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CDO

EACB ANSWER TO THE EC ONLINE QUESTIONNAIRE ON BUILDING A EUROPEAN DATA ECONOMY

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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.

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
- [x] My organisation operates its own data infrastructure without using third-party services
- [x] 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:

- [x] Legislative requirement
- [ ] Administrative rule
- [ ] Guidelines

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

- [x] Personal data for reasons other than the protection of natural persons with regard to the processing of personal data
- [x] 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

Generally speaking, requirements stetting from financial supervision. For example, Chapter 2 Section 19 of the Finnish Act on Book-Entry Securities and Settlement systems requires the Central Securities Depository to have adequate contingency plans, including IT systems etc. located in Finland. In addition to this, the Finnish FSA has in practice limited the use of cloud computing due to security concerns.

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

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

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

	Small	Medium	High
Impact on (you) providing a service to private entities	☐	☐	☑
Impact on costs	☐	☐	☑
Impact on launching a new product or service	☐	☐	☑

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

System maintenance costs, installation and upgrade costs. Lack of flexibility, lack of choice for systems, unjustified position in the market, lack of competence and competitive advantage. No access or restricted access to better performing technology.

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

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

- ○ Yes
- ○ No

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

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

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

Please describe

1000 character(s) maximum

Before considering any actions to be taken at EU level to address the data localisation restrictions, the EACB suggests the Commission to undergoing an assessment of the current situation in Europe and, depending of the funding of the assessment, address the issues and its multifaceted aspects and situations.

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

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.	○	○	○	◉	○
The sharing of non-personal machine-generated data should be facilitated and incentivised.	○	○	○	◉	○
Investments made into data collection capabilities and data assets should be protected.	○	○	○	◉	○
Sensitive business and confidential data should always be safeguarded.	○	○	○	◉	○
Lock-in effects in the data market should be minimised, especially for SMEs and start-ups.	○	○	○	◉	○

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

The issue to be regulated in Europe is a (legal) clarification for all MSs that, based on freedom of contract, contract partners should have the right to define the use and ownership of machine data produced by sensors or other means of data collection (e.g.satellite monitoring) in bilateral contractual relationships. Any regulation limiting such right would be a significant constraint to companies freedom of contract, and would have to be justified by more important benefits. The current problem is that in some EU countries there is no ownership of data given the immaterial nature of data. To remedy this, ownership of data could be defined in the same way as ownership in intellectual property, i.e. absent other contractual provisions data should belong to the owner of the device generating it, who has the right to allow access to third parties for defined/limited usage. We believe that guidance on how to avoid mis-usage of data would be welcome, as opposed to guidance on data usage.

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: 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

EACB members believe that the optimal solution is to leave it entirely to the parties to decide, based on freedom of contract. EACB members believe that guidance on how to avoid mis-usage of data would be welcome, as opposed to guidance on data usage which is based on a contract.

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

1000 character(s) maximum

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

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

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

Freedom of contract is a key right for parties to enter into a relationship. Therefore any contractual agreement cannot be 'unfair' as long as there is a clear legal provision that the right to use data and the ownership of data can be defined in contracts without any limitation. EACB members believe that guidance on how to avoid mis-usage of data would be welcome.

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

1000 character(s) maximum

Would you agree with the following statement: More data would become available for re-use if a 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

Freedom of contract is a key right for parties to enter into a relationship. EACB members believe that guidance on how to avoid mis-usage of data would be welcome.

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

1000 character(s) maximum

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

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

Please explain.

1000 character(s) maximum

EACB members believe that 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. Moreover, EACB member think that as long as those 'technical means against misappropriation' are in alignment with the (bilateral) contract, no additional civil law remedies are required, as civil law per se is the basis of contractual agreements.

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 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

Yes, as long as regulation respects freedom of contract, which should be sufficient to define the usage of machine data, between the owner or user of the machine, tool or device and the manufacturer.

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 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

We think that this this would be a limitation to the freedom of contract to define the usage of machine data.
A sufficiently comprehensive and accurate definition of machine-generated data, adequately covering the many types of devices involved in generating data, ranging from consumer devices (e.g. smartphones) to industrial machinery and smart appliances, does not seem to exist. At the same time, it is important to keep in mind that, to the extent that data generated by devices is used by banks, all these different types of data will already be subject to specific regulations, e.g. PSD2 and other banking regulations. Actions related to machine-generated data should therefore on the one hand aim to clarify the general definition and on the other to enumerate specific use cases by also making reference to the legislation that already applies to each of them.

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

We think that this this would be a limitation to the freedom of contract to define the usage of machine data.
A sufficiently comprehensive and accurate definition of machine-generated data, adequately covering the many types of devices involved in generating data, ranging from consumer devices (e.g. smartphones) to industrial machinery and smart appliances, does not seem to exist. At the same time, it is important to keep in mind that, to the extent that data generated by devices is used by banks, all these different types of data will already be subject to specific regulations, e.g. PSD2 and other banking regulations. Actions related to machine-generated data should therefore on the one hand aim to clarify the general definition and on the other to enumerate specific use cases by also making reference to the legislation that already applies to each of them.

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

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

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

Please specify

500 character(s) maximum

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If the manufactures do not provide adequate procedures/measures, how to
secure an update is a complex process. Once an element in the chain is
tainted (e.g. an eSignature), it is potentially more risky to update than
not. Users therefore need to obtain knowledge of the functioning and impact
of software updates in order to take appropriate action.
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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)?

- [x] The producer of the physical device
- [x] The provider of the digital good (software and/or app)
- [x] 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

Please motivate your answer.

1000 character(s) maximum

We think that in case of damages caused by defects or malfunctions of a smart device which combine tangible goods, digital goods and services the liability should be borne by whoever gets paid for the device.

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

We think that in case of damages caused by defects or malfunctions of a smart device which combine tangible products, digital products and services the liability should be borne by whoever gets paid for the device.

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

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

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

1000 character(s) maximum

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

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

- ○ Yes
- ○ No
- ○ I don't know

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

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

Please specify.

1000 character(s) maximum

We think that defects or accidents caused by products embedding open algorithms, i.e. algorithms developed through cooperative platforms, the liability should be borne on whoever gets paid.

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

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

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

- ○ Yes
- ○ No

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

1000 character(s) maximum

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

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

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

- Yes
- No
- I don't know

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

1000 character(s) maximum

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

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

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

1500 character(s) maximum

4.2. Interoperability and standards

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

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

- ( ) Yes
- ( ) No

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

- (•) Yes
- ( ) No

If yes, based on which standards?

1000 character(s) maximum

ISO-standards, PCI DSS

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

- [ ] Data portability of non-personal data
- [ ] Service interoperability
- [x] 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
- [x] Other

Please specify.

1000 character(s) maximum

Market-driven API development

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

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

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.

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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