

Open data and Open Finance in the EU: it's not only about the data!



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In recent years, we have been inundated with articles, opinions, reactions and concerns from society, academia, and the business world focused on the issue of data (understood as personal information about her/his private activity). Given this avalanche of opinions, a reflection on the economic regulation of data, i.e., a reflection that sets aside legal, ethical, privacy, and social questions regarding data exchange¹, should consider three dimensions: data as an economic factor held by an individual, data as a factor of production in a digital services industry, and the role of data in the overall structure of digital services. In this text, I will examine these three dimensions commenting on how they are addressed in the European Commission's proposed framework for Open Finance².

During the Mobile World Congress 2024 in Barcelona, it was possible to visit different exhibitors and enjoy coffee, beer, wine without paying, provided we allowed the reading of the key code on our identification card, which contained some basic information about who we were. I realised halfway through the visit that I was, for the first time, consciously and directly paying for different basic products with my data. My data had immediate value for something as simple as having a coffee. I now know, because I receive various personalised and targeted emails, that, «there's no such thing as a free coffee». I'll be more careful in the future! However, the most interesting question is not the personalised emails

but rather what can be done using the new computing capabilities with information. I provided, in exchange for a coffee! With a reasonable sample, someone will know how to extrapolate information to anticipate the behavioural pattern of Portuguese individuals aged 52 that discuss regulation. Of course, anyone with basic knowledge of the history of the insurance market and, even more basic, history of marketing knows that statistical information about behaviours allows for generalisations, risk assessment, and better marketing campaigns. Anyway, again, the question now is different. It's not about extrapolating on statistics but understanding what can be done with the new algorithms and digital tools that work on huge amounts of diverse data that is being produced at an extremely high rate³.

The game is no longer the very respectable actuarial risk analysis or the surprising ability to creat TV or street marketing campaigns. It's about having the capacity to understand and anticipate each person's, individual, behaviour. For that, personal information contributes, exclusively and rivalrously, for a direct personalised contact, but it also contributes to the capacity of algorithms to understand patterns of behaviour that represent a value that is nonexcludable and non-rivalrous (i.e., a value that can be characterised as a public benefit).

With this long story, I want to make a point: data is relevant for personalising

* All views expressed in this article are of the sole responsibility of the author

1/ I'm not denying the relevance of this specific impacts. I'm just establishing my starting point as being one of an economist.

2/ Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554.

3/ Velocity, variety, and volume that characterises "big data".

offers and thereby creating well-being for specific consumers but also for overall society. If well informed and empowered, data holders will face better offers and have the capacity to make better decisions. Data is a currency and a tool that can be used by economic agents in their market decisions. Data allows companies to personalise contacts and offers. But "big data" is also relevant for training algorithms that do much more than that and can impact the life of a person and the entire market. There is a positive and/or negative impact for the market (I leave the topic for ethical considerations), but there is a clearly positive impact for producers that is not perceived by data owners. As someone might say "its an externality stupid" and, therefore, markets fail by control and signal⁴ when trying to efficiently allocate them.

At this point, all the effort that the European Commission (COM) is making to promote the digital strategy is commendable. All regulations within the data strategy and data sharing strategy are commendable. Europe must take advantage of the benefits resulting from the ability to create large «data lakes» that can promote the development of the overall digital industry. As an economist, I know that if a company can discriminate prices at the individual level, there is an increase in welfare. I also know that markets should be contestable and capable of imposing propriety right laws to promote innovation. Now, three new questions arise: does the data holder, the one who provides information to obtain personalised services, receive a benefit that is effectively equivalent to the contribution given to the market? Are data holders (consumers) aware of the relevance of data and being given the tools to use it? Is the impact on the market being considered in all its breadth?

Considering the data holders, COM's efforts have been focusing on privacy protection, combating fraud and misinformation, with special attention to more vulnerable groups such as youth. This attention and effort are clearly relevant and should be reinforced. Open data proposals address the possibility of sharing data as a basis for creating new offerings, putting data at the service of the market. However, there is a need to look at the issue from a

dual perspective. A perspective that also considers the role of data in the process of choice, of decision-making. Data holders are not just a source of data. They should also be users of data. To promote this transformation, it is necessary to ensure: that data holders are informed about how to use data, that they have the necessary tools to make informed decisions, and that data is presented to them in a simple and intuitive way (avoiding conditioning or manipulation). Here, developments in behavioral analysis can play an informative role and ethical and manipulation questions may be raised. A regulatory intervention may be justified to correct a possible «failure by signal», promoting literacy and disseminating formatted information⁵.

