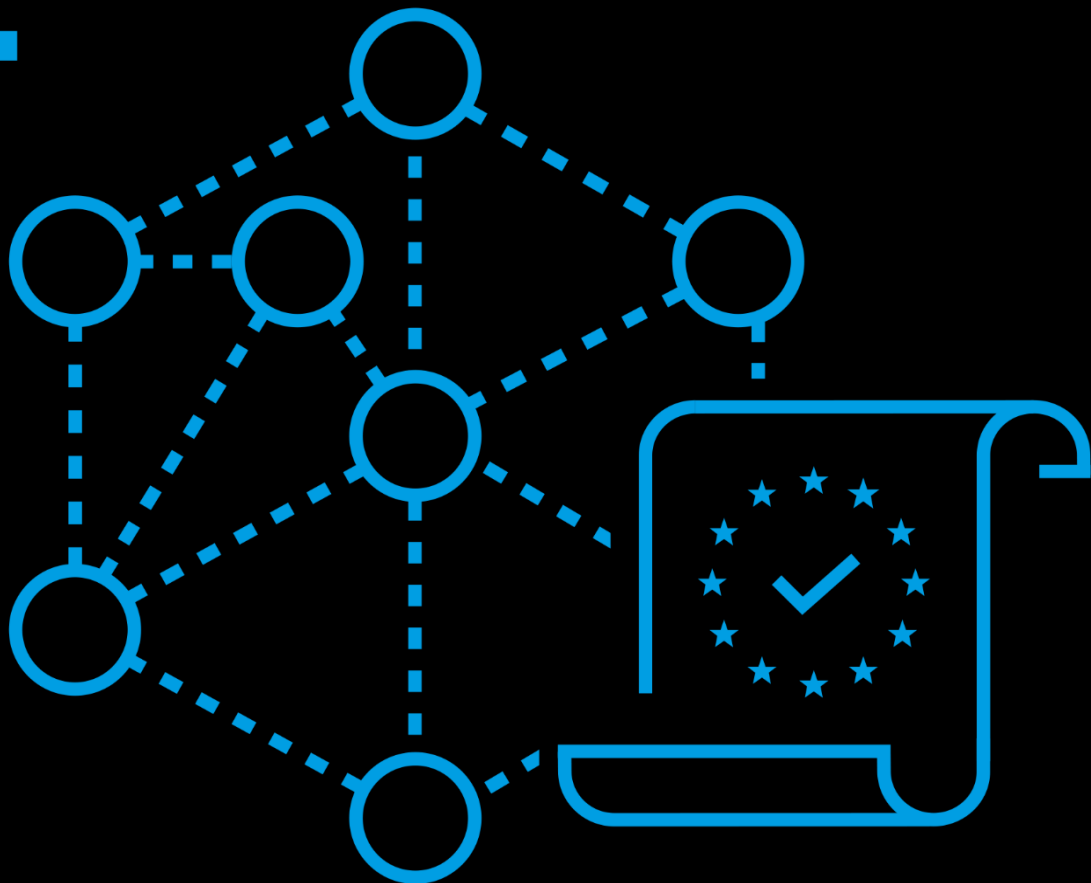


Position Paper | October 2023

Reflections on the DGA and Data Intermediaries



- Position Paper of members of the IDS Association
- Position Paper of bodies of the IDS Association
- Position Paper of the IDS Association
- White Paper of the IDS Association

Impulse Paper, October 2023

Reflections on the DGA and Data Intermediaries

This Impulse Paper has been developed by the International Data Spaces Association. It aims to contribute to the discussion about the Data Governance Act (DGA) regulations on “data intermediation services” and the role of data intermediaries in data spaces.

