

Paris, 10 November 2016

MEMORANDUM FROM THE FRENCH AUTHORITIES

Re: free flow of data between economic stakeholders

The European Commission has begun laying the groundwork for integrating the free flow of data into its digital single market strategy. The goal of open data is being actively pursued in the European Union, in particular in application of Directive 2013/37/EU of 26 June 2013 on the **re-use of public sector information (the “PSI Directive”)**. However, **as more commercial and manufacturing sectors take part in the digital transformation** (megadata, cloud computing, the Internet of Things, smart machines, robotics, etc.), **it seems that open data must now move beyond the public sector.**¹

The generation, calculation, exchange, crosschecking and leveraging of data from advanced processes and industrial sensors have opened up fresh perspectives for many industries, from transport to automobile manufacturing, energy, aerospace and food. However, several challenges can arise from setting up **“industrial data platforms”**. If several operators pool, use and leverage sets of data from technical and industrial processes shared or generated by machine-to-machine protocols, devolving the right or access to these data may put the various stakeholders into complex, awkward situations.

The Data Revolution also affects the service sector (retail, tourism, banking, etc.), where better organisation, management and leveraging of its data assets improve the quality of the customer offering and boost competitiveness.

Industrial or commercial data, then, are key sources of new developments and uses. It would be helpful to start thinking about opening up that data in order to spur the development of future services and added value, as open data in the public sector has already done.

This memorandum focuses specifically on sharing and accessing data between economic stakeholders.

¹ Although this is a sector-based approach, according to Directive 2010/40/EU on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (the ITS directive), the open data envisaged is not limited to the public sector.

The rationale is based on the idea that, **in addition to some public-sector data, data currently generated by certain industries should also be open, although subject to controlled access. Europe needs efficient industrial data ecosystems, which guarantee productivity and growth.**

1/ The first sectors involved

The new data economy is spurring developments in a rising number of industrial and commercial sectors. So far, two or three industries have taken the lead with regard to open data.

a/ Industries that are pioneering open data

At national level, some industries' market-sector stakeholders are already making data available to the public.

Transport

In March 2015, Francis Jutand² submitted a Report with recommendations on open data in the transport sector.

The Report advocated the idea of “information in the general interest”, which would be applicable in many areas (transport, housing, health, etc.). The information would have its own status, different from that of public information as spelled out in **Act 78-753 of 17 July 1978 which included various steps to improve relations between government and the general public as well as administrative, social and tax measures** (the CADA Act). The decision as to which data are relevant would be based on two guidelines. One, “organic”, takes account of a public entity's participation in setting up or operating a service through subsidies or agreements. According to the other, teleological, information could be declared “in the general interest” if it is generated in a public service framework and if opening it up would foster the development of new public services.

French legislators wrote the Jutand Report's recommendations into law in the **Growth, Economic Activity and Equal Economic Opportunity Act of 7 August 2015**. With regard to mobility and regular **public transport** services, data held by market-sector stakeholders — in this case transport companies whether or not they have a public service mandate — would be open if it helped to achieve the overall goals of making information available to users, developing new and better services and improving the delivery of mobility services and means of transport.

Some data held by market-sector stakeholders can also be made available to the public in order to improve **smart mobility** services.

Connected vehicles

The emergence of connected vehicles is prompting the development of new platforms of industrial collaboration between market-sector manufacturers, software publishers, repair networks and so on. At the heart of these new forms of cooperation, rules on accessing and sharing data produced by connected vehicles are the key to success (see point 4).

² http://www.developpement-durable.gouv.fr/IMG/pdf/vf_rapport_jutand.pdf

Smart cities

Local authorities and many market-sector operators developing the smart city model are involved in improving services (water distribution, waste management, etc.). In these cases, the issue of making data held by market-sector stakeholders available to the public, is also raised.

b/ Data from market-sector stakeholders having a public service mandate or receiving public subsidies

Another area of open data could be confined to the concept of “**general interest data**”. At first, this idea can involve **data held by market-sector stakeholders with a specific connection to the public sector, such as those fulfilling a public service mandate or receiving public subsidies**. The goal is to implement the Jutand Report’s recommendations, as legislators did when they introduced the idea of “general interest data ” into Digital Republic Act 2016-1321 of 7 October 2016.

