Finding a European Way:
the EU's Quest to Promote the Data Economy

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Introduction

The European Commission published its communication on a *European strategy for data* in February 2020 and began a consultation on this strategy which ended 31 May. The main proposal of this ambitious strategy is the creation of a common European data space – a single market for data – which would store personal data, non-personal data and sensitive business data in a secure manner.[1] This would include a cross-sectoral European data space alongside sectoral specific data spaces for sectors such as manufacturing, health, transport and others.[2] These data spaces would ensure that data can flow between different economic sectors and Member States of the EU. European rules, values and standards would be enforced though high standards of governance and fit-for-purpose legislation.[3]

Motives for the strategy

Underpinning the Commission's ambition is its belief that the vast majority of data produced in Europe is currently left unused, despite the fact that this data could be used to generate enormous economic and social benefits.[4] Greater data sharing can promote advances in diverse fields such as Artificial Intelligence, healthcare, the European Green Deal, and the efficiency of energy and resource consumption.[5] It can also facilitate the emergence of new goods, services and businesses and enable better governance and public services. With striking timing, the strategy also noted how "aggregated and anonymised" data could track potential epidemics[6] - which has since become a central concern of the Commission.

A positive feature of the strategy is that these potential benefits are balanced against a focus on ensuring respect for European values throughout, including privacy and data rights. In contrast, the strategy perceives the US to be a model in which private companies dominate the data economy with few government constraints and China to be a model where government intrusion undermines the rights of individuals. The strategy proclaims that "We have to find our European Way."[7] A related theme of the strategy is the Commission's concern that the EU's digital sovereignty could be infringed by what it calls external "Big Tech" companies, which may not share its values.

This paper will examine the key data challenges facing the EU and discuss three features of the data strategy that are proposed to address these challenges. First it will assess the proposed investment, governance and data structures, which form the heart of the data strategy. Second, it will examine proposals to promote data sharing more generally, via initiatives and clarifications relating to legislation, rules and guidance. Third, it will reflect on proposals to ensure that citizens and SMEs can both contribute to, and benefit from, the growing European data economy. Finally, it will explore the data foreign policy which is proposed to ensure the EU can play a pivotal role in shaping the emergence of a global data economy.

Overall, the data strategy is assessed here as an ambitious and broad ranging plan to utilise Europe's enormous amounts of data for the benefit of society, while ensuring that privacy, data rights, inclusivity and fairness are maintained.

Europe's Key Data Challenges

Two key challenges facing the EU's data economy are outlined in the strategy: first, the current lack of sufficient data sharing within the EU, and second, the risks that the Commission believes external "Big Tech" companies pose to the EU's digital sovereignty and competition. Some of the key reasons for insufficient data sharing within the EU, particularly in the private sector, are outlined as follows:

1. Businesses often lack economic incentives to share data with each other. In some cases, they may additionally fear losing a competitive edge if they do so.[8]
2. A lack of trust and legal clarity about data use which can prevent data sharing between businesses.
3. Market imbalances, which can inhibit fair or suitable terms for data sharing with smaller parties.

4. The use of data formats and standards that lack adequate compatibility, is a major obstacle, especially between different economic sectors.[9]
5. Insufficient cloud uptake in both private and public sectors within the EU.[10]

The lack of access to publicly held data, and the lack of data sharing by the private sector with the public sector, are also issues noted.[10]

A second key concern expressed in the strategy is that "vast amounts of data" in Europe are controlled by what are referred to as the external "Big Tech" companies, upon which Europe is highly dependent. The market dominance of these "Big Tech" companies means that they can set rules which other businesses can be effectively forced to obey - potentially curtailing competition and the emergence of new data-driven firms.[11] "Big Tech" companies can also curtail the growth of Europe's digital industry, as EU-based providers often struggle to gain market visibility in comparison.[12] The Commission also believes this may be a challenge to Europe's values. The Commission is concerned that Europe's digital sovereignty could be infringed and that European citizens' data could potentially be used in ways that violate European law. Potential legislative conflicts that could arise between the EU and particular foreign jurisdictions hosting these "Big Tech" companies are noted as a concern.[13]

The Commission's proposals to address both these challenges will be explored in the following sections.

Promoting Data Sharing: Governance, Investment and the Common Data Spaces

At the heart of the data strategy is the Commission's ambitious plan to oversee investment of €4-6 billion in the "High Impact Project on European data spaces and federated cloud infrastructures", with funding provided by the Commission, Member States, and industry. This project will establish EU-wide, common, sector-specific data spaces.[14] This will be accompanied by a cross-sectoral governance structure for European data in general, and for the European data spaces in particular. In a highly valuable initiative, this cross-sectoral governance structure will implement standards and interoperability requirements to ensure that data formats are compatible between different economic sectors and EU Member States, thus addressing a major obstacle to data sharing. However, alongside such standardisation, a welcome flexibility is demonstrated, as a "one-size-fits-all approach" is avoided. Instead, sectoral and Member State specific requirements will also be accommodated, with appropriate sector-specific governance and legislation as required.[15]

To promote data sharing, organisations will be incentivised to contribute data to the common clouds in return for access to data contributed by others, analytical results from the data pool and data related services or licence fees.[16] Greater elaboration on the details of these incentives, however, will be needed and it remains to be seen if the incentives offered will be sufficient.

