

BUILDING THE EUROPEAN DATA ECONOMY

Fields marked with * are mandatory.

INTRODUCTION

Data has become an essential resource for economic growth, job creation and societal progress. Data analysis facilitates better decision-making, innovation and the prediction of future events. Europe aims to exploit this potential without infringing the rights and freedoms of people or damaging economic investments made into generating data. Within this context, the Commission aims to foster an efficient, competitive single market for data services including cloud-based ones. It needs to identify the legal, economic, and regulatory challenges, and to launch a discussion with stakeholders on future action.

On 10 January 2017, the Commission adopted the "Building the European Data Economy" package consisting of a [Communication](#) and a [Staff Working Document](#). These policy documents give an overview of issues at stake, and of the context of this consultation. Respondents are invited to read them prior to completing the questionnaire.

Purpose

The public consultation will help shape the future policy agenda on the European data economy. It will feed into a possible Commission's initiative in 2017 on Building the European Data Economy.

The objective of the consultation is to collect information on:

- whether and how local or national data localisation restrictions inhibit the free flow of data in Europe
- whether and to what extent digital non-personal machine-generated data are traded and exchanged
- the nature and magnitude of any barriers to accessing such data
- ways of tackling those barriers
- emerging Internet of Things and robotics liability challenges
- practices and issues relating to data portability, interoperability and standards

Context

The "Building the European Data Economy" package addresses restrictions on the free flow of data, including legal barriers on the location of data for storage and/or processing purposes, and a series of emerging issues relating to data such as ownership, access, reuse, portability and liability.

While the questions on liability issues in this consultation are addressed in a data economy context, a [separate consultation](#) separate consultation on the overall evaluation of the application of the [Product Liability Directive \(85/374/EEC\)](#) is being launched.

This consultation does not cover any issues related to personal data protection. These are extensively regulated elsewhere, namely in the [new EU data protection rules](#), as well as through the [review of the ePrivacy Directive](#). Issues of access to and re-use of public sector information are excluded from this consultation because they will be tackled under the upcoming review of the [Directive on the re-use of public sector information \(2003/98/EC\)](#).

The Commission has already engaged in an extensive dialogue on the data economy with stakeholders, in the form of sector-specific (e.g. manufacturing and financial sectors) and cross-sector round-tables, [workshops](#), [conferences](#), bilateral meetings including targeted consultations of the Member States on data economy topics, and a [public consultation](#) in which the data economy was one of a broader range of topics.

Targeted respondents

This consultation targets:

- Businesses of all sizes
- Manufacturers and users of connected devices
- Operators and users of online platforms
- Data brokers
- Businesses commercialising data-based products and services
- Public authorities
- Non-governmental organisations
- Researcher and research organisations
- Consumers

As data collected by sensors are used in many areas, this consultation targets all sectors. Some of the sectors likely to be concerned are manufacturing, energy, automotive, health, consumer-facing commerce, Internet of Things (IoT), etc.

Consultation period

10 January – 26 April 2017

Replies received after the closing date will not be considered.

How to respond

You can reply in any EU language, even to the online English version of the questionnaire. The questionnaire in all of the other EU languages will be available as from 1 February 2017.

Only responses received through the online questionnaire will be considered for analysis. Questionnaires sent by e-mail or on paper will not be analysed except those due to accessibility needs of persons with disabilities (see below).

All questions and sections are optional. You can pause any time and continue later. You can download your contribution once you have submitted your answers.

Given the volume of this consultation, you can download [a PDF version](#) before responding to the survey online. The PDF version includes all possible questions. When you fill the survey in online, you will not see all of the questions; only those applicable to your chosen respondent category and to other choices made when you answer previous questions.

The questionnaire is divided between 4 sections:

- 1. Localisation of data for storage and / or processing purposes*
- 2. Access to and re-use of non-personal data*
- 3. Liability*
- 4. Portability of non-personal data, interoperability and standards*

While you may want to contribute to the entire questionnaire, it is also possible for you to contribute only to the sections (s) that is / are relevant to you or your organisation.

Accessibility for persons with disabilities

We accept questionnaires by e-mail or by post from people with disabilities and their representative organisations.

Please send either e-mail with your reply attached as Word, PDF or ODF document

to CNECT-CONSULTATION-DATA-ECONOMY@ec.europa.eu

or write to us at:

European Commission

DG Communication Networks, Content & Technology

Unit G1 – Data Policy and Innovation

Euroforum Building

10 rue Robert Stumper

L-2557 Luxembourg

Luxembourg

Transparency

In the survey you will be asked whether you are responding as an individual or representing the views of an organisation. We ask responding organisations to register in the Transparency Register.

We publish the submissions of non-registered organisations separately from those of registered ones.

Replies & next steps

We shall publish all contributions to the consultation unless non-publication is specifically requested in the 'About you' section of the questionnaire.

A short summary of the consultation results will be published on this page 1 month after the consultation closes. We shall issue a report with the qualitative analysis of the contributions in due course.

In case your response includes confidential data please provide a non-confidential version. Please read the Specific Privacy Statement below on how we deal with your personal data and contribution.

