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ITI VIEWS ON THE EUROPEAN DATA STRATEGY

AN INNOVATION-ENABLING APPROACH TO DATA GOVERNANCE

Digital innovation relies on the availability of large and diverse datasets from the private and the public sectors, enabling technology developers to innovate across industries and meet the needs of individuals and society in unprecedented ways.

Crucially, in the context of crises like the one the world is currently going through, analysing data and producing customised recommendations based on learning from a large pool of similar cases can revolutionise the delivery of healthcare – among many other areas – and facilitate a new wave of personalised services for Europeans. Much of this functionality will be built upon insights gleaned from non-personal data sets – i.e. data which is anonymised or not directly relatable to a specific individual.

We appreciate the European Commission's focus on data governance with the adoption of [Europe's Data Strategy](#) in February 2020, outlining the European vision for a data-driven economy, and support its goal of creating a genuine **single market for data**. Below, we share our views on how the EU can realise its vision by continuing to invest in and prioritising the institution of effective data governance initiatives, which encourage digital transformation across sectors.

ITI – The Information Technology Industry Council – is the global association of the tech industry. Our membership comprises over 70 leading technology and innovation companies from all corners of the ICT industry, including hardware, software, digital services, semiconductor, network equipment, cybersecurity, and Internet companies. ITI and its members strongly believe that **preserving an enabling environment for data-driven innovation is essential to ensure Europe's global competitiveness and security**.

A balanced framework for data governance is critical to ensure that technology developers can access high quality public data sets. Allowing businesses and the public to reuse data can help address major societal challenges and boost economic development in Europe. Open government data is a tremendous resource that is as yet largely untapped. There are many areas where open government data can be of value to many, including the Member States governments themselves.



Data access & sharing obligations

In today's economy, access to data is essential to enable business' innovation, growth and the delivery of better services to citizens and consumers. Approaches obviously need to vary depending on the context and players (B2B, G2B and so long). Currently, voluntary agreements between companies constitute the main tool for business-to-business data sharing, and several consultations at the EU level in the past few years confirm that there is no demand to create legal obligations in this area. Instead, we would encourage the European Commission to focus on incentivising companies and the public sector to share more data; such incentives could include for example fair compensation for data shared, tax incentives and public-recognition programmes. In addition to identifying critical applications fields for data sharing such as healthcare and emergency response, it would be helpful if the European Commission would specify what types of data sets it would find valuable and why. This would enable companies to engage in a strategic dialogue with public sector entities in forging voluntary data sharing agreements.

While we appreciate the goal of promoting data-sharing to advance the data-driven economy, the potential introduction of data access rights and related compulsory access to data mechanisms through legislative provisions in the **Data Act** referred to in the Strategy would constitute a significant departure from the current situation, and would therefore need further discussion and clarification.

At the same time, we agree that facilitating a **robust government data access and data sharing environment** is a critical component of the EU strategy in the coming years. We support the Commission's continued efforts to catalyze economic growth through digital transformation by publishing open data under an open license and apply an **'open by default' principle**.

While the idea to introduce so-called **European data spaces** is compelling, several critical issues need consideration and clarification before rolling out a **legislative framework for the governance of common European data spaces** (Q4 2020) as proposed in the Data Strategy. We support the goal of incentivising businesses to share data with other companies and researchers. Participation in European data spaces should remain voluntary in order to avoid disincentivising investment in data innovation or put at risk IP rights or trade secrets. Companies are already undertaking significant activities in this field on a voluntary basis.

Also, participation should be open, non-discriminatory and not subject to arbitrary conditions. Companies should in all instances remain in full control of their data and not lose any rights on the latter when participating in voluntary data-sharing agreements. Further, extensive data-sharing schemes could put into question how companies can share data but still comply with the EU's existing competition and data protection rules including the General Data Protection Regulation (GDPR).

