**AEB position paper on the European Data Strategy**

**Introduction**

1. The Spanish Banking Association supports the European Commission’s ambition to create a single market for data in the EU. If effectively implemented, the Strategy is a first step to promote a European Data Economy that benefits both consumers and firms and to make sure Digital is put at the service of the recovery of Europe after the COVID pandemic.
2. The greatest opportunities for data-driven innovation will come from reusing and combining data, particularly **across sectors**. This is being underscored by the current Covid-19 crisis (e.g. importance of telecoms or mobility data to address challenges in the health sector). As the Commission outlines in its Data Strategy, “*making more data available and improving the way in which data is used is essential for tackling societal, climate and environment -related challenges*.” In addition, the proposal for a Green Deal Data Space shows the importance of creating an ecosystem of data that is not limited to sectoral boundaries.
3. Most importantly, users should be at the centre of the data economy and regulatory initiatives should directly help individuals and firms to take control over their data in the digital environment -- how it is used and how it is shared.
4. The EU has the opportunity to regain competitiveness with respect to other jurisdictions by enhancing the existing portability right for individuals under Article 20 GDPR and working towards a suitable data portability right for firms. This would stimulate innovation and competition for the benefit of both end-users and industry.

**EU Common Data Spaces**

1. We understand that Data Spaces are a way of organising initiatives around key sectors and policy priorities. We support work to encourage data exchange and reuse but must always keep in mind that data is especially valuable across sectors, particularly to create disruptive, not just incremental, innovation. For example, data from a Green Deal Data Space could be used by financial institutions as they support their customers green transition, including to enhance climate change risk assessments or analyse green loans.
2. Data Spaces initiatives should therefore start from the principle of making all data available on a cross-sectoral basis (with necessary controls and licensing wherever appropriate).
3. The financial sector has already taken a significant step in terms of implementing a financial data space with data sharing enabled by PSD2[[1]](#footnote-1). Banks and fintechs alike are committed to making it a success and have already launched a host of innovative products driven by this data sharing.
4. However, moving beyond PSD2 to include other financial products without also taking similar action in other sectors would deepen the existing data asymmetry faced by banks, preventing competition from taking place on an equal footing and limiting wider opportunities for innovation. On the contrary, taking mandatory steps for all sectors at the same time will open many opportunities for Europe.

**EU priority: portability / user data sharing**

1. The EU’s ambition should be for a cross-sectoral regulatory framework that makes data portability fit for the 21st Century and works for the European data economy.
2. Giving users control over when and how to share their data would bring clear benefits to the European economy, including lower switching costs for users when changing providers; lower entry-barriers for firms in digital markets; increased personalisation of goods and services; and increased innovation driven by valuable user-level insights.
3. In addition, access to a greater variety of data to train models and test results could contribute to the ethical and effective use of AI and it would complement the implementation of competition policy in digital markets, as highlighted by recent expert reports[[2]](#footnote-2).
4. A number of initiatives proposed in the Digital and Data strategies offer a practical first step towards achieving this.
5. To empower individuals, the European Commission (EC) should focus on enhancing GDPR portability through the Data Act. For firms, there should be a similar framework: EC has an opportunity to start with business users’ data held in digital platforms but should also work towards a broader portability right for firms.
6. These initiatives should create portability that ensures users can share the data they generate in a way that is easy, secure, in real time and on a repeated basis, through standardised interfaces such as Application Programming Interface (APIs).
7. It is important to note that firms also build value on top of raw or observed data, for example through analysis and data validation. Firms should be able to retain and build on this value. As such, sharing of inferred data should not in general be made mandatory or included in portability.
8. Data intermediaries can also play an important role in helping users to take control over how their data is used and shared. Public policy can and should facilitate the development of these services, which can be offered by different types of players, but should avoid prescribing a particular business model or create new barriers to sharing. Users should always be able to choose whether they share their data via an intermediary, or directly between two firms.

**How can Europe achieve this?**

1. Recognising the complexities of implementing enhanced portability for all firms and datasets in the short term, the **Data Act** should focus on requiring enhanced personal data portability for a subset of organisations holding data of particular value to individuals. This should include data from:

* digital platform providers (e.g. e-commerce, social media, streaming, mobility services);
* telecommunications providers;
* utilities (e.g. gas, electric, water); and
* public authorities (such as public registries, tax and social contributions data).