Protection of personal data & privacy statement

[Protection of personal data](#)

[Specific privacy statement](#)

Contact

CNECT-CONSULTATION-DATA-ECONOMY@ec.europa.eu

About you

* My contribution (Note that, whatever option chosen, your answers may be subject to a request for public access to documents under Regulation (EC) N° 1049/2001):

- can be published with my personal information** (I consent to the publication of all information in my contribution in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.)
- can be published provided that I remain anonymous** (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.)

* You are replying as:

- an individual in your personal capacity
- as a self-employed individual
- on behalf of a business/ organisation

* First Name

Martina -Luise

* Last Name

Krauss

* e-mail address

m.krauss@bitkom.org

* Name of your organisation

Bitkom e.V. - Federal Association for Information Technology,
Telecommunications and New Media

Website of your organisation

<https://www.bitkom.org/>

* Contact details of your organisation

Albrechtstraße 10, 10117 Berlin

* Please indicate the place(s) of operation of your business/organisation.

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

Please indicate the sector/s in which your business/organisation mainly operates:

- Manufacturing and processing
- IT services, including app/software developers
- Agriculture and Food
- Health and Care
- Energy and utilities
- Automotive and Transport
- Financial services/banking/insurance
- Retail/electronic commerce
- Wholesale trade
- Electronic communications
- Media, communication, entertainment
- Education
- Public sector
- Research
- Other

Which (if any) of these statements apply to you (it is possible to answer yes to several of these statements)?

- My organisation has significant business in the production and market commercialisation of sensor-equipped machines, tools, devices
- My organisation has significant business in internet-based platforms that also aim at generating data through the usage of such platforms by the various users
- My organisation is or is interested in accessing data held by an organisation which has significant business in the production and market commercialisation of sensor-equipped machines, tools, devices
- My organisation is or is interested in accessing data held by an organisation which has significant business in internet-based platforms that also aim at generating data through the usage of such platforms by the various users
- My organisation is an SME and/or a start-up

* Is your organisation included in the Transparency Register?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. See [Why a transparency register?](#)

- Yes
- No
- Not applicable

If yes, please indicate your Register ID Number.

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1. Localisation of data for storage and/or processing purposes

The main objective of this part of the questionnaire is to get detailed insights into the extent, nature and impacts of data localisation restrictions within the EU and what could constitute limited, justified grounds for such restrictions without unduly jeopardising the free movement of data within the EU (except for restrictions to the free movement of personal data for reasons connected with the protection of natural persons with regard to the processing of personal data. The Treaty on the Functioning of the European Union and the General Data Protection Regulation (GDPR) establish the free flow of personal data within the EU and set out the rules relating to that free movement).

Another important aspect is to find out to what extent businesses store or process data in multiple geographical locations within the EU and what are the reasons for this multiple location and, respectively, local storage or processing. The Commission also seeks respondents' views on the perceived impacts of the removal of data localisation restrictions within the EU. The Commission welcomes replies particularly from businesses, including SMEs, and public sector organisations.

Which of these statements apply to you in relation to data storage or processing?

- My organisation is a data service provider
- My organisation operates its own data infrastructure without using third-party services
- My organisation is a user of third-party data services
- My organisation is a scientific research organisation
- None of the above
- I don't know

Do you know about legislation or administrative rules or guidelines (including those adopted in the context of public procurement) requiring to store or process data in your or other EU countries (please see part 2 of the Staff Working Document linked to on the consultation webpage for the summary of data localisation restrictions identified so far)?

- Yes
- No

If yes, please specify:

- Legislative requirement
- Administrative rule
- Guidelines

If yes, the legislation, administrative rules or guidelines concern:

- Personal data for reasons other than the protection of natural persons with regard to the processing of personal data
- Business privately-held data
- Non-personal publicly-held data

Is your business or organisation required to comply with any of the measures?

- Yes
- No
- I don't know

Please describe briefly the requirement

1000 character(s) maximum

- § 146 Abs. 2a AO (statutory requirement)
- § 14b Abs. 2 S. 2 and 3 UStG (statutory requirement)
- §203 StGB (statutory requirement)
- Local Hospital Laws (statutory requirement) such as:
 - §48(1) Landeskrankenhausgesetz Baden-Württemberg
 - Art. 27 Bayrisches Krankenhausgesetz (4) S.6
 - §24 (7) Landeskrankenhausgesetz Berlin
 - §29 (2) Krankenhausgesetz für das Land Mecklenburg-Vorpommern
 - §13a (2) Saarländischen Krankenhausgesetz
- Kriterien für die Nutzung von Cloud-Diensten der IT-Wirtschaft durch die Bundesverwaltung (non-legislative):

Please see description in the position paper attached.

Is there any impact of such a measure, notably on your business or organisation?

- Impact on (you) providing a service to private entities
- Impact on (you) providing a service to public entities, e.g. following public procurement
- Impact on costs
- Impact on entering a new market
- Impact on launching a new product or service
- Impact on (your) ability to carry out scientific research projects/studies
- Other
- No impact
- I don't know

What is the impact (if any) of such a measure, notably on your business or organisation?

	Small	Medium	High
Impact on costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Impact on entering a new market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Impact on launching a new product or service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you identified an impact, what are the main additional costs or additional (regulatory) burdens:

- Storage of multiple copies
- Multiplication of servers
- Administrative costs
- Difficulties pertaining to scientific research
- Other
- I don't know

Please specify

1000 character(s) maximum

- Increased administrative costs in tax law due to necessary applications.
- Limited choice of service providers | IT services by certain professional groups.
- Market access partially hindered.
- Multiple storage of data required.
- Potential of cost savings cannot be fully realized.

