

Data Cooperatives in Europe: A Preliminary Investigation

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This paper presents research on the impact of data governance legislation on 'data cooperatives.' It explores the opportunities and challenges presented by new legislative developments and argues for a shift in how public institutions engage with existing data cooperatives to both cater for their needs and enable bolder forms of collective data management.

Introduction

In spite of significant developments in the European Union's digital and data policies in the last five years, not least the entry into force of the General Data Protection Regulation (GDPR) in 2018, there continue to be lingering concerns surrounding our increasingly datafied society. The concept of 'data stewardship' has arisen partially as a critique of how corporations (and in some cases governments) manage personal data and also to highlight alternative methods for acquiring, storing, aggregating and de-identifying personal data and setting procedures for their use. This means that stewards should seek to protect the interests of those whose data is managed by these systems and not just those of the entities they work for. The emergence of data cooperatives can be seen as one approach to data stewardship, as will be discussed further in this paper.

Data cooperatives are structures that enable the creation of open data and personal data stores for mutual benefit,⁴ rebalancing what many perceive as an asymmetric relationship between data subjects and data processing entities.⁵ While data cooperatives show promise in creating more inclusive, equitable and empowering ways of managing data, and have generated some interest at the policy level, these cooperatives are still rare. The potential and success of these novel and radically different organisations, many

of which operate within the EU, therefore depend on the evolution of EU legal and policy frameworks, alongside a rise in citizens' awareness and the adoption of data cooperative solutions.

This paper presents the preliminary results of an ongoing investigation into data cooperatives in Europe. The paper is centrally concerned with the relationship between data cooperatives and EU frameworks for data governance. Our contribution aims to both support data cooperatives in navigating legal constraints and opportunities in Europe, and to inform policy discussions on the construction of a sustainable democratic digital economy.

We draw attention to the possible impacts, benefits and limitations of the GDPR and the new Data Governance Act (DGA) for the growing ecosystem of data cooperatives in Europe. It is important for data cooperatives established in the EU and beyond to monitor landmark EU legislation such as the GDPR and DGA as it will no doubt affect their trajectories, growth and potential to thrive. It deserves close scrutiny and requires EU legislators to involve cooperatives more closely in policymaking.

The paper is structured as follows. In Part I we map the data cooperative landscape in Europe and outline some of the legal developments relevant to the data cooperative ecosystem. In Part II we describe some key takeaways from interviews carried out with cooperatives in Europe and lay out a vision for future collaboration between cooperatives and EU institutions.

Data cooperatives in Europe: Landscape, typologies & relevant law

Data cooperatives aim to give more control to members over their data and, in some cases, to use these data in the interest of a wider user community or the general public. EU regulatory regimes such as data protection law impact the existence of these cooperatives, shaping and potential-

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4 J. Tait, 'Open Data Cooperation – Building a Data Cooperative', available online at: <<https://www.opendatamanchester.org.uk/947/>>.

5 S. Delacroix and N. Lawrence, 'Bottom-up data Trusts: disturbing the one-size-fits-all approach to data governance', 9(4) International Data Privacy Law (2019), 236-252.

ly constraining their purposes, goals, business structures and technical features.

There are a number of data cooperatives in Europe. However, they tend to be small scale and relatively young. Some cooperatives are registered as cooperatives while others describe themselves as data cooperatives without being registered as such. In surveying the cooperative landscape, we identified two ways in which they can be categorised. One is according to the *motivation or purpose* for collecting and processing data. The data cooperatives we studied focus on the fields of health (Salus), personal data (polypoly), remote work (dOrg), transport in the gig economy (Drivers' Seat) and agriculture (SAOS). The second way is according to *how* the data are *technically gathered and used*. We identified some data cooperatives that do not want to access their members' data (Salus, polypoly) and others that work directly with these data (Drivers' Seat, SAOS). There are various reasons for this, including legal issues and ideological conceptions of data.

Data collection and processing carries with it certain legal obligations and restrictions. EU legislation such as the GDPR affects data cooperatives registered or operating in the European Economic Area (EEA). Privacy and personal data protection are indeed fundamental rights in the EU.⁶ This means that in Europe, there are significant restrictions on what private and public actors can do with personal data and information that relates to an identified or identifiable living individual. This is not only significant for cooperatives operating in the EEA but potentially also for cooperatives operating outside the EEA that handle the personal data of EU data subjects.

