

MAGDALENA JACOLIK*

Data Altruism or Voluntary Data Sharing in the Economy

Abstract: Along with technological progress, one can observe socio-economic changes taking place, and the transformation of the EU economy into a digital economy is an eloquent example. The scope of this transformation includes data, which plays an important role in the economy. This may be readily inferred from the European Strategy for Data published by the European Commission, which envisages a data-driven economy. The transformation towards a data-agile economy results in certain modification in the legal space. For instance, the proposal for a data governance regulation introduces an entity referred to as a data altruism organisation. The proposed act also requires EU Member States to designate a competent authority. This paper examines the functioning of said organisations and attempts to define their status, and discusses the duties of competent authorities which may possibly supervise the activities of data altruism organisations.

Keywords: data-driven economy, data altruism organisations, competent authorities, social organisations, non-governmental organisations.

* Magdalena Jacolik, Adam Mickiewicz University in Poznań, Faculty of Law and Administration, Poznań, Poland.

e-mail: magjac@amu.edu.pl, <https://orcid.org/0000-0003-2821-9461>.

Introduction

Technological progress goes hand in hand with socio-economic shifts, and the digital transformation of the EU economy can serve as a telling example.¹ The European Union² has taken a number of steps to build a Digital Single Market, manifesting in its *Digital Single Market Strategy for Europe*.³ Naturally, data falls within the scope of the transformation,⁴ as asserted in the *European Data Strategy* promulgated by the European Commission⁵ on 19 February 2020,⁶ which sets out a novel, unprecedented approach to development.⁷ The transformation towards an economy based on data processing⁸ demonstrates its important role in the global,⁹ EU and national economies:¹⁰ it is the

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Towards a thriving data-driven economy* {SWD(2014) 214 final}. Brussels, 02.07.2014. COM(2014) 442 final., Document 52014DC0442. Hereinafter: *Towards a thriving data-driven economy*.

2 Hereinafter: EU.

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A Digital Single Market Strategy for Europe* {SWD(2015) 100 final}. Brussels, 06.05.2015. COM(2015) 192 final., Document 52015DC0192.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A European strategy for data*. Brussels, 19.02.2020. COM(2020) 66 final, Document 52020DC0066, 1. Hereinafter: *A European strategy for data*.

5 Hereinafter: EC.

6 *A European strategy for data*. The strategy was presented concurrently with:

– Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Shaping Europe's digital future*. Brussels, 19.02.2020. COM(2020) 67 final, Document 52020DC0067.

– *White Paper On Artificial Intelligence – A European approach to excellence and trust*. Brussels, 19.02.2020. Document 52020DC0065, COM(2020) 65 final.

7 In the EU strategy EUROPA 2020, the development agenda envisaged an economy based on knowledge and innovation, which is how smart development was conceptualized. At present, *A European strategy for data* is informed by a new approach to development, i.e. data-driven economy. Concerning the knowledge-based economy, see Communication from the Commission *EUROPE 2020 A strategy for smart, sustainable and inclusive growth*. Brussels, 03.03.2010. COM(2010) 2020 final, Document 52010DC2020, 13 ff.

8 *Towards a thriving data-driven economy*, 5.

9 *A European strategy for data*, 4.

10 On the impact of data on economic development, see Grzegorz Koloch, Karolina Grobelna, Karolina Zakrzewska-Szlichtyng, Bogumił Kamiński, Daniel Kaszyński, *Analiza*

“lifeblood of economic development.”¹¹ The aforementioned strategy aims at building a data-driven economy.¹² Within the framework of the Single Data Market, it anticipates the creation of nine European Common Data Spaces in strategic sectors and areas of public interest,¹³ specifically:

- A Common European industrial (manufacturing) data space,
- A Common European Green Deal data space,
- A Common European mobility data space,
- A Common European health data space,
- A Common European financial data space,
- A Common European energy data space,
- A Common European agriculture data space,
- A Common European data spaces for public administration,
- A Common European skills data space.¹⁴

