

**BITS Seminar – Data sharing and re-use**

University Foundation – 3 October 2018

# Setting the scene

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**crids**

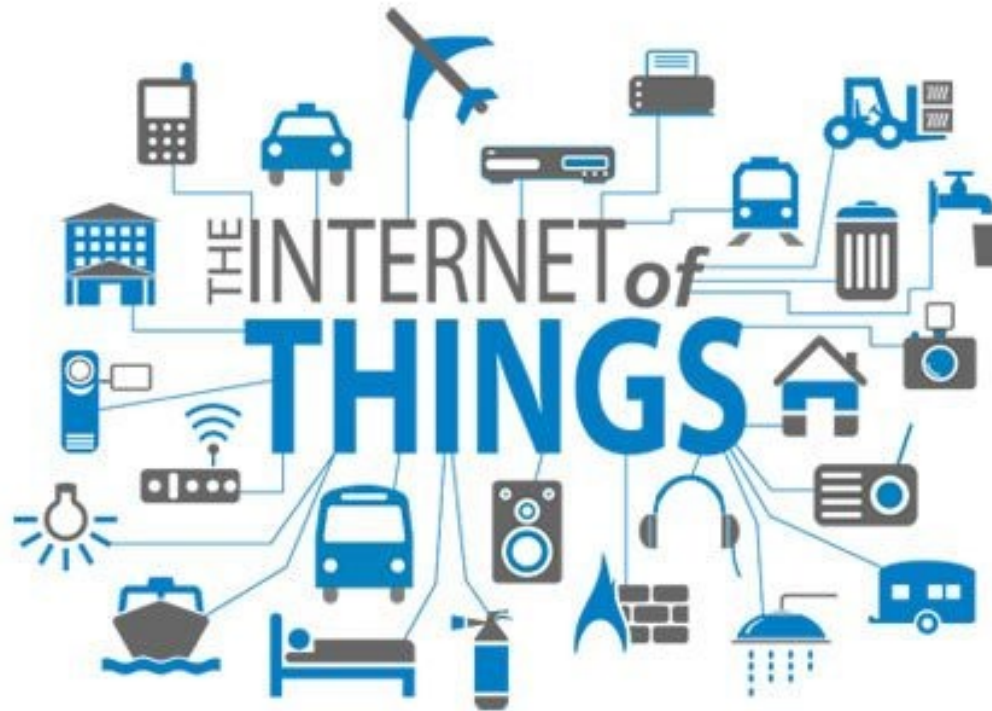
CENTRE DE RECHERCHE INFORMATION, DROIT ET SOCIÉTÉ

**NAD**  
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# Data

- Data is an essential resource for economic growth, job creation and societal progress
- “Internet of Things” will contribute to the exponential increase of data



# Data

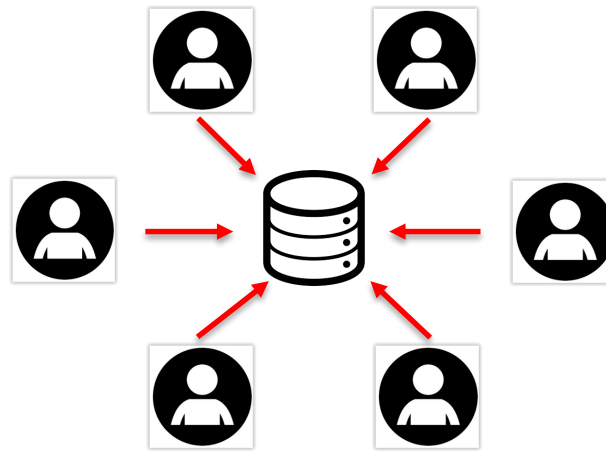
- “Machine-generated data” (MGD) at the heart of tomorrow’s economy, notably via “Big Data” applications
  - “[Data] created without the direct intervention of a human by computer processes, applications or services, or by sensors processing information received from equipment, software or machinery, whether virtual or real”

(Communication, “Building a European data economy”, 10 January 2017, COM(2017) 9 final, p. 9)



