

The proposed Regulation on harmonised rules on fair access to and use of data, also known as the [Data Act](#), of February 2022, and the proposed [Data Governance Act](#) of November 2020, are both part of the overall 2020 **European strategy for data**.

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.

■ The Data Act

The Data Act aims to ensure fairness by setting up **rules regarding the use of data generated by connected devices**. While the Data Act is without prejudice to existing data access obligations, any future rules should be consistent with it. It will make more data available for the benefit of companies, citizens and public administrations through a set of different measures.

The rules set out in the proposal would be directly applicable to all sectors and across the EU as minimum standards, though future revisions of sectoral regulations may go beyond these rules.

The proposed Data Act will 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 GDPR right to data portability. Individuals and businesses will get more control over their data through a reinforced data portability right.

The Data Act introduces **the principle that whenever a data holder is obliged to make the data available to a third party, such data must be shared under fair, reasonable and non-discriminatory (FRAND) terms**.

Under the proposal, data holders would be able to require compensation for making data available, based on a cost-based approach where the data recipient is an SME, and prevent discrimination between comparable categories of data recipients. In this case, costs for the SME would be limited to the cost of making the data available. Where the recipients are larger companies, the parties would have the margin to negotiate a reasonable compensation (Article 9).

■ The Data Governance Act

The Act aims to make more data available and facilitate data sharing across sectors and EU countries in order to leverage the potential of data for the benefit of European citizens and businesses.

The EU aims to boost the development of trustworthy data-sharing systems through 4 broad sets of measures:

- 1) Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data.
- 2) Measures to ensure that data intermediaries will function as trustworthy organisers of data sharing or pooling within the common European data spaces.
- 3) Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
- 4) Measures to facilitate data sharing, in particular, to make it possible for data to be used across sectors and borders, and to enable the right data to be found for the right purpose.

The European Parliament and EU Member States have reached a political agreement on the Commission's proposed Regulation on European Data Governance. The new rules should apply 15 months following their publication in the Official Journal.



The draft Data Act is being discussed by the European Parliament and Council. Its formal adoption of the Data Act is expected by early 2024. The Commission has proposed that the new rules should apply 12 months following their publication in the Official Journal.

The EP rapporteur is Spanish EPP MEP Pilar Del Castillo Vera.

BIPAR will be monitoring the EP and Council readings. It will focus on the importance for 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. It is also important that data sharing is always considered in the context of competition law.