Furthermore, in the addendum to *A European strategy for data*, the European Commission announced that work will continue on a European Open Science Cloud¹⁵ to ensure “(...) the basis for a science, research and innovation data space that will bring together data resulting from research and deployment

diagnostyczna – Intensywność wykorzystania danych w gospodarce a jej rozwój. Analiza na zlecenie Ministerstwa Cyfryzacji. Appendix no. 4 Raport_dane_prezentacja. <<https://mc.bip.gov.pl/rok-2017/analiza-diagnostyczna-intensywnosc-wykorzystania-danych-w-gospodarce-a-jej-rozwoj.html>> , access: 04.04.2022.

11 *A European strategy for data*, 3.

12 Hereinafter: DDE. See *A European strategy for data*. The EC Communication *Towards a thriving data-driven economy* asserts that “the data economy measures the overall impacts of the data market – i.e. the marketplace where digital data is exchanged as products or services derived from raw data – on the economy as a whole. It involves the generation, collection, storage, processing, distribution, analysis, elaboration, delivery, and exploitation of data enabled by digital technologies (European Data Market study, SMART 2013/0063, IDC, 2016)”, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Building a European data economy*, {SWD(2017) 2 final}. Brussels, 10.01.2017. COM(2017) 9 final, Document 52017DC0009, 2 note 1.

13 *A European strategy for data*, 12, 23.

14 APPENDIX to the Communication ‘A European strategy for data’ Common European data spaces in in strategic sectors and domains of public interest. Hereinafter: Appendix to the Communication *A European strategy for data*.

15 Appendix to the Communication *A European strategy for data*, 36.

programmes and will be connected and fully articulated with the sectoral data spaces.”¹⁶ Although the concept of the data-driven economy does not possess a legal definition, it has penetrated into the legal language¹⁷ and the idiom of soft law¹⁸ Put in the most straightforward fashion, the DDE denotes the exploitation of the potential of data¹⁹ from the private and public sectors,²⁰ which has been made available for the sake of economic growth,²¹ in accordance with European values, laws and fundamental rights.²² It must be emphasized that this vision is to be implemented in the EU Member States within the next 5 years.²³

The transformation towards a data-agile economy²⁴ is going to proceed following EU legislation and, subsequently, laws adopted at the national level.²⁵ It involves social and economic change, but it also results in modifications

16 Appendix to the Communication *A European strategy for data*, 36.

17 See esp. Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, Official Journal of the European Union of 26.06.2019, L 172/56, Document 32019L1024, hereinafter: Directive (EU) 2019/1024; Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union, Journal of the European Union of 28.11.2018, L 303/59, Document 32018R1807, and Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act). Brussels, 25.11.2020. COM(2020) 767 final, 2020/0340(COD), Document 52020PC0767, hereinafter: proposal for Data Governance Act.

18 See primarily *A European strategy for data* and other selected EU documents cited in this paper. The notion also penetrates into domestic sources of law, see esp. Resolution no. 28 of the Council of Ministers of 18 February 2021 on the Data Opening Programme for 2021–2027. Monitor of Poland 2021, item 290.

19 Commission Staff Working Document: Guidance on sharing private sector data in the European data economy accompanying the document Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions “Towards a common European data space” {COM(2018) 232 final}. Brussels, 25.04.2018. SWD(2018) 125 final, 1, hereinafter: *Guidance on sharing private sector data*.

20 *A European strategy for data*, 7 ff.

21 *Guidance on sharing private sector data*, 1.

22 *A European strategy for data*, 1.

23 *A European strategy for data*, 2.