We would like to comment more specifically on the three data-sharing models that the Data Strategy outlines:

- **Use of public sector information by business (government-to-business – G2B – data-sharing):** We strongly support efforts to make public data more accessible. Facilitating a robust government data access and data sharing environment will be critical for Europe in the coming years. We urge the EU to continue to catalyze economic growth through digital transformation by publishing public data under an open license and applying an 'open by default' principle. The EU should also continue to facilitate the removal of other barriers to widespread open data use. Even if governments are making the data available, it does not mean it is easy to find and ready for use. Other barriers include lack of awareness, lack of knowledge, incompatibility of unlike data sets, and poor data quality. Those factors often make it very difficult to share and aggregate data in a way that is valuable. In addition, prioritising meaningful data for release that would benefit the society and the greater research community can help form a successful open data plan. We welcome the Data Strategy's commitment to making more high-quality



public sector data available for re-use via an **Implementing act on high-value data sets** (Q1 2021) under the **Open Data Directive**.

- ***Sharing and use of privately-held data by other companies (business-to-business – B2B – data-sharing):***
The Data Strategy mentions that the general principle behind business-to-business data-sharing shall be to “facilitate voluntary data sharing.” ITI and its members believe that B2B data sharing should remain *in all cases* voluntary and that contractual freedom should remain the fundamental principle for B2B data sharing. There are several issues that must be addressed before sharing and using such data. First, entities may be subject to a wide array of legal obligations depending on the data use, and the jurisdictions where the data is stored and processed. Second, entities need to consider all contractual obligations as well as its impact of upstream and downstream agreements on the data collection, use and disclosure. Third, different sectors have completely different needs to share or acquire data with or from other businesses. Even businesses within the same sector might have completely different data strategies. Due to these considerations, voluntary agreements between companies constitute today the main tool for business-to-business data sharing, and several consultations at the EU level in the past few years seem to confirm that there is no demand to create legal obligations in this area. We therefore believe, that maintaining the current flexibility of voluntary agreements is the appropriate way forward.
- ***Use of privately-held data by government authorities (business-to-government – B2G – data-sharing):***
Business-to-government data sharing should be encouraged on a voluntary basis. An important factor to achieve that is by ensuring that requests for the reuse of privately held data by public bodies are proportionate, balanced and limited to the minimum extent necessary for the performance of their functions. In this context, what is defined as “public interest” data should follow a context-specific approach, be assessed against a set of criteria, on a case by case basis and be defined as narrowly as possible. A continuous discourse between policymakers and all relevant stakeholders to shape the criteria in a proportionate manner is preferred. Furthermore, there is lack of best practices for standard B2G data sharing in the EU, and a sometimes-inconsistent patchwork of legal frameworks, with rules on IP, privacy and competition all covering certain angles. On a separate note, Europe should take a thoughtful approach to data sharing for law enforcement purposes, working towards a clearer and more consistent framework when it comes to law enforcement cooperation. Efficient information-sharing and data access request mechanisms need to be established at EU level. The EU should bear in mind that its approach to government access to data is likely to have a significant impact globally, including in countries with fewer rule-of-law and fundamental rights safeguards.

Open license approach & removing barriers to data use

Facilitating a robust government data access and data sharing environment will be critical for the EU in the coming years. The EU should continue to catalyse economic growth through digital transformation by publishing open data under an open license and apply an ‘open by default’ principle. We welcome the Data Strategy’s suggestion to encourage application of common and shared compatible formats and protocols for gathering and processing data from different sources in a coherent and interoperable manner across sectors and vertical markets. We agree that this can be done through a strengthened European Interoperability Framework.

Lastly, high-quality training data is essential to advance research. Sharing and making more high-quality training data available would enable better training for AI algorithms, and the EU could maximise the benefits of a thriving data economy, in particular in the AI field. Allowing open access to machine-learning friendly datasets for R&D is key, provided that sufficient privacy and security protections remain.

Data literacy & skills

We fully endorse the view that data literacy and digital skills are critical for digital transformation. Data and computational resources alone cannot amount to data-driven innovation. Organisations need to upskill their



talent in critical areas such as AI, machine learning, data analytics, and cloud computing. While these tools and technologies already exist on the market, they are unfortunately not yet achieving their full potential in Europe due to skills and awareness gaps.