Key messages

- To understand the scope of the DGA on data intermediaries, Articles 2 (11), 10, and 12 DGA should be read as systematically related and together. The first step to determine the scope of the DGA is the legal definition of “*data intermediation services*” in Article 2 (11) DGA. Article 10 DGA then defines the services that require notification under the DGA and Article 12 DGA refers to Article 10 DGA stipulating, that every data intermediary who requires notification under Article 10 DGA needs to comply with certain requirements to provide the services, primarily in terms of transparency, neutrality or inherent conflicts of interest.
- Even if the definition and the expressed exceptions of “*data intermediation services*” in Article 2 (11) DGA seem to allow a general determination of the relevant services, the definition of the DGA is broad and gives room for interpretation. One reason is the inclusion of both a general definition of “*data intermediation services*” in Article 2 (11) DGA and the further definition of specific categories of such services in Article 10 DGA, while the interplay and consistency of both articles raises questions. This question should be subject to further investigation and guidance to avoid misunderstandings that are not in the interest of the regulator nor the stakeholders to realize the full potential of the regulation.
- With respect to the definition of “*data intermediation services*” in Article 2 (11) DGA it remains somehow unclear from a data space perspective, how the requirement of intermediation “*between an undetermined number of data holders/data subjects and data users*” in Article 2 (11) DGA and the exception in Article 2 (11) (c) DGA should be understood for the following reasons:
 - According to Article 2 (11) (c) DGA intermediation services used by a “closed group” are not “*data intermediation services*” under the DGA. As an example. for such excluded services the DGA mentions “*collaborations established by contract*”.
 - There exist data spaces organised as associations or membership groups based on contractually defined collaborators and rules. As such data spaces usually serve a specific group of participants (most common) based on a “*collaboration established by contract*”, the question might be raised, how to determine, if and to what extent such data spaces could be excluded from the DGA based on Article 2 (11) (c) DGA by definition.
 - As Recital 28 expressly refers to data spaces as the context for “*data sharing ecosystems that are open to all interested parties*”, the general exclusion of data spaces (if established by contract or other means) is more than unlikely. Therefore, a case-by-case assessment is necessary to determine, if a data space in fact results in the “*exclusivity within a closed group*” as referred to in Article 2 (11) (c) DGA (e.g. because the contractual framework does not allow for more participants) or if the data space is “*open to all interested parties*”.
 - However, more clarification on how to assess and determine the DGA definition on data spaces, especially those that qualify as the DGA example of “*collaborations established by contract*” would be helpful.



- To answer the open questions is in the interest of the overall data intermediary landscape. It's important to understand that the concept of data intermediaries isn't new. There already exist different definitions and understandings of data intermediaries as well as different business models. The recent "Science for policy" report from the European Commission's Joint Research Centre provides a landscape analysis of data intermediaries that employs a wider definition of "data intermediary" than the legal definition in the DGA. It's necessary to develop a common understanding how to align different co-existing concepts and business models of data intermediation services with the concept of neutral services meant by the DGA.
- For data space organisations the future differentiation between "self-regulated data intermediation service providers" and "data intermediation services providers recognised in the Union" can also be of strategic interest. Joining the DGA framework as an EU recognised intermediary means to become officially part of the EU data market infrastructure. The DGA can also be used as a reference model to improve the internal trust regime by adopting certain requirements of the DGA. The concept of EU recognised intermediaries can also be an interesting opportunity considering the idea to connect different data spaces.
- The issue affects several existing data space initiatives, private and public motivated, which is why it seems important to combine efforts to better understand the regulation and its practical implications. Therefore, cooperative activities such as the Data Spaces Support Centre (DSSC) are instrumental to facilitate a common understanding. Also, the European Data Innovation Board (EDIB), instantiated by the DGA, will play a fundamental role. Following the EU Commission's approach and the current legislation it will support the EU Commission in issuing guidelines on how to facilitate the development of common European data spaces as well as identifying the relevant standards and interoperability requirements for cross-sector data sharing (see Articles 29 and 30 DGA).

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Background

Already in February 2020, the Commission communicated the “European strategy for data” describing the vision of a single digital market and common European data spaces in key sectors. As part of EU’s digital strategy, it aims at creating a single market also for data that will ensure Europe’s global competitiveness and the sovereignty of its data and data subjects.¹ This is a continuation of the former Commission announced in 2015.²

In this context, the Commission stated that the economic and societal potential of data is enormous while this potential has not been realised so far. Data use and re-use (through, for example, data sharing) in the EU remains limited due to a number of obstacles (including low trust in data sharing, issues related to the re-use of public sector data and data collection for the common good, as well as technical obstacles).³

To overcome these obstacles and as part of the European strategy for data the Commission has proposed different regulations on harmonised rules for data governance, data access and use. Beside other regulations on data topics in force or being finalised⁴, the Data Governance Act (DGA)⁵ was the first to enter into force on 23 June 2022 and, following a 15-month grace period, applies since 24 September 2023.

One of the main objectives of the DGA is to identify a new category of neutral data intermediaries that comply with a specific set of rules and are thus recognised by the EU. The Commission prepared a website that maintains a public register of all data intermediation services providers offering their services in the European Union as notified by the member states.⁶ Companies, organisations and individuals will thus have the possibility to rely on such neutral and trustworthy intermediation services for the sharing or pooling of data as well as for exercising their rights as data subjects.⁷

Data intermediaries under the DGA will function as neutral third parties that cannot monetise the data they intermediate (e.g. by selling it to another company or using it to develop their own product based on this data) and will have to comply with strict requirements to ensure this neutrality and avoid conflicts of interest. According to the Commission’s Data strategy, this concept and new framework will offer an alternative model to the data-handling practices of the Big Tech platforms, which have a high degree of market power because they control large amounts of data.⁸ According to recital 27 of the DGA, *“data intermediation services are expected to play a key role in the data economy, in particular in supporting and promoting voluntary data sharing practices between undertakings or facilitating data sharing in the context of obligations set by Union or national law. They could become a tool to facilitate the exchange of substantial amounts of relevant data.”*

The DGA will influence the landscape of what are commonly thought of as data intermediaries. On our reading, as data intermediaries are a well-established concept in data spaces and one of the key instruments for data sharing and re-use, the DGA underlines not only the importance of data intermediaries, but also of data spaces in general. However, the

¹ <https://digital-strategy.ec.europa.eu/en/policies/strategy-data>.