# Issue





















- Wide variety of stakeholders have legitimate interests in controlling, accessing and/or making profit out of the processing of such MGD → multiple competing claims/rights



- Difficulty of establishing a well-defined EU legal framework for these MGD
  - *“Lack of a legal environment (...) may contribute to insufficient access to large datasets (...) and stifling effects on innovation”*

(Communication, “Building a European data economy”, 10 January 2017, COM(2017) 9 final, p. 3)

# EU Legal framework

Data sharing obligations (non-exhaustive)	Transport		<ul style="list-style-type: none"> <li>Intelligent Transport Systems (ITS) Directive 2010/40/EU</li> </ul>	
	Spatial		<ul style="list-style-type: none"> <li>INSPIRE Directive 2007/2/EC</li> </ul>	
	Financial services		<ul style="list-style-type: none"> <li>PRIPs Regulation No 1286/2014</li> <li>Solvency II Directive 2009/138/EC</li> <li>MIFID II Directive 2014/65/EU</li> <li>MI FIR Regulation (EU) No 600/2014</li> </ul>	
	Life Sciences	Environment		<ul style="list-style-type: none"> <li>Plant Protection Products Directive 2003/4/EC</li> <li>Public Access to Environmental Information Directive 2003/4/EC</li> </ul>
		Pharmaceuticals		<ul style="list-style-type: none"> <li>Medicinal Products Directive 2001/83/EC</li> </ul>
		Chemicals		<ul style="list-style-type: none"> <li>REACH Regulation (EC) No 1907/2006</li> </ul>
	Energy & Utilities		<ul style="list-style-type: none"> <li>Directive for Internal Market in Electricity 2009/72/EC</li> <li>Directive for Internal Market in Natural Gas 2009/73/EC</li> <li>Energy Labelling Directive 2010/30/EU</li> <li>Energy Efficiency Directive 2012/27/EU</li> </ul>	
	Automotive		<ul style="list-style-type: none"> <li>Vehicles Emissions Regulation (EC) No 715/2007</li> <li>Car Labelling Directive 1999/94/EC</li> </ul>	
	Food		<ul style="list-style-type: none"> <li>Food Information to Consumers Regulation (EU) No 1169/2011</li> </ul>	
	Aviation		<ul style="list-style-type: none"> <li>Advance Passenger Information Directive 2004/82/EC</li> <li>Passenger Name Record Directive (EU) 2016/681</li> </ul>	
	Public sector		<ul style="list-style-type: none"> <li>Article 15 of the TFEU (on transparency)</li> <li>Re-Use Directive 2003/98/EC</li> </ul>	
	Competition rights & obligations	Dominance & essential facilities		<ul style="list-style-type: none"> <li>Article 102 TFEU</li> <li>Essential facilities doctrine and case-law of the CJEU</li> </ul>
		Merger & acquisitions		<ul style="list-style-type: none"> <li>Merger Regulation (EC) No 139/2004</li> </ul>
Agreements between undertakings			<ul style="list-style-type: none"> <li>Article 101 TFEU</li> <li>Regulation on Licensing agreements for the transfer of technology (EU) No 316/2014</li> </ul>	
Individuals' rights	Consumer rights		<ul style="list-style-type: none"> <li>Proposal for a Directive on contracts for the supply of digital content</li> </ul>	
	Privacy	e-Privacy		<ul style="list-style-type: none"> <li>e-Privacy Directive 2002/58/EC</li> </ul>
		Privacy (GDPR)		<ul style="list-style-type: none"> <li>General Data Protection Regulation (EU) 2016/679</li> </ul>
Ownership-like rights	Trade secrets		<ul style="list-style-type: none"> <li>Trade Secrets Directive (EU) 2016/943</li> </ul>	
	Intellectual Property	Database rights		<ul style="list-style-type: none"> <li>Database Directive 96/9/EC</li> </ul>
		Copyright		<ul style="list-style-type: none"> <li>InfoSoc Directive 2001/29/EC</li> </ul>

