

Position paper DGA

Authority for Consumers and Markets (ACM, NL)

In 2025, the legislative evaluation of the Data Governance Act (DGA) will take place. The Netherlands Authority for Consumers and Markets (ACM) is responsible for ensuring compliance with this regulation in the Netherlands. In the context of this evaluation, the ACM has shared its findings and recommendations with the European Commission. This paper is a public summary.

The ACM recognizes the potential of the DGA as a key instrument for facilitating data sharing across the European Union. However, the ACM also observes that certain provisions within the current legislation may constrain or even hinder effective application of the DGA. In particular, the ACM sees room for improvement in the regulation of data intermediation services and in European cooperation with other authorities. This position paper sets out ACM's findings and proposals for enhancing the effectiveness of the DGA.

On the definition of a data intermediation service provider (Article 2.11 and 10 DGA)

The definition of a *data intermediation service provider* (DISP) is elaborated upon and clarified in various sections of the DGA.¹ The definition of a DISP in the DGA should be improved. The various provisions and recitals relating to the DISP-definition do not always align coherently. Moreover, the definition is formulated in such broad terms that many organisations could potentially fall within or outside its scope, depending on how it is applied. The ACM believes that this leads to ambiguity and gives rise to potential legal uncertainty, especially considering the wide variety of data-sharing services. In the ACM's view, the types of DISPs differ too significantly in nature to be adequately captured under a single definition.

The ACM therefore recommends to replace the general definition with explicit definitions of the various types of data intermediation services subject to registration – such as data marketplaces, personal information management systems (PIMS), orchestrators of data-sharing ecosystems, data pools, and data cooperatives – each accompanied by a concrete example. This approach would be comparable to the structure used for the definition of a core platform service in the Digital Markets Act (DMA) and could provide greater clarity. Furthermore the ACM recommends simplifying the list of exceptions in Article 2.11 of the DGA, as those listed under a, c and d do not qualify as true exceptions.

On the requirements for data intermediation service providers (Article 12 DGA)

The ACM observed that many organisations that are offering a data intermediation service (DIS) are still in a start-up phase. They are often still laying the groundwork for their ventures, experimenting with income-generating strategies, and relying on public funding. On top of that, even when organisations are more established, providing a DIS might be only a minor part of their overall business model. The ACM calls for rebalancing of the requirements that ensure trust in DISPs, as these are currently prohibitively strict.

Partly due to the nascent character of the market, certain requirements, especially Article 12 (a), (b) and (e), could hinder the ability of DISPs to find their footing in the market and to deploy their service sustainably. To summarize, the ACM finds that:

- The requirement for strict legal separation in Article 12 (a) sometimes places a heavy burden on organisations and may not be proportionate to its intended objective to ensure neutrality. Forcing this type of separation is often accompanied by a significant organisational and financial strain on organisations.
- The requirements concerning commercial terms and pricing in Article 12 (b) may hinder the ability for a DIS to create a viable business model. This is particularly the case because, for many of these organisations, only offering a DIS is not yet profitable and needs to be subsidized through internal or external means. More flexibility in their price setting could lead to these businesses being able to turn their DIS into a commercially viable service.
- The requirement of Article 12 (e) – which prohibits DISPs from offering other services as part of their DIS if those services are not solely for data exchange – could be counterproductive to the DGA's goals. Provided the sharing

¹ Article 2.11 provides a general definition of a DISP. Subsequently, Article 10 sets out a definition specifically for DISPs that are subject to a registration requirement. In addition, several recitals (27, 28, 29, 30, 31) provide further clarification on the definition.

terms remain clear and data holders retain control, offering other services would not only enhance the business proposition of the DISP, but it also ensures better data valorisation by data users, thus fostering data sharing by and large.

The requirements set out in Article 12 are intended to ensure the neutrality of the service and to avoid any conflict of interest. The ACM fully endorses this objective. However, as some requirements have a impeding effect on the market when applied strictly, the ACM has recommended easing them while ensuring that the neutrality of DISs continues to be guaranteed.

On European collaboration

The ACM considers European collaboration to be of vital importance in order to effectively and coherently implement European legislation. The European Data Innovation Board (EDIB) brings together a broad and diverse group of enforcement authorities, experts and other stakeholders, in order to facilitate structural cooperation under the DGA and Data Act (DA). The wide range of topics that have already been discussed within the EDIB have proven valuable to the ACM's work under the DGA. It is expected to be of great relevance for the ACM's efforts under the DA as well. The ACM appreciates the high level of engagement from Member States and the European Commission in discussing complex implementation issues.

However, currently there are already too many and too diverse topics that require discussion in a European forum for regulators, including the Commission, in order to come to effective and coherent application of the DGA. This demand for regulatory cooperation is only expected to increase with the starting of the application of the DA this fall. Therefore the ACM calls for further strengthening the EDIBs structure.

As the topics discussed within the EDIB are highly diverse, well-functioning working groups are essential to ensure that the appropriate experts can participate and address topic-specific issues. The ACM highlights four key challenges related to international cooperation:

- There is no clear linkage between the current working groups and the EDIB. Unlike other European cooperation bodies, the EDIB's agenda is not informed by input from subordinate working groups. This results in a lack of structural layering, as both substantive and strategic matters related to the DGA and DA are currently discussed within the EDIB. The ACM proposes to structure the agendas of the EDIB and the working groups.
- The current number of working groups is limited, particularly in the context of the DA. Given the broad scope and the impact of the DA and DGA, numerous legal and interpretive challenges are bound to arise. Therefore it is essential to establish a sufficient number of working groups to allow relevant experts to participate and address topic-specific issues effectively. The ACM proposes to create formal working groups under the DA.
- The current working groups are not granted formal status by the EDIB. While legislative interpretation is being carried out within these groups, the expertise generated is shared exclusively between participating authorities. Granting working groups formal status would allow them to propose draft documents that, after approval of the EDIB, could be published externally. This would improve transparency, stakeholder understanding and trust in a coherent application of the DGA and the DA.
- Unlike other cooperative frameworks such as the DSA-Board and BEREC, there is no secretariat in place to support the collaboration. This is necessary to further professionalize the cooperation and to enable Member States to allocate their available capacity to substantive matters. ₂

The ACM recommends to establish clear and well-defined working groups operating under the EDIB to ensure a sound and effective pyramid structure. This is key to enable the EDIB to function effectively as a strategically operating high-level group that is able to decide on proposals from working groups. In the ACM's view, only overarching strategic themes and substantive issues requiring coordination at a higher level should be discussed within the EDIB. Furthermore, the working groups should be supported by a secretariat and granted formal status.

Final remarks

The ACM welcomes the DGA as a valuable framework to improve data availability and to ensure that data intermediation services operate in a fair and trustworthy manner. Addressing the legal and organisational barriers mentioned in this position paper could help improve the implementation of the DGA and support its effective functioning in practice. In the ACM's view, this would enhance the DGA's ability to contribute to a robust, competitive, and fair European data economy.