² https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4919.

³ <https://digital-strategy.ec.europa.eu/en/policies/data-governance-act-explained>.

⁴ Proposal for Data Act (DA-E) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A68%3AFIN>; Digital Markets Act (DMA); Digital Services Act (DSA) [EUR-Lex - 32022R0868 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0868); AI Act <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0868>.

⁵ REGULATION (EU) 2022/868 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0868>.

⁶ <https://digital-strategy.ec.europa.eu/en/policies/data-intermediary-services>.

⁷ JRC Publications Repository, Mapping the landscape of data intermediaries, 2.3.1.1, p. 22; <https://publications.jrc.ec.europa.eu/repository/handle/JRC133988>.

⁸ <https://digital-strategy.ec.europa.eu/en/policies/data-governance-act-explained>.



DGA requires further clarification to allow the practical implementation of its potential as envisioned by the Commission. This clarification, according to the DGA, should be expected from the European Data Innovation Board (EDIB) that will consult the EU Commission on providing further guidelines and developing standards under the DGA, including the topic of data intermediaries, as well as from competent authorities assigned by Member States.

Against this background, this impulse paper is intended to contribute to the discussion about the Data Governance Act (DGA) regulations on "*data intermediation services*" and the role of data intermediaries in data spaces.⁹

Data intermediaries under the Data Governance Act

The scope of the DGA is determined by a number of articles that define the term of "*data intermediation services*" and its exceptions.

Art. 1 DGA: Subject matter and scope

The first mention of "*data intermediation services*" is in **Article 1 DGA**, which defines the subject matter and scope of the entire DGA:

Article 1 DGA

- (1) "This Regulation lays down: ...
- (b) a notification and supervisory framework for the provision of data intermediation services ..."

⁹ For the purposes of this paper, we use the definition of 'data space' according to the DSSC Glossary, Version 2.0, September 2023: "A distributed system defined by a governance framework, that enables secure and trustworthy data transactions between participants while supporting trust and data sovereignty. A data space is implemented by one or more infrastructures and supports one or more use cases."

Art. 2 DGA: Definitions

The legal definition of "*data intermediation services*" and connected definitions can be found in **Article 2 DGA**:

Article 2 DGA

- (11) '**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, including for the purpose of exercising the rights of data subjects in relation to personal data, excluding at least the following:
- (a) services that obtain data from data holders and aggregate, enrich or transform the data for the purpose of adding substantial value to it and license the use of the resulting data to data users, without establishing a commercial relationship between data holders and data users;
 - (b) services that focus on the intermediation of copyright-protected content;
 - (c) services that are exclusively used by one data holder in order to enable the use of the data held by that data holder, or that are used by multiple legal persons in a closed group, including supplier or customer relationships or collaborations established by contract, in particular those that have as a main objective to ensure the functionalities of objects and devices connected to the Internet of Things;
 - (d) data sharing services offered by public sector bodies that do not aim to establish commercial relationships;
- (7) '**data subject**' means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;
- (8) '**data holder**' means a legal person, including public sector bodies and international organisations, or a natural person who is not a data subject with respect to the specific data in question, which, in accordance with applicable Union or national law, has the right to grant access to or to share certain personal data or non-personal data;
- (9) '**data user**' means a natural or legal person who has lawful access to certain personal or non-personal data and has the right, including under Regulation (EU) 2016/679 in the case of personal data, to use that data for commercial or non-commercial purposes;
- (10) '**data sharing**' means the provision of data by a data subject or a data holder to a data user for the purpose of the joint or individual use of such data, based on voluntary agreements or Union or national law, directly or through an intermediary, for example under open or commercial licences subject to a fee or free of charge;

The definition in Article 2 (11) DGA contains **different elements** to define a "*data intermediation service*". Services covered by the DGA are those that aim:

- "to **establish commercial relationships** for the purposes of data sharing"



- “between an **undetermined number** of data subjects/data holders and data users”
- “through technical, legal or other means.

Article 2 (11) DGA expressly excludes “*at least*” certain types of services as listed in Article 2 (11) (a) – (d). The term “*at least*” means, that the list is non exhaustive and that there might be further types of services to be considered as excluded. For example, Recital 28 lists further services which should **not** be considered data intermediation services under the DGA:

*“The provision of cloud storage, analytics, data sharing software, web browsers, browser plug-ins or email services should not be considered to be data intermediation services within the meaning of this Regulation, provided that such services only provide technical tools for data subjects or data holders to share data with others, but the provision of such tools **neither aims to establish a commercial relationship** between data holders and data users **nor allows the data intermediation services provider to acquire information on the establishment of commercial relationships** for the purposes of data sharing.”*

Cloud storage, analytics, data sharing software or web browsers may provide the technical infrastructure for the performance of data sharing but are not the relevant instruments to “establish” a commercial relationship. They are rather the tools to “perform” the commercial relationship (e.g., after a commercial relationship has already been established based on an intermediation service).

