

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

Maika

* Last Name

Föhrenbach

* e-mail address

maika.fohrenbach@amchameu.eu

* Name of your organisation

AmCham EU

Website of your organisation

<http://www.amchameu.eu/>

* Contact details of your organisation

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* 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

Localisation mandates and preferences take many forms, including regulations, certification/accreditation, administrative requirements, procurement policies, and regulatory guidance, and are often sector-based. They also include, for example, laws based on national security requirements (e.g., for classified data), company record laws, and archival requirements (requiring storage of records in a specific institution inside a country). An example is France, where Act No. 2002-303 of 4 March 2002 requires entities other than licensed healthcare establishments and professionals to obtain an authorisation from the French Ministry of Health in order to lawfully store patient health data. In England, the NHS's use of cloud computing - which makes up roughly 85% of the UK's health sector - has been held back by a 2009 policy called the "Information Governance Offshore Support Requirements" ("IGOSR").

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

Please describe

1000 character(s) maximum

The impact of data localisation on service providers and their users is enormous, especially considering the growing trend towards more data localisation in Europe: data localisation complicates cross-border business strategies, bans and restricts market access, limits choice of service provider, can limit access to data, limits access to state-of-the-art technologies, drives up costs, adds red tape, adds legal uncertainty, creates misconceptions that localisation provides for better security, and consequently limits uptake of cloud technologies by companies and governments.

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

	Small	Medium	High
Impact on (you) providing a service to private entities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Impact on (you) providing a service to public entities, e. g. following public procurement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Impact on costs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Impact on entering a new market	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Impact on launching a new product or service	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Impact on (your) ability to carry out scientific research projects/studies	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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

While data localisation measures may be justified in extremely limited circumstances (e.g. highly confidential government data), their impact on the growth of the European data economy is generally negative: they fragment the single market and raise costs for the deployment of cross-border data economy services. Such measures have a particular impact on the infrastructure underlying the data economy - such as cloud services. This impacts further on the wider economy by hindering innovation and competition for new products and services, as new start-ups may struggle to have quick and affordable access to the necessary cloud infrastructure to support their business models. Data localisation requirements also make it difficult for enterprises across Europe, large and particularly small, in every sector, to benefit from new technologies that enable them to more efficiently and cost-effectively store and analyse data in other Member States.

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

Most data storage providers usually have a parallel system in place where at least two copies of the data exist. However, having to set up a greater number of full backups brings more costs, not just to the service provider but also for its clients. The cost will depend on the number of copies, but it should be up to the client, not to lawmakers, to decide on where storage should take place.

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

The impact is of a similar nature to the one described for costs related to multiple copies. Investing in new servers should be a business decision, not a legislative requirement.

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

Same as above. Data localisation obviously brings a lot more administrative burden, including legal and compliance costs due to the adaptation to local requirements.

As regards the difficulties pertaining to scientific research, what are they

- Difficulties to access the data-sets needed
- Difficulties to process accessible data
- Other
- I don't know

As regards the difficulties to access the data-sets needed, what is the impact?

- Small
- Medium
- High

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

Multiple locations are important in order to ensure business continuity, service redundancy, and security.

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 this reason (access to performant technology)?

- 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

Please describe

1000 character(s) maximum

Customers, both public and private, often believe there are data localisation mandates even where none are applicable. In other cases, customers do not believe there is an actual data localisation mandate, but do not know how, or lack resources, to verify that there is none, or to understand what rules do apply to the use of cloud services. Moreover, sometimes there is simply a cultural concern about storing data somewhere outside the jurisdiction, when customers believe data is more secure simply because it is not in a different country. Such a hesitation is ironic, because it can prevent a transition to the cloud that actually provides more security - through a wider array of professional security measures and concentrated security protocols - than on-premises data storage can typically provide. In our view, a legislative measure would help to dispel these misunderstandings, accelerating cloud adoption within the EU.

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

Please describe

1000 character(s) maximum

Localisation mandates are rarely objectively justified. Public security can be one such justification. However, the vast majority of public sector data is not sensitive. We encourage governments to classify data to recognise this. Similarly, provided laws mandate that organisations in control of data disclose it in response to Law Enforcement Access (LEA) requests, there is no clear reason why LEA needs must be met through localisation. Such data localisation requirements would not be necessary if a coherent regime for cross-border access to data is agreed within the EU (which is underway) with safeguards that protect customer data. Likewise, there is no reason why sensitive data need be localised, provided safeguards are taken. The GDPR will introduce rules requiring protection of all EU personal data in (and outside) the EU, and is clear that the free movement of data within the EU should not be 'restricted'.

