

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Legislative framework for the governance of common European data spaces
LEAD DG (RESPONSIBLE UNIT)	CNECT/G1
LIKELY TYPE OF INITIATIVE	Legislative proposal
INDICATIVE PLANNING	Q4/2020
ADDITIONAL INFORMATION	

A. Context, Problem definition and Subsidiarity Check

Context

The Covid-19 crisis has shown the essential role of data use for crisis management and for informed decision making by governments. Data will also have a key place in the economic recovery strategy for the EU, given its potential for innovation and job-creation, as well as its contribution to the efficiency of industries across all sectors. The European Council has underlined this potential at several occasions.

With its European [strategy for data](#), published on 19 February 2020, the Commission has formulated a vision for the data economy. It will work towards the creation of a Single Market for data, where data flows between countries and sectors, where data is available for use in full respect of European values and rules, and where there are clear rules for access and use of the data.

In order to take into account the specificities of the different sectors, the strategy foresees the creation of common European data spaces in crucial sectors and domains of public interest. The data spaces will build on existing EU legislation and combine the necessary technical infrastructure with clear governance mechanisms.

The horizontal legislative actions will be combined with funding under the EU funding programmes (DEP, CEF2 and Horizon Europe), as well as sector-specific measures on data governance, data access and use.

Problem the initiative aims to tackle

The initiative seeks to address the problem of

- low availability of data for research and innovative uses resulting from transaction costs that hinder data exchanges. A focus would be put on situations where data holders or data subjects would in principle agree to the use of the data. Transaction costs may arise from the difficulty to establish data exchange processes from a business/organisational, legal and technical side. This may result from the absence of relevant standards that support such exchanges and standards that make the data usable at the user end as well as the absence of trusted technical infrastructures supporting the exchanges;
- insufficient resourcing in public sector organisations when it comes to ascertain requests for use of data that is in principle not accessible and the use of which is conditional on the respect of rights of others (personal data, copyrighted material, commercially confidential information).

The planned legislative framework would tackle the problems with a cross-sector relevance in four thematic clusters:

- (i) unlock value from data held by public sector bodies the use of which is conditional on the respect of rights of others,
- (ii) support the use of data that individuals or companies voluntarily contribute to the wider public good,
- (iii) lower the cost of data use through interoperability at the technical level and availability of generic enabling standards and
- (iv) lower transactions costs in data sharing by supporting an emerging offer of data intermediaries, i.e. entities that enable any kind of data holder (persons, business, public sector bodies, academic or not-for profit organisations) to share their data of all types with other organisations, and which may provide additional value-added services.

While actions under (i) would be focussed on data held by the public sector, actions under (ii) would be focussed

on individuals and companies and actions under (iii) and (iv) in principle cover all data and all data holders.

The initiative would focus on reinforcing an institutional response to these challenges by establishing processes and bodies/structures without touching upon the existing legal regime of substantive rights in relation to (personal and non-personal) data.

More specifically, the problems to be addressed are:

(i) The low degree of use made of such data held by public sector bodies the use of which is conditional on the respect of rights of others (personal data, intellectual property rights, including trade secrets, other commercially confidential data). This concerns data that are not covered by the Open Data Directive or data which are in principle in scope but for which determining the applicability of the Directive is particularly time intensive. The initiative may require that technical means are available to allow certain insights to be derived from such data that do not compromise data privacy by allowing identification of individuals or exposing confidential business information. Technical mechanisms exist that would allow controlled processing of such data, but are costly to set in place and maintain. Some Member States (notably France, Finland and Germany) have established specific bodies that offer such technical mechanisms, creating different conditions for re-use of such data.

(ii) There is a strong potential in the use of 'consented data' made available voluntarily by individual data subjects for the common good ('data altruism'), but it is difficult to obtain such data at the scale necessary for establishing data pools required for Big Data analytics or machine learning. Problems to be addressed are, in particular: Identifying mechanisms or tools allowing the self-identification of willing persons that would make available data in accordance with the GDPR rules on consent as well as necessary tools and intermediaries for the safe processing of data made available under this mechanism.

(iii) Data usability is often dependent on standards that minimise costs of data transformation or normalisation. Such costs are part of the transaction costs in use of data from another organisation that can constitute an important barrier to entry of markets for products and services building on data. Standardisation needs are typically identified within sectors, but identification of needs is more difficult across sectors. Yet, a lot of untapped benefits of data are in re-use across sectors. A 2018 study for Vodafone attributes between one quarter and one third of the potential benefits of using data generated by objects connected to the Internet of Things – IoT data – more widely to sharing of such data between sectors. The initiative would examine additional means of supporting the Commission and stakeholders in this challenge.