Recital 28 further gives some **examples** of data intermediation services as follows:

*“Examples of data intermediation services include **data marketplaces** on which undertakings could make data available to others, **orchestrators of data sharing ecosystems that are open to all interested parties**, for instance in the context of **common European data spaces**, as well as **data pools established jointly by several legal or natural persons with the intention to license the use of such data pools to all interested parties** in a manner that all participants that contribute to the data pools would receive a reward for their contribution.”*

Considering the examples according to Recital 28 it seems, that there should be a broad understanding of the different definition elements of Article 2 (11) DGA to define a “*data intermediation service*”:

“to establish commercial relationships”

- The “**establishment**” of commercial relationships should simply be understood as the connection of data holders and data users by providing instruments to identify potential data sharing opportunities and to allow for the entering of a commercial relationship for the specific purpose of data sharing. The existence of previously established commercial relationships between parties should not be considered a disqualifying factor. In other words, a service may qualify as a data intermediation service in scope of the DGA even the parties connected by it already have an established commercial relationship, but one which did not cover the specific data sharing subject.
- The term “**commercial relationship**” in general has a broad meaning. Every relationship between two parties concerning the exchange of somehow valuable goods or services has a commercial relevance. There might be few exceptions of non-commercial relationships between parties (e.g., in private or altruistic situations).



“between an undetermined number”

- Article 2 (11) (c) DGA expressly excludes certain types of services that have somehow the character of being “exclusive” or that concern a limited group of participants or a closed environment only (like closed groups, including supplier or customer relationships or collaborations established by contract).
- Recital 28 uses the term *“open to all interested parties”* and expressly mentions the context of common European data spaces as an example.
- Therefore data intermediaries as defined by the DGA needs to offer their services to a *somehow* open group of data holders/data subjects and data users.

But even if the definition and the expressed exceptions seem to allow a determination of the relevant services, it remains unclear *how* open the contexts in which data intermediaries provide their services need to be for the services to fall in scope of the DGA. For example, the accessibility of potentially “open” services might be limited due to the fact, that service providers can (will) charge fees for the use of their services. This necessarily excludes interested parties not able or willing to pay for the service. Clearly, then, the services are in fact not *“open to all interested parties”* in the sense of, for example, open data or open-source software, which are free for all interested parties to use without payment. This commercial aspect could influence the scope of the regulation by practical “workarounds”, even though the service basically induces a need for DGA protection.

The question of how the requirement of “open” is to be determined is essentially relevant for data intermediation services in data spaces due to the following considerations:

- Article 2 (11) (c) DGA expressly excludes intermediation services for a “closed group”.
- It’s clear to understand, that collaborations that are by definition established only for a determined set of parties to ensure the functionality of a joint offering (such as an IoT device that requires distinct legal persons, e.g., hardware manufacturer(s) and software provider(s), to share data with each other) are by definition not open for any other parties to join apart from exceptional circumstances.
- But the definition lacks this certainty considering other concepts of collaborations, in particular data spaces:
 - Data spaces are often established as contractual collaborations serving a specific group of participants (usually) based on a *“collaboration established by contract”*.
 - Considering the terms used in Article 2 (11) (c) DGA one could argue that data space intermediaries providing services within and based on this collaboration fall under the excluded services according to Article 2 (11) (c) DGA.
 - On the other hand, such data spaces collaborations may still be *“open to all interested parties”* as mentioned in Recital 28 and therefore do not compare to the “closed group” examples given by Article 2 (11) (c) DGA.

So far there is no specific guidance on the question how to determine a “closed” or “open” group under the DGA and a case-by-case assessment is necessary.¹⁰ The topic should be further investigated and more guidance from the EU on this is required.

However, given the strategic policy context of the DGA and the high priority with which common European data spaces are being promoted by the European Commission, a general exclusion of data intermediation services serving (members of) data spaces by the DGA seems to be unlikely. This is underlined by Recital 28 that expressly refers to data spaces is

¹⁰ The recently published [White Paper on the Definition of Data Intermediation Services by KU Leuven](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4589987) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4589987) includes a detailed analysis of this topic finding, that “the question is whether a datasharing ecosystem is open or closed to interested parties” and that “this must be considered on a case-by-case basis as some examples of closed groups are qualified rather than absolute throughout the text of the DGA and its recitals”.



the context for *"data sharing ecosystems that are open to all interested parties"*. Also considering the already existing data intermediary landscape (see more details below) it seems rather plausible to interpret the DGA as an attempt to provide a legal framework for a specific type of data intermediation services to enable a functional and trustworthy service infrastructure for data spaces while there still exist data intermediation services not governed by the DGA (such as for closed groups and there instead governed for example by whatever legal framework based on contractual rules).