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

Please describe

1000 character(s) maximum

The removal of localisation mandates would send a clear signal that would help to immediately dispel customer confusion about localisation requirements. Customers would be more confident that there are no legal requirements preventing their migration to the cloud, and we expect cloud adoption rates within the EU would accelerate. This signal would also have benefits internationally. A clear statement against localisation mandates from the EU could help to deter some foreign governments from adopting localisation mandates of their own, preserving the free flow of data across borders and helping to make hyper-scale cloud services more economical for all in the longer term.

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

If data localisation measures in Europe were removed, this would facilitate the provision of cloud services, although this alone will not suffice. Dispelling misperceptions and driving cultural change will be equally important to accelerating the expansion and growth of cloud services. AmCham EU encourages the EU and Member States to lead by example through adoption of “cloud-first” policies that demonstrate willingness to enable data to be stored off-shore. These measures would enable cloud migration for public and private sector users, enhancing security, and efficiency.

How important this benefit would be (Cost reduction)?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

Removing localisation mandates would give cloud customers much more significant legal certainty about their ability to procure cloud services. This would have several benefits. First, it would reduce the legal and other resource-related spend required for regulated organizations to shift to the cloud, cutting the cost of transferring to the cloud and speeding EU cloud adoption rates. Second, by speeding adoption rates for cloud services, particularly in sectors where funds are limited (e.g., hospitals) a net consequence would be cost savings for those customers (and often for public sector budgets too) - because the cloud can be demonstrably, and significantly, less costly overall than on premise solutions in many use cases.

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

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

By removing localisation mandates, the EU would ease the ability of organisations to switch to cloud services. This would deliver an immediate and important security benefit, as cloud services are typically more secure and better protected than their on-premise counterparts. In addition, removing localisation mandates will help enable cloud data centres to be dispersed geographically, providing benefits in terms of latency and security through geographic redundancy. Most natural disasters, for example, do not take place in parts of Europe at once - so a distributed cloud service can continue to provide uninterrupted services, even where another - which is required to maintain centres locally - could be more easily disrupted.

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

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

Where data localisation mandates apply, but where an operator may not currently offer a data centre, the operator effectively cannot offer cloud services within that Member State (at least to the extent that the relevant sector is regulated by that mandate). Eliminating mandates would directly contribute to expanding market base in Member State markets. This effect would be most significant for small Member States and sectors with lower total values, where local data centre investments would be disproportionate.

How important this benefit would be (expanding sales to foreign market(s))?

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

The EU is an important jurisdiction, and as noted above, if the Commission acts to remove localisation measures, and prohibiting future such measures, this sends a strong message to third countries. In this way, the Commission's action could help "lead the world" towards fewer / less significant localisation measures. This will help reduce the cost of providing services into those foreign markets - potentially a boon to European start-ups seeking to expand beyond Europe.

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

- Small
- Medium
- High

Please quantify if possible

1000 character(s) maximum

Removing localisation mandates would reduce the cost of additional data centres and promote EU-wide competition, enabling lower prices for customers, and helping customers to receive more efficient, cost-effective services through the cloud. As a result, businesses using the cloud are also likely to be able to launch new innovative services of their own more easily, triggering benefits both in terms of cost as well as 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

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

What are the reasons for this?

- The data have been generated in view of onward sale
- I would like to generate additional revenue from the data
- I have amortised the costs of data generation already and would like others to innovate or benefit from the data
- By the nature of the data it is important that they are re-used as widely as possible (e.g. data on available means of transport; data that can have the character of a quasi-standard in a certain field)
- I am legally obliged to license the data

To what extent does the intended use of the data by your business partner influence the price you request for the data use?

- Not at all
- To a minor extent
- To a major extent (e.g. lower licence fees are requested for non-commercial use of the data)

Which type(s) of data do you share and which type(s) of data do you not share?

1000 character(s) maximum

The Commission has rightly recognised that for the data economy to grow, industry players – in some cases, and depending on the circumstances – will need to prevent disclosure of data in order to lawfully protect themselves against competitors. We welcome the Commission's intent to mitigate divergent national laws, and agree that non-binding guidance could be a useful vehicle for this purpose. We encourage further guidance and tools to be released for the purpose of assisting public-sector organisations that wish to create new platforms and ecosystems to open up public datasets for a broader range of uses. At the same time, we encourage sharing best practices for both public and private sector organisations on developing, managing and securing APIs.

