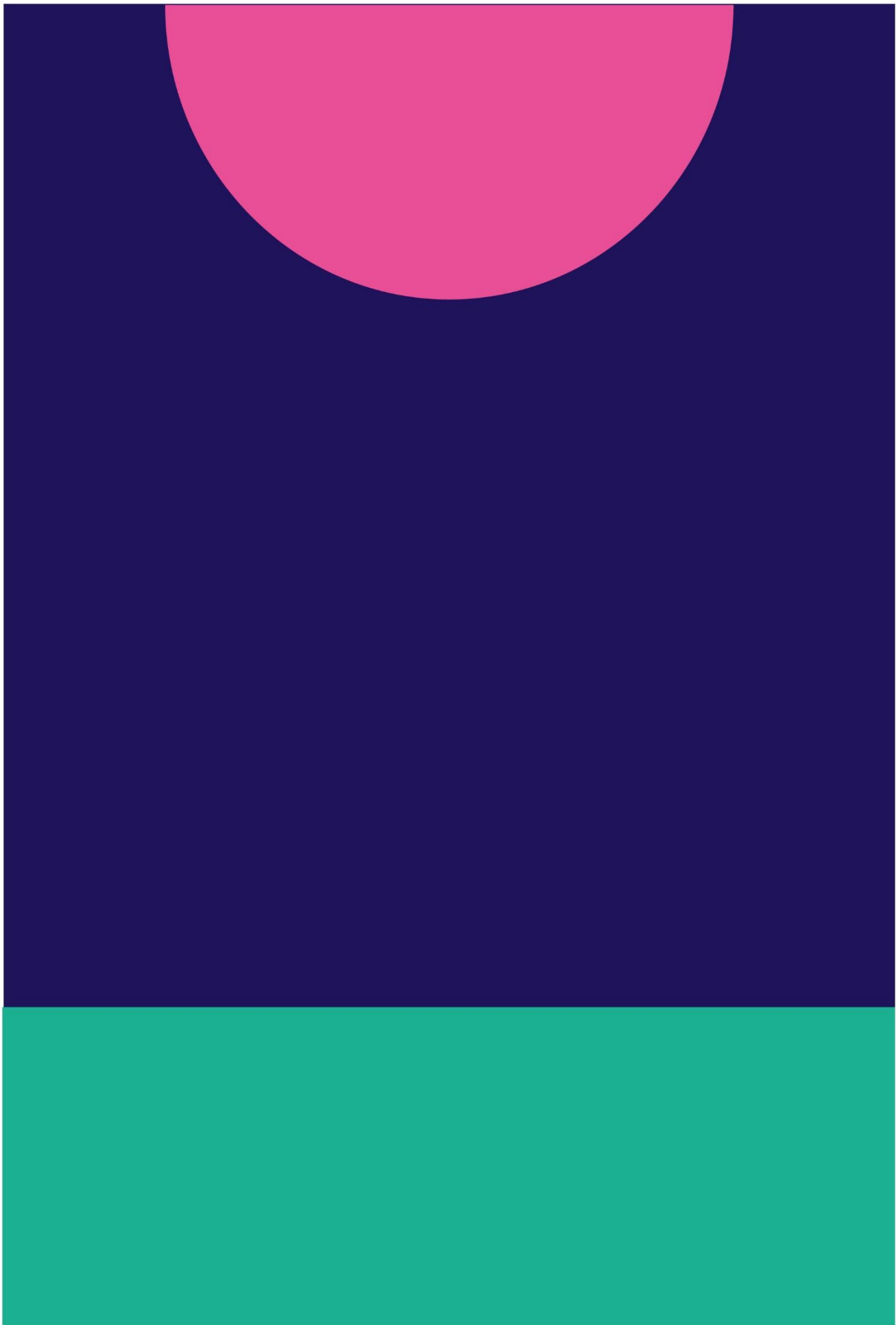




Priorities for the EU Data Governance Act

**For a successful European
data economy**

June 2021

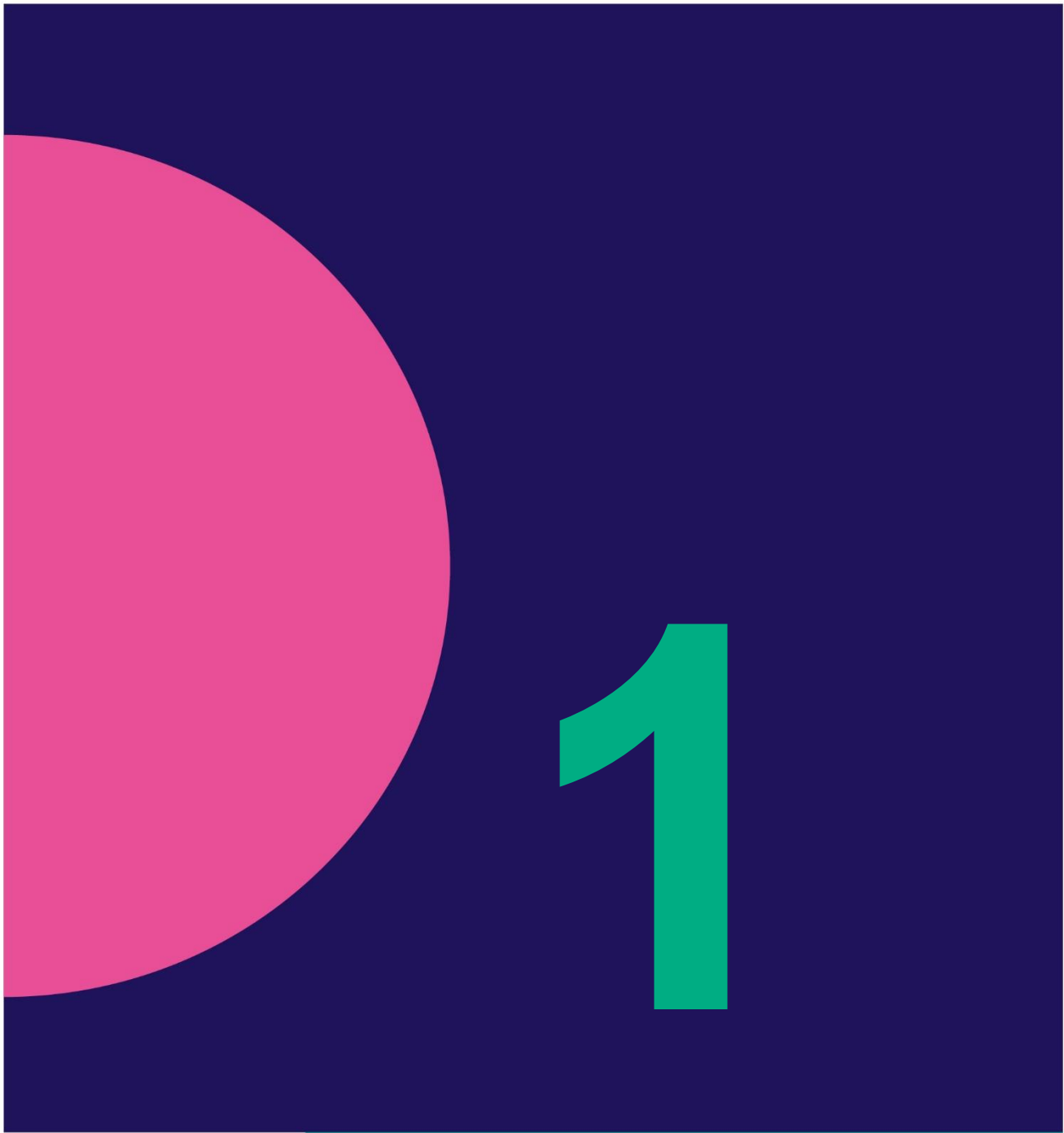


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Key Messages

- > Encourage enhanced data quality, availability, access, and collaboration which can help further digital transformation to address both societal and economic challenges across Europe. Ensure that any framework for 'data sharing intermediaries' does not disincentivise participation by prejudicing existing or new market players and does not create disproportionate liabilities. Prioritise the principle of Business-to-Business (B2B) data portability.
- > Develop an open data ecosystem where the re-use of data, in particular public sector data, can play a critical part in solving societal challenges and allowing sectors to innovate for the future.
- > Enhance the role of industry in the European Data Innovation Board to ensure greater stakeholder input on access agreements and data altruism mechanisms.
- > Enhance innovation through greater data sharing and collaboration by developing frameworks which facilitate cross-border exchanges. Encourage cross border data flows and avoid data localisation requirements which would slow down, rather than speed up, industrial data sharing and research collaboration.
- > Refrain from imposing unnecessary burdens on business with the process of determining adequacy of non-EU countries in data transfers by ensuring limited application.
- > Increase trust in data sharing and foster fair competition in the data economy.
- > Encourage the development of European data spaces in strategic sectors and domains of public interest.
- > Embrace cloud technologies and the development of a Cloud Rulebook.
- > Avoid fragmentation of the Single Market by harmonising the definition of what type of public sector data is to be available for re-use.
- > Encourage the re-use of public sector data to unlock societal solutions. Avoid creating disincentives to industry and public sector collaboration by creating additional costs in conducting business.
- > Avoid creating further complexity for stakeholders with the introduction of a data altruism consent form. Alleviate administrative burdens for SMEs and boost the benefits of Research and Development (R&D) for relevant sectors.
- > Facilitate enterprises within and outside Europe to establish bodies of data in the EU for re-use and sharing by non-profit entities.
- > Take an industry-driven approach to solving challenges in data sharing and achieving enhanced data interoperability and portability.



