

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 20-1928

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### SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

#### EEA EFTA COMMENT

**on COM(2020) 65 White Paper on Artificial Intelligence – A European approach to excellence and trust and COM(2020) 66 A European strategy for data**

#### 1. EXECUTIVE SUMMARY

- The EEA EFTA States (Norway, Iceland and Liechtenstein) welcome the Commission's White Paper on Artificial Intelligence (AI) and Communication on the data economy. We believe that Europe should aim at becoming a leading role model for a society empowered by data.
- The EEA EFTA States share the view of the Commission that many of the issues relating to AI are already covered by existing legislation and support the risk-based approach to a possible new regulatory framework. We recognise that regulation of issues relating to an emerging technology raises difficult questions and may involve trade-offs.
- The EEA EFTA States support the Commission's aim to create a single European data space and call on the Commission to include the EEA EFTA States in all future activities related to building the European data economy.
- We would emphasise the need to uphold the principles and enforce the rules underpinning free flow of data within the entire European Economic Area. In this regard we would advise caution when considering large cloud federations, which may work to the detriment of smaller cloud service providers and impede true free flow of data in the EU/EEA.
- The EEA EFTA States welcome the work the EU is doing to mitigate concerns regarding third-country legislation on access to data, in particular the US CLOUD Act. An EU-US

agreement in this area, that also includes the EEA EFTA States, would be important in facilitating increased uptake of cloud computing.

- The EEA EFTA States encourage the Commission to prioritise the work to clarify the rule book for cloud services. The first edition of the compendium of existing cloud codes of conduct and certifications should be made available earlier than Q2 2022.
- While the EEA EFTA States welcome proposals for a number of data spaces within different sectors, we would advise on somewhat stricter prioritisation. In light of the COVID-19 crisis, the health data space seems to be the number one priority. A common European mobility data space could make an important contribution to the European Green Deal. Data spaces for public administration should support the Single Digital Gateway Regulation, providing the platform for realising the "once-only" principle in practice. The EEA EFTA States would also suggest that the Commission consider creating a data space for the marine and maritime sector.

## 2. INTRODUCTION

1. The EEA EFTA States (Norway, Iceland and Liechtenstein) welcome the Commission's communications on Artificial Intelligence (AI) and on the data economy. The EEA EFTA States support the objectives of the white paper on AI in promoting the uptake of AI in Europe and addressing risks associated with certain uses of AI. We agree with the direction of the strategy for data that the EU Member States and EEA EFTA States can become a leading role model for a society empowered by data.
2. Both the white paper on AI and the strategy for data stress the need for a common European approach in order to reach sufficient scale and avoid fragmentation of the Single Market while at the same time preserving high levels of privacy, security, safety and ethical standards. The EEA EFTA States support this view.

## 3. GENERAL AND SPECIFIC REMARKS

3. In smaller societies **trust** between people remains high, and this is also one of the primary foundations for the cooperation within and between the EEA EFTA States. Responsible and trustworthy development and operation of AI should be at the forefront of the European approach.
4. With regard to a **regulatory framework for AI**, the EEA EFTA States share the view of the Commission that many of the issues relating to AI are covered by existing legislation while there may be areas that are not specifically regulated today. The EEA EFTA States support the risk-based approach to these issues and recognise that regulation of issues relating to an emerging technology raises difficult questions and may involve trade-offs. Clarification of existing regulation in certain areas is welcome.
5. The EEA EFTA States would point to the notion of an "**ecosystem of excellence**" where easily available checklists and self-declaration schemes could be considered. A voluntary labelling scheme may also play a role.

6. Access to services in your own language is important. The EEA EFTA States believe that common European solutions based on AI should be developed with a view to support **all European languages** in order to provide EU/EEA citizens with equal opportunities.
7. The EEA EFTA States support the Commission's aim to create **a single European data space**, with specific spaces for various sectors. The EEA EFTA States would like to point out that they as part of the Internal Market should also be included in the activities building the European data economy. With regard to the common European rules and enforcement mechanisms mentioned in the strategy for data, such mechanisms should ensure that data can flow not only within the EU, but within the entire European Economic Area.
8. The EEA EFTA States would stress the need to uphold the principles underpinning **free flow of data**, supported by the General Data Protection Regulation (GDPR), the free flow of non-personal data regulation and the Cybersecurity Act. This is also supported by the ePrivacy regulation, and underlines the need for an updated and simplified legislation. We would advise caution when considering large cloud federations, which may work to the detriment of smaller cloud service providers in the EU/EEA and impede true free flow of data.
9. In section 4 of the strategy for data the Commission specifically points to the challenge of gaining **access to sensitive data** (e.g. health data) in public databases for research purposes. The EEA EFTA States would also like to address the added complication when applying such data for research purposes in the field of AI. AI challenges the distinction between research purposes and patient treatment, when AI-based tools developed in a research project, trained on patient data from research, are to be used to provide actual treatment.
10. The EEA EFTA States welcome the work the EU is doing to mitigate concerns regarding **third-country legislation on access to data**, in particular the US CLOUD Act. This act is the source of much uncertainty regarding the use of cloud services, in particular in the public sector. An EU–US agreement in this area, that also includes the EEA EFTA States, would be important in facilitating increased uptake of cloud computing.
11. The EEA EFTA States would welcome the evaluation of the intellectual property rights (IPR) framework as part of a possible Data Act, and in particular a revision of the Database Directive.
12. As there is still much uncertainty attached to regulation regarding cloud computing, the compilation of a '**cloud rulebook**' would be most welcome. The EEA EFTA States believe that in order to promote increased uptake of cloud services, in particular in the public sector, the first edition of the compendium of existing cloud codes of conduct and certifications should be made available as early as possible, preferably a lot earlier than Q2 2022. Clarifications of legal areas where there are known issues, such as the US CLOUD Act mentioned earlier, should be prioritised and published on an easy to find official web site as soon as they are ready, in anticipation of the complete rule book.
13. The EEA EFTA States would recommend presenting a more comprehensive description of the proposed European **cloud services marketplace**, including how it will relate to the

public procurement directive and how it will relate to already established national marketplaces.

14. The Commission's proposal to create a framework to **measure data flows** and estimate their economic value within Europe, is most welcomed by the EEA EFTA States. Such a framework should encompass both EU Member States and the EEA EFTA States to ensure the most comprehensive overview possible.
  15. The EEA EFTA States welcome proposals for a number of **common European data spaces**, listed in the Annex to the data strategy. We would, however, advise on a somewhat stricter prioritisation of the proposed data spaces. In light of the COVID-19 crisis, the **health data space** seems to be the number one priority. A common European **mobility data space** is an important area that when developed in a secure, standardised and transparent manner, also would make great contribution to the European Green Deal. Data spaces for public administration should support the **Single Digital Gateway Regulation**, providing the platform for realising the "once-only" principle in practice. Finally, the EEA EFTA States would suggest that the Commission consider creating a data space for **the marine and maritime sector**.
  16. In the coming years with the expected strong growth in the Internet of Things (IoT), edge computing and 5G applications across all sectors, we would like to stress the importance of achieving a well-balanced **strategy for co-generated data**, like IoT data.
  17. The EEA EFTA States hope to be able to contribute in many areas mentioned in the AI white paper and the data strategy and we look forward to partnering with the Commission and the EU Member States in developing AI and the data economy in line with our common European values.
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