

# FESE response to the Commission consultation on a European Strategy for Data

28<sup>th</sup> May 2020, Brussels

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## 1. Section 1: General questions on the data strategy

Do you agree that the European Union needs an overarching data strategy to enable the digital transformation of the society?

- Yes
- No

“More data should be available for the common good, for example for improving mobility, delivering personalised medicine, reducing energy consumption and making our society greener.” To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

Do you think that it should be made easier for individuals to give access to existing data held about them, e.g. by online platform providers, car manufacturers, producers of wearables, voice assistants or smart home appliances, to new services providers of their choosing, in line with the GDPR?

- Yes
- No

Which mechanism(s) do you think would help achieve this?

- A compelling offer to use the data that brings benefits to the individuals
- Practical solutions that allow individuals to exercise control, such as mobile and online dashboards or apps
- Additional rights in law
- Other
- I don't know / no opinion

If additional rights in law, please specify

N/A

If other, please specify

N/A

Have you faced difficulties in recruiting data professionals (workers who collect, store, manage, analyse, interpret and visualise data as their primary or as a relevant part of their activity) during the last 2 years?

- Yes
- No

'General data literacy across the EU population is currently insufficient for everyone to benefit from data-driven innovation and to become more active agents in the data economy.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

Have you had difficulties in using data from other companies?

- Yes
- No

What was the nature of such difficulties?

- Impossibility to find companies to supply data of relevant quality
- Denied data access
- Prohibitive prices or other conditions considered unfair or prohibitive
- Technical aspects relating to both data interoperability and transfer mechanisms
- Other
- I don't know / no opinion

If other, please specify

N/A

'It is currently challenging to define solutions on the allocation of the rights to use data coming from smart machines or devices that are fair for all parties concerned'. To what extent do you agree with this statement?

- Strongly agree

- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

'The EU should make major investments in technologies and infrastructures that enhance data access and use, while giving individuals as well as public and private organisations full control over the data they generate.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

'The development of common European data spaces should be supported by the EU in strategic industry sectors and domains of public interest (industry/manufacturing, Green Deal, mobility, health, finance, energy, agriculture, public administration, skills).' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

Are there general comments you would like to make about the data strategy?

Classification to discern types of data on commercial scope is necessary. Not all data can be provided freely as the companies' business case to produce high-quality data would be lacking. However, data availability and sharing measures can be supported once data is no longer commercially valuable.

## 2. Section 2: Specific questions on future actions

### 2.1. Data Governance

'Data governance mechanisms are needed to capture the enormous potential of data in particular for cross-sector data use.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree

- Strongly disagree
- I don't know / no opinion

### Standardisation

'The re-use of data in the economy and society would benefit greatly from standardisation to improve interoperability.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

'Future standardisation activities need to better address the use of data across sectors of the economy or domains of society.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

Which of the following elements do you consider to be the most useful in terms of standardisation?

- Metadata schema
- Metadata variables (semantic interoperability at the metadata level), including ontologies, controlled vocabularies and agreed thesauri
- Data formats
- Common data models
- Data exchange protocols
- Application Programming Interfaces (APIs)
- Licences or licence terms
- Other
- I don't know / no opinion

If other, please specify

N/A

What role should EU or national government bodies take in standardisation?

- Provide necessary funding in order to ensure open standards

- Take an active role in the prioritisation and coordination of standardisation needs, creation and updates
- Be directly involved in defining standards
- Provide funding to test draft standards in practice and develop tools to implement them early-on
- Other
- Governments should not have a role in standardisation
- I don't know / no opinion

If other, please specify

'Standardisation of data' is a task better performed by industry bodies who possess the necessary technical knowledge and work on common standards on a voluntary basis.

### Secondary use of data

'Public authorities should do more to make available a broader range of sensitive data for R&I purposes for the public interest, in full respect of data protection rights.' To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don't know / no opinion

Which of the following should public authorities do to facilitate data re-use:

- Help the re-user to identify the exact authority that is holder of a specific set of data (one-stop-shop)
- Ensure that the request for data access is processed faster, within agreed deadlines
- Assess whether the re-use of the data could potentially harm the interests of others (of the persons/companies whose data is being used) for concrete use-cases
- Be able to provide anonymisation of specific data for concrete use-cases
- Offer the possibility to process data within a secure environment it makes available, so that the user does not need to obtain a copy of the data
- Clarify from the outset the legal rules on the purposes for which the data can be used
- Provide for recourse mechanisms to challenge decisions on one or several of the above.
- Other
- I don't know / no opinion

If other, please specify

N/A

### Data altruism

Do you think that law and technology should enable citizens to make available their data for the public interest, without any direct reward?

- Yes
- No
- I don't know / no opinion

For which of the following purposes would you be willing to make data available:

- For health-related research
- For aspects relating to the city/municipality/region I live in, including for example improving mobility, to improve environmental challenges that can be addressed through action at local or regional level
- For other public interest purposes
- None of the above
- I don't know / no opinion

If for other public interest purposes, please specify

N/A

Do you think there are sufficient tools and mechanisms to “donate” your data?

