

POSITION PAPER

Brussels, 31 July 2020

Orgalim draft submission on “Legislative framework for the governance of common European data spaces”

In today's digital world data has become an asset to many companies. The production, distribution and consumption of digital data – data economy – are driving rapid advances in IoT/IIoT, machine learning, AI and automation. Europe's technology industries see the transition to a data economy as an essential one for their future growth and competitiveness. This vision has already been expressed in previous position paper on [“Digital Transformation: Orgalim Position Paper Towards a Common European Data Space for Smart Manufacturing”](#) and the [answer to the public consultation on European strategy for data](#).

Orgalim, Europe's technology industries see the transition to a data-driven economy as essential for their future growth and competitiveness, as well as inevitable. Our companies are developing and providing sensor-equipped machinery, data-based services, smart production systems and intelligent products. Data flows make it possible to increase manufacturing productivity and tap into new efficiency gains, whilst simultaneously enabling new data-driven services and business models. The incentives to do so must be right, and the tangible benefits of data sharing must be visible and be better understood, in monetary and other terms. We believe that the use and sharing of data will increase the ability of Europe's industrial base to produce cutting-edge technologies. It will also allow Europe to become an even stronger competitive location for new data-based business models.

Therefore, we support the development of common European data spaces to facilitate voluntary data sharing in strategic sectors and domains of public interest, while respecting intellectual property rights (IPR) and the know-how of the companies (IPR), data privacy and security requirements. A clear governance would encourage and facilitate B2B data sharing by creating more legal certainty, including on competition law aspects, and technical feasibility, including interoperability. At the same time, political intention to create and oversee the data spaces must be backed up by sufficient funding to ensure their success.

Participation in such spaces should remain voluntary, contract based, access should be non-discriminatory and open to all players after having ensured that they comply with existing EU rules. Orgalim is, for example, working on drafting examples of contractual clauses that can be used by companies, including SMEs. This will facilitate data sharing, whereas mandatory opening-up of private sector data could hinder innovation and investment.

Orgalim represents Europe's technology industries, comprised of 770,000 companies that innovate at the crossroads of digital and physical technology. Our industries develop and manufacture the products, systems and services that enable a prosperous and sustainable future. Ranging from large globally active corporations to regionally anchored small and medium-sized enterprises, the companies we represent directly employ 11.5 million people across Europe and generate an annual turnover of over €2,100 billion. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

In a B2B context, liability issues related to data can be addressed by contracts that are freely negotiated by the two parties. Therefore, we ask policymakers to refrain from any specific legislation imposing opening-up of industrial and on data liability, respecting the companies' freedom of contract.

Companies need legal certainty and a trusted market environment to share, transfer and access data to enable them to innovate in new data-driven business models. To that end, trade secrets and intellectual property rights of companies shall be protected.

The willingness of industry to share data on a voluntary basis could be further encouraged by platforms and data spaces offering data management models that ensure that data is shared in a fair manner, aligned with the business interest of all the stakeholders involved, in particular the most vulnerable ones, like the SMEs.

Based on this, Orgalim proposes the following key elements for a European data policy framework:

1. **Opening up data: freedom of contract as the guiding principle.** In this regard, we would like to stress that the European Commission should be extremely cautious about the idea of proposing hard law forcing companies to open up their data. The effects may prove detrimental to the innovative potential of industrial data.
2. **Liability.** Liability issues can be addressed sufficiently by contracts freely negotiated by the two parties, within the framework of the overall negotiations about data sharing between companies. We have not seen any market failure justifying a change in this approach. Therefore, we do not currently anticipate a need for legislation on this specific issue.
3. **Protection of data: know-how and intellectual property rights.** The intellectual property rights 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, that might be revealed by accessing or sharing data, of businesses taking part in the data spaces that this governance framework will create should continue to be upheld throughout and remain duly protected. Further clarity is therefore needed on how IP protection can be upheld when taking part in a common data space, this should also include guidance on how existing IPR rules, duly harmonised at EU level.
4. **Cybersecurity.** Cybersecurity is a deciding factor to increase trust in sharing data. In order to achieve a high level of cybersecurity for products, solutions and processes circulating in the single market, Europe needs a holistic approach to cybersecurity by minimizing the risk of legal fragmentation towards cybersecurity.
5. **Interoperability and portability: key to unlocking data sharing in the EU.** European and international standards that enable this interoperability need to serve as a basis. The application of standard formats for processing data from different sources in a coherent and interoperable manner across sectors should be encouraged. It can reduce the costs and technical barriers associated with sharing and re-use of data. In order to achieve this, it is of utmost importance that the standardization process is industry-driven, consensus-based, coherent and free from contradictions. In addition, we would like to highlight the importance to promote the use of voluntary (industry-developed) standards.
6. **The role of competition law:** Companies increasingly report concerns about the legal uncertainty in data sharing from a competition law standpoint. Therefore, more clarity and legal certainty from this competition law standpoint is needed for new forms of cooperation on data. A block exemption regulation on data sharing and a guidance document on the topic would be welcomed in this respect.
7. **Unlocking the potential of international data transfers.** International data transfers are becoming increasingly important in an interconnected digital economy. Orgalim asks for the inclusion of a chapter that allows international data transfers in all the future Free Trade Agreements that the European Commission is negotiating, doing away with data localisation requirements.
8. **General Data Protection Regulation (GDPR).** We believe that the initial governance framework that will be set up for voluntary B2B data sharing should be limited to non-personal data and

anonymised personal data. Although in general machine data relates mostly to non-personal data, there might be mixed data sets. Due to the wide set of definitions outlined in the GDPR, these might be linked to persons and therefore fall within the scope of the GDPR. We believe that a lighter process should apply to mixed data sets, rather than the full application of the GDPR. Therefore, Orgalim calls for a pragmatic approach on how to handle mixed data sets to enable data sharing, especially for SMEs.

9. **Raising awareness.** One important aspect of creating more trust around data sharing, especially amongst the SME community, is to provide more guidance regarding potential obstacles and how to overcome them. As Orgalim, we are also committing to a specific effort to inform our members regarding the potential of data sharing, gather data on the perceived obstacles, and provide guidance on how to best overcome these.

Europe's technology industries represent companies that innovate at the crossroads of digital and physical technology. As key drivers and beneficiaries of the digitalisation of industry, these industrial sectors play a leading role in the data economy. We believe that data will also have a key place in the economic recovery strategy for the EU, given its potential for innovation and job-creation, as well as its contribution to the efficiency of industries. We therefore call on the Commission to ensure that Europe's technology industries are closely involved in the further development of clear governance framework for common European data spaces.