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## Supporting document to Homo Digitalis response to the EC Consultation on the European Strategy for data

[Homo Digitalis](#) is a Greek civil society organisation based in Athens that focuses on the promotion and protection of human rights in the digital age. We are also members of the European Digital Rights ([EDRI](#)) network. We welcome this initiative and we would like to thank the European Commission for offering us the opportunity to provide our input to its consultation on the European strategy for data.

### *General Comments on the survey questions*

We would like to mention that some questions of this survey (especially the ones with the “do you agree...” narrative) could be perceived by the respondents as double-barreled. Thus, we decided to keep a neutral position on these questions, since they introduced more than one argument at a time. Under section 1, an example of such potential double-barreled questions are the following:

*–“More data should be available for the common good, for example for improving mobility, delivering personalised medicine, reducing energy consumption and making our society greener.”*

*–“The development of common European data spaces should be supported by the EU in strategic industry sectors and domains of public interest (industry/manufacturing, Green Deal, mobility, health, finance, energy, agriculture, public administration, skills)..”*

Such statements introduce argumentation that merge together processing activities of different types of data, such as personal data, special categories of personal data, and non-personal data. Thus, the respondents could face difficulties in offering a precise answer, since they might agree with the first example, but disagree with the second, etc.

Moreover, the use of terms that are not defined in legal provisions, such as the term “Data altruism” could create confusion to the respondents regarding their answers. The use of the words

“altruism” and “donation” for data sharing activities is leading and could influence the behavior of data subjects in the future, prompting them to donate data just like they would donate blood or money for a good cause. Thus, we suggest to the European Commission to refrain from using such terms for describing data sharing activities in the future. Nevertheless, we understand the inherent difficulties of designing and launching a survey in such a complex topic.

### *Mixed Datasets*

The European data strategy aims to create a genuine single market for data, where personal as well as non-personal data, including confidential data, are secure. We would encourage the European Commission to explore in depth the challenges that arise from the use of mixed datasets in data marketplaces. More precisely, in many real-life scenarios in the field of data markets, the datasets used are likely to be composed of both personal and non-personal data. Such datasets are often referred to as “mixed datasets”.

At the same time, the rapid development of emerging technologies such as Artificial Intelligence, Internet of Things, technologies enabling big data analytics and 5G are raising questions related to access and reuse of such datasets. One could argue that this should not create confusion for the stakeholders involved, since there are no contradictory obligations under the GDPR and the Regulation on the free flow of non-personal data (FFD Regulation).

However, the personal data protection framework is much more strict in comparison to the non-personal data framework, while the boundaries between non-personal data and personal data are too fluid to act as regulatory anchor. In this way, there is the challenge that data sets that could fall under the notion of personal data might be treated as non-personal data by the stakeholders involved in their processing activities. Thus, two separate regimes applicable to opaque datasets might lead to challenges related to the adequate enforcement of personal data protection rules.<sup>1</sup>

### *Make full use of the GDPR and its provisions*

Via the adoption of the data protection package in May 2016, the European Commission used its best endeavours to ensure that Europe will fit for the digital age. The GDPR was an essential step to strengthen individuals' fundamental rights in the digital age and facilitate business by clarifying rules for companies and public bodies in the digital single market.

Now, it is time for all the stakeholders involved to make full use of the GDPR provisions. This powerful piece of legislation is only two years old, and its provisions need more time to reach their full potential. Thus, Homo Digitalis firmly believes that any legislative initiative arising from the European data strategy should not call into question the GDPR text.

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<sup>1</sup> See more in Inge Graef, Raphael Gellert, and Martin Husovec (2018), Towards a Holistic Regulatory Approach for the European Data Economy: Why the Illusive Notion of Non-Personal Data is Counterproductive to Data Innovation, Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3256189](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3256189)

Learning from the experience of the arduous and long ePrivacy reform, unfortunately, if the GDPR text will open again there is a considerable chance that its provisions will be watered down and the modifications will possibly undermine its text. The GDPR has made the European Union the leading light in terms of data protection. Thus, we call for the European Commission to defend the rights and freedoms of the people of the EU and preserve the GDPR provisions in their current form.

The data protection principles, as well as the safeguards provided by the GDPR text, such as the data protection impact assessment, prior consultation with the DPAs, data protection by design and by default must, unreservedly, form an integral part of the European Commission's vision for the European data strategy.

Such strategy should avoid the monetization of personal data. The people of EU should not be encouraged to give up their fundamental right to data protection in return for monetary profit. Otherwise, the protection of personal data will become a luxury, while millions of poor and vulnerable people will become victims of data exploitative business models.

### *Strengthening the protection of fundamental rights and freedoms*

As EDRI notes in a recently published open letter to the European Commission<sup>2</sup> it is essential that other legal frameworks bolster the protection of GDPR. The upcoming Digital Services Act (DSA)<sup>3</sup> is an opportunity for the European Union to limit the negative consequences of the advertisement-driven and privacy-invading business models of data brokers. Finally, the adoption of a strong ePrivacy Regulation is urgently needed to further advance the protection of the rights and freedoms of the EU people in the digital environment.

We remain at your disposal for any clarification. Many thanks for your time on our input.

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<sup>2</sup> European Digital Rights (2020), Open Letter: EDRI urges enforcement and actions for the 2 year anniversary of the GDPR, Available at: <https://edri.org/open-letter-edri-urges-enforcement-and-actions-for-the-2-year-anniversary-of-the-gdpr/>

<sup>3</sup> DSA EDRI PAPER