

## Contribution to the European Strategy for Data

### About EuroCommerce

[EuroCommerce](#) is the voice of over 5 million retail, wholesale, and other trading companies. Our members include 32 national federations from all EU Member States and European countries outside the EU, 36 leading European retail and wholesale companies, and federations representing specific retail and wholesale sectors. Our members are the link between producers and consumers billions of times every day.

### Key recommendations

EuroCommerce welcomes the opportunity to contribute to the European Strategy for Data. The Common European Data Spaces, as it foresees, will create a common framework for data sharing, access and use of data.

The coronavirus crisis is accelerating the digital transition. Retailers and wholesalers need a framework that supports the establishment of European based data driven eco-systems that will enable them to compete with those established outside the EU and creates a level playing field. Data is at the heart of such eco-systems – access to data supports improved services and their customisation, which in turn, improves attractiveness among consumers. Therefore, the need for a fair and ethical European data ecosystem is more pressing than ever. The Data Economy and its insights can help us to improve our services, foster innovation and provide new opportunities and speed up recovery. Nevertheless, responses to the crisis can bias competition and open the door to more intrusive practices.

To secure a futureproof framework that will foster voluntary data sharing as well as ensure competitiveness of the retail and wholesale sector during recovery and beyond, EuroCommerce strongly believes that:

- **Data sharing should remain on a voluntary basis.** Companies should keep the freedom to decide which data, they feel comfortable sharing, when and with whom within the boundaries set down in competition law.
- **Common European Data Spaces should be self-regulatory,** as it was proven that the existing common practices are functioning very well.
- **Cross-sectorial data sharing should be encouraged.** Retail and wholesale companies may be operating across different data spaces and thus would welcome the opportunity for voluntary data exchange, within the limits of competition law, between different data spaces. Such an approach would prevent the creation of unnecessary silos and trigger efficient data sharing practices.
- Data sharing for the common good should rely on a **clear harmonised definition of what constitutes public interest.**

- **Standardisation efforts should be targeted** to support data sharing and innovation without generating high database reorganisation costs and barriers to innovation.
- **Data portability could benefit from standardisation** only if such standards are flexible, easy to implement and foster competition without preventing companies from fulfilling their legal obligations and safeguarding their competitive advantage.
- **The future Cloud Rulebook should assist businesses** when they navigate cloud services and promote secure data sharing in and across sectors.

## The role of Data in the retail and wholesale sector

**Retail and wholesale are data-driven sectors** that generate, use and share data. However, we face challenges when gaining access to the data we need to offer our customers better services that will secure our future competitiveness.

**We expect data to play an even bigger role in the future.** The rapid expansion of digital technologies throughout our supply chain (Artificial Intelligence, robotics, IoT) is fundamentally changing the way retailers and wholesalers sell, distribute, and reach out to their customers.

**Retailer and wholesalers are constantly adapting their business model to the rising changes in the Data Economy** to respond to increasing customers' expectations for a seamless service. Major e-Commerce platforms are increasingly selling directly to business customers and private consumers. Increased price transparency and lower entry barriers have also made it easier for manufacturers to play a dual role, i.e., selling directly to business customers and end-consumers, competing directly with their distribution networks.

**The highly specialised supply chains in which retailers and wholesalers operate tenfold the scale and magnitude of this Data transformation.** As sector, we face challenges when embracing and investing in new technology that are essential to the digitalisation of our services.

**The Covid-19 crisis has encouraged the development of online sales,** which has increased the speed of the digital transformation of our sector. As a result, retailers and wholesalers are facing increased competition from data-driven retail and wholesale ecosystems established outside Europe. We expect the uptake of e-Commerce to accelerate and stay.

### *Retailers and wholesalers already generate, use, and share data*

#### **Data generation**

- **Private customers and business customers data.** Retailers and wholesalers collect data on their customers, whether individuals or businesses, as they shop to tailor services to their needs and improve their customer journey. Data policies are becoming features of retailers and wholesalers' unique offerings that actively contribute to consumers' trust in our sector.
- **Sales data.** Retailers and wholesalers generate significant volumes of data covering product sales both online and offline.
- **Data management.** Retailers and wholesalers need to implement adequate solutions securing the quality of their datasets – including maintenance, update, cybersecurity, and appropriate

processing capabilities – that are very costly. The right data strategies help minimisation of the cost, automatic detection of data flows, and make the sector more time-efficient.

