

JBCE Position Paper

Consultation on the European Strategy for Data

31/May/2020

1. Introduction

- (1) In the context of the COVID-19 pandemic, the EU should continue to work towards an economic recovery and a resilient society with its international partners while placing a continued emphasis on the Digital Single Market and on digital transformation policies and initiatives.
- (2) Japan Business Council in Europe (JBCE) is committed to supporting the EU's ambition to accelerate the shift towards a genuine single market for data. In this regard, JBCE would stress the importance of balancing innovation and privacy and security regulation to fully realise the benefits of an advanced and reliable data-driven society, while also ensuring global regulatory interoperability that avoids unnecessary fragmentation.
- (3) JBCE thanks the European Commission for the opportunity to feedback on its strategy, and would highlight 10 points that we believe deserve careful consideration as the Commission prepares the follow-up actions. These points are divided into three areas: i) Data governance; ii) high-value datasets; and iii) regulatory context tied to cloud computing.

2. Recommendations

(1) Data Governance Recommendations

- ① We recommend the Commission continue to support the facilitation of international, cross-border data flows, both within the EU, and with international partners through the principle of "Data Free Flow with Trust" (DFFT). Moreover, when considering bilateral Free Trade Agreements between the EU and third countries, we would continue to support the inclusion of a digital clause in such agreements, particularly to help against forced data localisation, disclosure of algorithms or source codes. More generally, the EU and Japan should continue to promote together data flows within international fora, like the G20 and during WTO eCommerce discussions.

- ② We invite the EU to take into consideration policy and legislative trends in other regions. The European data spaces mentioned in the strategy should be made compatible with those of its trading partners outside the European Economic Area (EEA), staying true to the principles of international data flows and ensuring a high level of interoperability and interconnectivity between the EU's data spaces and those found in third countries.
- ③ We agree with the Commission that additional measures on improving access and sharing of qualitative data sets are a pre-condition to enable the successful training of AI systems.
- ④ JBCE would welcome further discussions on the legal issues arising out of data sharing, including: data access, ownership, and interoperability in both B2B and B2G Data sharing, and we will continue to seek the views of various stakeholders beyond the confines of this consultation. We note that changes proposed in the Commission's Data Strategy will require a significant amount of time and consideration before deciding on regulation.
- ⑤ We believe that standardisation should be promoted at international level, be facilitated by a multi-stakeholder approach, and led by industry experts. The process should take into consideration the fact that, depending on the specific sector or area, both industry experts and national governments might be needed.
- ⑥ With regard to data re-use, JBCE believes that public authorities have a key role to play in facilitating access to public data by improving, promoting, and clarifying the use of effective legal agreements, data sharing agreements, and governance tools.
- ⑦ JBCE also recognises the value of data altruism, which, we believe, could be further encouraged via model contractual clauses or data sharing agreements to which individuals would agree. When making data available, however, a proper equilibrium between public interest and individual privacy should be ensured.
- ⑧ Another important element to facilitate data re-use is establishing common terms of data licensing. Agreement on these terms are widely acknowledged by vendors and IT players as a key element to setup legal rules that facilitate the sharing of data between users, companies, and entities. Even before technological requirements, those terms should be the fundamental requirement added to all contracts and/or user license agreements in order to avoid technological or legal lock-in effects, and to allow for a fuller standardisation of data exchange.

(2) Identification of High-value datasets recommendation

⑨ JBCE supports the Commission's efforts to expand the list of high-value datasets, and agrees that encouraging public authorities to make these datasets available free of charge, without restrictions and via APIs would be a good way to improve the dissemination of public sector data. However, we would recommend the Commission take a broad view of what datasets will be made available to not risk excluding datasets that could stimulate growth. Therefore, we hope the Commission will not be overly prescriptive in defining the datasets that qualify.

(3) The (self-/co-) regulatory context of cloud computing

⑩ Finally, we believe that European users should have access to the widest possible range of competing cloud services, yet we currently observe potential risks creating limitations to cloud service offerings across the EU associated to legal/contractual issues, security challenges raising possible lack of trust.

3. Conclusions

JBCE is optimistic about the prospects of the EU's data economy and the European Strategy for Data provides a good basis to develop the measures needed in the coming years. Above all, we would emphasise the importance of facilitating an interoperable data economy, one in which trust, secure connectivity and reliable data flows are truly possible. While discussions on the measures contained in the strategy are yet to begin in earnest, when the time comes for the legislation to be drawn up, we believe that any new eventual requirements must be clear, concise, feasible for companies to implement and well-justified. Moving forward, we stand ready to work together and contribute to this important discussion for Europe's success.