

Personal data monetisation in the data economy in the light of the protection of fundamental rights in the European Union

“There might well be a market for personal data, just like there is, tragically, a market for live human organs, but that does not mean that we can or should give that market the blessing of legislation. One cannot monetise and subject a fundamental right to a simple commercial transaction, even if it is the individual concerned by the data who is a party to the transaction.”¹

The aim of the project is to analyse the lawfulness of personal data monetisation in the digital space in the light of the European Union's human rights protection regime. For at least a dozen years, data has figured in the public opinion as a synonym for the 'new oil', which various types of organisations, above all those in the ICT sector, consider as their main interest, aiming to acquire and then process, with the ultimate goal of monetising, understood as transforming the intangible value of data into real value. Although this imaginative comparison - data to oil - has repeatedly been criticised for its superficiality, it seems to illustrate well the economic potential that data generates. Demand for consumer data is steadily growing, a fact also confirmed by statistics published by the European Commission, according to which the value of the data economy in the 27 countries of the European Union surpassed the €300 billion threshold in 2018 and is expected to reach €829 billion in 2025.

European Union law is an intriguing case of a legal framework ensuring, on the one hand, strict personal data protection (Article 8 of the Charter of Fundamental Rights of the European Union), including by guaranteeing a series of rights to data subjects, and, on the other hand, guaranteeing freedom to conduct a business (Article 16 of the Charter of Fundamental Rights of the European Union). In recent years, the legislative proposals under way and adopted, which are the fruits of the Digital Single Market Strategy and the European Data Strategy, legalise and facilitate the maximisation of profit from the economic value of data, including personal data. In the light of the reform of EU data protection legislation carried out a few years ago, which is underpinned by a human-centred approach, human flourishing and autonomy, and which embeds personal data protection in a harmonised, protectionist regulatory regime, the recent actions of the EU legislator lead to significant tensions at the normative level and raise important questions about the risks associated with the 'commodification' of personal data, the violation of the inalienable nature of the right to the protection of personal data, as well as inconsistency, fragmentation of rules and legal uncertainty.

This project seeks to answer the question under what conditions (if any) it is possible to create a legal framework under EU law for a 'balanced monetisation' of personal data that does not violate the essence of fundamental rights. To this end, the project envisages a comprehensive legal analysis of the conflicts between interests related to different human rights. In addition, the project envisages to use a case study method through which an analysis and subsequent characterisation of selected applications of business models based on the personal data monetisation will be carried out, which will enable the risks and legal consequences of personal data monetisation practices to be identified in detail, taking into account specific cases such as, inter alia, the monetisation of vulnerable data subjects' data (e.g. children).

The project fits into current scientific, political and economic debates, providing useful implications for the development not only of European Union law, but especially of human rights, while offering innovative research methods. Although interest in the concept and meaning of data monetisation in the context of data protection has been growing in recent years, the global literature on the subject is still disjointed and usually limited to narrow aspects of the phenomenon. While there have been several publications in recent years providing a structured overview of data monetisation-based strategies and business models, there is a lack of analysis of individual models in terms of their compatibility with fundamental rights, in particular the right to the protection of personal data. The results may prove relevant not only to the academic world, but also to public authorities, private sector representatives, NGOs and individuals - consumers of digital goods, content and services.

¹ European Data Protection Supervisor, *Opinion 4/2017 on the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content*, 14 March 2017, para. 17, p. 7.