

REGULATORY ENVIRONMENT FOR PLATFORMS, ONLINE INTERMEDIARIES, DATA AND CLOUD COMPUTING AND THE COLLABORATIVE ECONOMY

Public consultation of the European Commission - Position of the French Digital Council

Online platforms

SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

Do you agree with the definition of "Online platform" as provided below?

"Online platform" refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers.

- No

Please explain how you would change the definition

The Council proposed to define a platform as follows:

“A service with an intermediary function in the access to information, content, goods or services, often edited or provided by third parties. Beyond its technical interface, a platform organizes and prioritizes these contents for the purpose of their presentation to final users. An ecosystemic dimension - characterized by strong interrelations between convergent services - can sometimes be added to this common feature. Several platforms have in fact adopted development models based on the constitution of downright ecosystems of which they tend to become the center.”

What do you consider to be the key advantages of using online platforms?

Online platforms...

- make information more accessible
- make communication and interaction easier
- increase choice of products and services
- create more transparent prices and the possibility to compare offers
- increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.)
- lower prices for products and services
- lower the cost of reaching customers for suppliers

- help with matching supply and demand
- create new markets or business opportunities
- help in complying with obligations in cross-border sales
- help to share resources and improve resource-allocation
- others:

Please specify:

Platforms also :

- help private individuals to interact socially with their peers ;
- help empower individuals, disseminate knowledge and provide individual and collective options.

Have you encountered, or are you aware of problems faced by consumers or suppliers when dealing with online platforms?

- Yes

Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible.

A/ Platforms to consumers

The relationship between platforms and customers can raise three main concerns:

1/ Pluralism and freedom of expression (detailed in the following questions)

2/ Transparency and 3/ Privacy:

Given their prescriptive role, platforms contribute to shape and determine the way we access information and offers online. In doing so, they often combine usefulness with opacity. For example, they do not always make it easy to determine whether the results shown are advertising, a generic algorithmic selection, a customisation or a preference for the platform's offering.

Furthermore, a strong opacity surrounds the fate of collected data. Terms of services are often unreadable for a reasonably well informed customer and it is sometimes clearly impossible to verify what the platform has done with it or to whom they were shared with.

B/ Platforms to suppliers/businesses

Asymmetries of power can exist between platforms and their professional users, due to their intermediate position. This position allows them to intervene in the relations between their business and private users, and sometimes even to compete with them. In doing so, the platform may take advantage of a strong knowledge on consumer behaviours and preferences, acquired through its intermediary position, which allows collecting an important amount of information on the relations between the different sides of a market.

This imbalance can be fostered by:

- Network effects of which the digital environment is conducive to.
- Diffusion effects associated to open innovation strategies implemented by the platforms. For example, numerous additional services may be developed through Application programming interfaces (API) made available by the platform operator.
- Horizontal diversification through a spectrum of services which can be interconnected with a user account: mail, video, storage, office tools, mapping, app markets, etc.
- Vertical integration, through the control of technical nodes that allow access to users: operating system for connected device, web browser, pre-installed applications, etc.

In such cases, online platforms may become almost inevitable intermediaries for many suppliers. Some platforms operators may have taken advantage of this ecosystemic environment by adopting practices which are potentially harmful for innovation:

- Capturing a great part of the value created by third-parties and imposing unbalanced commercial conditions to them ;
- Raising diverse barriers to the use of services from competing environments, or to move from one platform to another ;
- Decreasing the visibility of the offers of its competitors, at the benefit of its own offers.

How could these problems be best addressed?

- a combination of the above (market dynamics, regulatory measures, self-regulatory measures)

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the traders that use them, more transparency in relation to:

a) information required by consumer law (e.g. the contact details of the supplier, the main characteristics of products, the total price including delivery charges, and consumers' rights, such as the right of withdrawal)?

- Yes

b) information in response to a search query by the user, in particular if the displayed results are sponsored or not?

- Yes

c) information on who the actual supplier is, offering products or services on the platform

- Yes

d) information to discourage misleading marketing by professional suppliers (traders), including fake reviews?

- Yes

e) is there any additional information that, in your opinion, online platforms should be obliged to display?