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 checked="" 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 checked="" 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 checked="" type="radio"/>
Sensitive business and confidential data should always be safeguarded.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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

To the extent such guidance would take the form of model contract terms, such contracts should be optional, and based only existing law. There should not be a mandate to use standard-form contracts, as this would undermine the freedom to contract in B2B relations and would also fail to provide for a fully flexible solution to match the many different scenarios and market realities. We also note that many small organizations, such as SMEs, may not have datasets of sufficient size or with sufficient statistical validity to benefit third parties, therefore model contracts may ultimately prove to be less effective than anticipated.

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

Innovation in this contents is largely driven by the ability of businesses to collect data and use it for purposes they are free to determine. A business will not invest in specialized IoT sensors, for example, unless it can derive a benefit from licensing or using that data. Provided B2B freedom to contract is not regulated or limited in any way, Commission guidance and / or model contracts are unlikely to significantly undermine or improve that incentive.

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

Today, companies determine issues around technical data through contracts with their customers, suppliers, researchers and other counterparties. These contracts are negotiated by organisations that have a deep understanding of the context in which data will be developed, shared and exploited. The resulting arrangements reflect that context - which can vary from an airline leasing a jet engine, and sharing the data generated by the engine with the manufacturer of the engine, to a third-party analysing data generated by an assembly line, to an academic researcher reviewing data pulled from the energy grid to develop dynamic grid management algorithms. The sheer variety of scenarios involving technical data in B2B dealings are best handled by bespoke contractual arrangements - not by one-size-fits-all rules. Today's legal framework has delivered, and continues to deliver, pan-European innovation and economic growth in industries that are data-reliant.

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

A positive impact. In the last half-decade, throughout all sectors of the European economy, industrial generation of data has expanded dramatically. This explosion of data has generated new demand for products and services to help firms manage and derive use from these new data streams. Markets for the sale of industrial equipment capable of generating relevant data are typified by fierce competition. The growing market for systems to help firms handle and make sense of this growing data cache is likewise fast-growing and competitive. These results are the fruit of investment (enabled by predictability of law and flexibility of contracts) and open markets.

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

We completely agree with the Commission's assessment about the importance of APIs in today's data economy. APIs enable developers and third parties to build new services on top of organisations' data. Our members routinely release APIs in order to create ecosystems or platforms for third parties to access and use datasets. At the same time, our members also enable organisations to manage and secure these APIs. We encourage further guidance and tools to be released for the purpose of assisting public-sector organisations that wish to create new platforms and ecosystems to open up public datasets for a broader range of uses. At the same time, we encourage sharing best practices for both public and private sector organisations on developing, managing and securing APIs.

What would be the best way to achieve this?

- Promoting knowledge about the benefits of using APIs
- Providing technical guidance on how to design developer-friendly APIs
- Introducing API labelling systems (to measure e.g. documentation, developer availability, access licence costs, etc. of existing APIs)
- Other

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

We question the value of default contract rules. The data economy spans virtually every sector, from hospitals to agriculture; no single contract template is likely to be applicable. It may be better for the Commission to monitor developments in particular sectors where concerns about specific practices or imbalances in negotiating power are identified, and once understanding the needs, starting a broad stakeholder dialogue on how to remedy.

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

An “unfairness control” which restricts B2B freedom of contract could undermine incentives for innovation. New services that would otherwise be subsidized by the promise of the creation of valuable datasets would need to be priced differently – and higher – resulting in smaller markets for innovations and reduced demand. We also do not believe model contracts based on today’s laws would have an appreciable difference on already highly competitive and innovative markets.

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 previous question: We question the value of default contract rules. The data economy spans virtually every sector, from hospitals to agriculture; no single contract template is likely to be applicable. It may be better for the Commission to monitor developments in particular sectors where concerns about specific practices or imbalances in negotiating power are identified, and once understanding the needs, starting a broad stakeholder dialogue on how to remedy.

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

see previous question: An “unfairness control” which restricts B2B freedom of contract could undermine incentives for innovation. New services that would otherwise be subsidized by the promise of the creation of valuable datasets would need to be priced differently - and higher - resulting in smaller markets for innovations and reduced demand. We also do not believe model contracts based on today’s laws would have an appreciable difference on already highly competitive and innovative markets.

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

There are already some civil law remedies available against many types of misappropriation - including, most recently, through the EU’s newly adopted Trade Secrets Directive. We do not believe there is a need for additional remedies, although of course we would be open to receiving and addressing more information if the Commission believes it has identified further gaps.

