



**2020/2217(INI)**

28.1.2021

# **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

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## 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 European data space is key to ensuring the EU’s global competitiveness, strategic digital autonomy and economic prosperity; points out that common regulatory provisions for data will enable the European Union to benefit effectively from access thereto and use thereof in various ways, such as: increasing productivity, developing market competitiveness, improving citizens’ health and well-being, environmental protection, transparent governance and effective public services;
2. Notes that the EU approach to digitalisation should be human-centred, value-oriented and based on the concept of the social market economy that respects human rights and democracy and contributes to addressing environmental and climate challenges; underlines that choosing a European approach to digitalisation should not mean that the EU becomes protectionist; stresses, therefore, that every third country market participant should be able to operate in the European data space as long as they comply with EU law and meet its technological, privacy, security and ethical standards, such as those on transparency, accountability, traceability, sustainability, social responsibility, good governance and on non-bias and non-discrimination, in particular regarding persons belonging to minority ethnic groups or racialised communities; stresses in this respect the necessity to create a level playing field between EU and third country market players and for the EU to work closely with third-country partners in view of establishing safe cooperation spaces at international level;
3. Believes that the data strategy can also help to establish the required legal certainty and technical infrastructures, while also giving an incentive to the European industry to make better use of the large amounts of available but unutilised data; notes that data access, sharing and re-use, as well as data analytics, are already essential today for many data-driven products and services, but will be absolutely crucial for the development and deployment of emerging technologies such as artificial intelligence (AI), the internet of things (IoT), fibre, 5G, 6G, quantum and edge computing, blockchain and high-performance computing; underlines that in particular AI systems would benefit from the increased availability and access to data brought about by tackling existing barriers and by promoting the use of modern technologies and services, such as web and API-based services for convenient and fast retrieval, browsing and processing of data;
4. Stresses that increasing the level of data exchange between private and public entities is an essential factor in creating new products and services, improving the quality of public services in all areas; underlines that the COVID-19 crisis is the most recent event that highlights the importance of access to data, cross-border data exchanges, as well as the quality and traceability of data; points out that the lack of common data bases and of interoperability between national systems are still compromising an effective European

strategy against the virus;

5. Highlights that it would be impossible to fully exploit the potential of the data economy without ensuring adequate levels of knowledge and skills in data management, including among law enforcement and judicial administration staff, as well as among workers from any other relevant areas; notes that digital skills play a crucial role in the process of digitalisation of justice systems in all Member States; stresses that this process faces many unnecessary barriers to the effective and secure collection, processing and exchange of digital data;

### ***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 seek to lower unnecessary current administrative burdens for research, civil society, small and medium-sized enterprises (SMEs) and start-ups, while safeguarding the best interests of EU citizens and allowing them to benefit and be involved; believes that this framework should also be combined with concrete measures, private-public guidance, codes of conduct and programmes, robust investments, with making best use of existing exceptions and derogations provided for by the law, and, if necessary, new sector-specific laws; highlights that in order to unlock the potential of digital technologies, it is also important to remove unnecessary existing legal barriers, so as not to hamper the growth of or innovation in the Union's developing data economy;
7. Draws attention to the importance of avoiding regulatory fragmentation, which can pose a major risk to the creation and development of a common European data space; notes that a number of Member States have already started to adopt rules on data use and processing; urges the Commission therefore, prior to any legislative initiative, to perform an in-depth evaluation and mapping of current legislation at both national and Union level in order to assess whether adjustments or additional requirements are needed to support the EU data economy, evaluate and address its ecological footprint, notably its carbon footprint, which is expected to double by 2025, and safeguard fair competition for all affected actors and to avoid legal overlaps with potential upcoming legislation implementing the data strategy;
8. Stresses the need for consultations and impact assessments prior to legislative proposals in order to identify possible negative consequences for market participants, notably SMEs and start-ups; and for civil society; maintains that, since many citizens and entities such as SMEs and start-ups often lack the necessary know-how and human and financial resources, the Commission should continue to develop initiatives such as the European Data Portal and the Support Centre for Data Sharing to help them to act effectively on data access, sharing and use;

### ***Data access, data sharing and rights to data***

9. Stresses the key importance of fostering access to data while fully respecting the rules on the protection of personal data for EU businesses, especially for SMEs and start-ups, for their competitiveness on the global stage, and also for research and civil society; considers that increased voluntary data sharing between stakeholders based on fair and transparent contractual arrangements would help to achieve this goal; notes that voluntary data sharing should be enabled by a solid legislative framework that ensures

trust and encourages businesses to make data available to others, particularly across borders; adds that this framework should support investments in data sharing projects, including through balanced public-private partnerships, and may be complemented, where proportionate and in line with State aid rules, by incentives in the form of subsidies and tax breaks; notes, in this regard, that the current biggest digital market participants have all benefited from support from the third countries where they are based, such as the USA and China, through tax incentives or subsidies;

