EUROPEAN COMMISSION

Brussels, 15.10.2020
SEC(2020) 405 final/2

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act)

{COM(2020) 767 final}
{SWD(2020) 295 final}
{SWD(2020) 296 final}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Legislative Framework for the governance of common European data spaces

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

This is the first initiative of the 2020 European Strategy for Data. It aims to create better access to data to safeguard EU global competitiveness and data sovereignty. Data should be available for use, while keeping those who generate it in control. Common European data spaces would be arrangements comprising an IT environment and a set of legislative, administrative and contractual rules on the use of data. They should ensure secure processing and access to data by an unlimited number of organisations. This report investigates different options to create such framework.

(B) Summary of findings

The Board notes the revised impact assessment and the improvements in the readability and the description of the objectives.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) Options are not sufficiently clear on how they would work in practice. The justification for the composition of the options is not always convincing.

(2) The analysis lacks depth regarding impacts on SMEs, Member States and the internal market.

(3) The report does not convincingly argue the choice of the preferred option for data altruism.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should further clarify the content of the options. It should explain how the self-regulation option would differ from current practices (which are part of the baseline). For the options on reuse of public data, it should justify why other possible dimensions of the options were considered, but not further analysed. It should better explain how the high intensity option would work in practice. For the options on data altruism, the report should better justify why the low intensity option foresees voluntary private certification and the high intensity option compulsory public authorisation. It should consider including a voluntary public certification option as an alternative. Regarding the European Data Innovation Board, the report could further specify its foreseen functioning under the options, including its role and powers vis-à-vis Member State authorities.

(2) The report should deepen the analysis of SME specific impacts and costs for Member States. It should analyse the possible impact on the internal market of different implementation approaches across Member States. It should explain better why the expected benefits in the impact assessment are much smaller than in the referenced research studies.

(3) The report should better integrate the expected effects of the Digital Europe programme and the Connecting Europe Facility in the analysis of options.

(4) The report needs to present a more granular overview of the impacts of the different intervention areas in tabular form. It should better justify its choice for the high intensity option for data altruism, especially as it does not analyse a voluntary public certification option (see above).

(5) The report should examine in more depth how it intends to organise future monitoring and evaluation on an ongoing basis. Given that it is experimenting with new, untried approaches, waiting five years for their evaluation seems a rather static approach. It should clarify how increased trust in data sharing will be measured and monitored. It should describe how the effectiveness of these new approaches will be assessed in a timely manner.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The lead DG may proceed with the initiative.

The lead DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the lead DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a Regulation of the European Parliament and of the Council on governance of common European data spaces
Reference number	PLAN/2020/7446
Submitted to RSB on	25 September 2020

Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Effect on Gross Domestic Product (GDP)	EUR 10.9 billion in 2028 (0.079 % of GDP in 2028).	
Costs Savings and efficiency gains - Easier discovery and reuse of data (due to the creation of mechanisms, including a one-stop shop)	EUR 49.2 million/year	Benefits for data reusers for the EU27, assuming a saving of 20 hours of work per application.
Costs Savings and efficiency gains - Lower cost of data processing and management (due to the creation of mechanisms, including a one-stop shop)	EUR 684 million/year	Benefits for data holders for the EU 27, assuming that 20% of data holders relinquish their dedicated data processing environment and 30% of the data pre-processing work is passed on to the one-stop shops.
Costs Savings and efficiency gains linked to the set-up of a European Data Innovation Board in charge of enhanced governance of standardisation	EUR 5,335.6 million	Efficiency for participating companies assuming 800 companies and 50M EUR turnover based on IDS examples
Business development linked to data intermediary certification/labelling	25%-50% business development time acceleration for data intermediaries	
Easy and transparent way to access data of various fields, contributing to research and development as well as improved decision-making	EUR 300 million	Improved policy making for government as for example data altruism has proved to be valuable during the COVID-19 pandemic. Other examples are smart city initiatives and environmental data for the public good. These would then be improving public services

		and goods.
Indirect benefits		
Contribution to societal goals through improved policy- and decision-making	*Not quantifiable due to lack of data*	Especially data altruism could enhance societal goals such as achieving environmental goals, building smart cities of the future and help eradicate pandemics (as is currently the case with COVID-19).
R&I and competition advancement for data intermediaries in the B2B market	*Between 1%-25% competition increase in data intermediaries B2B market, in a 2-5 years' timeframe,* *and between 1%-25% competition increase in data intermediaries B2B market, in a beyond 5 years' timeframe.*	
R&I and competition advancement for data intermediaries in the C2B market	*Between 1%-25% competition increase in data intermediaries C2B market within a one-year timeframe after obtaining the certification/label in 2-5 years' timeframe;* *and between 25%-50% competition increase in data intermediaries C2B market, beyond 5 years' timeframe*	