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 answer here depends on the detail of the proposed new civil law remedies. If the European Commission were to decide to move forward in this space, we would encourage it to be careful not to propose remedies that could chill data use, and to avoid resulting scenarios where companies become risk averse and stop sharing data for fear of placing themselves in a position where they may be liable under these new proposed remedies.

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

In many instances, such sensors already make available the data they collect to the user of the tool on an automated basis through licenses. This is in fact usually a selling point for manufacturers of "smart" or sensor-based equipment, and so market forces typically encourage and reward this type of data sharing already. There can be many reasons where manufacturers do not make such data available. For example, a manufacturer might like to make variations on a manufacturing technique and measure the performance of products after each change (e.g., with and without the variation in technique). This data is meaningful and important to the manufacturer, but often irrelevant for the user of the equipment so long as the equipment functions as intended.

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

Any solution that mandates a greater amount of sharing of data between manufacturer and users could undermine incentives of manufacturers to make these types of tools. Market forces already reward sharing of such data in many cases, and where they do not (e.g., where data is highly technical), the manufacturer may be concerned that disclosure of this type of data will benefit not the user, but - more realistically - the manufacturer's direct competitors. This will therefore discourage the manufacturer to design products with sensors in the first place.

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

AmCham EU member companies both create the machines that collect data and produce the data itself. From a systematic perspective as well as from our experience, we believe that contractual solutions are sufficient to ensure both parties' interests are protected. Any consideration of a prospective data producer's right should consider extremely carefully the potential impacts on the still nascent data economy.

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 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

AmCham EU does not believe a sui generis IP right is necessary. Companies already have market incentives to share data, and requiring companies to share data with users on the basis of a new right is neither justified in evidence nor will it account for the need for incentives for innovation. Moreover, such a right could introduce unhelpful and new complexity. There are thousands if not millions of licenses, cross-licenses, and other contracts to make available and share data in place today. All these arrangements would need to be exhaustively reviewed and revised if a new right were put in place, and companies working together in joint ventures and collaborations could be discouraged from sharing data for fear of putting themselves in a position where this new right might be breached through their collaborations.

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

We believe a sui generis right for the data “producer” to access data from products equipped with sensors will undermine incentives for innovation. Manufacturers are already deciding today whether to produce products with sensors today and they should be rewarded for that choice with the right to decide whether and how to share the data created by those products with end users. In many cases, the data is shared, but in cases where it is not, this is often because of a concern about the use of this data for competition against the manufacturer. Furthermore, such a right would not take account of the fact that the data from some sensors is used in many cases to effectively form part of the value received by a manufacturer in exchange for a sale. Consequently, such a right could push up prices of sensor-based products, as manufacturers seek other ways to find profit.

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

AmCham EU members deal with all of the technological developments listed above:
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

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

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

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

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

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

AmCham EU believes consumers should be protected against the harms caused by defects in IoT devices to the same extent they are protected against defects in other devices. We are not aware of any evidence, however, that existing consumer protection and liability regimes are deficient in delivering such protections. New liability rules targeted solely at IoT devices could lead to legal and business uncertainty and deter investment in innovative new products in the IoT device sector. Nevertheless, differences in these regimes across EU Member States can in some cases impose barriers to consumers seeking to obtain effective relief, while also imposing administrative and other costs on businesses operating on a pan-European basis (costs that are particularly difficult to bear for SMEs). Accordingly, while we do not see the need for new liability rules, the Commission's ongoing efforts to further harmonize this area across Member States could provide value to both consumers and suppliers.

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

Please explain.

1000 character(s) maximum

We understand the Commission's decision to further study whether new rules are needed to handle issues relating to liability in connection with the "data economy" (particularly in the context of the Internet of Things). It is important that no "gaps" in liability exist for consumers and we agree that identifying fault in the connected device economy may at times be difficult given the number of different hardware and software suppliers involved in individual products. However, contract terms are the best way to handle liability issues, as they provide predictability and certainty for businesses engaged in the supply chain.

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. AmCham EU strongly supports robust consumer protections and we believe that the existing consumer acquis, including the Product Liability Directive, the Consumer Rights Directive are fit for purpose, and we are not aware of any evidence suggesting that new liability rules directed at such devices are necessary.

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

We are not aware of any evidence that existing rules are not sufficient to protect consumers with regard to IoT devices, and caution that any attempt to impose IoT-specific rules could generate significant uncertainty that could weaken incentives for innovation.

While a carefully tailored liability cap could help to incentivize IoT development, more experience with the application of existing rules is preferred. Product safety guidelines coupled with an exemption from liability could be one way in which to deliver this type of cap, but the IoT market's diversity should be taken into account.

