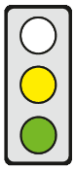
EU DATA STRATEGY – PART 2

cep**PolicyBrief** No. 2020-8

KEY ISSUES

Objective of the Communication: The Commission wants to establish common European data spaces.

Affected parties: Undertakings as well as the public sector.



Pro: (1) The establishment of sectoral European data spaces is instrumental to addressing barriers to data sharing, use and re-use.

(2) Digital product passports increase transparency on the "greenness" of products but should remain voluntary.

Contra: The obligation for banks under the PSD II Directive to provide bank account data of their customers to payment service providers should not serve as a model for other initiatives.

Proposals: (1) Even in complex set-ups where multiple actors are involved in the production of data, private contracts are an adequate means to govern data sharing, use and re-usage. The Commission should refrain from setting strict data usage or property rights.

(2) A review of the Type Approval Regulation is necessary to assess which data is essential for competition on new aftermarkets and whether a possible intervention should take place by regulation or rather by application of competition law.

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**
  - 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 cep**PolicyBrief** deals with common European data spaces in strategic sectors and public interest domains (Pillar D and Annex). They shall enable a more intense sharing, use and re-use of data within given sectors.
  - A first cep**PolicyBrief** dealt with
    - obstacles for the European data economy remaining pillars of the data strategy,
    - a cross-sectoral governance framework for data access and use (Pillar A);
    - investments in data and data infrastructure (Pillar B).

- **Common European data spaces in strategic sectors and public interest domains**

  In order to increase the availability of large pools of data, the Commission wants to promote the development of common European data spaces in, initially, nine strategic sectors and public interest domains – (1) Industrial (manufacturing), (2) Green Deal, (3) Mobility, (4) Health, (5) Financial, (6) Energy, (7) Agricultural, (8) Public administration and (9) Skills [p. 21–23]. Where possible, we refer to the Commission time planning.

  1. Industrial (manufacturing) data space
  - The potential value of use of non-personal data in manufacturing is estimated at 1.5 trillion Euro in 2027 (Study by Deloitte for Vodafone) [p. 22].
  - The Commission wants to [p. 26]
    - "address issues" with respect to usage rights for jointly generated industrial data with a Data Act (Q4 2021) and

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- assist the manufacturing sector in agreeing on conditions for data production and sharing, which are in line with competition rules and data protection rules (starting Q2 2020).

2. Green deal data space

– The EU aims at becoming climate neutral by 2050 under the EU Green Deal (see cep**Adhoc**). As the Commission sees data as decisive to achieve that goal, it wants to [p. 26 and 27]
  - review the INSPIRE Directive [2007/2/EC], which lays down rules on establishing an infrastructure for spatial information in the EU, and the Access to Environment Information Directive [2003/4/EC], which requires public authorities to make available environmental information held by or for them to any applicant at his request, under a "GreenData4All" initiative (4Q 2021 or Q1 2022),
  - develop digital "product passports" that provide information on the origin, durability and repair possibilities of a product (2020 and 2021),
  - establish an EU data space for smart circular applications, which shall first focus on the built environment, packaging, textiles, electronics, ICT and plastics sectors (2020 and 2021),
  - establish the "Destination Earth" project, a very high precision digital model of the earth allowing the visualisation, monitoring and forecasting of natural and human activity on the planet. The model shall support the efforts for a better environment as set out in the Green Deal (starting 2021).

3. Mobility data space

– The Commission deems data-sharing crucial in the mobility sector, especially with respect to connected cars, but also to other transport modes. Thus, the Commission wants to address digitisation and data in a "strategy on smart and sustainable transport" (Q4 2020). [p. 27]

– Since 2007, the EU Type Approval Regulation for motor vehicles [(EC) 715/2007] ensures access for independent repairers to car data held by car manufacturers that is required for car repair and maintenance. The Commission wants to review the Regulation in order to (1) make more car data available for mobility-related services, (2) look at how data can be made available, (3) clarify roles and rights of car owners and (4) to establish procedures to ensure data access to be in line with data protection rules (Q1 2021). [p. 27 and 28]

