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Orgalim input to the European Commission consultation on the Data Act

Executive summary

Orgalim supports the facilitation of data access and use in business-to-business (B2B) and business-to-government (B2G) situations. Orgalim believes that the role of the legislator in this field should be limited only to measures that would encourage and foster B2B and B2G data sharing.

Freedom of contract as the guiding principle should be at the heart of any new initiative. In addition, the intellectual property rights of companies need to be protected.

Orgalim sees the untapped potential in smart contracts to facilitate automated data sharing and pooling at scale, while enforcing usage restrictions.

Last but not least, we need to continue to facilitate international data transfers that are very important in an interconnected digital economy.

Access to data holds great potential within the European Union. Access to data is also an essential factor for the future competitiveness of companies, especially SMEs, as it serves both to improve existing processes and to develop new business models that could boost innovation and job creation. Data sharing in a business-to-business (B2B) context can take different forms: from unilateral to more collaborative approaches, data can be shared against payment, through the provision of a service, or free of charge. While encouraging companies to exchange data on a voluntary basis is paramount, the proposed new data initiatives must not become onerous for business.

Europe's technology industries' vision on data has already been expressed in the Position Paper on "[Digital Transformation: Orgalim Position Paper Towards a Common European Data Space for Smart Manufacturing](#)", the answer to the [public consultation on the European strategy for data](#), and Orgalim's submission on "[Legislative framework for the governance of common European data spaces](#)".

1. Use of privately held data by the public sector (B2G)

Access to public sector data is important for companies. We therefore welcome the goal to increase access to, and further use of, data held by the public sector. This will allow more public and private actors to benefit from techniques such as Big Data and machine learning. There are, however, some aspects that will need to be respected to build trust in the sharing of data. The conditions for access and further usage in B2B relationships are usually regulated by private contracts. The usage of privately held data by the public sector therefore needs to respect those existing contracts as well as the intellectual property rights and investments of the private sector.

Therefore, companies should not be forced to make data available to the public sector.

Freedom of contract as the guiding principle should be at the heart of any new initiative. In this regard, Orgalim calls on the European Commission to refrain from proposing legislation that will force companies to open their data. The effects of doing so are likely to be detrimental to the innovative potential of industrial data.

The intellectual property rights (IPR) of companies need to be protected from unauthorised access. While data is – per se – not necessarily to be considered know-how and does not lead to intellectual property rights, we believe that IPR rights, which might be revealed by accessing or sharing data, should continue to be upheld throughout and remain duly protected. Further clarity is therefore needed on how IPR and trade secrets can be upheld when sharing data between companies and the public sector. This should also include guidance on existing IPR rules, duly harmonised at EU level.

2. Data access and use in B2B

Orgalim believes that data access and use in a B2B context are sufficiently open to facilitate growth in new business models. Data holders can freely decide on how they want to share data according to the following models: data monetisation, data marketplaces, industrial data platforms, open data policy etc. Contractual arrangements between companies are the foundation of these forms of data sharing. Trust and simplicity are the key elements that enable companies to successfully share data in business contexts.

To this end, Orgalim has published a legal guide on [industrial data](#) to support the development of balanced practices and business based on data. This guide will encourage companies to better recognise the value of their data, and to develop partnerships that further promote the use of data in business development.

In a B2B context, liability issues related to data can be addressed by contracts that are freely negotiated by the two parties. Moreover, the trade secrets and intellectual property rights of companies must be protected. The Trade Secrets [Directive](#) is an excellent tool in this respect, ensuring protection against (un)lawful acquisition, use and disclosure of certain business-sensitive information.

Also, the EU Directive on the protection of databases ([96/9/EC](#)) is sufficient to protect arrangements of data. We encourage the Commission to clarify some concepts in the databases Directive ([96/9/EC](#)), such as substantial investment or an individually accessible element, for instance through a guidance document. Any clarification should be made without prejudice to freedom of contract, meaning that the creator of a database should be free to determine by contract the conditions of use of his/her database.

3. Smart contracts

Orgalim believes that the role of the legislator in this field should be limited only to measures that would encourage and foster B2B data sharing (i.e., awareness-raising campaigns, toolkits or guidelines). Guidance will help companies to better understand the legal framework related to B2B data sharing. This includes when, and to what extent, data can be legally shared and how to handle cases of data misuse. Orgalim agrees that smart contracts and

distributed ledger technologies have an untapped potential to facilitate automated data sharing and pooling at scale, while also enforcing usage restrictions. However, further developments, including standard-setting, in this area are needed.

Voluntary standards developed by the European Standardisation Organisations (ESOs) together with the industry will support the interoperability of smart contracts across sectors and across borders, while also providing important technical support for the pooling and sharing of data within and between data spaces.

4. Unlocking the potential of international data transfers

International data transfers are becoming increasingly important in an interconnected digital economy: whether for consumers buying products or services through their bank accounts, medical research or suppliers collaborating to overcome a health crisis, paymasters remunerating employees, agricultural traders supporting the food supply chain, travellers booking a flight or a hotel, matching job seekers to a job, manufacturers adding worth to industrial value chains, an SME launching a marketing campaign for a new brand, insurers outsourcing customer claims management or the analysis of statistics to support public services etc. Even simple tasks such as sending an email rely on data flows. Whether directly or indirectly, many European businesses conduct data transfers to grow and expand in Europe and on the international stage.

Orgalim asks for the inclusion of a chapter or a specific international agreement that allows international data transfers in all future EU trade negotiations, and for an adequate implementation of the same chapters of existing Free Trade Agreements, doing away with data localisation requirements.

5. Conclusions

The Commission should further develop and raise awareness about the concept of B2B and B2G data sharing and its benefits, prioritise soft policy measures over-restrictive regulations, and provide guidance and financial support to companies that are interested in sharing and re-using data between themselves and the public sector of the EU.

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of €2,126 billion, manufacturing one-third of all European exports and providing 11.33 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

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