IoT security is very important, but there are many ways to achieve that goal, and mandatory insurance are not the best approach.

We are not aware of any real-world consumer threat from "bugs in algorithms." On the contrary, algorithms typically improve consumer safety, because they enable suppliers to incorporate real-time, real-world data.

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

- Yes
- No
- I don't know

Please explain.

1000 character(s) maximum

The IoT devices market is evolving rapidly and is extremely diverse. Products range from smart toasters and smart cars to self-flying drones and industrial sensors. Efforts to impose a standard certification regime on this diverse universe could significantly curtail innovation, while the process of certification would almost certainly slow product development and market entry - something that Europe should avoid if it wishes to be a global leader in this area. Moreover, where market demand for certification along certain dimensions may arise (e.g., with respect to product safety or security), many existing European and international standards are already available to suppliers to meet such demand. Nonetheless, we support industry-led efforts to establish voluntary standards in relation to some parts of the IoT - e.g., in relation to communication between different types of machine, for example in consumer homes.

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

Please specify.

1000 character(s) maximum

AmCham EU believes existing EU and Member State consumer protection and liability rules are more than adequate to address any concerns that may arise with respect to products that incorporate or utilize open algorithms. Indeed, many products with embedded algorithms, such as mobile phones, have been on the market for many years. Given the lack of evidence that existing rules are inadequate to address these issues, we do not see a clear need for further regulation at this time.

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

Please briefly list your reasons of dissatisfaction

1000 character(s) maximum

The Commission is right to emphasise the importance of competition to the data economy; competition is a powerful driver of innovation. At the same time, we urge the Commission to exercise caution before moving to propose new data portability measures. The new data economy is still forming, and it is far from clear that the market is failing to provide sufficient interoperability or data portability. Indeed, there are a number of productive industry efforts already underway to foster interoperability, including and particularly in the context of international standards bodies. At this stage, AmCham EU believes that the best way to address these issues is contractual.

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

In general, AmCham EU believes the market is responding well to customer demand for data portability and therefore do not see significant evidence of the need for regulatory intervention. Also, to the extent AmCham EU members rely on data portability features offered by others, we believe these features generally work well.

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

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

1000 character(s) maximum

There are a number of productive industry efforts already underway to foster interoperability, including and particularly in the context of international standards bodies. Furthermore, the General Data Protection Regulation's portability requirement has yet to be implemented; while that rule applies to personal data, its implementation may produce learnings that could be relevant for non-personal data as well. However, it is too early to have any certainty on the right way forward.

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

We currently do not witness any market failures or other market distortions related to the portability of non-personal data that would necessitate the need for an additional right of this kind. Cloud providers should – and do – compete on data portability features in order to attract customers, but providers should also be free to innovate with new systems and offerings that do not conform to the current standard formats, since these non-standard alternatives might provide better solutions to the specific needs of customers. A requirement to make all non-personal data submitted to a service portable in a predefined machine-readable format could discourage investment in new and innovative services and make cloud service providers less able to respond to market needs and customer demands.

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

Again, we are not aware of any evidence of market failure that would justify adopting such a data portability right. On the contrary, there is substantial evidence that suppliers are already providing many robust data portability options to accommodate varying customer needs. We also have concerns that introducing this type of a portability right could undermine incentives for innovation in the area of cloud services and leave European suppliers at a competitive disadvantage.

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

We believe the reasons against adopting a data portability obligation with regard to sensor-equipped machines, tools, and/or devices are essentially the same as those articulated in response to the previous questions.

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

We believe the reasons against imposing a data portability obligation on online platforms are largely the same as those highlighted in responses above. Moreover, the broad diversity in the purposes, functions, and operations of services that may qualify as “online platforms” means that imposing such an obligation could have vastly different, undesirable, and unpredictable impacts in different sectors.

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

We welcome the Commission's recognition of existing standards processes. The Commission's commitment to further promoting and progressing ongoing and future standards-based initiatives would be helpful. Standards should remain voluntary to retain the flexibility necessary for a rapidly evolving technical environment.

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

Although a common framework can be helpful for interoperability and portability, attempting to define one broadly is not a practical effort. The wide variety of technical implementations in the current ecosystem makes it impossible to define a generalized reference architecture or framework beyond that provided by an entry-level systems design textbook. Any effort to define common interfaces or standards above the syntactic level (which is already well served by JSON, XML, etc.) will be unable to keep up with changing technology and implementation.

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.

228dc279-f8a8-473c-b3d8-1002a029a43c/AmCham_EU_position_data_economy_final.pdf

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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