



# Response to the European Commission’s Inception Impact Assessment “Legislative Framework for the Governance of Common European Data Spaces”

## INTRODUCTION

On behalf of the Center for Data Innovation ([datainnovation.org](http://datainnovation.org)), we are pleased to submit feedback to the European Commission’s roadmap titled “Legislative framework for the governance of common European data spaces.”<sup>1</sup>

The Center for Data Innovation is the leading think tank studying the intersection of data, technology, and public policy. With staff in Washington, D.C. and Brussels, the Center formulates and promotes pragmatic public policies designed to maximize the benefits of data-driven innovation in the public and private sectors. It educates policymakers and the public about the opportunities and challenges associated with data, as well as technology trends such as artificial intelligence, open data, and the Internet of Things. The Center is a non-profit, non-partisan research institute affiliated with the Information Technology and Innovation Foundation (ITIF).

## BACKGROUND

The European Commission published a data strategy in February 2020 with the goal of creating a single market for data.<sup>2</sup> As part of that vision, the Commission has proposed creating “European data spaces” with clear and consistent rules across member states for access and use of data in key sectors of the economy. To that end, the Commission has invited feedback on its initial plans to propose a legislative framework that would 1) increase access to publicly held data; 2) support voluntary data sharing by individuals and organizations; 3) developing technical standards and promoting interoperability to lower the cost of data sharing; and 4) support data intermediaries to share data between different stakeholders.<sup>3</sup>

## FEEDBACK ON THE POLICY OPTIONS

We provide feedback below on the policy options described for each of the four goals.



## 1. Increasing Access to Publicly Held Data

The European Commission is wise to pursue initiatives to increase access and use of government data. Open government data supports many research and commercial purposes. In particular, the EU has yet to fulfill the goals of the Open Data Directive because complete, updated, and accurate datasets on various topics are often unavailable across all member states.<sup>4</sup> Reasons for this vary, including inconsistent data collection, a lack of EU-wide data standardization, and different licensing policies across different member states.<sup>5</sup> The Commission should proceed with developing general open data best practices to share among member states, as well as specific ones to address unique issues related to high-priority datasets, such as geospatial data. These best practices should encourage data standardization, including creating common formats and definitions, to make data easier to use.

In addition, the Commission should explore opportunities to provide access to government data that cannot be made publicly available (e.g. because of confidentiality requirements), but could be shared under certain restricted licensing terms, for research and commercial purposes. In particular, the Commission should urge member states to make greater use of the exemption in the GDPR that allows data processing that is in the public interest. For example, during the COVID-19 crisis, increasing access to medical data such as temperature, blood oxygenation levels, and blood pressure could have helped public health authorities, healthcare providers, and researchers track the diffusion of the pandemic and its impact on at-risk populations and ensure efficient allocation of healthcare resources.<sup>6</sup>

## 2. Supporting Voluntary Data Sharing

The European Commission correctly recognizes that individuals and organizations should be able to voluntarily contribute data for the common good, a concept it labels “data altruism.”<sup>7</sup> In particular, individuals should be able to easily consent to sharing their personal information. For example, there is no simple mechanism for EU citizens to donate their data for health research purposes, either while they are living or upon their death. The Commission proposes developing a “common European consent form” which could be adapted to various use cases or developing a certification for apps that collect consent. Rather than developing a certification requirement for apps which may be unnecessarily expensive, the Commission should instead develop a set of functional requirements for any consent mechanism, such as a standard on how and when individuals can withdraw consent for data they have already shared.

However, the Commission should not restrict the types of organizations with which individuals can voluntarily share data or the conditions under which they share it. The Commission proposes taking a paternalistic approach when it suggests “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).”

First, this language suggests individuals are unable to determine for themselves whether they should share data with third parties or that they may be pressured or provided incentives to sharing their personal information. Given that this type of critique is often made about large U.S. Internet companies—that individuals inadvertently share large amounts of personal data without understanding the consequences—there is a risk that rules around data altruism could limit EU citizens from having a simple method for voluntarily sharing data with organizations outside the EU, which operate on a for-profit model, or which provide individuals something in exchange for their data. Given that important research occurs outside of the EU and in for-profit businesses, such as genetic research by U.S. companies, this would severely limit the potential value of this proposal. Moreover, such limits would adversely affect immigrant communities in the EU who may wish to contribute their data to organizations in other countries.

Second, the suggestion that some organizations may offer individuals “unethical incentives” to share their data is likely a veiled reference to the free or discounted online services consumers often access in exchange for sharing some personal data. Critics have cried foul in the past when Google offered a voluntary web tracking extension for its Chrome browser that would pay users \$5 a month in return for tracking their online behavior, and when Facebook paid users up to \$20 per month in exchange for data about their smartphone use.<sup>8</sup> But there is nothing unethical about organizations giving individuals incentives to share personal information. Indeed, it is elitist to suggest that individuals, especially low-income individuals, are not capable of making market-based transactions that would benefit themselves. Even when individuals act altruistically, they may sometimes receive some benefits, such as compensation for participating in a research study. Unless the Commission plans to restrict all types of incentives that individuals receive for various donations, there is no justification for limiting these types of basic incentives when it comes to data.

