



# Data Portability—moving the discussion forward

## 1. Introduction

In July 2019, Datum Future published a Bright Paper, *Data Portability: What is at stake?* The paper proposed an exploration of the context and drivers of Data Portability. The paper identified individual empowerment and more dynamic markets as the primary potential benefits of Data Portability, but also raised a number of concerns, such as lack of detail on the technical means to delivering Data Portability, as well as questions about security, liability, a heightened risk of data leaks and patchy data literacy among consumers.

The Bright Paper established a framework for a deeper investigation into the challenges of Data Portability. As the next iteration of this, Datum Future held a round table on Data Portability in October 2019<sup>1</sup>. This paper summarises the insights from that round table, with additional detail on the possible benefits of Data Portability for all stakeholders, as well as highlighting some potential pitfalls. We conclude with a number of suggestions for legislators and regulators.

One key insight is that the potential of Data Portability will only be realised if there is trust: between consumers and businesses, citizens and organisations, and between states. Issues of cross-border data flows are not confined to the question of Data Portability, but are certainly important to this discussion. Safeguards already exist in some cases for business data to move across borders; if the same can be provided for consumer data, this could go some way towards winning greater trust.

## 2. Powerful Me: What if individuals were more easily able to exercise the right to Data Portability?

Since the GDPR came into law in Europe, the number of requests for access to personal data has risen substantially. Clearly, consumers and citizens have become more aware of this right in the past year and more people feel capable of exercising it. By comparison, the right to Data Portability remains largely unexplored, with businesses reporting a low or negligible volume of requests to transfer data to other services. It is clear that if businesses and other organisations do not more actively promote Data Portability by facilitating easy transfers and providing information about the options, utilisation and understanding of its possible applications are likely to develop quite slowly.

Nevertheless, with variants on the right to Data Portability also being created by new laws in California, Argentina, Brazil and Singapore, uptake of the right to port data will eventually rise and could bring significant benefits.

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<sup>1</sup> Companies and organisations represented: BNP Paribas, CIPL, Datum Future, Epsilon Abacus, Experian, Facebook, HSBC, Mastercard, Microsoft, Spencer Stuart, Vrije Universiteit Brussel (VUB)

Because the right is too new for there to be many existing use cases, the round table considered hypothetical examples:

### **Moving homes**

*Datum Future's Data Portability Bright Paper set out the use case of moving house. Instead of having to update details for utilities, bank accounts and insurance, phone and internet services, loyalty programmes and e-commerce websites, vehicle registrations, employers and schools, and so forth – what if all you needed to do was to change your address using one 'trusted third party' offering a simple tool to update all necessary providers and help in finding new providers? In this case, Data Portability would*

- *save time and energy,*
- *prevent possible lock-outs or service interruptions,*
- *streamline the search for new services.*

### **Changing jobs**

*When people move from one job to another, this often entails a change of mobile phone number and email address. As many services these days are linked to sim cards, phone numbers or email addresses, this can lead to lock-outs and service interruptions. If you carry only a work mobile phone and keep all your accounts on that device, you risk losing access to your digital identity in communications, mobility and banking apps when you hand in the phone to your old employer. As a consequence, you may not be able to get in touch with friends and family, order a taxi or check your bank account for what may feel like an uncomfortably long period. The same can happen when you travel abroad and temporarily use a local sim card to reduce costs. While there are ways around these complications, such as holding multiple smartphones or dual sim phones and maintaining multiple email addresses, these complicate customer experience. In a worst-case scenario, a person may be robbed of their phone and then blocked out of services as a consequence as well.*

*Data Portability could smooth a transition to a new phone or phone number by*

- *obviating the need for registration procedures,*
- *preventing service interruptions and delays,*
- *providing instant access to stored data (address book, downloads, photos, etc.).*

### **Changing schools**

*When pupils move schools, information about their educational record will be transferred to the new school, such as grades, progress reports and accomplishments. These days, many schools work with online software and resources to improve students' skills and support diverse learning needs. Educational technology ('ed tech') has transformed learning environments in the past decade, offering tailored learning optimisation based on detailed student performance data. Unfortunately, interoperability issues still plague the ed tech sector, and pupils are often unable to port valuable metrics to their new schools. Provided that data governance, privacy and security obligations are met, allowing students and parents to download and transfer data in a reusable format would ease the transition while advancing trust by offering transparency on the data collected.*

*Data Portability could*

- *prevent lags in learning that may result from having to rebuild a learning profile,*
- *make children feel at ease at their new school sooner through tailored support,*
- *provide more transparency about data use and processing in education settings.*

Given these obvious benefits, why is the uptake on Data Portability still so low? One reason, already mentioned, is a lack of awareness of the right. Another may be that people are so used to finding switching providers a struggle that they assume invoking the right to Data Portability would also be difficult and time-consuming. If, as a consequence of a seamless provision of Data Portability, switching services became easier and was understood to be so, people would almost certainly switch more often. Offering data portability may even become a competitive advantage in some sectors as it reflects a concern for customers. In addition, businesses can save resources if they do not have to collect afresh customer data that has already been gathered elsewhere.

In some countries, sharing personal data has already made people's experiences smoother in fields regulated by specific national legislation, such as the provision of utilities and mobile telephony. When this works properly, individuals are not even aware of data being exchanged between providers. People do not need to know that they are exercising their right to Data Portability.

