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## **Position Paper on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: A European Strategy for Data**

Berlin, 18 May 2020

On 19 February 2020, the European Commission published its draft discussion paper on a European Data Strategy together with a draft Digital Strategy and a White Paper on Artificial Intelligence, and launched a consultation on these papers.

Data is a central factor of the digital industry and forms the fundament of almost all modern applications and services. Access to large amounts of high-quality data is a prerequisite for the design and development of future technologies, such as various forms of artificial intelligence or information systems based on Big Data.

With the presented draft European Data Strategy, the intention of the EU Commission is to lay the foundations for a European data economy, which in a broader context represents a crucial cornerstone for the European approach to artificial intelligence, for the European Industrial Strategy, and for other political initiatives. eco – Association of the Internet Industry regards a European Data Strategy as a core element of the Digital Single Market and considers it to be an important precondition for the success of digital business models and the economy in Europe.

### **I. General remarks**

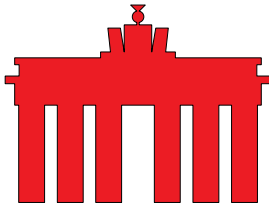
eco offers the following general comments on the paper presented by the EU Commission:

#### **▪ Comprehensive approach to the Data Strategy**

With its Data Strategy, the Commission is setting out a comprehensive approach to the future handling of data. In addition to the shaping of governance structures, further foci of the Commission are the development of competences for handling data, support for investment, and the creation of common data spaces. Such a holistic approach will assist society and the economy in creating a largely unified European data space in which they can operate in a legally secure manner and have clarity and transparency for the competent use and processing of data.

#### **▪ Governance approach of the Commission**

In its draft Data Strategy, the European Commission emphasises that a governance approach should be pursued. This approach is to be regarded positively in principle, as it allows for different variants and interconnection possibilities within the framework of regulated self-regulation. From eco's



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perspective, the fact that cross-sectoral interconnection of data should also play a special role in the governance approach is to be welcomed.

▪ **The significance of data for competition requires clarification**

Data-based and data-centric digital business models in particular have made it clear just how significant data is for competition and how much it contributes to value creation. Although data in itself is not a competitive economic good, it serves as the basis for a wide range of value creation opportunities. This being the case, the regulation of access to data is currently being discussed in many quarters, and this aspect is also understandably addressed in the draft EU Data Strategy. Nevertheless, it should be borne in mind that the obligation to make private sector data sets accessible to other private and often competing players raises further questions beyond those of competition, and that the actual significance of data sets for unfair competition has not been conclusively clarified. From eco's point of view, a further discussion of these questions would be appropriate before potential regulatory measures are adopted.

## II. On the draft EU Data Strategy in detail:

eco's detailed comments on the draft EU Data Strategy are as follows:

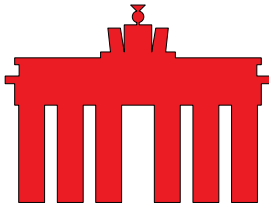
### 1. On the introduction

The goal for Europe to become a role model for a society empowered by data to make better decisions in all sectors is as simple in its formulation as it is ambitious in its design. The Commission sees the general legislative framework required for the realisation of this goal as being already largely in place. This reflects the reality of the situation and should be urgently taken into account in the further debate, especially with regard to data protection and IT security issues.

### 2. On the question of: What is at stake?

With its outlined scenarios, the Commission is attempting to present possible future scenarios for the use of data. These also highlight the regulatory challenges posed by the development of data economies outside of the European Economic Area. The application examples offered are generally appropriate. The listed legal foundations in Europe also represent a comprehensive framework for the design of digital business models and systems of artificial intelligence, which are highly relevant for all further thinking regarding the European Data Strategy. The legal foundations form a solid starting point for further deliberations.

However, what remains open to question in particular is precisely how the development and use of "digital twins" should take place, as these are created on the basis of personal data and, at least under current conditions, are unlikely to represent any added value in relation to the processing of personal data. The application example in the medical field can be regarded as apt and can be applied as an example of the added value of high-quality data.



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### 3. On the vision

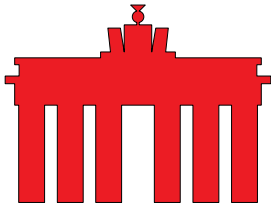
The vision which was loosely outlined in the introduction is delved into in greater detail at this point. The European Commission sees both personal and non-personal data as the framework for its Data Strategy. The framework for the European data economy is intended to be developed in such a way that all conditions are fully implemented by 2030. In addition to EU-wide and cross-sectoral standards for data exchange and the establishment of data governance structures, further benchmarks for the realisation of this vision include compliance with data protection regulations, competition law and consumer protection. The latter aspects in particular are likely to pose a particular challenge.