European data protection law, including the GDPR, is based on the foundational principle that any processing of personal data is unlawful unless it can be justified as fair and lawful processing. The GDPR introduced inalienable data subject rights that allow individuals to access information about their personal data and how they are processed,⁷ to rectify and erase personal data⁸ and to port data.⁹ Data subjects must exercise these rights individually and cannot delegate them. They can only delegate their rights to lodge complaints and request remedies against data protection authorities, controllers and processors.¹⁰

Several data cooperatives are involved in the healthcare sector, so it is pertinent that the GDPR's default rule is a prohibition of processing of health, genetic and biometric data that can be used to identify an individual.¹¹ The GDPR itself provides several exceptions too, however. It is possible to give explicit consent to processing of these data for certain specific purposes.¹² A foundation, association or other not-for-profit body with a political, philosophical, religious or trade union aim can carry out processing if the processing has a legitimate aim and appropriate safeguards are in place as long as the processing concerns members, former members or persons who have contact with the entity in connection with its purposes. These personal data cannot be shared with third parties without the consent of the relevant data subjects.¹³

New EU legislative initiatives will promote the exercise of personal data rights in the Union. The Data Governance Act (DGA), which will become directly applicable after a grace period on 24 September 2023, enables greater access to and use of data for novel, commercial and altruistic ends. The DGA presents a framework for data access and use by setting out the conditions for re-using and accessing these data. Data intermediation services, including data cooperatives, must comply with a number of requirements to provide services across the Union.¹⁴ These include notifying a designated authority in the Member State where they have their main establishments (or in which the legal representatives of non-EEA organisations have their establishments) and meeting a host of conditions, such as limiting the use of the data collected with respect to any activity of a natural or legal person. Significantly, the DGA clarifies that data intermediation service providers have 'fiduciary duties' to data subjects if they intermediate exchanges of data between data subjects and legal persons.¹⁵ All these requirements have consequences for the operations of data cooperatives.

In addition to new procedural requirements for data cooperatives, the DGA advances a specific, and arguably muddled, conception of what data cooperatives are and does not reflect the diversity of the data cooperatives in existence. The DGA explicitly includes services provided by data cooperatives within the types of data intermediation

6 Charter of Fundamental Rights of the European Union, arts. 7-8.

7 GDPR, art 15.

8 GDPR, art 16.

9 GDPR, art 20.

10 GDPR, art 77-80.

11 GDPR, art 9(1).

12 GDPR, art 9(2)(a).

13 GDPR, art 9(2)(d).

14 DGA, arts 11(4)-(5), 12.

15 DGA, recital 33.

services in its remit,¹⁶ with data cooperatives expected to help user-members make informed choices prior to consenting to data use and to negotiate terms and conditions with data users prior to individual consent being given. This includes the activities of data cooperatives like polypoly. However, this conception of data cooperative fails to acknowledge the *not-for-profit* data cooperatives that exist both in the EU (e.g., Salus) and beyond (e.g., MIDATA), which aim to establish commercial relationships between data subjects and data holders on the one hand and data users on the other. It also ignores data cooperatives that collectively pool members' data (e.g., Drivers' Seat). This raises questions about whether existing data cooperatives will be able to continue describing themselves as such. Instead, it is possible that data cooperatives that serve 'general interests' – which include healthcare data cooperatives that pool data¹⁷ – may be expected to register as 'Data Altruism Organisations,' a new creation of the regulation that can collect and process personal and non-personal data so as to make these data available for general interest purposes.

These laws and requirements not only entail new costs for cooperatives but they also require a transformation in how these organisations operate.

Key takeaways from our interviews

As part of our research, we conducted interviews with the leaders of Salus.coop, polypoly and dOrg. We were interested in understanding their organisational structures and purposes, the legal issues they face – particularly in relation to data governance – and their interactions with public institutions. We also communicated with organisations such as SAOS and Driver's Coop for general comments regarding our work but did not conduct interviews with them. We supplemented this with desk-based research on these organisations.

a) Data cooperative models tend to be under-resourced and would benefit from help and coordination at the EU level.

