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EU Data Governance Act: New Developments in Data Governance Rules and Implications for China

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Abstract
With the rapid advancement of the new industrial revolution, digital technology and its applications are increasingly becoming a key area in which the world's major economies are competing for development. Seeing the prospects as well as the challenges posed by the digital age, the European Union has made a series of strategic plans for data governance in order to cope with them. As part of the strategy, the EU's newly enacted Data Governance Act establishes a framework for data sharing and creates a trustworthy environment for data governance. In this regard, China should learn from the EU's data governance model, establish unified standards for the flow of data resources, and actively respond to the impact of international competition for digital sovereignty.

Keywords
data governance, data altruism, data sharing, data governance act

1.Introduction

In the digital age, the EU faces competitive pressures from major powers such as the United States and China, as well as asymmetries in terms of data resources, digital infrastructure and digital technologies. To address these challenges, the EU has put forward the concept of digital sovereignty, which is the autonomy of EU in the digital world and a tool for forming strategic autonomy and promoting EU leadership. The EU has been committed to building a harmonized, open and competitive internal market, removing barriers and obstacles in the digital sphere, facilitating the free flow of data and services, and improving the efficiency and competitiveness of the digital economy. The EU started to put forward the idea of building a knowledge-based economy in 2000, submitted a policy strategy for a digital single market in 2005, formally launched a single digital market strategy in 2015, and released documents such as the A European Strategy for Data (hereinafter the Strategy) in 2020 to achieve this goal. In addition, the EU has launched strategic plans such as the 2030 Digital Compass, aimed at strengthening digital infrastructure, promoting data sharing and governance, and realizing digital transformation and inclusiveness.

However, the problem of EU in the digital space is the lack of leading global digital companies and platforms. The digital industry of EU is relatively small, with low market concentration and relatively weak innovation capacity, making it difficult to compete with competitors such as the United States and China. Key tech-

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nologies such blockchain, cloud computing, Internet of Things, and artificial intelligence have not received enough attention from the EU or created enough results from them, nor has it formed an effective digital ecosystem and supply chain. Therefore, the EU needs to take measures to enhance its digital competitiveness and innovation capacity, and nurture more digital leaders and platforms. In order to address that issue and promote data sharing and data spaces, a A European Strategy for Data had been proposed, aimed at creating a true single data market and establishing nine shared data spaces covering a wide range of areas.

The Strategy identifies in the preamble that data is a vital resource for social advancement and economic growth, and it is essential to the transformation of the economy and society. The Strategy plans policies and measures to realize the data economy over the next five years, establishing a strong legal framework aimed at creating a common European data space, strengthening global competitiveness and data sovereignty of Europe [9], thus contributing to the realization of the data economy. Although the potential for economic and social value of data is enormous, it is difficult to fully realize its value because of the low trust of data subjects in data sharing, the difficulty of reusing public sector data, and technical barriers [9]. In order to solve the above problems and promote the implementation of the Strategy, the EU has taken the first legislative measure to introduce the Data Governance Act (hereinafter DGA). As an important pillar of the Strategy, the Act aims to establish a framework for data sharing within the European Union, which will further develop a borderless digital internal market and a secure data society and economy by increasing the level of trust of data subjects in data sharing, broadening the sources of data, and overcoming technical barriers to data reuse.

2.Key elements of EU Data Governance Act

The Digital Governance Act provides for the following four main areas. First, the construction of a public sector data reuse system. Chapter II of the DGA provides for reusing data from the public sector. Reusing public sector data is defined under Article 2(2) as the act of a natural or legal person using data stored by the public sector for purposes other than the original public job that created the data, whether for commercial or non-commercial objectives. The provisions of act on the re-use of public sector data fill a gap in the the Directive on Open Data and the Re-use of Public Sector Information (hereinafter the Directive). The reuse of open or usable information held by the public sector is provided for in the Directive, however, the public sector may also hold protected data similar to personal data or commercially confidential data that cannot be reused as open data [10]. However, the norms in the DGA allow for both the extraction of useful resources from such protected data and the safeguarding of such data from harm.