Introduction

Introduction

The pandemic has accelerated the economic and societal importance of a digitally enabled transformation of Member States, public services, enterprise, and human interaction across the EU by several years. Europe's data economy, which has undergone significant growth in the past decade, holds promise for the EU's sustainable recovery from the pandemic. The Data Governance Act (DGA)¹ is core to unlocking that potential.

Ibec supports an over-arching, market-friendly European data strategy, we responded to the European Commission consultation on a European Strategy for Data². We recognise that if effectively harnessed, data will not only be a major driver of growth in the EU but also improve day-to-day societal conditions for all.

For Europe to take its place as a global leader in the data economy, it will need access to data in quantities that could exceed that held by individual businesses or public bodies. The European data economy should intensify collaboration between government, regulators, enterprise, and the research community to encourage voluntary, responsible sharing of datasets relevant to key sectors while respecting IP, privacy, and cyber-security requirements. In building on existing government access regimes, it is essential that a data sharing ecosystem of excellence and trust be fostered. Ibec supports efforts to promote the availability of data for re-use and to strengthen data sharing mechanisms across the EU.

Ibec envisages an outward looking, dynamic, and successful EU, that provides the conditions for organisations and individuals to adapt to technological change and reach their full potential. A strong and successful European data economy can enable that vision. This paper outlines Ibec recommendations to EU co-legislators on the European Commission's proposed Data Governance Act.

¹ European Commission (2020) Regulation of the European Parliament and of the Council on European data governance - Data Governance Act. 2020/0340 (COD)

² Ibec (2020) 'Implementing an open European digital future Ibec response to European Commission consultation on its European Strategy for Data' (<https://www.ibec.ie/-/media/documents/influencing-for-business/digital-policy/ibec-open-digital-future-data-paper.pdf>)



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Recommendations

Ibec recommendations on the European Data Governance Act

International data transfers

The EU should leverage ongoing activities on the development of international data governance and avoid duplicating efforts.

Our recommendations:

- **Encourage cross border data flows and avoid forced data localisation.** The use of free trade agreements (FTAs) and mutual adequacy decisions should be intensified as a vehicle to promote further (bilateral) digital trade and cross-border data flows and to address digital protectionism without prejudice to EU data protection rules. Cross-border exchanges can be stimulated by enhanced data sharing and collaboration.
- **Enhance innovation through greater data sharing and collaboration by developing frameworks which facilitate cross-border exchanges.** Ensure that Intellectual Property (IP) rights and commercially sensitive information are protected.
- **Increase trust in data sharing and foster fair competition in the data economy.** Europe's data economy is part of the wider global economy and benefits from international cooperation. In the global data competition, we need fair and competitive legal frameworks to advance in key strategic technologies.
- **Avoid localisation requirements which would slow down, rather than speed up, industrial data sharing and research collaboration,** as in Chapter II, Article 5 of the DGA which could be interpreted as imposing restrictions on international transfers of publicly-held non-personal data.
- **Refrain from imposing unnecessary burdens on businesses in the process of determining the adequacy of third EU countries in data transfers by ensuring limited application.** Provide guidance for business on technical and non-technical measures and on which type of data for re-use is intended to be restricted from data transfers to third countries under Chapter II, Article 5 of the DGA.

Data Sharing Services

Ibec supports the development of common European Data Spaces incentivising voluntary data sharing in strategic sectors, while respecting IP, data privacy and security requirements.