Specific information obligations may apply to platforms, in order to allow their users to understand the exact nature of the service provided, as regards :

- Identification of sponsored and advertised contents ;
- Distinction between 1) contents referenced automatically, on the basis of the platforms' pertinence criteria (organic referencing) ; 2) organic referencing personalized using data relating to the user: geolocalisation, browsing history, user profile... (personalized organic referencing) ;
- The main orientations of the platform's content personalization policy ;
- Content removal policy and procedure.

Have you experienced that information displayed by the platform (e.g. advertising) has been adapted to the interest or recognisable characteristics of the user?

- Yes

Do you find the information provided by online platforms on their terms of use sufficient and easy-to-understand?

- No

What type of additional information and in what format would you find useful? Please briefly explain your response and share any best practice you are aware of.

It is essential that the terms of use of the service are understandable for a *reasonably well informed customer*. This understandability could be assessed by *test panels* (see answers on rating agencies). Terms of service should be easily accessible and efforts could be put in standardising those that are common to most services. At the very least, it would be helpful if industry professionals were drafting shared good practices on information design and access to rights with the aim of improving its friendliness to the users.

Two examples of good practices:

“How search works” In 2013, Google made available a website describing the functioning of its search engine, in the form of interactive graphics and textual explanations.

“Terms of Service ; Didn't Read” is a web-browser plug-in that rates with colors and letters the ToS of most of online services on key aspects such as : licence on shared contents, data transfer to third party, data portability, etc.

USE OF INFORMATION BY ONLINE PLATFORMS

In your view, do online platforms provide sufficient and accessible information with regard to:

a) the personal and non-personal data they collect?

- No

b) what use is made of the personal and non-personal data collected, including trading of the data to other platforms and actors in the Internet economy?

- No

c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)?

- No

Please share your general comments or ideas regarding the use of information by online platforms

Regarding the use of information by online platforms, the Council is in favor of the consecration of a legal principle of informational self-determination, a principle used in German constitutional law at the benefit of the citizens. It was first used in the context of a 1983 German Federal Constitutional Court ruling related to personal information collection. The Court ruled that the basic right warrants the capacity of the individuals to determine the disclosure and use of his/her personal data.

This important principle was given a broader meaning by the French Conseil d'Etat, in a remarkable report from last year on digital technologies and fundamental rights. The informational self-determination principle implies that we don't regard the protection of personal data as an end in itself, but as an essential mean in service of the free development of individuals.

People should be free to decide the use made of their personal data. This implies that the user understands the terms of service and that he maintains control over his (personal) data. This is the reason why data fluidity is essential, in particular data portability (see below).

RELATIONS BETWEEN PLATFORMS AND SUPPLIERS/TRADERS/APPLICATION DEVELOPERS OR HOLDERS OF RIGHTS IN DIGITAL CONTENT

Please briefly describe the situation

The Council identified a need for better understanding of the usage of *open source* in outsourced and crowdsourced innovation, that mainly occurs through Application Programming Interfaces (A.P.I), in order to differentiate best practices from predatory behaviors when a business operate an API within a mixed environment ("closed" and "open"). The Council suggested :

- To integrate an assessment of the stability of the API provided by the main platform operators ;
- More broadly, to adopt *case based* guidelines on best practices for open source and APIs made available for developing consumer services, or to facilitate cooperation between professionals in the industry.

More details in the minutes of the consultation conducted by the CNN on platforms' ecosystems: <http://www.cnumerique.fr/neutralite-des-plateformes-consulter-la-restitution-de-la-concertation/>

Is there a room for improvement in the relation between platforms and suppliers using the services of platforms?

- Yes, through the combination of the above (market dynamics, self-regulatory measures, regulatory measures).

Please share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms

CONSTRAINTS ON THE ABILITY OF CONSUMERS AND TRADERS TO MOVE FROM ONE PLATFORM TO ANOTHER

Do you see a need to strengthen the technical capacity of online platforms and address possible other constraints on switching freely and easily from one platform to another and move user data (e.g. emails, messages, search and order history, or customer reviews)?

- Yes

If you can, please provide the description of some best practices (max. 5)

	Name of the online platform	Description of the best practice (max. 1500 characters)
1.	VLC	Interoperability
2.	PIMS	Portability
3.	Google TakeOut	Portability

Should there be a mandatory requirement allowing non-personal data to be easily extracted and moved between comparable online services?

- Yes

Please explain your choice and share any best practices that you are aware of.