24 The data-driven economy is also referred to as the data-agile economy, see *A European strategy for data*, 4.

25 See e.g. Act of 11 August 2021 on open data and the reuse of public sector data, Journal of Laws 2021, item 1641, whose scope implements the provisions of the Directive (EU) 2019/1024.

within the legal domain. For instance, the *Proposal for a Regulation of the European Parliament and of the Council on European data management (Data Governance Act)*²⁶ introduces the so-called altruistic approach to data, whereby organizations engaging in data altruism²⁷ will share data in the general interest.²⁸ The scope of the proposed regulation also requires EU Member States to designate a competent authority (at least one) in charge of a register of such organizations and responsible for monitoring their compliance with the provisions set out in the proposal.²⁹

This paper will therefore outline how organisations engaging in data altruism operate, attempt to define their status, and discuss the functioning of designated authorities whose competence encompasses the activities of data altruism organisations, with the author presenting her observations and viewpoint on the matter. Due to the vastness of the issue in question, the enquiry will be carried out to the extent which permits the essentials to be conveyed, drawing attention to selected provisions of the proposed act. It is worth noting that the intention of the EU legislator in the process of building a data-driven economy, expressed in the proposal for the Data Governance Act (in addition to the *Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act)*³⁰) is of crucial importance at this point in time.

Organisations Engaging in Data Altruism. Analysis of the Provisions of the Proposal for EU Regulation

As defined in the proposal for the Data Governance Act, engaging in data altruism, i.e. the voluntary sharing of data by natural persons or enterprises in the general

26 Hereinafter: proposal for Data Governance Act, draft Act.

27 Art. 15 of the proposal for the Data Governance Act.

28 Art. 16 of the proposal for the Data Governance Act.

29 Art. 20(1) of the proposal for the Data Governance Act.

30 Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act), Brussels, 23.02.2022, COM(2022) 68 final, 2022/0047(COD).

interest,³¹ “means the consent by data subjects to process personal data pertaining to them, or permissions of other data holders to allow the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services.”³² As previously noted, the provisions of the proposed act introduce data altruism organisations³³ into the legal space, whereby such entities are subject to registration.³⁴ Having submitted an application, an entity is subsequently entered in the pertinent register and may refer to itself as a “data altruism organisation recognised in the Union.”³⁵ However, those seeking to obtain this designation are required to satisfy certain general requirements, i.e. have to function with a view to achieving objectives of general interest, engage in non-profit activities (including independence from profit-oriented entities) and to “perform the activities related to data altruism take place through a legally independent structure, separate from other activities it has undertaken perform altruistic data practices through a legally independent structure, distinct from other [activities undertaken] (...).”³⁶ The information to be included in the application is specified in Article 17(4) of the proposal.³⁷ The EU legislator stipulates that data altruism organisations must appoint a legal representative. Pursuant to Article 17(3), “[a]n entity that is not established in the Union, but meets the requirements in Article 16, shall appoint a legal representative in one of the Member States where it intends to collect data based on data altruism. For the purpose of compliance with this Regulation, that entity shall be deemed to be under the jurisdiction of the Member State where the legal representative is located.”³⁸ Such organisations shall keep complete and accurate records as well as draft annual reports concerning their activities; these constraints are posited under

31 Recital (35) of the proposal for the Data Governance Act the rationale to the proposal for Data Governance Act, 9.

32 Art. 2 (10) of the proposal for the Data Governance Act.

33 Art. 15 of the proposal for the Data Governance Act.

34 Art. 17 of the proposal for the Data Governance Act. Registration is valid in all Member States of the EU, see Art. 17(5) of said proposal.