- Yes
- No
- I don't know / no opinion

In which of the following domains do you see potential for the use of ‘contributed’ data:

- For health-related research
- For aspects relating to the city/municipality/region I live in, including for example improving mobility, to improve environmental challenges that can be addressed through action at local or regional level
- For other public interest purposes
- None of the above
- I don't know / no opinion

If for other public interest purposes, please specify

N/A

What would support the usefulness of ‘data altruism’ mechanisms as a means to build up data pools for research and innovation:

- A standard form for obtaining consent (and, where necessary, requesting data portability) from the individual in line with the GDPR
- A European approach to obtaining consent that is compliant with the GDPR
- Public registers of persons that are willing to make available some of their data for research or innovation purposes
- The existence of intermediary infrastructures such as personal data spaces /wallets/stores controlled by each individual from which the data could be retrieved
- Additional EU legislation on data altruism relating to deceased persons
- Information campaigns sensitising individuals on the subject matter, e.g. via clinical practitioners
- Measures to mitigate inherent bias in the data collected through this means
- Other

If other, please specify

N/A

### Data intermediaries

‘Such intermediaries are useful enablers of the data economy.’ To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don’t know / no opinion

### 2.2. Identification of high-value datasets

‘The establishment of a list of high-value datasets, to be made available free of charge, without restrictions and via APIs, is a good way to ensure that public sector data has a positive impact on the EU’s economy and society.’ To what extent do you agree with this statement?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- I don’t know / no opinion

Apart from the potential to generate socio-economic benefits, please indicate the relevance of the following additional factors to be taken into account when selecting datasets for the future list of high value datasets:

	Very relevant	Relevant	Neutral	Not relevant	Not relevant at all	I don't know / no opinion
The re-use of the dataset would increase if it was provided free of charge.						
The dataset belongs to a thematic area in which there are few EU-level requirements for opening up data.						
The re-use of the dataset would increase if its availability under uniform conditions was ensured across the entire EU.						
The re-use of the dataset would increase if it was available via an application programming interface (API).						

If other factors: please specify

N/A

Under the Open Data Directive, specific high-value datasets will have to be available free of charge, in a machine-readable format, provided via APIs and, where relevant, provided as a bulk download. Please indicate the relevance of each of the other arrangements indicated below to improve the re-usability of specific high-value datasets.

	Very relevant	Relevant	Neutral	Not relevant	Not relevant at all	I don't know / no opinion
Licensing and other terms applicable to		X				

re-use						
Standardised formats of data and metadata						
Possibility of user feedback						
Specific technical arrangements for dissemination						

If other arrangements, please specify:

N/A

Please specify which specific technical arrangements for dissemination:

N/A

EU programmes may provide funding to enhance the availability and re-use of high-value datasets across Europe. For each of the following activities, please indicate how relevant it is to support them.

	Very relevant	Relevant	Neutral	Not relevant	Not relevant at all	I don't know / no opinion
Improving the quality (e.g. machine-readability) and interoperability of the data / metadata						
Ensuring sustainable data provision via application programming interfaces (APIs)						
Engaging with re-users (promoting the data, co-defining use-cases)						

If other activities, please specify:

N/A

According to your experience and the expected potential of concrete datasets, indicate up to three specific datasets that should be listed in each of the thematic categories of high-value datasets, as referred to in Article 13(1) of the Open Data Directive:

	Specific datasets
Geospatial	
Earth observation and environment	
Meteorological	
Statistics	
Companies and company ownership	
Mobility	

### 2.3. The (self-/co-) regulatory context of cloud computing

Does your organisation use and/or provide cloud or edge services?

- Yes, my organisation uses cloud or edge services
- Yes, my organisation provides cloud or edge services
- None of the two

Does your organisation use:

- Cloud
- Edge
- Both cloud and edge

Does your organisation provide:

- Cloud
- Edge
- Both cloud and edge

Please explain why you do not use cloud, edge or neither of the two:

N/A

Do you believe the cloud market currently offers the technological solutions that you need to grow and innovate your business?

- Yes
- No

Do you feel that your organisation's sensitive data is adequately protected and secured by the cloud services you use?

- Yes

No

Please specify the problems

N/A

Have you experienced problems in the context of the current functioning and constitution of the market for cloud services in Europe?

Yes

No

Do these problems relate to:

Cost of cloud services

A limited possibility to switch providers, please specify

Asymmetry of power of negotiation between customer and provide, please specify

Contractual practice on the market, including unilateral change of terms and conditions, please specify

Security risks, including leakage of data or intellectual property

Other

Please specify

Many FESE Members use cloud in their operations. We acknowledge the limited offer of providers but to favour innovation, is crucial that the EU market remains open to non-EU cloud providers.

Do you perceive risks emerging from the current functioning and constitution of the market for cloud services in Europe?

Yes

No

Do these risks relate to:

Cost of cloud services

A limited possibility to switch providers, please specify

Asymmetry of power of negotiation between customer and provide, please specify

Contractual practice on the market, including unilateral change of terms and conditions, please specify

Security risks, including leakage of data or intellectual property

Other

Please specify

Agreeing regulatory compliant contracts with CSPs in the financial sector requires extraordinary efforts and time. We actively support the EU's work in designing "Voluntary Standard Contract Clauses".