In an ambitiously broad approach to the possible benefits of data for society, ten sectoral specific data spaces are proposed. These include sectoral data spaces for the agriculture, energy and industry sectors, where greater data sharing can bolster productivity, improve the efficiency of consumption and resource use, and help to achieve the sustainability targets of the European Green Deal. A European mobility data space would promote a more efficient and greener transport system and improve maintenance and repair services. A European financial data space could promote greater capital markets integration, potentially enhancing financial access for European businesses.

Significantly, the strategy does not confine itself to the economic and business benefits of data sharing and explores how data sharing can benefit society more widely. For instance, a European Green Deal data space would facilitate data sharing that can reduce pollution and promote the production of more sustainable, durable and environmentally friendly products. Similarly, a public administration data space can optimise the transparency, accountability and efficiency of public procurement and enhance law enforcement. Of interest to both businesses

and workers is the Common European skills data space, which would enable learners to receive digital credentials of their qualifications and skills and provide European workforce data. The European Open Science Cloud will give access to research data for researchers, innovators, and companies and become a science, research and innovation data space.

The proposed Common European health data space is particularly ambitious. It would ensure that national Electronic Health Records can be used compatibly throughout the EU Member States. For the twenty-two Member States participating in the eHealth Digital Service Infrastructure (including Ireland), data sharing would support diagnosis, treatments, research and policymaking. This would be enabled by sharing electronic patient summaries, e-prescriptions, medical images, laboratory results and discharge reports but be accompanied by high standards on privacy and consent. Overall, the proposed sectoral data spaces reflect an ambitiously broad view of how greater data sharing can benefit society.

Promoting Data Sharing: Laws, Rules and Guidelines

To promote data sharing more generally, initiatives relating to new or existing laws, rules and guidelines are proposed. These include: (i) legislation and guidelines to promote data sharing; (ii) a "cloud rulebook"; and (iii) proposed mandatory data sharing in special circumstances.

A key legislative initiative that should be well-received by businesses and other stakeholders is a proposed **Data Act** to promote greater data sharing by clarifying unclear rules and removing legal obstacles. It would particularly address issues relating to responsible usage, legal liability, and usage rights for co-generated data.[17] Publicly held data would be opened for wider re-use by transposing the Open Data Directive by July 2021 and other measures[18]; the specific needs of SMEs would be particularly taken into account. Furthermore, updated guidelines will be provided to give clarity on how data sharing and data pooling arrangements can comply with competition law.[19]

One feature of the strategy that should be especially welcome to businesses and other stakeholders is the proposal to create a "cloud rulebook" to provide a comprehensive overview of the relevant EU rules. It would also provide a compendium of existing cloud codes of conduct and certification requirements for topics such as cybersecurity and data protection. Given that such a comprehensive overview is currently lacking, this rulebook should enhance clarity and assist those navigating the existing rules, codes and requirements.

Finally, the data strategy contains the bold and controversial proposal that in some special cases data sharing could be made compulsory. Some commentators have overinterpreted this proposal as indicating that mandatory data sharing would become common within the EU. In reality, the strategy proposes mandatory data sharing only for very specific situations, such as in those in which insufficient voluntary data sharing causes market failures that ordinary competition law cannot resolve. Furthermore, it would only occur under strict conditions – with fairness, proportionality, non-discrimination, transparency and reasonableness all listed.[20] While this proposal is understandably controversial, the envisaged approach seems to be one that will be subjected to strict conditionality and underpinned by a general respect for commercial sensitivity. The proposal should arguably be welcomed as a last resort mechanism in cases where competition may be significantly endangered.

Facilitating the growth of the data economy — and ensuring that its growth benefits citizens and SMEs

To promote the growth of the European data economy and to ensure that citizens and SMEs will benefit from this growth, policies are proposed to promote the data skills and data rights of citizens, to strengthen the data capabilities of SMEs, and to create a cloud services marketplace.

A **Digital Europe programme** would fund specialist digital skills training for an expected 250,000 people to reduce the EU's current gap in data specialists. Among the EU population more generally, the **Reinforced Skills agenda** would provide training for citizens who lack basic digital skills. **The Digital Education Action Plan** would also ensure that education systems help to foster digital skills and ensure that the education and training sectors themselves use big data and analytics to improve performance.