10. Asks the Commission and Member States to ensure that the new data strategy will contribute to a speedy implementation of the Directive on Open Data making public sector and publicly funded data re-usable; considers that to facilitate this Member States should be encouraged to share best practices;
11. Calls on the Commission to evaluate the impact of the prerequisite of requiring open access to publicly funded research data on research institutions;
12. States that mutually beneficial, fair, simple, intelligible, secure, interoperable and affordable voluntary data sharing agreements between companies from the same supply chain and different sectors which comply with existing rules on the protection of personal data, will further accelerate the development of the EU data economy; points out that these agreements may entail different ways to reward data providers, including by setting up ‘give and take schemes’ or by incentivising their participation; calls on the Commission to further reflect on the concept of data value and reward schemes, as well as to better define and lay down the scope of ‘data altruism’; calls for Member State public procurement processes and funding programmes to include data access and interoperability requirements; recalls that data exchange can only take place in accordance with the legal framework applicable to the protection of personal data and the fundamental rights of data providers;
13. Calls on the Commission to assess the possibility of defining fair contractual conditions with the aim of addressing imbalances in market power and between the parties concerned, as well as to monitor any market failures and to take adequate action, if and where necessary, namely to tackle potential cases of abuse of dominant position; underlines that a European data space will require stakeholders to be allowed to cooperate closely with each other; considers therefore that more guidance for businesses on competitiveness and competition law matters from the Commission is needed, and that safe harbours as well as block exemptions could be considered as an option for fostering access and cooperation on data sharing and pooling for private and public purposes;
14. Considers that questions of possible ownership, if and when raised, and control of access to data are often out of reach for SMEs and start-ups while having an high economic impact; calls on the Commission to take into due account these concerns and stresses that, to solve this issue, public and private actors should have access to platform environments where they could pool their data in conditions acceptable for data providers; underlines that these environments would lower the risks and costs related to data sharing and pooling, including by bearing the costs of legal, security, technical and compliance issues within a centralised environment;

15. Welcomes the results of the Commission's cooperation with the Member States on increasing the supply of high value datasets in the common European data space on the basis of Directive 2019/1024 on open data and the re-use of public sector information; encourages the Commission to extend, on the basis of a cost-benefit analysis, the list of data sets made available free of charge for the re-user without or with minimal legal restrictions on use and re-use beyond the possibility to require acknowledgement of authorship, to further areas with the highest potential for use in innovative technologies, such as AI; calls on Member States to ensure access to public information and high quality data held by public authorities;
16. Recommends further strengthening interoperability and the establishment of consensus-based, industry-led common cross-sector standards, particularly for data quality, authenticity and integrity, in order to guarantee that the movement of data between different machines and entities can take place in an innovative manner; notes that economic entities with significant market power that operate across sectors should not be able to fill the gaps in the establishment of standards on their own; highlights the importance of open, non-proprietary standards for ensuring a high degree of interoperability and involvement of other relevant stakeholders, including international non-profit fora;
17. Calls for European guidelines for common and structured data formats, which should be machine-readable and based on open recording standards; notes in this regard, further, the need for a coherent definition of machine-to-machine communication, which is essential for the dissemination, implementation and development of solutions using IoT technology, and for strengthening the potential of edge computing;
18. States that open source technology can also help to promote mutually beneficial collaboration between businesses while guaranteeing transparency and public scrutiny, thereby providing the high level of trust needed to engage in data sharing; encourages the European to take it more into consideration for their plans to establish European data spaces;
19. Stresses that, where a risk assessment so indicates, the implementation and enforcement of the proposed new framework on trustworthy data governance might require access to code and data by competent authorities, when strictly necessary and in full respect of Union legislation on data protection, privacy, intellectual property rights and trade secrets, in the case of certain high-risk technologies such as applications used by government authorities on citizens;
20. Declares that a distinction between 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 current rules and the considerable legal uncertainty as to whether personal data is sufficiently depersonalised; notes that this distinction may be difficult to draw in practice given the existence of mixed data, for which the Commission should therefore come up with specific guidelines that explain how to process this type of data lawfully; emphasises at the same time that current Union legislation mandates that, where non-personal data and personal data are inextricably linked, data protection rights and obligations apply in full to the whole mixed dataset, regardless of the comparative amount of personal data in relation to non-

personal data; underlines that the General Data Protection Regulation (GDPR) does not apply to the processing of information that does not relate to an identified or identifiable natural person, or personal data rendered anonymous; believes that the Commission should promote further research into anonymisation techniques, clarify their legal base, define specific criteria for their use, and encourage their uptake; notes that the Commission should thereby also reflect upon the shift from the sharing of data to the sharing of computation, while ensuring that no personal data, or data allowing for the reconstruction of personal information, are shared if they contain the computation results, application programming interfaces APIs as a means to abstract the access to personal data without sharing it, the use of synthetic data that provide the characteristics of a complete data set without containing real personal data, and data sandboxes that work on separate databases without containing real personal data;