As regards the storage of multiple copies, what is the impact?

- Small
- Medium
- High

As regards the storage of multiple copies, what is the type of cost?

- One-off cost
- Recurring cost

As regards the storage of multiple copies, please quantify the cost.

1000 character(s) maximum

As regards the multiplication of servers, what is the impact?

- Small
- Medium
- High

As regards the multiplication of servers, what is the type of cost?

- One-off cost
- Recurring cost

As regards the multiplication of servers, please quantify the cost.

1000 character(s) maximum

As regards the administrative costs, what is the impact?

- Small
- Medium
- High

As regards the administrative costs, what is the type of cost?

- One-off cost
- Recurring cost

As regards the administrative costs, please quantify the cost.

1000 character(s) maximum

For your own organisation's purposes, do you store or process your data in multiple locations within the EU?

- Yes
- No

If you answered yes, what are the main reasons?

- Economic
- Business continuity
- Access to performant technology
- Improve security
- Other

Please describe

1000 character(s) maximum

- For reasons of service/competition
- Latency | shorter distances between servers and customers

What is the importance of these economic reasons?

- Small
- Medium
- High

What is the importance of these business continuity reasons?

- Small
- Medium
- High

What is the importance of these security improvement reasons?

- Small
- Medium
- High

Please quantify the savings from multiple-country storage or processing

- More than 75%
- More than 50%
- Less than 50%

When providing IT-related services (e.g. cloud, applications, software, infrastructure, hosting, Over-The-Top, etc.), have your customers demanded that their data is stored or processed locally (in the same country as their relevant business establishment)?

- Yes
- No
- I don't know

What is/are the main reason(s) indicated by your customers?

- An assumption/perception that there is a local legal or administrative requirement to do so
- A lack of familiarity with EU-wide rules
- Other

What is the importance of assumption/perception by your customers that they have to comply with a local legal or administrative requirement as a reason to demand local storage or processing?

- Small
- Medium
- High

What is the importance of the lack of familiarity by your customers with EU-wide rules as a reason to demand local storage or processing?

- Small
- Medium
- High

In your opinion, should data localisation restrictions be removed within the EU?

- Yes
- No
- I don't know

In your opinion, what grounds would justify keeping data localisation restrictions within the EU?

- Public security
- Law enforcement needs
- Public policy (such as immediate availability of data for supervisory authorities)
- Public health (please note that patient data may already be covered by a free movement provision under the General Data Protection Regulation)
- Other

If you answered yes, how would the removal of the localisation restrictions be beneficial to your business or organisation?

- Faster start-up or scale-up of business
- Cost reduction
- Accessing more performant or secure technologies
- Entering new Member States market(s)
- Expanding sales to foreign market(s)
- Developing new products/services
- Other

How important this benefit would be (Faster start-up or scale-up of business)?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

Data localisation restrictions can often result in increased costs for businesses. It may be not economically viable for every service to establish local servers in certain territories. This applies in particular to SMEs (/Start-ups) which are eager to attract customers not only domestically but also in foreign markets but which do not have the financial capacity to make investments in expensive infrastructure. Especially in the cloud market, it is the ability to use the data in the most effective and secure location that supports the scalability and drives efficiencies. Equally, for cloud users localization measures reduce the overall offer and especially limit access to innovative products not yet provided in the users' country by a local provider.

How important this benefit would be (Cost reduction)?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

The costs for storage in a specific territory vary but may add up 20 to 30 per cent of the costs of an equally safe, accessible, and scalable off-premise data storage / data processing facility. Given the fact that IT budgets are limited, this amount of extra costs could be invested elsewhere (e.g. in smarter security solutions such as predictive security). Data localization can generally affect investment decisions and absorb resources which could be invested more flexibly into security structure.

How important this benefit would be (accessing more performant or secure technologies)?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

Data localisation does not ensure security per se. On the one hand security depends on how companies protect their systems and continuously respond according to best practices to the ever-growing sophistication of cyber criminals. Cloud business providers e.g. often take advantage of the Internet's distributed infrastructure and use sharding and obfuscation techniques to avoid data being gathered at one place and thereby making it an ideal target for criminals and surveillance. On the other hand, security depends on the data centre itself (capacity, upgraded hardware, experienced security personnel to counter intrusions and detect signals associated with potential breaches, vulnerability to natural disasters). Requirements to store data at multiple locations can have the negative effect that investments might go rather into location than the security and service of storage and processing itself. Furthermore, localization may only give the false impression of higher security. ♦

How important this benefit would be (entering new Member States market(s))?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

If data localization restrictions were to be removed it would be possible to offer services in new markets outside the host country of the business. Especially smaller member states' economies would benefit from a removal of data localization requirements as their markets are often too small to provide them with data storage and processing infrastructure. This leads to a lack of services which could be remedied with services provided from other member states.

How important this benefit would be (developing new products/services)?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

A removal of data localization requirements would help to foster cross-border cooperation in fields which are currently subject to localization restrictions and lead to new services. For example, in the health sector (see problems with German hospital laws) or in the education sector (cloud services could be offered to schools to store common teaching content. If school/education data is required to be stored locally, the potential of digital education is impeded). As data localization requirements vary throughout the EU, multiple branches are excluded from cross-border cooperation which impede innovation.

