

# CEMA contribution to the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

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## Executive Summary

- **Online platforms in agriculture** serve to collect, combine and pool different types and flows of data to enable better decision-making by farmers which will boost the productivity, sustainability and profitability of farms.
- Online platforms and cloud computing services should be **regulated by sector-specific standards set at international level by the industry**. In addition, cloud computing services should provide standards based on interoperability and portability, but not at the feature function level where services may differentiate and add value. These differences should be retained for breadth and value of applications.
- CEMA encourages the development of standards providing for the **portability** of data to address questions around farmers moving from one platform to another.
- **Data location restrictions** are disruptive to the free flow of data. Restrictions to the free flow of data should be carefully evaluated and balanced with other relevant interests.
- With regards to **personal data**, sufficiently prescriptive rules are included in existing data protection legislation. With regards to **non-personal data**, arrangements around data access and data use can be dealt with within the framework of contractual negotiations. Regarding the question of **data ownership**, the current legislative framework is fit for purpose so that no new regulations are needed for now.
- Certainty is needed on the question of **liability for any advice provided**. The existing frameworks are able to address such potential issues whenever they should arise.
- In order to unleash the full potential of online platforms in agriculture an enabling framework needs to be set at European level. In this context, CEMA asks for the creation of a **true and reliable Digital Single Market** and would like to underline the fundamental importance to **improve broadband infrastructure and access in rural areas**.

## Introduction

CEMA, the European association representing the agricultural machinery industry, is pleased to respond to the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. Within agriculture, online platforms are a comparatively new, yet quickly emerging feature. Though not explicitly mentioned in the Commission's questionnaire, CEMA believes online platforms in agriculture will play an increasingly important role in the future. Since online platforms in agriculture are not the main focus of the questionnaire and many of the questions are not directly related to the topic, CEMA decided to provide dedicated input to the consultation via this document.

## Online platforms in agriculture

A major trend in advanced agricultural machinery today is a trend towards higher precision and smart machines. Precision farming is about producing more with less by managing variations in the field in hitherto unknown accuracy. Online platforms in agriculture are directly linked to this trend by enabling further, data-driven improvements of precision farming applications.

For instance, with the help of GPS and sensor technology, precision spreaders can automatically adjust the amount of fertilizer according to field-specific needs. The amount of fertilizer required by the plant can be calculated based on pictures taken by sensors or drones. In addition, the amounts of fertilizer needed in certain parts of a field can be further refined by combining it with data from field-specific yield maps from previous harvests. In agriculture, the expectation therefore is that online platforms will be used to provide better advice based on the data and information that is put in.

On such online platforms, a wide range of applications can be found that can be used for different types of equipment. These applications can be uploaded by third parties and downloaded by farmers. Via these applications advice is given on, for instance, the exact use of fertilizer. At the same time, farmers can provide data to the platform and/or application by using pictures from a drone and sprayer together with information obtained during harvesting. The aggregation of data will further improve the quality of the algorithms used to provide the advice.

As such, in agriculture, online platforms will serve to collect, combine and pool different types and flows of data to enable better decision-making, as information and experiences from different applications and farms are used. This will allow farmers to make better decisions regarding the use of fertilizer, pesticides, time to harvest, etc. which will benefit the productivity, sustainability and profitability of farms.

Some online platforms are already in place which provide advice to farmers and use more and more data to improve the analyses and the quality of the advice given. The majority of these platforms are still comparatively new. The introduction of these online platforms raises several questions of which some are related to chapters of the questionnaire. Below we try to give more details on some of the aspects.

CEMA believes that online platforms and cloud computing services should be regulated by sector-specific standards set at international level by the industry. We strongly encourage the European

Commission to look at the already ongoing activities related to aggregation of data, encryption and communication.

In addition, cloud computing services should provide standards based on interoperability and portability, but this is not at the feature function level where services may differentiate and add value. These are differences we wish to retain for breadth and value of applications.

## Free flow of data

Currently, several separate online platforms in agriculture are available. Whenever a farmer chooses to move from one platform to another platform, one important criteria is how to transfer the data obtained in the past for his/her fields to the new platform. If data remains within the ownership of the farmer it will be relatively easy to switch from one platform to another depending on the software. In this context, CEMA encourages the development of standards providing for the **portability** of data and any services that already provide portability of personal data that could be useful for the user. Furthermore, the portability of personal data is also addressed in detail in the upcoming Data Protection Regulation. Extending portability requirements beyond personal data would bring up a new and even more challenges such as how to reconcile possible legal conflicts with collection of intellectual property rights in Europe.

What also need to be taken into account is that currently each platform is compatible with different machinery such as, for instance, seeding machines, fertilizer spreaders or sprayers. So while it might be easy to switch from one online platform to another it could be more difficult due to the compatibility between machines used.

**Data location restrictions** are disruptive to the free flow of data and impact industry both at a local and global level. It will also limit access by domestic companies to the most advanced technology and in long term hurt their competitiveness. Mandating local storage and or processing will therefore not necessarily increase cybersecurity. Restrictions to the free flow of data should be carefully evaluated and balanced with other interests.

Concerning **personal data**, there are already sufficiently prescriptive rules included in the current data protection legislation. When looking at non-personal data, arrangements around data access and data use can be dealt with within the framework of contractual negotiations. Regarding the question of data ownership, we believe that the current legislative framework is fit for purpose so that no new regulations are needed for now. Discussions around additional rights and obligations are, and should continue to be, set by contractual relations between the various parties involved.

To make the best analysis it is important to have the right data available and the possibility to take into account other factors. Many public authorities and researchers have access to data such as weather conditions which could influence the decision that will be taken by a farmer. If this data would be publically available and easily accessible the quality of advice from online platforms could significantly be improved.

The same is true for the allowance of **data markets**. As more data becomes available, the quality of advices will go up. When certain platforms can increase their data content by obtaining data on the market, the quality and added value of that platform will likely increase.

## Liability

One important element on which certainty is needed is the question of liability for provided advice. For instance, when a platform operator in agriculture gives a certain advice based on an analysis, yet, afterwards, for instance, the resulting harvest does not match the expected quality or quantity is important to ensure that the operator is not liable for the advice given. Given the complexity of agricultural processes and management decision that need to be taken, it is likely that more such issues will arise in the future.

We believe that the existing frameworks currently in place are able to address such potential issues whenever they should arise. We have not seen to date any specific issues arising that would point towards limits of the current legal frameworks. Liability risks around IoT are not new or specific to this technology. That being said, we do support an ongoing dialogue with stakeholders around the development of the technology to avoid a situation as is in place for rules regarding access to Repair and Maintenance Information (RMI) under which the equipment manufacture is liable for any change that may occur to the information exchanged. As always, the right balance between consumer safety, industry interests and the ability for new technologies to develop must be maintained.

## Ownership of data

Information should be available in the system as anonymously as possible. Questions may arise when farmers' data is used to improve the algorithms that are used to provide advice. However, given that platforms need to comply with applicable EU and national laws on consumer protection, this aspect of data protection should already be sufficiently covered by existing rules.

## How to unleash the full potential of online platforms in agriculture

CEMA strongly believes that online platforms can contribute to the future development of agriculture in Europe by improving the productivity, sustainability and economic viability of farming processes. In order to unleash the full potential of online platforms in agriculture an enabling framework needs to be set at European level. In this context, CEMA asks for the creation of a true and reliable Digital Single Market and would like to underline the fundamental importance to improve broadband infrastructure and access in rural areas in Europe.

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