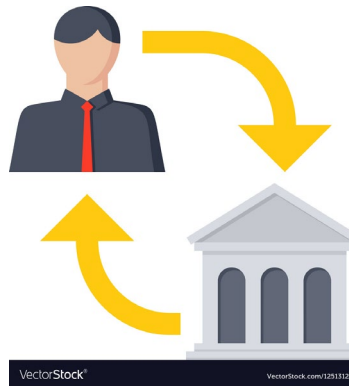
Source: B. Van Asbroeck, J. Debussche & J. César, *White Paper: Building the European Data Economy – Data Ownership*, Bird & Bird, 1 January 2017, p.123

# Two hypothesis of data sharing

- Data sharing with other private undertakings – B2B



- Data sharing with the public authorities – B2G



# *B2B Data sharing – EU Commission*

- EU Commission: creation of a new right establishing a form of “ownership” and access to these MGD ?

(Communication, “Building a European data economy”, 10 January 2017, COM(2017) 9 final)

- Concept of “ownership” is problematic
- Rather “competing rights on”, “control of” and “access to” MGD
- No creation of a new right → Contractual freedom
- There is **no general obligation** for private undertakings to share their data
  - But specific sectoral obligations (see slide 7)



# *B2B Data sharing – EU Commission*

- BUT – Key principles to be included voluntarily in B2B data sharing contractual agreements:

(Communication, “Towards a common European data space”, 25 April 2018, COM(2018) 232 final, p.10)

## **a) Transparency**

- Persons or entities that will have access to the data
- Type and level of detail of such data
- Purposes for using such data

## **b) Shared value creation**

- Contractual agreements recognise that, where data is generated as a by-product, several parties have contributed to creating the data

## **c) Respect for each other’s commercial interest**

- Contractual agreements should address the need to protect both the commercial interests and secrets of data holders and data users



# *B2B Data sharing – EU Commission*

- BUT – Key principles to be included voluntarily in B2B data sharing contractual agreements:

(Communication, “Towards a common European data space”, 25 April 2018, COM(2018) 232 final, p.10)

## **d) Ensure undistorted competition**

- Contractual agreements should address the need to ensure undistorted competition when exchanging commercially sensitive data

## **e) Minimised data lock-in**

- Companies offering a product or service that generates data as a by-product should allow and enable data portability as much as possible

# *B2B Data sharing – EU Commission*

- Commission also provides guidance on the preparation and/or negotiation of data sharing agreements:

(Staff working document, “Guidance on sharing private sector data in the European data economy – Accompanying the Communication “Towards a common European data space”, 25 April 2018, SWD(2018) 125 final, pp. 6-8)

## **a) What data shall be made available?**

- Typology, updates, quality, data set or data stream, legal compliance,...

## **b) Who can access and (re-)use the data in question?**

- Access, re-use and distribution limits and conditions, sub-licensing,...

## **c) What can the (re-)user do with the data?**

- Transparency about the downstream use, define non-disclosure rules and rights on derivatives of the data,...

## **d) Define the technical means for the data access and/or exchange**

- Frequency, maximum loads, security requirements, SLA,...

## **e) What data do I need to protect and how do I protect it?**

- Proper security measures, protection of trade secrets, IPRs, sensitive commercial information,...

# *B2B Data sharing – EU Commission*

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## **f) Include rules on liability provisions**

- Supply of erroneous data, disruptions in the data transmission, destruction/loss or alteration of data,...

## **g) Define rights of both parties to perform audits on the respect of the mutual obligations**

## **h) What is the intended duration of the contract? What rights to terminate the contract? What notice to be given to your partners?**

## **i) Agree on applicable law and dispute settlement mechanisms**

# B2B Data sharing – Models

- **Bilateral contracts**



- ✓ Unilateral approach to share data
- ✓ Generate additional revenues
- ✓ Add value to services provided

Source: Everis, *Study on data sharing between companies in Europe*, 2018, p.61, available at:  
<https://publications.europa.eu/en/publication-detail/-/publication/8b8776ff-4834-11e8-be1d-01aa75ed71a1/language-en>