21. Calls for an increase in the availability of raw and anonymised data in business-to-government and business-to-business communication, particularly in the case of data which have been generated in connection with the provision of services of general interest, or which are of public interest or connected with the performance of publicly co-financed tasks; stresses that because of their importance and high value for society, this data should be made available and reusable for the general good while respecting the principles of personal data protection;
22. Stresses the need to streamline and regulate the exchange of data between public entities (G2G, government-to-government) in cross-border relations; notes that the gradual expansion of the scope and scale of data exchange between public institutions, for instance in the area of justice, can lead to a more effective fight against crime and more efficient handling of cross-border disputes in accordance with the rules on the protection of personal data, fundamental rights and the rule of law;
23. Emphasises the importance of clarifying the contractual rights of individuals and businesses who contribute to the creation of data using 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; notes that consideration can be given to the possibility of the free software community using data and producing software for the general public without automatically becoming subject to obligations specifically designed for businesses producing and using data in a professional capacity;
24. Stresses the importance of cloud services, which are an essential tool for data collection and processing, in fully exploiting the potential of the digital economy; underlines that the new regulations should ensure the transferability of data between different service providers, as well as taking into account the problem of securing and recovering data from the cloud provider when it ceases these activities;
25. Recalls the current general data protection regime as stipulated in Regulation 2016/679/EU on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the GDPR); highlights the need to revise the ePrivacy Directive with the aim of creating a level playing field for EU companies with regard to the acquisition and use of data;

### ***Liability for data***

26. Believes that although the current liability principles and technology-neutral liability rules are, in general, suitable for the digital economy and most emerging technologies, there are nevertheless some cases, such as those concerning operators of AI systems, where new or additional liability rules are necessary in order to enhance legal certainty and to provide for an adequate compensation scheme for the affected person in case of unlawful use of data;
27. Urges the Commission to conduct a comprehensive assessment of similar potential legal gaps in relation to liability for data, such as for AI- and non-AI-caused damage resulting from deficiencies in or the inaccuracy of data sets, and to evaluate possible adjustments to the current liability systems before coming up with new legislative proposals;
28. Emphasises the need for traceable and, to the extent possible under Union law, publicly available training data for algorithms; considers that in areas such as health, liability must ultimately lie with a natural or legal person;

### ***Intellectual property rights, trade secrets and the Database Directive***

29. Stresses that the implementation of the European Data Strategy must strike a balance between promoting the wider use and sharing of data and protecting intellectual property rights (IPR), trade secrets, but also fundamental rights such as privacy; underlines that data used for the training of AI algorithms sometimes relies on structured data such as databases, copyright-protected works and other creations enjoying IP protection which may not usually be considered as data;
30. Calls for prior impact assessments to be conducted by the Commission on whether the data-driven digital economy requires any changes or adjustments to the current legal framework for IPR in order to promote innovation and the uptake of new digital technologies; welcomes the Commission's intention to revise the Database Directive and to further clarify the application of the Directive on the protection of trade secrets;
31. Notes that the use of copyright-protected content as data input needs to be assessed in the light of the current rules and the 'text and data mining' exception provided for by the Copyright Directive, as well as related rights in the Digital Single Market; calls on the Commission to issue guidance on how reserving the rights will be made publicly available for all in a centralised way;

### ***Jurisdiction, applicable law and procedural law***

32. Calls on the Commission to take measures to ensure that the application of legislation from foreign jurisdictions, such as the US CLOUD Act or 2017 China's National Intelligence Law, does not undermine the fundamental rights of Union citizens or lead to legal uncertainty and disadvantages for Union businesses; points out recent jurisprudence by the Court of Justice of the European Union in this regard;
33. Stresses that common rules are needed on the lawful use, access to or sharing of data in order to accelerate the development of innovative data spaces within the EU, and to enable our businesses to compete worldwide;

34. States that the Commission should further evaluate changes to the current 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<sup>1</sup>.

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<sup>1</sup> OJ C 334, 19.9.2018, p. 39.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	27.1.2021
<b>Result of final vote</b>	+: 22 -: 1 0: 0
<b>Members present for the final vote</b>	Manon Aubry, Geoffroy Didier, Pascal Durand, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Ernő Schaller-Baross, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Caterina Chinnici, Heidi Hautala, Bettina Vollath

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

22	+
PPE	Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Ernő Schaller-Baross, Axel Voss, Marion Walsmann, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Lara Wolters, Tiemo Wölken
Renew	Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara
ID	Jean-Paul Garraud, Gilles Lebreton
Verts/ALE	Heidi Hautala, Marie Toussaint
ECR	Raffaele Stancanelli
NI	Mislav Kolakušić

1	-
The Left	Manon Aubry

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention