

Comments on Report by the Committee of Experts on Non-Personal Data Governance Framework (111972/2020/CL&ES)

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About AEEE

Alliance for an Energy Efficient Economy (AEEE), is one of the leading organizations in India that works on creating awareness about energy efficiency as a resource. It is a policy advocacy and energy efficiency market enabler with a not-for-profit motive. We advocate for data-driven and evidence-based energy efficiency policies and research.

We foster a culture of energy efficiency in India, working with industry, government and civil society organizations. AEEE advocates for Thermal Comfort for All, and a Lean-Mean-Green philosophy to design and construct net-zero energy-water-waste built environments, Sustainable Transportation and robust Energy Data Framework for better policy-making and implementation, to build a culture of energy efficiency in India. We are committed to achieve India's energy transition for a climate-resilient and energy secure future and meet India's commitments to the 2030 nationally determined goals (NDC) and UN sustainable development goals (SDG).

Introduction

The comments provided in this document are with a view to the immense benefit of using non-personal (anonymised) data on energy consumption and energy-consuming equipment, processes appliances, etc., at a granular level, to develop pathways to clean and affordable energy for a climate resilient and energy secure future, whilst at all times ensuring data privacy for individuals and organisations. Access and use of these data sets is for “Core Public Interest Purpose” as defined in Recommendation 5.

General Comments

- » The Ministry of Electronics and Information Technology’s report on Non-Personal Data (NPD) Framework is a welcome step in light of the digital revolution that India (and indeed the rest of the world) is going through. It demonstrates proactiveness and political will to act upon the many challenges and opportunities that digitalisation will present.
- » Recommendations for encouraging sharing of important data for specific sectors (section 4.10, iv) is a positive step for researchers who need large granular data sets.
- » Though very brief, the section “Core Public Interest Purpose” (section 7.2) is a positive one. For example, large, periodical, granular, and timely (and currently unavailable) datasets such as energy consumption by end-use can be “useful for policy making, improving public service, devising public programs, infrastructures, etc. and, in general, supporting a wide range of societal objectives including science, healthcare, urban planning, etc.”, and help create and sustain an integrated, clean, and flexible grid; “special public interest and high-value” datasets can help track the progress of decarbonisation and climate action, guide investment in renewable energy assets and energy efficiency for maximised effect, and most importantly, allow the integration of siloed policy, technological, and market interventions for maximised impact.
- » The NPD framework correctly identifies that access to NPD can “encourage competition and provide a level playing field or encourage innovation through start-up activities”. For example, the large, periodical, granular, and timely datasets of energy consumption by end-use mentioned above can help spur demand for energy technology companies such as energy data analytics (incl. IoT, building energy management companies, etc.), equipment manufacturers, facility managers, ESCOs, etc.
- » The data governance framework as is seems more geared for data businesses. The framework could benefit from adding more information and examples on data sharing for “Core Public Interest Purpose”, especially since this requires collaboration with civil society and government entities such as urban local bodies, transportation sector, energy companies and DISCOMs.
- » The definition of community NPD needs fleshing out, especially in light of the stakeholders of the NPD ecosystem and their roles. The framework describes the data trustee as “the closest and most appropriate representative body for that community, which will, in many cases, be an appropriate community body or Central/ State/ Local government agency”. It mentions the examples of the Ministry of Health and Family Welfare as a data trustee of data on diabetes among Indians or Manipur government as a data trustee of data on Meitei language. This definition and the examples that are mentioned in support of it appear to be in conflict with the definition of the data custodian who “undertakes collection, storage, processing, use, etc. of data in a manner that is in the best interest of the data principal” and should have the ‘best interest’ of and a ‘duty of care’ towards the data principal (i.e. the community in this case). Obviously, the data trustee and the data custodian act in different (though not opposing interests) and must be different entities with clearly defined roles and responsibilities; any overlaps should be clearly highlighted with guidance on how to deal with them.

Specific Comments

Considering the many inherent complexities and sensitivities around data sharing and use, the framework is unable to reach its full potential and would benefit hugely from a round of revision to create a seamless NPD ecosystem that is able to achieve and exceed its objective. Some specific suggestions and questions for clarification are presented in the table below.

Section/chapter #	Remarks
4.1	<p>The definition of NPD should be made clearer, highlighting whether encrypted data will be considered as NPD.</p> <p>Whilst the framework cautions against the shortcomings of anonymisation, it does very little to alleviate these concerns. It does allude to “duty of care” of data custodians and the need for future regulatory guidelines around “anonymisation standards and requirements”. However, it stops short of fleshing this out sufficiently, especially in light of existing and emerging knowledge around the anonymisation.</p>
4.3-4.4	<p>The definitions of community NPD and private NPD should be made more distinct and clear; there is overlap between these two definitions as private companies providing services such as telecom, cab, electricity, etc. are also considered under community NPD. Overlapping definitions can have implications on data sharing protocols.</p>
4.7	<p>It should be clarified whether private companies such as telecom, cab, etc. or the individual customers will be the data principal, particularly in light of personal data rights and to uphold the rights of the data principal to collect, use and share anonymised datasets.</p>
4.9 (ii & iii)	<p>The definition of data trustee is ambiguous and should be made clearer. The cases where data sharing will become mandatory should be laid out as clearly as possible with specific examples and use-cases.</p>
4.10	<p>How will checks and balances around the powers of the Data Trust in the NPD ecosystem be implemented?</p>
5.1 (v)	<p>More discussion on how citizens and communities will benefit from NPD should be added.</p>
5.4	<p>As per recommendation 5, data can be shared for sovereign purpose, core public interest and economic purpose – these categories are open-ended and subject to interpretation, and should be fleshed out.</p>
6.2	<p>How will the threshold be arrived at for different sectors? How will it be ensured that the data collection is unbiased, and its use is for public good?</p>
7.2 (ii & iii)	<p>Though very brief, this section is a positive one. However, while this report is only a framework it is a pity to see that critical data related to climate action is not even cited as an example. With climate change being such a critical problem the following data sets should be considered high-value datasets:</p> <ul style="list-style-type: none"> » Energy consumption and supply (electricity, renewables, petrol, diesel, LPG PNG, LNG, biomass, etc.) » Emissions » Key buildings and their energy use characteristics, etc. <p>In this regard, there should be a well-defined process for determining high-value datasets.</p>

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7.3 (iii)	The role and responsibility of data and cloud innovation labs and research centres should be clearly defined as is being done in case of other labs such as ARAI, ICAT, etc.
7.3 (iv)	Some checks and balances around running algorithms on centralised anonymised data systems should be defined; also what will be the processes around accessing/submitting the data?
7.5	How will data custodians communicate requests for data to data principals (especially private NDP)? What will determine whether or not these request are accepted?
7.6 (ii)	This contract or clause should be binding for third parties that will provide the data infrastructure to enable AI and other algorithms to ensure data privacy and security.
7.6 (iv)	The peer-review process for registered academic labs should be made stricter than just being encouraged to ensure compliance.
7.6 (v)	The constitution of the academic-industry advisory body should be clearly specified including the number of members, their requirements, and the appointment process.
8	The following should be fleshed out: Conflict of interest between the NPD regulatory authority and other actors of the NPD ecosystem; repercussions of breach of data privacy; number of members and the appointment process. It would be good that the NPD regulatory authority works in tandem with the advisory body, and seeks their feedback and leverages their expertise. The need for having separate regulators for personal data and NPD should be substantiated.
9	This section should be fleshed out in light of the Information Technology Act 2000.





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