

# CCBE response to the European Commission Consultation on the European Data Strategy

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*The Council of Bars and Law Societies of Europe (the CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.*

The CCBE would like to comment on the proposed European Data Strategy, meaning the Communication “A European strategy for data” ([COM\(2020\) 66 final](#), hereinafter referred to as “Data Strategy”) and the Final report prepared by the High-Level Expert Group on Business-to-Government Data Sharing (see [here](#), hereinafter referred to as “HLEG report on B2G Data Sharing”).

The CCBE contribution focuses at this point on potential fundamental rights implications and the use of data in the field of so-called legal tech as implied in the Data Strategy.

First of all, the CCBE would like to recall that the **protection of fundamental rights** constitutes one of the values of the European Union. However, the Data Strategy makes only very limited reference to this issue.<sup>1</sup> **The CCBE therefore urges the European Commission, to work on questions of fundamental rights when further developing its data strategy.**

The current discussions on **Covid-19 contact tracing apps** show that even when working with anonymised data, serious **threats for fundamental rights** can occur, for example with regard to the right to assemble.<sup>2</sup> The HLEG report on B2G Data Sharing makes reference to applications which helped governments or international organisations to track trends in population movements or track certain content in social media networks, both in areas where this was probably beneficial (fighting epidemics and disinformation)<sup>3</sup>, however the same applications can potentially be used to hinder citizens to gather for protests (or even from finding shelter in armed conflicts) and for the purposes of **ensorship**.

Also, serious questions have to be asked when the European Commission suggests that “Data is created by society and can serve (...), where necessary and proportionate, to ensure more efficient **fight against crime**.”<sup>4</sup> Will citizens find themselves confronted with wrong suspicions caused by mere aggregation of data? Such data use can cause irreversible damage for the life of the wrongly accused and would seriously undermine the principle of **presumption of innocence**.

Lastly, the European Commission itself points out in its White Paper on Artificial Intelligence that: “By analysing large amounts of data and identifying links among them, AI may also be used to **retrace and de-anonymise data** about persons, (...)”<sup>5</sup> It is not understandable, why the implications of this realistic threat are not discussed further in the Data Strategy.

<sup>1</sup> See for example Data Strategy, Section 1, page 1: “The EU can become a leading role model for a society empowered by data to make better decisions – in business and the public sector. To fulfil this ambition, the EU can build on a strong legal framework – in terms of data protection, fundamental rights, safety and cybersecurity – and its internal market with competitive companies of all sizes and varied industrial base.”

<sup>2</sup> See [CCBE Statement on Covid-19 contact tracing apps](#).

<sup>3</sup> See Section 1.1, page 15 HLEG report on B2G Data Sharing.

<sup>4</sup> See Data Strategy, Section 4, page 6.

<sup>5</sup> See [White Paper](#) On Artificial Intelligence - A European approach to excellence and trust, COM(2020) 65 final, Section 5.A, page 11.

The CCBE would also like to point out that the **enforcement of rights** and **access to justice** are potentially not only linked to legislative instruments, but also to the sheer **technological ability to detect wrongdoings and prove them**. This includes among others access to used algorithms etc, but also the (financial and other) possibility to have access to the necessary experts.

The CCBE notes that the European Commission makes reference to so-called **legal tech** in its Data Strategy.

Firstly, with regard to the planned “seamless access to and easy reuse of EU and Member State legislation, jurisprudence as well as information on e-justice services” which shall enable “**innovative ‘legal tech’ applications** supporting practitioners (judges, public officials, corporate counsel and lawyers in private practice)”<sup>6</sup>, the CCBE would like to point out that *any* action in this field should only be taken in close cooperation with the national bars and the CCBE itself. The CCBE and the national bars have very important expertise in this field, also with regard to possible negative effects of certain types of technology.

In this respect the CCBE wishes to draw attention to the [CCBE Guide on lawyers use of online legal platforms](#) which also addresses the re-use of data by online legal platforms (such as those operated by legal tech). Reference is made to Chapter 2 (pages 11-13), and in particular Section 2.3 on issues regarding “**Profiling of data subjects and reuse of data by the platform provider**” and Section 2.4 about “**Access to data**” on which the CCBE notes a number of potential issues for lawyers using those platforms which the European Commission may find interesting to consider in relation to the questions on data access and use of legal information. Furthermore, the CCBE also highlighted a number of ethical aspects concerning the use of AI in legal practice in the [CCBE considerations on the Legal Aspects of AI](#) which are also relevant in this context (see section 6.5, page 31-33).

Moreover, the European Commission plans to support European data spaces for public administration, including enabling “‘gov tech’, ‘reg tech’ and ‘legal tech’ applications supporting practitioners as well as other services of public interest”<sup>7</sup>. Insofar as this could also concern interoperability of **electronic legal filing processes (lawyer to courts or other public administrations/authorities, and vice versa)**, the CCBE would like to remind the Commission that only bars are competent to validate if a person is a lawyer (registered and licenced) and thus must also be included in any discussions as from the very beginning.

<sup>6</sup> See Appendix to the Data Strategy, Section 8, page 32.

<sup>7</sup> See Data Strategy, Section 5.D, page 22-23.