The Council has been promoting the PIMS initiatives - for personal information management systems - which precisely let users take back control of their data, usually known as "personal clouds". PIMS are there to centralize the information that the user has in the commercial systems. The user has a 360 view on the personal data, he can know which service has access to which data, he can choose to move the data from one service to another, or to stop certain applications from gaining access to the data.

Please share your general comments or ideas regarding the ability of consumers and traders to move from one platform to another

In the digital environment, data portability - the ability for people to reuse their data across different services, the ability to move data among different application programs, computing environments or cloud services - is essential.

A typical user today usually has data on several devices and in a number of commercial systems. Those commercial systems function as data traps. It is easy to check in information but incredibly difficult to remove it or often to simply access it.

Portability therefore aims at liberating the users from those data traps in order for him to make use of his own data. It is essential to implement this right in order to foster a dynamic data ecosystem.

The Council asked itself whether competition really was just a click away on the web. Indeed, there is some kind of a conventional wisdom that states that competition is “just a click away” (MySpace is often given as an example of the precariousness of dominant positions): users’ switching costs in terms of time, money and effort are supposed to be low, which would make it easy for users to switch to an alternative supplier if they are not satisfied with a service. However, the specific growth dynamics of platforms mean that this conventional wisdom needs to be reconsidered: up to a certain market penetration rate or “tipping point”, a service is fragile and vulnerable to opposing forces (such as a lack of interest in the service or exorbitant market entry costs). But once a platform reaches the market tipping point, the dynamics make its success overwhelming, creating barriers to entry for competitors - because of critical mass of data, learning algorithms, attraction for advertisers and contributors, etc.

Additionally, there is a quite recent tendency for dominant platforms to:

- constantly extend their activities and services,
- develop a vertical integration strategy
- and acquire their emerging competitors.

These strategies, combined with strong network effects, are likely to make it harder to challenge those dominant positions in the future. In this environment, it is very likely that the “first mover takes all”.

Some observers think that there is a “natural” tendency for monopolies to emerge, that may or may not be irreversible. Others predict a lasting oligopoly will be established since only a handful of players can deploy the resources required to control the entire value chain, ranging from services and content to devices and connected objects, and including operating systems, browsers and search result rankings.

Either way, there is the risk of being held hostage by a single solution or the battle between competing platforms. Ultimately, the concern is that quality and diversity will suffer, innovation will be hindered and fewer channels for expression will be available.

ACCESS TO DATA

As a trader or a consumer using the services of online platforms did you experience any of the following problems related to the access of data?

- a) unexpectedly changing conditions of accessing the services of the platforms
 - Yes

- b) unexpectedly changing conditions of accessing the Application Programming Interface of the platform
 - Yes

- c) unexpectedly changing conditions of accessing the data you shared with or stored on the platform
 - Yes

- d) discriminatory treatment in accessing data on the platform
 - Yes

Would a rating scheme, issued by an independent agency on certain aspects of the platforms' activities, improve the situation?

- Yes

Please explain your answer

In order to enforce a fairness principle towards platforms, it is crucial that we adopt a new form of regulation, a disruptive approach: Opening the monopoly of regulation towards a more flexible, and crowd-based regulation in order to complement and overcome some weaknesses of traditional tools.

As the information economy grows, trust and reputation are becoming a bigger part of the equation. This is why the Council has been proposing the creation of a European “platform rating agency”, to evaluate the behaviors of digital services. Those agencies would rely on an open network of contributors: a centralized agency relying on a decentralized crowd - and a decentralized expertise.

It would offer a canal for information feedback, federating a wide variety of potential expertise: developers, designers, lawyers, consumers associations, and communities of researchers. This approach is very important as it allows enlightening practices which are not illegal “per se”, but can contribute, to hamper the exercise of our rights if they are done in a large scale.

Those agencies would examine and rate specific aspects of the platforms, both on BtoC and BtoB levels:

- comprehensiveness of the terms of service;
- detect some user interfaces crafted to trick people into doing things, such as signing up for recurring bills, disguised ads, forced disclosure, etc.
- stability of the APIs for developers;
- commercial behavior;

- harmful tax practices...

Just like the current credit rating agencies, this agency's role would be to clarify the choice for consumers, businesses (who want to develop an app within a platform), investors (who want to invest in an app developed within a platform), shareholders, public authorities...