What kind of action at EU level do you consider appropriate to address the restrictions?

- The EU should not address the issue
- A legislative instrument
- Guidance on data storage / processing within the EU
- Increasing the transparency of restrictions
- Other
- I don't know

2. Access to and re-use of non-personal data

This part of the questionnaire aims to understand the data trading practices of businesses, and how all businesses, in particular SMEs, and other stakeholders access and trade non-personal data, and what are the perceived barriers to such trading and re-use of such data. The Commission seeks the views of businesses and other respondents on ways to enhance access to and re-use of data and data trading in Europe today.

2.1. Accessing data

This section is addressed to businesses and organisations of any size, and especially SMEs and start-ups which are seeking access to non-personal or anonymised data for running their businesses or developing new businesses. For consumer access issues, please see section 4.1 on data portability for non-personal. The aim is to find out whether and to what extent businesses and organisations have access to the data they need to develop or conduct their tasks, and furthermore to find out what role existing legislation plays in today's data markets, and whether there is a need to revise or introduce legislation to support the European data economy.

Do you currently depend to a significant extent on data resources that you acquire from others (for products or services you offer, for your internal business processes)?

- Yes
- No

Have you had difficulties in acquiring data from other business actors (i.e. limited or no access to the data) or have you been exposed to business practices that you consider unfair with respect to access to such data?

- Yes
- No

When acquiring data from other economic operators or when negotiating such acquisition: To what extent do you consider to be in a situation of equal bargaining power when negotiating data usage licences?

- To a great extent
- To some extent
- To a minor extent
- Not at all
- I don't know

When acquiring data from other economic operators or when negotiating such acquisition: How often do you consider having been exposed to a situation that in your view would amount to an abuse of dominant position (as defined in competition law)?

- Never
- Rarely
- A number of times
- Often
- I don't know

Does current competition law and its enforcement mechanisms sufficiently address potentially anti-competitive behaviour of companies holding or using data?

- To a great extent
- To some extent
- To a minor extent
- No
- I don't know

Have you entered contracts in which certain data was defined as a trade secret?

- Yes
- No

In which circumstances did you enter into such contracts:

- In relations to sales or acquisition of machines, tools and or devices with embedded sensors
- In relation to performing or buying data analysis services
- In relation to licensing in or out data for further re-use
- Other

Please explain

1000 character(s) maximum

All the above mentioned areas can be observed in practice.

How were the data in question defined as trade secrets?

1500 character(s) maximum

Trade secrets are defined by the contracting parties in the general contractual terms and conditions.

Who typically invokes the right (type of party)?

- Users of machines, tools and or devices with embedded sensors
- Producers of machines, tools and or devices with embedded sensors
- Data platforms gathering large datasets from embedded sensors in machines, tools and/or devices
- Enterprises performing data analysis of machine generated data on demand (of machine owner or producer)
- Other

2.2. Holding and supplying data

This section is addressed mostly to businesses that hold non-personal or anonymised data not subject to significant data processing ("raw" data), in particular data collected by sensors embedded in machines, tools and/or devices and who are in a position to share them. The aim is to get more information about data licensing practices.

Do you believe existing EU legislation sufficiently protects investments made into data collection by sensors embedded in machines, tools and/or devices?

- Yes
- No
- Only in some scenarios
- I don't know

If you/your organisation hold/s raw data or data sets, do you license its usage to others?

- No / to a minor extent
- Only to sub-contractors that perform tasks closely related to the organisation's business processes
- Only to companies within an economic group (e.g. parent and subsidiaries in a corporate group /holding; affiliate, etc.)
- Only within IT innovation environments, collaborating with other companies on concrete projects
- Yes, to a wider range of players based on paying licences
- My company makes certain datasets accessible as open data (accessible online, e.g. through a web API), licensing conditions allow many re-use options and re-use is free of charge, at least for non-commercial re-use of the data
- Other

Are you including the value of at least some of the data you hold as a business asset in your balance sheets?

- Yes
- No

Please explain why.

- This is not required by the applicable accounting/financing reporting standards
- I am not sure how to measure the value of the data I have or do consider that this would prove difficult
- Considerations of commercial strategy
- I have not given this a thought
- Other

2.3. Possible solutions

Sections 2.3.1 and 2.3.3 are directed at all respondents, including consumers and businesses. Section 2.3.2 is directed at businesses that deal with data collected by sensors embedded in machines, tools and/or devices. The aim is to receive input on what a possible future EU framework should look like to support a thriving, diverse and innovative European data economy.

2.3.1. General objectives for a future EU framework for data access

To what extent do you agree with the following statements (1=not at all,2=to a minor extent, 3=neutral/I don't know, 4=to some extent, 5=to a great extent):

	1	2	3	4	5
Trading of non-personal machine-generated data should be enabled to a greater extent than it is today.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The sharing of non-personal machine-generated data should be facilitated and incentivised.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investments made into data collection capabilities and data assets should be protected.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sensitive business and confidential data should always be safeguarded.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lock-in effects in the data market should be minimised, especially for SMEs and start-ups.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

2.3.2. Access for public sector bodies and scientific research

Could you agree to an obligation to license the use of (non-personal) data you hold for any of the following purposes (subject to conditions)?

