article 18. It may also be abusively used by some data holders to hinder the reuse of data for research purposes and ultimately research conducted to address public emergencies or to support tasks in the public interest.

Specific rules on the access to and use of data for research purposes

We warmly welcome the amendments introduced by the Council to Recital 87 and Article 40 clarifying that the Data Act is without prejudice to “Union and national law providing for access to and authorising the use of data for scientific research purposes.” This provides not only much-needed clarification in relation to data (re)used for scientific research purposes but also an avenue to further strengthen this area in the future.

We acknowledge the commendable ambition of the European Commission to ensure that the fast-paced digital transformation of our societies is human-centred. Considering the growing number of EU and national data regulations, we re-assert to the European Commission, the Member States and the European Parliament our willingness to engage with them in dialogues on, and in the co-creation of, better conditions for the access to, and reuse of, data for research purposes.

