



# OPINION

European Economic and Social Committee

## Data Act

Proposal for a Regulation of the European Parliament and of the Council on  
harmonised rules on fair access to and use of data (Data Act)  
[COM(2022) 68 final – 2022/0047 (COD)]

INT/978

Rapporteur: **Marinel Dănuț MURESAN**  
Co-rapporteur: **Maurizio MENSI**

[www.eesc.europa.eu](http://www.eesc.europa.eu)

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Referral	European Parliament, 23/03/2022 Council, 29/03/2022
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	01/06/2022
Adopted at plenary	15/06/2022
Plenary session No	570
Outcome of vote (for/against/abstentions)	184/0/2

## 1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee (EESC) welcomes the Data Act Regulation and highlights the need to implement it without any discrimination against people who have difficulty accessing the internet or data.
- 1.2 The EESC believes that the protection of personal data, digital identity and privacy should be considered fundamental aspects of data governance directly linked to respect for human dignity and fundamental rights. Therefore, traceability, interoperability and multimodality of the various activities of the supply chains are needed to ensure a clear synergy with the Green Deal indicators and the Sustainable Development Goals (SDGs).
- 1.3 The EESC considers it important to guarantee respect of safety and ethical standards, multiple and sufficient conditions for data functionality, cybersecurity procedures and the proper storage of data on EU territory, on the assumption that individuals should be in control of the data they generate in accordance with the objectives of strategic autonomy and technological independence. As the administration of this huge volume of data will consume a substantial amount of energy, we recommend that the request for entities in charge of data storage to use mainly energy from renewable resources be included in the act.
- 1.4 The EESC believes that ensuring fair competition and a fair distribution of costs and added value within the data supply chain including all actors is relevant and important.
- 1.5 The EESC points out that the protection of citizens' rights is at the basis of the EU's social system and that economic competitiveness has to be guaranteed by a high level of privacy and security, the respect of safety and ethical standards, multiple and sufficient conditions for data functionality, cybersecurity procedures and the proper storage of data in EU spaces and certified locations.
- 1.6 The EESC suggests enlarging the scope of the proposed regulation in order to cover all physical products that obtain, generate or collect data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service.
- 1.7 The EESC believes that users and data recipients should have unhindered access to data which is essential to the functioning, repairing or servicing of connected products and related services. This would include all raw data and metadata but also other relevant sets of processed, refined or aggregated data.

## 2. **Background**

- 2.1 The European Commission is proposing to launch the Data Act, which aims to ensure fair allocation of value obtained from data and better and more efficient use of and access to data. Regulating data access and use is a fundamental prerequisite for seizing the opportunities presented by the digital age we live in. Moreover, the proposal outlines how relevant rights are being applied, increases access to data use for consumers and businesses and ensures the

accessibility of data for public institutions when required. Its aim is to unlock the value of data generated by connected objects in Europe by removing barriers to accessing data, for both private and public sector bodies, while preserving incentives to invest in data generation by ensuring balanced control over the data for its creators.

- 2.2 The proposal is the last horizontal building block of the Commission's data strategy and it integrates the overall EU digital policy acquis, including the GDPR, the PSI Directive, the Regulation on the free flow of data and ongoing negotiations on the Artificial Intelligence Act, the ePrivacy Regulation and the Digital Services Act. Finally, its objective is to create fairer allocation of value by addressing situations where data are used exclusively by a few actors. The EESC is recommending that we have a clearer definition of users as well as of categories of data along with ensuring the rights of the users.
- 2.3 The purpose of the proposal is to ensure fairness in the digital environment by enabling consumers and companies to have more control over their data, clarifying who can access it and on what terms; stimulate a competitive data market by "unlocking a wealth of industrial data"; open up opportunities for data-driven innovation; and make data more accessible to all.
- 2.4 Facilitating clear and efficient synergy between cloud and edged services, safeguards against unlawful data transfer without notification by cloud service providers and developing interoperability standards for data to be reused between sectors, are objectives stated in the proposal. Another main objective is to increase the added value of the database, generated by data and data processing, as well as motivating the various actors to contribute in support of the development of the data economy.
- 2.5 The proposal will have broad implications for citizens, companies and public authorities alike, inside and outside the EU, and could profoundly transform the European regulatory framework for data. It aims to increase transparency and legal certainty around the sharing of data generated by the use of certain products or services, as well as operationalising rules to ensure fairness in data sharing contracts. It creates a predictable and appropriate framework for business-to-consumer and business-to-business data sharing and establishes the legal obligations for data holders in making data available. It regulates the unfair terms related to data access and use between actors on the market.
- 2.6 The Data Act coherently approaches non-personal data safeguards in international contexts as well as interoperability alongside reducing various barriers in the use and reuse of data.

