

15 July 2020

Feedback for the European Commission's consultation on a proposed legislative framework for the governance of common European data spaces

The European Academy for Freedom of information and data protection welcomes the opportunity to provide feedback for this initiative by the European Commission.

1. The European Academy supports the outcome of the stakeholder dialogue as referred to in the Communication „Towards a common European data space“ of 25.4.2018 that there is no need for a new „data ownership“ type of right. This applies not only to business-to-business sharing of information but also to the rights of citizens and customers vis-a-vis data controllers which are laid down in the General Data Protection Regulation.
2. The individual's consent to share personal data with others (also for the common good – „data altruism“) has to be given freely and on the basis of intelligible information (Art. 7 and Recital 42 GDPR). The data subject should in particular be able to specify for which research purposes (e.g. in the area of medical research) he or she is willing to share his or her personal data. Blanket consent to share data for the common good cannot be considered to be informed. On the other hand broad consent may be given for certain research fields if the data subject is given the opportunity to be informed about specific research projects where his or her data are used (as long as they are not anonymised).
3. The data subject has the right to withdraw his or her consent at any time (Art 7 para. 3 GDPR). It shall be as easy to withdraw as to give consent with effect for the future. Again this applies where and as long as data in a European data space are not anonymised.
4. In general the creation of common European data spaces will be facilitated by the use of anonymised data. Also, pseudonymisation is an important tool for privacy by design in particular in the area of medical research. Whereas pseudonymous data in general are personal data and thus regulated by the GDPR, anonymous data are not. However, the distinction between anonymous and personal/pseudonymous data is not static. It has to be monitored over time since with the fast developing technology the risk of re-identification may increase or return. Therefore the Commission is encouraged to support research in anonymisation techniques as well as methods to monitor the risk of re-identification in large data pools. This is crucial in future common European data spaces, e.g. in the context of the Internet of Things.
4. The Commission rightly stresses the aim to avoid data lock-in effects. To this end the right to data portability (Art 20 GDPR) should be strengthened by obliging controllers to provide information in an interoperable format and to implement application programming interfaces in order to allow data subjects to make real use of data portability.

5. If - as the Commission envisages – the provision and use of common European data spaces is not limited to public sector bodies and private companies (intermediaries) will play an important role here, it is essential that the data subjects can exercise their rights concerning their shared personal data effectively even in cases of mergers or bankruptcy. To this end a governance infrastructure should be established which ensures transparency and effective oversight. Duties to notify public authorities (e.g. the Supervisory Authorities under the GDPR) whenever a private controller ceases to operate or merges with another company, indicating who is the new controller to which the data subject can turn, should be introduced. Such obligations are currently not part of the GDPR.

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