Tackling illegal content online and the liability of online intermediaries

Please indicate your role in the context of this set of questions

- none of the above (individual user, content provider, notice provider, intermediary)

Please explain

The French Digital Council is an independent advisory commission, composed of honorary members chosen by the government for their expertise.

Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12-15) has proven not fit for purpose or has negatively affected market level playing field?

- No

Do you think that the concept of a "mere technical, automatic and passive nature" of information transmission by information society service providers provided under recital 42 of the ECD is sufficiently clear to be interpreted and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

- I don't know

Please explain your answer

Answered in last question.

Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services e.g. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some diverging case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified?

- Yes

Please provide examples

Detailed in last question.

On the” notice”

Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?

- No

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

- Yes

Please explain your answer

It is necessary to introduce the equivalent of the principle of “adversarial proceedings” in the matter of illegal content in so far as the hosting service provider generally endorses the role of a judge, in charge of determining the illegality of a content (usually noticed by a third party). This principle dictates that both parties must be heard and have the possibility to respond to the accusation. Removing content (should it be illegal or not) infringes the content provider’s freedom of speech, therefore it seems logic that he or she should be given the possibility to express his or her views on the alleged illegality of the content during a reasonable time. In the meantime, the content could be removed, temporarily (until shown proof of the contrary) or definitely.

Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)?

- No

Please explain

A general “take down and stay down” principle would not be adequate as it would lead to a general monitoring obligation for online intermediaries. However, should the Commission decide to go in that direction, it is imperative that this principle provide with substantial guarantees in order to be acceptable:

- the content provider should be given the possibility to express his or her views on the alleged illegality of the removed content, and given the right to an effective recourse;

- it is necessary to affirm a principle of human intervention, in order to prevent an always more automated censorship.

On duties of care for online intermediaries:

Do you see a need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received as well as their main content and the results of the actions taken following the notices)?

- Yes

Should this obligation be limited to those hosting service providers, which receive a sizeable amount of notices per year (e.g. more than 1000)?

- Yes

Do you think that online intermediaries should have a specific service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism?

- Yes

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

I. A new online intermediary category should not call into question the current liability regime of 'hybrid' intermediaries

The current dichotomy, based on the “mere technical, automatic and passive nature” of information transmission by information society providers can lead to some legal uncertainty. Indeed, both at a national and a european levels, abundant decisions have shown the difficulties in qualifying certain types of actors and activities. Moreover, the growing involvement of some online intermediaries in the content distribution is likely to raise some questions as to whether those providers are still endorsing a “mere technical, automatic and passive” role.

However, it is to be noted that this legal uncertainty is likely to be inevitable in the context of the extremely-rapid changes of the digital environment: with regards to the key role that those regimes have played in the development of the digital economy and society, it is therefore essential that one proceed with extreme caution when modifying the applicable regime.

Additionally, the exclusive purpose of this categorisation is to define the applicable liability regimes regarding illegal content. In this respect, it wishes to reaffirm the great importance of the limited liability regime applicable to online intermediaries with regards to freedom of speech. The stronger the applicable liability regime is, the more likely will the intermediary engage in preemptive and

automated censorship of content, for fear that it might be liable. There is a risk that it might lead to a growing movement to prohibit speeches and acts proactively - before they even occur.

Consequently but without recommending it explicitly, the Council is not opposed in principle to the creation of further categories for intermediary services if this leads to a clarification of the applicable regime and if it takes into account the changing nature of online intermediaries. **It is however crucial that this new categorisation doesn't impact the current limited liability regime of the 'hybrid' intermediaries.**

II. The Council proposed a general device for tackling illegal content online: towards a more effective system that guarantees fundamental rights

In the Council's opinion, it is necessary to rethink the general device for tackling illegal content online. The current legislation can lead to absurd situations, in which the online intermediaries are the unique private judges of the illegality of contents. Moreover, as the amount of data transferred never ceases to grow, the legislation should result in a more effective system that guarantees that the illegal content can be removed more quickly.