What would happen if more people began exercising their right to Data Portability? That may depend on who picks up the cost of enabling the right. Under certain conditions, businesses may charge a fee for Data Portability requests. On the other hand, if businesses ostensibly pick up the full cost, they may pass them back to the customer in other ways. In either case, the introduction of Data Portability could make life more expensive for consumers, at least in the short term.

Companies may regard ensuring more flexibility in switching providers as a threat to their businesses because of the competitive advantage they see in data and the risk of increasing churn. As a consequence, they may try to limit the amount of data they provide – using, for instance, the limitations regarding the lawful basis for processing (data only need to be portable when collected on the basis of consent or for contractual purposes) as an excuse. The right to Data Portability may thus be interpreted in a narrow manner, reducing potential benefits.

Even if consumers are more aware of the right to Data Portability, do they have sufficient data literacy to make informed decisions on transferring data? This question has already arisen with the advent of Open Banking, made possible by the introduction of the EU's updated Payment Services Directive (PSD2) in September 2019. People tend to favour convenience over security and few read the fine print when, say, an online shop offers frictionless payment. A person's financial data can provide insights into sensitive matters such as their religious or political affiliation or sexual orientation.

Customers may also unwittingly let slip other types of information in a Data Portability procedure, e.g. medical information about family members when transferring genetic data. Organisations need to take into account the possibility that data subjects may lack an understanding of such risks. To reduce liability, they may also consider data recovery services to accompany Data Portability, to reclaim excessive information that has been sent in error to another business or organisation and arrange that it is deleted by that recipient.

In some situations, the right to Data Portability may conflict with other rights and protections. One such case is the transfer of student data between schools. The exchange of certain types of data – for example, examination data, demographic details, dietary restrictions – will be regulated by education laws, but other types of data cannot be shared even if parents give

consent. Similarly, in the banking sector, legal requirements surrounding secrecy and confidentiality prohibit transfer of certain data even if there would be benefits to consumers for these transfers.

### **3. Brighter Economies: How can business benefit from Data Portability?**

In many organisations, strategic thinking about data governance is still in its infancy. More strategic data governance can prevent unauthorised access to data or limit the damage from data breaches and unlock such benefits as better personalisation of services and efficient detection of new business opportunities.

Wider sharing of data may potentially serve not only individuals and companies, but society as a whole. The concept of data-driven decision-making has inspired local authorities to set up 'smart city' projects that rely on collaboration in data-sharing with the private sector as well, for example to facilitate crowd management, utilities planning and management, and urban development planning. However, exchanging personal data between the public and private sector calls for careful data stewardship on the part of public administrators.

In the development of new services or products, companies often take a use-case approach. Integrating considerations about data sharing in such development procedures, including consideration of the opportunities and pitfalls of sharing data with other organisations, enables a proactive (rather than reactive) approach to Data Portability requests. For example, while seamless transfers may offer opportunities for greater customer satisfaction, this may come with a higher risk of money laundering when important datasets become more fluid.

One effect of the implementation of Data Portability may be that less data is stored. What an organisation does not hold, they cannot share – this may be a consideration both for organisations and for individuals who could become more reluctant to provide data as they gain awareness of the amount of data collected.

When organisations are too protective of their data and data-driven services, this may harm business, including their own. Lack of interoperability between services in the sphere of the Internet of Things, for instance, already serves as a brake on the speed of development and adoption of such services.

### **4. What can legislators and regulators do?**

Since the introduction of the GDPR, data protection authorities in several EU countries have issued warnings about the failure to protect personal data, especially when it comes to Data Portability. At the same time, competition authorities warn that the failure to share data may be a sign of anti-competitive behaviour. This points to an inherent tension surrounding the right to Data Portability, a piece of competition law enshrined within data protection law. In practice, this may lead to conflicting directions and rulings from different regulators, undermining legal certainty. Clarification of such issues requires a concerted effort encompassing different regulatory authorities and stakeholders.

Legislation may also be in conflict in other domains, such as European regulations for payments services and bank secrecy, or consumer protection and data protection. While such conflicts are a standard consideration in impact assessments of legislative proposals, it would be most helpful if future regulation included provisions for the resolution of conflicting legislation.

Datum Future's Bright Paper on Data Portability looked at the two main models for Data Portability: bilateral between organisations and via the establishment of trusted third parties. Options for multilateral portability discussed at the round table included data vaults or centralised data stewardship to ensure security, access to and integrity of data, and the requisite trust between parties. The question here is who the steward should and would be: government or the commercial sector? Proponents of government-controlled data vaults may argue that democratic oversight will be needed, while their opponents will argue that businesses have much more advanced and efficient data aggregation and governance capabilities. This is also, again, a matter of trust: societies differ, and often for good reason, in whether they trust corporations or authorities.

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## CALL FOR USE CASES

The discussion in the beginning of October 2019 yielded a number of use cases illustrating the benefits Data Portability can bring to consumers or citizens. We welcome further use cases to supplement these examples, not only for current data ecosystems, but also potential future situations, specifically IoT environments, 'smart' mobility including self-driving cars, and use cases involving machine learning/AI.

These use cases can be fully developed or simply a headline idea and brief scenario.

We invite in particular submissions that set out ideas for services and products that businesses and governments might create to develop and realise the right to Data Portability.