- For the establishment of statistics by public statistical offices
- For government agencies for the prevention of public health or other specified risks
- For government agencies in order to address other societal challenges (e.g. improving urban planning, manage supply of energy)
- For scientific research that is funded from public resources
- Other
- I would not agree to such an obligation for any purpose

Do you consider there should be action at EU level to address access to such data for the entities mentioned in the previous question (the establishment of statistics by public statistical offices, government agencies for the prevention of public health or other specified risks, government agencies in order to address other societal challenges (e.g. improving urban planning, manage supply of energy), scientific research that is funded from public resources)?

- The EU should not address the issue
- Yes, but only voluntary measures (e.g. industry self-regulation)
- Yes, through legislative measures (for a scope to be defined)
- I don't know

2.3.3. Access for other commercial entities

The following questions ask for an assessment of a number of potential measures that might help to make more data held by one commercial entity available for re-use by another commercial entity.

Would you agree with the following statement: More data would become available for re-use if the Commission would issue guidance on how access, use and re-use of data should be addressed in contracts (data usage licences) – based on existing legislation (in particular the Trade Secrets Protection Directive, copyright legislation and the Database Directive)?

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

Non-binding guidelines based on the applicable law on how to regulate access and control rights for non-personal data in contracts could be useful as long as their purpose is to assist companies in understanding national and European legislation. However, they would only be useful as starting point for orientation. Most situations are too specific to be regulated by general guidelines. Mandatory (also factually binding) specifications are to be rejected.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

More specific guidelines could lead to uncertainties and concerns of stakeholders if the proposed schemes are not consistent with the actual business models and disruptive concepts. This could create barriers to new business models since deviations from recognized guidelines will be difficult to justify in the market and before courts.

Would you agree with the following statement: The optimal solution for making data collected by sensors embedded in machines, tools and/or devices available for re-use is to leave it entirely to the parties to decide (by contract) who should have the right to license the usage of these data, how and to whom.

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

The freedom to contract is an indispensable pillar of the data value chain, which does not allow any predefined and unilaterally specified or legally defined one-size-fits-all solutions. In the B2B environment, data access and use is normally defined in contracts between the different parties involved. New legislation is not preferable to the existing contractual solutions and cannot adequately represent the different interests in individual cases. There is no reason for a regulatory intervention before there is proven evidence that contract solutions are not sufficient or unworkable in practice. See more comments in attached paper.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

Would you agree with the following statement: More data would become available for re-use if more data holders used Application Programming Interfaces (APIs) to facilitate access to the data they hold, and these APIs were designed and documented in a way easy to use by third party application developers.

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

Generally the development of APIs as a means to facilitate an efficient use of data should be supported. Therefore, the Commission might contemplate to increase the funding of R&D projects in this area. However, APIs are only one way for the exchange of machine data. New legislation requiring businesses to share their data via APIs would pose a significant risk for companies in the EU. Ultimately, any such new regulation may provide the incumbents of the global digital industry low cost access to highly valuable machine/business data of EU companies. Hence, the EU - as the US and other states - should refrain from any new broad legislation in this area. Only tailor-made rules for certain specific markets (e.g. smart mobility) may be useful.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

Would you agree with the following statement: More data would become available for re-use if legislation would define a set of (cross-sector or sector-specific) non-mandatory contract rules for B2B contracts, possibly coupled with an unfairness control in B2B contractual relationships) for allocating rights to access, use and re-use data collected by sensors embedded in machines, tools and/or devices were defined.

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

The freedom to contract is an indispensable pillar of the data value chain, which does not allow any predefined and unilaterally specified or legally defined one-size-fits-all Solutions. For more comments see position paper attached.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

For some market participants, Standard contract clauses could be temporarily helpful, but in the Long term they would be a too tight framework and would hamper th creation of new business models.

Would you agree with the following statement: More data would become available for re-use if a set of recommended standard contract terms were to be drafted in close collaboration with stakeholders.

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

See comments above. Contract Terms should be defined by the parties in the negotiation of the contract and not by regulators.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

Would you agree with the following statement: More data would become available for re-use if a company holding data which it protects through technical means against illicit misappropriation had civil law remedies against such misappropriation (e.g. the right to seek injunctions, market exclusion, or to claim damages).

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

The creation of civil law remedies would not impact companies' policy regarding data-sharing, the current legislative framework is already well equipped.

Would you agree with the following statement: More data collected by sensors embedded in machines, tools and/or devices would become available for re-use if both the owner or user of the machine, tool or device and the manufacturer share the right to license the use of such data.

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

Data access, use and transfer is already governed to a certain extent by existing law (including data protection law, antitrust and competition law, contract and consumer law, IP law, database rules and rules on trade secrets). Access and usage rights to personal and machine-generated data should be negotiated between the contracting parties. Market imbalances are not apparent. The flexibility of existing contractual solutions should not be given up. For more comments see attached paper.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

In case licensing is shared, the data might lose value and the owners would probably be less inclined to invest in data collection and analysis. Moreover a first licensor might hesitate to make any investment in developing a market and infrastructure for respective data, which cannot be recovered because the data might be available from a second source not having had these costs or at lower royalties.

Would you agree with the following statement: More data would become available for re-use if the companies active in the production and market commercialisation of sensor-equipped machines, tools or devices were awarded an exclusive right to license the use of the data collected by the sensors embedded in such machines, tools and/or devices (a sort of sui generis intellectual property right).