The procedure could therefore be changed to this 4 steps:

- 1. Double notice:** once a notice provider notifies a content, the notice is transferred without delay to the online intermediary **as well as to the relevant public authorities.**
- 2. Adversarial proceedings:** At the same time, the content provider is notified that his or her content is subject to notice, and that he or she can express views on the alleged illegality of the content during a reasonable time. Those observations are transferred to the relevant public authorities and to the online intermediary without delay.
- 3. Temporary withdrawal:** As soon as the online intermediary receives the notice, the online intermediary is charged with a quick examination, in order to determine its gross illegality. If it concludes so, it removes it **temporarily, waiting for the confirmation of the public authorities who are charged with a thorough examination of the notice.**
- 4. Confirmation from the relevant public authorities:** After taking into account the possible observations of the content provided, the relevant public authority confirms or not the illegality of the content. It reserves the right to transmit the file to the public prosecutor for action. If, on the contrary, the illegality is not confirmed, the removed content is reintegrated.

Data and cloud in digital ecosystems

FREE FLOW OF DATA

ON DATA LOCATION RESTRICTIONS

In the context of the free flow of data in the Union, do you in practice take measures to make a clear distinction between personal and non-personal data?

- Not applicable

Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable?

What kind(s) of ground(s) do you think are justifiable?

National security

Public security

Other reasons:

Please explain

The European Union should safeguard member states' capacity to restrict the free flow of data for security reasons, but also for the preservation of citizens' fundamental rights, as personal data protection, notably in the health sector. Moreover, the impact of free data flow on the industrial competitiveness of Europe must be better expertised. International trade negotiations should not endanger Europe's digital sovereignty.

ON DATA ACCESS AND TRANSFER

Please share your general comments or ideas regarding data access, ownership and use

The French Digital Council is vigorously opposed to the introduction of any property regime on data, as property rights could neither protect individuals' privacy nor resolve data access problems. It could even represent a threat to both of them, for the following reasons :

- It puts the individual in a very asymmetrical power relationship with big corporates ;
- It might lead to a social fragmentation between those who can afford protection and those in need who will more likely sell their data ;
- It shakes the very foundation of the data protection's nature, which would not be a fundamental right - and not even a personality right - anymore. The French Senate in fact

recalled in 2009 that our conception of privacy is based on the preservation of human dignity, and that ownership on the contrary would imply that such a protection can be transferred and commodified ;

- It also represents a major economic threat : data ownership might allow some hegemonic actors to further preempt data markets. The European Union should rather set ambitious open data policies and promote free use of data, in order to allow all actors, including the small ones, to develop data-driven innovative products and services ;
- Data ownership would finally question a fundamental balance of intellectual property rules, which state that information and data are outside its realm. Property rights in fact only protect the expression or embodiment of an idea, but never the idea itself. Database rights (or *sui generis* rights) also specifically protect the selection or arrangement of contents, and do not create any kind of ownership on data, information whatsoever. Introducing property regimes on data ownership might be a threat to broad diffusion, access, and sharing of data and information, and hence innovation and development.

The Council would rather suggest to reinforce the definition and protection of public domain information (against illegitimate forms of exclusivity), develop open data policies by making public information open and free, and support data portability (for both personal and non-personal data). Furthermore, the Council strongly recommend to allow text and data mining for research, notably in the process of the revision of Directive 2001/29/EC. The European Commission - along with all member states - should also widely support use of existing open licences for software, cultural works or research.

ON DATA MARKETS

What regulatory constraints hold back the development of data markets in Europe and how could the EU encourage the development of such markets?

First of all, the Council would like to draw attention to the fact that the use of the term “data market” is controversial here (see answer on data ownership). We would suggest to rather employ the term data economy, which more broadly reflects that the value generated from data not comes from data alone, but its aggregation, analysis, uses, etc. The Council therefore recommends that the EU should mostly focus on the development of access, use, and reuse of data, which must be broad and inclusive.

In this order, the Council strongly recommends the introduction of a right to data portability, but also suggest to reinforce the definition and protection of public domain information (against illegitimate forms of exclusivity), develop open data policies by making public information open and free, and support data portability (for both personal and non-personal data). Furthermore, the Council strongly recommend to allow text and data mining for research, notably in the process of the revision of Directive 2001/29/EC. The European Commission - along with all member states - should also widely support use of existing open licences for software, cultural works or research.

ON ACCESS TO OPEN DATA

Do you think more could be done to open up public sector data for re-use in addition to the recently revised EU legislation (Directive 2013/37/EU)?