"through technical, legal or other means"

The DGA follows a rather broad understanding of *"the means"* to establish the commercial relationships between data holders/data subjects and data users by the intermediary. Article 2 (11) DGA itself does not further specify the term and is intentionally broad, like the definition of *"data sharing"*.¹¹ This interpretation is also covered by Article 10 (a) DGA that uses the terms *"exchanges," "platforms or databases,"* and *"infrastructure"* as non-exhaustive examples (*"may include"*) for service categories (for more details on Article 10 DGA see below).

Therefore, all kind of technical or other ways to connect data holders/data subjects and most known data intermediation services are likely covered by this element of the definition in Article 2 (11) DGA.

This can be illustrated by some examples with a view to selected roles in IDS:

- The IDS Meta Data Broker provides an index service, which is a system for the publication of metadata sent by Connectors. It matches demand and supply of data based on metadata.¹² In this case, the broker provides services to share data from data holders (parties that control a connector) with data users (customers of the broker).
- The IDS Clearing House provides a set of clearing and settlement functions based on transaction logging. It mediates between the different parties.¹³ In this case, the clearing house provides services necessary to share data (in a way that conforms to the rules of a data space) from data holders or data subjects with data users.

Both roles provide services through technical means at different stages of the data sharing process. However, it remains questionable (considering the above mentioned questions) whether the purely functional implementation of these services already sufficiently qualifies for the application of the DGA.

¹¹ See White Paper on the Definition of Data Intermediation Services by KU Leuven (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4589987).

¹² See [IDS Whitepaper on IDS Meta Data Broker](#).

¹³ See [IDS Whitepaper on Clearing House](#).

Art. 10 DGA: Data intermediation services

Article 10 DGA then further describes the data intermediation services subject to the notification procedure and the obligation to comply with Article 12 DGA:

Article 10 DGA

"The provision of the following data intermediation services shall comply with Article 12 and shall be subject to a notification procedure:

- (a) intermediation services between data holders and potential data users, including making available the technical or other means to enable such services; those services may include **bilateral or multilateral exchanges** of data or the **creation of platforms or databases** enabling the exchange or joint use of data, as well as the **establishment of other specific infrastructure** for the interconnection of data holders with data users;
- (b) intermediation services **between data subjects** that seek to make their personal data available or **natural persons** that seek to make non-personal data available, and potential data users, including making available the technical or other means to enable such services, and in particular **enabling the exercise of the data subjects' rights** provided in Regulation (EU) 2016/679 [= GDPR];
- (c) **services of data cooperatives** (further defined in Art. 2 (15) as "data intermediation services offered by an organisational structure constituted by data subjects, one-person undertakings or SMEs who are members of that structure, having as its main objectives to support its members in the exercise of their rights with respect to certain data, including with regard to making informed choices before they consent to data processing, to exchange views on data processing purposes and conditions that would best represent the interests of its members in relation to their data, and to negotiate terms and conditions for data processing on behalf of its members before giving permission to the processing of non-personal data or before they consent to the processing of personal data)".

Article 10 (a) DGA covers intermediation services for both natural and legal persons (but excludes natural persons acting as data subjects, who are provided for by services enumerated at Article 10 (b) DGA below) and both personal and non-personal data. Therefore, these types of services seem to be widely relevant for data spaces that focus on catering mainly or exclusively to legal persons (as opposed to natural persons), B2B contexts, and industrial data sharing.

Article 10 (b) DGA covers intermediation services for **natural persons** either as data subjects and with respect to their personal data or as parties with the right to share non-personal data. According to recital 30 DGA "*such data intermediation services providers seek to enhance the agency of data subjects, and in particular individuals' control over data relating to them.*" These type of services seem to be especially relevant to data spaces that focus on catering mainly or exclusively to natural persons (as opposed to legal persons), (B2)B2C contexts, and sharing personal data.¹⁴