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

The creation of an exclusive right to data is neither necessary nor recommendable. Such an exclusive right would automatically lead to the question who this right should be assigned to - a question to which there is no adequate solution possible.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

Severe negative impact on the data economy. Such rule would put the manufacturer in a superior position in the market. It would also be in conflict with trade secret standards. The data economy is typically consists of a long chain of suppliers, producers, manufacturers, devices and services: Creating such a right would immediately create as many data owners and significantly complicate the process.

Would you agree with the following statement: More data would become available for re-use if the persons or entities that operate sensor-equipped machines, tools or devices at their own economic risk ("data producer") were awarded an exclusive right to license the use of the data collected by these machines, tools or devices (a sort of sui generis intellectual property right), as a result of the data producer's operation, to any party it wishes (subject to legitimate data usage exceptions for e.g. manufacturers of the machines, tools or devices).

- Yes
- Sometimes
- No
- I don't know

Please explain.

1000 character(s) maximum

The debate on the creation of a "data producer's right" has raised considerable concerns. Such an extensive right would not only restrict the necessary flexibility of companies in the drafting of contracts, its content and scope would also be difficult to determine in practice. Existing legislation seems appropriate, along with contractual arrangements, to provide legal certainty to the parties involved. The added value of such a right and a compensation for the granting of data access by the respective rightholder is not apparent. Currently, data owners are not restricted in their decision as to how and with whom they want to share their data.

What impacts (if any, including economic) on competition and innovation would you expect from the solution described in the previous question?

1000 character(s) maximum

The impact of such a proposal would be extremely negative, due to complications and legal uncertainty it would entail.

To what extent would you agree to an obligation to license for the re-use of data generated by machines, tools or devices that you have commercialised under fair, reasonable and non-discriminatory (FRAND) terms?

- To a large extent
- To some extent
- To a minor extent
- Not at all

To what extent would you agree to an obligation to license for the re-use of data generated in the context of your online platform through its users under fair, reasonable and non-discriminatory (FRAND) terms?

- To a large extent
- To some extent
- To a minor extent
- Not at all

3. Liability

This part of the questionnaire aims to understand the level of awareness, as well as the respondents' experiences and issues related to liability for products and services coming out of Internet of Things (IoT) technologies and autonomous systems. The questions are also meant to gather evidence for a proper assessment of the adequacy of the [Product Liability Directive \(85/374/CEE\)](#) to respond to IoT and robotics liability challenges. The Commission seeks the views of producers and users of IoT technologies and autonomous systems in this section.

3.1. Extra-contractual liabilities: IoT and robotics products and services

Questions for producers/suppliers/manufacturers

As a producer/supplier: please indicate which new IoT and/or robotics technological developments you deal with.

- Non-embedded software/mobile apps
- Advanced and new sensor equipment
- Smart medical devices
- Robots, e.g. for care, surgery, industrial robots, other
- Automated cars
- Smart objects, i.e. thermostats, fridges, watches, cars
- Drones
- Other

Please specify

500 character(s) maximum

All of the above.

As producer of IoT/robotics devices, did you ever experience problems in not knowing in which category (product/service) to classify the device in order to comply with a specific liability regime on provision of services or manufacturing of products?

- Yes, to a significant extent
- Yes, to a moderate extent
- No, I never experienced this problem
- I don't know

Do you, as a producer, take into account the possibility of being held liable for potential damages when pricing IoT/robotics devices?

- Yes
- No

Have you ever been held liable for damage caused by your IoT/robotics defective device?

- Yes
- No
- I don't know

As a producer, do you have a specific insurance for IoT/robotics products to cover your liability in case of compensation?

- Yes
- No
- I don't know

Questions for consumers/end-users

As a consumer, have you suffered damage due to a defective IoT/robotics device?

- Yes
- No

As a consumer/user have you ever experienced a software security problem (e.g. failure of the software, cyber-attack) when using your IoT/robotics product?

- Yes
- Yes, but I do not know the exactly problem or cause.
- No

As a consumer/user of an IoT/robotics device, how easy it is to update the software of your device?

- Easy
- I can manage
- It is too inconvenient, complex, difficult
- My device is automatically updated/patched by the manufacturer or developer
- I do not have to update it
- Other

As a consumer, what (if anything) makes you reluctant to buy IoT/robotics products or services?

- They are technologically too complicated to use
- Price
- I am not interested
- Privacy risks
- Software security problems, Cyber security risks
- Legal uncertainty: I didn't know whether I would receive a compensation in case of damage
- In case of damage, it is difficult to understand where the cause of damage lies
- No reluctance at all
- Other

Do you think IoT/robotics products and services should be equipped with an event data recorder to track what the device was doing when the damage occurred?

- Yes
- No
- I don't know

In the EU country where you live, are there specific rules on liability for damage caused by the new technological developments, such as IoT/robotics products? If you are aware of such rules, please indicate them.

1500 character(s) maximum

In your opinion, who should bear the liability in case of damages caused by defects or malfunctioning of a smart device which combines tangible goods (a car), digital goods (an app) and services (e.g. data services)?

