



POLITICAL  
INTELLIGENCE

# The EU Data Act Overview of the Proposal & Stakeholder Reactions

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# About the Data Act

The **Data Act proposal** consists of new rules on who can use and access non-personal data generated in the EU across all economic sectors. The Act will ensure fairness in the digital environment, stimulate a competitive data market, open opportunities for data-driven innovation and make data more accessible for all. It will lead to new, innovative services and more competitive prices for aftermarket services and repairs of connected objects.

The Data Act proposal follows the **Data Governance Act**, both resulting from the February 2020 **European strategy for data**, which aims to make the EU a leader in our data-driven society. While the Data Governance Act creates the processes and structures to facilitate data sharing by companies, individuals and the public sector, the Data Act clarifies who can create value from data and under which conditions.

These initiatives aim to unlock the economic and societal potential of data and technologies in line with EU rules and values. They will create a single market to allow data to flow freely within the EU and across sectors for the benefit of businesses, researchers, public administrations, and society at large.

The Commission notes that data is a non-rival good: many people can access them at the same time and they can be consumed over and over again without impacting their quality or running the risk that supply will be depleted. While the volume of data is constantly growing, 80% of industrial data is never used. The Data Act will address the legal, economic and technical issues that lead to data being under-used. The new rules will make more data available for reuse and are expected to create €270 billion of additional GDP by 2028.

The proposal for the Data Act includes:

- Measures to allow users of connected devices to gain access to data generated by them, which is often exclusively harvested by manufacturers; and to share such data with third parties to provide aftermarket or other data-driven innovative services. It maintains incentives for manufacturers to continue investing in high-quality data generation, by covering their transfer-related costs and excluding use of shared data in direct competition with their product.
- Measures to **rebalance negotiation power for SMEs by preventing abuse of contractual imbalances** in data sharing contracts. The Data Act will shield them from unfair contractual terms imposed by a party with a significantly stronger bargaining position. The Commission will also develop model contractual terms in order to help such companies to draft and negotiate fair data-sharing contracts.
- Means for **public sector bodies to access and use data** held by the private sector that is necessary for exceptional circumstances, particularly in case of a public emergency, such as floods and wildfires, or to implement a legal mandate if data are not otherwise available. Data insights are needed to respond quickly and securely, while minimising the burden on businesses.
- New rules **allowing customers to effectively switch** between different cloud data-processing services providers and **putting in place safeguards against unlawful data transfer**.

**Consumers and businesses** will be able to access the data of their device and use it for aftermarket and value-added services, like predictive

maintenance. By having more information, consumers and users such as farmers, airlines or construction companies will be in a position to take better decisions such as buying higher quality or more sustainable products and services, contributing to the Green Deal objectives, according to the Commission.