# B2B Data sharing – Models

- **Data marketplaces**



- ✓ Trusted intermediary between data suppliers and data users
- ✓ Data suppliers sell their data to interested data users
- ✓ Revenue is generated from each data transaction



Source: Everis, *Study on data sharing between companies in Europe*, 2018, p.62, available at:  
<https://publications.europa.eu/en/publication-detail/-/publication/8b8776ff-4834-11e8-be1d-01aa75ed71a1/language-en>

# B2B Data sharing – Models

- **Industrial data platforms**



- ✓ Strategic and collaborative partnerships
- ✓ Mutual benefits for all parties
- ✓ Data shared (for free) in a closed, exclusive and secure environment
- ✓ Develop new or improved products and/or services
- ✓ Enhance internal performance

**AIRBUS**

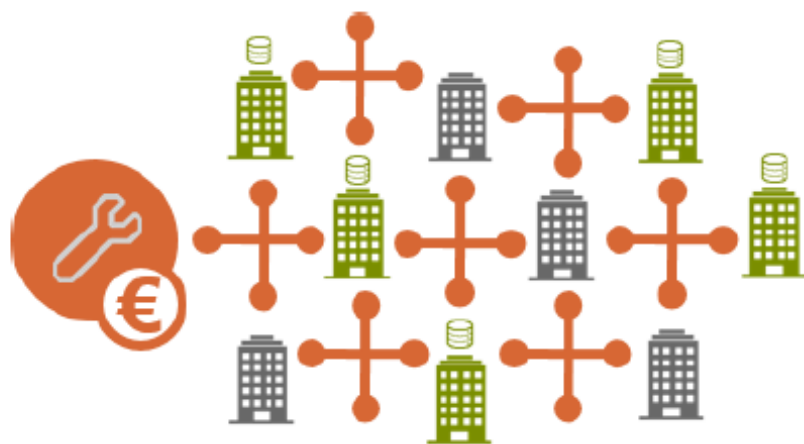


Source: Everis, *Study on data sharing between companies in Europe*, 2018, p.63, available at:

<https://publications.europa.eu/en/publication-detail/-/publication/8b8776ff-4834-11e8-be1d-01aa75ed71a1/language-en>

# B2B Data sharing – Models

- **Technical enablers**



- ✓ Businesses specialised in and specifically dedicated to enabling data sharing through a technical solution
- ✓ Fee is requested for setting up, using and/or maintaining the solution
- ✓ Revenue is not generated from data shared



Source: Everis, *Study on data sharing between companies in Europe*, 2018, p.63, available at:  
<https://publications.europa.eu/en/publication-detail/-/publication/8b8776ff-4834-11e8-be1d-01aa75ed71a1/language-en>



# B2B Data sharing – Models

- **Open Data policies**



- ✓ Companies likely to be legally bound to make data available to third parties
- ✓ Data shared to develop new products and/or services
- ✓ Seldom get payment for data shared

