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GUIDELINES FOR THE DEBATE ON A DATA ECONOMY

Berlin, 05.10.2022

The availability and use of machine-generated data is a vital baseline for the successful digitalisation of the economy, the government and society. The use of this data will be an important factor for the future prosperity and competitiveness of Germany and Europe. This has been recognised by the European Commission and the German federal government, who, with several initiatives at national and European level, are endeavouring to regulate the data economy and promote data-driven business models and data usage in general. For example, the aim is to create new access rights through the Data Act and to facilitate the exchange of data through the Data Governance Act. In Germany and Europe, the contingent of the data-driven economy is still low compared to other regions of the world. The Internet industry sees value in the various initiatives set to create an innovation-friendly regulatory environment for data-driven business models. In order to participate in the societal discussion about the concrete design of this regulatory framework, eco has formulated the following guidelines to provide practical recommendations for action.

I. Data for the economy and society

In recent years, the progressive digitalisation of various sectors of the economy has led to a huge rise in the amount of available data. This trend will continue in the coming years and will be further intensified by the transformation of industry in the direction of “Industry 4.0”. The European Commission has estimated that the amount of available data will continue to sharply increase in the run-up to 2025. Between 2018 and 2025, the amount of available data is expected to have soared from 33 zettabytes (ZB) to 175 ZB. The Commission also predicts that the added value generated by the processing of data will rise steeply. By 2028, if the right framework conditions for data usage are applied, this could result in a €270 billion expansion of the EU’s GDP. In the future, the prosperity of an economy will depend more than ever on how well the regulatory framework for the processing and use of data is structured.

From the perspective of the state and society in general, data usage can also be beneficial. Ultimately, data supports better decision-making. State resources can be used more efficiently, while problems can be identified better and at an earlier stage and can be addressed in a target-oriented manner. Without the use of high-quality data, climate change mitigation or Smart City projects would either be impossible or would be more difficult to achieve. In the field of science, better access to data can also form the

baseline for important breakthroughs in the treatment of diseases. When it comes to health research, for example, it is possible to develop new tailor-made treatments for patients that can help to overcome previously incurable diseases, or to improve the targeting and success of treatments as a whole.

II. How data potential can be better utilised

- Clear rules for data usage

One of the biggest problems hindering the use and exchange of data is the frequent lack of a regulatory certainty for companies and other social actors, such as the scientific community. Under the current legal situation, in many instances it is not clear when and for what purpose data can be used by which actors. Many companies consider the lack of legal certainty in the handling of data to be the main reason for the relatively low use of non-personal data in Germany and the EU by international standards. One factor for this legal uncertainty arises from the question concerning when personal data is anonymised or pseudonymised to the extent that it loses its personal character and is thus no longer subject to the rules of the GDPR. A definitive demarcation is central to the use of non-personal data. In this regard, a clear and standardised interpretation is needed. However, even in the planned Data Act, this has not been defined to a sufficient extent. One possibility would also be to define legally secure options for pseudonymisation and anonymisation of data in order to be able to counter these uncertainties.

A fact that should also be taken into account is that no fundamental rights – such as the right to informal self-determination – are affected by the processing or sharing of non-personal data. In order to address this fact, the regulatory framework for non-personal data should consequently differ from the GDPR.

In addition to clear rules for the use of non-personal data, there is also a need for a standardised interpretation of these rules across the EU. Different interpretations of the same rules within the EU thwart both the efforts to create a European digital single market and the intention to create regulatory certainty for companies in this field. In this context, it is important to note that a fragmentation of legal interpretation within Member States also hinders a single market for data.

- Cross-border data exchange

The baseline for the global interconnectivity of the economy, society and science stems from international connectivity, cross-border telecommunication infrastructures, data traffic and data transmission, as well as the interoperability of systems based on international standards within and outside the EU. As such, these are important factors for international cooperation and value chains. Since the adoption of the European GDPR, this fact has been underscored by the increasing international awareness

and importance of data protection beyond European borders. Within the EU, it must be possible to exchange data without barriers across the Member States' borders. This is a prerequisite for the advancement of a European digital single market. Data spaces can be a solution to address this problem and to enable cross-border data usage. Currently, several data spaces for different sectors are planned at EU level to promote the exchange and use of data between different actors. The use of the data spaces should be simple and optional, while new synergies can arise through interoperability between different sectoral data spaces.

Especially in view of the legal uncertainties following the 2020 Schrems II ruling of the European Court of Justice, it is necessary to resolve the associated issues of international data transfer. It is high time for a fundamental and sustainable long-term approach that enables cross-border and international flows of data. Any related restrictions or barriers to the transfer of non-personal data must be avoided.

From eco's point of view, what is required is an international political and legally secure solution for the international exchange and transfer of data. In particular, the development of new technologies, such as AI applications, requires high-quality data bases in order for these to be used efficiently and effectively. To this end, a free exchange of data across national borders is essential.