– The Commission wants to improve the efficiency and greenness of passenger and freight transport by [p. 28]
  - reviewing the Directive on harmonised river information services [2005/44/EC], which establishes a framework for the deployment and use of such services to support inland waterway transport (2021),
  - reviewing the Directive on Intelligent Transport Services [2010/40/EU], which establishes a framework for the deployment and use of Intelligent Transport Systems (ITS), i.e. traffic management tools (2021),
  - establishing common data sets as foreseen in the Regulations on
    - a Maritime Single Window [Regulation (EU) 2019/1239]; those data sets shall include information that might be requested by national authorities or port operators when a ship makes a port call (Q3 2021),
    - electronic freight transport information [(EU) 2020/1056, see cep**PolicyBrief**]; those data sets shall ensure a coordinated communication of regulatory freight transport information to EU competent authorities by economic operators (Q4 2022).

4. Health data space

– The Commission wants to [p. 29 and 30]
  - strengthen access of citizens to their health data, foster its portability and tackle barriers for the provision of health services and products across borders,
  - support the establishment of national electronic health records (EHRs) and allow for data interoperability between those records by applying the Electronic Health Record Exchange Format [see cep**PolicyBrief**].

5. Financial data space

– In a Digital Finance Strategy, the Commission wants to (Q3 2020) [p. 30 and 31]:
  - explore whether the approach in the Payment Services Directive [PSD II,(EU) 2015/2366, see cep**PolicyBrief**] – banks must provide access to customers' bank account data to payment service providers if customers request so – could be used for other initiatives as well,
  - facilitate access to financial and supervisory reporting data via common technical standards to allow for more efficient data processing.

6. Energy data space

– EU regulation grants costumers' access and portability rights with respect to their meter and energy consumption data. EU law also sets out obligations for electricity network operators to share data. To allow for increased availability and cross-sector sharing of data, the Commission wants to [p. 31]
  - address these issues in a smart sector integration strategy [COM(2020) 299],
  - adopt implementing acts, as foreseen in the Electricity Directive [(EU) 2019/944, see cep**Input**], on interoperability requirements and procedures for access to metering and consumption data (2021/2022), and
  - improve the interoperability in smart buildings to enhance energy efficiency (Q4 2020).

7. Agricultural data space
Production data, earth observation data and meteorological data can improve the agricultural sector's sustainability and competitiveness. Thus, the Commission wants to assess the "code of conduct on agricultural data sharing by contractual agreement", which was developed in 2018 by EU stakeholders mostly from the farming as well as the machinery sector (Q3/Q4 2020). [p. 31 and 32]

8. Public administration data space
– The Commission wants to start an initiative on EU and national public procurement data (Q4 2020) and provide a governance framework for it (Q2 2021) [p. 32].
– Data and information on EU and Member States legislation is critical for law enforcement needs, for an effective application of EU law and for enabling innovation in the legal tech sector, i.e. legal services supported by IT technology. Thus, the Commission wants to [p. 32 and 33]
- issue guidance on common standards and interoperable frameworks for legal information like the European Case Law Identifier (ECLI) for EU court decisions,
- ensure that data sources on the implementation of the EU budget are "findable, accessible, interoperable and reusable (FAIR)".

9. Skills data space
– There is need for "high-quality data on qualifications, learning opportunities, jobs and the skill sets of people". Thus, the Commission wants to [p. 33]
- push for digital credentials and datasets on qualifications and learning opportunities and support Member States in this regard (2020-2022),
- establish a governance framework for the "Europass Digital Credentials Framework", which provides for credentials in a "secure and interoperable digital format" (2022).

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 cep**Adhoc** and cep**PolicyBrief**].

Options for Influencing the Political Process

Directorate General: DG Connect

ASSESSMENT

Economic Assessment

The establishment of sectoral European data spaces is instrumental to addressing some of the existing **barriers to data sharing, use and re-use.** Transaction costs for both data suppliers and demanders 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 and templates for contractual terms and conditions. Nonetheless, any public action must be market neutral and must not impede the level playing field among market actors.