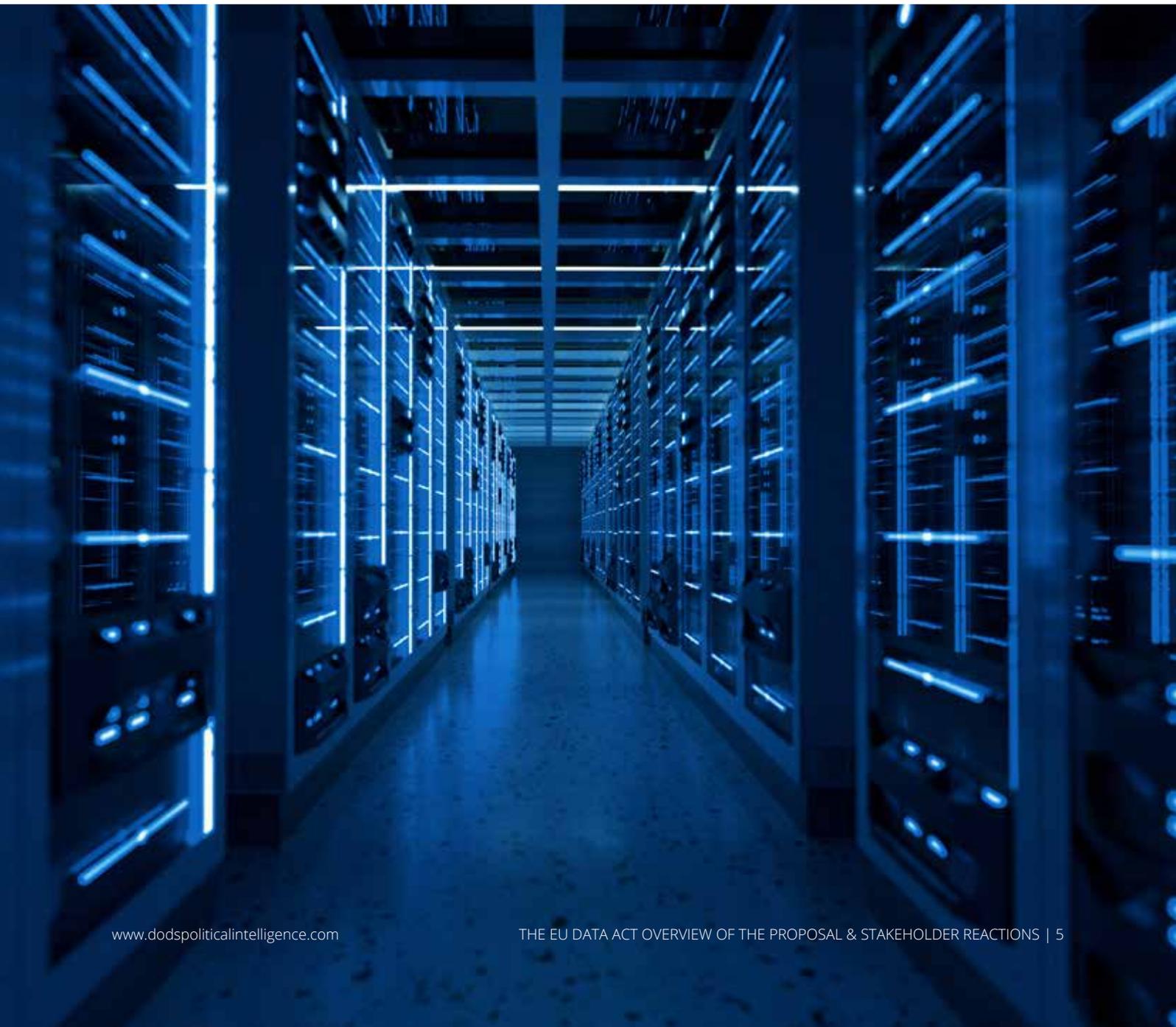
**Business and industrial players** will have more data available and benefit from a competitive data market. Aftermarkets services providers will be able to offer more personalised services, and

compete on an equal footing with comparable services offered by manufacturers, while data can be combined to develop entirely new digital services as well.

For more information, please click [here](#).

Please find the speech by Executive Vice-President Vestager on the Data Act [here](#).

For a good summary of the changes in the proposal, please click [here](#).





# Upcoming Legislative Process

The legislative proposal will now be discussed by the European Parliament and the Council of the EU by the ordinary legislative procedure.

In the **European Parliament**, the Industry, Research and Energy Committee (ITRE) is the lead Committee for the Data Act. **The Rapporteur is Pilar del Castillo Vera (EPP, ES)**. The only appointed shadow rapporteur so far is Miapetra Kumpula-Natri (S&D, FI). The IMCO, JURI and LIBE committees may deliver an opinion on this file. Information about the procedure is regularly updated [here](#).

In the **Council of the EU**, the Data Act has so far been discussed in the Working Party (WP) on Civil Law Matters, the WP on Intellectual Property and the WP on Telecommunications and Information Society.

Both institutions will now discuss the file in the respective committees/WP. There is no official timeline yet.

