Council of the European Union

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NOTE

From:	Presidency
To:	Council
Subject:	EU Conference on digitalisation of agriculture (organised by the German Federal Ministry of Food and Agriculture together with EURAGRI) (Potsdam (Germany), 2-3 December 2020) *- Information from the Presidency*

Delegations will find:

- In the Annex information from the Presidency on a EU Conference on digitalisation of agriculture jointly organised by the German Federal Ministry of Food and Agriculture together with the European Agricultural Research Initiative (EURAGRI) on 2-3 December 2020;
- In Annex I to the Annex the programme of the Conference;
- In Annex II to the Annex a paper submitted for the round-table discussion during the Conference.

The abovementioned documents will be dealt with under "Any other business" at the "Agriculture and Fisheries" Council on 15-16 December 2020.

ANNEX

EU-Conference on digitalisation of agriculture
"Digital Transformation of the Agricultural Value-Chain –
Opportunities, Challenges and the Role of Science"
and
two round-table discussions

Together with EURAGRI (European Agricultural Research Initiative), the German Federal Ministry of Food and Agriculture (BMEL) organised a virtual conference from 2 to 3 December 2020 (see conference programme in Annex I), organised in two "tracks". Track 1 covered the topic of sustainable digital transformation of the agricultural value chain. Track 2 dealt with "a governance framework for agricultural data".

Prior to the conference, on 24 November, the Presidency discussed with the European Commission and EU Member States at expert level on current and planned activities as well as strategies with regard to digitalisation in agriculture.

On 3 December, the Presidency, together with the European Commission and EU Member States, held a round-table discussion on **agricultural data**. The Presidency submitted a paper with four questions (see Annex II). The aim of the round-table discussion was to exchange views on the experiences gained by the Member States with the "EU Code of conduct on agricultural data sharing by contractual agreement"*. The Presidency initiated an exchange of views on the future governance and/or legal framework for agricultural data in the EU. It became clear that many Member States see the need to further develop the Code of conduct and some support the adoption of specific legal measures in the EU on agricultural data.

* The "EU Code of conduct on agricultural data sharing by contractual agreement" was jointly developed in 2018 by several agricultural associations. It promotes the benefits of data sharing and enables the transition of agri-business models towards digitally enhanced farming.

Background of the German initiative on agricultural data:

In its European strategy for data, the Commission announced that it would take stock with Member States and stakeholders on experiences gained with the stakeholder Code of conduct. The BMEL commissioned a report on the topic of "European Guidance and Rules for Agricultural Data". This report (June 2020) was prepared by Prof. Dr. jur. Ines Härtel. It identifies gaps in protection in the Code of conduct and suggests legal strategies and potential solutions to establish a well-ordered agricultural data space. The Presidency sent a questionnaire on the report to the Member States in September 2020.

A conference under the German Presidency of the Council of the European Union, jointly organised by the German Federal Ministry of Food and Agriculture (BMEL) and the European Agricultural Research Initiative (EURAGRI).

The digitalisation of agriculture is transforming agricultural primary production and the food sector. All actors across the whole value chain up to the consumer are affected by this transformation. The numerous digital innovations in the agricultural and food sector have the potential to contribute to sustainable food production, enhance animal welfare, combat climate change, improve global food security and promote biodiversity.

Beside technological developments, science has an important role to play in critically reflecting and assessing the sustainability of digital innovations. With regard to a governance framework for agricultural data, it is necessary to implement guidelines and/or rules that take into account fundamental data principles while ensuring legal certainty for farmers.

The German Federal Ministry of Food and Agriculture (BMEL) hereby joins EURAGRI in inviting you to address and discuss the various dimensions of digitalisation of agriculture.

The main questions to be discussed are:

- What kind of initiatives, strategies and policies do we have in Europe with regard to the digitalisation of the agricultural value chain? What can we learn from each other?
- Which rules and/or guidelines for agricultural data should be implemented at the EU level?
- How can digital innovations be connected to sustainability along the whole agricultural value chain?

Important:
Originally planned as a pure physical event, due to the COVID-19 pandemic now the conference will be carried out as an online conference.