Even in complex set-ups where multiple actors are involved in the production of data, e.g. in car manufacturing, **private contracts** between these actors **are an adequate means to govern data sharing, use and re-usage. The Commission should**, when "addressing issues" of the manufacturing data space, **refrain from setting strict data usage or property rights** which define circumstances under which actors have access to said data. Any regulatory interference should be limited to cases where a non-contestable market power of one of the actors involved may cause competition problems.

Guidance by the Commission on which conditions for data sharing are in line with competition and data protection law is necessary and lowers the barriers for exchanging data: Currently, legal certainty is very low. Data poolers risk being sanctioned by antitrust authorities as it is unclear when data pooling could amount to anticompetitive information sharing (see also cep**Study**).

Public entities making spatial and environmental information available to a greater extent may allow for new innovative products and services. The update of the INSPIRE Directive should especially tackle the problem that many datasets are not easily accessible. Also, high initial investment costs for public authorities for setting up consistent data policies hinder their establishment as benefits often evolve only at a later stage. The amendment of the Directive on access to environmental information ("GreenData4All") should not only allow for such access based on requests, but simply by default.

Digital product passports increase transparency on the "greenness" of products. This information can be useful for consumers as they have no realistic possibility of researching it themselves. The passports **however** presuppose the availability of a great amount of trustworthy data. Producing this data may cause considerable costs. For this reason,

digital product passports **should remain voluntary.** Every producer should be free to decide whether his customers value the information offered by the passport and are willing to pay for it.

The EU Type Approval Regulation for motor vehicles forces car manufacturers to grant access to car related data in order to safeguard competition in maintenance and repair aftermarkets. Technological developments such as autonomous driving, lead to a higher data production and an increased relevance of this data. **A review of the Type Approval Regulation is necessary to assess which data is essential for competition on new aftermarkets and whether a possible intervention should take place by regulation or rather by application of competition law.**

The Commission's plan to support the establishment of national electronic health records (EHRs) and strengthen their interoperability across borders is to be supported. It facilitates the usage of health services in other EU Member States and thus increases competition among healthcare providers. Improved cross-border data interoperability may also improve the quality of care and reduce the amount of examinations that need to be carried out.

The obligation for banks under the PSD II Directive to provide bank account data of their customers – upon their approval – **to payment service providers should not serve as a model for other initiatives.** While it may foster competition on aftermarkets, it raises two issues. First, access obligations should be conditional upon the presence of a non-contestable dominant position in the respective market. The obligation under the PSD II is, however, independent of any market dominance. Second, banks should be able to charge access seekers in order to safeguard innovation incentives and intellectual property rights. The obligation under the PSD II does not provide for that.

Electricity customers can, under the Electricity Directive, access their consumption data and share it with companies other than their electricity providers, e.g. electricity suppliers or aggregators. Common interoperability requirements for access to such data facilitates their voluntary sharing, may promote competition and lowers barriers to entry also in a cross-border context.

Sharing agricultural data is, as in other sectors, often based on contractual arrangements. Industry specific codes of conduct that set non-binding guidelines for such contracts can facilitate data sharing and may especially incentivise small market players, e.g small farmers, with limited expertise to contribute their data. When assessing these codes, the Commission should focus on questions related to the delineation of personal and non-personal farm related data, data ownership and trade secrets issues.

Legal Assessment

Legislative Competence of the EU and Subsidiarity

Dependent on the design of the individual legislative measures.

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.

Conclusion

The establishment of sectoral European data spaces is instrumental to addressing barriers to data sharing, use and re-use. Even in complex set-ups where multiple actors are involved in the production of data, private contracts are an adequate means to govern data sharing, use and re-usage. The Commission should refrain from setting strict data usage or property rights. Digital product passports increase transparency on the "greenness" of products but should remain voluntary. A review of the Type Approval Regulation is necessary to assess which data is essential for competition on new aftermarkets and whether a possible intervention should take place by regulation or rather by application of competition law. The obligation for banks under the PSD II Directive to provide bank account data of their customers to payment service providers should not serve as a model for other initiatives.