Specifically, Chapter II of the DGA contains seven articles covering both substantive and procedural norms for the reuse of public data, addressing issues such as conditions for reuse, fees, competent authorities and procedures for requesting reuse. The Act lists by way of enumeration the types of data to which it may and may not apply. Data containing commercial secrets, pertaining to the protection of third-party intellectual property, and data containing personal data that are not protected by the Directive are among the types of data that can be applied to the Act, while data held by public enterprises, cultural and educational institutions, and national security are not applicable to the Act. Article 3 (1) of the DGA specifies this,

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which broadens the usage of public sector data for reuse. Certain public qualities are present in public sector data, and making more public sector data available helps the public sector create better policies, which greatly increases the efficiency and openness of public services. Furthermore, the terms and conditions for the reuse of public sector data must be non-discriminatory, transparent, proportionate and reasonable (article 5); they must also not be used to stifle competition and must prioritize protecting personal information, business confidentiality, and intellectual property rights; member states should ensure that the conditions and costs relating to the reuse of public sector data can be accessed through a single point of information (article 8); and public sector bodies are prohibited from entering into exclusivity agreements (article 4).

The public sector data reuse regime in the EU DGA broadens the scope of data reuse, helps to improve the efficiency and transparency of public services, protects the legitimacy and security of data, and it thus supports the use of data for research and innovation by the public and private sectors in the EU. It is a significant step in advancing the growth of the digital economy and the modernization of digital governance.

Second, the establishment of data intermediary services to facilitate data sharing. Services that create a business connection between an arbitrary number of data subjects, data holders, and data users with the intention of sharing data via technological, legal, or other methods are known as data intermediary services, which are regulated in Article 2 (11) of the DGA. Data sharing, on the other hand, according to Article DGA 2 (10), is the provision of data by data subjects to data users, either directly or through intermediaries, under voluntary agreements or under EU or national law, for the joint or separate use of such data.

In practice, companies have expressed concerns about the loss of competitive advantage and the risk of data misuse after data sharing, and the DGA increases the level of trust in data sharing by establishing a set of rules for providers of data intermediary services that ensure the neutrality and transparency of data intermediaries and enable them to act as trusted organizers of data sharing within the common European data space.

Chapter III of the DGA mainly regulates the contents related to data intermediary services. First of all, data intermediary service providers shall fulfill the notification obligation to declare to the data intermediary service authority, including their name, address, contact information, and the type and scope of data intermediary services provided. In addition, aim to ensure the neutrality of the data intermediary service provider, a series of conditions need to be observed, including that the supplier of the data intermediary service is limited to acting as an intermediary and is not permitted to use the shared data for any other purpose; in order to avoid conflict of interest, the data intermediary service should be structurally separated from other services and provided by a separate legal person; for the purpose of facilitating the specific purpose of the data exchange, the data intermediary service may provide the data subject with additional specific tools and services, such as temporary storage, transformation, anonymization, etc.; data intermediary service providers should ensure that procedures for accessing their services are impartial, open, and devoid of discrimination; data intermediary service providers should ensure that the storage and transmission of competitively sensitive information is subject to the highest level of security measures.

Data intermediary services can not only facilitate data sharing, but also ensure the credibility, reliability

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and security of data sharing. The EU DGA provides better safeguards and support for data sharing by building a mechanism for data intermediary services. The measure will further encourage data sharing among enterprises and organizations, promote data-driven innovation and development, and inject new vitality into the development of the EU digital economy.

