EU regulations related to data and the European Agricultural Data Space

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Increasing role of agri data, various ways to collect them
• Growing role of various types of agricultural data:
  ➢ farm data: agronomic data (yield planning, soil data, seeds data), livestock data (animal welfare and health indicators, animals’ genetic data)
  ➢ field data (information about plots, relevant authorization)
  ➢ machine data (data connected to tractors, harvester, milking robots for their maintenance and repair)
  ➢ environmental data (emissions, effluences)
  ➢ meteorological data
  ➢ financial data

• This trend parallels the digital transformation of agriculture (with crop and livestock monitoring, bulging and equipment management, farming by drone, etc.)
Estimated Amount Of Data Generated By The Average Farm Per Day

Source: OnFarm, BI Intelligence Estimates, 2015
Tools for analysing the data and finding ways to use or monetize the data
EU policies: the Green Deal and Farm to Fork Strategy

Doris Marquardt, EU Commission, 10 Nov. 2020
The Green Deal and Farm to Fork Strategy – the role of digital technologies in farming

Farm to Fork Strategy: overall goals

- Reduce the environmental and climate footprint of the food system
- Lead a global transition towards competitive sustainability from farm to fork
- Tap into new opportunities
- Create a robust and resilient food system

Doris Marquardt, EU Commission, 10 Nov. 2020
Outline

1. Regulation of data in EU law
2. Towards a European Agricultural Data Space
3. New instruments for data sharing
   • Draft 2020 Data Governance Act
   • Future 2021 Data Act
EU regulation of data appropriation and sharing

- Trade secrets Directive (2016)
- General Data Protection Regulation (2016)
- © in the Digital Single Market Dir. (2019)
- Reg. on free flow of non-personal data (2018)
- Database Dir. (1996)
- Contracts on digital content (2019)

Ex ante regulation of data
Variety of data: four main legal types in the EU

- **Personal data**
- **Non-personal data**
- **Public or Open data**
- **Confidential data**

**2016 GDPR**

**2018 Free Flow Data Reg.**

**2016 Trade Secrets Dir.**

**2019 Open Data Dir.**
Trade secret directive (2016): confidential data

• Definition: ‘trade secret’ means information which meets all the following requirements:

(1) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its component, generally known among or readily accessible to persons within the circles that normally deal with this kind of information

(2) has commercial value because it is secret

(3) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret

• Leading concept: « document » which means (Art. 2(6)):
  « (a) any content whatever its medium (paper or electronic form or as a sound, visual or audiovisual recording); or
  (b) any part of such content »

• Those documents « shall be re-usable for commercial or non-commercial purposes » according to the Dir. regime

• But limited scope as the Dir. excludes:
  « (c) documents for which third parties hold IPRs;
  (d) documents, such as sensitive data (the protection of national security) or commercial confidentiality (including business, professional or company secrets) »
General Data Protection Regulation (GDPR 2016)

• Broad scope as **personal data** means:
  • “any information relating to an **identified or identifiable** natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier **such as** a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person” (Art. 4(1))

Free Flow of non-personal Data Reg. (FFDR 2018)

• **Non-personal data**: “data other than personal data” (Art. 3(1) FFDR)
## Focus of general data regulation

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The European Agricultural Data Space

- In February 2020, the European Commission announced a [European strategy for data](https://ec.europa.eu/info/publications/european-strategy-data-en) whose goal is to empower users to stay in control of their data and encourage the creation of common European data spaces in various sectors, including agriculture.

- European Commission’s intends to improve data sharing in the agricultural sector through an agricultural data space and to create sandboxes for AI applications in the agri-food sector.

- Processing and analyzing production and connected types of data allows for the precise and tailored application of production approaches at the farm level.

- **Creating a neutral platform for sharing and pooling agricultural data** to support the emergence of an innovative data-driven ecosystem based on fair contractual relations.
The common European agricultural data space

**Farmers**
- **Benefit:** Improve performance with enhanced decision-support systems
- Data accessible for one entry point. Avoid vendor lock-in

**Private sector**
- **Benefit:** Exploitation of data will enhance EU industry
- Boost AI industry for agriculture and create B2B marketplace

**Public sector**
- **Benefit:** Sector analysis
- Data across different fields can be used for policy monitoring
EU Code of Conduct on Agricultural Data Sharing by Contractual Arrangement

April 2018
Nine organizations and associations
• **Access to agricultural data** is essential for optimizing agricultural production techniques; data sharing between the different partners must be done fairly and transparently.

• **Data ownership** as one of the main principles → the collection, access, storage and usage of the collected agricultural data can only occur once the data owner permits it.

• Data can be collected and used only for the specific purpose determined in the contractual agreement → the data owner must be able to agree on or refuse selling or sharing data with a third party that is not mentioned in the agreement.

• The **Code of Conduct focuses primarily on non-personal data** → if data is used to make decisions about the data owner as a natural person, the GDPR applies.

• The Code of Conduct is not a legal document and compliance with it is voluntary.
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The draft Data Governance Act: objective

• Released on 25 November 2020

• Creation of a new legal infrastructure (>< technical: GAIA-X) for:
  • Supporting the European data spaces
  • Facilitating data sharing between businesses (B2B)
  • Making public sector data available for re-use (G2B and G2C)
    • Extension of the Open Data Directive
  • Allowing the re-use of personal data
  • Making data reusable on altruistic grounds
    • For ex. pooling of public hospital data or donation of data by patients for scientific research and the fight against Covid-19
Draft DGA: place within EU digital initiatives

• The DGA is a follow-up to the **European Strategy for Data**
  • Announcement: cross-sectoral governance framework for data access & use
  • Enablers: the European data spaces for manufacturing, health, agriculture, etc.

• The DGA aims to improve data governance, but does not aim to change the substantive rights (on who can access and use data under which conditions) → this should be included in the **2021 Data Act**
  • Reevaluation of the IPR framework

• In parallel to the push for a **European cloud federation: GAIA-X** (linking existing cloud services of EU companies with industrial data)
Type of data exchange as focus of the DGA

- Covers both **non-personal and personal data**:
  - Title II: Public sector data that is **not open data** but « **protected** » by third-party IP rights, by confidentiality or by data protection
  - Title III: Data sharing services (DSS) deal with personal data (for the personal data spaces and data cooperatives) and with non-personal data
  - Title IV: Data altruism involves **personal (Citizen) or non-personal (Business) data**

- In the context of
  - **G2B and G2C** (title II)
  - **B2B and C2B** (title III)
  - **C2NP(non profit) and B2NP** (title IV)
    - >< P2B context (as in the 2019 Platform to Business Reg.)
The future Data Act will change the property rights on data

- **Commission’s IP Action Plan** (COM(2020)760 final): to promote data sharing
  - “In today’s economy, **easier and faster access** to knowledge, **data** and technologies, including IP-protected ones, **is crucial**”
  - « the Commission is currently evaluating the IP framework to ensure the balance between the need to foster data sharing ... and the need to be able to safeguard legitimate interests”

- **Trade secrets dir.**: what datasets re protected? Exceptions?...

- **Database directive**: facilitate the sharing of machine generated data/within IoT
Thanks for your attention

Additional references:

• A. Strowel and C. Delronge, “Data Sharing For a Smarter Mobility and For Connected Vehicles: How the design of the data flows contributes (or not) to transport policy and innovation”, in A. Strowel and Chr. Lazaro (dir.), Des voitures autonomes à l’intelligence artificielle, Larcier, 2020, p. 187-206

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