



INTERACTIVE SOFTWARE
FEDERATION OF EUROPE
the European video games industry

ISFE comments on the European Commission's Communication: A European Strategy for Data

The Interactive Software Federation of Europe (ISFE) represents the European video games industry. ISFE's membership comprises national trade associations in 18 countries throughout Europe which represent in turn hundreds of games companies at national level. ISFE also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet.

The video games industry is the fastest growing segment of the European content industry, with revenues of €21 billion in 2019 and a growth rate in key European markets of 55% over the past five years. Via the emergence of on-demand and streaming services and the launch of new high-performance consoles, together with the strong growth of mobile gaming, the industry offers players across Europe and in all age groups the possibility to enjoy and engage with video games¹.

Gameplay data is vital for our industry.

Without data, our industry would not exist. Video games are a form of artistic creation that is driven by data. As players interact with games, data about their activity is generated. This data is fundamental for the development and creation of new video game content and plays an essential role in ensuring good and frictionless gaming experiences in line with consumers' requirements and expectations. It plays a crucial role in the way companies are detecting software errors or bugs and fraudulent behaviour by the players. By collectively analysing players' data, a video game company can identify if there is a large problem being experienced by the majority of the players and learn how such "bottlenecks" need to be fixed.

Analysis of gameplay data also helps to match players based on non-precise location and skill in order to set up multiplayer game sessions and to ensure the most competitive gaming experience for the players. Players have a more enjoyable experience if they are matched with other players of similar skill levels while non-precise location is required to ensure players are placed together on the most appropriately located servers, so that their connections are not interrupted.

Our sector therefore understands how important data is for economic development. We welcome the Commission's ambitious strategy to build a European data space on the scale of the Single Market in which the potential of data is used to create wealth for the economy and society. We very much support its prime goal to give a leading role to the EU in the data economy

¹ See also <https://www.isfe.eu/data-key-facts/>

and to tackle a range of issues in order to increase the amount of quality data and to incentivise data-driven innovation.

Reconsideration of the ePrivacy proposal is essential

In particular, ISFE supports the objective to create as part of the EU Data Strategy an attractive policy environment that combines fit-for-purpose legislation and governance to ensure availability of data, with investments in standards, tools and infrastructures as well as competences for handling data. We agree with the Commission that updating regulation and sectoral policies can help increase demand for data-enabled offerings and that the rules for access to and use of data need to be fair, practical and clear.

The creation of a successful European Single Data Space requires a solid and harmonised framework for digital trust which ensures that citizens' privacy is protected. Such a framework is however far from achieved. The draft ePrivacy Regulation (ePR) was proposed in January 2017 and remains on the agenda of the EU Council. Progress has been limited and many questions about essential aspects of this proposal remain unanswered.

The overlapping inconsistencies between the GDPR and the ePR proposal have generated a lot of uncertainty. Rather than complementing the GDPR, the proposal is in some respects in conflict with the basic tenets of the EU data protection framework. Consent is, for instance, mandated for activities that in some cases would rely on one of the other legal grounds under the GDPR. This would significantly impact the amount of data available to European businesses and damage their competitiveness. It would also mean that less data can flow within the EU and across sectors.

Attempts by the Council to solve these issues have however not been successful. If an incoherent text is adopted, core objectives of the Commission's new digital strategy such as the creation of a single European Data Space or the establishment of a regulatory framework for Artificial Intelligence that creates an "ecosystem of trust" can never be fully achieved. That is why a fresh start in this debate is needed now more than ever. We therefore urge the Commission to reconsider this proposal and to develop a new approach to meaningful protection of privacy and confidentiality which is fully in line with the GDPR.

Limitations of data interoperability should be clearly acknowledged

The EU Data Strategy outlines several issues that are holding back the EU from realising its potential in the data economy. It finds that data sharing between companies has not taken off at sufficient scale due to lack of economic incentives, lack of trust between economic operators, imbalances in negotiating power, the fear of misappropriation of the data by third parties, and a lack of legal clarity on their use. This holds true, of course, for data that has an economic potential when it is shared between economic actors.

On-screen action in a video game is determined by a combination of software operation and user input. The data that is processed by a video games company is based on a specific code format which only has relevance in the context of a specific game. This underlying code is

proprietary in nature (and is, of course, copyright protected under the EU Computer Programs Directive) as well as subject to non-disclosure agreements under the licensing agreements allowing gameplay. The game's code only works in the context of a particular game and cannot be "translated" to other games.

