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## EBF Response to the European Commission's consultation on the Data Governance Act

### KEY POINTS:

- The European Banking Federation (EBF) welcomes the opportunity to respond to the European Commission's consultation on its published Data Governance Act.
- While the EBF recognizes that the different elements of the Regulation are a step towards helping to create a Single Market for Data in the EU, we would encourage more ambition in future proposals, **notably on the Data Act, to increase access data across different sectors.**
- Data sharing intermediaries can play an important role in incentivising broader data exchange and helping users to take control over how their data is used and shared. However, **they are only one part of the wider data sharing ecosystem and should not replace the need for further actions**, such as an enhanced data portability rights and mechanisms such as APIs, that allow user data sharing in real-time.
- We welcome the **creation of a European Data Innovation Board** and stress the need to **make industry participation from different sectors a permanent part of the expert group rather than just occasional or invitation only**, which is particularly important given the tasks mandated to the Board by the Regulation.

### A. Introduction

The European Banking Federation (EBF) welcomes the opportunity to comment on the European Commission's published Data Governance Act and continues to support its ambition to build a Single Market for Data in Europe.

Making more data available and improving the way in which data is used is essential for tackling a wide array of challenges. While the measures in the Regulation – setting conditions for the re-use of protected data held by public sector bodies, creating a framework for data sharing intermediaries and creating the European Data Innovation Board – are a step-forward to achieving the Data Strategy's<sup>1</sup> goals, we would like to stress

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0066&from=EN>  
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the need for more ambition **on increasing access to data, particularly across different sectors** and **encourage the European Commission to take this up in the future Data Act**, including enhancing the existing data portability right under Article 20 GDPR. We welcome that in the Digital Markets Act Regulation<sup>2</sup>, proposed by the European Commission in December 2020, gatekeepers are required to **provide effective portability of data** generated through the activity of a business user or end user and shall, in particular, **provide tools for end users** to facilitate the exercise of data portability, in line with GDPR (where end users as individuals are concerned), including by the provision **of continuous and real-time access**.

### **B. Chapter II: Re-use of certain categories of protected data held by public sector bodies**

We welcome that the proposal sets out the requirements which aim to guarantee the protection of business secrets and intellectual property, as well as confidentiality of data. However, **we would recommend that the re-use of protected data which could fall within the categories identified in Chapter II is assessed on a case-by-case basis**. We would also advise to ensure consistency with the activities of the European Single Access Point, an ongoing project to develop a platform that provides the public with unhindered, EU-wide access to all relevant information published by companies, including financial companies, including non-financial information.

### **C. Chapter III: Requirements applicable to data sharing services**

Overall, we agree with the initiatives to support the uptake of data intermediaries by end users and businesses through the creation of an EU framework, as they can play an important role in incentivising broader data exchange and helping users to take control over how their data is used and shared. However, an obligation for data holding companies **to provide mechanisms such as APIs**, that allow user data sharing in real-time, in a standardised and secure way, is a prerequisite for this to happen. Data intermediaries would be **an additional tool** available for users, but their framework under this Regulation **should not result in a situation where data intermediaries are de facto required for any data sharing** – whether from individuals or businesses – to occur, thereby inadvertently create new barriers to data sharing. **Individuals and firms should always be able to choose whether they share their data via an intermediary, or directly between two firms**.

As a result, while Recital 23 of the Regulation notes that the data sharing intermediaries would “*assist individuals in exercising their rights under Regulation (EU) 2016/679, in particular managing their consent to data processing, the right of access to their own data, ... the data portability right, which allows data subjects to move their personal data from one controller to the other*”, data sharing intermediaries should not be a mandatory part of any future actions on data portability, including enhancing the data portability right under Article 20 GDPR, as foreseen in the Data Act.

Furthermore, the Regulation allows data sharing services to make adaptations to the data exchanged only to the extent that this improves the usability and interoperability (Article

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<sup>2</sup><https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0842&from=en>

11(4)). This should not prevent the emergence of new value-added services that could further help users and companies to manage their data in an effective way.

It is also important to keep in mind that interfaces and data standards are harmonised across initiatives under the Commission's Data Strategy as a whole, while taking into account existing data transfer standards.

More specifically, we also see **a need for further clarification of the rights and obligations of data intermediaries**. In particular, within the scope of the GDPR, the question arises as to which party - data intermediary, data user, or both - the data subject consents to the use of the data. The data user must be able to ensure that it fulfils its obligations under the GDPR, even if it receives the data via a data intermediary - i.e., indirectly. Similar questions arise **regarding the accuracy of data provided through an intermediary, e.g., if it is used to meet regulatory requirements**. In addition, the question of potential liability would also need to be addressed.

It is also important to note that, outside of the data sharing intermediaries which fall into the scope of the Regulation, other types of intermediation services exist and should be able to continue to do so without suffering a disadvantage to the intermediaries that fall under this Framework. Therefore, **the scope of the Regulation should be clear on what intermediaries are covered and will have to meet the prescribed conditions**, such as the structural separation between the "data sharing service" and all other services. It should ultimately be the choice of the consumers or firms which services to use. Finally, we would also like to emphasize the importance of a predictable and transparent update and change process as users are likely to automate the collection of data from intermediaries or directly from data owners.

#### **D. Chapter VI: European Data Innovation Board**

We **welcome the proposal to create a European Data Innovation Board (EDIB)** in the form of a European Commission expert group and that Article 26 (2) provides that "*stakeholders and relevant third parties may be invited to attend the meetings of the Board and participate in its work.*" However, we would strongly urge to **make industry participation from different sectors a permanent part of the expert group rather than just occasional or invitation only**. This is particularly important in light of tasks given to the Board such as those under Article 27 (c) and (d):

- Advising the Commission on **the prioritisation of cross-sectoral standards to be used and developed for data use and cross-sector data sharing**, cross-sectoral comparison, and exchange of best practices with regards to **sectoral requirements for security**, access procedures, while taking into account **sector-specific standardisations activities**.
- Assisting the Commission in **enhancing the interoperability of data** as well as data sharing services between different sectors and domains, **building on existing European, international, or national standards**.

Industry contribution to identifying the needs of standardisation is key to ensure practicability of standards, legal certainty for firms, and broad adoption of standards in the long run. To understand best practices within sectors and how to facilitate cross-sector data sharing, **representatives from different sectors are needed**.

We are also encouraged that the EDIB will advise the Commission on identifying and prioritising standardisation needs – but the EDIB **should not develop the standards themselves. This should be left to existing mechanisms and processes for standardization, with the involvement of industry.** Considering the broader initiatives that have been developed over the recent years at industry level (ISO standards, API technology etc) is therefore important.

Regarding the elements which are most useful in terms of data sharing, we would like to highlight the importance of standardization of data formats, the description of data sets, and security requirements (authentication requirements and secure communication).

**ENDS**

**For more information:**

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## About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international - while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

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