35 Art. 15(3) and Art. 17(1) of the proposal for the Data Governance Act.

36 Art. 16 of the proposal for the Data Governance Act.

37 Art. 17(4) of the proposal for the Data Governance Act.

38 Art. 17(3) of the proposal for the Data Governance Act.

the heading of transparency.³⁹ The records kept by data altruism organisations concern “all natural or legal persons that were given the possibility to process data held by that entity; the date or duration of such processing; the purpose of such processing as declared by the natural or legal person that was given the possibility of processing; the fees paid by natural or legal persons processing the data, if any.”⁴⁰ The annual report, on the other hand, should contain “a description of the way in which the general interest purposes for which data was collected have been promoted during the given financial year; a list of all natural and legal persons that were allowed to use data it holds, including a summary description of the general interest purposes pursued by such data use and the description of the technical means used for it, including a description of the techniques used to preserve privacy and data protection; a summary of the results of the data uses allowed by the entity, where applicable; information on sources of revenue of the entity, in particular all revenue resulted from allowing access to the data, and on expenditure.”⁴¹ Importantly, data altruism organisations are required to inform data holders “about the purposes of general interest for which it permits the processing of their data by a data user in an easy-to-understand manner; about any processing outside the Union.”⁴² It may be noted at this juncture that, for the purposes of data altruism, the EC may develop a European-wide consent form by means of an implementing instrument, thus ensuring uniformity in this regard.⁴³

Competent Authorities to Supervise the Activities of Data Altruism Organisations

Besides provisions applicable to such organisations, an obligation arises under the proposed regulation, specifically under Article 20(1), for the EU Member States to designate a competent authority (at least one) to maintain a national

39 Art. 18 of the proposal for the Data Governance Act.

40 Art. 18(1) of the proposal for the Data Governance Act.

41 Art. 18(2) of the proposal for the Data Governance Act.

42 Art. 19(1) of the proposal for the Data Governance Act.

43 Art. 22 of the proposal for the Data Governance Act.

register of recognised data altruism organisations. The competent authority is also tasked with monitoring and supervising whether the organisations in question fulfil pertinent requirements (as laid down in the proposal).⁴⁴ Furthermore, the competent authority is entrusted with processing submissions from entities seeking to become “data altruism organisation recognised in the Union” as well as entering such entities in the national register.⁴⁵ Should the information relating to the data altruism organisation provided in the application change, the organisation concerned is obliged to notify the competent body of this fact.⁴⁶ Moreover, it is also obliged to submit the aforementioned annual activity report to the competent authority.⁴⁷ In the proposal for regulation, the competent authority is mandated to request necessary information (in a manner which is proportionate and reasonable) from the data altruism organisations in order to verify their compliance with the provisions applicable to their activities.⁴⁸ If, on the other hand, a competent authority determines that that an entity “does not comply with one or more of the requirements of this Chapter it shall notify the entity of those findings and give it the opportunity to state its views, within a reasonable time limit.”⁴⁹ The competent authority may also require that such breaches cease⁵⁰ and, furthermore, it is empowered to take certain measures (appropriate and proportionate) to ensure conformity on the part of data altruism organisations. If an organisation fails to comply with the requirements set out in the proposed regulation (at least one) it may no longer be entitled to be referred to as a “recognised data altruism organisation” and may be struck from the register.⁵¹ The European Commission maintains the EU-wide register of recognised data altruism organisations, therefore information on the registration of a new

44 Art. 20(1) and Art. 21 of the proposal for the Data Governance Act.

45 Art. 17(5) of the proposal for the Data Governance Act.

46 Art. 17(7) of the proposal for the Data Governance Act.

47 Art. 18(2) of the proposal for the Data Governance Act.

48 Art. 21(2) of the proposal for the Data Governance Act.

49 Art. 21(3) of the proposal for the Data Governance Act.

50 Art. 21(4) of the proposal for the Data Governance Act.

51 Art. 21(4) and (5) of the proposal for the Data Governance Act.

entity is forwarded to the EC.⁵² Member States are also obliged to provide the EC with identification data concerning the designated competent authorities.⁵³ As an aside, it is worth mentioning that the competent authorities must be “legally distinct from, and functionally independent of any provider of data sharing services or entity included in the register of recognised data altruism organisations.”⁵⁴ In addition, the competent authorities must carry out their duties edition in an “impartial, transparent, consistent, reliable and timely manner.”⁵⁵ Importantly, under Article 24(1) of the proposal, “natural and legal persons shall have the right to lodge a complaint with the relevant national competent authority against a provider of data sharing services or an entity entered in the register of recognised data altruism organisations.”⁵⁶

