

Trilateral Cooperation on Digitizing the Manufacturing Industry

Common Position on „Data Ownership“

Digitisation and more particularly data driven economy are paving the way for the ongoing industrial revolution. We, “Plattform Industrie 4.0” in Germany, “Industrie du Futur” in France and „Piano Impresa 4.0 “ in Italy underline that these opportunities need to be embraced through an innovation-friendly approach in the EU.

The digital transformation currently underway in all areas of the economy and society has changed the way data is viewed.

Data and algorithms increasingly serve as a foundation for the creation of added value in the digital economy. Data is not only considered a by-product of business activities anymore, but **a strategic resource that constitutes the basis for developing and offering novel digital products, services and business models**. Many of these business models will be based on the analysis and evaluation of machine generated data.

Machine data is indispensable for any digitised industry application and one of the pivotal factors when it comes to improving competitiveness. This is true for large varieties of data from a wide range of sources and which can be used to obtain very different kinds of information. Data about the operating conditions of the machine can be just as useful as data about the actual production being performed. In many cases, it is only once the different data sets have been correlated with one another (e.g. via big-data analytics) that they provide an added value, i.a. on how to improve manufacturing, or to design new business models. This means that such data can be very valuable in economic terms and can assure a competitive advantage to those possessing them.

Therefore, the legal protection of data and access to data become essential questions.

Existing law does not provide for any comprehensive, absolute rights to a certain piece of data per se. As a general rule, the extent to which machine data is protected, depends on its content and the context in which it is found. Depending on its kind and nature, data is, however, already protected by a complex network of different forms of national and international legislation (copyright law, patent law, database law, commercial and business secrets, data protection law, criminal law etc.). It is moreover to mention that the EU is currently preparing a legislative act to facilitate the exchange of non-personal data in the Member States, with a focus on non-personal data processing corporations such as cloud service and Big Data providers (Proposal for a Regulation on a framework for the free flow of non-personal data in the European Union, COM 2017, 495 final).

The French-German-Italian trilateral cooperation shares the view that for the time being there is no need for new legislation which would assign particular machine data to certain market participants and grant them absolute rights in that data.

Instead of taking legislative initiatives, it seems to be preferable at present to strengthen the contractual freedom of industrial actors so that they can contractually regulate the allocation of data and access to data among themselves and take account of the particularities of each case of application in a flexible manner. The European Commission therefore should therefore act with restraint and, above all, not too hastily, in consideration that:

- it is questionable whether the countless number of possible constellations in which data can be assigned to a particular party could be suitably addressed by a single piece of horizontal legislation. The current discussion among legal experts is in flux and it is likely to continue evolving dynamically – especially given the many yet unknown usage scenarios as much as new business models that may develop in the future.
- any legislation that would mechanically assign certain data rights in order to protect certain stakeholder interests could hamper innovation and investment, for example by preventing new business models, such as in the field of data analytics, and lead to an unwanted legal fragmentation of markets or, on the other end, undermine industrial and commercial secrecy.

Industry underlines the mutual gains to actively promote data sharing between industrial actors, without prejudice to the protection of sensitive business data.

Fair competition in the access to data should be strengthened without diluting data ownership. This means providing room for innovation and countering undesirable developments with new legislation in a targeted manner only when market participants' legitimate interests are harmed, or where such harm is impending, particularly with regard to proper and fair competition. On the other hand, special attention should be paid to help SMEs become active players in the new data-driven economy and not to deter them from adopting modern technological solutions, therefore unintentionally reducing data circulation and market development.

The French-German-Italian trilateral cooperation maintains that the balance between openness for innovation and protection, especially for smaller market actors, can be struck according to the following policy lines:

1. In B2B relationships, European "soft-law" measures such as guidelines, good practice guides and sectoral standard contract terms are to be actively promoted in order to facilitate the sharing of data.

The past decades already saw the widespread adoption of contractual practices including standardised confidentiality and usage agreements. Contractual agreements provide the requisite flexibility and openness to innovation in the face of rapid technological development as well as a basis for a self-regulating market which relies on the continued development of sustainable data usage agreements. The developments of such practices may include guidelines involving:

- a) Standardized levels of data segregation and data sharing, implementing anonymization activities if needed.
- b) Definition of a sustainable data 'openness'.
- c) Definition of 'confidentiality levels' that take in account: 1) business impact for the involved companies; 2) alignment with the EU framework for the free flow of non-personal data
- d) Set of detailed, clear and transparent information requirements before a new contract for data storage and processing is signed

The concrete implementation of guidelines or self-regulatory codes of conduct should be closely monitored, especially when dealing with the porting of data and providers switching between businesses, in order to prevent lock-in situations between service providers. B2B data exchanges should be made by means of trusted processes and services. This ‘trust’ could be guaranteed by certifications similar to those envisioned by the European CyberSecurity Certification Framework. Business continuity and data protection according to the previously defined ‘confidentiality levels’ have to be key drivers for certifications.

2. In order to provide a space where industry offer matches industry demand, it is necessary to accelerate the development of industrial digital platforms in Europe, by learning how to make them interoperable.

The European market of platforms for industry digital transformation remains very fragmented: each country or region develops its own policy, and each industry has its own needs, vocabulary and standards. The goal now is not anymore to produce universal standards, but rather to make existing standards – and the new ones to come – able to co-operate together. This is the role of Industry Platforms, that are virtual spaces where complex value chains can meet, exchange information securely and work together. Efforts to boost industrial digital platforms should be connected to the Industrial Data Space initiative (IDS) that has already started to shape the whole digitalization of the value chain.

3. A regulatory framework is only required to effectively prevent “data monopolies” and the abuse of market power on digital markets.

If there should be signs of a concentration of power on particular markets which benefits only a limited number of corporations that are amassing huge amounts of data, this situation would have to be addressed under competition law.

In summary, we share the view that Europe needs a digital transition process, which should concentrate on Europe’s strong industrial base. We urge the need for a modern and competitive European data economy in order to make the Digital Single Market a reality. We believe that, going forward, the European industrial sector and data driven services will only be successful if we work together and actively engage in dialogue with all stakeholders at European, national, regional and local level. The Digitising European Industry-initiative of the European Commission with its European Stakeholder Forum provides an excellent basis for that purpose. Europe can become a role model for shaping the digitising of industry by sharing best practices, bringing together industrial competences and digital opportunities and for giving incentives to innovate and to invest without losing any of its dynamism.

Imprint

