



2020/2217(INI)

29.10.2020

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

on a European strategy for data
(2020/2217(INI))

Rapporteur for opinion (*): Axel Voss

(*) Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

General

1. Welcomes the Commission communication entitled ‘A European strategy for data’; stresses that the creation of a single European data space is key to ensuring the EU’s global competitiveness, digital sovereignty and economic prosperity;
2. Notes that the EU approach to digitisation should be human-centred, value-oriented and based on the concept of the social market economy; underlines that choosing a third path to digitisation should not mean that the EU becomes protectionist; stresses, therefore, that every non-EU player should still be welcome to operate in the single European data space as long as they meet the EU’s ethical, technological, privacy and security standards;
3. Believes that the data strategy should also help to establish the required legal certainty and technical structures, while also giving an incentive to the European industry to make better use of the large amounts of available but unutilized data, thus leading to more economic growth, innovation and jobs across Europe;
4. Notes that the access, the sharing and the re-use as well as data analytics are already today essential for many data-driven products and services but will be absolute crucial for the development and deployment of emerging technologies such as AI, IoT, fibre, 5G, 6G, quantum and edge computing, blockchain and high-performance computing;
5. Underlines that the COVID-19 crisis is the most recent event, highlighting the importance of access to data, cross-border data exchanges as well as quality and traceability of data; points out that missing common data bases and lacking interoperability between national systems are still compromising an effective European strategy against the virus;

Better regulation principles

6. Believes that the new strategy should be implemented by means of a principle-based and innovation-friendly EU legal framework, which should be proportionate and avoid unnecessary administrative burdens for small to medium-sized enterprises (SMEs) and start-ups, and should be combined with concrete measures, guidance, private-public codes of conduct and programmes, strong investments, and, if necessary, new sector-specific laws;
7. Urges the Commission, prior to any initiatives, to perform an in-depth evaluation and mapping of the existing legislation to assess whether adjustments or additional requirements are needed to support the EU data industry and safeguard fair competition for all affected actors and to avoid legal overlaps with potential upcoming legislation to implement the Data Strategy;

8. Maintains that, since many citizens and entities like SMEs and start-ups often lack the necessary know-how, human and financial resources, the Commission should continue to develop initiatives like the Support Centre for Data Sharing to help them to act effectively when it comes to the access to, sharing and use of data;

Data sharing and rights to data

9. Stresses the key importance of fostering access to data for EU businesses, especially for SMEs and start-ups; considers that voluntary data sharing between businesses based on fair and transparent contractual arrangements, triggered by incentives in the form of subsidies and tax breaks, would help to achieve this goal;
10. States that fair, simple, intelligible, secure, interoperable and affordable voluntary data sharing agreements between companies from the same supply chain and different sectors, that either monetise the participation of data providers or enable 'give and take' schemes, will further accelerate the development of the EU data economy;
11. Calls on the Commission to assess the possibility of defining fair contractual conditions with the aim of addressing imbalances in market power; underlines that a single European data space will require companies to be allowed to closely cooperate with each other, and therefore considers that safe harbours and block exemptions on cooperation for data sharing and pooling, as well as more guidance for businesses on competition law matters from the Commission, are needed;
12. Recommends further strengthening interoperability and establishing consensus-based, industry-led common standards in order to guarantee that the movement of data between different machines and entities can take place in an innovative manner;
13. Declares that a distinction as to the legal regimes concerning personal and non-personal data is essential, as not sharing any commercial datasets is often the only option for businesses due to the complexity of the existing rules and the great legal uncertainty as to whether personal data is sufficiently depersonalized; notes that this distinction may be difficult to draw in practice given the existence of mixed data, for which specific rules and approaches should be introduced; considers that models that focus on anonymization, which requires a clear legal base and a list of criteria, and other technical ways to ensure privacy are to be encouraged, like the shift from the sharing of data to the sharing of computation, application programming interfaces (APIs), synthetic data or data sandboxes;
14. Emphasises the importance of clarifying the contractual rights of citizens and businesses who contribute to the creation of by the use of machines or other devices, and in particular the rights to access data, to port them, to urge another party to stop using data, to correct them or to delete them, while also identifying their holders and delineating the nature of such rights;

Liability for data

15. Believes that the existing liability principles and technology-neutral liability rules are already fit for the digital economy and most emerging technologies; states that there are nevertheless some cases, such as those concerning operators of AI systems, where new

liability rules are necessary to provide the affected persons with adequate compensation;

16. Urge the Commission to make a comprehensive assessment of similar legal gaps in relation to the responsibility for data and evaluate possible adjustments to the current liability systems before coming up with new legislative proposals;

Intellectual property rights, trade secrets and the Database Directive

17. Stresses that the implementation of the European Data Strategy must ensure the balance between the promotion of the wider use and sharing of data and the protection of the IPR, privacy and trade secrets;
18. Is of the belief that the data-driven digital economy does not require major changes to the existing IPR framework and thus notes that the Commission should carefully assess what legal adjustments are really necessary; welcomes, in this regard, the Commission's intention to revise the Database Directive and clarify the application of the Trade Secrets Directive
19. Notes that the use of copyright-protected content as data input needs to be assessed in the light of the existing rules and the 'text and data mining' exception provided for by the Copyright Directive as well as related rights in the Digital Single Market, and that no new exceptions should be created in this regard;

Jurisdiction and procedural law

20. Calls on the Commission to assess to what extent the application of foreign jurisdictions' legislation, such as the US CLOUD Act, might lead to legal uncertainty and disadvantages for Union residents and businesses and whether any action is needed in this regard;
21. States that the Commission should further evaluate changes to the existing legal frameworks in civil procedure law in order to reduce existing investment obstacles for private investors; calls on the Commission, in this regard, to promptly and adequately follow up on Parliament's resolution on common minimum standards of civil procedure (2015/2084(INL));