

EU Data Act

Data is central to the digital economy, and an essential resource to secure the green and digital transitions. The importance given to data stems from the sheer volume that is increasingly generated by humans and machines coupled with the fact that most of this data is concentrated in the hands of relatively few large companies. Therefore, this Act is a way that seeks to make it possible to achieve a “data driven innovation by facilitating access to and the use of data by consumers and businesses, while preserving incentives to invest in ways of generating value through data.

The EU envisions making this data possible by removing barriers in line with European laws and values so that everyone can tap into the benefits that this data can provide.

The Data Act is a key pillar and the second major initiative announced in the data strategy providing for horizontal data sharing across sectors. It is aimed that the data act is created in such a way as to facilitate a greater flow of data in all sectors, from business-to-business, business-to-government, government-to-business and government-to-government. The data access and use will not include that generated from laptops and smartphones.

How the Data Act is beneficial to SMEs

The Data Act aims to level the playing field by shielding SMEs from unfair contractual terms imposed by a party with a significantly stronger bargaining position, as well as develop model contractual terms in order to help such companies draft and negotiate fair data-sharing contracts.

The Act would provide for greater access rights for users including the right to share data with third parties, for a faster turnover and free of charge. In the case of some data generating products and machines, the data is to be directly accessible to the user. Where contracts between sharing parties are available, it could also be possible to share B2B trade secrets when it comes to data. It is also envisaged that SMEs should not pay more than the costs that have incurred to the other party in relation to making the data accessible.

In the case of public emergency, data is to be made available to the public sector free of charge, but micro and small businesses will be exempted. B2G sharing of trade secrets is also to be allowed but this is to be confined to very limited cases and where the public body is able to ensure confidentiality.

Data processing services (such as cloud providers), would be obliged to allow for switching to another provider technically possible, provide customer assistance and phase-out the switching charges. In the case of data sharing with third countries, this can only be justifiable

in cases where there are international agreements in place. Existing authorities within the member states will be responsible for enforcement.

Main concerns over the Data Act

There are generally concerns over the broad scope of the regulation, as the proposal would apply to a broad range of products and services, some of which will process highly sensitive information on individuals. Examples of such include device manufacturers, providers of digital services as well as public authorities in the EU. Lobbyists are also asking that GDPR prevails over the Data act especially in the case of conflicts over the processing of personal data.

There is also question over the proportionality of the B2G data access in the context of exceptional need, citing the need to have additional safeguards. It is also argued that in the case of exceptional need, the definition of emergency needs to be clearly defined.

Views from the Industry

The Data Act is a horizontal framework and having a consumer-focused approach for the Data Act, is deemed to be the right approach. It is generally agreed that one piece of legislation should not undermine the other. Having a level playing field in data sharing is useful to larger companies given that data access is important to foster competition and access to better and more innovative products with the possibility of increasing efficiency. There is however concern from private companies over competition risk because of the sharing of trade secrets. Here it is argued that stronger wording is needed in the Data Act to protect data secrets.

It remains pivotal to have high quality data whilst ensuring the application of the fair data principle. Taking this into account, companies flag the potential need for them to invest in the right infrastructure to be able to comply with this Act. Any conflicts with GDPR data need to be worked out and a balanced approach to the Data Act is important in empowering the consumer that includes businesses.

The full text of the Commission proposal can be found at the link below:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0068>

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