The Status of Data Altruism Organisations: A Tentative Determination

Recapitulating the above, data altruism organisations are subject to registration, pursue no profit, and operate with the intention of accomplishing objectives of general interest, doing so as legal entities,⁵⁷ while their activities are informed by voluntariness. The legal solutions contained in the proposed Data Governance Act compel one to consider the status of these organisations, in other words try determine the legal nature of these entities.

Within the Polish legal order, one distinguishes definitions of social organisations and non-governmental organisations (without considering their similarities or the equivalence of these terms). The very appellation, i.e. data altruism

52 Art. 17(5) and Art. 15(2) of the proposal for the Data Governance Act.

53 Art. 20(2) of the proposal for the Data Governance Act.

54 Art. 23(1) of the proposal for the Data Governance Act.

55 Art. 23(2) of the proposal for the Data Governance Act.

56 Art. 24(1) of the proposal for the Data Governance Act. Regrettably, the scope of this paper does not permit attempting to delineate the legal position of the competent authorities.

Given how extensive the issue is, this qualifies as a matter to be explored in a separate text.

57 Art. 16(a) of the proposal for the Data Governance Act.

organisations, offers grounds to approach them from that particular standpoint. In the doctrine, social organisations are non-state entities possessed of organisational independence; they involve voluntary participation, pursue continual activity and play a role in the state.⁵⁸ Furthermore, under Article 5 § 2(5) of the Administrative Procedure Code, social organisations are “(...) construed as (...) professional, self-government, cooperative and other social organisations.”⁵⁹ It would thus seem legitimate to conclude that the first two features of social organisations apply to data altruism organisations as well. Given the above analysis of the provisions of the proposed Data Governance Act, it may be asserted that these are non-state organisations functioning under organisational autonomy. In the author’s opinion, it would be difficult to determine at the moment whether such organisations are characterised by sustained activity. There are no regulations which set out such a requirement explicitly, as e.g. in the case of associations; pursuant to Article 2(1) of the Act of 7 April 1989, Associations Law, “an association is a voluntary, self-governing, permanent union with non-profit purposes.”⁶⁰ As already observed, data altruism consists in voluntary sharing of data by natural persons or enterprises in the general interest.⁶¹ Therefore, the “voluntary” element is indeed in evidence but, based on the provisions of the proposed act, one cannot state the same about voluntariness of participation, since data altruism organisations will not have members as is the case with e.g. associations⁶² or professional self-governance bodies.⁶³ Voluntariness manifests itself in the voluntary provision of data by natural persons or enterprises

58 Jolanta Blicharz, “Organizacja prawna administracji” in *Prawo administracyjne*, ed. J. Boć. Wrocław, 2005: 175; Jolanta Blicharz, “Organizacja prawna administracji” in *Prawo administracyjne*, ed. J. Boć. Wrocław, 2007: 165; Jan Zimmermann, *Prawo administracyjne*. Seventh edition. Warszawa, 2016: 208.

59 Art. 5 § 2(5) of the Act of 14 June 1960, Administrative Procedure Code, Journal of Laws 2021, item 735.

60 Art. 2(1) of the Act of 7 April 1989, Associations Law, Journal of Laws 2020, item 2261.

61 Recital (35) of the proposal for the Data Governance Act and the explanatory memorandum to the proposal for Data Governance Act, 9.

