

13 May 2022

FEEDBACK ON THE EU DATA ACT



COMMENTS

ACCIS is the voice of organisations responsibly managing data to help assess the financial credibility of consumers and businesses. Established as an association in 1990, ACCIS brings together more than 40 members from countries all over Europe as well as associates and affiliates across the globe.

ACCIS members collect and provide credit information or any other relevant data for creditworthiness assessments (CWAs) on consumers and businesses. ACCIS members include credit reference agencies, credit registers, business information providers and alternative credit reporting services providers.

ACCIS broadly welcomes the EU Data Act as it creates a fairer, more innovative, and more competitive data economy in Europe. We are however unclear as to the stated harmonising objective of the Regulation. The GDPR - that the EU Data Act builds upon - has not [yet] managed to harmonise data processing across the EU. Inconsistencies in how GDPR has been interpreted, transposed and enforced in Member States are having a negative impact on the credit information system i.e., our industry, unduly increasing the risk of consumer over-indebtedness and holding back innovation that would benefit consumers.

Some points of particular attention in the EU Data Act proposal are:

1. **Clarify scope on data access and use.** The proposed Regulation seeks to redefine rules and practices on data access and use in order to foster data (re)use. The draft Act's declared objective is to ensure fairness in how the value of data is allocated among actors who are active on different levels of the data value chain. Although the rules set out in the proposal are meant to be directly applicable to all sectors and across the EU as minimum standards, we are unclear how these rules will apply specifically to our industry - if they apply at all - and would welcome clarifications in that regard.
2. **Clarify "reasonable" compensation in data access and use.** The proposed Data Act also aims to set regulatory standards for the conditions of data access and use. When data sharing is mandated by national or EU rules, data holders will have to provide access on fair, reasonable and non-discriminatory (FRAND) terms. Notably, the proposal provides that any data-related compensation must be reasonable and must not discriminate between comparable categories of data recipients. The question as to what constitutes FRAND terms is complex and it would be necessary to clarify what "reasonable" means.
3. **Clarify fulfilment of prohibition to gain economic insights.** The proposal prohibits data holders from using the data generated by a product's use to gain insights about the economic situation of users or authorised third parties, or other similar business-sensitive information that could undermine their commercial position. The specifics of such information are not spelled out in the proposal. We would appreciate a clarification of how the European Commission would expect data holders to comply with that obligation.
4. **Restrict "exceptional circumstances" in B2G data.** Under the proposed framework, public bodies will be able to request access to business data in cases of exceptional need. The proposal published by the Commission contains a list of "exceptional needs". However, the recitals of the Data Act already note that the existence of a public emergency would be determined according to the respective procedures in the Member States, and hint that other situations may be covered by the concept of "exceptional need," such as the need for timely compilation of official statistics under specific conditions. We would support a water-tight definition of "exceptional circumstances" and an *ex ante* clarification of the scope of B2G data that could be covered by these provisions.
5. **Ensure consistent implementation and interpretation.** The proposed Data Act is meant to complement existing rights and obligations under data protection laws such as the GDPR and should be read in parallel with such laws. The Data Act aims to facilitate the exercise of certain rights that have proven to be difficult to exercise in practice, such as the right to data portability. Under the Data Act, the scope of the right to data portability is broadened and includes any data generated by the use of a product or related service regardless of the nature or origin of the data or, in relation to personal data, the legal basis for its acquisition under GDPR. It is of the essence that the Data Act and the GDPR are applied and interpreted in a consistent way that does not impact on legal certainty for business operations.

ACCIS members will continue monitoring this legislative proposal through the legislative process and provide comments as appropriate.

We thank you for your attention and are available to discuss about the issues raised in this document.

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