



SME Panel Consultation via the Enterprise Europe Network

Consultation on B2B data sharing principles and guidance

Introduction

The Digital Single Market initiative aims to improve the availability of data in the economy:

- data held by the public sector ("public sector information"),
- data resulting from publicly funded scientific research, but also
- data held by businesses.

A wider availability of data could be beneficial for SMEs that typically have insufficient means to collect data themselves.

At the same time, the advent of "smart" devices connected to the internet (Internet of Things) poses new challenges for commercial confidentiality, competition and fair value attribution.

Sharing of business data should be based on freedom of contract as a cornerstone.

The Commission has analysed these emerging legal issues in detail (See COM(2017)9 "Building a European data economy" or COM(2018)232 "Towards a common Europa data space".. It concluded that:

- contractual freedom shall continue to be the cornerstone of all arrangements on the use of IoT objects and data resulting from those objects.
- sharing should happen on "data markets".
- the respect of certain principles would be necessary in order to ensure fair competition on these markets, i.e. both for IoT objects as well as for products and services that rely on non-personal machine-generated data created by such objects.

The principles apply only to non-personal data, because the General Data Protection Regulation and other applicable rules sufficiently regulate the processing of personal data.

The principles are calling on companies to ensure in the relevant contracts:

- to be transparent as to who can access the relevant data and what they are used for;
- to acknowledge as much as possible the value created by each of the parties (by the data collection, by the services offered on top of the data, etc.)
- to include safeguards for protection of companies commercial secrets and other intellectual property assets (e.g. monitoring smart manufacturing robots in order to understand production practices or standstill times allowing speculation about the economic performance of the company)

- not to aim at distorting competition and in particular at locking companies into deals with one provider, e.g. on the basis of data formats or similar that are usable by others only under additional costs.

In the Communication "Towards a common European data space", the Commission indicated that the principles would be discussed with stakeholders and could be amended on the basis of the results of such discussions. It encouraged industry to develop codes of conduct to complement these principles. It indicated that it would continue assessing whether the principles and possible codes of conduct prove to be sufficient in order to maintain fair and open markets and that it would address the situation, if necessary, by taking appropriate action.

PART 0:

About your company:

1. In what business sector is your company active?
 - a. Agriculture, forestry and fishing; food processing, food supply chain;
 - b. Automotive, including suppliers, manufacturing, retail, service and maintenance and related after-market services;
 - c. Household appliances, "smart living", including suppliers, manufacturing, retail, service and maintenance and related after-market services
 - d. Other manufacturing, including suppliers, manufacturing, retail, service and maintenance and related after-market services;
 - e. Passenger transportation (taxi, bus, train, plane, waterways);
 - f. Logistics;
 - g. Telecommunications, including suppliers;
 - h. Retail;
 - i. Media, publishing, broadcasting and related services including advertising;
 - j. Health care, social services
 - k. Finance and insurance (other than motor insurance)
 - l. Legal advice; market research;
 - m. Production and/or transmission/supply of electricity, gas, water, steam and air, including related data services;
 - n. Other

2. What is the size of your company (staff counted as full-time equivalents)?
 - a. Less than 10 staff (micro enterprise);
 - b. 11-49 staff (small enterprise);
 - c. 50-249 staff (medium sized);
 - d. More than 249 staff (large sized).

PART 1 – Use and generation of non-personal data in your company

3. Have you tried to acquire data held by another company, e.g. for developing a new service or product or improving processes of decision-making or production processes?
 - Yes
 - No

If yes:

4. Did you have difficulties in acquiring (usage rights on) data from another company?
 - Yes
 - No

5. Were you exposed to practices about access to such data that were in your view unfair or unreasonable (e.g. unreasonably high licensing fees, unforeseeable termination of contract)?
- Yes
 - No
6. If so, what was the nature of such difficulties/practices? Please explain:

If no:

7. Why is your company not using data from other companies (multiple answers possible)
- a. We do not use data in our business model/ we produce all relevant data in-house;
 - b. We are not aware of any company that would have relevant data;
 - c. We do not have the necessary expertise or technical requirements to analyse data;
 - d. The data we need are not made available by other companies;
 - e. We produce the data in-house;
 - f. Data or IT system security reasons;
 - g. Fear for liability resulting from the use of acquired data;
 - h. Costs (including costs of drafting relevant contracts) that cannot be recuperated.

