

Data Intermediaries and the DGA

Principles, Frictions, and Perspectives



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The Data Governance Act – A Concise Outline

- DGA published as (EU) Regulation 2022/68 on 3 June 2022
- DGA addresses disparate subject matter in Chapters II-IX

Article 37

Re-use of public sector-held data (Art. 3-9 DGA)

Data intermediaries
(Art. 10-15 DGA)

Data altruism organizations
(Art. 16-25 DGA)

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 24 September 2023.

Safeguards for international data transfers (Art. 31 DGA)

Complaints and remedies
(Art. 26-28 DGA)

European Data Innovation Board
(Art. 29-30 DGA)

B2B Data Sharing with and without Data Intermediaries

Persistent barriers to seamless data exchanges

- Information asymmetries and limited experience at all stages of data transactions
 - Technical shortcomings, e.g. lack of interoperability between data sets
 - Regulatory burden especially regarding processing under data protection law
- **High transaction costs**

The benefits associated with data intermediaries

- “Matching” between suppliers and buyers
- Standardization of data transactions (contract templates, interoperable data formats)
- Supplementary services

Current issues with data intermediaries according to the European Commission

- Lack of user uptake due to **low trust** in intermediaries acting in their users’ best interest
- Impeding market concentration on dominant platforms → risks to **fair competition**

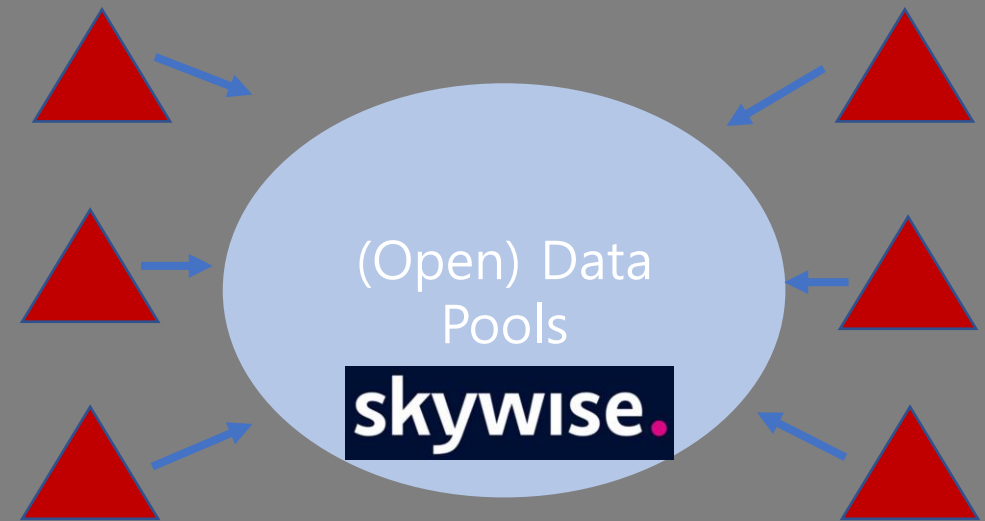
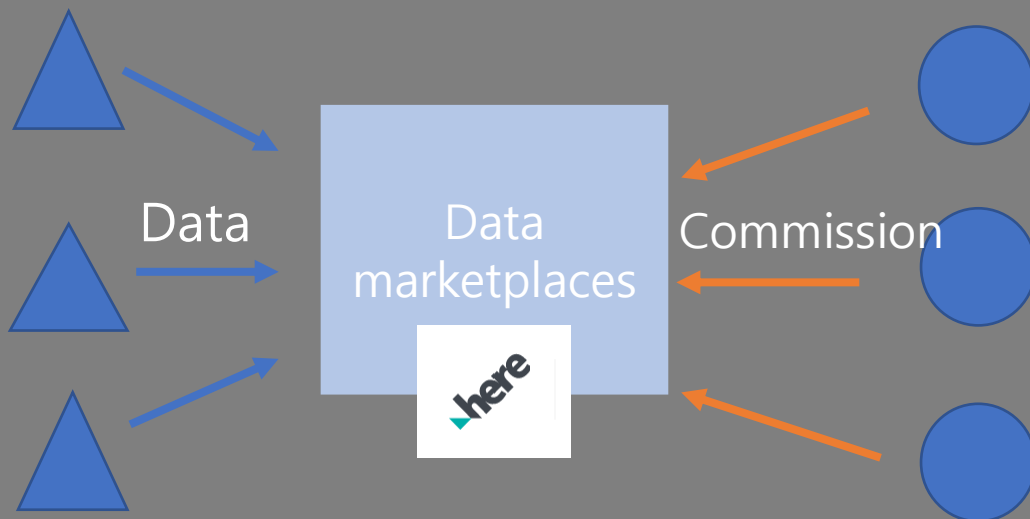
The Notion of Data Intermediaries

Legal definition

Art. 2(11) DGA: **'data intermediation service'** means a service which aims to establish commercial relationships for the purposes of data sharing between an undetermined number of data subjects and data holders on the one hand and data users on the other, through technical, legal or other means [...]

→ exclusion of **data brokers** (Art. 2(11)(a) DGA) and **closed groups** (Art. 2(11)(c) DGA)

Types of data intermediaries covered



Requirements (1): Neutrality and purpose limitation



Structural separation (Art. 12(a))

→ separate legal person does not entail independence from larger corporate structure altogether

Purpose limitation (Art. 12(a) and (c))

- Data intermediary may only use the data for provision to the data users and for the development of its service
- Exception: additional tools under Art. 12(e) which facilitate data exchanges (e.g. conversion, anonymization)

Requirements (2): Fairness of operating the service

Prohibition on bundling and tying (Art. 12(b))

→ e.g. further operating service / program required to make use of the data intermediation service

FRAND-like standards for accessing the data intermediaries' service (Art. 12(f))

- Disclosure of terms of service and pricing to avoid closed market structures
- See FRAND data licensing under Art. 8 et seq. Data Act

Reasonable continuity of service in the event of insolvency (Art. 12(h))

- Mechanisms in place to allow transfer and retrieval of data for both data holders and data holders
- Close interplay with porting and retrieval rights under concomitant legislation

Requirements (3): Technical Safeguards / Data Security

Mandates for interoperability (Art. 12(d) and (i))

- Conversion into interoperable data formats only upon request by data users or if required by law
 - Open standards for interoperability between data intermediation services
- Art. 28-29 Data Act

Measures against unauthorised and unlawful access (Art. 12(g) and (j)-(l))

- Verification of non-abusive and non-fraudulent access requests
- High level of security when processing competing competitively sensitive data
- Duty to inform users in the event of a breach

Can the DGA be squared with the needs of the data economy?

Empirical problems

- DGA relies exclusively on the lack of trust narrative → aforementioned barriers may in fact be more prominent

Compliance costs

- Notification regime introduces a strict regulatory approach which may be particularly harmful to smaller firms
- Layered legal framework with data governance, data protection, and competition law
- Monitoring by competent (data protection) authorities adds to the complexity

Collingridge dilemma

- DGA builds on non-verifiable assumptions for the development of the market for data intermediation services
- Proactive (*ex-ante*) regulation at odds with conventional competition remedies therefore suffers from a built-in degree of uncertainty \leftrightarrow *ex post*- policy option may however not be able to reverse set developments



Outlook: European Data Spaces

= *Orchestrators of data sharing ecosystems (Recital 28)*

Sectoral infrastructures, i.e. Common European Data Spaces



Proposal for a Health Data Space



Thank you for your attention!



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