



Digitalisation - European Strategy for Data: Data Act and Data Governance Act

■ Why does it matter to intermediaries?

In addition to the General Data Protection Regulation (GDPR), the European legislators are working on implementing the European Strategy for Data which aims to create a single market for data in order to ensure that more data becomes available for use in the economy and society while keeping the people and companies who generate that data in control. The European Strategy for Data materializes through two pieces of legislations: the **Regulation on European data governance (Data Governance Act)** and the **proposed Regulation on harmonised rules on fair access to and use of data (the Data Act)**. While the Data Governance Act creates the processes and structures to facilitate data, the Data Act clarifies who can create value from data and under which conditions. **Both acts will apply across sectors and could impact insurance and financial intermediaries insofar as they receive and share data.**

■ State of play

The Data Governance Act

It was adopted on 30 May 2022 and entered into force on 23 June 2022. It will start applying on 24 September 2023. Its objective is to make more data available and facilitate data sharing across sectors and EU countries in order to leverage the potential of that data for the benefit of European citizens and businesses. The Act contains four broad sets of measures:

- Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data.
- Measures to ensure that data intermediaries will serve as trustworthy organisers of data sharing or pooling within the common European data spaces.
- Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
- Measures to facilitate data sharing (especially cross-border and cross-sector) and to enable the right data to be found for the right purpose.

The Data Act

On 23 February 2022, the European Commission published its proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act). In the framework of the European strategy for data, the Data Act complements the Data Governance Act by clarifying who can create value from data and under which conditions. The Data Act will notably set up rules on the use of data generated by connected devices.

The rules set up in the proposal should be directly applicable to all sectors, including the insurance distribution sector, and across the EU as minimum standards. In that regard, the Data Act will complement the general framework established by the GDPR and should be read in parallel with it. The proposed Data Act contains:

- Measures to increase legal certainty for companies and individuals who generate data on who can use such data and under which conditions.
- Measures to prevent abuse of contractual imbalances that hinder fair data sharing. These measures aim to protect SMEs from unfair contractual terms imposed onto them by entities enjoying stronger market positions.
- Means for public sector bodies to access and use data held by the private sector for public interest purposes.
- Rules allowing customers to effectively switch between different providers of data-processing services.
- The principle that whenever a data holder is obliged to make data available to a third party, such data must be shared under fair, reasonable and non-discriminatory terms. Under the proposal data holders would be able to require compensation for making data available, on a cost-based approach when the recipient is an SME.

Trilogue negotiations were initiated in March 2023 on the basis of the EP's report and the Council's position. The negotiations are ongoing and BIPAR will continue to follow the discussions on this proposal and the potential impact it could have on our sector.



■ BIPAR's position / key messages

- BIPAR focuses on the importance for the European Strategy for Data (and especially the Data Act) to achieve a level playing field between different players and to ensure a fair and equal access to data across all sectors. BIPAR also emphasizes the importance of considering data sharing in the context of competition law.
- BIPAR insists on the need for proportionality with regard to smaller entities that should not be subjected to unreasonable added burden or costs as not to put them at a significant disadvantage when compared to bigger entities.

■ Next steps

- The Data Governance Act will start applying on 24 September 2023.
- The trilogue negotiations regarding the Data Act will continue and should result in an agreement between the co-legislators. When such an agreement is reached, the text will need to be formally adopted before it can start applying.

■ Links

- [Data Governance Act](#)
- [Proposed Data Act](#)
- [EP's report](#)
- [Council's position](#)
- [Commission's website on the European Strategy for Data](#)
- [Commission's Communication on a European Strategy for Data](#)
- [BIPAR's website: dossier on digitalisation](#)