Parlamentul României
Senat

Bucharest, April 14, 2021 *Courtesy translation*

OPINION
of the SENATE OF ROMANIA
on the *Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act)*
COM(2020) 767 final

The Romanian Senate has examined the Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act) – COM (2020) 767 final, according to the provisions of the Treaty of Lisbon (Protocol no. 2).

Taking into account the report of the Committee for European Affairs, **the Plenum of the Senate**, during its session of April 12, 2021,

1. It welcomes the launch of the Proposal for a Regulation on data governance and considers that the establishment of this regulatory framework will increase the amount of data available for re-use in the European Union, increase confidence and strengthen data sharing mechanisms in the European Union.

2. It is noted that, considering that the data-driven economy and the economic value of data sharing will increase to an estimated value of between EUR 510-544.4 billion (between EUR 3.92-3.95% of GDP), opening access to public sector data for re-use is equivalent to a process of free privatization of a public good and the specific legislation of each Member State in this area should be taken into account.

3. They are some reservations and demands:

A. Clarification on the compatibility between DGA and GDPR, as regards the personal data component:

a. Regarding the definitions provided in Article 2, given that the proposed regulation "is without prejudice to Regulation (EU) 2016/679", the definitions set out in Article4 of Regulation (EU) 2016/679 and should not be amended or deleted by this proposal for a Regulation, and the new definitions introduced, insofar as they relate

to the processing of personal data, should not contain rules that are incompatible with Regulation (EU) 2016/679. For example, regarding of Article 2 (4) "metadata" may also include personal data;

b. Article 2 (5) also defines the "data holder" who has the right to grant access to certain personal data under his control or to share such data. In this context, it should be noted that Regulation (EU) 2016/679 does not mention this right, but guarantees everyone the right to the protection of personal data concerning them, which refers to a set of rules for the processing of personal data, what are mandatory for the operator/associated operators/person authorized by the operator;
c. Another aspect concerns that the proposal for a regulation should clearly specify the legal basis for the processing of personal data, as provided for in Regulation (EU) 2016/679;
d. It is noted the terms "personal data" and "non-personal data" in the proposal. In this regard, it is recommended that there be a clear distinction between personal and non-personal data, in order to avoid confusion as to how the proposed regulation would apply in compliance with the provisions of Regulation (EU) 2016/679;
e. Regarding the reuse conditions provided in Article 5 of the proposal, in accordance with the principle of legality of processing, established in Article 5 (1a) of Regulation (EU) 2016/679, it is recommended to clarify that an appropriate legal basis, in accordance with Regulation (EU) 2016/679, must be provided for in Union or Member State law and carefully identified by the bodies from the public sector, regarding any subsequent re-use of personal data;
f. Article 5 does not include, among the conditions of re-use, the obligation of private sector bodies to provide information to data subjects (principle of transparency), provided by Regulation (EU) 2016/679. Thus, it is recommended to include an explicit provision on the obligation of these public sector entities to provide information to data subjects under Regulation (EU) 2016/679, so as to ensure the exercise of the rights conferred on data subjects by data protection. In the same context, it is necessary to respect the other principles provided by Article 5 of Regulation (EU) 2016/679, in particular the principle of data minimization and the principle of integrity and confidentiality;
g. Regarding the Article 9 on data sharing service providers, in particular those relating to the intermediation of services between data holders and data users, services which may include bilateral or multilateral data exchanges or the creation of platforms or databases allowing the exchange or operation of data sharing services of common data, we draw attention to the need to implement appropriate technical and organizational measures, in accordance with Article 24 of Regulation (EU) 2016/679, as well as the observance of the principle of ensuring data protection, starting from the moment of conception and implicitly (privacy by design and by default), established by Article 25 of Regulation (EU) 2016/679;
h. Regarding the data sharing services, they will be subject to the conditions for the provision of data sharing services mentioned in Article 11 of the proposed regulation. However, it was not identified, among the conditions from Article 11, and the obligation to comply with data protection rules;

i. Regarding the provisions on competent authorities and monitoring of compliance, it is considered that they should be better defined, in order to ensure a more appropriate verification of data sharing service providers, including compliance with Regulation (EU) 2016 / 679;

B. Clarification of the additional costs and responsibilities of the various actors, in the context of the implementation of the regulation requiring the designation of several competent national authorities. The proposed regulation will generate financial and administrative costs, which will be borne mainly by national authorities, while some costs will also burden data users and data sharing service providers to ensure compliance with established obligations in this Regulation;

C. Clarification of issues related to "data altruism":

a. The European consent form on data altruism (Article 22) should allow individuals and businesses to define the purposes of data exchange, and the regulation should provide for means of communication so that these forms are accessible to the public, for the benefit of data altruism organizations;
b. The regulation could investigate the possibility of opt-in/opt-out users to exchange data. The regulation assumes that the GDPR and/or the data anonymization make it possible to waive the need to examine the consent of data subjects for the re-use of their data in a framework of non-altruistic European exchanges. However, there may be cases where citizens object to the use of data collected by a public body and then made available to third parties, through a data sharing service provider, depending on the use of such data (military, health insurance).

President of the Senate
Anca Dana DRAGU