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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee/Council

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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

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**I. INTRODUCTION**

1. The Commission adopted the proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act) on 23 February 2022<sup>1</sup>. Following the Data Governance Act, it is the second of a set of measures put forward by the Commission as announced in the 2020 European strategy for data<sup>2</sup>. It is a horizontal piece of legislation, which is expected to be complemented soon with sector-specific provisions.

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<sup>1</sup> doc. 6596/22.

<sup>2</sup> [COM/2020/66 final](#).

2. The main objectives of the Commission proposal, 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. More specifically, the Data Act proposal 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. Internet of Things objects), to lay down rules to ensure fairness in data sharing contracts, and to provide for the use by public sector bodies of data held by businesses in situations where there is an exceptional need. The proposal also aims to ease the switching between providers of data processing services, puts in place safeguards against unlawful international governmental access and transfer of non-personal data from outside the EU, and provides for the development of interoperability standards for data to be reused between sectors.
3. In the European Parliament, the Committee for Industry, Research and Energy (ITRE) has been nominated as the committee responsible for the negotiations on the Data Act. The Rapporteur, MEP Pilar Del Castillo Vera (EPP, Spain) published her Draft Report on 14 September 2022. The Committee on the Internal Market and Consumer Protection (IMCO), the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) are associated. The final vote in the European Parliament is planned for March 2023.
4. The European Economic and Social Committee<sup>3</sup> and the European Committee of the Regions<sup>4</sup> were requested to provide their opinions on the proposal. These were delivered on 15 June 2022 and on 22 June 2022, respectively.
5. On 5 May 2022 the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) issued a joint opinion on the proposal<sup>5</sup>.

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<sup>3</sup> [CES0850/2022](#)

<sup>4</sup> [CDR1959/2022](#)

<sup>5</sup> EDPB-EDPS Joint Opinion [02/2022](#)

6. The European Central Bank issued an opinion on the proposal on 5 September 2022, on its own initiative<sup>6</sup>.
7. The Body of European Regulators for Electronic Communications issued an opinion on the proposal on 20 July 2022, on its own initiative<sup>7</sup>.

## II. WORK WITHIN THE COUNCIL

8. In the Council, the examination of the proposal has been carried out in the Working Party on Telecommunications and Information Society (hereinafter: WP TELECOM). The WP TELECOM started discussing the proposal in March 2022, under the French Presidency. After a detailed presentation of the proposal and of the accompanying impact assessment by the Commission, delegations held an early exchange of views on most aspects of the proposal. The French Presidency completed the first reading of the Data Act proposal in WP TELECOM on 3 May 2022.
9. In addition to the work carried out in WP TELECOM, the French Presidency organised three workshops with the participation of the Commission and experts from the capitals. The workshops provided an opportunity to address specific questions and requests for clarifications, while allowing for direct interaction between capital-based experts and the Commission.

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<sup>6</sup> [OJ C 402 19.10.2022, p. 0005](#)

<sup>7</sup> [BEREC High-Level Opinion on the European Commission's proposal for a Data Act](#)

10. On 25 May 2022 the French Presidency requested Member States to provide their initial drafting suggestions and written comments on the entire text of the proposal by 15 June 2022.
11. Based on Member States input, the Czech Presidency drafted the first compromise text, which was presented in WP TELECOM on 19 July, 5 and 15 September 2022. The proposed changes aimed to address the following high-level issues that remain at the core of the discussions in the Council:
- a) **Scope**: on the one hand, a clearer link between the different types of data and the specific chapters covering them was established (material scope). On the other hand, legal certainty was enhanced with regard to the territorial scope, in particular the limitation to users in the Union.
  - b) **Definitions**: several definitions were added either to align the text with the Data Governance Act ('personal data', 'non-personal data', 'consent' and 'data subject') or to clarify key concepts such as 'customer', 'digital assets', 'on-premise' and 'operators within data spaces'. Others were fine-tuned, where possible, although in some cases it still needs to be decided whether new definitions of the same terms are justified or whether reverting to existing definitions would not be a more appropriate option.
  - c) **Interplay with existing horizontal and sectoral legislation**: amendments throughout the whole text were made aiming at addressing the relationship of the Data Act proposal with other relevant legislation, such as the General Data Protection Regulation (GDPR), the Free Flow of Non-Personal Data and the Data Governance Act. These changes relate, for example, to the role of the various boards established under the different regulations and to the competence of national designated bodies when supervising cases falling simultaneously under the different regimes.

- d) **B2G data sharing based on exceptional need**: both the provisions and the scope of Chapter V were better defined, to limit their scope and provide for a clearer understanding of the concept of 'exceptional need' as well as of the notions of 'public emergency' and 'public interest'. Together with additional guarantees concerning, for instance, the data made available by public sector bodies to third parties or requests involving personal data, the aim is to ensure a uniform application of the B2G provisions.
- e) **Switching between data processing services**: a number of amendments addressed the obligations of providers of data processing services, which should not prevent customers from switching and porting all their data. Such obligations concern, for instance, removing obstacles inhibiting customers from maintaining functional equivalence or the customers' right to a high level of security throughout the porting process.

12. Following a rich exchange with delegations and taking into account Member States' additional oral and written input, the Czech Presidency drafted the second compromise proposal. The discussion in WP TELECOM started on 27 October and first covered a further delineation of the scope of the Regulation and new definitions, such as 'official statistics' and 'Union bodies'.
13. The discussion then focused on the newly introduced concept of 'readily available data' and the protection of the confidentiality of trade secrets. Particular attention was dedicated to clarifying the mechanism of 'reasonable compensation' for the data holder to make data available. Unfair contractual terms, the narrower scope of provisions related to B2G, the conditions for scenarios where exceptional need for data is not based or connected to public emergency and the requests for data for statistical purposes were also covered. Delegations also exchanged views on a separate date of application for provisions related to design obligations.

14. The analysis of the second compromise proposal continued on 8 November 2022. The proposed amendments aimed at making the provision concerning effective switching clearer and more widely applicable, in particular through a possible extension of the 30-day notice period for terminating the contract by the user to two months and by better defining the scope of technical switching obligations. Delegations were able to express their views also on a new safeguard against the possible loss of data during the porting process and some additions to facilitate interoperability, such as a specific reference to an online register of standards and open interoperability specifications.
15. Other issues covered include: the role, tasks and possible interactions between different national competent authorities, the notion of common European data spaces and several additional adjustments to align the provisions with the GDPR and the DGA.
16. In order to address persisting technical issues, on 15 November 2022 the Czech Presidency organised an online workshop with the participation of the Commission and experts from the capitals. The workshop was intended to address specific use cases of sharing of non-personal data under Chapters II and III of the Data Act. Furthermore, on the same day a meeting of WP TELECOM was held in the afternoon in order to discuss a number of additional topics where further clarifications were needed, notably as regards the interplay between the Data Act and other legislation (GDPR, the new Single Market Emergency Instrument (SMEI), Cyber Resilience Act). During the meeting some delegations indicated that some more reflection would still be needed on certain aspects of the proposal, in particular in order to clarify which products are in scope of Chapter II.
17. After introducing the second compromise text, the Czech Presidency set a deadline for additional written contributions by 18 November 2022. Based on Member States' input and taking into consideration the exchange at the WP TELECOM, the Czech Presidency will prepare the third compromise text and will consider if the text can be the basis for the Coreper mandate.

### III. CONCLUSION

The COREPER is invited to take note of this progress report from the Presidency, with a view to submitting it to the TTE Telecom Council at its meeting on 6 December 2022.

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