It is important that such data cannot be shared. Revealing the code would allow other companies to copy the game and would weaken the technological protection measures put in place to prevent piracy and keep players safe from hackers. The code is the incentive that justifies the investment in the game and ensures the competitive advantage on the market. ISFE therefore calls on the Commission to ensure that the application of new technical standards and the use of compatible formats and protocols for interoperable data sharing remains totally voluntary. Companies should not be forced into standardisation measures when there are no economic incentives to do so.

The right to portability requires further clarification

In order for individuals to be able to decide at a granular level what is done with their data, the EU Data Strategy proposes to explore enhancing the portability right under Article 20 of the GDPR. Changes could include stricter requirements on interfaces for real-time data access or making machine-readable formats compulsory for data from certain products and services.

ISFE would like to caution against adding further requirements to this right before providing substantial clarification on how it should be applied in different business environments. Despite the fact that the Article 29 Working Party organised a workshop to collect feedback from stakeholders and provided dedicated guidance on this topic, businesses are still struggling with its implementation. In particular, the wide interpretation of the scope of this right in the WP29 guidance has generated a lot of concern. It is consequently far from clear in all circumstances what the range, quality and format of the data should be when a request for data portability is received.

Furthermore, although Recital 68 acknowledges that data controllers are not required to adopt technically compatible systems, a certain degree of investment is necessary to ensure that popular data portability requests can be dealt with systematically and that raw data is converted into something that is meaningful and can be applied in the context of another service. Adding new technical requirements to these compliance procedures will put an additional strain on limited resources and have a clear financial impact.

As other data protection rights, the right to data portability is often misused. Not only do players sometimes make extensive requests when they do not agree with a company decision that was taken in a different context. Video game companies that face criticism can sometimes be hit with attacks from large crowds attempting to flood them with expensive data access requests. We call on the Commission to further fine-tune the conditions under which such a right can be invoked whereby businesses should be able to protect themselves from requests that are made to protest or make life more difficult without a 'real' interest in getting any data.

Addressing the skills gap must remain a policy priority

Whether a genuine single market for data can be established will also depend on the EU's ability to bridge the skills gap and address critical shortages in unfilled positions. ISFE welcomes the ambitious goals that were set in the strategy to increase the digital talent pool with 500 000 specialists and expand the proportion of the EU population with basic digital skills to 65% by 2025.

Recruiting people who can provide the level of expertise and technical talent required in the games industry can be difficult. The games industry often requires very specialised, niche skillsets which drastically narrow the candidate pool. The annual members survey of UKIE², the national trade association in the UK, revealed that 56% of respondents were struggling to fill their listed vacancies due to a low number of candidates with relevant skills while 18% stated it was due to a low number of candidates in general. This means that 76% of the participating video game companies reported difficulties in finding skilled staff, which is well above the average of 40% of businesses in the EU that reportedly³ have difficulties in finding ICT specialists.

Results from the Polish "Gamedev 2017" study⁴ which surveyed more than 100 companies between December 2016 and March 2017 confirm this trend. While nearly 93% of the companies indicated that the skillset is the key determining factor in choosing a new team member, only 10% were satisfied with graduates' preparedness. 37% think that the educational level is poor or even very poor.

Competition from other countries or sectors is another major concern when vacancies cannot be filled easily. Games companies around the world are competing fiercely to recruit the best talent internationally for roles which are highly specialised and forward-facing. Additionally, as a relatively young industry which relies on cutting-edge technical talent, games businesses often compete not only with themselves but with the wider technology industry.

Today, there remains a long-standing and broad skills shortage for the video games industry. As a sector we are investing significantly in our future talent, but this alone will not solve our skills gap. A more fundamental transformation of the education and training systems is needed which ensure that people receive the necessary knowledge, skills and competences to fill job roles that continuously evolve and change. In addition, this transformation should address the lack of interest among woman to pursue studies in information and communication technologies (ICT) and science, technology, engineering and mathematics (STEM).

The video games industry is helping to support this educational reform. Games can be a useful tool to acquire the essential competences and basic literacy that are needed in a digitized society. Games can improve problem-solving, analytical, and intellectual skills and promote genuine collaboration between users, who can experiment, make mistakes and learn by doing. That is why a growing number of teachers views electronic games as an information and

² See also, <https://ukie.org.uk/news/2019/10/key-findings-ukie-member-survey-2019>

³ [The Digital Skills Gap in Europe](#), p. 2

⁴ [State of the Polish Video Games Industry 2017](#), p 81-82.

communication technology capable of modernizing the teaching methods implemented by the educational system.