Our recommendations:

- **Encourage the development of European data spaces in strategic sectors and domains of public interest. Respect IP, data privacy, and security requirements. Participation in data spaces should be voluntary, and access open to all players, and non-discriminating.** Enhanced data quality, availability, access, and collaboration can help further digital transformation to address both societal and economic challenges across Europe.
- **Embrace cloud technologies and the development of a Cloud Rulebook.** Facilitate cloud by avoiding market barriers and removing unjustified limitations which curtail innovation such as data residency. Compile existing regulatory frameworks industry-recognized standards that will help customers to navigate their risk assessments and due diligence as they plan their journey to the cloud.
- **Prioritise the principle of Business-to-Business (B2B) data portability.** This should be built-in to new data infrastructure as a default to the benefit of Europe's data economy. This would increase customer trust and reduce barriers to the Single Market. This should enable business users to choose whether they share their data via an intermediary or directly between two firms.

- **Ensure that any framework for ‘data sharing intermediaries’ does not disincentivise participation by prejudicing existing or new market players and does not create disproportionate liabilities.** Provide a clearer definition of what data sharing intermediaries are impacted by Chapter III, Article 9 of the proposal, so as to avoid affecting existing models of data sharing. Develop trust in data sharing frameworks by removing ambiguity from Chapter III, Article 9 which, as written, does not clarify which data sharing intermediaries are impacted by the proposal and could include existing B2B platforms operating in Europe.
- **Clarify how the proposal relates to the potential certification requirements of existing private data sharing services.** Efforts to support trust in the European data market by setting out the conditions of the existence of these new players are positive. However, as written the proposal leaves the governance, legal guidance, technical feasibility and encouragement of B2B data sharing to ‘trusted data intermediaries’.

Access and re-use of publicly held data

Ibec supports better infrastructure, an enhanced circular economy, health and prosperity. As such, we welcome efforts by the Commission to untap cross-sectoral and smart societal solutions from the re-use of public sector data, in particular with health, transport, climate and national statistical data.

Our recommendations:

- **Develop an open data ecosystem where the re-use of data, in particular public sector data, can play a critical part in solving societal challenges and allowing sectors to innovate for the future.** EU support for the re-use of sensitive data is welcome. Essential to building trust in this endeavour will be increasing public understanding and confidence in the handling of such data.
- **Avoid fragmentation of the Single Market by harmonising the definition of what type of public sector data is to be available for re-use.** The proliferation of standards and definitions at a national level creates market barriers for smaller players. Further define the concept of ‘highly sensitive’, ‘protected’ and ‘public interest’ data.
- **Encourage the re-use of public sector data to unlock societal solutions. Avoid creating disincentives to industry and public sector collaboration by creating additional costs in conducting business.** To help businesses collaborate, clarify how data will be protected and how the public sector will remove commercially confidential information from datasets. Ensure that companies can maintain trust in the re-use of their data.

Data Altruism

Ibec encourages the re-use of public sector data to harness economic and societal benefits for Europe, recognising that greater sharing of data on health, transport, climate, and official national statistics could allow companies to advance novel or real-time solutions. Ibec supports measures to enhance data portability and which encourage data holders to share data for general interest purposes (Chapter IV) where requirements for business are minimised. Data protection, security and transparency remain fundamental to ensuring trust in such mechanisms.

Our recommendations:

- **Alleviate administrative burdens for SMEs and boost the benefits of Research & Development (R&D) for relevant sectors** such as health by clarifying consent liabilities and the processes for how organisations can access data, recognising that many market players already comply with strict administrative requirements.
- **Avoid creating complexity for stakeholders in the introduction of a data altruism consent form.** Consultation with potentially impacted stakeholders is paramount to ensure transparency and that sectoral differences are taken into account with such measures.
- **Facilitate enterprises within and outside Europe to establish bodies of data in the EU for re-use and sharing by non-profit entities.**

European Data Innovation Board

Ibec welcomes the establishment of a European Data Innovation Board with EU, Member States and cross-sectoral representation to guide the implementation of the DGA.

Our recommendations:

- **Enhance the role of industry in the European Data Innovation Board** (Chapter VI) to ensure stakeholder input to access agreements in relation to the re-use of public and private sector data and the development of any data altruism mechanisms (Chapter IV). This will also ensure relevant international and European standards for use in data sharing are prioritised.
- **Take an industry-driven approach to solving challenges in data sharing and achieving enhanced data interoperability and portability** by pursuing technical solutions, open standards, and open-source technologies as the basis to realise this.



About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 36 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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