- The producer of the physical device
- The provider of the digital good (software and/or app)
- The producer of the physical device jointly with the provider of the digital good (software and/or app)
- The attribution of liability is better dealt through contracts on a case-by-case basis
- To be established on a case-by-case basis based on the best positioned to avoid risks
- To be established on a case-by-case basis based on the entity generating the highest risks
- Other

As end-user (consumer/company) active in the data economy, have you directly experienced/entered into agreements, or are you aware of contracts that reduce substantially the liability of providers of IoT products/services/robots?

1000 character(s) maximum

Existing rules do not unreasonably limit the liability in relation to the low price paid for the use of the IoT device / Service.

What type of contractual liability limitations have you faced (e.g. on errors, accuracy and reliability of data, defects, functionality and availability of service, risk of interception of information, cyber-attacks)?

1000 character(s) maximum

Under German law, product liability as well as liability for intent can not be excluded by contract. In contracts governed by the law of other jurisdictions, far-going limitations of liability are possible (all such restrictions may, for example, be contained in cloud agreements).

Which exclusions (damage to property, financial loss) or limitations of damages (e.g. caps) connected in any way with the use of IoT products/services/robots have you experienced or are you aware of?

1000 character(s) maximum

Typical limitation of liability is a maximum amount as a percentage of the annual fees.

Do you think the attribution of liability in the context of IoT/Autonomous systems products and services can adequately be dealt with through contracts?

- Yes
- Partially
- No

Please explain.

1000 character(s) maximum

The rules on product liability also apply to IoT devices and services.

3.2. Possible options and a way forward (both for consumers/end users and producers of IoT /Robotics devices)

Do you think a risk management approach in which the party that is best placed to minimise or avoid the realisation of the risk (e.g. the manufacturer of the IoT device, or the software designer) could be a way forward?

- Yes
- No
- I don't have information about what a risk management approach would entail and would thus prefer not to answer
- I don't know

In your opinion, who should bear the liability in case of damages caused by defects or malfunctioning of a smart device which combines tangible products, digital products and services?

1000 character(s) maximum

From an end user perspective, the person/contractual partner should be liable for damage caused by the good/service. Generally, liability should require fault and be reduced by contributory negligence of the user. Generally, we do not believe that rules specific to smart devices are needed when it comes to assigning liability. The existing rules in the Prod. Liability Dir. can apply to IoT devices. Additionally, like other business models, the IoT relies on complex supply & value chains which can involve a great number of service providers and users. In all those business models and equally for data driven services and connected products, liability is assigned in contract terms & conditions which provide the necessary legal certainty for parties in the supply chain. The idea of assigning liability to market players "which are best placed to avoid the realisation of such risk" raises many questions and concerns. See more comments in attached paper.

What type of liability, contractual or extra-contractual, is, in your opinion, the most consumer-friendly way to deal with damages caused by defects or malfunctioning in smart devices, which combine tangible products, digital products and services?

- Contractual
- Extra-contractual
- None of them
- I do not know

Do you think that the liability in relation to smart devices combining products and services require an ad hoc approach at EU level?

1000 character(s) maximum

No. Generally speaking, we do not believe that rules specific to IoT are needed when it comes to assigning liability. The existing rules in the Products Liability Directive can apply to IoT devices. In addition, like many other business models, the Internet of Things relies on complex supply and value chains which can involve a great number of service providers and users. In all those business models and equally for data driven services and connected products, liability is assigned in contract terms which provide the necessary legal certainty for parties in the supply chain.

Independently of who is considered liable, should there be a liability cap, i.e. an upper bound to the compensation of damages?

- Yes, for all IoT products
- Yes, but only for specific products in the experimentation/testing phase
- Yes, but only for specific products abiding by strict safety standards
- No
- I do not know

What is your opinion on the idea of best practices guidelines and/or expected care and safety standards that, if fulfilled, would automatically exclude/limit liability?

- I agree, for all IoT products
- I agree, but only for specific products in the experimentation/testing phase
- I agree, but only for product performing automated actions or taking independent decisions
- I do not agree
- I do not know

Is there a need for mandatory cyber insurance?

- Yes, for all IoT products
- Yes, but only for specific products in the experimentation/testing phase
- Yes, but only for product performing automated actions or taking independent decisions
- No
- I do not know

Do you feel protected by the current legal framework (both Business-to-Business and Business-to-Consumer) for algorithms, e.g. in case it can be proven that an accident has been caused by a bug in the algorithm?

- Yes
- No
- I don't know

Please explain.

1000 character(s) maximum

Generally speaking, we do not believe that rules specific to IoT are needed when it comes to assigning liability. The existing rules in the Products Liability Directive can apply to IoT devices. In addition, like many other business models, the Internet of Things relies on complex supply and value chains which can involve a great number of service providers and users. In all those business models and equally for data driven services and connected products, liability is assigned in contract terms which provide the necessary legal certainty for parties in the supply chain.

Should some sorts of standard certification or testbedding be envisaged for algorithm based services?

- Yes
- No
- I don't know

Who should be liable for defects or accidents caused by products embedding open algorithms, i.e. algorithms developed through cooperative platforms?

- The producer
- The user
- The participants to the cooperative platform jointly
- Nobody
- Other

4. Portability of non-personal data, interoperability and standards

4.1. Portability of non-personal data

This section is directed towards all respondents, including consumers, organisations and businesses. The objective of this section is to explore business situations where portability of non-personal data can unlock opportunities and/or eliminate blockages in the data economy, as well as the effects of such conditions on all the concerned actors.