PART 2 – Feedback on the fair principles for IoT objects and non-personal data resulting from those objects

An IoT object is a device that sends data over the internet, e.g. to the manufacturer, in exchange for a service or other reward. In a document from April 2018, the Commission drew up the following principles and calls on companies to ensure in the relevant contracts:

- to be transparent as to who can access the relevant data and what they are used for;
- to acknowledge as much as possible the value created by each of the parties (by the data collection, by the services offered on top of the data etc.)
- to include safeguards protection of companies commercial secrets and other intellectual property assets (e.g. monitoring smart manufacturing robots in order to understand production practices or standstill times allowing speculation about the economic performance of the company)

- not to aim at distorting competition and in particular not to aim at locking companies into deals with one provider, e.g. on the basis of data formats or similar that are usable by others only under additional costs.
8. Are you already using or planning to use in the near future an IoT device (e.g. an industrial robot)?
 - Yes
 - No
 9. Do you agree that IoT objects and data coming from such objects represent new challenges for market fairness?
 - Yes
 - No
 10. Are these challenges currently well addressed by law (e.g. Database and trade secrets protection legislation, copyright law, competition law)?
 - Yes
 - No
 11. Do the principles (listed above) address all relevant issues?
 - Yes
 - No

If No:

12. What other issues should be added? Please explain:

13. How do you rate the importance of each of the principles in industrial practice?

	Very important	Fairly important	Less important	Not important

a. to be transparent as to who can access the relevant data and what they are used for;				
b. to acknowledge as much as possible the value created by each of the parties;				
c. to include safeguards protection of companies commercial secrets;				
d. not to aim at distorting competition and in particular not to aim at locking companies into deals with one provider.				

14. To what extent do you expect that businesses are likely to negotiate contracts on the basis of each of these principles and to be sufficient in maintaining fair markets for IoT objects and data resulting from such objects?

	Fully sufficient	Moderately sufficient	Less sufficient	insufficient
a. to be transparent as to who can access the relevant data and what they are used for;				
b. to acknowledge as much as possible the value created by each of the parties;				
c. to include safeguards protection of companies commercial secrets;				
d. not to aim at distorting competition and in particular not to aim at locking companies into deals with one provider.				

PART 3 – B2B data sharing guidance and future Support Centre

On 25 April, the Commission also published guidance on how companies could share more data with other companies. This guidance contains three parts: A non-exhaustive list of mechanisms to share

data, underlying business models and a list of elements to be taken into account when contracting on data.

15. Which of the parts of the guidance document are relevant for you:

- A. Elements to be considered in contractual negotiations;
- B. Technical aspects of data sharing;
- C. Underlying business models and best practice examples.

In addition to the guidance published on 25 April, the Commission will finance a Support Centre for data-sharing. This Support Centre will be tasked to deliver a number of tasks.

16. How do you rate the relevance of each of the following tasks:

	Very relevant	Relevant	Fairly relevant	Slightly relevant	Not relevant
Providing industry best practice examples on data-sharing					
Providing a reference document on the law applicable to the sharing of data					
Providing model contract terms developed by industry					
Developing new model contract terms for specific sectors, value-chains or with cross-sector relevance					
Developing guidance on how to develop Application Programming Interfaces (APIs) and manage interactions with users of such APIs (including work on model terms of usage of APIs [API licence])					
Developing guidance on how to guarantee data security when sharing data with others.					

Developing guidance on how to improve traceability of usage of data once shared.					
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17. What other documents or services would be useful for you:

Thank you for completing the questionnaire!

Please send the document **before 14 Januari 2019** to

Jean-Philippe Mergen, Directeur Internationalisation Enterprise Europe Brussels

E-mail : jpm@beci.be

Tel : 02 210 01 77 – Fax : 02 640 93 28

Chambre de Commerce de Bruxelles – Avenue Louise, 500 – 1050 Bruxelles