Additionally, the initiative will look at transaction costs resulting from the absence of standards for the most common steps in any data sharing situation: standards for discoverability of data and transparency on data quality through appropriate metadata descriptions, aspects of identification and, authentication of parties or objects party to a data sharing situation, access and usage rights management, consent, including its withdrawal, etc. It will examine whether new mechanisms are necessary to ensure adoption and use of common standards.

(iv) Voluntary data-sharing remains costly and complicated as a result of transaction costs that can result from: Difficulty to identify relevant data suppliers, costs of licensing agreement and costs of identifying appropriate reward for data (including the cost of asking a price below value of the data), cost of giving and maintaining permissions on use of data (consent for personal data and permissions for other data), technical infrastructures for secure data exchange (including securing data during on-going negotiations) or data processing where no copy of the data shall be transferred to the data user etc. Novel data intermediaries are emerging to offer such services mainly focussing on transactions involving individuals (personal data spaces, personal data trusts or cooperatives) and companies (data marketplaces, industrial data platforms). Yet, they can also support data sharing involving public sector as data users (for public sector as data supplier see mechanisms identified under (i)) or academic and not-for-profit organisations. Some of them are also offering data normalisation services, which helps addressing a problem identified under (iii). Being mostly start-ups, they have seen some commercial success but are limited in growth potential because trusting such service providers remains a key challenge in this emerging market.

The legal instrument would limit itself to aspects of horizontal nature or of cross-sector or cross-domain relevance and would allow for articulation with sector or domain-specific frameworks.

Basis for EU intervention (legal basis and subsidiarity check)

Article 114 TFEU, potentially combined with other legal bases.

This initiative intends to further complete a single market for data, i.e. an area in which data from the public sector, business and citizens can be accessed and used in the best possible manner while respecting rights in relation to such data and investments made into their collection. The initiative will allow the EU to benefit from the scale of the internal market, since data-driven products and services are often developed using data from different Member States, and later commercialised across the EU. Moreover, some Member States have taken legislative action addressing the problems described above (for example France, Germany and Finland on facilitating re-use of public sector data), whereas others have not. This can lead to legislative fragmentation in the internal market and as a result companies will be faced with a plethora of different rules and practices across the EU.

Subsidiarity check:

The actions may require the Member States to put in place the necessary processes and bodies to handle the problems described above, while leaving room for implementation at the national and domain-specific level. Member States will be able to build on existing bodies and structures. The actions at European level will facilitate a faster implementation of national best practices in all Member States.

B. Objectives and Policy options

Objectives:

- Make more data held by the public sector usable for research and innovative uses (development of new products and services) where the use is conditional on the respect of rights of others (right to the protection of personal data, intellectual property rights, including trade secrets, and other commercially confidential data).
- Make more data usable for the common good for research and innovative uses where individuals consent to such use in compliance with EU data protection rules or companies voluntarily agree to use of non-personal data they hold;
- Enhancing data use in the society and economy by lowering transaction costs, resulting from technical barriers, in particular those resulting from the lack of interoperability and absence of generic standards for data sharing, but also from costs of establishing data sharing from a legal and technical perspective.

Policy options:

The initiative would focus on an institutional response by establishing structural enablers (bodies/structures and/or processes) for data-sharing, both with respect to the common European data spaces to be established under DEP and other data sharing arrangements. It would deliberately not consider policy options changing the situation (in substantive law) with respect to rights and obligations persons and organisations have with regard to specific data.

To tackle the issues, hard law options will be considered (with different degrees of intensity), as well as softer measures (e.g. technical recommendations to Member States) in relation with the four areas mentioned above. The creation of a European body/ies, function(s) or process(es) is considered relevant for all objectives and all sectors. It might have to follow a model of variable geometry to reflect the diversity of the public authorities and the big data users in the different sectors. The tasks could be covered by the same body, function or process or by several.