II. Overview of costs – Preferred option							
		Data holders		*Data intermediaries*		*Data (re)users*	
		One-off	*Recurrent*	*One-off*	*Recurrent*	*One-off*	*Recurrent*
Measures facilitating	*Concerned parties*	*Public sector bodies*		*Mechanisms (incl. one-stop-shop)*		*Researchers and businesses*	

secondary use of sensitive data held by the public sector (low intensity)	*Direct costs*[1]	-	*EUR 7.6 million/year*	*EUR 286.4 million*	*EUR 16.5 million/year*	-	*EUR 41.8 million/year*
	Indirect costs	-	-	-	-	-	-
Certification/labelling framework for data intermediaries(low intensity)	*Concerned parties*	*Businesses, citizens, academia, researchers*		*Certified/labelled data intermediaries*		*Businesses*	
	Direct costs	-	-	*EUR 20 000-50 000*	*EUR 20 000-35 000/year*	-	-
	Indirect costs	-	-	-	*Approximately 25% decreased market competition in B2B market within the 1st year after obtaining certification*	-	*Non-quantifiable costs due to lack of data*
An EU-wide data 'altruism' scheme (high intensity)	*Concerned parties*	*Citizens, businesses, public sector authorities*		*Public sector authorities, research orgs, businesses*		*Public sector bodies, researchers*	
	Direct costs	*Giving consent to make data available*	*Giving consent to make data available (could be recurrent if it is revoked)* *Non-quantifiable costs due to lack of data*	*Becoming authorized (if applicable)* *EUR 3 800-10 500 depending on the size of the organization* *Establish scheme/authorization process and national oversight body*	*Maintain data altruism authorisation EUR 5 000*		-

[1]These numbers show the aggregate amount for the entire EU27, including the costs for all Member States.

				(for public authorities) *Non-quantifiable, however every EU-27 state has a data authority (or equivalent) that could implement this.*			
	Indirect costs	-	-	-	-	-	-
European structure for governance aspects of data sharing **(low intensity)**	*Concerned parties*	*Businesses*		*Public and private organisations*		*Other businesses and researchers*	
	Direct costs	-	-	-	*EUR 280.000/year for running the group*	-	-
	Indirect costs	-	-	-	-	-	-

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2020)

Opinion

Title: Impact assessment / Legislative Framework for the governance of common European data spaces

Overall opinion: NEGATIVE

(A) Policy context

This is the first initiative of the 2020 European Strategy for Data. It aims to create better access to data to safeguard EU global competitiveness and data sovereignty. Data should be available for use, while keeping those who generate it in control.

Common European data spaces would be arrangements comprising an IT environment and a set of legislative, administrative and contractual rules on the use of data. They should ensure secure processing and access to data by an unlimited number of organisations.

This report investigates different options to create such framework.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report does not explain the problem clearly enough and why the EU should promote a new model for data sharing.

(2) The report does not elaborate in sufficient detail the design and composition of the options and how they would work in practice.

(3) The scale of the quantified direct impacts is not in line with the impacts presented in the text.

(4) The analysis is not sufficiently granular to underpin the choice of the preferred option.

(C) What to improve

(1) The report should better describe the current situation on data sharing in Europe. It should explain why it does not examine the creation of data markets. It should analyse drawbacks and risks stemming from the current role of data intermediaries. It needs to provide more evidence on the insufficiency of the existing arrangements, for example

regarding findability, quality and neutrality of data. The report should inform on the current tendencies of concentration of data supply by intermediaries. It should expand on the problems arising from access to data being concentrated outside the EU. The report should elaborate on the problems that emerging European data sharing initiatives are facing and their internal market dimension. The report should detail the governance problems of data intermediation.

(2) The report should be clear on the objective of the intervention. It could explain that the initiative might help to mitigate the Covid-19 and climate crises. However, the resolution of these crises does not form an integral part of the intervention logic and should therefore not be the general objective. In addition, the report should make evident that the initiative is not about 'free data for all'. The objectives should also better consider the importance of access to data for competitiveness.

(3) The report should explain the interaction between the investments in common European data spaces by the Digital Europe programme and the Connecting Europe Facility, and this initiative. It should include their effects in the baseline and the analysis of options.

(4) The report should better explain the composition and completeness of the options. It should justify why it discards all soft regulatory measures upfront. It should elaborate the reasons for the combinations of measures under the 'low' and 'high' intensity options, and explore further if the set of options is complete. The report also needs to explain clearly how each option would work in practice. In particular, it should describe in more detail the role and functioning of the different supervising and coordinating bodies that are under consideration. It should also clarify to what extent the initiative would rely on altruism, and whether this poses concerns regarding supply and scarcity of data. It should explain how control interests of primary data suppliers would be protected. It should consider the possible role of the public sector as a data intermediary with the digitalisation of public administrations.

(5) The report should explain why the calculated economic benefits of the options are marginal compared with the expected evolution of the data sector. If necessary, it could rely more on qualitative arguments. The analysis should look into effects on SMEs and costs for Member States. The report should better justify the benefits of creating the European Innovation Board.

(6) The report therefore, needs to present a more granular analysis of the impacts of the different intervention areas to better justify the choice of the preferred option.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Proposal for a Regulation of the European Parliament and of the Council on governance of common European data spaces
Reference number	PLAN/2020/7446
Submitted to RSB on	20 July 2020

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