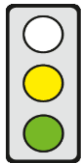


## KEY ISSUES

**Objective of the Communication:** The Commission wants to establish a single European data space for personal, non-personal, business and public data and boost the sharing, use and re-use of data in the EU.

**Affected parties:** Businesses, consumers and public bodies participating in the data economy.



**Pro:** (1) As data is non-rival in consumption and data markets are often characterised by economies of scale, the Commission is right to tackle existing barriers to sharing, use and re-use of data.

**Contra:** The Commission's ideas are still vague.

**Proposals:** (1) In order to tackle the issue of high information costs related to making personal data available and in order to make data altruisms more realistic, the Commission should promote "data trustees".

(2) The Commission's aim of encouraging B2B data sharing is not easy to achieve. Many of the obstacles to sharing non-personal corporate data cannot easily be removed by regulation. The Commission should reduce transaction costs by way of guidance on appropriate contract terms and conditions.

(3) A legal ownership right to non-personal business data should not be introduced.

(4) Any obligation to share data should apply only where a company has a non-contestable dominant market position because it holds a monopoly over data that is an essential input for competitors.

(5) The Commission should refrain from general ex ante regulation of online platforms. Competition law instruments are generally the instrument of first choice.

(6) Initiatives that increase the transparency of cloud offers can be private and do not require public action by the Commission. A public cloud rulebook that sets standards for a cloud marketplace beyond what is prescribed by law is not acceptable.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

Communication COM(2020) 66 of 19 February 2020: A European strategy for data

### Brief Summary

#### ► Context and objectives

- Data is of enormous significance both for the economy and for society at large [p. 2].
- Today, a significant proportion of the world's data is held by a small number of big tech firms from the US and China. The Commission believes that there is possibility for this to change because data will
  - grow considerably in volume – from 33 zettabytes in 2018 to 175 zettabytes in 2025;
  - be processed in a de-centralised fashion, i.e. in smart connected objects like home appliances, as opposed to the current centralised processing model based on data centres [p. 3].
- In this Communication, the Commission proposes an EU data strategy for the next five years. The aim of the strategy is to create a single European data space for personal, non-personal, business and public data. Compliance with all relevant EU-legislation – including data protection rules – should create a trusted environment for the sharing, use and re-use of data in the EU and should improve innovation and growth. Eventually, more data should be stored and processed in the EU, and not in third countries. [pp. 4–6].
- This cepPolicyBrief deals with obstacles to the European data economy and the first two pillars of the Commission's strategy, i.e.:
  - a cross-sectoral governance framework for data access and use (Pillar A);
  - investments in data and data infrastructure (Pillar B).
- A second cepPolicyBrief will deal with the remaining pillars of the data strategy.

#### ► Obstacles to the European data economy

- According to the Commission, insufficient sharing of data impairs the use and re-use of data in the EU. Data is shared insufficiently between [pp. 6–8]
  - companies (B2B),