### 3. **General comments**

- 3.1 The EESC welcomes and supports the Data Act, as it clarifies who can create value from such data and under which conditions, it ensures fairness in the allocation of data value among the actors in the data economy and in their contracts while respecting the legitimate interests of companies and individuals that invest in data products and services. Finally, the new rules empower consumers and companies by giving them a say on what can be done with the data generated by their connected products. In recent years, data-driven technologies have shown accelerated development. They are used in many economic sectors, therefore ensuring and

organising adapted and appropriate access to data. Alongside the added value created by the database, the Data Act regulation is important to ensure innovative and ethical economic growth that can create opportunities for all.

- 3.2 Currently, many SMEs lack access to data whose generation they have contributed to when using Internet of Things (IoT) equipment or related services that they own, rent or lease. Furthermore, innovative SMEs and startups fail to create added value in the form of novel products and complementary services for the users of IoT equipment due to their inability to get hold of the data these devices churn out. This undercuts the performance of the Digital Single Market.
- 3.3 The legislative proposal aims to "maximise the value of data in the economy by ensuring that a wider range of stakeholders gain control over their data and that more data is available for innovative use". In doing so, it considers various innovative tools to relocalise data processing services at the European level and deeply transforms existing power structures that favour large data incumbents at the expense of smaller European actors. The aim of the proposal is to invert recent market trends that have led to the consolidation of the "internet economy" and generated data monopolies in various sectors, such as healthcare and the automotive industry. This continuous increase of data needs attention and regulation of the extent of unfair conditions of data use.
- 3.4 The proposal improves the conditions under which businesses and consumers can use cloud and edge services in the EU, as these make it easier to move data and applications from one provider to another without incurring any costs.
- 3.5 The EESC believes that further efforts must be made to consolidate the data economy and data governance. In particular, increasing and supporting data literacy is greatly needed for consolidating and developing the data economy so that people and businesses are aware and motivated to offer and provide access to their data in compliance with the relevant legal rules. This is at the basis of a sustainable data society, with the respect of fundamental rights, workers' rights, the rules of democracy and open and inclusive rights.
- 3.6 The EESC welcomes the provision concerning SMEs, which are now protected against unfair contractual terms thanks to the list of unilaterally imposed contractual clauses that will be deemed or presumed to be unfair. Clauses that do not pass this "unfairness test" will be not be binding on SMEs. In this regard, the Commission will develop and recommend non-binding model contractual terms, helping SMEs to negotiate fairer and balanced data sharing contracts with companies enjoying a significantly stronger bargaining position. The EU and the Member States should pay more attention to enhancing the capacity of European companies, especially SMEs and startups, to participate in and contribute to the data economy in Europe and globally. This requires more investments in education and training, research and development, and common data spaces that underpin data-based value creation. It is crucial to ensure that SMEs have the means to make use of the unfairness test and protect themselves from unfair contractual practices. Model contractual terms provided by the Commission are a necessary tool in this respect but need to be complemented with other forms of support from the competent national authorities.