While a solid legal basis for data protection has already been created with the GDPR – which is now to be implemented as uniformly as possible in the Member States – there are still many questions to be answered with regard to the other two regulatory areas. The relevance of data for competition is largely undisputed in politics. However, the question of how exactly the aspect of “data power” of companies and players should be dealt with is a matter of some contention. In turn, European consumer law has not yet been standardised. This fragmentation constitutes a major problem for companies. What therefore needs to be critically examined is the extent to which consumer law issues should be included in the Data Strategy and how these should be dealt with in the context of creating a European data space that is unified to the greatest extent possible.

### 4. On the problem

The Commission identifies fragmentation across Member States as a key challenge. The struggle to find a common path for the creation of a European data space should not be underestimated. Looking at other key projects such as the GDPR, which was negotiated over a total of four years, it's clear that a “quick solution” may not be as full-featured as many players would like, or may in fact be completely out of the question. On the other hand, the hypothesis that there is not enough data available for the development of services and products is debatable. This should not simply be assumed at this point in time. Rather, questions arise concerning under which premises and framework conditions the data available from different players can be made available, for which purposes they can be processed, and by whom.

Another hypothesis requiring further exploration is that concerning the extent to which data is available but cannot be used due to existing concerns regarding data protection, copyright or patent law and whether inadequate preparation or connectivity is preventing the use of data. The example in the section “Data for the public good” also raises the question of why preferential access by SMEs should be conducive to the public good, and to what extent this disadvantages larger companies in terms of access. Uniform rules on data use for all players should be the objective in order to avoid an imbalance in the planned data governance structure. The question of how the Commission intends to proceed here is also prompted by the further



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description of the problem, in which a very fine-grained system (G2B, B2B, B2G and G2G) is drawn up, for which different arguments are identified.

A decisive factor is also likely to be the question of how the relevant players have in the past managed to build up large data pools and use them for their products and services. The lack of interoperability and therefore the only partially transparent quality of data will, however, undoubtedly be a challenge for all market participants in Europe. The fact that European data governance is not yet in evidence also needs to be emphasised, as do the challenges for data and cloud infrastructures. Finally, data competence, qualifications and IT security are important building blocks for trusted and legally compliant handling of digital technologies and a successful data economy.

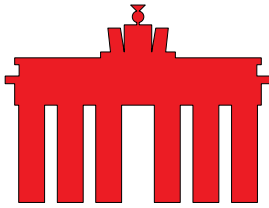
#### **5. On the strategy pillar: A cross-sectoral governance framework for data access and use**

The cross-sectoral governance framework for data access and use combines various individual measures that are intended to contribute to strengthening data management. In this regard, the Commission regards a “legislative framework for the governance of common European data spaces”, which it envisages for the 4th quarter of 2020, as a central priority. The legislative framework, in turn, comprises of various individual measures that are intended to strengthen the interconnection and interoperability of data pools. In addition to these measures, which eco rates as positive in principle, decisions on whether the use of data is legally compliant are also to be facilitated. This additional legal certainty for companies would be most welcome from eco’s point of view.

In facilitating such decisions, however, what also needs to be taken into account is the extent to which possibilities for simplifying access to data for corresponding use can be created in the form of legal clarification through the application of general rules or the creation of permits for specific uses and data processing groups; especially where the GDPR allows this.

Here, proposals for regulations at sub-legislative level work should be developed in conjunction with data protection experts and experts from industry and academia in the respective areas and sectors. When creating the data spaces, care should also be taken to ensure that they are shaped in an inclusive manner and that they allow as many people as possible to freely participate. The Commission’s proposals to include various aspects of “data donation” or “data altruism” in the governance rules are generally sound approaches. However, it would make more sense to ensure clarity about the extent to which findings from used data can be further used, or whether there are legal restrictions based on data protection.

An implementing act on high-value data sets should also make clear that selected public sector data will also be made available to companies. The implementing act should systematise and prioritise this provision. As part of an open Data Strategy which aims at the successive use of data from European institutions, the speed of implementation is of particular importance. The implementing act, which is planned for the first quarter of



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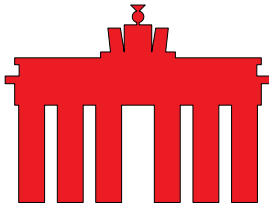
2021, should therefore be mobilised without delay. eco welcomes the Commission's initiative and expects that it will provide impetus and new opportunities for the digital economy to offer new systems and services on the market. Ultimately, all players and the economy as a whole stand to benefit from this initiative.

The review of the existing regulatory framework in individual sectors to further shape the data economy is the most complex, but at the same time the most important challenge for the success of the Data Strategy. APIs, common standards and cross-sectoral pools can only be successful if the players providing data have the legal security to do so. The current provisions which sometimes go even further than the GDPR are restrictive and create uncertainty in this realm. Clear authorisation criteria in accordance with the applicable data protection rules and, where applicable, other sector-specific laws will therefore play a central role in the success of a European Data Strategy and can become a lever for the economy in Europe. It is unclear, however, how the Data Act alluded to by the Commission will impact these plans.