Does your organisation have flexibility to procure/adopt new and innovative cloud solutions if they emerge on the market?

- Yes
- No

Is this related to:

- Technical barriers
- Legal/contractual barriers
- Economic/cost barriers
- Security barriers
- Other barriers

If technical barriers, please specify

N/A

If legal/contractual barriers, please specify

N/A

If economic/cost barriers, please specify

N/A

If security barriers, please specify

N/A

If other barriers, please specify

N/A

Is your organisation aware of self-regulatory schemes for cloud/edge services (for example, codes of conduct or certification schemes)?

- Yes
- No

Please indicate in which of the following areas you are aware of self-regulatory approaches:

- Data protection
- Data portability

- Security
- Energy efficiency
- Other

If other, please specify

N/A

Can you please name the specific schemes that you are familiar with?

N/A

How do you believe market awareness of these schemes could be raised?

N/A

Do you believe a self-regulatory approach is appropriate to identify best practices to apply EU legislation or self-regulation?

- Yes
- No

If yes, do you believe a self-regulatory approach is appropriate to identify best practices to apply EU legislation or self-regulation relating to:

	Yes	No	I don't know / no opinion
Data protection			
Data portability			
Security			
Energy-efficiency			
Other			

If other, please specify

N/A

Please explain why:

N/A

Would it be beneficial for your organisation if applicable rules for cloud and edge would be bundled and corresponding information made available by the European Commission?

- Yes
- No

I don't know / no opinion

### 3. Additional information

#### Final Comments:

FESE supports the strategy of the European Commission in proposing an overarching data strategy that has the potential to achieve the benefits of the single market and avoid further fragmentation. To this end, we believe a harmonised European approach is preferable to speed up the use and investment in technologies and avoid lagging behind other jurisdictions. Even if self-regulatory approaches could be supported following the subsidiarity principle, these could take an excessive amount of time to be deployed and have risks to create fragmentation in a sector where harmonisation is favoured. Therefore, we consider that regulators possess the appropriate tools to act quickly and effectively to prepare a harmonised approach in the form of legislation. Nevertheless, caution should be exercised and legislation should be designed proportionally to the existing business environment.

It is important to find a careful balance between ‘data privacy’ and the use of data for public interests. Society can benefit from the larger use of data from various sources, allowing for analysis and monitoring for research and developments purposes. However, not all data can be considered as a ‘common good’ and it is fundamental to consider the incentives that the data originator needs to have in order to produce innovative and valuable data. Companies should be allowed to ‘upgrade’ raw data and develop products/services based on these sources. It is, therefore, important not to create disincentives towards data collection/standardisation and product developments, i.e. allowing for commercialisation of data. Considering the above, FESE sees the need for a clear and concise definition of “data” in the form of a classification framework. As such, we would propose the following:

1. **Source of data.** It makes a significant difference whether data is originated by (i) private individuals, (ii) companies, and (iii) if data is created in the retail market (C2B) vs wholesale data (B2B).
2. **Ownership of data.** There could be cases where the originator of data does not correspond to the owner of the same data. For example, Exchanges have ownership of data through their market data licensing agreements (i.e. contractual ownership).
3. **Data quality.** Differentiating between pure ‘raw’ data and a form of data that is refined and upgraded.
4. **Data value.** Meaning, distinguishing between commercially valuable data that has the potential to be monetisable, and data that is not commercially valuable.
5. **Pooling of data.** Having the possibility of commercialisation for making pooled data readable/available.
6. **Availability.** Data sets can be either free for distribution, linked to a fee, for user subscription, etc.
7. **Timestamp.** Which would be used also as a measure to determine when data lose its commercially valuable characteristic after a certain amount of time.

Regarding the “EU data spaces” proposal, prudence should be exercised. While a harmonised approach across different industry sectors might be attractive, we believe this option would likely result in an excessively complex project where the desired innovation will eventually not be achieved. In this sense, a competitive approach is preferable. On the same line, ‘standardisation of data’ is a task better performed by industry bodies who

possess the necessary technical knowledge and work on common standards on a voluntary basis.

Finally, cloud markets offer technological solutions in financial markets to innovate and should be supported. While the level of cybersecurity is already high, further advancements are required mainly in the areas of: (i) extending encryption technologies to data being in use/in memory, (ii) include end-to-end encryption wherever possible, (iii) consistent implementation of customer lockbox/consent requirements before data is accessed/shared, (iv) international agreements between the EU and other major jurisdictions (e.g. the US) to sharply regulate cross border access and activities. FESE would like to stress the current asymmetries of power of negotiation between customer and Cloud Services Providers (CSPs), i.e. the extraordinary efforts and time required to agree on regulatory compliant contracts with CSPs in the financial sector. Therefore, we actively support the EU's work designing "Voluntary Standard Contract Clauses" to facilitate future negotiations. Moreover, it is still problematic to procure/adopt new and innovative cloud solutions, as it takes a long time to ensure that these new services are regulatory compliant.