

Comments to the Commission's roadmap/inception impact assessment on the Data sharing in the EU – common European data spaces (new rules)

Introduction

EuroCommerce welcomes the opportunity to provide feedback to the European Commission's Inception Impact Assessment for a legislative framework for the governance of Common European Data Spaces (CEDSs). The coronavirus crisis has made the need for a fair and ethical European data ecosystem more pressing than ever. The Data Economy and its insights can help retailers and wholesalers to improve their services, but also to innovate and find new opportunities to speed up recovery. To remain competitive, retailers and wholesalers need a regulatory framework that supports strong European retail and wholesale ecosystems in a digital environment and gives them legal certainty and incentives to invest in robust omnichannel strategies.

Summary

CEDSs will encourage voluntary data sharing in strategic sectors, foster data use across industries and the European Union, and establish safe and easily accessible data environments for public bodies, companies, and individuals. EuroCommerce strongly believes that the following criteria should be taken into consideration as the foundation of a well-functioning legal framework for Data Sharing:

- **Data sharing in Common European Data Spaces should remain on a voluntary basis.** We strongly believe that mandatory data sharing should only be used as a last resort tool in exceptional cases of clear market failures and should carefully balance the interests of data holders/generators and data recipients.
- **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; it is thus essential that the approach allows for voluntary data exchange between different data spaces, within the limits of competition law. Such an approach would prevent the creation of unnecessary silos and trigger efficient data sharing practices.
- **Data sharing for the common good should be based on a clear harmonised definition** of what constitutes public interest.
- **Common European Data Spaces must provide legal certainty, secure privacy, and competition safeguards and ensure an adequate level of cybersecurity.** The proper implementation of existing rules will be paramount to the success of CEDSs.
- **Unlocking the value of public data** in a useful, harmonised format has great potential to foster innovation.
- **Investing in skills, digital education and research should be a priority of the European Union.**

1. Data sharing should remain on a voluntary basis in the Common European Data Spaces. Retailers and wholesalers are already sharing large amounts of data on a voluntary basis throughout the whole supply chain. To improve their operational efficiency along supply chains such as logistics, sales, and performance. As well as to fulfill their regulatory obligations, retailers and wholesalers share their data with public authorities (e.g. traceability, registration of chemical substances, statistics, tax and other purposes). As common practice already shows, data sharing and data access can only be successful if it remains 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, helping companies grow and securing adequate investment for data management.

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

We strongly believe that mandatory data sharing should only be used as a last resort tool in exceptional cases of clear market failures and should carefully balance the interests of data holders/generators and 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.

2. Common European Data Spaces should be self-regulatory. We welcome that the European Commission acknowledges the well-functioning data sharing practices in our sector. Common European Data Spaces should have clear purposes, identify what data to share as a priority, and secure data accuracy. Standardisation for datasets should be considered only on a case-by-case basis. Enabling interoperability within and across sectors and supporting data innovation without generating high database reorganisation costs should be encouraged.

Information sharing agreements and data analysis services are negotiated by companies and regulated under horizontal and vertical competition rules. Companies should keep the freedom to negotiate contractual terms and conditions on how, when, and why 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 an integral part of the European Common Data Spaces.

3. **Cross-sectorial data sharing should be encouraged.** We encourage the European Commission to leave the proposed Common European Data Spaces open for cross-sectoral data exchanges. A transversal approach 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 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 sector-led code of conducts, would be welcomed. Such an approach will provide SMEs with the legal certainty they need to share more data.
4. **Data sharing for the common good should rely on a clear harmonised definition of what constitutes public interest.** The concept of *opening up data for the common good* is too broad and must rely on clear adequate and accurate criteria. We strongly believe that stakeholder consultation is needed beforehand to secure a future-proof definition and map out relevant criteria.
5. **A voluntary data sharing framework must provide privacy safeguards.** Data that will be used and shared in Common European Data Spaces should be non-personal and/or anonymised personal data and abide by GDPR principles. The future European framework for Data should also 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.
6. **Common European Data Spaces should ensure an adequate level of 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. 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.
7. **Encouraging better implementation of existing rules will provide legal certainty for data sharing through CEDSs.** Different interpretations of the GDPR at the national level are creating legal uncertainty and fragment the Single Market for Data. The full potential of the Data Economy will only be reached if already existing rules are properly enforced.
8. **Unlocking the value of public data has great potential to foster innovation.** Public data has great potential to help technological development. However, Member States often share public data is often only available in unusable formats. We encourage the development of harmonised useful public data formats, that can help boost innovation in various sectors.
9. **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 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. Data alone is not the key to technological development, it is also, the right set of skilled people, who have the right know how.