#### Data use

- **The more businesses process data, the higher the costs.** As analytics technologies offer more opportunities to businesses, they also require more specific skills, higher energy consumption and more extensive processing power and are more costly.
- **Stock management and predicting trends.** Data analysis allows retailers to forecast future trends and demands and anticipate needs for products and services, thereby preventing over or undersupply of warehouses.
- **Planning and strategies.** By analysing buying pattern data (with the help of past purchases), retailers can create more tailored offers and plan well in advance their next strategic steps.

#### Data sharing

- **Data sharing today.** Our sector is already sharing large amounts of data across its supply chain, such as through the cooperation with [GS1 \(organisation that develops and maintains global standards for business communication, they have 1.5 million user companies\)](#).
- **Data sharing for operational efficiency.** Partners along supply chains are already exchanging data for operational efficiency (e.g. supply chain optimisation, logistics, sales performance).
- **Data sharing as a regulatory obligation.** The retail and wholesale sector share data with public authorities to fulfil regulatory obligations (e.g. traceability, registration of chemical substances) or request from governments (e.g. for statistics, tax, or other purposes).

#### *Retailers and wholesalers face challenges to make the most of the Data Economy*

- **Lack of access.** Manufacturers do not always grant retailers and wholesalers access to relevant data (e.g., data generated by products they sell) and can impose strict (contractual) limitations for (re)use of data. Accessing such co-generated data would provide our sector with the insights on product use needed to improve customer journey and secure a level-playing field for the entire data ecosystem.  
Additionally, public administration across Member States have a great reservoir of data which could be useful for businesses and research. However, the lack of digitalized administration is hindering the uptake of G2B data sharing.
- **Digital infrastructure, governance, and cybersecurity.** Processing large amounts of data also means operational risks. Cybercrime is on the rise, but only few recognized industry standards are currently available to combat them.
- **Interoperability.** Different standards and specifications are used for the same data and for different datasets, complicating interoperability, and portability. At the same time, too extensively standardised approaches are limiting data innovation. A balanced approach needs to be encouraged.
- **Legal uncertainty.** Different interpretations of the GDPR at national level are creating legal uncertainty, among retailers and wholesalers when processing data. Different interpretation of EU Law in Member States leads to fragmentation of the Single Market.
- **Dual role of suppliers.** Retailers and wholesalers may be under pressure from suppliers to share data on their sales and activities, all while the suppliers are directly selling to customers.

- **Lack of skills.** Companies struggle to access know-how for analysing data. In particular, most companies cannot afford a dedicated data science team and those with the necessary financial capacities face skill shortages.

## EuroCommerce recommendations to the European Data Strategy

### General recommendations

1. **Data sharing should remain on a voluntary basis and have a clear purpose.** Data sharing and data access can only be successful if voluntary, i.e., if companies can decide for themselves which data they want to share or grant access to, and to whom. Sharing data can be expensive and cumbersome. A voluntary approach would support data reuse while safeguarding the competitiveness of European businesses and securing adequate investment for data management.

Additional guidance on competition law apply to data polling and data sharing between competing companies, within groups of companies and franchising systems, specifically with regards to the Horizontal Guidelines, should be considered. Increased legal certainty would support data sharing between competing companies and enable voluntary data sharing.

2. **Common European Data Spaces should rely on a self-regulatory approach.** Retailers and wholesalers are already sharing data along supply chains and across sectors on daily basis. We welcome that the European Commission acknowledges the well-function data sharing practices in our sector. The Common European Data Spaces should have clear purposes, identify what data to share as a priority, and secure data accuracy.

Information sharing agreements and data analysis services form part of the negotiations between companies and are regulated under horizontal and vertical competition rules. Companies should keep the freedom to negotiate contractual terms and conditions on how, when and under which conditions they share data. Such mechanisms have proved very efficient over the years and have fostered trust in common practices.

Additionally, regulatory sandboxes for data sharing could potentially enable businesses of all sizes to share data purposefully and explore the potential of new technologies such as Artificial Intelligence. Current European and national legislative frameworks, notably competition and privacy rules, limit data sharing between small, medium, and large companies. Data sandboxing, containing small data sets, would allow every business to build and participate in a secure environment for data sharing, in which governments could experiment innovative approaches to regulation that are supportive of small and large businesses alike. It should be considered whether such regulatory sandboxes could become as an integral part of the European Data Spaces.

