

Data Act

The Data Act contributes to the topic of “data ethics” by ensuring a fair allocation of value in the data economy to the benefit of all players. It enhances ethical use of data, e.g. by increasing transparency, awareness and control over IoT data. The proposal includes safeguards against dark patterns and sets limits for gatekeepers’ use of IoT data. It also encourages innovation in the aftermarkets of connected devices (e.g. smart home products, smart machines in the industrial context, cars, smart farming) to the benefit of consumers and society. Data access will be key for the development of new digital services, including AI, such as predictive maintenance. The proposal allows for a more competitive cloud market and protect cloud users from unlawful governmental data request from third countries.

The proposal was adopted on 23 February 2022. Negotiations in Council have started (the aim under the French Presidency is to reach a first compromise text). In the European Parliament, the ITRE committee is responsible. Stakeholder interactions show mixed reactions of industry. Producers of connected products oppose mandatory data access; other players see business opportunities.

Main messages

- The Data Act leads to better control on data generated with the use of connected devices, as much for consumers as for companies. New access and portability right improve competition in aftermarkets of such products, such as repair and maintenance.
- New data access rights cannot be granted to the benefit of the largest players defined as gatekeepers in the Digital Markets Act. Those players do not need an access right to get to the data, market mechanisms work for them.
- The Data Act is a true SME-instrument, foreseeing favourable conditions for SMEs to put them at the negotiating table and enable them to develop digital solutions on the basis of valuable data.
- The framework for business-to-government data sharing will empower public institutions to get access to privately-held data, where absolutely needed in exceptional situations. This mechanism will enable public authorities to formulate databased solutions.

Defensives

What is meant by a « fair » allocation of value?

- With the Data Act, we lay down the foundation for more innovations that will allow all actors (in the economy and society) to benefit from better use of their data.
- Fairness means finding the right balance between granting more access to data while preserving incentives for manufacturers to invest.
- We want to increase the use of data for the benefit of all. To facilitate the creation of value from the use of data is essential for the recovery of the European economy.

Will the proposal change the GDPR? Will the Commission address GDPR issues?

- The proposal is fully GDPR compliant. We are not proposing any measure that changes or interferes with personal data protection legislation.
- We will strengthen the portability right enshrined in Article 20 GDPR in relation to data from connected objects.
- In this context, the improved portability will cover both personal and non-personal data generated by the use of connected objects and will allow such data to be transmitted to a third party chosen by the user.
- Technically, the proposal ensures an easier access to data.

How should we understand the interplay between GDPR and Data Act? Is it reasonable to assume that the GDPR applies 'after' the Data Act?

- The GDPR continues to apply when the processing of personal data is concerned.
- However, the Data Act will help to overcome previous legal uncertainty, e.g. with regard to the effective application of Art. 20 GDPR, by clarifying the scope of data portability in the context of data from IoT objects.

Is there a risk that consumers are encouraged to give away data too easily?

- This aspect was taken into account throughout the whole preparation work. The proposal strengthens consumers' control over their data.
- Moreover, additional safeguards protect the consumer, such as the prohibition of practices to manipulate the user's decision-making process through dark patterns.

Background***The Data Act***

The Data Act focuses on the following topics:

- Better access to IoT data: manufacturer of IoT objects must allow access to co-generated data whilst maintaining the incentive to innovate. Users of IoT objects can access and port data and third parties can use the data to offer services (SMEs get special conditions).
- Horizontal rules for IoT data also frame data access and use in specific sectors.
- Contractual unfairness in B2B data sharing agreements: SMEs will have stronger negotiating power where certain conditions are unilaterally imposed on them.
- Business-to-government: companies must make data available to public sector bodies in case of emergency or exceptional need.
- Easier switching between cloud services.
- Facilitate interoperability: the Commission may adopt technical specifications if necessary to reduce transaction costs related to the use of data even across sectors.
- Protection of European cloud data in the international context.

The Data Governance Act

The Data Governance Act was adopted by the European Parliament on 6 April 2022 and will be formally adopted by the Council in May 2022. It will become applicable in the Member States 15 months after its publication. It facilitates voluntary data sharing and offers a framework for neutral actors between data holders and recipients as data intermediaries. Based on the mandate given in the Data Governance Act, the Commission will set up the European Data Innovation Board by the end of this year, i.a. to recommend priorities in interoperability.

A Danish Labeling Program for Digital Accountability (D-seal) was launched in September 2021. It is founded by the Confederation of Danish Industry, the Danish Chamber of Commerce, SMVdenmark and the Danish Consumer Council. Its aim is to promote data security, data protection and data ethics. The label contributes to the same goal as the Data Governance Act by increasing trust in the sharing of data.