



Council of the
European Union

Brussels, 16 May 2022
(OR. fr)

8577/22

LIMITE

TELECOM 174
COMPET 270
MI 322
DATAPROTECT 116
JAI 554
JUSTCIV 52
PI 45
CODEC 571

**Interinstitutional File:
2022/0047(COD)**

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. Cion doc.:	6596/22
Subject:	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) - Progress report

I. INTRODUCTION

1. On 23 February 2022, the Commission adopted the proposal for a Regulation laying down harmonised rules on fair access to and use of data (Data Act)¹. Following the Data Governance Act, this is the second in a series of measures proposed by the Commission, as announced in the 2020 European strategy for data².

¹ 6596/22.

² [COM/2020/66 final](#).

2. The main objectives of the Commission proposal, which is based on Article 114 TFEU, are 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. It is a horizontal piece of legislation which should soon be supplemented by additional legislation for specific sectors. More specifically, the proposed Data Act aims to facilitate access to and the use of data by consumers and businesses by increasing legal certainty around the sharing of data generated by the use of products (e.g. the Internet of Things), to establish rules to ensure fairness in data sharing contracts and to allow public sector bodies to use data held by enterprises in certain situations where there is an exceptional data need. The proposal also aims to facilitate switching between providers of data processing services, puts in place safeguards against unlawful data transfer by cloud service providers and provides for the development of interoperability standards for data to be reused between sectors.
3. In the European Parliament, the Committee on Industry, Research and Energy (ITRE) has been designated as the committee responsible for negotiations on the Data Act. In March 2022, the ITRE Committee appointed Pilar del Castillo Vera (EPP, Spain) as rapporteur. However, the European Parliament is still in the process of deciding on the competences and modalities of participation by other committees (IMCO, JURI and LIBE).
4. The European Economic and Social Committee and the European Committee of the Regions were invited to deliver their opinions on the proposal on 29 March 2022 and on 12 May 2022 respectively. The opinions are still pending.
5. On 5 May 2022, the European Data Protection Board and the European Data Protection Supervisor (EDPS) issued a joint opinion on the proposal³.

³ [EDPB-EDPS Joint Opinion 2/2022 on the Proposal of the European Parliament and of the Council on harmonised rules on fair access to and use of data \(Data Act\)](#).

II. WORK WITHIN THE COUNCIL

6. Within the Council, the proposal has been examined by the Working Party on Telecommunications and Information Society (hereinafter ‘the TELECOM Working Party’). The TELECOM Working Party examined the proposal at its meetings on 1, 10, 22, 29 and 31 March, 5 and 26 April and 3 May 2022. During those meetings, the Commission presented the entire text of the proposal in detail, together with the accompanying impact assessment. Delegations were able to ask their initial questions and quickly exchange views on most aspects of the proposal. **Thus, at the meeting of the TELECOM Working Party on 3 May 2022, the French Presidency completed the first reading of the proposed Data Act.**
7. In addition to the work carried out within the TELECOM Working Party, the French Presidency organised three workshops with the participation of the Commission and experts from the capitals, on the basis of the questions and requests for clarification submitted in advance in writing by delegations. The workshops took place on 13, 20 and 25 May and enabled delegations to take a closer look at the topics covered by the Data Act, while allowing for direct interaction between capital-based experts and the Commission. The workshops were highly appreciated by delegations and praised for having provided the necessary clarifications on the manner in which some of the proposed provisions could work in practice.
8. On 25 May 2022, the French Presidency asked Member States to submit their initial drafting suggestions and written comments on the text of the proposal as a whole by 10 June 2022.

9. Although discussions on the proposed Data Act are still at a very early stage within the TELECOM Working Party, most Member States welcomed the proposal and its main provisions as an important step in the development of the European data economy. At this stage of the discussions, several high-level issues have already been identified and are expected to require further examination in the future:

Scope

- a) A number of delegations questioned the choice made in the proposal as regards the scope, and in particular the decision to focus only on Internet of Things data and to exclude data from other products from the scope of certain chapters. Such an approach could be considered too narrow and, for this reason, this topic will merit further discussion. At the same time, other chapters seem to address all types of data, so it might be necessary to specify more explicitly in the proposal for a Regulation which parts of the proposal cover which types of data.

Definitions

- b) It was also pointed out that a number of terms used in the proposed Data Act have been given new definitions, even though they have already been defined in other related legislation such as the GDPR or the Data Governance Act. A further discussion will be needed to determine whether these new definitions of the same terms are justified and whether a return to the existing definitions might not be a more appropriate option. In addition, some additional terms may need to be defined to ensure that the provisions proposed are interpreted in a uniform manner.

Interaction with existing horizontal and sectoral legislation

- c) The relationship between the proposed Data Act and other relevant horizontal legislation, such as the General Data Protection Regulation, the free flow of non-personal data and the Data Governance Act, will need to be further examined, for example as regards the role of the various committees set up under those Regulations. A key issue to be analysed will be the competence of the future bodies designated at national level when monitoring cases which come under several different regimes at the same time.

IoT (Internet of Things) data

- d) It was noted by some delegations that the provisions concerning the allocation of value along the entire value chain of the Internet of Things, as currently proposed in the Data Act, may need to be adapted to take into account the specificities of the different sectors and the need to protect intellectual property rights. Many delegations expressed a strong desire to clarify the practical arrangements for the implementation of data sharing. In that regard, they consider that it would be useful to further clarify the terminology.

B2G data sharing based on an exceptional need

- e) Some delegations consider that the definition of ‘exceptional need’ is particularly broad and refers to two very general and rather vague concepts of public emergency and public interest. In order to ensure uniform application of the B2G provisions, it will be necessary to examine in more detail how these concepts should be understood.

Switching between data processing services

- f) A number of Member States expressed concern that a single period of 30 days, which could be extended to six months, would not be an appropriate time frame for all cloud switching cases. Therefore, more precise adjustments will be needed to ensure that the provisions in question are as clear as possible. The discussions also revealed a genuine interest in implementing ambitious switching measures for the benefit of European cloud users.

III. CONCLUSION

Coreper is invited to take note of this progress report from the Presidency, with a view to submitting it to the Telecommunications Council (TTE) at its meeting on 3 June 2022.