3. **Mandatory data sharing should be only a last resort in exceptional cases of clear market failures and should carefully balance the interests of data holders/generators and the data recipients.**

*As stated in the European Strategy for Data (footnote 39), "A data access right should only be sector-specific and only given if a market failure in this sector is identified/can be foreseen, which competition law cannot solve. The scope of a data access right should take into account legitimate interests of the data holder and needs to respect the legal framework."*

For example, the European Commission has identified the need to grant access to certain in-vehicle data to independent car repairers as a means to preserve the secondary market for car repair and maintenance.

4. **Data sharing in the public interest should rely on a clear harmonised definition of what is considered under public interest.** The General Data Protection Regulation (GDPR) has already set a clear framework for the concept of ‘public interest’ that should serve as a basis for the future European Data framework.
5. **Investing in skills, digital education and research should be a priority of the European Union.** We strongly encourage the European Commission to support investment in digital skills and cooperation with education providers to achieve general data literacy across the EU and secure higher education programmes in Data Science.  
We believe that a minimum level of digital literacy must be secured. Similarly, data education will be paramount to train the data experts of tomorrow and secure the competitiveness of the European retailers and wholesalers. Retaining and retraining current employees will also be key to address changing customer demand and make the most of new opportunities.

### *Sector-specific recommendations*

6. **We encourage the European Commission to leave the proposed Common European Data Spaces open for cross-sectoral data exchanges.** This will prevent the creation of unnecessary silos and will be beneficial for all sectors. This is especially true for the retail and wholesale sector that have developed common data sharing practices but use, generate and seek access to the data that will be stored in several of the suggested Common European Data Spaces. Encouraging practical and affordable agreements for data sharing, for example through code of conducts defined by the sector, would be welcomed. Such approach will provide SMEs with the legal certainty they need to share more data.
7. **The future European framework for Data should protect Intellectual Property (IP) rights.** The European Commission should clarify how IP rights would be protected when participating in a Common European Data Space, noting that databases result from substantial investments. Data to be used and shared in European Data Spaces should be non-personal and/or anonymised personal data.
8. **There is little or no demand for data portability.** Even though the General Data Protection Regulation (GDPR) has been in force for almost two years, so far consumers have made little use of their right to data portability as foreseen in its Article 20. Data portability could benefit from standardisation only if such standards are flexible, easy to implement and complement the framework set by the GDPR. We acknowledge that data portability has the potential to foster competition through new data flows. However, there is a lack of awareness and added value for consumers given the high degree of multi-homing in retail, as well as interest to exercise their right. On the other hand, controllers are facing technical barriers and the relevant know how to meet requests. Meanwhile the worrying and diverging interpretations at national level on how to apply data portability are fragmenting the Single Market.
9. **Common European Data Spaces should ensure an adequate level of cybersecurity.** Only a secure environment that is continuously improved and protects effectively stored data and cloud services will foster trust and support the uptake of the Data Economy.

**10. Standardisation for datasets and Application Programming Interfaces (APIs) should be considered only on a case-by-case basis.** Focus should be put on enabling interoperability within and across sectors and supporting data innovation without generating high database reorganisation costs.

One of the challenges retailers and wholesalers face when sharing data is the lack of IT standardisation. We would appreciate the opportunity to call upon the Commission to encourage strategic standardisation for datasets and Application Programming Interfaces (APIs).

**11. The EU (self-) regulatory Cloud Rulebook.** Our sector sees with interest the opportunity for the creation of the EU (self-) regulatory Cloud Rulebook. It is important that the rulebook raises awareness on standards and codes of conduct providing a sufficient level of assurance that the data are processed in a trustworthy and secure environment. It offers the opportunity to address concerns that companies have in the adoption of cloud services. In addition, it could help show the range of cloud services that exist on the market today thus allowing retailers and wholesalers to use cloud services that fit for their purposes. This could include cloud services currently being developed by a small number of retailers and wholesalers, which some of them are considering expanding to third parties.

**12. European Cloud Service marketplace.** A European Cloud services marketplace would support greater competition in the market. It could give all market participants the opportunity to scale up while ensuring the level playing field between cloud providers as regards security, privacy, and data governance. Initiatives such as Gaia-X should be taken into consideration in order to prevent duplication.