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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	European Union as a hub for ethical data use - Policy debate

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**The digital economy is becoming a data economy**

The digital economy is becoming a data economy. We are moving beyond the phase in which the digital development resulted in novel consumer services run through digital platforms.

Digitalisation and the increasing pace of change have challenged current structures and regulative frameworks – especially where the use of data is concerned. The new, digital branches of the economy are now built on data and the use of data has begun to have a profound effect on traditional sectors such as the manufacturing industry, agriculture and transport and as well as public governance. Accordingly, the Council has strongly emphasised the need for the continued promotion, development and deployment of the European data economy<sup>1</sup>. [A New Strategic Agenda 2019-2024](#) agreed by the European Council in June 2019 sets the priorities for the next 5 years and comprises Developing the Economic Base – the European model for the future.

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<sup>1</sup> Conclusions on the Future of a highly digitised Europe beyond 2020: "Boosting digital and economic competitiveness across the Union and digital cohesion":  
<https://www.consilium.europa.eu/media/39667/st10102-en19.pdf>

This recognises the significance of digital transformation in this context and emphasises the importance of further work on all aspects of the digital revolution, including data.

Within the EU institutions, this presents a prime opportunity to discuss the lessons learnt and the way forward on data policy. In the interests of economic fairness, societal sustainability and achieving a competitive edge globally, the European Union could aim at becoming a hub for ethical data use. The European Union has made good progress on the Digital Single Market Strategy. However there is still significant untapped economic potential, and there are, at the same time, underlying concerns and a lack of trust. Firstly, access to data is becoming increasingly asymmetric, since data is being concentrated in the hands of the largest players. Secondly, privacy and security questions demand constant attention in order to maintain people's trust. Thirdly, in order to make the data economy work in practice, proper structures on data use are needed, which should include guidelines on the fair and legal exchange and use of data, with a view to encouraging the sharing and joint use of data.

### **Mainstreaming balanced data sharing, human-centricity and proper structures**

The European Union has many strengths in the data economy. These range from the high-quality open data of the public sector to the setting of global standards in the field of data protection (the [General Data Protection Regulation](#)). We need to turn the good ideas from sectoral work into guiding principles so that these best practices have a wider impact on the structure and functioning of the European data economy. At the same time, we need to ensure the effective implementation of past initiatives so that their provisions deliver tangible results.

With regard to **data sharing**, the public sector has led by example. The [Open Data Directive](#) enhances the availability of public documents and data, and with it the EU has taken further steps towards ensuring the availability of high-value data sets in thematic areas. With the [INSPIRE Directive](#) the European Union promotes access to and the interoperability of geospatial data, since this is indispensable in many areas, including environmental policy and map making. In the [Regulation on Access to Vehicle Repair and Maintenance Information](#), the EU has ascertained the crucial role of data access in ensuring effective competition in the private sector. In the same vein, the opening of banking interfaces in accordance with the [Second Payment Services Directive](#) boosts competition and new services in the finance sector.

The sectoral legislation thus addresses issues relating to the interoperability of union-wide data sets, access to the sector's essential data and the opening of interfaces within the sector's key infrastructure. To prevent regulative fragmentation within the European Union, improve interoperability and boost competition and the creation of new services, one option is to assess whether these instruments could serve as an example to other sectors. For example, in order to ensure the proper functioning of the internal market and to ensure a level playing field, there might be a need to give a regulatory push to business-to-business data sharing in sectors that can help deliver more sustainable products and services, such as the automotive and mobility, health, energy and agricultural sectors. This might need to be complemented with adequate governance models to ensure trust between the parties involved.

Data use and re-use can make a significant contribution to the European Union's economy. At the same time, the relevant conditions (e.g. privacy, security, data integrity) are determined by the infrastructures and services used to process the data. A competitive and open cloud market is a key condition for the development of a European data economy in which data is freely shared and re-used. One aspect of this is to ensure that there is a clear framework of rules applicable to cloud services. The European Union has set the global standard on data protection and this leadership could be built on by setting equally high standards for information security, market fluidity and the energy efficiency of data infrastructure.

On the issue of **human-centricity**, the General Data Protection Regulation strengthens individuals' rights to govern their data use, and thus creates a cornerstone for a human-centric data economy. The Coordinated Plan on Artificial Intelligence<sup>2</sup> sets the European Union's ambition to become the world-leading region for developing and deploying cutting-edge, ethical and secure AI, while promoting a human-centric approach in a global context.

The European Union has become a model in data protection legislation, but the goals that are set are not met unless the individuals are empowered in practice. For example, the enhanced rights to manage one's personal data (e.g. to copy, rectify, delete, port) or to give consent to the processing of such data do not deliver results unless organisations provide people with easy-to-use tools. Secondly, algorithms and intelligent and autonomous systems are already available so the question is not whether these can be used, but rather how they can be used in a way that is compatible with fundamental and human rights. It remains to be seen whether there will be a need to increase their trustworthiness, accountability and transparency through the provision of mandatory or voluntary control mechanisms – at least in those sectors where there is an increased need to prevent unwanted harmful effects, one instance being connected and autonomous driving.

Lastly, the data economy needs **structures** that are workable. In practice, this can comprise key infrastructure, such as cloud computing services. However, this can also cover more abstract concepts such as data governance models for cross-sectoral data use and a modernised regulatory approach. Both of these are taken into account in the [Free Flow of Data Regulation](#), for example. The regulation is designed to promote the use of cloud services by prohibiting unjustified data localisation restrictions. It does this in a goal-oriented manner and mixes regulation with self-regulatory codes of conduct on data porting. An assessment of these self-regulatory efforts will be made in 2022 to ensure cloud switching. A possible consequence could be EU regulatory intervention, if insufficient progress was being made.

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<sup>2</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - Coordinated Plan on Artificial Intelligence (COM(2018) 795 final) [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=56017](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=56017)

One possible lesson learnt is that new technology does not necessarily require new legislation and that, in general, regulation needs to become less technical and more enabling and goal-based. However, to make data flow across national and sectoral borders in the EU, interoperability at a legal, semantic, organisational and technical level could be enhanced. There are several ways in which to do this, such as including the use of open standards, having structured data sets, creating model contracts for data sharing or introducing a data portability right.

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In the above context, the Presidency would ask the Ministers to present their views on the following questions:

- 1) *In addition to the actions already taken, what are the actions and instruments that are urgently needed to boost European data economy and to make the European Union a hub for ethical data use?*
- 2) *What measures can be taken to encourage business-to-business data sharing in Europe over the next five years?*
- 3) *With regard to algorithms and intelligent and autonomous systems, what can be done to promote and ensure human-centricity, privacy and security in order to build trust in the data economy?*

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