

Developers Alliance Contribution To The European Commission's Consultation On The European Strategy For Data



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policy@developersalliance.org

I. On The Vision

We support an EU policy for building a data-driven and interconnected economy. This could be achieved by pursuing the following key objectives:

- Promote the free-flow of data within the Digital Single Market.
- Balance the need for data protection with the promotion of data access.
- Promote ready access to public data, and invest in the production of curated datasets.
- Encourage the voluntary sharing of data, strong data management, and security practices.
- Carry on the free flow of data between the EU and its major trading partners. Create a permanent framework for transatlantic data-flows.

The approach proposed by the strategy partially meets these objectives. Invoking the need to promote “European values”, it inappropriately focuses on “more data being stored and processed in the EU,” increasing the risk of data localisation, and on inefficient infrastructure investments in this sense. Artificially created data pools provide no guarantee to foster European competitiveness. We propose instead to provide the appropriate regulatory and economic environment that will rather encourage European businesses to build and to thrive in data-driven ecosystems naturally created by the free market.

The strategy is based on a misunderstanding of the notion of data, which is seen mainly as a traditional economic asset, without considering its characteristics.¹ The statement that “a small number of Big Tech firms hold a large part of the world's data” exemplifies this misconception. There is an abundance of data, never-ending, constantly produced by us and the world around us.

Data represents only one of the building bricks of the digital economy in general and for AI development in particular.

Collecting and gathering together different datasets doesn't represent a panacea for EU competitiveness. Data becomes useful once it's cleaned, organized, and analysed alongside other data. Its value is in the insights one can uncover once it's refined, and in the services that can build around it, and the new tools that can be brought to market based on these insights. Useful data is produced, not collected.

The best approach is to allow innovation and entrepreneurship to flourish. European developers and their startups and SMEs need a proper environment to produce and make use of data and thus to create the data-driven ecosystems. This should be done in an efficient way, utilising and building on the existing tools for processing and storage of data, not duplicating them through inefficient investments. A focus on cutting red tape and providing a coherent framework for the implementation of data protection and privacy would be very useful instead. This essential objective is considered under the first pillar of the strategy, on cross-sectoral governance, but overall the approach seems contradictory.

The patchwork of the proposed initiatives doesn't offer a clear guarantee of concrete benefits for European developers and their businesses. The protectionist approach is in dissonance with working at a global level, which is specific to software development, especially in the open-source environment. A constrained data system inside the EU would only create a disincentive for European innovators and entrepreneurs.

¹ “[Why Data Is Not the New Oil](#)”

II. On The Problems

At the beginning of the strategy, it is mentioned that the EU has the potential to be successful in the data-agile economy, because “it has the technology, the know-how, and a highly-skilled workforce.” This is followed by a short description of the approaches pursued by the US and China. The strategy doesn't comprise a substantial analysis of the causes for the EU's current shortfall in competitiveness in the digital economy. These are not necessarily generated by the lack of data availability. Some of the problems listed by the strategy properly identify the causes, but others point in the wrong direction.

We agree that fragmentation within the EU should be tackled, as it always represents an obstacle for the provision of digital services.

On availability of data:

- We agree with the description of the issues related to the use of public sector information by business (government-to-business “ G2B “ data sharing).
- On sharing and use of privately-held data by other companies (business-to-business “ B2B “ data-sharing), privacy-related issues are missed.
- The problem around the use of privately-held data by government authorities (business-to-government “ B2G “data sharing) is overemphasized, in the context of an overall low capacity of the public authorities to digitally process and make use of the datasets that they already have access to.
- The implementation of the “once-only principle” to foster the sharing of data between public authorities certainly continues to remain a problem at the EU level.

On imbalances in market power:

- The problems are in fact arguable statements, which are not backed by solid evidence.
- The statements reflect the previously mentioned misconception on the concept of data. Accumulation of large amounts of data doesn't guarantee any competition advantages, without the necessary investments and innovative solutions to transform the data into information and knowledge, and to build new and competitive products and services.
- The assessment of the market of IoT products is still at an incipient stage, as these markets are still emerging. Thus the analysis of the potential imbalances should be carried on before establishing any policies and/or regulations that may negatively affect the innovative development of this sector.

On data interoperability and quality:

- We agree on the main issues presented, underlying that the solutions, including standardization, should be based on the real needs of the industry and not artificially driven by public policies.

On data governance:

- We fully support the proposed approach to regulation - “to create frameworks that shape the context, allowing lively, dynamic and vivid ecosystems to develop.”

On data infrastructures and technologies:

- There is no assessment of the causes that lead to the fact that only a small share of the cloud market belongs to the EU-based cloud providers.
- There's no distinction between third-countries regimes based on democratic values and authoritarian ones.
- The provision of cloud services is based on contractual provisions and not in a legal vacuum.