Data portability for businesses

Data portability must take specific situations and contexts into account and avoiding a one-size-fits-all approach. Consideration of issues related to switching, access to data and portability should take into account the data at play, the operator concerned and available alternatives. This might help increase competition in the markets and avoid lock-in effects and switching barriers. Horizontal rules for data portability, or prescriptive rules for the interoperability of data sets would in many cases not be workable, especially in a business environment. It will be very challenging, if not impossible, to make 1-1 transfers to other providers because the implementations of data sets being used are different. It is unreasonable for a business user to expect the exact same configuration when they move data from one IT provider to another. An example would be buying a new car: the buyer can expect that there will be a trunk, but the buyer can't expect to store her or his luggage in the exact same way they did in their old car.

However, IP and trade secrets should be respected and safeguarded. Also, the imposition of rigid standards to enable data portability could have unintended consequences, like hardwiring the status quo, forestalling innovation and precluding future portability.

Under competition law in particular, data should be assessed as any other asset that companies compete with in the market but take into account how it differs from other assets due to its non-exclusive nature. Enforcement should consider a company's conduct beyond structural aspects, like the amount of data a company holds, or its size. The EU should particularly consider potential unintended consequences of an unduly strict approach to big data, avoiding new rules for every new product or business model, which might stifle more innovative or effective models. This is particularly true for data-intensive AI applications, as these vary widely, policymakers should recognise the importance of sector/application-specific approaches; one approach will not fit all AI applications.

Data portability for individuals

The Data Strategy suggests enhancing the portability right for individuals under Article 20 of the GDPR. The Commission proposes to achieve this through stricter requirements on interfaces for real-time data access and making machine-readable formats compulsory for data from certain products and services. The Commission also floats the idea of introducing new rules for providers of personal data apps or novel data intermediaries such as providers of personal data spaces. We strongly urge against imposing the abovementioned obligations. The technology industry has made major efforts to comply with new rules brought about by the GDPR that entered into force merely two years ago. Mandating additional rules at this stage would impose a disproportionate burden on companies. Instead, we believe that consumer choice and consumer-friendly product innovation will lead to more interoperability between products and services.

Data protection and fundamental rights online

Ensuring individuals' control over personal data is key to foster their trust that data is used transparently, leading to increasing consumer welfare through better products and services. The General Data Protection Regulation (GDPR) is an existing and well-functioning law to ensure privacy online. Nevertheless, companies continue to face legal uncertainty around anonymising personal data. More legal certainty through European Data Protection Board (EDPB) guidelines and a standardised industry approach that includes a risk-based view to the anonymisation of data, are key to advancing this debate.

As many promising uses of technology rely on personal data, responsible use and compliance with existing privacy laws are key. Developers, users, and regulators should incorporate transparency, accountability,



privacy-by-design, risk assessment and mitigation, and redress as key principles of responsible data use. Strong privacy protections combined with strengthened data governance can jumpstart innovation.

Cloud computing

Maintaining and increasing the ability to develop key technologies and ensure their availability to the EU in the future is a legitimate concern and an unquestionable aim for any government. The Data Strategy recognises cloud computing as a key element of the data economy. The use of cloud services also bears great potential to reduce research costs and speed up product development due to efficiency gains. We are committed to contribute to the EU's objectives of strengthening European capabilities in cloud infrastructure and services. It is crucial that this legitimate goal is pursued on a non-protectionist and non-discriminatory basis.

Most of the strategy's ideas can be implemented in ways that are compatible with Europe's longstanding commitments to free trade and open markets, and should not be based on the false premise that excluding or otherwise treating foreign entities differently is the way to strengthen Europe's technological autonomy. An open EU economy is in fact a major source of productivity gains and private investment, which in turn foster new technologies, research, and innovation.

The idea of a **cloud services marketplace** proposed by the Data Strategy could be an interesting project so long as it does not result in market access barriers. Procurement rules should reflect the fundamental characteristics of public cloud computing services e.g., multi-tenancy, resource pooling, shared responsibility, and scalability. All global cloud service providers should be able to participate to the marketplace if they comply with relevant European laws, codes of conduct, standards and best practices regardless of where their headquarters are located.

Cybersecurity

As new network infrastructure enables unprecedented data-enabled innovations, such as the Internet of Things and Artificial Intelligence, we are seeing exponential growth in the volume, velocity, and variety of data. With this growth comes new challenges, including the question of who has access to or controls the data, which has implications for individual privacy, technological leadership, and economic competitiveness. Of course, it remains necessary to ensure the protection of individuals' personal data and cybersecurity solutions are a key way to do so. When considering non-personal data, cybersecurity measures are key to protecting IP rights and safeguarding business information.