We noted that data cooperatives and their members have little understanding of the regulatory environment beyond incorporation and registration as cooperatives, which is often due to a lack of resources. With respect to data governance, cooperatives like Salus.coop mentioned that they rely on data subject access under Articles 77-80 of the GDPR

as a basis for their business model but there was limited awareness about the opportunities and challenges afforded by new legislation like the DGA. Some data cooperatives are unaware of the extent to which their work is connected to and impacted by existing EU legislation. Others want to engage in the development of laws and policies but do not know how to do so. As a result, data cooperatives in general tend to be *law-takers* as opposed to *law-makers* when it comes to regulatory developments regarding data cooperative models.

b) Data cooperatives have a keen interest in collaborating with public institutions

These cooperatives have appetite for working with public institutions and want the data cooperative model to thrive within local communities across the continent. For example, Salus works closely with public institutions to generate value in the healthcare sector. In order to better develop infrastructure for cooperatives and other alternative models of data governance in Europe, policymakers should more actively speak to data cooperatives within and outside the EU to understand how these organisations can adapt to legislative developments while also ensuring that these developments respond to their needs. This could, for instance, include acknowledging the existence of not-for-profit data cooperatives. This is supported by our interactions with data cooperatives, who suggested a more proactive approach by public institutions as a way to help them grow faster and generate greater social impact.

c) Data cooperatives tend to be driven by individualist technical and ideological models, including blockchain and multi-party computation.

Development and deployment of distributed ledger technologies are common in the data cooperative space. This is due to broadly shared beliefs regarding the potential of these technologies to redistribute power away from centralised infrastructure and towards a dispersed network of people and software programmes (e.g., smart contracts). However, the risks in using these technologies are that they contribute to an excessively *individual-centric* approach to (personal) data management. Use of these technologies attempts to make individual users responsible for how their data is accessed and used, thus (purportedly) shielding data cooperatives from responsibilities under data protection and other laws. The use of these technologies therefore raises questions about whether current data cooperatives, while providing data intermediation services, are able to

¹⁶ DGA, arts 2(15) and 10(c).

¹⁷ DGA, recital 45.

effectively bear the fiduciary duty of acting in the best interest of data subjects as required under the DGA.

d) There is a lack of initiatives in Europe that focus on co-managed collective pools of data, which may be a result of the stringent requirements in EU data protection law. In order to increase the socio-economic and relational value of collective data, data cooperatives could serve as carve-outs from data protection law.

Sitting uneasily within the requirements imposed by the GDPR and the possibilities created by the DGA, data cooperatives remain a promising yet so far missed opportunity to create social value through data. For example, the DGA explicitly seeks to enhance the agency and control of individuals over their data,¹⁸ with the rights under the GDPR continuing to be personal and non-delegable beyond certain limited exceptions. In other words, the DGA still continues to strengthen an *individualistic* model of data governance, precluding more ambitious *collectivist* models of data governance where, for instance, the collective interests of data subjects would be recognised and cooperatives would be allowed to pool and process aggregated data, as do Drivers' Seat in the US and PescaData, which pools the data of fishing cooperatives in Mexico. We found a relative lack of collective data pools in the EU cooperative ecosystem.

Legal changes are needed to promote a bolder and more capacious data cooperative movement. It seems necessary, for example, to extend the DGA beyond its current scope and encourage exploration of more ambitious collaborative attempts to support data pools beyond the limited scope of 'data altruism.' In addition to reforming the DGA, bodies created by this regulation such as the European Data Innovation Board could more proactively include representatives of the cooperative movement. It also seems necessary to envisage certain exceptions to the GDPR requirements regarding the processing of personal data for collective and public-interest purposes.

Conclusion

Data cooperatives present an innovative and radical approach to the governance of collective data while preserving data subjects' agency over their personal data. They therefore merit the urgent attention and support of EU policymakers. Legal frameworks such as the GDPR and

the DGA affect data cooperatives, yet these entities have no say on the laws themselves. Greater collaboration is needed between data cooperatives, legislators, policymakers and public institutions. Cooperatives should not be passive witnesses to legal changes but become active stakeholders in their making.

Collaboration between various stakeholders and data cooperatives can bring about data sovereignty for citizens as well as significant social value. However, current data protection law and other proposed data laws continue to promote a more individualistic conception of data, even by some existing data cooperatives. Given the benefits of collective data approaches, we suggest that policymakers should more boldly pursue a collective conception of data and of data cooperative models. They must go beyond current conceptions of 'data altruism' and embed the socio-relational value of aggregated data in the law.

¹⁸ DGA, recital 30.