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- The statement “there is uncertainty about compliance of cloud service providers with important EU rules and standards, for example on data protection” is of speculative nature. The GDPR and other EU legislation are applicable to all service providers and any enforcement issues cannot be imputed to other entities other than those responsible for their proper implementation. It's hard to understand why the extraterritorial nature of GDPR is overlooked in this case, while the EU is generally praising its success.
- The affirmation that “micro-enterprises and SMEs suffer economic detriment because of contract-related problems, e.g. non-conformity with the contract or unfair contract terms” doesn't represent a systemic problem, especially that there are solid legal frameworks in place to ensure the enforcement of the commercial and civil law in all Member States.
- We agree that there is a low cloud uptake, for both the public and private sectors.

On empowering individuals to exercise their rights:

- The GDPR provides a solid framework for citizens to control their personal data.
- Tools to manage personal data could increase individual accountability in online spaces.

On skills and data literacy:

- We fully support policy measures aimed to increase the digitally-skilled workforce in the EU.
- There is a need to promote the broad adoption of digital tools by non-digital businesses and also across all public institutions.
- Digital skills and data literacy are essential elements of empowering citizens to enjoy the benefits of digital products and services and to exercise their rights.

On cybersecurity:

- Strong data management and security practices should be key elements in defining the legal and technical frameworks for data sharing.
- Strengthening resilience in the area of cybersecurity should be a common effort, including both public and private actors.
- While certain technologies, such as blockchain, may offer good solutions, the legal framework should be future-proof, to allow the adoption of other technologies in years ahead.

III. On The Four Pillars

On the cross-sectoral governance framework for data access and use:

- We welcome the proposal to ensure a **harmonized approach**, and to avoid “overly detailed, heavy-handed ex-ante regulation,” opting for “**an agile approach to governance that favours experimentation (such as regulatory sandboxes), iteration, and differentiation.**”
- The governance structures should follow a tailored approach, according to each sector's specificities and needs.
- We fully support the proposal to ensure an EU framework for high-level datasets under the Open Data Directive. These will foster data use for innovative businesses and for the public good.
- The future EU legal framework for the data economy should **balance the promotion of data access with the need for data protection and privacy.**
- With regard to the future Data Act proposal, **we strongly recommend the principle of voluntary sharing of data between businesses (B2B), based on contractual freedom.** Mandated sharing of data assets between private actors raises not only risks related to privacy and cybersecurity but inhibits the commercial incentive to innovate inside the EU.
- Concerning a possible evaluation of the IPR framework, the basic principles should be maintained, including those related to the protection of trade secrets.
- On future guidelines and remedies within the competition area (related to merger control and data-access and sharing remedies), a precocious approach is recommended, to avoid unintended effects (e.g. on start-up dynamics, privacy constraints).
- The prospective ex-ante regulation for online platforms under the Digital Services Act package should take into consideration the strategy's proposed approach “to create frameworks that shape the context, allowing lively, dynamic and vivid ecosystems to develop,” “because it is difficult to fully comprehend all elements of this transformation towards a data-agile economy.”

On investments in data and strengthening Europe's capabilities and infrastructures for hosting, processing and using data, interoperability:

- As previously mentioned, investments in this direction should be driven by efficiency.
- Concerning jurisdictional issues related to data, while providing businesses much needed legal clarity, **the risk of data localisation should be avoided.** This is also to be considered when setting up rules for public procurement of data processing services and the future cloud services marketplace.

On empowering individuals, investing in skills and in SMEs:

- We strongly believe that the EU efforts in strengthening digital competences are necessary in the current context.
- STEM training and re-skilling of displaced workers will provide a richer pipeline for tomorrow's skilled workforce. Also, a focus on skilled immigration increases worker availability. Promoting digital training programs focused on diversity and under-represented groups is critical. We look forward in this sense to the Reinforced Skills agenda and the updated Digital Education action Plan.
- The support measures for startups and SMEs are equally important. These should also promote the adoption of digital tools in otherwise non-digital businesses.
- We recommend a pragmatic approach for enhancing the portability right for individuals under Article 20 of the GDPR, taking into consideration the real needs of the consumers, and the potential technical limitations.



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On common European data spaces in strategic sectors and domains of public interest:

- While fostering the free flow of data and strengthening the use and re-use of data in certain sectors could increase economic and societal benefits, this should be done entirely under a voluntary approach.
- Such initiatives should involve all participants in these particular markets and should respect their economic freedom and interests. The risk of market distortions is high.
- It is difficult, sometimes impossible, to separate personal from non-personal data and even industrial data. Therefore, respecting the GDPR imposes a cautious approach for every measure proposed under this section, and in general by the rest of the strategy.
- The need to ensure cybersecurity imposes certain limitations on data sharing.
- It is unclear what are the limits of these dataspace and therefore the risks of data localisation should be considered too.

On the international approach:

- Data-driven growth of the EU economy is underpinned by the free-flow of data within the Digital Single Market, but also by **the data flows with the EU's major trading partners, as the digital economy doesn't stop at political and geographical borders.**
- A permanent framework for EU-UK and transatlantic data-flows will provide legal certainty for many businesses, big and small, and will encourage European trade.



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