- 3.7 The EESC believes that a more sectoral approach in the added value process, use and reuse of data is needed for better synergy with the Green Deal indicators and SDGs. Sectors that are lagging behind in integrating digital technologies should be stimulated and supported. Transparent and effective application of the regulation would be important for the traceability, interoperability and multimodality of the various activities of the supply chains, for example in the transport sector. In this regard, it would be useful to adopt specific guidelines to facilitate a uniform interpretation of the regulation among Member States.
- 3.8 The EESC supports the right for public institutions to access the data in case of emergency, where permitted by law. However, this should be monitored carefully in order to avoid abuses or endangering democratic values and the rule of law. Increasing resilience and ensuring fair competition while respecting human rights are factors to be taken into account in case of emergency. In general, public sector bodies are allowed to access data when necessary to protect the general interest, in a proportionate way that minimises the burden imposed on the individual or legal entities. It would be useful to support the establishment of independent trusted bodies that have the role of promoting the voluntary or mandatory sharing of data between businesses and governments from the technical, contractual, operational and financial point of view. These organisations could also act as dispute-settlement bodies.
- 3.9 The EESC believes that the Data Act proposal should take into account the impact on the labour market. It has to be considered that new skills and competences are lacking, especially the in the case of employees from micro, small and medium-sized enterprises. Improving working conditions, ensuring job stability and career predictability are elements that can ensure the consolidation of the data economy in the future and should be constantly taken into consideration.
- 3.10 The EESC welcomes the main purpose of this proposal, which is to ensure access to the data economy and data market without discrimination as well as to offer opportunities of access for all businesses and persons, regardless of the region. Therefore, guaranteeing high-speed broadband and high-capacity networks within the EU and building multiregional internet infrastructures for gathering, use and reuse of data should be duly taken into account.
- 3.11 The EESC considers the disruptive growth and increase of digital risks, together with the public and private infrastructures using digital technologies, to be important incentives for intensifying control of the proper implementation of the Data Act, especially concerning the management of data.
- 3.12 The EESC believes that the protection of personal data, together with the protection of digital identity and privacy, are essential aspects of data governance directly linked to respect for human dignity and fundamental rights. For this reason, it would be important to recognise and guarantee property rights for personal data in order to enable European citizens to control the way their data are used<sup>1</sup>. Online activities should only be monitored when there is knowledge and express consent about the further use of that data, in accordance with relevant legal rules.

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<sup>1</sup> [OJ C 286, 16.7.2021, p. 38.](#)

#### 4. **Specific comments**

- 4.1 The EESC welcomes the proposal, in line with the needs of the digital economy, to remove barriers to a well-functioning internal market for data and to promote a fair exchange by setting a harmonised framework. In this regard, it would be necessary to comply with EU security and cybersecurity rules in accordance with the objectives of EU strategic autonomy and technological independence.
- 4.2 Disadvantaged groups and regions which are isolated and have poor access to the internet should also be supported and assisted from the economic point of view in order to benefit from the opportunities of the data economy.
- 4.3 The EESC highlights the need for Member States to further improve the efforts to support companies, especially SMEs to create, consolidate and use data infrastructures, competences for employees and expertise, using EU structural funds and NextGenerationEU. Training for SMEs for digitalisation of their activities should be improved. Subventions and fiscal incentives in this regard could also be delivered by the Member States.
- 4.4 The data economy can not only deliver high quality job opportunities especially for youth, vulnerable groups or 'not in education, employment, or training' (NEETs) but also improve labour conditions. This process will contribute to reducing digital inequalities and increasing the competitiveness of the data economy at European level.
- 4.5 The EESC believes that ensuring fair competition in the European market between various actors and access to data is crucial. In particular, fair distribution of costs and added value within the data supply chain including all actors is relevant and important. Big companies, especially cloud service companies which concentrate a high amount of market power, should be controlled to eliminate various abuses.
- 4.6 The EESC believes that investing in the managerial and operational capacity of the competent public authorities is crucial for ensuring proper implementation of the Data Act. A proper amount of financial resources should be allocated for competent authorities to guarantee an adequate level of human, technical and financial resources.
- 4.7 The EESC recognises the importance of a cooperative model for establishing data management and exchange as a way of favouring micro, small and medium-sized enterprises, self-employed workers and the professions<sup>2</sup>.
- 4.8 The EESC points out that it would be important to preserve the full protection of citizens' rights when ensuring the EU's economic competitiveness. In particular, it would be important to guarantee a high level of privacy and security, the respect of safety and ethical standards, multiple and sufficient conditions for data functionality, cybersecurity procedures and the proper storage of data on EU territory (and owned by the EU) in spaces and certified locations.

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<sup>2</sup> [OJ C 286, 16.7.2021, p. 38.](#)

- 4.9 The EESC suggests evaluating the enlargement of the scope of the regulation in order to covers all physical products that obtain, generate or collect data concerning their performance, use or environment and that are able to communicate data via a publicly available electronic communications service. In addition to a broad spectrum of IoT equipment, this definition should also include personal computers, tablets, smartphones and other similar connected devices.
- 4.10 The EESC believes that users and data recipients should have unhindered access, while respecting intellectual property rights and/or trade secrets, to all data which is essential to the functioning, repairing or servicing of connected products and related services.

Brussels, 15 June 2022

Christa SCHWENG

The president of the European Economic and Social Committee

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