More specifically:

- In order to foster reuse of more data held by the public sector: Most impact is expected from options that would focus on public sector bodies that hold relevant data, which are typically Member State bodies. Options to be examined will range from sharing of best practices among Member States to creation of obligations on Member States to offer certain support services to researchers and business innovators (one-stop-shop, hosting of data in secure environments for processing, support of public registers in compliance with existing regulation). European coordination bodies, functions or structures (or one single body, function or structure) could support exchange of best practices or may lead to adoption of guidelines for common practices of national bodies. These measures would complement the provisions of the Open Data Directive.
- In order to support individuals in making data available for the common good: Options to be assessed would examine whether main actions are best adopted at the national or European level. Options to be examined will range from obligations on Member States to ensure national data altruism mechanisms, to making available a common European consent form (which can be customised depending on areas), certification or labelling of tools or apps for communicating data and consent (including the option to withdraw) and tasking the European coordination mechanism (mentioned before) to maintain and disseminate such form;
- In order to tackle interoperability and standardisation needs, the establishment of (a) European coordination body/ies, structure(s) or process(es) is/are considered. Its/their role would be to better identify needs early on, also from an industrial policy perspective and which shall feed into the established

- mechanisms and processes for technical standardisation;
- In order to lower transaction costs in data sharing, support could be given to the commercial uptake of novel data intermediaries through the development of voluntary labels or fully-fledged certification options. Options to be considered are the way in which criteria for labelling/certification are being established (already in the legislative act, in a delegated act to be adopted later, by stakeholders in a self- or co-regulatory process), and the mechanisms to be used (label/certification, voluntary or compulsory certification) and the means to obtain certification. Such decisions could be taken at European level or at national level. Existing frameworks in particular the one under the GDPR would be taken into consideration.

When designing the options, conditions to data access from outside the EU will also have to be assessed.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

There is a large amount of literature on the economic benefits of enhancing data sharing within and across sectors. A recent OECD report (November 2019) outlines the economic and societal benefits of fostering data sharing and access to data. It indicates that, overall, data access and sharing is estimated to generate social and economic benefits worth between 0.1% and 1.5% of gross domestic product (GDP), in the case of public-sector data, and between 1% and 2.5% of GDP when also including private-sector data.

Many factors influence whether such benefits can be created and the measures address in principle any economic, societal or governmental activity. Granular quantitative data on the impact of the envisaged measure (e.g. certification scheme), currently not available, will be collected through a support study.

The benefits of standardisation translate into lower technical adaptation costs for a larger range of companies as well as public authorities, lower barriers to enter markets or to develop entirely novel products or services. Such benefits should in particular benefit SMEs that normally cannot influence standardisation prioritisation.

SMEs would also substantially benefit from wider availability of public sector data as they can typically not create large data pools themselves.

Likely social impacts

The initiative is expected to speed up scientific discovery and innovation in the different common European data spaces, through easier re-usability of data. It will improve policy implementation and government services, including at the local level, based on better data availability (e.g. as a result of civic data altruism), as well as in public areas with high societal impact. It will lead to faster and more targeted response to societal challenges due to anticipating risks based on more available information; it will bring governance benefits, through more effective public participation and transparency; and it will also contribute to better decision making both in the public and private sectors through better analysis of information.

Studies (IDC 2019) demonstrate a clear growth potential in skilled labour for data workers, a potential that this initiative aims to leverage through supporting more data-driven services.

The initiative will also allow for more effective and efficient management of societal risks resulting from climate change disasters and unsustainable economic activities.

The impacts of this initiative will materialise in the different sectors and domains of the economy and society. In this respect, the envisaged sectoral European data spaces on health, skills and mobility – to be developed by sector-specific measures complementing the horizontal framework – amongst others can have significant social impacts, improving medical care, reducing skills gaps and labour market shortages, and making public and private transport more efficient.

Likely environmental impacts

The initiative will support the development of common European data spaces that have a high relevance many environmental issues, including for combating climate change:

The framework will support the establishment of individual common European data spaces. Better and wider accessibility to relevant data will contribute to solutions that enhance preservation and sustainability. Indirectly, it will thus create positive overall impacts in the environment through the following specific initiatives:

- The environmental impact of the creation of a Green deal data space will be significant, as accessible and interoperable data will aid to understand and tackle environmental challenges through better policies to achieve its objectives. Targeted initiatives could exploit the additional potential of improved access to non-public data in support of the Green Deal priority actions e.g. on climate change impacts, circular economy, zero-pollution, biodiversity, and deforestation.