1. Action should also be taken to ensure that firms too can exercise control over their data and share it if they choose. The initiatives in the Data Act to clarify firms’ rights over data (particularly where it is co-generated) should be a precursor to a wider initiative to also provide firms with effective portability of their data.
2. A first step towards this should be taken as part of the development of **ex ante rules for markets with large digital platforms**, planned for the Digital Services Act.
3. An increasing number of firms depend on and transact through digital platforms, making the data stored in these platforms critical to business users. Making this data shareable would increase competition in the platform space and allow data to be reused across other sectors.
4. To implement this, new ex ante rules should require large digital platforms to offer their business users portability tools that allow them to share their data.

**What’s needed from legislation?**

1. We do not believe that a voluntary approach will be sufficient to create a fair, open data economy. Misaligned incentives, coordination challenges, and imbalances in market power have meant that users have not been empowered in the past - whether in the financial, automotive or electricity sectors - until policy initiatives unlocked the opportunity for them.
2. To overcome these challenges and implement 21st century portability that is easy to use, secure and in real-time, forthcoming legislative initiatives - including enhanced portability in the Data Act and ex-ante rules for digital platforms in the Digital Services Act - need to include the following:
   * User at the centre: users (consumers and businesses) should be empowered to decide which data to share and with whom
   * Transfer mechanism: mandate use of dedicated interfaces (i.e. APIs) for key data sets, with real-time data transfer that can take place on a one-off or recurrent basis.
   * Security: Authentication requirements (such as two factor authentication) and secure communication.
   * Standardisation: Data formats, security, API models and user experience to be standardised, for example through industry standards validated by an appropriate governance structure, with input from EU and national authorities.
   * Licensing and liability/redress: A full authorisation scheme similar to that in PSD2 could create unnecessary burdens if data is less sensitive. A proportional approach could require firms wishing to access data on behalf of users to register with authorities, use appropriate security certificates, and include a framework for resolving questions of liability and redress.
   * Cost recovery: Firms should be able to recoup the cost of developing and maintaining portability APIs, providing this principle is applied equally across firms and sectors.

**Re-use of Public Sector Data**

1. We believe that the public sector also has a central role to play, and can set an example for the wider economy, through (i) facilitating the reuse of public data, and (ii) ensuring that users’ can access and share their data held in public institutions.
2. The public sector holds large amounts of data of wider economic, scientific, and social value. Some of this is already made available today, including through APIs as part of dedicated data sharing portals. However, there is still much more that can be done. We encourage the Commission and Member States to continue improving the availability of public data, and in particular to take an ambitious approach to the definition and availability of high value datasets under the Open Data Directive.
3. The public sector also holds specific information on individuals and firms generated through their interactions with the state and public services. For example, tax and social security contributions, driving license information, and registration of residency. Individuals and firms should be able to share this data, both with other parts of the public administration and with the private sector. This would ease administrative burdens and facilitate the reuse of information to provide more innovative and personalised services.
4. In some particular cases, this is already possible. For example, parents in Spain applying for public schools can provide regional governments with direct access to their tax declaration. Data portability, built around standardised APIs and consent models, should become the norm for all the data that individuals and firms can access in the public sector - an ideal starting point is data held in public registries and in tax/social security authorities.

**Conclusion**

1. The crisis has shown that the use of data has no sectoral boundaries and its value lies in its use and re-use - no one has been surprised to see how data from telecommunications and technology companies could help contribute to resolving a health problem.
2. Data driven innovation is a key enabler of European economic competitiveness, but its role is constrained by data availability for European firms. The Commission’s Data strategy is a first step to promote a European Data Economy and to boost its potential benefits, but it may not be ambitious enough if it focuses only on the establishment of voluntary, sector-specific data spaces.
3. In our opinion, a **cross-sector** **user data sharing** framework would help to solve some of the current imbalances in market power and empower individuals and firms to take control over their data in the digital environment -- and there is a clear path available to European authorities to take immediate action in the forthcoming Data Act and Digital Services Act.
4. We encourage stakeholders to work closely with the European Commission to help ensure that Spain, and the wider EU, can fully realise the benefits that the digital economy has to offer.

1. The revised payment services directive (EU 2015/2366) [↑](#footnote-ref-1)
2. These include the expert report reports on digital competition delivered to the [EU Commission](https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf) (April ‘19), [German government](https://www.bmwi.de/Redaktion/EN/Pressemitteilungen/2019/20190909-commission-of-experts-on-competition-law-40-presents-final-report-to-minister-altmaier.html) ("Competition Law 4.0", September ‘19), British government ([“Furman report”](https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel), March ‘19) and the [Stigler Committee report](https://research.chicagobooth.edu/stigler/media/news/committee-on-digital-platforms-final-report) in the USA (September ‘19). [↑](#footnote-ref-2)