Day 1: Wednesday 2nd December

10:00 *10:00 am (CET)*	**Beginning of the conference**	
10:00 *10:00 am (CET)*	**Welcome** • **Julia Klöckner**, German Federal Minister of Food and Agriculture • **Dr. Wolfgang Burtscher**, Director-General at the European Commission, DG AGRI • **Prof. Gerry Boyle**, EURAGRI	
10:30 *10:30 am (CET)*	**Setting the scene – opening addresses** 1. Challenges and opportunities of digitalisation in the agricultural value chain – A governance perspective. **Prof. Dr. Peter H. Feindt**, Humboldt-Universität zu Berlin 2. EU level initiatives and policies concerning digitalisation in the agricultural value chain. **Kerstin Rosenow**, EU Commission, DG AGRI 3. Enabling innovation and providing guidelines – A governance framework for agricultural data. **Prof. Dr. José Martinez**, University of Göttingen Q & A / discussion (Moderation: **Dr. Steffen Beerbaum**, BMEL)	
12:00 *12:00 pm (CET)*	**Lunch break and online networking**	
13:30 *1:30 pm (CET)*	**Track 1:** **Sustainable digital transformation of the agricultural value chain** **Different perspectives: State of play** • Farming 4.0 - The necessity of change: **Milica Trajkovic**, BioSense Institute • Up-stream sectors: How can digital transformation foster sustainability in primary production of biomass? **Prof. Dr. Cornelia Weltzien**, Leibniz Institute for Agricultural Engineering and Bioeconomy (ATB) • Down-stream sectors: Digitalisation and automation in the food industry - Implications for skills and science. **Karen T. Hamann**, IFAU Institute for Food Studies & Agroindustrial Development ApS • Digitalisation shaping the consumer landscape: **Prof. Dr. Nesli Sözer,** Technical Research Centre of Finland (VTT) • Research and Inovation: How to build trust for the digital transformation of the agricultural value chain. **Dr. Jürgen Vangeyte**, Flanders Research Institute for agriculture, fisheries and food (ILVO) • Q & A / discussion (Moderation: **Prof. Dr. Spyros Fountas**, Agricultural University of Athens)	**Track 2:** **A governance framework for agricultural data** **Responding to current challenges** • A governance framework for agricultural data **Dr. Klaus Heider**, BMEL • A European Strategy for Data - Implications for the agricultural sector and agricultural policies **Dr. Doris Marquardt,** European Commission, DG AGRI • Ensuring the farmers' data sovereignty **Daniel Azevedo**, COPA-COGECA • Toward trusted farm data sharing practices **Dr. Simone van der Burg**, Wageningen University & Research (WUR) • Lessons learnt – insights from Australia **Prof. Leanne Wiseman,** Griffith University • Q & A / discussion (Moderation: **Dr. Doris Marquardt**)

Programme subject to change

15:30 *3:30 pm (CET)*	**Coffee break and online networking**	
16:00 *4:00 pm (CET)*	**Track 1:** **Sustainable digital transformation of the agricultural value chain** **Shaping the future: Discussion** What is needed from policymakers (EU/national level) to make the digital transformation of agriculture a success for all stakeholders? Indroductory pitches: • COPA-COGECA (**Daniel Azevedo**) • EEB (**Dr. Bérénice Dupeux**) • CEMA (**Dr. Ivo Hostens**) • Bitkom (**Andreas Schweikert**) Moderation: **Prof. Dr. Engel Hessel**, BMEL 17:00 End of Day 1 in Track 1 *5:00 pm (CET)*	**Track 2:** **A governance framework for agricultural data** **Deep dive** • Agricultural data: Diversity of players, data relations and data categories **Dr. Katarzyna Kosior,** National Research Institute Poland • Legal strategies to establish a well-ordered agricultural data space **Dr. Alexander Duisberg,** Bird & Bird LLP • Data ownership, data sharing and access rights **Can Atik**, Tilburg Law School • Promoting Data Sharing in the EU: A Regulatory and Antitrust Perspective **Dr. Martina Anzini** , Centre for European Policy (cep) • Data sovereignty in agriculture: status quo, challenges and solution concepts **Bernd Rauch**, Fraunhofer IESE • Q & A / discussion (Moderation: **Dr. Martina Anzini** and **Bernd Rauch**)
18:00 *6:00 pm (CET)*	**End of Day 1**	