- public bodies (G2G) and
  - public bodies and companies (B2G and G2B).
  - A handful of online platforms and cloud providers already have at their disposal a large stock of data. This triggers imbalances in data availability to the exclusive benefit of these companies. [p. 8]
  - The lack of data interoperability and low data quality makes it difficult for data producers and users to combine data from different sources within and between sectors [p. 8].
  - According to the Commission, operational and organisational approaches to data use are perceived by a number of stakeholders as too diverse, both between and within sectors [p. 8].
  - As EU cloud providers only have a small market share, users are dependent upon third country providers. This poses data security threats as these providers may be subject to third-country legislation such as the US cloud act. Also, there is uncertainty whether cloud providers comply with EU rules e.g. on data protection. [pp. 9–10]
  - Only 25% of EU companies use cloud infrastructures and services and the cloud uptake is particularly low in the public sector, which impedes the efficiency of public services, increases IT costs and limits European governments' capacity to deploy artificial intelligence technologies [pp. 9-10].
  - Consumers are faced with "risks of discrimination, unfair practices and 'lock-in' effects" [p. 10].
  - There is a shortage of big data and data analytics experts – approx. 496,000 unfilled positions in 2017 in EU27 – and a low level of data literacy [pp. 10-11].
  - The expected shift from centralised to de-centralised data storage and processing brings about new cybersecurity issues, i.e. how to preserve the security of data while such data is being exchanged [p. 11].
- **Pillar A: A cross-sectoral governance framework for data access and use**
- As the digital economy is subject to continuous change, the Commission wants to refrain from “overly detailed, heavy-handed ex ante regulation”. It nevertheless intends to propose four measures to support access to and use of data. [p. 12]
- Legislative proposal on common European data spaces**
- By the end of 2020, the Commission will issue legislative proposals on “common European data spaces” aimed at [p. 12 and 13]
    - increasing the standardisation of data and thus its ability to move across sectors;
    - facilitating "data altruism", i.e. making it easier for individuals to make the data they generate available for the public good;
    - clarifying the conditions for data processing for scientific research purposes under the GDPR.
- High-value data sets under the Open Data Directive**
- The Open Data Directive [Directive (EU) 2019/1024] allows the Commission to define, via an implementing act, “high-value datasets” as a subset of non-personal data held by the public sector. These datasets must be made available at short notice, for free and in machine readable format by public sector bodies and public undertakings. [Art. 14 and Annex I, Directive (EU) 2019/1024]
  - The Commission plans to define high-value datasets with an implementing act in Q1 2021 [p. 13].
- B2B Data sharing**
- The Commission considers proposing a “Data Act” as a directive or a regulation to incentivise data sharing between businesses of different sectors by 2021. [p. 13]
  - The Data Act should support B2B data sharing by
    - assigning usage rights for data generated by multiple actors, a problem which is currently dealt with through contractual arrangements;
    - making data sharing compulsory on a sector-specific basis in order to address market failures which competition law cannot solve;
    - setting out a liability regime for data sharing;
    - potentially, revising intellectual property regulation (notably, the Database Directive [Directive (EU) 96/9] and the Trade Secret Protection Directive [Directive (EU) 2016/943]).
- Digital Services Act**
- By the end of 2020, the Commission plans to propose a Digital Services Act as a directive or a regulation. This Act could address the market power of online platforms and may include an ex ante regulation. [p. 14 and 15]
- **Pillar B: Investments in data and data infrastructure**
- Funding for a “High Impact Project”**
- The Commission wants to fund the “establishment of EU-wide common interoperable data spaces in strategic sectors” with € 2 billion. The Commission expects Member States and industry to co-invest to reach a total of € 4–6 billion of funding. The project should establish data-sharing tools, create data governance frameworks and improve data processing and computing capacities as well as cross-sector availability, quality and interoperability of data. [p. 17]
  - Strategic sectors include manufacturing, mobility, health, financial services and energy [p. 22]

### Integrating national projects

- The Commission wants to promote the integration of national cloud and data-sharing projects like Gaia-X – a project proposed in 2019 by the German government – because these initiatives will only be successful if they can benefit from the size of the internal market. For this purpose, the Commission wants to sign Memoranda of Understanding with relevant Member States by Q3 2020. [p. 18]

### Cloud Computing

- According to the Commission, cloud service providers and users lack a comprehensive overview of the rules they must abide by in the EU. It thus wants to issue a "cloud rulebook" by Q2 2022. The rulebook will offer "a compendium of existing cloud codes of conduct and certification on security, energy efficiency, quality of service, data protection and data portability". In general, both the applicable legal framework and self-regulatory initiatives will be part of the rulebook. [p. 18]
- The Commission wants to establish a cloud services marketplace by Q4 2022. The marketplace will be a platform that connects cloud service providers and users, in particular public sector entities and SMEs. [p. 19]
- Cloud service providers will only be allowed to offer their services on the marketplace when guaranteeing "transparent and fair contract conditions" [p. 19].

## Policy Context

The Communication is the first leg of the new digital strategy of the Commission, the other being the White Paper on Artificial Intelligence - A European approach to excellence and trust [COM(2020) 65, see [cepAdhoc](#) and [cepPolicyBrief](#)].

## Options for Influencing the Political Process

Directorate General:

DG Connect

# ASSESSMENT

## Economic Assessment

**Data is non-rival in consumption** so that the same data can be used numerous times by numerous users, even simultaneously and for different purposes. **Data markets are also often characterised by economies of scale** in the sense that the cost of producing a first data(set) is usually substantial but the cost of producing more datasets of the same type often declines steadily. These two characteristic features of data illustrate the advantages of high intensity use, re-use and sharing of data. This can be highly valuable for the economy and society at large: Data sharing can, for instance, contribute to innovation as not all firms may see the economic potential of data created by others or have the technical means to generate added value by re-using data. Also, sharing data among actors within one value chain can improve production processes, increase efficiency, lower production costs and lift potentials for productivity gains.

**As a consequence, the Commission is right to tackle existing barriers to sharing, use and re-use of data.**

Data is often very diverse, varying in quality and in different technical formats. This inhibits the exchange of data across and within sectors as both suppliers and demanders of data have to make investments to agree on common data standards and solve interoperability issues. The Commission's efforts to tackle these issues and set up governance structures are thus to be welcomed.