An all-encompassing obligation to provide and make available data can create negative incentives for market participants, irrespective of how the specific conditions are designed. This could potentially have counterproductive effects on investment in data-centric and data-driven services and applications, as well as on business models. To what extent the Commission intends to take action in terms of competition law is not clear from the present draft Data Strategy. eco views it as being highly advisable that the Commission's approach does not counteract the efforts to improve the interconnection of data pools. The extent to which a further institutional framework in the form of a dedicated observatory is needed for the development of the digital economy in Europe should also be critically examined.

## **6. On the strategy pillar: Investments in data and strengthening Europe's capabilities and infrastructures**

In its draft Data Strategy, the Commission has correctly recognised that solid basic infrastructures are required for the processing and connectivity of large volumes of data, especially if the aim is to achieve decentralised storage of data. In eco's view, it is positive that the Commission itself wants to take action to promote the establishment and roll-out of appropriate infrastructures in a competition-driven environment. In this context, the High Impact Project planned for the period 2021 to 2027 is to be welcomed. However, it is crucial for its success that it is as open and connectable as possible and that it offers all market participants the opportunity to participate. It is also positive to note that the Commission is not thinking in sectoral terms in relation to the development and roll-out of relevant infrastructures, but would like to embed these strategies in the context of its broader economic and industrial policy, as well as to promote appropriate investments and remove the respective barriers to the use of modern technologies.



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Against this background, the fostering of close synergies of this European policy with those in the Member States is also to be welcomed. It is to be hoped that the Memoranda of Understanding with the Member States aimed at for the third quarter of 2020 can then actually take place and that these agreements can build the framework for a meaningful promotion of digital infrastructures. It is unclear, however, how the Commission's plans for a European cloud framework will affect this and to what extent initiatives such as GAIA-X for federated infrastructure and data services, which meets the requirements for a European Digital Single Market, can be integrated into these plans. Various options already exist for the certification and evaluation of cloud services, and these should also be taken into account. However, what remains unexplained is how exactly the cloud regulations are to be structured and to what extent this will create uncertainty among providers and consumers with regard to compliance and other factors.

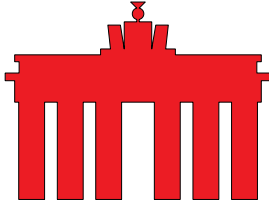
It would also be important in this regard to take into account the work done under the EU Cybersecurity Act. In this context, what is also to be viewed critically is the proposed establishment of a further marketplace for digital services. Competition with free offers available on the market could prove counterproductive and present an obstacle to the development of a European platform economy. What is to be positively highlighted, however, are the Commission's plans to develop standardised pan-European standards and requirements for the procurement of data processing services. This could provide a European frame of reference for the future, one which can also be applied in the Member States. This would give an impetus to the integration of the Digital Single Market and promote its realisation in the long term.

#### **7. On the strategy pillar: Empowering individuals, investing in skills and in SMEs**

Strengthening the competence of individuals and SMEs in how they deal with data is to be welcomed in principle. Expertise concerning the implications of data-driven services would help, both in the sense of consumers' own competence and in the operational and business context. It remains to be seen to what extent this will correlate with a further specification of the data portability right. A central question here is to what degree this right should be defined in the future and to what extent the exercise of the right would impact the operation and development of services.

#### **8. On the strategy pillar: Common European data spaces**

The creation of common data spaces for use by industry, society and politics is an important issue for the EU Commission. However, the Commission's selected strategy of connecting and making cross-sectoral data pools available will only achieve limited progress in this regard. For the data spaces under discussion, a streamlined sectoral approach has been chosen, presumably to take account of the key players in industry and business. To what extent this approach is promising for a stringent digitalisation of the European economy remains unclear. What would have been desirable here would have been proposals on how the Commission intends to promote data-driven services and contribute to their better interoperability and use,



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and how data formats and internationally connectable standards can be standardised in all EU Member States.

### **III. Conclusion**

With its draft European Data Strategy, the European Commission has identified many important actions that need to be taken in order to create an open, connectable and functioning digital ecosystem based on the values and objectives of the unified European Digital Single Market. A competitive approach provides the basis for development in the shaping of a European data economy, from both an economical and societal perspective. Such an approach should therefore be given due consideration and be accorded preference over rigid rules or bureaucratic measures. If it focuses more strongly on these aspects, the European Data Strategy has the potential to become a significant success for the entire digital world and markets, both in Europe and beyond.

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### **About eco**

With more than 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995 eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. The focal points of the association are the reliability and strengthening of digital infrastructure, IT security, trust, and ethically-oriented digitalization. That is why eco advocates for a free, technology-neutral, and high-performance Internet.