The **Digital Republic Act** requires transparency of key data from **public service concession-holders** and **recipients of public subsidies**. Similarly, Article 28 of the **Energy Transition Act** allows power companies to receive, free of charge, metering data, alerts and comparative information from **network managers** that they will then have to supply to consumers in application of the Energy Code.

2/ A general framework with sector-specific variants

In the spirit of the Jutand Report, a general framework could be developed to govern access to “general interest data”, meaning data where access is a matter of general interest. This framework could be complemented with sector-specific variants designed to define which data from the sector correspond to the notion of general interest data.

a/ Guiding principles for common regulation

The general principles governing the regulatory framework could be based on the following rules.

In the relevant sectors, operators are **required to provide access to certain categories of the data** they collect. The access principle could come with a **proportionality requirement**, insofar as access could jeopardise the holder’s business interests. The proportionate access requirement for different categories of data would be implemented under **reasonable conditions and using objective, transparent and non-discriminatory procedures**.

The data access procedures could be adapted for the different sectors and the different categories of data by means of:

- the **scope of access** (open access for everyone or access restricted to specific, clearly identified persons)
- the **access procedure** (on request or requirement to post online)
- the authorisation or prohibition of **commercial use** of the data
- the data **format** specifications
- the **rules on charges for access** to data
- the legal terms for providing data access

Industry regulators could set some of the rules for implementing the procedures by means of best practices guides developed jointly with the relevant industry representatives. The relevant joint bodies could also be made responsible for supervision and dispute settlement.

The rules or “best practices” could deal with the following, in addition to upholding the principles of transparency and non-discrimination:

- open data formats
- **standard licencing agreement clauses**
- pricing principles: the data holder could, where appropriate, be entitled to compensation in some cases and receive a **financial contribution covering the cost of producing and providing the data**, as well as compensation for innovation, with a view to providing a strong incentive for data collection and innovation. In the case of general interest data (public service mandate or public subsidies), the principle of free access could be promoted, along with **safeguard clauses** (e.g. intellectual property protection, **protection of trade secrets**, protection of national defence secrets, public safety concerns, privacy, protection of personal information and, more specifically, obtaining the consent of the person concerned and compliance with the “purpose principle”).
- the requirements for re-using data, including, where appropriate, restrictions to protect trade secrets (e.g. the ban on reconstituting databases).

b/ Sector-specific arrangements tailored to needs

Sector-specific arrangements adapted to the specific characteristics of each industry could be based on the general framework. The dynamics of open data are at work in such diverse sectors as energy, transport, water or waste management, healthcare, housing, automobiles, employment and environmental protection. The open data rationale in each industry affects specific types of data, raises specific issues related to data sharing and calls for suitable regulatory procedures. This diversity means that the objective of open data needs to be achieved by differentiated means. It would be neither desirable nor possible to apply a single open data system uniformly across all sectors. Sector-specific standards seem to be the best way forward, with a case-by-case approach to access to data held by some market-sector entities.

Sector-specific arrangements would make it possible to define:

- the **categories of data** subject to the different potential access requirements
- the persons entitled to access
- the most relevant access requirements for the sector in question
- the restrictions and guidelines on sector-specific costs

3/ Corollary adaptation of the European framework

The discussions on setting up a dedicated European framework for access to general interest data must be consistent with the body of EU legislation. Therefore, we should assess the changes in EU laws needed to eliminate obstacles to open access to general interest data.

4/ Case study: access to and sharing of connected vehicle data

The spread of connected vehicles has given rise to a new business model based primarily on connected vehicle data access and sharing by a multitude of stakeholders (car manufacturers, original equipment manufacturers, repair shops, software and IT solution suppliers, road infrastructure stakeholders, etc.). **Access to such data may be of benefit for many public interest purposes:** improving safety for users or service personnel, facilitating and optimising traffic management, giving alerts and flagging risks (congestion, accidents), etc.