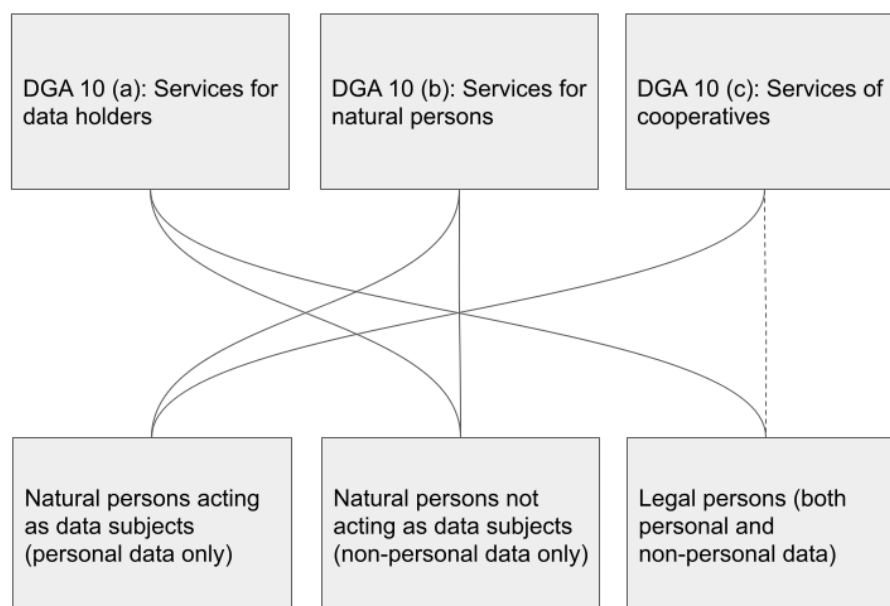
Article 10 (c) DGA addresses data cooperatives, that – according to recital 31 DGA - "*seek to achieve a number of objectives, in particular to strengthen the position of individuals [...].*"

¹⁴ e.g. MyData, see the MyData paper on operators; <https://www.mydata.org/wp-content/uploads/2020/04/Understanding-Mydata-Operators-pages.pdf>.

Therefore Article 10 services of type (c) seem to be mostly relevant for data spaces in domains such as health, smart cities and communities, or skills and employment, where the data being shared affects people as members of a specific group (e.g., individuals with a rare medical condition, residents of a city or neighbourhood, platform workers respectively) and who will benefit from a collective bargaining and decision-making mechanism with regard that data.

It is critical to highlight here that all kinds of data intermediation services (a)-(c) can be, and especially both types (a) and (b) will most likely be, included as necessary parts of the service infrastructure of *any* data space. The prevalence of personal data, and resulting mixed data sets, are not the exception but rather the rule when it comes to data sharing and data spaces. And wherever personal data is being shared and used, the data subject will always have the rights enumerated in the GDPR. It therefore makes sense to design data spaces and their service infrastructure from the ground up with data subjects – and those data intermediation services of type (b) that serve them – as a key stakeholder group in mind.

Figure 1: DGA article 10 intermediation service types and the parties who make (what kinds of) data available through them.



Considering the general definition of "*data intermediation services*" in Article 2 (11) DGA, the interplay and consistency of Article 2 (11) DGA and Article 10 DGA raises questions. Even though Article 10 DGA defines certain categories of "*data intermediation services*" and therefore seems to serve as an additional specification, its definition is even broader than Article 2 (11) DGA. This could lead to the interpretation that the general definition is the sole determining factor for "*data intermediation services*".

Art. 12 DGA: Conditions for providing data intermediation services

The provision of data intermediation services that fall under the definition of Article 2 (11) DGA as well as Article 10 DGA are subject to several conditions the providers must comply with. There are altogether 15 such conditions, some of which provide additional clues to understanding what kind of entities may under the DGA provide data intermediation services and how they can and cannot operate. This opens up design possibilities in the sense that the establishment of a data intermediary service on the basis of a data space concept with full implementation of all the criteria mentioned below forces it to fall under the DGA,



whereas only partial implementation allows room for other governance and business models.

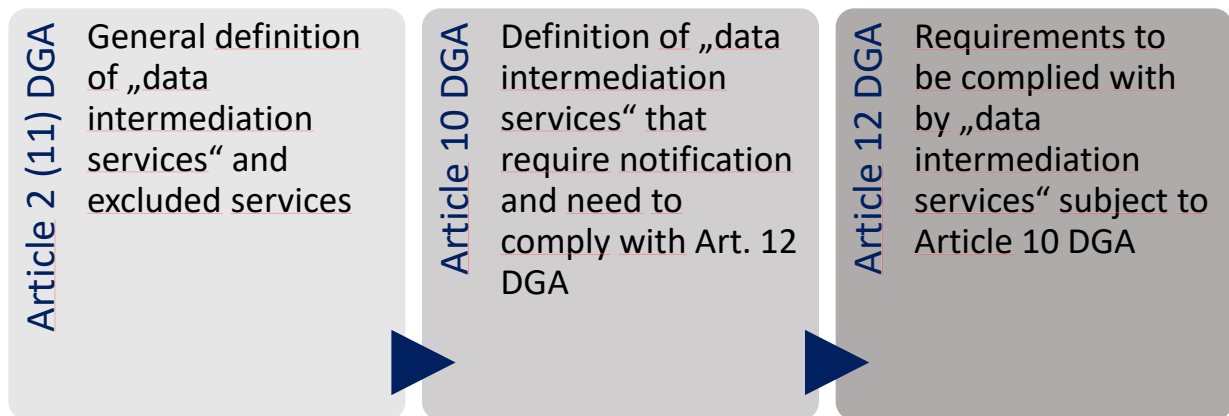
Below are listed and summarised in plain language the most relevant conditions included (for the full legal text see Article 12 DGA):