Since 2006, ISFE is exploring in partnership with European SchoolNet (the network of 34 Ministries of Education) how commercial games are and can be used in schools. The initial research project under the name “Games in Schools” was quickly followed by the publication of a handbook for teachers which provides the necessary information to understand the educational benefits of digital games and to learn how to use them as educational and motivational resources. Furthermore, a 6-week long [Massive Online Open Courses](#) (MOOCs) are organised on an annual basis to empower and train teachers across Europe by online collaboration on the use of commercial video games as pedagogical support in the classroom. The course provides for weekly workshops with interaction between participants through blog and forum at the end of which teachers were asked to come up with a tailored lesson plan to do "in-class" activities. A record of 4,282 educators from 73 countries participated in the 2019 edition.

With a series of local initiatives, the industry is also trying to address the skills gap on the national level. In the UK, the “[Next Gen Skills](#)” campaign has achieved great success in getting computer science back on to the national curriculum. UKIE’s Digital schoolhouse project uses play-based learning to increase access to effective computer science education and its [Video Games Ambassador scheme](#) aims to inspire school children by sharing experiences about what it’s like to work in our industry. [Gamecampus.de](#) is a German portal where interested students, educational institutions, parents, politicians and the media can find information about the typical job profiles in the games industry and the game-specific courses that are on offer, as well as learn how to apply for an internship or job offer.

However, not every skills shortage can be addressed with more education. Diversity and gender balance are important factors in growing the most successful teams. Research⁵ has found that girls who play video games are already three times more likely to enrol in STEM. Our national trade associations have set up several joint initiatives⁶ that aim to commit video games companies to strive for even more diversity within the sector.

Rather than waiting for change to happen, the video game industry has actively deployed many activities to digitally enhance teaching and learning, open-up education systems, boost digital competences, drive interest in STEM careers and courses and address the skills gap, thereby implementing the policy objectives that were identified in the Commission’s 2018 Digital Education Action Plan⁷. We call on the Commission to retain the issue of critical skills shortages on top of their list of policy priorities and will cooperate where we can. We look forward to the upcoming launch of the reviewed Digital Education Action Plan and Skills Agenda.

⁵ <https://www.surrey.ac.uk/news/geek-girl-gamers-are-more-likely-study-science-and-technology-degrees>

⁶ <https://hier-spielt-vielfalt.de/>, <https://raisethegame.com/>

⁷ See Digital Education Action Plan, p 4

A global approach to data regulation is needed.

Digital industries are global by nature and the video games industry is no exception to that. Our growth heavily relies on an efficient transfer of data between territories which is indispensable for the competitiveness of our sector. We therefore strongly welcome the Commission's commitment in the Data Strategy to "address unjustified obstacles to data flows in bilateral discussions and international fora while promoting and protecting European data processing rules and standards, in full compliance with EU legislation". The goal should be to minimize the fragmentation of the global digital markets by pushing joint standards and promote the sharing of data between trusted countries. Mechanisms for international transfer of personal data are essential to allow our companies to operate their business worldwide while guaranteeing protection of individuals' data in an effective and comprehensive manner.

In this context, it is of paramount importance that the European Commission seeks to secure an adequacy decision with the UK to maintain the free flow of personal data after the Brexit transition period ends. ISFE agrees with the position⁸ of the UK government that the country's data protection standards are "essentially equivalent" to those of the EU as it played an active role in the development and implementation of the GDPR.

We also call on the Commission to mitigate any concerns that might arise about the validity of the Privacy Shield. This framework is central to facilitating transatlantic trade and provides significant economic benefits to the EU economy. Furthermore, companies have heavily invested in ensuring they comply with its legal requirements. The stability of this framework is fundamental to secure confidence and legal certainty in the digital economy.

Even when joint standards for sharing data with third countries cannot be achieved, it is important that the different regulatory approaches are made as transparent as possible for European companies operating on global markets. Legal uncertainty should be prevented by providing guidance on how to overcome issues resulting from potentially conflicting data protection regimes.

ISFE Secretariat, May 2020

⁸ Policy paper: [Explanatory Framework for adequacy discussions](#). Department for Digital, Culture, Media & Sport