Third, it proposes data sharing based on data altruism. Data altruism is interpreted in the A European Strategy for Data as making it easier for individuals to allow the data they generate to be used in the public interest, provided it complies with the General Data Protection Regulation (hereinafter GDPR) [9]. By enabling the voluntary sharing of data based on the consent of the data subject to the processing of personal data pertaining to him or her, or the permission of the data holder to permit unpaid use of his or her non-personal data for the public interest or scientific research, the regulation of DGA article 2(16) further enhances data altruism. The Digital Governance Act strives to build trustworthy and easy-to-use tools that enable data to be shared in a simple manner, thereby accessing a larger pool of data for data analysis, machine learning, and cross-border transfers.

To assist both data holders and data subjects increase their trust in recognized data altruistic organizations, the DGA provides for registration, transparency obligations and specific requirements for advocacy in Chapter IV. First, data altruistic organizations should be non-profit and comply with transparency requirements (article 18 and 20). Secondly, the registration of a data altruism organization entitles it to the label "Alliance-recognized data altruism organization" as well as to a generic logo. In contrast to the mandatory registration obligation for data intermediary service providers, registration as a recognized data altruism organization is not a prerequisite for data altruism activities (article 17). Finally, the development of a European data altruism consent form. A common European data altruism consent form would allow for the collection of data between Member States in a harmonized format, ensuring that subjects sharing data can easily express and withdraw their consent (article 15).

Data altruism helps to promote cross-border data exchange and cooperation, ensuring consistency in the sharing of data and facilitating the flow and use of data. The Digital Governance Act has refined provisions to provide tools for the voluntary sharing of data and to improve the efficiency of data analysis and cross-border transfers, which will hopefully facilitate cross-border data use within the Union and the emergence of data pools covering multiple member States. Data altruism, facilitated by the European Union, will continue to play an important role in promoting data sharing and contributing to sustainable development.

Finally, a European Data Innovation Board (hereinafter EDIB) has been established. In order to facilitate the implementation of data shareability and interoperability policies, the DGA provides for the establishment of a EDIB in the form of an expert group. First, the EDIB can advise and assist in the development of harmonized data altruism practices within the EU. Second, by promoting cross-border, cross-sectoral interoperability of data and data sharing services between various sectors and domains, the EDIB encourages the creation of a common European data space and supports cross-sectoral data sharing and offers legal standards to address the fragmentation of the data economy in the internal market. Finally, in order to promote data sharing inside the European Union and fully utilize the data space's potential for the successful growth of the European data economy, the European Commission for Data Innovation has put up principles for a shared European data space.

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3.Analysis of the EU Data Governance Framework

Overall, the strategy of EU is to facilitate digital transformation of Europe by establishing a credible data governance environment and building on the data sovereignty governance strengths of EU.

First, the EU is promoting trustworthy data governance in a layered and more comprehensive point-by-point manner through laws such as the GDPR and the DGA. First, the provisions of the GDPR strengthen the protection of individual privacy and the right to make autonomous decisions about how data is used, increase individuals' trust in their own data, and provide a reference model for the protection of other non-personal data. Second, fairness, transparency and accountability in the digital environment are ensured through the enactment of the Digital Services Act (hereinafter DSA) and the Digital Markets Act (hereinafter DMA), which increase users' trust in the data provided by digital platforms and online intermediary service providers and prevent tech giants from abusing their dominant market position or imposing unfair conditions on users and consumers. Further, providing a framework for fair access and sharing for the utilization of non-personal data through the DGA will increase the trust of users, SMEs and the public sector, among others, in non-personal data and facilitate the full flow of data and unlocking of value. Finally, the Data Act (DA) will establish strict rules for the cross-border flow of non-personal data, increase EU trust in the security of cross-border transfers and the preservation of Europe's digital sovereignty, and safeguard legally compliant data exchanges by establishing effective international agreements with third countries or meeting other specific conditions.

