

EUROCHAMBRES Input to the Data Act Consultation

EUROCHAMBRES welcomes the plans for a Data Act as an important step to facilitate the establishment of a thriving data economy in Europe. European legislation should provide legal certainty for voluntary data sharing and data exchange. They act as cornerstones to enable start-ups and companies from all economic sectors to fully participate in tomorrow's digital economy.

Access to data is a prerequisite for the data future economy. It is crucial for the competitiveness of companies, as it can serve both to improve existing processes and develop new business models. Compared to large technology companies from other economic areas, European companies often lack extensive databases which hampers innovation.

Many European companies, in particular SMEs, are reluctant to share their data, since many find it difficult to be in compliance with a large number of laws – weather national or European – applicable to their data, especially when it comes to data concerning people.

Legislation involving data exchange has to consider that data can be of very different nature, be it in encryption or content, it can be personal or generic. Data may have been given away for free, against payment or in exchange for the provision of services. Any legislative approach should therefore be transparent, reduce legislative complexity and be based on the “think-small-first” principle.

B2G Data sharing

We welcome incentives for companies to share their data with the public administration, however we are critical toward new obligations to share data owned by companies. The Data Act needs a clear definition when general public interest sufficiently justifies that privately held data must be shared with the public and must be strictly limited to essential and clearly defined areas.

To make data exchange technically as easy as possible, open interfaces and common standards should be created. Companies that share their data with public authorities should not be exposed to further bureaucracy. Instead, incentives could be created to encourage companies to share their data. Regulatory, technical, and economic barriers need to be reduced through the promotion of standards and the facilitation of regulatory requirements. Consequently, any proposal must be in line with the existing legal framework for copyright, IPR, the Database Directive, GDPR, the e-Privacy Directive, the Trade Secrets Directive, banking secrecy, cyber security and others. Technical solutions must be implemented in such a way that personal data and business information are adequately secured and protected.

The conditions for the use of the data, including appropriate remuneration, must be fair,

transparent and suitable to the needs of companies sharing their data. Public administrations should establish a safe environment for data to be shared.

B2B data sharing

Data sharing in the B2B context has been subject to contract law and companies can decide if and how they want to share data, as long as this happens within the legal framework. Data monetization, data marketplaces, industrial data platforms and open data policies have made data access and exchange in the B2B context sufficiently open to facilitate growth in new business models. Initiatives to promote data sharing should be launched that offer concrete incentives to companies to share data. In data exchange, the principles of willingness and freedom of contract should have precedence.

Several shortcomings of the current B2B-data-sharing framework have been identified. Technical difficulties in data sharing are due to incompatible data formats, insufficient data quality, lack of common metadata or lack of interfaces for data sharing requests. Legal problems are related to the lack of a legal basis for data sharing, power imbalances in contractual negotiations and insufficient prosecution and enforcement of data sharing agreements, data control, legal actions against unlawful acquisitions of data, and disclosure of business-sensitive information, especially if non-EU jurisdictions are involved.

Model contracts or fairness tests for contracts can greatly contribute to fairness in contract negotiations and as a consequence to more data exchange. The definition of the specific conditions under which a "fair" data exchange can take place is to be further specified. Horizontally applicable rules often cannot adequately respond to the diversity of sectors and situations concerned. In specific, exceptional cases, where imbalances in bargaining power between economic actors persist or in cases of market failure, despite incentives for data sharing, appropriate sector-specific measures might be considered. In any case, additional bureaucracy and costs for companies should be avoided.

Sector specific templates, toolkits or guidelines, following the revision of the Directive on the Protection of Databases (96/9/EC) can increase legal certainty but should be voluntary. The revision of this directive should be in line with the Data Act and not lead to additional compliance obligations for companies.

Companies urgently need guidance for GDPR-compliant data sharing. For instance, there is great uncertainty as how personal data can be anonymized in order to be transferred lawfully. Uncertainties in data protection law should be solved by legislation, as such uncertainties lead to companies refraining from exchanging data with each other.

Smart Contracts

Smart contracts have the potential to facilitate business and can play a bigger role in the future. Still, many companies are reluctant to use smart contracts. Standards, guidance and tools might help to increase the usage of smart contracts.

Portability of Data and International Data Transfers

Standardized APIs for the portability of data should be developed in order to enable companies to fully profit from the provisions of Art 20 GDPR.

For new international trade agreements, especially free trade agreements, we suggest a specific chapter regulating the core elements of data sharing to enforce European data protection standards and prohibiting excessive data localisation requirements.

EUROCHAMBRES – The Association of European Chambers of Commerce and Industry represents over 20 million enterprises in Europe – 98% of which are SMEs – through 45 members and a European network of 1700 regional and local Chambers.

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