Conference moderation at Day 1: Vincent-Immanuel Herr and Martin Speer

Programme subject to change

Day 2: Thursday 3rd December

09:00 *9:00 am (CET)*	**Beginning of Day 2**	
09:00 *9:00 am (CET)*	**Track 1:** **Sustainable digital transformation of the agricultural value chain** **Future trends: Part 1** • The digitalisation of agriculture – Challenges for advisory services. **Prof. Tom Kelly**, Teagasc • Transforming the organisation of value creation and business models in the digitalisation of agriculture. **Prof. Dr. Cynthia Giagnocavo**, University of Almeria • Enhancing trust in the food system with block chain technology – Strengths and vulnerabilities. **Chris Addison**, Communiq.org • A safe and just operating space for the bioeconomy: The role of digitalisation in the 5th SCAR foresight report. **Prof. Gianluca Brunori**, Università di Pisa • Q & A / discussion (Moderation: **Dr. Pierre Labarthe**, INRAE)	**Track 2:** **A governance framework for agricultural data** **Policy forum (non-public)** • Introduction • Presentation: Report on European Guidance and Rules for Agricultural Data by Prof. Ines Härtel • Round-table discussion
10:30 *10:30 am (CET)*	**Coffee break and online networking**	
11:00 *11:00 am (CET)*	**Track 1:** **Sustainable digital transformation of the agricultural value chain** **Future trends: Part 2** • What is the impact of digitalisation on farming practices and structures as well as new dependencies? **Dr. Karel Charvát**, Wirelessinfo • Which are the new business models? **Claudia Mittermayr**, Agro Innovation Lab GmbH • Sustainable food futures, the role of ICT and citizen consumers. **Prof. Anna Davies**, Trinity College Dublin • Q & A / discussion (**Niels Gøtke**, Danish Agency for Science and Higher Education)	**Track 2:** **A governance framework for agricultural data** **Policy forum (non-public)** • Round-table discussion

Programme subject to change

12:15 *12:15 pm (CET)*	**Lunch break and online networking**
13:45 *1:45 pm (CET)*	**Presentation on outcomes & conclusions in Track 2** • BMEL
14:00 *2:00 pm (CET)*	**Panel discussion** • European Commission, Ministry: **Dr. Doris Marquardt** (DG AGRI), **Dr. Anikó Juhász** (Hungarian Ministry of Agriculture) • Research institutions: **Drs. Krijn J. Poppe** (Wageningen University & Research), **Dr. Christian Huyghe** (INRAE, National Research Institute for Agriculture, Food and Environment of France) • Other stakeholders: **Georg Mayerhofer** (farmer), **Dr. Alexander Duisberg** (Bird & Bird LLP) Moderation: **Prof. Donagh Berry** (Teagasc)
15:15 *3:15 pm (CET)*	**Rounding up and conclusion** • **Prof. Dr. Engel Hessel**, German Federal Ministry of Food and Agriculture (BMEL) • **Prof. Gerry Boyle**, EURAGRI
15:30 *3:30 pm (CET)*	**End of the conference**

Conference moderation at Day 2: Martin Speer

You can register online for the event on www.eu2020.de/eu2020-en/events/-/2365106

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The Presidency of the Council

Round table discussion - 3 December 2020

A governance framework for agricultural data

PRACTICALITIES

The round table will be conducted virtually via Zoom. It will start at **9 am CET** and end at around **12:15 pm CET**. Each delegate will be given about 5 minutes to give a statement on the following questions. The exchange of views will be held at expert level. There will be translation into English and French available.

To use Zoom, it is necessary to install the latest version of the **Zoom client for meetings**. This can be done by clicking the following link: https://zoom.us/download#client_4meeting .

We would also like to invite you to participate in a **technical test** prior to the round table. It will take place on Tuesday, 1 December 2020. Details will be submitted to you after registration.

Prior to the conference, you will receive a link to the round table discussion.

In 2018, EU stakeholders from both the farming and the machinery sector developed a code of conduct relating to agricultural data sharing by contractual agreement. The European Commission announced in its European strategy for data that it would take stock with Member States and stakeholder organisations of experiences gained with the stakeholder code of conduct in Q3 and Q4 2020, also on the basis of the current market for digital farm solutions and their requirements in terms of data availability and use. In a report for the German Federal Ministry of Food and Agriculture, Prof. Dr. Ines Härtel critically reflects on the code of conduct and recommends legal strategies and potential solutions to establish a well-ordered agricultural data space. The German Federal Ministry of Food and Agriculture carried out a survey amongst the Member States starting in August 2020. Many Member States answered the questionnaire.

