

What kind of legislative action do we need for raw data?

What is raw data?

Raw data? What is it actually? Maybe it is unstructured data that is not systematically filed or collected in databases. But does that answer the question of what raw data is? The central initial question is therefore whether it can be adequately defined what data is in the legal sense.

There is a need for legislative action to clarify what raw data is in the legal sense and how it is to be treated in the context of licensing. However, data are so-called non-rival goods. At least, in Germany it is the status of legal discussions that raw data cannot and should not be assigned to an entity as "owner", so no property right should be introduced. So contracts will become more important for the use of raw data. However, only with a clear legal definition can sufficiently legally secure contracts be concluded. Otherwise, you do not know what the object of e.g. a data license contract really is in terms of law. From an interdisciplinary perspective alone, however, it is very difficult to define raw data. From an information science perspective, for example, data is information in the state of storage or transport. Against this background, an unqualified property right to data would, create a broad "super-IP" that would be detrimental to innovation. Not to mention the problem of assigning such a right to specific individuals. This is where the legislator is needed.

Do we need rules for access to data?

Not least since the recently passed amendment in antitrust law in Germany, the question has come to the fore as to whether the legal system must create access claims to certain data. In view of the immensely growing importance of data in all branches of business, enabling access to such data is likely to become one of the key economic issues of the future. Therefore, access to competition-relevant data in the case of a dominant market position, seems to be as important as a right of access even in the absence of market dominance in the case of market blocking opportunities.

The existing possibilities for (contractual) regulation of access to data are not sufficient to meet the requirements of Big Data in the Internet of Things and Industry 4.0.