About the GFII*: created in 1979, the GFII, the French organization of information professionals, is a unique association in the data landscape* ***that brings together private and public data producers and re-users,*** *such as the French Ministry of Interior, INPI, IGN, Total, BNP Paribas, Roquette frères, Saint-Gobain, Wolters-Kluwer, Elsevier, Françis Lefebvre-Dalloz group, Altarès. It gathers lawyers, engineers, data experts, compliance officers...*

The GFII aims to promote the economy of data, that means the recognition of the costs necessary for their manufacture, maintenance, development and dissemination in an assumed commercial environment, which does not exclude free of charge data sharing, but which puts more emphasis on the interoperability of data, their valorisation and their reusability. The 6 working groups produce positions papers and white papers in order to help shaping the future of data policy in France and in the EU by offering a balanced and economically sustainable point of view about data and IA. The GFII promotes a sustainable and ethical use of data and works closely with its members for offering the most expert and efficient feedback about the implementation of data policies. GFII members may be AI systems providers, users or both.

GFII contribution on the impact assessment relating to the "Data Act (including the review of the Directive 96/9/EC on the legal protection of databases)" initiative

GFII is, of course, in favour of developing data sharing, as data is / will be one of the essential economic assets of this century. The value chain of data should be transparent and understandable for each actor of a particular chain, and it should embark on a clear description of what IP rights apply to data, and who owns these IP rights.

1) Readability of the EU Data Legislation

When reading the impact assessment, we, first of all, invite the European Commission **not** to include too many topics in a same legislative initiative, even if it is to modify an existing directive or regulation. A clear difference between these topics would be more understandable (for companies, public sector, and citizens, etc.) and practical. Therefore, we suggest:

1. To dedicate the future Data Act to BtoB and BtoG datasharing only,
2. To have separate initiatives for fitting the need to:

- encourage the development of smart contracts in the context of B2G and B2B data access and use as well as in the portability of personal data by data subjects,
- • manage requests pursuant to provisions of the laws of third countries, as this topic is already covered in the DGA,
- • revise the Directive 96/9/EC of 11 March 1996 on the legal protection of databases,
- • clarify the Directive 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure even if they come from debates and ideas linked to the Strategy for Data and the "Data package";

• • organize the development of cloud computing services, as this topic is already covered in the Free Flow of Data Regulation, not to say in the DORA draft

Considering all the present and future Data initiatives and all the DGs involved, it is essential from our point of view to have a strong coordination between all DGs and to work on the readability and interactions between all pieces of legislation. This is particularly important for the interaction between GDPR and the new Data legislation (Data Governance Act / Data Act / Data Spaces, etc.).

2) Regarding the BtoG Data sharing

a) Definition of "public interest/common good" : It seems to us that, at the present time, there is no unique EU definition of “public interest” nor of “common good”. If no harmonization can be found at EU level, it may be necessary to define some precise access and reuse purposes / use cases by public sector bodies. Nevertheless, such a BtoG Data sharing should remain voluntary.

b) Personal Data: We have understood that personal data may be included, which means that anonymization may be required. According to the GDPR, anonymization must be done by the data provider / the private holder. (costs/responsibility).

c) Intermediation structures: The impact assessment mentions the creation of Intermediation structures or bodies between private sector data holders and public sector bodies interested in certain data. Would these intermediation structures or bodies be the same structures as the data intermediaries described in the draft DGA? GFII encourages this solution as their neutral role would remain essential, as well as the technical options they could potentially propose to both data holder and data reuser. Then, coherence between the DGA and the Data Act will be key.

d) Compensation: Compensation will for sure be a key topic. Since the beginning of the PSI directive recast in 2017, GFII strongly alerted on the potential side effects of requiring that certain PSI like High Value Data Sets shall be made available for reuse free of charge. As a matter of fact, reusers as well as public bodies have rapidly seen the impacts of such a policy in France. Whatever the data holder and the data reuser, developing and maintaining a high quality database has a cost, as well as the way data are made available for reuse (quality of data, APIs availability, data standardization, technical documentation etc.). High Data quality is vital for developing AI technology, so Data legislations and the future AI regulation will have to be perfectly consistent.

e) Level playing field :

- **we strongly alert on the fact that data provided by a private data holder to a public sector body shall never become PSI and, as such, be available “in clear” to all potential reusers**. If public bodies can access and reuse private data, it will be then necessary to coordinate the access right to public documents and the access and reuse of private data by the public bodies coming from the future data act.
- Another question: how and by whom the marginal costs/market price of the private data should be evaluated?
- BtoG data sharing may also be a competition issue if there are different private sector data holders from the same sector in capacity to provide data to a public sector body. Should the public sector body make a call for tender?

f) Coordination of national legislations: We alert that the future BtoG sharing rules will have to consider rules/actions already existing at national level, like in France ("données d'intérêt général" - "Data of general interest").

3) Regarding the BtoB data sharing

The articulation between the DGA and the future Data Act on BtoB data sharing seems to us quite confuse. From our understanding at present time:

- • the DGA would apply if a private sector data holder decides to make its data available through a data intermediary to potential reusers,
- • the future Data Act would apply if a private sector data holder agrees to provide its data to a private sector data reuser, according to some contractual rules.

We understand the principle of the B2B fairness test, but not so good the way it could be made.
It may be useful to have a list of mandatory topics / articles to be found in a BtoB data sharing contract.
Technical conditions to make data available and reusable will also be key and … have a cost, that will have to be taking into account.

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