



Research Plays an Essential Role in Public Interest Data Use

Science Europe Response to the European Commission's Consultation on a Future Data Act

As the representative of major national research performing and research funding organisations, Science Europe continuously advocates the importance of data access and data sharing for research and innovation. It actively promotes an Open Science system in which research data and other digital objects are freely shared and re-used. This is also strongly supported by the European Commission. Science Europe therefore welcomes the Commission's intent to provide a legislative framework to foster and increase data sharing across sectors, as well as the opportunity to provide input to its consultation on the future Data Act.

Science Europe regrets to see that, as is often the case in digital or data-related initiatives, the European Commission's considerations for the Data Act focus strongly on the business sector. However, the future legislation will also have an impact on research. Researchers also benefit from increased access to data as it allows them to perform their research in the best possible conditions. As with any future legislation that governs the access to and use of data and data-related services, the Data Act must also address the needs and practices of the research sector, thus increasing the knowledge base and the innovative potential of the EU.

Science Europe would like to comment on the following five areas that are important for the research sector:

1. Private sector data for public sector use: clarification of scope needed
2. Potential of business data for the research sector: do not limit to B2B data sharing
3. A revised Database Directive should be 'future-proof'
4. Safeguards for non-personal data in an international context for all sectors
5. Legal certainty in cloud computing rules

1. Private sector data for public sector use: clarification of scope needed

Access to and use of privately held data by the public sector should benefit society as a whole. Clear rules and transparent information on reliable data sharing are crucial for all data holders and users to operate in full legal certainty. In addition to clear rules, it is also important to emphasise the soft positive effects that private-to-public data sharing can have for private entities, such as enhancing the entity's public reputation. Further incentives for the private sector to share their data are needed. These need to be carefully considered and supported by evidence and related analytical studies.

The information on the actual scope of the envisaged initiatives to the benefit of the public sector, as currently provided by the European Commission, is still confusing. In its considerations, the Commission alternates between referring to the public sector in general and to business-to-government (B2G) data sharing in particular. It needs to be clarified whether the Commission intends to limit its proposal to governments only, or whether the public sector at large – including public research funders and research performing organisations – should benefit from it. As the Commission intends to foster and promote

access to and use of data in the public interest and for the benefit of society as a whole, research should play a role in these considerations. As a highly data-dependent sector, the research sector would certainly benefit from access and use rights to larger amounts of data than currently available.

2. Potential of business data for the research sector: do not limit to B2B data sharing

Science Europe welcomes the intent of the European Commission to improve legal certainty in the private sector regarding the access and use of non-personal data to open up more opportunities to generate value from data. The Commission states that it aims to support, in particular, start-ups and SMEs in developing innovative products and services. Science Europe would like to stress that, yet again, focusing only on the private sector is too short-sighted as it overlooks the role of the research sector in innovation.

Ensuring legal certainty for the owners and the users of data should benefit all sectors that can contribute significantly to innovation and the public good. Fostering a culture of data sharing across sectors will improve the sustainability of data and the readiness to share data in the long term.

In addition, data-service providers need to operate in clear legal frameworks, including when offering new services for data sharing. It is, however, not clear from the current Commission plans if the considerations on more legal clarity for service providers are limited to commercial providers, or if they could also benefit publicly funded ones. The latter would be essential as there are publicly funded providers that largely support the extensive data sharing experience of the research sector.

3. A revised Database Directive should be ‘future-proof’

Science Europe appreciates that the European Commission intends to review the 1996 Database Directive to ensure that it is adapted to current technological developments and to provide legal certainty for access to and sharing of data. Such a review should address legal uncertainties that have emerged over time, such as the lack of rules for machine-generated data and databases as a service provider for machine-learning, for instance.

A revised Database Directive should not only address the current state of technology but also be future-proof. It must take into account that technological progress will continue to bring forward new technologies with an increasing degree of complexity, which also need to be seamlessly regulated under the revised legislation.

The revised database legislation will have to balance the rights and obligations for database owners and database users. It should leave no room for interpretation as legal uncertainties risk preventing users from using databases for fear of committing infringements.

The plans for the review of the Database Directive as laid out by the Commission in the [consultation](#) document and the [Inception Impact Assessment](#) are currently too vague to comment on in more detail. Until more information is available, Science Europe would like to stress that the revised Database Directive may significantly impact Open Science practices in the research sector. It is crucial to ensure that the new rules will be future-proof and will foster Open Science.

4. Safeguards for non-personal data in an international context for all sectors

In its considerations on the issue of protecting non-personal data in an international context, the European Commission refers only to EU-based companies receiving requests for access to non-personal data. It should, however, be assumed that such requests could impact any data holder that has stored data with a cloud service provider or is exchanging data with international partners.

Researchers and research organisations often work in cross-border research collaborations. In this context, data can be stored in cloud services that are not based in the EU. Having collaborating partners exposed to conflicting obligations concerning the protection of non-personal data could hinder

international research collaborations. Therefore, the data that researchers exchange with colleagues and organisations exchange with their partner organisations should also be protected against disproportional government access from third countries.

Even if researchers or research organisations in the EU do not store their data in third-country-based cloud services, their international partners might do so. And with the advancement of Open Science and the further growth of the European Open Science Cloud (EOSC), scenarios in which researchers use third-country services are more likely to emerge in the future.

5. Legal certainty in cloud computing rules

European entities depend increasingly on cloud services for their data processing. It is important that all users, not only businesses, can easily switch their data and applications between different cloud computing providers or bring their data back to their own on-premise IT systems without encountering contractual, technical, and/or economic barriers.

Interoperability and portability of data are essential in a research sector that is increasingly establishing Open Science practices and policies. Many research organisations run their own repositories for research outputs and do not use external cloud services. However, given the ever-increasing amounts of data and other digital outputs available, they might turn more regularly to commercial cloud services providers in the future.

It will be crucial for researchers and their organisations to have legal certainty that the information they store in cloud computing services will remain available for them if they choose to move it to another storage.

Conclusion

Science Europe calls upon the European Commission to take the potential impacts on the R&I sector into account and offers its expertise and the extensive experience of its members to provide input to the upcoming legislation. The R&I sector will benefit from increased data access, which in turn will be beneficial for society and the economy as a whole.

About Science Europe

Science Europe is the association representing major public organisations that fund or perform excellent, ground-breaking research in Europe. It brings together the expertise of 38 of the largest and best-known research organisations in the world to jointly push the frontiers of how scientific research is produced and delivers benefits to society. It advocates science and the scientific community to help build the European Research Area (ERA) and shape the global scientific agenda.

Science Europe member organisations develop, manage, and implement national research policies, as well as a large variety of funding programmes, from bottom-up schemes to mission-oriented research. They collectively invest over €23.9 billion each year on research in 28 European countries. Science Europe members are also developing and adapting national policies on an on-going basis to create the best possible conditions for research.