62 Blicharz. 2005, 177.

63 Blicharz. 2005, 176.

in the general interest as well as in the very existence of such organisations. As previously noted, one of the vital aspects of their functioning is that they undertake activity with the intention of pursuing objectives of public interest. It may be added at this point that the relevant literature refers to an “open typology” of social organisations, which include: “political parties, associations, unions, self-governments, trade unions and cooperatives.”⁶⁴

One may also consider the Act of 24 April 2003 on public benefit activity and voluntary service, which sets out that “non-governmental organisations are legal persons or organisational units without legal personality, to which a separate act grants legal capacity, including foundations and associations, subject to Section 4, which are not units of the public finance sector (...) and which do not operate in order to achieve profit.”⁶⁵ With this definition in mind and taking into account the above analysis of selected provisions in the proposed Data Governance Act, these characteristics may be attributed to a data altruism organisation, stressing once again that such organisations are legal entities which are not geared towards profit, as they engage in non-commercial undertakings.⁶⁶ The analysed normative substance does not indicate that entities referred to as “data altruism organisations” qualify as units of the public finance sector.

Conclusions

Data altruism certainly constitutes a new, previously unknown mechanism of data sharing. In the opinion of the author, the provisions of the current proposal for the Data Governance Act are not sufficiently specific to unequivocally determine the status of such organisations. It follows from this analysis that data altruism organisations display certain traits of social organisations and fall within the

⁶⁴ Zimmermann, 208.

⁶⁵ Art. 3(2) of the Act of 24 April 2003 on public benefit activity and volunteer service, *Journal of Laws* 2020, item 1057.

⁶⁶ Art. 16(b) of the proposal for the Data Governance Act. However, one cannot fail to note Art. 18(1)(d) of the same, which after all refers to “the fees paid by natural or legal persons processing the data.”

scope of the statutory definition of non-governmental organisations. Undoubtedly, the very notion that the entities engaging in data altruism are “organisations” suggests that they should be approached precisely in such a manner. It would also be advisable to consider one more aspect, namely whether an enterprise which voluntarily shares data (allows it to be used) in the general interest constitutes a data altruism organisation.⁶⁷ Perhaps the term “organisation” should not be exclusively attributed the meaning informed by the proposed context?

This raises another question concerning the functioning of the organisations in question, i.e. whether natural persons or enterprises will voluntarily supply data to data altruism organisations⁶⁸ to be subsequently made available to natural or legal persons in the general interest,⁶⁹ or whether this will be data that is already held by such entities/organisations.

The Data Governance Act is currently at the proposal stage, therefore it is likely that the provisions governing data altruism organisations will be made more specific and provide a clear answer to the concerns raised in the article.

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- Jan Zimmermann, *Prawo administracyjne*. Seventh edition. Warszawa, 2016.

67 <<https://calg.pl/zarzadzanie-danymi/>>, access: 22.04.2022 and the explanatory memorandum to the proposal for the Data Governance Act, 9.

68 <<https://www.consilium.europa.eu/pl/press/press-releases/2021/10/01/eu-looks-to-make-data-sharing-easier-council-agrees-position-on-data-governance-act/>> access: 22.04.2022.

69 Art. 18(1) of the proposal for the Data Governance Act.

EU and domestic normative act

Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information. Official Journal of the European Union of 26.06.2019, L 172/56, Document 32019L1024.

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Act of 7 April 1989, associations law. Journal of Laws 2020, item 2261.

Act of 24 April 2003 on public benefit activity and volunteer service. Journal of Laws 2020, item 1057.

Act of 11 August 2021 on open data and reuse of public sector data. Journal of Laws 2021, item 1641.

EU and domestic documents

Appendix to the Communication ‘A European strategy for data’ Common European data spaces in in strategic sectors and domains of public interest.

Commission Staff Working Document: Guidance on sharing private sector data in the European data economy accompanying the document Communication from the Commission to the European Parliament, the Council, the

- European economic and social Committee and the Committee of the Regions “Towards a common European data space” {COM(2018) 232 final}. Brussels, 25.04.2018. SWD(2018) 125 final.
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Building a European data economy*, {SWD(2017) 2 final}. Brussels, 10.01.2017. COM(2017) 9 final, Document 52017DC0009.
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