# Stakeholder Reactions

**BusinessEurope**, the corporate lobby, argues that for many years European companies have used data-sharing agreements that are simple, intelligible, secure, interoperable, and affordable. The EU Data Act should not become an obstacle for EU companies to invest and to grow by enforcing data sharing where no market failure exists. According to BusinessEurope, it is also very important not to undermine the confidentiality of trade secrets and to be consistent with the GDPR and IPR. The EU data-sharing framework should be underpinned through cloud infrastructure based on security, interoperability, portability, and openness principles to build trust for market participants to share, store and process data.

**DIGITALEUROPE** considers that the Data Act has the potential to unleash the incredible value of the data economy but only if regulation acts as an enabler, rather than as a set of restraining obligations. According to DigitalEurope, the Act should focus on incentivising data sharing and building trust through clear guidelines. Imposing strict obligations on everybody, based on perceived issues in specific sectors – such as voice assistants – while we are still in the very early stage of developing Europe’s data economy, will hinder achieving Europe’s Digital Decade goals, they argue. According to the Director-General, when it comes to data sharing, many companies – especially smaller ones – are still finding their feet. They need incentives and support. “Now is not the time to impose strict measures across the board that are designed to fix problems that simply don’t exist”. Data-sharing agreements must remain voluntary and commercially viable. On the other hand, DigitalEurope welcomes model non-binding contract terms which will be useful for start-ups and scale-ups, clarity on the use of data generated by connected devices and rules for governments’ access to data.

**BEUC**, the European Consumer Organisation, sees the new rules on data-sharing, including conditions and protections on data portability and accessibility, as essential to consumers. Consumers need to stay in control of how and with whom the data they helped generate - through their use of connected devices and digital services - is shared. This data is useful for all kinds of services in the economy that consumers might also benefit from, such as competing service providers or a wider choice of aftermarket services. According to BEUC Director General, consumers should have a simple-to-exercise data portability right, which extends beyond personal data, so that they can for example take all their data from one service to another if they want to. BEUC also stressed that the Data Act must not end up reinforcing Big Tech data monopolies.

**ETNO**, the Association representing Europe’s leading telecom operators, supports the objective of fostering data sharing and reuse. However, it is crucial that the measures avoid adverse effects on competition and innovation. According to ETNO, data exchanges should continue to be primarily based on voluntary agreements that address the specific needs of contractual parties, subject to general contract and competition law. Actions that facilitate data access by users of connected products, and that increase transparency and fairness in data marketplaces, are welcome. ETNO further stresses the need for sustainable business-to-government data sharing cooperation and suggests opening up possibilities in the cloud and edge market.

A **broad coalition** representing a wide range of major automotive aftermarket stakeholders, as well as operators in the mobility services value chain, consumers, and the insurance and tyre industries welcomes that the Data Act allows users to access the data generated through their use of connected

products, and assign rights of access to that data to a third-party service provider of their choice. They also welcome that aftermarket repair and maintenance services and access to diagnostics information are explicitly included. However, the coalition strongly believes that the Data Act will not be sufficient by itself for the automotive sector and calls for a sector-specific automotive legislation. The coalition also calls on the Commission to swiftly propose robust sector-specific legislation on access to in-vehicle data and resources.

**BSA | The Software Alliance**, welcomed efforts to remove regulatory impediments to data sharing and transfers, both within the EU and internationally. However, the BSA argues that organizations that hold data should retain full control over whether they share or transfer data, to whom, and on what terms. “Mandating organizations in the EU to share the data they own—or, equally, restricting them from sharing or transferring data to third countries—will not only prevent EU businesses from reaping the full benefits of the digital transition but will render them less able to innovate and compete effectively in global markets,” said the Director General. The BSA aims to help in making it easier for organizations to share data voluntarily, dispelling myths around third-country government access to non-personal data and ensuring that the new rules are consistent with EU trade commitments.

According to **CCIA**, the EU Data Act is well-intended but in need of improvements. CCIA notes that the proposal puts forward strict rules on companies designated as “gatekeepers” under the Digital Markets Act that are prohibited from receiving users’ data and from participating in this EU data market. It also notes that European and international companies subject to foreign laws would also face new restrictions to transfer non-personal data outside the EU, or to even process such data within the bloc. CCIA argues that the Data Act will serve the EU’s digital ambitions if it protects confidential business information, treats all companies equally, and avoids creating new data flow restrictions.