These public interest goals warrant special access to such data for certain stakeholders (road infrastructure managers, law enforcement, etc.) in exchange for compensation that, at minimum, covers the cost of producing and providing the data.

Connected vehicle data may also have potential for many new uses and applications that enhance competition and market growth, such as automatic updates of roadmaps, real-time information on the availability of parking places (which is covered by Directive 2010/40/EU - Intelligent Transport Systems) and facilitating interfaces with other modes of transport.

Several national and European initiatives have already been launched.

The Commission launched a study, overseen by the DG Move, and commissioned the GEAR 2030 High Level Group to produce a roadmap for connected and driverless vehicles. The DG Connect and the DG Move have also launched projects to deploy equipment and technologies for communications between vehicles and infrastructure.

In France, a special working group on connected vehicles was set up as part of the “Automobile” Platform (PFA), which is intended to become part of the “Connected Vehicle” component of the “Eco-Mobility” Solution under the “New Face of Industry in France” programme. Another working group called “Mobility 3.0” overseen by the Ministry of Transport stimulates discussion on transport in general and intelligent mobility. The “Scoop@F” project is coordinated by the Ministry for Ecology. This project relies on the work of local authorities, national road network managers, car manufacturers, original equipment manufacturers, research centres, universities and research institutes. Full-scale experiments have started at five sites in France this year.

The preliminary work and current discussions, especially at the French “Automobile” Platform have highlighted a number of issues regarding:

- **the categories** of relevant data: data generated by the vehicle information system are very diverse (location, state of the vehicle, engine speed, etc.)
- **contracts:** the distribution and use of the data by the various stakeholders are governed by contract
- **access:** the middleware that aggregates the data should provide access to the data in compliance with the guiding principles set out in 2)a, and, more specifically:

- be non-discriminatory, meaning that all access procedures are equal (price charged for the quantity of data provided, data formats that are accessible for everyone) for all users (start-ups and major corporate groups)
- be compliant with the Data Protection Act and the general regulation on the protection of personal information, meaning that that the middleware prohibits access to personal information and to data that could lead to prosecution (e.g. speed data). Work is currently underway with the French Data Protection Authority (CNIL) to develop a special compliance package that facilitates processing of vehicle data and that is compliant with national and European laws and regulations.
- **Uses:** The uses of the data and the services developed (by the manufacturer or any developer of applications and IT services) are of two distinct types:
 - applications for users (driving recommendations, automatic control of certain functions, etc.), which are controlled and validated by the manufacturer, who remains the warrantor and is liable for the operation of the vehicle
 - third-party services, including “consumer” services (e.g. traffic management systems, etc.); in this configuration, it is typically necessary to uphold the equity principle, which maintains that the data sharing rules must apply to all stakeholders providing equivalent services (e.g. the *Waze* app owned by Google, which aggregates data from drivers)

These principles should be adapted for stakeholders with a public interest purpose (road infrastructure managers, law enforcement, etc.)

The nature of the data is of much greater importance than their source with regard to the expected social and economic benefits of connected vehicles. Yet, in some situations, the data collected by the vehicle, such as traffic information, may be collected in the same way by the driver’s smartphone, roadside infrastructure, or an after-market system installed in vehicles. Consequently, the rules applying to the data should be enforced in the same way, regardless of the data source.

Finally, this work must be consistent with Directive 2010/40/EU, called the ITS Directive, and its Delegated Acts.

5/ Proposed plan of action

Given the major issues involved in data access, the French authorities support strong European action in this area and submit the following recommendations for discussion with the Commission and the other Member States:

- a) creating incentives at European Union level to roll out structured and proportionate sector-specific approaches to open data in the fastest growing industries in the European economy and in view of the public interest aspects of access to such data**
- b) organising synergistic approaches in each industry; collating and consolidating the findings of pilot projects in each sector**
- c) using the differentiated findings to build a reference framework for data access and data sharing between stakeholders**