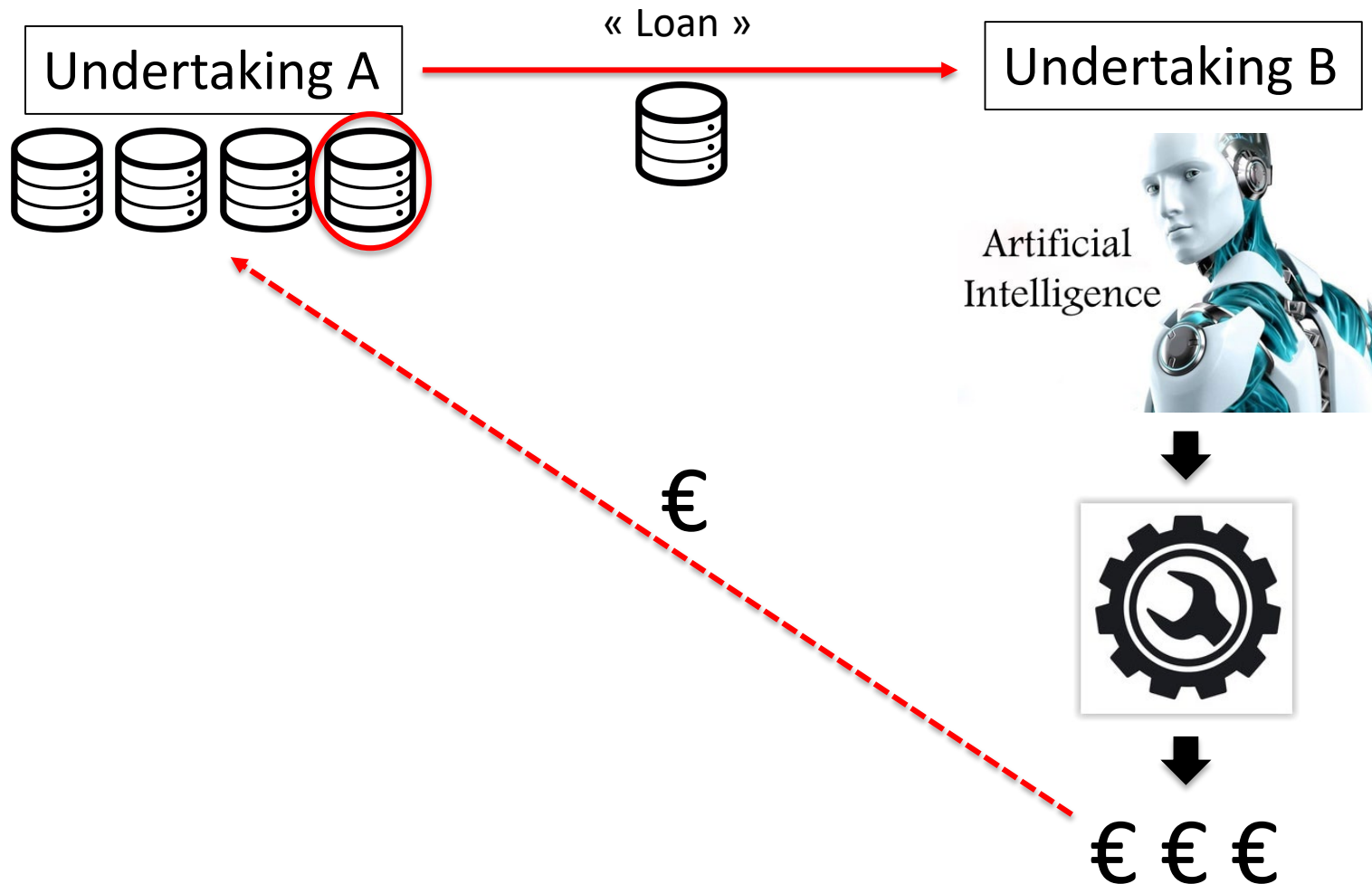
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Source: Everis, *Study on data sharing between companies in Europe*, 2018, p.64, available at:  
<https://publications.europa.eu/en/publication-detail/-/publication/8b8776ff-4834-11e8-be1d-01aa75ed71a1/language-en>

# B2B Data sharing – Models

- Other



# B2B Data sharing – Models

- Other



**Road traffic accidents**

www.europeandataportal.eu  
data.wu.ac.at  
+2plus

Road traffic injuries  
www.europeandataportal.eu

Data from: Road Traffic Accident Data  
www.europeandataportal.eu  
data.gov.uk

NI 047 - People killed or seriously injured in road traffic accidents  
www.europeandataportal.eu  
data.gov.uk  
+1plus

**Road traffic accidents**

www.europeandataportal.eu data.wu.ac.at data.gov.uk find-data-beta-staging.cloudapps.digital