**ITI**, global tech trade association, strongly supports the goal to facilitate data access and use, which is essential to stimulate innovation and grow the European data economy. However, ITI urges policymakers to focus on incentives, rather than mandates, to increase data sharing between businesses based on existing industry best practices and with strong safeguards in place for the protection of intellectual property and trade secrets. The Data Act must also not unjustifiably restrict cross-border data flows, so as to avoid harming the global competitiveness of businesses in the EU. The Data Act should avoid imposing rigid standards for portability, while taking specific situations and contexts into account. ITI encourages reliance on voluntary global industry-driven interoperability standards.

**DOT Europe** deems that the Data Act has the potential to provide more legal certainty but cautions against this horizontal legislation being used as an exclusionist mechanism towards certain service providers as this could have a chilling effect on innovation. DOT Europe mentions proposals on cloud interoperability which might impact innovation in the cloud economy while there is already substantial work being done by industry to facilitate cloud switching. DOT Europe hopes that the proposal will foster innovation, build on existing success in data sharing and offer opportunities to all service providers in the EU.

According to the **World Economic Forum** (WEF), the proposal has highly controversial data sharing points - the proposed compelled business to government (B2G) data sharing for public good may have sweeping implications without clear parameters. The rules must be balanced and appropriate so as not to create a chilling economic effect and instead achieve a future-proof human-centric data economy.

While **Ecommerce Europe** generally welcomes the idea of unlocking the potential of the data economy with a view to making the EU a global leader in the

market, it is convinced that a strict regulatory regime will not help create a competitive EU data economy. The key to a successful data-driven society is, according to Ecommerce Europe, a well-functioning incentive system built on best practices from the industry. They urge policymakers to preserve economic incentives for all market operators and consider sector-specific characteristics rather than one-size-fits-all rules. Ecommerce Europe has concerns regarding the mandatory nature of the data access requirements. They believe that data sharing should occur on a voluntary partnership basis and that a clear and comprehensive list of conditions under which public sector bodies can request such access should be included in the legislation. The Data Act should further consider important principles such as feasibility, privacy, security, intellectual property and the protection of trade secrets.

**The American Chamber of Commerce to the EU** is convinced that the Data Act can strengthen Europe's competitiveness and help achieve its digital transformation objectives. However, AmCham EU is concerned that some of the provisions risk disrupting functioning data sharing and processing models and imposing unjustified and disproportionate mandatory sharing and portability requirements. They may also hinder collaboration with international partners. The new obligations should be realistic, balancing out the technical complexity of implementing new requirements with the need to foster users' trust and serve customers' interests. They should also recognise successful industry-led initiatives that meet similar objectives.

**Orgalim** supports the Data Act's overarching objective to foster Europe's data economy but argues that data sharing needs to be incentivised and not imposed, and therefore it is key that the industry is fully involved in developing a functioning and viable framework for the data economy. It also notes the possibility for public sector bodies to get access to specific business data and that foresees limitations to international data transfers, with potentially far-reaching negative consequences for Europe's data economy. Orgalim supports the facilitation of data access and use in business-to-business (B2B) and business-to-government (B2G) situations. It believes that the role of the legislator in this field should be focused on measures that would encourage and foster B2B and B2G data sharing with "freedom of contract" and "respect for intellectual property rights" as the guiding principles.

**FIA**, the Fédération Internationale de l'Automobile, strongly welcomes the Data Act proposal and its intention to make the sharing of data a common practice across different actors, and to put consumers at the centre of the process. According to FIA, the proposal is a step forward towards reaching fair, reasonable, and non-discriminatory access to data. They look forward to an update of vehicle type-approval legislation, including access to vehicle functions and resources, that supports the implementation of these principles in the context of connected cars and mobility services.

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