The German Presidency of the Council invites the European Commission and the Member States to join a round table discussion on 3 December 2020. The aim is to exchange views on the experiences gained by the Member States with the code of conduct. The presidency would furthermore like to exchange views on the future governance and/or legal framework for agricultural data in Europe. The following questions will be discussed:

1. **Would you support having the code of conduct on agricultural data sharing by contractual agreement developed further and if so, why?**

2. **What amendments and / or additions should be made to the code of conduct?**

3. **Would you support the adoption of legislative measures on agricultural data at EU level?**

One legal strategy would be to adopt an EU legislative act on agricultural data. In her report, Prof. Dr. Härtel recommends the adoption of a separate, special legal act for the agricultural data space (EU legal act on agricultural data), Option 1.[1]

'The legal basis for an agricultural-policy focus of the scope of the EU legal act on agricultural data could be formed by the agricultural competence according to Art. 43 II TFEU. Were it to be further expanded beyond the CAP in the narrower sense, Art. 114 TFEU would have to be used as a basis.'[2]

[1] Report on the topic of "European Guidance and Rules for Agricultural Data" (European Agricultural Data Governance) by Prof. Dr. jur. Ines Härtel, June 2020, p. 37.

[2] Report, p. 37.

'There are a number of reasons in favour of this option, consisting primarily of guaranteeing the right to food through sustainable agriculture (with diversified sizes and farm structures), thus ensuring food sovereignty in Europe. The special provisions for agriculture also reflect the differences between agriculture and other industries. Whilst the digital ecosystem in other industries (Industry 4.0) is located in closed premises, the digital ecosystem in agriculture is to be found in open spaces and makes use of natural resources. Agriculture is influenced by external factors such as climate change, the weather, soil quality, water resources and biodiversity. There is also a need to take account of the fact that farms all over the EU are largely small and medium-sized on average. Such farms do not usually have the resources required to analyse (complicated) regulations applying to the use of data, and thus to defend their own data rights. A special legal act could however have the disadvantage of fragmenting EU data law.'[3]

Another option (Option 2) would be to wait for a detailed horizontal B2B legal act on data. This could regulate special rules in a separate section for agriculture.[4]

'With regard to the regulation of EU agricultural data law in the B2B sector, there is a need to examine which provisions are specific to agriculture and which are part of the general law on data. The agriculture-specific provisions should help solve the existing practical problems (including the vendor lock-in effect) and aim to create remedies for digital data-related structural dangers in agriculture.'[5]

4. If you agree on legal measures on agricultural data at EU level: How do you view the proposal to entrench farmers' data sovereignty in agriculture instead of data ownership?

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3 Discussion paper on the topic of "European Guidance and Rules for Agricultural Data" (European Agricultural Data Governance) by Prof. Dr. jur. Ins Härtel, June 2020, p. 3-4.

4 Discussion paper, p. 4.

5 Report, p. 37.

'The right to property in accordance with Art. 17 CFR does not provide for a comprehensive right to dispose of data. There is no exclusive right to data. The right to property, for instance, protects trade and operational secrets. Most operating data of farmers does not, however, fall within the rather narrowly-defined term "trade secrets".'[6]

'The EU Code of Conduct uses the term "data ownership" with regard to contracting on rights to take decisions regarding data/rights to use data. It is not possible to presume here, in the overall context of the Code, a traditional understanding of ownership in the sense of an exclusive right, but a right to use data in multipolar legal relationships, also with possible multiple authorisations as part of data sharing, whilst taking account of the particularities of the digital data added-value processes.'[7]

'The central foundation of the EU legal act on agricultural data would lie in explaining and designing farmers' digital data sovereignty. The legal establishment of data ownership over and above the previously existing protection elements (such as trade and operational secrets, database law, intellectual property of software developers) does not do justice to the (general interest) needs and legitimate interests of market players in the digital data value chain. Comprehensive data ownership with exclusive rights, or indeed also with tiered, derived rights, also leads to problems when it comes to technical implementation and economic handling.'[8]

6 Report, p. 29.
7 Report, p. 29.
8 Report, p. 39-40.

'As a central legal institution and data right in agriculture, data sovereignty should instead be entrenched in the EU legal act on agricultural data. This primarily includes having one's own data at one's disposal (including handling metadata or where appropriate consent to erasure), confidentiality in the sense of freedom to decide on the porting of data to providers one chooses oneself, and the authenticity in the shape of knowledge about the provider and his or her commercial conduct. Data sovereignty corresponds here at the same time with the (more comprehensive) digital sovereignty of farmers. In normative terms, this is particularly characterised by the components maturity, self-determination and freedom of choice, as well as responsibility, equal treatment, equal access and participation, the digital skills that are imparted through training, education and experience (knowledge, technical understanding, risk and benefit awareness) comprehensibility/transparency of digital acts, as well as knowledge of the law. Data sovereignty and overall digital sovereignty are ultimately an expression of fundamental rights. Data sovereignty in agriculture is then, however, to be safeguarded in an EU legal act on agricultural data.'[9]

Should you have any more questions, please do not hesitate to write to 822@bmel.bund.de .

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[9] Report, p. 40.