### **3. Developing Technical Standards**

The European Commission proposes establishing European coordination bodies to work in partnership with the private sector to develop technical standards and increase interoperability. This is a useful objective because identifying the need for technical standards and developing those standards can facilitate data sharing within a sector. Government agencies can play an important role in facilitating the development of standards by bringing different stakeholders together. The development of technical standards can increase interoperability and foster more data sharing across different organizations, unlocking more innovation, including across entire functions of the economy (e.g. growing, processing, and distributing food).



#### 4. Supporting Data Intermediaries

The European Commission proposes to lower transactions costs to enable more efficient data sharing by supporting the development 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.” Transactions costs are a legitimate barrier to data sharing, yet especially when it comes to personal data, many of these costs exist because of the data protection regulations the EU has enacted. For example, the GDPR’s consent requirements make it more expensive for businesses to collect and share personal data or use it for new purposes.<sup>9</sup> In particular, the GDPR’s requirements that organizations specify the purpose of data collection and minimize what data they collect significantly limits their ability to innovate by restricting them from both collecting new data before they understand its potential value and reusing existing data for novel purposes.

In addition, there are already a number of data intermediaries that empower consumers with a variety of tools to manage their personal data and share it with third parties. Some of these are startups that have created “personal data wallets” to give consumers different tools to manage their data. But the most popular of these are companies like Google and Facebook which enable businesses and researchers to extract massive value from personal information while giving users control over the information they choose to share. Rather than attempt to recreate the wheel, EU policymakers should consider ways to reduce transaction costs for existing data intermediaries.

There is also an opportunity for the Commission to work with the private sector to develop sector-specific data trusts that allow the government, industry, and academia to securely and efficiently share non-public data in key sectors like health and education. The United Kingdom has pioneered the concept of data trusts which it defines as “not a legal entity or institution, but rather a set of relationships underpinned by a repeatable framework, compliant with parties’ obligations to share data in a fair, safe, and equitable way.”<sup>10</sup> The objective is to establish reusable data sharing agreements, endorsed by both industry and government, that make it easier for organizations to share sensitive and proprietary data that they might otherwise not share.

### MOVING FORWARD

The European Commission outlines many important goals in this roadmap to foster the EU data economy, and there are a variety of tools at its disposal to pursue these objectives in partnership with the private sector. As it pursues the goal of a stronger data economy, the



Commission should be careful to not use any of these initiatives to erect barriers to digital trade. The roadmap notes that “conditions to data access from outside the EU will also have to be assessed,” suggesting that access to EU data spaces or datasets may only be available to EU firms. This approach is inappropriate in a global digital economy, at odds with the EU’s commitments to fostering the global free flow of information, and could lead to tit-for-tat responses from other nations to cut off access to data for EU firms. Instead, the EU should be building partnerships fostering data sharing across sectors with its democratic allies.

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<sup>1</sup> European Commission, "Proposal for a regulation—Legislative framework for the governance of common European data spaces," <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12491-Legislative-framework-for-the-governance-of-common-European-data-spaces>.

<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, “A European Strategy for Data” (European Commission, February 19, 2020), [https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf), p.20.

<sup>3</sup> Ibid.

<sup>4</sup> Daniel Castro and Travis Korte, "Open Data in the G8" (Center for Data Innovation, March 17, 2015), <https://www.datainnovation.org/2015/03/open-data-in-the-g8/>.

<sup>5</sup> Daniel Castro, Michael McLaughlin, and Eline Chivot, "Who Is Winning the AI Race: China, the EU or the United States?" (Center for Data Innovation, August 19, 2019), <https://www.datainnovation.org/2019/08/who-is-winning-the-ai-race-china-the-eu-or-the-united-states/>.

<sup>6</sup> Eline Chivot, "COVID-19 Crisis Shows Limits of EU Data Protection Rules And AI Readiness" (Center for Data Innovation, March 30, 2020), <https://www.datainnovation.org/2020/03/covid-19-crisis-shows-limits-of-eu-data-protection-rules-and-ai-readiness/>.

<sup>7</sup> A better term might be “data communitarianism” to suggest that people should share data as part of their responsibilities as citizens.

<sup>8</sup> Michael Nunez, "Google Screenwise: Is Your Internet Privacy Worth \$5 or \$100?" (International Business Times, February 8, 2012); Phys.org, "Facebook paid users to track smartphone use: Report" (Phys.org, January 30, 2019), <https://phys.org/news/2019-01-facebook-paid-users-track-smartphone.html>.

<sup>9</sup> Eline Chivot and Daniel Castro, "The EU Needs to Reform the GDPR to Remain Competitive in the Algorithmic Economy" (Center for Data Innovation, May 13, 2019), <http://www2.datainnovation.org/2019-reform-the-gdpr-ai-a4.pdf>.

<sup>10</sup> Jack Hardinges, “What is a Data Trust,” (The Open Data Institute, July 10, 2018), <https://theodi.org/article/what-is-a-data-trust/>.