**However, the Commission's ideas are still vague. cep proposes:**

Individuals are often faced with the following dilemma: either they consent to making personal data available to others without really understanding the consequences of the decision, or they deny access, irrespective of the merits of the data access request, in order to protect their private spheres. Both approaches can prevent a functioning market for data. **In order to tackle the issue of high information costs related to making personal data available, and in order to make data altruisms more realistic, the Commission should promote "data trustees"**. These are entities that exercise data rights and handle data access requests on behalf of individuals. They could, on the one hand, allow individuals to express their preferences more accurately with regard to personal data provision and, on the other, enhance confidence among users as regards sharing their data. Of course, this presupposes that the trustees are perceived as neutral and transparent brokers. They could tackle the asymmetry between the negotiating position of individuals and that of those seeking access to data, in particular big tech companies.

The Commission should reconsider and investigate whether a general obligation for public sector bodies and public undertakings to grant access to non-personal high-value datasets is really appropriate. It should especially look into the existing data sharing practices of public and private companies in particular sectors – e.g. transport and geospatial – to evaluate if data sharing based on voluntary agreements is sufficient or if further action – be it through soft-law measures or binding EU law – is required.

**The Commission's aim of encouraging B2B data sharing is adequate, but not easy to achieve. Many of the obstacles to sharing non-personal corporate data cannot easily be removed by regulation.** This is the case when businesses refrain from data sharing for strategic reasons, because of uncertainty about the intended use, because of the danger

of data leakage or because of problems regarding the valuation of the data. **The Commission can and should reduce transaction costs of B2B data sharing**, for example **by way of guidance on appropriate contract terms and conditions**. Any such action must be market neutral. **A legal ownership right to non-personal business data should not be introduced**. De facto control over data through contract law and technical restrictions form a sufficient basis for data market development.

In order to protect intellectual property rights and innovation incentives, **any obligation to share data should apply only where a company has a non-contestable dominant market position because it holds a monopoly over data that is an essential input for competitors**. Depending on the case, markets may have to be defined very narrowly, e.g. brand-wise, thereby making it more likely to establish market dominance. Imposing an obligation to share data by regulation would then be appropriate. In all other cases, competition law can better guarantee an appropriate market definition and analysis of market dominance. Data protection rules must be upheld. The application of competition law should not lead to an obligation to share personal data without the data subject having consented. In such cases, alternative remedies might be introduced, such as the possibility of data subjects transferring data to other service providers (“data portability right”).

**The Commission should refrain from general ex ante regulation of online platforms**. The existing large platform providers are very diverse, so a one-fits-all ex ante regulatory approach is unlikely to be useful. **Competition law instruments are generally the instrument of first choice** to address issues relating to their market power.

The establishment of (sectoral) data spaces can be instrumental in addressing some of the existing barriers to data sharing. Transaction costs for both sellers and demanders of data can be reduced by bringing together relevant private and public actors and pooling knowledge and expertise. Data spaces may further facilitate the development of common technical standards or templates for contractual terms and conditions. However, any public action supporting the establishment of data spaces must be market neutral and not distort the level playing field for market actors.

**Initiatives that increase the transparency of cloud offers**, e.g. with respect to their data security levels, data portability or other technical features make it easier for potential cloud users to choose among different cloud service offers and providers. Such initiatives **can be private and do not require public action by the Commission**. **A public cloud rulebook that sets standards for a cloud marketplace beyond what is prescribed by law is not acceptable**. It is likely to deter competition on an arbitrary basis, even to the detriment of suppliers that fulfil all existing European legal standards.

## Legal Assessment

**Legislative Competence of the EU, subsidiarity, proportionality with respect to Member States**

Dependent on the design of the individual legislative measures.

**Compatibility with EU Law in other Respects**

Dependent on the design of the individual legislative measures.

**Impact on and compatibility with German Law**

Dependent on the design of the individual legislative measures.

## Conclusion

As data is non-rival in consumption and data markets are often characterised by economies of scale, the Commission is right to tackle existing barriers for the sharing, use and re-use of data in the EU. However, the Commission’s ideas are still vague. cep proposes:

In order to tackle the issue of high information costs related to making personal data available, and in order to make data altruisms more realistic, the Commission should promote “data trustees”. The Commission’s aim of encouraging B2B data sharing is not easy to achieve. Many of the obstacles to sharing non-personal corporate data cannot easily be removed by regulation. The Commission should reduce transaction costs of B2B data sharing by way of guidance on appropriate contract terms and conditions. A legal ownership right to non-personal business data should not be introduced. Any obligation to share data should apply only where a company has a non-contestable dominant market position because it holds a monopoly over data that is an essential input for competitors. The Commission should refrain from general ex ante regulation of online platforms. Competition law instruments are generally the instrument of first choice. Initiatives that increase the transparency of cloud offers can be private and do not require public action by the Commission. A public cloud rulebook that sets standards for a cloud marketplace beyond what is prescribed by law is not acceptable.