- (a) The data intermediated cannot be used for anything else than making it accessible for data users.
- (a) Intermediation services must be provided by a dedicated legal person.
- (c) Data about intermediation service use can only be used for developing the intermediary service itself.
- (c) Data about intermediation service use must be provided for data holders (but not data subject or data users or other intermediaries) if requested.
- (d) The format of the data intermediated can only be converted
 - to enhance interoperability or ensure harmonisation with standards, **or**
 - by request of the data user (but not data subject or data holder or another intermediary), **or**
 - when required by EU regulation, **and**
 - when the data subject or data holder has not opted out of conversion.
- (e) Additional tools and services (e.g., temporary storage, curation, conversion, anonymisation, and pseudonymisation) can be provided by the dedicated legal person only
 - to data subjects and data holders (but not data users or other intermediaries), **and**
 - for the purpose of facilitating the data exchange, **and**
 - with the explicit request by or approval of the data subject or data holder.
- (f) Access to intermediary services must be fair including pricing which (b) cannot depend on whether or how much the service user also uses other services by the intermediary or its affiliates.
- (i) Intermediation services must be interoperable with other intermediary services.
- (m) Intermediation services for data subjects must act in those data subjects' best interest (including information and advice regarding consents).
- (n) Intermediation services that support obtaining consents from data subjects or permissions from data holders must include tools both to grant and revoke them.

Additional requirements are listed concerning prevention of (g) fraud or abuse and (j) illegal access or transfer; ensuring (h) service continuity, (l) cybersecurity, and (o) activity logging; and (k) breach notification.

Summary

To understand the scope of the DGA on data intermediaries, Articles 2 (11), 10, and 12 DGA should be read as systematically related and together. Considering the above-described regulations, the first step to determine the scope of the DGA is the legal definition of "*data intermediation services*" in Article 2 (11) DGA. Article 10 DGA then describes the services that require notification under the DGA and Article 12 DGA refers to Article 10 DGA stipulating, that every data intermediary who requires notification under Article 10 DGA needs to comply with certain requirements to provide the services.



Data intermediaries in data spaces

The DGA regulations on data intermediation services might become relevant for data spaces considering that the generic concept of data intermediaries already exists and is widely used in data spaces. Even more, it is one of the key instruments to enable data sharing and re-use. That is also the reason why the DGA mentions the importance of data spaces for the enabling of data sharing and at least refers to data spaces in the context for "*data sharing ecosystems that are open to all interested parties*".

However, as described above the definition of the DGA leaves some questions open regarding data intermediation services in data spaces and there should be further investigation and guidance on the impact of the DGA on existing data intermediary concepts to allow the full protection and potential of the DGA.

Today the scope of the DGA is still unclear from a practical perspective. The main reason might be that, as mentioned before, the concept of data intermediaries isn't new which means, that there already exist different definitions and understandings of data intermediaries as well as different business models. For example, the glossary developed by the **Data Spaces Support Centre (DSSC)**¹⁵ – like the IDS glossary¹⁶ – contains a number of different intermediaries that do not necessarily clearly map onto the DGA definition in Article 2 (11) DGA. Also the recent "Science for policy" report from the European Commission's Joint Research Centre provides a wider definition of "data intermediary" than the legal definition in the DGA.

From an IDS perspective there are different roles relevant to the discussion on intermediation services:

The IDS Reference Architecture Model (RAM)¹⁷ defines basic roles in a data space in four categories: Core Participants, Intermediaries, Software Developers and Governance Bodies. In the category of the intermediaries, it distinguishes between data Intermediaries and service intermediaries. The data intermediaries as described in the RAM are "[...] *responsible for the execution of the data exchange on behalf of the Data Owner or User respectively*. [...]", while the Service Provider "[...] *is a platform operator providing metadata on services, the services itself (i.e. app including computing time as a trustee), or both*.[...]".

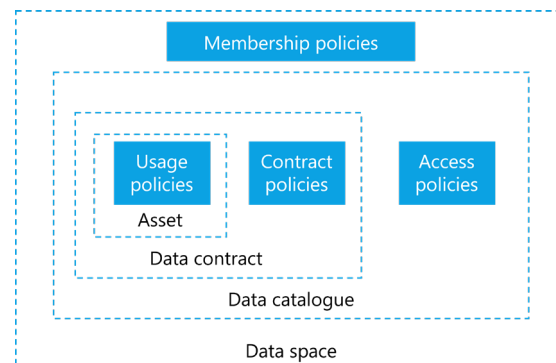
¹⁵ <https://dssc.eu/>.

¹⁶ <https://docs.internationaldataspaces.org/ids-knowledgebase/v/ids-g/Glossary>.

¹⁷ https://docs.internationaldataspaces.org/ids-knowledgebase/v/ids-ram-4/layers-of-the-reference-architecture-model/3-layers-of-the-reference-architecture-model/3-1-business-layer/3.1.1_roles_in_the_ids#business-roles-in-the-international-data-space.