Formats de téléchargement disponibles auprès des fournisseurs  
CSV , HTML

**Description**

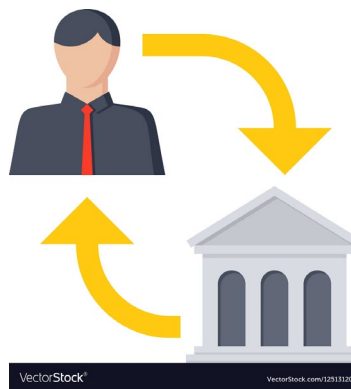
Information on accidents across Leeds. Data includes location, number of people and vehicles involved, road surface, weather conditions and severity of any casualties. Please note The Eastings and Northings are generated at the roadside where the accident occurred. Sometimes due to poor internet connectivity this data is may not be as accurate as it could be. If you notice any errors please contact [accident.studies@leeds.gov.uk](mailto:accident.studies@leeds.gov.uk). Due to the format of the report a number of figures in the columns are repeated, these are: Reference Number Easting Northing Number of Vehicles Accident Date Time (24hr) 1st Road Class Road Surface Lighting Conditions Weather Conditions Reference Number Grid Ref: Easting Grid Ref: Northing Number of vehicles Accident Date Time (24hr) 21G0539 427798 426248 5 16/01/2015 1205 21G0539 427798 426248 5 16/01/2015 1205 21G1108 431142 430087 1 16/01/2015 1732 21H0565 434602 436699> 1 17/01/2015 930 21H0638 434254 434318 2 17/01/2015 1315 21H0638 434254 434318 2 17/01/2015 1315 Therefore the number of vehicles involved in accident 21G0539 were 5, and in accident 21H0638 were 2. Overall in the example above a total of 9 vehicles were involved in accidents A useful tool to analyse the data is Excel pivot tables, these help summarise large amounts of data in a easy to view table, for further information on pivot table visit here . Further Information Please see the guidance document for further information on categories.

# *Two hypothesis of data sharing*

- Data sharing with other private undertakings – B2B



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# B2G Data sharing – “Reverse-PSI”

- Access, by public sector bodies, to privately held data for public interest purposes



- Proposed by the EU Commission during the public consultation pertaining to the PSI Directive recast
  - 88% of the respondents were in favour
  - But many position papers by associations of private undertakings argued that the proposal lacked precision:
    - Which public sector bodies?
    - What is a public interest purpose?
- Commission decided not to include it in the recast proposal

# *B2G Data sharing – “Reverse-PSI”*

- BUT – Key principles for the supply of private sector data to public sector bodies under preferential conditions for re-use:

(Communication, “Towards a common European data space”, 25 April 2018, COM(2018) 232 final, pp. 13-14)

## **a) Proportionality in the use of private sector data**

- Justified by a clear and demonstrable public interest
- Adequate, relevant and proportionate for the targeted public interest
- Reasonable cost in comparison with the expected public benefits

## **b) Purpose limitation**

- Data use limited to one or several specific and precise purposes
- Private company should receive guaranties that data will not be used for other purposes

## **c) “Do no harm”**

- Protection of trade secrets and other commercially sensitive information

# *B2G Data sharing – “Reverse-PSI”*

- BUT – Key principles for the supply of private sector data to public sector bodies under preferential conditions for re-use:

(Communication, “Towards a common European data space”, 25 April 2018, COM(2018) 232 final, pp. 13-14)

## **d) Conditions for data re-use**

- Must be beneficial for both parties, while offering preferential conditions to the public sector body, given the public interest purpose
  - E.g. preferential pricing

## **e) Mitigate limitations of private sector data**

- Private companies should offer a proportionate and reasonable assistance in order to evaluate the data quality
  - E.g. possibility to control and verify the data

## **f) Transparency and societal participation**

- Transparency regarding the parties to the agreement, their objectives, the knowledge acquired and the identified good practices



# Conclusion

- Which types of data are undertakings willing to share?
  - Data typology
- Under which model / conditions?
  - Panel “Sectoral experiences on data sharing”
- Is contractual freedom the answer?
  - Are there enough incentives to share?
  - What about discrepancies in bargaining power?
  - Can Competition Law solve potential market failures that might arise?
- Should the Commission go a step further?
  - Policy panel “Should data sharing be incentivised?”

Thank you for your attention !

Questions?

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