- The establishment of a common European energy data space will improve energy efficiency, optimise local consumption and broaden the integration of renewable energy sources.
- The set-up of a common agriculture data space will allow for increased precision farming capacities and thus reduce emissions from agriculture to the environment.

Likely impacts on fundamental rights

Since personal data would fall into the scope of some elements of this initiative, the measure will be designed in a way that fully complies with the data protection legislation.

In the context of data altruism of individuals, such individuals need to be protected, so that they do not share data with organisations that (i) do not respect their altruistic intentions or (ii) encourage individuals to make available more data than they would normally be prepared to (by setting ‘unethical’ incentives). Further promoting use of personal data held by the public sector bears inherent risks that need to be addressed in the institutional design.

Likely impacts on simplification and/or administrative burden

The proposed elements of the measure on unlocking more public sector data will require additional expertise and resources in the public sector, but will considerably lower the administrative burden for researchers using data. A European body/structure(s) shall support experts in the Member States and ensure that expertise is re-used across Member States. This body will have to organise the participation and representation of the different authorities in the Member States.

Companies providing data sharing services may face additional administrative burden in terms of certification or labelling, but only if such certification or labelling would become compulsory. Such administrative burden would need to be balanced against the advantages such certification or labelling would provide to them in terms of increased business resulting from more market participants trusting them.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact Assessment will help preparing the policy initiative, supported by an evidence collection exercise and a stakeholder consultation process. Actions to procure a support study have been already undertaken (SMART 2019/0024). Final results are expected in August 2020 (deadline subject to possible change in light of the COVID-19 crisis). The Impact Assessment will also benefit from substantial consultation actions that have already taken place in 2017-2019.

Evidence base and data collection

Extensive work has been done during the past mandate, identifying the problems that are currently preventing Europe to realise the full potential of the data-driven innovation in the economy, in particular by ensuring greater access and use of data. This work includes earlier Commission policy documents (Commission Communications on “Building a European data economy [COM(2017)9] and on “Towards a common European data space” [COM(2018)232]), and extensive exploratory study work. The analyses have identified difficulties linked to the access to and the (legal and technical) ability to use data as key barriers to data-driven innovation using techniques of Big Data analytics and Artificial Intelligence in the EU.

A number of obstacles was identified. They concern technical barriers (interoperability, safety and security requirements), legal ones (uncertainty about rights on the data, the costs of compliance with existing legal obligations as well as costs of licensing), organisational challenges, the difficulty to control downstream use, the fear of misappropriation and non-availability of skilled labour.

The impact assessment can thus build on earlier study work, namely:

- [Study on data sharing among companies in Europe](#),
- [Study on emerging issues of data ownership, reusability and access to data](#),
- [results of a 2017 public online consultation](#),
- [targeted SME panel consultation](#),
- [Impact assessment study supporting the review of the public sector information directive](#)

This evidence allows the proposed focussing of this measure on specific elements discussed above.

Additional evidence will be sought in terms of the specific regulatory costs and benefits of the concrete elements of the measure described above. These regulatory costs, benefits and burden reduction/simplification potential will be identified and quantified.

Consultation of citizens and stakeholders

The preparation of the Impact Assessment will rely on a consultation of the stakeholders, also building on the findings from past consultations about data-related issues. These are the 2017 public consultation on building a

European data economy, the 2018 public consultation on the revision of the Directive on the reuse of public sector information, the 2018 SME panel consultation on the B2B data sharing principles and guidance

The Commission also launched a public consultation running from 19 February until 31 May 2020. Further consultation activities include workshops. A series of 10 workshops on common European data spaces, covering a range of sectors were conducted already in 2019. More workshops shall be organised on data platforms, and consultations with stakeholders organised in the Big Data Value Association. Additionally, targeted dialogues with SMEs will be organised 2020, as well as sectoral events, allowing for interaction in specific areas, in particular health, industrial manufacturing, agriculture and law enforcement. Finally, the contractors of the support study will contribute to the consultation process, including with interviews with targeted stakeholders (deadlines subject to possible change in light of the COVID-19 crisis).

Following the publication of this inception impact assessment, the feedback collected will be taken into account for finalising an Impact Assessment, which should be analysed and commented upon by the Regulatory Scrutiny Board after the summer 2020. The adoption of the initiative is expected in Q4 2020.

Will an Implementation plan be established?

Depending on the type of act, an implementation plan could be established. It would in particular ensure mutual learning from best practices in Member States.