Looking at data as a productive factor and bearing in mind what has been done over the past century in sectors such as insurance and marketing, I now consider how data is being used in the present. It is fascinating how new technologies and techniques and, foremost, artificial intelligence algorithms (generically called AI) have transformed the possibilities that arise from data processing. In the past, actuarial analysis based on market statistics allowed the insurance industry to act more securely in defining risk, reducing the impacts of adverse selection. Now, with the volume, speed, and variety of data collected every minute, economic agents can not only focus on the individual but also extrapolate that knowledge to society in different segmentations. The potential in terms of offerings, behavioural evaluation, and risk assessment is immense. However, it must be borne in mind that accessing data alone is not enough. As always, the potential may lie in the raw material, in a tree trunk, but there must be vision, tools, and art to sculpt it. Does the recently developed draft regulation consider all these dimensions?

This brings us to the question of the role of data in digital services.

Regulatory intervention on any component of the digital world involves looking beyond the specific object/objective/good or service. Digital services result from at least three layers of services: infrastructure as a service (IAAS),

4/ Referencing the market failures as presented by Bator (1958, "The Anatomy of Market Failure", *The Quarterly Journal of Economics*, 72, 351-379)

5/ Portuguese Communication Regulator (ANACOM) has developed a tool that gives users access to a set of georeferenced information on electronic communications and postal services sector. This platform can be used to consult coverage of fixed, mobile and satellite networks available at a specific location or address in Portugal. (<https://geo.anacom.pt/publico/home>; <https://www.anacom.pt/render.jsp?contentId=1755401>).



platform as a service (IAAP), and software as a service (IAAS). Thus, recognising that the use of platforms, big data, and tools for using big data (such as AI) requires communication and reservation infrastructure, processing capacity, and tools for collecting and using data. To generate innovation, economic and social development, and to foster the development of sectors that can lead the future of digital, it is not enough to ensure good data circulation; we must consider all the components of infrastructure, how they are prepared, developed, and how data circulation itself will impact these services. In particular one should realise that the access to the different parts of the market it is not guaranteed by statute or freedom of access. The capacity to use, treat, create at the different levels of these services is fundamental, but the focus should be place not only on data, but also on the capacity to use the data, and to access all infrastructures needed to that end.

The Open Finance regulation proposal focuses on the conscious and authorised sharing of data; it concerns itself with the remuneration of one of the players in this structure; how and what data is transacted and who can participate in the scheme; how information is gathered, stored and treated and what are the tools for sharing it; it promotes the creation of «sharing schemes» that must adhere to principles of access freedom and non-discrimination. Nevertheless, I'm not certain all dimensions of impacts on the different services that will support data usage are being considered. I do not know

if the impact on both static and dynamic efficiency and the competitive impacts of some of the options and the promotion of co-regulation is being weighed at the three service levels mentioned above.

When looking at the overall European regulatory package - the Data ACT, the AI Act, the DSA, the DMA, and now the discussion on creating conditions for the European development of a support structure for networks as a service (NAAS), I believe that consideration is being given regarding all potential negative impacts and potential benefits to the financial industry and others sectors in the coming years.

From the package of regulatory proposals one thing seems clear, the analyses of any factor related to digital markets should never be (and should never have been) considered on a shortsighted perspective of a single service but on the overall cluster of activities that are related (adjacent, secondary and complementary markets - IAAS, PAAS, SAAS). Data must be considered from the overall impacts at different regulatory levels, calling for different perspectives to ultimately empowering consumers as data owners and decision-makers. As a relevant example, the UK created the Digital Regulation Cooperation Forum (DRCF) bringing together four UK regulators - the Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA), the Information Commissioner's Office (ICO) and Ofcom, to deliver a coherent approach to digital regulation⁶⁻⁷. ■

6/ <https://www.drcf.org.uk/>

7/ In Portugal "Technology Free Zones (TFZs)", areas with characteristics similar to a Regulatory sandboxes, are overseen by different sectorial regulators. (<https://www.ani.pt/en/knowledge-valorization/interface/free-zones-for-technology-framework-for-regulatory-sandboxes/>)