However, ensuring that citizens can benefit from the data economy will depend on their data rights as well as their data skills. European citizens currently enjoy a wide range of data protection rights. In practice, however, exercising these rights is often excessively burdensome. This can give rise to unfair practices, such as those in which consumers' data can be used to create "lock-in" effects or to charge them higher prices. So in a valuable initiative, the planned Data Act will seek ways to further strengthen the data rights of individuals. In particular, tools to allow individuals to decide what is done with their data at a granular level will also be considered, including through "personal data spaces" which would be promoted by the Horizon Europe programme. Furthermore, while Article 20 of the GDPR states that citizens have the right to request that a holder of their data should transfer the data to another entity, this right is particularly burdensome to enforce and proposals to fix this issue will be explored.[21]

The strategy particularly focuses on the role of data in SME growth, and the participation of SMEs in the data economy, as does the EU's new SME strategy.[22] SME participation in the data economy is currently deemed insufficient, for instance with regard to cloud uptake.[23] The Horizon Europe and Digital Europe programmes will help to create opportunities for SMEs in the data economy and to support the data competencies of emerging SMEs. Support to SMEs in the form of legal and regulatory advice is noted as particularly important.

A further proposal that is potentially of great significance is the planned EU cloud services marketplace. For cloud providers, participation would enhance their visibility and customer base, but their participation would be conditional on adherence to high standards on issues such as data protection and cybersecurity. It would also be conditional on offering transparent and fair contract conditions, which, currently, are often unavailable for SMEs. This interesting proposal may effectively and indirectly pool the bargaining power of SMEs, thus prompting cloud providers to offer fairer and more SME friendly policies to gain access to this market.

A Data Foreign Policy and a Policy for Foreign Companies

In an ever more digitally interconnected world, the EU's data foreign policy is of special importance. The EU will promote international cooperation and international standards for data, because the European Commission regards international data sharing as "indispensable" for the competitiveness of EU companies. The Commission's approach will be open and assertive, and it intends to address the allegedly "unjustified barriers" which EU companies currently face abroad in relation to accessing and using foreign data. The EU would generally promote free data flows between countries, if the data is kept securely and in compliance with the EU's legislative framework. Through the EU's "digital diplomacy", particular non-EU countries will be recognised as "trusted partners" with whom the EU would especially promote connectivity and data exchange.[24] The EU would also work with organisations such as the OECD and IMF to promote the investment and infrastructure necessary to facilitate greater international data sharing. Notably, companies from outside the EU would be welcome to avail of the European data space - but this would be made strictly conditional on their compliance with European rules, including rules on data sharing. Indeed, in general, external non-EU companies making data related sales in the EU, or that use the data of EU citizens, would be expected to comply with EU rules.[25] In a striking sign of ambition, using the instruments described above, the Commission intends to become a global standard setter for the emerging global data economy; the strategy declares that the EU should "promote the European [data]
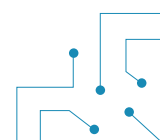
model around the world." These proposals reflect both the EU's desire to optimise the economic benefits of international data for Europe, and to project the EU's soft power influence worldwide to promote European values and standards for the emerging global data economy.

Conclusion

The European data strategy is an ambitious vision for harnessing the potentially enormous value of Europe's data and it aims to create a single European market for data which is open to data from across the world. It encompasses diverse proposals to use data for the betterment of society – ranging from economic benefits in industry and agriculture, to social benefits including promoting the European Green Deal and facilitating potentially life-saving advances in healthcare. The data strategy will be well-received by many of Europe's businesses, which can benefit from the enormous data sharing initiatives proposed, and it will be especially appreciated by SMEs. The strategy strikes a commendable balance between focusing on harnessing the value of data, while simultaneously ensuring that Europe's standards of data privacy and data rights can be maintained or strengthened. By focusing on data rights, digital skills and SMEs the strategy aims for an inclusive approach to the emerging data economy. The most controversial proposal of the strategy is the mandatory data sharing tool; however strict conditionality seems to be envisaged for this tool which could provide valuable protection for competition. Ultimately, the data strategy is a broad and ambitious plan to harness Europe's vast quantities of data for the benefit of society, in a balanced manner that aims to ensure respect for privacy, data rights, fairness and inclusivity.

Endnotes

1   "A European Strategy for Data", p. 4 -5
2   "A European Strategy for Data", p. 6
3   "A European Strategy for Data", p. 5
4   "A European Strategy for Data", p. 4
5   "A European Strategy for Data", p. 5
6   "A European Strategy for Data", p. 7
7   "A European Strategy for Data", p. 3
8   "A European Strategy for Data", p. 7
9   "A European Strategy for Data", p. 8
10 "A European Strategy for Data", p. 10
11 "A European Strategy for Data", p. 3,8
12 "A European Strategy for Data", p. 10
13 "A European Strategy for Data", p. 9
14 "A European Strategy for Data", p. 13
15 "A European Strategy for Data", p. 12
16 "A European Strategy for Data", p. 5
17 "A European Strategy for Data", p. 13
18 "A European Strategy for Data", p. 13
19 "A European Strategy for Data", p. 14
20 "A European Strategy for Data", p. 13
21 https://medium.com/streamrblog/our-thoughats-on-the-eu-data-strategy-a1e4f468a237
22 https://ec.europa.eu/info/sites/info/files/communication-sme-strategy-march-2020_en.pdf
23 "A European Strategy for Data", p. 10
24 "A European strategy for data", p. 4
25 "A European Strategy for Data", p. 14

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