- Introducing the principle of 'open by default'
- Improving interoperability (e.g., common data formats);
- Further limiting the possibility to charge for re-use of public sector information
- Remedies available to potential re-users against unfavourable decisions
- Other aspects?

Please specify

The EU should strengthen open data policies, notably the Directive 2013/37/EU in order to further facilitate reuse of public sector information : all European administrations must work towards the objective of eventually making public data automatically available and, generally, free-of-charge.

- The European Commission should support the development and coordination of open data strategies, by providing technical and qualitative guarantees to foster reuse by third parties. It should provide methodological support to local authorities through an harmonized framework, in order to ensure interoperability between national data sets (data formats) and their reuses (licensing). Further promoting existing open data licenses (as the ODBL licence) seems more appropriate and relevant than creating a new and specific European licence.
- The eGovernment action plan should include the support of a European open data community, based on a network of chief data officers. It could be built along with the PSI working group.
- Member states should develop common European open data projects based on national as well as European data, opened to private actors from civil society or the business sector (Open Data Institute, Open knowledge Foundation).
- The European Union should work towards a positive legal status for the public domain (including raw data and information as well as every object not covered by intellectual property), in order to ensure a protection against illegitimate exclusivities (“copyfraud”).

Do you think that there is a case for the opening up of data held by private entities to promote its re-use by public and/or private sector, while respecting the existing provisions on data protection?

- Yes

Under what conditions?

in case it is in the public interest

Please explain

The European Union could experiment the opening of information on a voluntary basis between private actors under the initiative of public authorities, notably by inspiring itself from the example of the Bureau of Transportation Statistics in the United States. Strong legal limitations should be provided to the ability of states to impose the opening or transmission of data on a public interest basis.

ON ACCESS AND REUSE OF (NON-PERSONAL) SCIENTIFIC DATA

Do you think that data generated by research is sufficiently, findable, accessible identifiable, and re-usable enough?

- No

Why not? What do you think could be done to make data generated by research more effectively re-usable?

The implementation of the guidelines on Open Access to scientific publications and research data enounced by the European commission is uneven and often insufficient. member states should adopt more ambitious open access policies to publicly funded publications and research data by creating secondary exploitation rights (as Germany did "Zweitverwertungsrecht) or imposing the deposit on public open archives after short embargo periods. Moreover, the Council strongly recommend to allow text and data mining for research, notably in the process of the revision of Directive 2001/29/EC. Text and data mining has in fact been recognized as an important driver for innovation and growth. Private editors should not be allowed to impose restrictions on the automated processing of data contained in databases on which academics have legal access to.

Do you agree with a default policy which would make data generated by publicly funded research available through open access?

- Yes

PERSONAL DATA MANAGEMENT SYSTEMS

Do you think that technical innovations, such as personal data spaces, should be promoted to improve transparency in compliance with the current and future EU data protection legal framework? Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'?

- I don't know

Would you be in favour of supporting an initiative considering and promoting the development of personal data management systems at EU Level?

- Yes

EUROPEAN CLOUD INITIATIVE

What are the key elements for ensuring trust in the use of cloud computing services by European businesses and citizens

- Standards, certification schemes, quality labels or seals ;
- Investment by the European private sector in secure, reliable and high-quality cloud infrastructures.

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- No

What information relevant to the security and protection of users' data do you think cloud service providers should provide?

- Data storage modalities,
- data retention period and conditions of suppression,
- data transfers (if possible, accompanied by the identity of subcontractors and suppliers),
- undertaken security guarantees.

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- No

As a (potential) user of cloud computing services, do you agree that existing contractual practices ensure a fair and balanced allocation of legal and technical risks between cloud users and cloud service providers?

- No

Please explain

- Liability clauses,
- Third party access to data,
- Lack of information regarding portability possibilities.

What would be the benefit of guaranteeing the portability of data, including at European level, between different providers of cloud services

Economic benefits

Trust
Others:

Please specify

- Control over data
- Possibility to churn more easily

Have you encountered any of the following contractual practices in relation to cloud based services? In your view, to what extent could those practices hamper the uptake of cloud based services? Please explain your reasoning.