Are you using or have you used services which allow you to port or retrieve non-personal data that you had previously provided?

- Yes
- No
- I don't know

Please specify the context.

- Cloud computing
- Online platform
- Other

Please specify.

500 character(s) maximum

How satisfied are you with the conditions under which you can port data?

- Very dissatisfied
- Dissatisfied
- Neutral
- Satisfied
- Very satisfied
- I don't know

What advantages does/would portability of non-personal data bring to you/your business?

- Build value deriving from these data
- Trade data on data trading platforms
- Give access to third parties to the data
- Switch easily service provider without losing these data
- Other

Please specify.

1000 character(s) maximum

- New business models could be developed
- Building value deriving from these data
- Give access to third parties to the data
- Switch easily service provider without losing these data

Is your business offering portability of non-personal data to its business or individual clients?

- Yes
- No

Please describe the conditions under which data portability is granted to your clients and how this influences your business model.

1000 character(s) maximum

Data portability is an important element in many business models and the conditions under which it is granted generally depends on the context and the client's needs and specifications.

Are you aware of other good examples of services offering data portability? Please specify.

1000 character(s) maximum

If you are a business user of cloud services or online platforms: Have you experienced difficulties in switching providers?

- Yes
- No
- I was not interested in switching providers

Do you see a specific need for businesses to receive non-personal data in a machine-readable format, as well as the right to licence the use of such data to any third party (i.e. the right of data portability under article 20 GDPR extended to any user and to non-personal data)?

- Yes
- No
- I don't know

If you have further comments on portability rights, please insert them below.

1000 character(s) maximum

Data portability can only extend to the degree that a title to data retrieval ("Datenherausgabe") exists. A title for data retrieval, the format and amount of data to be ported is to be agreed on contractually. Business and trade secrets are to be protected. Initiatives furthering the exchange of data and portability are to be supported as this constitutes a significant growth factor for digitisation, e.g. in order to avoid lock-in effects. However, there should not be a general right to portability of machine generated data. The best way to enable portability of non-personal data is to rely on international standards developed and agreed upon by the industry.

What are the possible effects of introducing a portability right for non-personal data regarding cloud services? Please consider positive and possible adverse effects, and consequences for your business and, more generally, for the user of the cloud service as well as the service provider and other concerned actors.

1500 character(s) maximum

Current discussions on portability standards should be supported in global standards bodies including fora/consortia. Contract terms requiring service providers to implement the portability of customers' data or new data portability rights would hamper innovation and technology adoption.. The best way to enable portability of non-personal data ist hat it must be based on international standards developed and agreed by the industry. The Commission should avoid an overly-restrictive approach to rules and regulations regarding data portability and allow companies to develop voluntary standards, regimes and other best practices that can be revised and tailored based on the needs of the clients.

What are the possible effects of introducing a portability right regarding non-personal data generated by sensor-equipped machines, tools and/or devices? Please consider positive and possible adverse effects, and consequences for your business and, more generally, for the user of the services as well as manufactures, service providers and other concerned actors.

1500 character(s) maximum

See above.

What are the possible effects of introducing a portability right for non-personal data regarding online platforms? Please consider positive and possible adverse effects, and consequences for your business and, more generally, for the business user of the platform, consumers, intermediary (data) services, the online platform and other concerned actors.

1500 character(s) maximum

4.2. Interoperability and standards

This section is primarily directed towards businesses and organisations. The objective of this section is to get the stakeholders' opinions on the best approaches to technically support data portability and access to data.

As a provider of cloud services, do you provide “standard-compliant” solutions?

- Yes
- No

As a user of cloud services, do you give preference to “standard-compliant” solutions?

- Yes
- No

For which reasons would/do you use a “standard-compliant” cloud solution

- Data portability of non-personal data
- Service interoperability
- Privacy, data protection compliance & Security
- Cloud management
- Service Level Agreement
- Other

What do you consider as a priority for facilitating access to data and to improve its technical and semantic discoverability and interoperability?

- Common metadata schemes (including differentiated access, data provenance, quality)
- Data catalogues
- Use of controlled (multilingual) vocabularies
- Common identifiers
- Other

What technical instruments should be used for promoting/implementing your priorities suggested in the previous question?

- Definition of new standards
- Improvement of existing standards
- Recommendations

What legal instruments should be used for promoting/implementing your priorities suggested in the same question?

- EU regulation
- Guidelines
- Support actions
- Other

Please specify.

1000 character(s) maximum

As open source technologies play a key role for cloud services it is important that awareness about open source technologies in the area of cloud is available. Therefore, the Commission should work on clarification regarding the procurement of open source. This could be done in the form of guidelines. Furthermore, the Commission should promote the use of Code of Conduct as developed in the Cloud SIGs.

Do you see the need for the definition of a reference architecture recommending a standardised high-level framework identifying interoperability interfaces and specific technical standards for facilitating seamless exchanges across data platforms?

- Yes
- No

Please explain.

1000 character(s) maximum

Additional contribution

Please feel free to upload a concise document, such as a position paper. The maximal file size is 1MB.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

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If you wish to add further information - within the scope of this questionnaire - please feel free to do so here.

2000 character(s) maximum

Contact

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