We welcome the EU's commitment to ensuring strong cybersecurity via the Cybersecurity Act and updates to the NIS Directive. Any future cybersecurity requirements in the data governance debate should be coordinated and consistent with efforts made by the EU's Cybersecurity Agency ENISA around the Cybersecurity Act, especially when considering the adoption of cybersecurity standards to ensure the safe and widespread use of data. While the document references using the "highest available cybersecurity standards" on several occasions, it is not clear what is meant by this phrase. We would encourage the Commission to further consider this in conjunction with ENISA and make clear its support for voluntary, industry-led, international standards that change with the technology.

We agree with the Commission's assessment that cybersecurity will be foundational to enabling a data-driven economy and that encouraging the use of secure cloud service solutions is one significant way that could help the Commission meet its security objectives. That said, we would recommend that the Commission consider how to manage the full range of data access risks that are presented by this exponential growth of data in the context of its broader supply chain risk management approach as well.

Global cooperation & international data flows



The role that data, and access to large datasets globally, play in developing stronger players in key technologies in Europe (e.g. artificial intelligence, 5G, quantum computing, cybersecurity, blockchain, data sharing and data usage etc.) is fundamental. As the Commission pursues new and innovative approaches to data governance, we embrace its statement that the notion of technological sovereignty is not about protectionism, but about developing stronger players on key technologies in Europe.

We also recognize that the world-leading data governance policies pursued by the Commission in the coming years will have a significant influence on the domestic policies of other economies. As such, we strongly encourage the Commission to pursue sustained international engagement as means of maximizing interoperability among varying data governance regimes, and fostering convergence where appropriate on approaches that broaden opportunities for European firms to access necessary data without imposing unnecessary restrictions.

As a global leader in digital policy, including with respect to data governance, the EU has an opportunity to model approaches that facilitate the necessary cross-border movement of data while respecting core values and achieving economic, security, and privacy objectives. We stand ready to support these efforts, which we believe will promote greater innovation and digital transformation across industry sectors and public institutions.

- ***Advancing data sharing tools***

To enable global cooperation in a data-driven economy, we applaud the European Commission's efforts to date to advance privacy adequacy decision with third countries in order to allow for seamless data transfers. We encourage policymakers at EU and Member State level to also advance other tools including Binding Corporate Rules (BCRs), Standard Contract Clauses (SCCs) and Codes of Conduct and ensure a timely approval of such industry initiatives.

- ***International Trade Engagement***

In collaboration with industry and like-minded governments, the EU has led in challenging discriminatory practices of third countries that unjustifiably restrict the movement of data, disregard intellectual property protections, create unfair competitive conditions and hinder the development of innovative technologies. These measures, which include forced data localization measures and other requirements to use local servers and software, are evolving and proliferating across markets, impacting firms and consumers globally and demonstrating the need for strong, rules-based policy tools. In keeping with its efforts to date, we encourage the EU to also work with government and non-government stakeholders to craft a balanced approach to data flows in trade agreements that allows data to flow freely across borders while safeguarding strong privacy protections. This is feasible within the framework of the EU's existing legislation and should remain so as the EU advances new approaches to data governance. Trade agreements should not be used to regulate or circumscribe appropriate privacy or cybersecurity practices. They should rather contain narrowly tailored exceptions to digital trade provisions to allow participating countries to adequately protect data while preventing the imposition of overly restrictive or discriminatory measures.

- ***Judicial cooperation with third countries***

When it comes to international cooperation in the field of data sharing, we encourage a balanced approach that respects and upholds agreements with third countries. We support rule-of-law based law enforcement requests for information such as the Mutual Legal Assistance Treaty (MLAT) process, requests to companies through appropriate channels, or bilateral arrangements established via the CLOUD Act. The US and EU are both committed to upholding individual privacy rights and should continue to work on solutions together that promote privacy for citizens on both sides of the Atlantic. ITI is supporting these efforts by encouraging US lawmakers to adopt federal privacy legislation.