Difficulties with negotiating contractual terms and conditions for cloud services stemming from uneven bargaining power of the parties and/or undefined standards

Always B2C / Often B2B

Limitations as regards the possibility to switch between different cloud service providers

Often (interoperability + portability)

Possibility for the supplier to unilaterally modify the cloud service

Always (contractual provisions allowing unilateral service modifications)

Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)

Always (disclaimer leading to the exclusion of liability)

What are the main benefits of a specific European Open Science Cloud which would facilitate access and make publicly funded research data re-useable?

Making Science more reliable by better quality assurance of the data

Making Science more efficient by better sharing of resources at national and international level

Making Science more efficient by leading faster to scientific discoveries and insights

Creating economic benefits through better access to data by economic operators

Making Science more responsive to quickly tackle societal challenges

Others

Please specify

- Adopt a “commons” approach of European Science
- Create a unique platform (harmonized frame) on a decentralized infrastructure

Please share your general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire

See answers on PIMS and data portability.

The collaborative economy

Which are the main risks and challenges associated with the growth of the collaborative economy and what are the obstacles which could hamper its growth and accessibility? Please rate from 1 to 5 according to their importance (1 – not important; 5 – very important).

- Not sufficiently adapted regulatory framework : 3
- Uncertainty for providers on their rights and obligations : 4
- Uncertainty for users about their rights and obligations : 4
- Weakening of employment and social rights for employees/workers : 5
- Non-compliance with health and safety standards and regulations : 4
- Rise in undeclared work and the black economy : 4
- Opposition from traditional providers : 2
- Uncertainty related to the protection of personal data : 3
- Insufficient funding for start-ups : 4
- Other, please explain

One other major problem lies in the transfer of economic profitability within the value chain. A phenomenon observed in many traditional sectors (hotel industry, culture, etc) where new players place themselves between producers and consumers, by offering new, innovative and efficient services: personalization of content via the use of big data and predictive algorithms, shopping facilities in "one-click", etc. While these evolutions also present several economic opportunities, they raise questions on the compliance of these platforms concerning taxation rules. The European Union member states should hence affirm that profit must be taxed where it is generated and to this end, support the setting of new rules that define digital tax presence.

How do you consider the surge of the collaborative economy will impact on the different forms of employment (self-employment, free lancers, shared workers, economically dependent workers, tele-workers etc) and the creation of jobs?

- Varies depending on the sector
- Varies depending on each case
- Varies according to the national employment laws
- Other

Please explain

This question is difficult to answer, considering the scope of the definition for the collaborative economy suggested here. First of all, one must recall that the collaborative economy mostly generates new revenues, but rarely employment. Current studies on this matter are often very contradictory on these issues - few are able to answer it comprehensively.

The European Union could launch a vast research network on this matter. A first step would be to make some distinctions between the various models existing. Some important ones might be the distinction between :

- merchant and non-merchant platform models ;
- non-monetised and monetised as well as nonprofit and profit at the user level ;
- collaborative production, funding and consumption ;
- business models (redistribution and selling of goods, location systems, on the demand services or local cooperatives).

Please explain

The definition adopted in this consultation is too broad to precisely answer this question.

Do you see a need for action at European Union level specifically to promote the collaborative economy, and to foster innovation and entrepreneurship in its context?

Yes

Please indicate the sector/action

The EU should adopt platform regulation rules aimed at increasing their transparency, information on tariffication, offer presentation and execution (across sectors, not specifically for the collaborative economy - cf. our answers on online platforms) and create a platform rating agency in order to complement the traditional B2B regulation by more flexible tools, based on a reputational lever and the reduction of information asymmetries.

The European Union could also support platform cooperativism with guidelines on how members states can increase positive social and environmental externalities of platforms. Platform cooperativism (see Trebor Scholz for instance) in fact allow independent workers to be included in the decision-making process of platforms from the collaborative economy (terms and conditions of use, tariffication policies, etc)

What action is necessary regarding the current regulatory environment at the level of the EU, including the Services Directive, the E-commerce Directive and the EU legislation on consumer protection law?

More guidance and better information on the application of the existing rules is required

Please indicate the sectors and the rules concerned

The Council does not believe in the creation of new specific rules, which will necessarily be *ad hoc* and unsustainable. The challenges of the collaborative economy rather invites us to reinvent and adapt our ordinary law : rethinking our social protection, notably for independent workers, redefine relationships of subordination, or reinvent labour relations.