



# The “emerging issue” of data ownership

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# 1. Context

- Big Data = New dimension of collection of raw data over distance and its aggregation/analysis
- Value of data increases with aggregation level
- Overall objective: providing the conditions for an ecosystem where new data-driven business models can flourish in a true Internal Market (GROW focus: industrial data)
- Two core interests in the ownership discussion:
  - Ensure that there is **broad and fair access** to data held and/or aggregated for those who want to use it for commercial or public interest purposes
  - Ensure that (in particular smaller) companies can valorise their data on **fair terms** even vis-à-vis powerful players in the data economy

## 2. Key questions in the ownership debate

- Is there a case for creating a new (intellectual) property right for data?
- Is there a need for a dedicated regulatory regime on access to industrial data?
- (Why) Are contracts not enough?

## Contracts...

- are widely used today
- are flexible and can be adapted to emerging business models and new technologies

BUT:

- are not predictable
- reflect the (im-)balance of power in negotiations
- do not (always) take into account the interests of independent third parties
- may be viewed as less reliable by investors
- lead to uncertainty in case of bankruptcy

# A new (intellectual) property right?

- Protection against misappropriation – how far do existing IP tools reach?
- Crystallising data as an asset for companies
- Legal certainty on the default owner of rights of data exploitation in scenarios of data generation chains and embedded devices
- Awareness raising in negotiations

But:

- Economic imbalances in data licensing negotiations cannot be eliminated

## A dedicated access regime?

Options:

- a) Market forces will work: as soon as there is demand for certain data and it can be monetised, it will be shared. Competition law enforcement is enough to deal with abuses and data sets amounting to essential facilities
- b) A predefined regime inspired by competition rules
- c) A regime of default access with exceptions and defences
  - Prescribed access would have to be complemented by a compensation regime

### 3. Can existing IP tools protect Big data?

- Trade Secrets directive
  - Did not create a new IP right
  - Does not attribute who is the owner of a trade secret
  - Was not designed with a view to Big Data
  - Not every business sensitive information is a trade secret
  - Means of protection under requirements of the directive will often be contracts
  - Exceptions on "reverse engineering"
- Copyright and database right under the database directive
  - Protection of raw content?

## Conclusions

- Topic not mature for strong regulatory intervention
- Strong interlinkage between ownership and access
- Concerns about economic imbalances in data exchanges and licensing may require responses beyond an IP regime
- Need to avoid a fragmentation of legal and regulatory approaches across the EU