The definition of intermediary roles in the IDS RAM and the data intermediaries described in the DGA can not be clearly mapped. According to the IDSA Rulebook¹⁸ different policies are attached to the data itself and are applied to all participants in a data space as a governed entity. Therefore, intermediaries in IDS are also regulated by applicable policies and the relationship between the two regimes, the IDS framework for data intermediaries and the DGA framework need to be clarified and aligned. However, the DGA can be used to provide clarity on the data usage from a legal perspective and could be subject to policies in a data space.

Figure 2 Different policies in Data Spaces (Source: IDSA Rulebook)



Considering the different concepts of data intermediaries, there should be a common understanding how to align the co-existing concepts with the concept provided by the DGA. One starting point might be the recent “Science for policy” report from the **European Commission’s Joint Research Centre (JRC)**¹⁹ that provides a landscape analysis of data intermediaries. Like the DSSC or IDSA, they employ a wider definition of “data intermediary” than the legal definition in the DGA, discussing for example also data altruism organizations (distinctly defined by the DGA). The JRC identify in the landscape of current actors six types of intermediaries: Personal Information Management Systems (PIMS), data cooperatives, data trusts, data unions, data marketplaces and data sharing pools. Based on this report the starting point for the further investigation and development of the future landscape of data intermediaries should be the assumption, that the DGA concept of data intermediaries provides a specific type of data intermediaries added to the existing landscape.

While we await legal precedent on open questions for data intermediaries in data spaces, it remains a data space *business design* question whether to require that (some of) the data intermediation services (generically understood) offered within a data space are “data intermediation services provider recognised in the Union” (Article 11 (9) DGA) that fulfil the definitional criteria and comply with the requirements of the DGA. Services that are not regulated by the DGA will continue to be provided for actors involved in data spaces and time will tell whether DGA-compliant services will become successful within or without the data spaces context.

Conclusions

Even if the definition and the expressed exceptions of “*data intermediation services*” in the DGA seem to allow a general determination of the relevant services, the definition of the DGA is broad and gives room for interpretation. From a data space perspective and with respect to already existing concepts of data intermediaries, there remains some uncertainty

¹⁸ https://docs.internationaldataspaces.org/ids-knowledgebase/v/idsa-rulebook/idsa-rulebook/3_functional_requirements#policies

¹⁹ <https://publications.jrc.ec.europa.eu/repository/handle/JRC133988>.



regarding the scope and applicability of the DGA. One important question in this respect concerns the determination of the requirement of “openness” of the data intermediation services as defined in Article 2 (11) DGA. It is not clear, if data intermediation services in data spaces that are provided to a limited group of data holder/data users (the participants) only and governed by contractual relationships (e.g., associations, memberships, cooperatives) should be qualified as “closed groups” in the meaning of Article 2 (11) (c) DGA and are therefore out of the scope of the DGA. Also the future interplay between existing concepts and rules on data intermediaries and the new DGA rules needs to be clarified to develop the future landscape of data intermediaries in Europe.

From a business perspective, the impact as well as the potential of the DGA concept for intermediaries should be assessed. For data space organisations the future differentiation between “self-regulated data intermediation service providers” and “data intermediation services provider recognised in the Union” can be of strategic interest. Joining the DGA framework as an EU recognised intermediary means to become officially part of the EU data market infrastructure. The DGA can also be used as a reference model to improve the internal trust regime by adopting certain requirements of the DGA. The concept of EU recognised intermediaries can also be an interesting opportunity considering the idea to connect different data spaces.

The **European Data Innovation Board (EDIB)**, instantiated by the DGA, will play a fundamental role in giving further guidance on this topic. Following the EU Commission’s approach and the current legislation it will support the EU Commission in issuing guidelines on how to facilitate the development of common European data spaces as well as identifying the relevant standards and interoperability requirements for cross-sector data sharing (see Articles 29 and 30 DGA).

The issue affects several existing data space initiatives, private and public motivated, which is why it seems important to combine efforts to better understand the regulation and its practical implications. Therefore, cooperative activities such as the **Data Spaces Support Centre (DSSC)** are instrumental to facilitate a common understanding and strategy.

We assume that the “community” will continue to discuss this topic and that we will see further publications in the near future.²⁰ IDSA will continue to monitor and contribute to the further developments on this topic.

²⁰ The recently published White Paper on the Definition of Data Intermediation Services by KU Leuven (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4589987) can be named as one of these detailed analysis of this topic. .



Annex

1. IDS Knowledge Base <https://docs.internationaldataspaces.org/ids-knowledgebase/>
2. IDS Reference Architecture Model <https://docs.internationaldataspaces.org/ids-ram-4/>
3. IDSA Rulebook: <https://docs.internationaldataspaces.org/ids-knowledgebase/v/idsa-rulebook/>

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