Second, several pieces of EU legislation have established its first-mover advantage in data governance and created a strong competitive environment for local companies. The GDPR sets a high standard of protection requirements for personal data, gives citizens control over their own personal data, and increases public trust in the digital environment.The GDPR has also become a global reference model for personal data protection, influencing relevant legislation in other countries and regions. The DSA and the DMA provide stricter regulation of Internet platforms, restricting their monopolization and abuse of massive amounts of data and safeguarding the rights and interests of users, consumers and small and medium-sized enterprises. The EU has also cracked down on platforms' unfair behavior towards competitors and suppliers, including through antitrust laws. The DGA and the DA, on the other hand, provided a framework for fair access and sharing of non-personal data, clarified measures for business-to-business and business-to-public-sector data flows, while defining the relevant obligations of data-processing service providers, and promoted openness and competition in the data market. The European Union also encourages data sharing between the public sector, the private sector and social organizations to promote the public interest and social innovation.

These aspects build an EU ecosystem of trustworthy data governance, which work together in a complementary and coordinated manner to protect the data rights and interests of European citizens and businesses, to highlight the strengths of EU data governance, and thus to safeguard Europe's digital sovereignty and data security, as well as to enhance Europe's voice in the rules of global digital governance.

4.Implications of EU data governance rules for China

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In order to promote the free flow and efficient use of data, China needs to establish unified standards for the circulation and application of data resources, eliminate the risk of legal and administrative fragmentation, and reduce the phenomenon of fragmentation in different regions, sectors and industries. Currently, China's national-level legislation on data sharing is too simple, with relevant norms scattered in the Data Security Law, Personal Information Protection Law, Civil Code, Intellectual Property Law and local data legislation. This has led to different standards, formats, market access and authorization conditions for data sharing, as well as the phenomenon of data silos, which has seriously impeded the unified and efficient allocation of digital resources across the country. In addition, China's open utilization of government data also lacks top-level planning and unified standards, and the open utilization of data faces barriers to centralization and processing. There is a lack of unified planning and standards for data and technology among government departments, making large-scale centralization, processing and utilization of government data difficult, and the phenomena of systematic silos, low-quality data, multiple sources of one number, and data conflicts are serious, making it difficult to form high-quality data collections and data models that truly contribute to application innovation.

The European Union, as a geopolitical aggregator with a large number of member States, has a strong first-mover advantage in promoting data governance. China can draw on the practices of the European Union's DGA to accelerate the promotion of uniform standards and certification mechanisms for data sharing and to promote the standardization of nationwide data sharing. Taking into account the actual situation of each region, China can follow the flexible design of the DGA in formulating general regulations and overall standards for nationwide data sharing and utilization, while at the same time reserving room for local adjustments and authorizing provinces to formulate local regulations and norms according to their own circumstances, so as to promote the balanced utilization and development of data resources among regions.

In addition, the digital economy has become an important engine of global economic and social development and a new competitive high ground, and countries have been engaged in data governance to protect their digital interests and security, while seeking a dominant position in the digital sphere. The European Union, the United States and other developed countries have launched a series of policies and measures in digital infrastructure, digital technology and digital rules to enhance their digital competitiveness and influence.

As the world's largest digital market and the most active digital innovator, China possesses huge data resources, algorithmic capabilities and application scenarios, but it also faces uncertainty and complexity in the external environment. To this end, China should strengthen its own digital capacity building, enhance the autonomy and control of digital infrastructure, digital technology and data resources, and construct a credible and controllable digital security barrier. At the same time, China should improve its own digital governance rules and systems, align with international standards, and provide a fair, transparent and open market environment for domestic and foreign enterprises. China should also actively participate in global digital governance and cooperation, advocate the construction of an open and win-win pattern of international cooperation in the digital field, and promote multilateral consultation and rule-making on important issues such as cross-border flow of data, cyberspace security, and AI ethics. The EU is advanced and leading

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in data openness policy and technology, and China and the EU and other important partners have extensive common interests and room for cooperation in the digital field, and can cooperate on the basis of respecting each other's digital sovereignty to enhance their discourse and influence in the digital field.

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