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BVI's comments on the EU Commission initiative on high-value' datasets held by the public sector

BVI¹ welcomes the opportunity to comment on the European Commission's roadmap on high-value datasets. Firstly, we would like to express our grave concern in light of the anti-competitive constraints put by data vendors and data distributors on the financial services industry in Europe. The worldwide data economy is characterized by an ecosystem of different types of market players competing and collaborating to generate additional value. Increasingly, it is the ability to access data that provides market players with market power – a key element in the EU's global competitiveness going forward.

The provision of technology-enabled financial services is highly dependent on data. Asset managers, like other financial services market participants, are heavily reliant on information as part of their everyday business decision-making processes portfolio management activities, from granting loans to managing investment portfolios. We believe that the trends witnessed in data license management in financial services – one of the most digital industries today in Europe – do not bear well for the future of the whole European digital economy based on the Internet of Things (IoT). Quality data is a prerequisite for the provision of any service along the entire value chain in asset management, ranging from research, portfolio and risk management, trading to clearing and settlement. Secure access to and availability of high-quality financial market data at all times is also indispensable in fund distribution or in regulatory and investor reporting. In the future, more and more non-traditional data sources ("big data") will be integrated into the asset managers' business operations. Financial market data are often offered by natural monopolies and oligopolies such as stock exchanges and companies with a dominant market position. These have great market power and can set one-sided conditions, since the users on the asset manager side rely on such data and any disruption would jeopardise their business. The use of financial market data has therefore for years been associated with regular, sometimes massive price increases and the conclusion of increasingly complex data licences for the asset managers. With increasing cost pressure and the change of business models to more quantitative or passive investment, data costs are becoming more and more a success factor for many asset managers.

BVI advocates a revision of the existing EU regulations for the provision and use of financial market data on appropriate commercial terms, e.g. in MiFID/MiFIR, Benchmark Regulation, Credit Rating Agencies Regulation, and an implementation of data user protecting terms in in the Benchmarks Regulation and the various EU regulations on regulatory reporting. Data charges should be determined on the basis of the marginal cost of producing and disseminating the data. Access to data should not be unduly restricted and on opaque terms, but be provided in a reasonable and transparent manner. Also in the area of financial services, open datasets such as the European Rating Platform (ERP) operated by ESMA are an alternative to expensive commercial procurement. More public open datasets should be made available in financial services at least with respect to those data which use is required by

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



regulation, i.e. market data (prices), benchmark data (index values, prices, constituents and weightings) and credit rating data.

In this respect, the European Commission's roadmap on high-value datasets is an important precedent also in the area of financial services. Therefore, it is useful to promote an expansion of economic statistical data provision of all kinds (e. g. new GDP-growth or ESG data sets based on Big Data such as satellite image analysis of the lighting levels of cities) by the public sector in order to reduce dependency on purely commercial data deliveries / data licenses. Against this background, we welcome the European Commission's aim to identify and define high-value datasets whose reuse is free of any technical, legal or financial barriers.

In view of the growing importance of ESG data, research and rating services, market concentration in this area has significantly increased over the last years, particularly due to strategic acquisitions. All leading ESG data and research providers (MSCI, Morningstar (which acquired Sustainalytics earlier this year), ISS ESG and Vigeo-Eiris, which are the biggest according to market share) are now either headquartered in the US or owned by US company groups. This situation has implications for the quality and reliability of data, since EU investors and financial market participants need to rely on ESG research and qualitative assessments of ESG aspects as basis for ESG ratings that might not fully incorporate and take into account the development of the EU sustainable finance regulations. This is particularly relevant in relation to investments outside the EU, where EU investors will most probably not be able to rely on corporate disclosures, since such disclosures will not meet the EU requirements. This outcome cannot be deemed satisfactory from the EU policy perspective and should be in part addressed by EU provided high-value ESG datasets whose reuse is free of any technical, legal or financial barriers.

From a technical perspective, access to open data should be free of fees and licences. This requirement needs to include all data in an open dataset or open data platform. For example, if the identifier used to identify the items within the open data sets are fee and license liable, the value of open datasets for society is put into jeopardy. A case at point is the licensing of the use of foundational identification codes, namely the ISIN securities identifiers (ISO 6166 Standard) which are essential to enable processing of securities in all stages and aspects of the value chain of asset management (in particular for trading, clearing, indexing, client and regulatory reporting) and can be considered as "public goods". Requesting fees and license contracts on foundational standards data inhibits automation based on standardization within the industry and limits innovation and use of new financial technology offerings. Market-accepted identifier codes such as the ISIN are an essential facility for all financial services as they allow to link data of all sorts to one security. The importance of identifiers increases every day as the financial services industry like others moves rapidly from human interaction (screen-based transactions – "on display licenses") to fully-automated transactions where computers interact on both sides of the trade. Automated transactions are impossible without proper data linkage by market-accepted identifiers. The fee-free and license-free use of foundational identifiers is therefore one of the most critical requirements to enable a fully digitalized (financial services) industry. Specifically on US-ISIN, the European Commission issued a commitment decision concerning S&P's ISIN practices on 15 November 2011 (Case COMP/39.592) to address excessive pricing of the identifiers use.

However, the requirement of a fee-free and license-free use of identifiers is central to the digital economy as a whole. Beside existing ISO standards for Digital Object Identification (DOI) there is the welcomed ISO initiative on developing a Digital Token Identifier (DTI) for the blockchain economy. We are concerned, however, that digital object and token identifiers as well as any other open dataset



identifiers may end up in the commercial data vendors' camp, with the danger of all the license complications that could arise. The IoT will radically change the world in the coming years, and networked devices will be a substantial part of that change. In 2010, people owned 12.5 billion networked devices; it is estimated that by 2025 that number will have climbed to more than 50 billion. Imagine how damaging it would be for the market and innovation if each and every of these billions of IoT products or open data sets required to allow their operation is to be identified with fee and license contracts carrying commercial identifiers going forward. All users of physical products, as well as the machines themselves, would have to pay billions of Euros in data license fees every year and could not freely use information, which in most cases is not even protected as intellectual property (IP).

The problem is exacerbated because of data sources and data vendors generating profits today by not only charging fees for the use of identifiers but, more importantly, for the use of any kind of data, including non-creative data such as prices, numerical specifications, or index levels which are not protectable by IP rights. Most open datasets are likely to fall into the same trap going forward. The situation can only get worse from the user perspective as there are data industry initiatives to develop fully automated “contractual rights management solutions” to prevent any unlicensed data use by inserting specific codes into all data sets which can only be activated for use by the respective data vendor. As a result, no data-dependent product can be developed going forward without data sources and data vendors knowing and consenting to the data use – or preventing it by claiming license requirements. However, claiming rights to data independently of the existence of IP rights is anti-competitive. Such data licensing practices hinder data access and digital innovation and are in conflict with the EU’s digital economy objectives.

Setting the scene right for the provision of in all aspects truly fee and license free open datasets under the European Commission’s roadmap on high-value datasets is therefore an opportunity to set a precedent to address similar issues in the digital market economy as a whole.

We would welcome the opportunity to discuss these issues in more detail with you and remain at your entire disposal for any question you may have.