

Data Act

2022/0047(COD) - 23/02/2022 - Legislative proposal

PURPOSE: to set harmonised rules on fair access to and use of data (Data Act).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND : the volume of data generated by humans and machines has been increasing exponentially in recent years. Most data are unused however, or its value is concentrated in the hands of relatively few large companies. It is therefore crucial to **unlock such potential by providing opportunities for the reuse of data**, as well as by removing barriers to the development of the European data economy in compliance with European rules and fully respecting European values.

On 25 March 2021, the European Council reiterated the importance of better exploiting the potential of data and digital technologies for the benefit of the society and economy. On 1-2 October 2020, it stressed the need to make high-quality data more readily available and to promote and enable better sharing and pooling of data, as well as interoperability.

In its [resolution](#) of 25 March 2021 on a European Data Strategy, the European Parliament urged the Commission to bring forward a data law to encourage and enable greater and fairer data flows across all sectors, between businesses, between businesses and public administrations and vice versa, and between public administrations themselves. It also stressed the need to create common European data spaces to ensure the free flow of non-personal data across countries and sectors, and between businesses, academia, relevant stakeholders and the public sector.

Following the [Data Governance Act](#), this proposal is the second main legislative initiative resulting from the February 2020 **European strategy for data**, which aims to make the EU a leader in our data-driven society. Its aim is to ensure fairness in the allocation of value from data among actors in the data economy and to foster access to and use of data.

The Data Act should ensure fairness in the digital environment, stimulate a competitive data market, open up opportunities for data-driven innovation and make data more accessible to all.

CONTENT: the proposed Regulation aims to establish a **harmonised framework** that specifies who, in addition to the manufacturer or other data holder, has a right of access to data generated by products or related services, under what conditions and on what basis, in all economic sectors.

The proposed Regulation:

- aims to ensure that **users of a product or related service in the Union can access, in a timely manner, the data generated by the use of that product or related service** and that those users can make use of that data, including sharing it with third parties of their choice. Manufacturers and designers should design products in such a way that data is easily accessible by default, and they should be transparent about what data will be accessible and how it can be accessed. Users would have the right to authorise the data holder to give access to the data to third party service providers, such as after sales service providers;

- sets out the general rules applicable to **data provision obligations**. Where a data holder is obliged to make data available to a data recipient, the general framework sets out the conditions under which the data is made available and the compensation for making the data available. All these conditions should be fair and non-discriminatory, and any compensation should be reasonable;

- adapts the **rules of contract law** and prevents the exploitation of contractual unfairness that hinder fair access to and fair use of data by micro, small or medium-sized enterprises. The Data Regulation would protect SMEs from unfair contract terms imposed by a party with significantly more bargaining power. The Commission would also develop model contract terms to help these companies draft and negotiate fair data sharing contracts;

- provide for the use by public sector bodies and Union institutions, agencies or bodies of data held by enterprises in certain situations where there is an **exceptional data need**. This primarily concerns **public emergencies**, but also other exceptional situations where compulsory business-to-government data sharing is justified;

- introduces minimum regulatory requirements of contractual, commercial and technical nature, imposed on providers of cloud, edge and other data processing services, to **enable switching between such services**. In particular, the proposal ensures that customers maintain functional equivalence (a minimum level of functionality) of the service after they have switched to another service provider;

- puts in place **safeguards against unlawful data** transfer without notification by cloud service providers. This is because concerns have been raised about non-EU/European Economic Area (EEA) governments' unlawful access to data. Such safeguards should further enhance trust in the data processing services that increasingly underpin the European data economy;

- provides for the development of **interoperability standards** for data to be reused between sectors, in a bid to remove barriers to data sharing across domain-specific common European data spaces, in consistency with sectoral interoperability requirements, and between other data that are not within the scope of a specific common European data space;

- supports the setting of standards for '**smart contracts**'. These are computer programmes on electronic ledgers that execute and settle transactions based on pre-determined conditions. They have the potential to provide data holders and data recipients with guarantees that conditions for sharing data are respected.