- Common standards for data

In particular, shared data usage by several actors is often hampered by an absence of standards or insufficient data quality. The EU Commission's goal to create a European single market for data is supported by eco, with common standards being a crucial condition for achieving this goal. With the GAIA-X project, the framework for a cloud ecosystem has already been created, enabling data from different actors to be amalgamated and shared. eco takes a positive stance on this approach.

With the adopted Data Governance Act, the EU has also created a legal framework for data intermediary services. These services could help to standardise and simplify the exchange of data between different actors and, in this respect, increase usage. While it is encouraging that the EU Commission has taken up this issue, care should be taken to ensure that the regulations are sufficiently unbureaucratic to enable companies and other actors to use the new instruments as easily as possible.

Furthermore, a legal framework for data intermediary services must be adequately designed for an attraction in operating such a service. In addition

to a low level of bureaucracy, there must be opportunities to develop business models, such as value-added services. In order to have a range of actors attracted to operating a data transmission service, monetisation options are essential, with this in turn facilitating choice and competition between different providers. In this respect, we see a need for improvement in the regulations of the Data Governance Act, which must be addressed in a future evaluation of the regulation.

Data standards should be developed in dialogue with all relevant stakeholders in the context of multi-stakeholder formats and standardisation bodies. Therefore, eco is opposed to standards imposed unilaterally by either the federal government or the EU Commission. Interoperability should be promoted and can be incentivised through the establishment of standards. For reasons of competition, eco takes a critical stance on mandatory requirements for interoperability.

- Open government / Open data

Public administration bodies possess a vast amount of data that is not often used to a sufficient extent. For citizens and companies, free access to this data can not only be beneficial from their end but can also have added value for the administration itself. For example, innovative start-ups can use the available raw data of administration bodies to provide various data-driven services. These services can be used in municipalities, for example, to better record traffic flows or to implement Smart City projects.

For this reason, the availability of data from the public sector should also be enhanced for companies. Public authorities should make their non-sensitive data accessible to all stakeholders free of charge and without discrimination in order to actively enable and promote data usage.

- Promotion of data literacy

Aside from various legal and organisational obstacles, better data usage is also hindered in many companies by a shortage of professionals or a lack of know-how. The shortage of professionals in this field must be addressed by policymakers and the relevant training must be strengthened. The data competence of companies, especially SMEs, can be addressed through actions such as funding programmes or opportunities to write off investments in data usage against tax. SMEs in particular still have difficulties in using their data efficiently, which is why investments in this field must be supported in order to support the economy’s digital transformation.

III. Market economy principles must retain validity

Data ordinarily needs to be processed in order for it to be made more useful for companies, public administration and society. Raw data itself is often of little value and is seldom suitable for creating added value. Consequently, what is needed is the refinement and processing of data into usable data sets. In turn, this requires appropriate knowledge and, for companies, is also a cost factor. For many innovative companies in the data economy, such processing is also the core of their business model and the outcome of years of commitment. Such efforts are imperative for realising the full potential of data usage. In terms of an innovation-friendly data policy, it is therefore important that companies can also profit economically from the services provided and can use generated data sets to monetise these services. It is only when companies benefit from investments in the systematic processing and preparation of data that these can be promoted, and companies can be encouraged to invest in the refinement of data.

In principle, data is not a competitive commodity and can be shared without any loss of value for the data owner. Nevertheless, market economic principles should not be disregarded when considering how to promote data usage by different actors. The baseline for a wide availability of high-quality datasets is an environment that makes their production economically attractive. Furthermore, in any consideration of data sharing, the protection of trade secrets should always be given the highest priority in order to protect companies' know-how and their business models.

IV. Guidelines for a data economy

In order to promote data-driven business models and the use of data as a whole, eco believes the following aspects are important:

- More regulatory certainty in data usage for companies:
  Personal data subject to the GDPR and non-personal data must be clearly defined – especially in terms of anonymised data. Data protection law and data law must be interpreted in the same way across the EU so as not to counteract the EU single market.
- Legally secure exchange with third countries must be possible:
  The exchange of data with third countries must be possible in a legally secure manner. Data spaces can also facilitate international data usage.

- Uniform data standards must be promoted:
  A lack of universally applicable data standards makes the use, portability and sharing of data considerably more difficult. Uniform data standards should therefore be developed and promoted together with relevant stakeholders.
- More open data:
  The public sector should make its non-sensitive data available to companies, science and citizens free of charge and in a non-discriminatory manner.
- Promotion of data literacy:
  Training in the field of data science should be promoted in order to counteract the shortage of professionals in this field. Investments in data usage or training should be tax deductible.
- Taking market economy principles into account:
  Market economy principles must also be taken into account in data policy. In this context, the added value must also be worthwhile from the perspective of companies and must remain attractive to allow the generation of high-quality data. Trade secrets must be well protected at all times.

About eco: With more than 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995, eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. The focal points of the association are the reliability and strengthening of digital infrastructure, IT security, trust, and ethically oriented digitalisation. That is why eco advocates for a free, technology-neutral, and high-performance Internet.