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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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)

Delegations will find attached document SWD(2022) 35 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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)

{COM(2022) 68 final} - {SEC(2022) 81 final} - {SWD(2022) 34 final}

A. Need for action

What is the problem and why is it a problem at EU level?

The overall problem is the insufficient availability of data for use within the European economy. This is mainly due to the lack of clarity on data rights, imbalances in negotiating power, limited access to fair and trustworthy cloud services, and a lack of cross-sector data interoperability in the EU. The problem affects a range of economic sectors and leads to the underutilisation of data at EU level, with negative consequences for consumer choice, innovation and public service delivery.

What should be achieved?

The objective is to maximise the value of data in the economy and society by ensuring that a wider range of stakeholders gain control over their data and that more data is available for use, while maintaining incentives to invest in data generation.

What is the value added of action at EU level (subsidiarity)?

Data value chains in the EU are structured largely in a cross-border way, with data both holders and users scattered across various Member States. The problems identified are therefore not specific to one particular Member State. Rather, they affect the entire single market. This is why coordinated EU action can add greater value to the European economy and to European society as compared to action taken by individual Member States.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

This initiative includes measures to increase legal certainty about access to data, prevent the abuse of contractual imbalances, facilitate the use of commercially held data by public sector bodies, facilitate switching between trustworthy data processing service providers, and establish a framework for efficient data interoperability.

The impact assessment considered three policy options. Option 1 involves minimal intervention, with non-binding measures to facilitate more efficient and more fairly balanced data access and use. Option 2 proposes a limited set of legislative measures to facilitate the use of data, while strengthening legal certainty on how and by whom data can be used. Option 3 proposes more far-reaching obligations in terms of the use of data by third-party businesses, consumers and public sector bodies, as well as stronger provisions in terms of obligations on data service providers and interoperability requirements.

The analysis concluded that Option 2 is the preferred option. Why? Because it would enhance legal certainty about data (including *sui generis* database rights for machine-generated data), increase the amount of data available for reuse and give consumers and companies greater control over data, while limiting data holders' costs for making data more accessible and maintaining incentives to generate data. It would also introduce a legislative approach to the issue of the fairness and trustworthiness of data-processing infrastructures, combined with industry-led standardisation of technical interoperability for cloud switching.

What are different stakeholders' views? Who supports which option?

Most stakeholders confirm that the obstacles identified in the impact assessment do exist. However, opinions on what to do about them are divided: data holders (e.g. car manufacturers), wary of regulatory intervention, would like to see solutions that only target clear market failures. On the other hand, small and medium-sized enterprises (SMEs) that use data (especially those active in aftermarket services) call for a right to access data and are in favour of reviewing the *sui generis* right. Consumer organisations also stress the need to empower consumers to choose their service providers. Stakeholders are, however, in agreement when it comes to the necessity of EU rules to ensure portability in the cloud and to safeguard cloud users against unlawful access to their data from outside the EU. They are also in favour of alleviating the administrative burden by streamlining the rules on business-to-government data sharing.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

The preferred option would increase EU-27 GDP by 1.98 percentage points by 2028, and increase government revenues and investment activities by EUR 96.8 billion and EUR 30.4 billion respectively in the period 2024-2028. This initiative would also create an additional 2.2 million jobs. The estimated benefits for each intervention area are as follows:

- empowering consumers and companies using connected products and related services and increasing the availability of data for commercial use and innovation between businesses would generate up to EUR 196.7 billion a year by 2028;
- improving contractual fairness would generate an additional EUR 7.4 billion a year;
- facilitating the use of commercially held data for public interest purposes: reduced administrative burden of up to EUR 155 million a year;
- facilitating access to fair and trustworthy cloud and edge services: an additional EUR 7.1 billion a year.

What are the costs of the preferred option (if any, otherwise of main ones)?

The costs of the preferred option include:

- the obligation of manufacturers to allow access in the business-to-business/business-to-consumer context, technical infrastructures: EUR 410 million in one-off costs and EUR 88 million in recurring costs;
- ensuring contractual fairness: EUR 69 million a year;
- business-to-government data sharing: EUR 552.5 million in one-off costs and EUR 78.1 million in recurring costs;
- interoperability requirements: EUR 1 million (for each standard).

What are the impacts on SMEs and competitiveness?

SMEs are among the main beneficiaries of the Data Act. The new rules would bring more data resources within their reach by re-balancing the distribution of data value across market actors, reinforcing their ability to compete and to continue doing their business. Addressing the imbalance in bilateral contractual relations alone would boost the SMEs' profits by around EUR 5.2 billion a year.

Will there be significant impacts on national budgets and administrations?

The initiative would not impact national budgets, except for the measures in the context of business-to-government data use. The support study to the impact assessment estimated that the setting up of national structures to streamline business-to-government data use would cost EUR 21.6 million a year to public administrations in Member States.

Will there be other significant impacts?

The initiative would improve public services and policies, allowing a more effective and rapid response to public emergencies. It would also give consumers and companies greater control over the use of the data they generate and enhance their active participation in the digital economy. Finally, greater business and manufacturing efficiency should result in less waste, lower energy consumption and fewer CO_2 emissions.

Proportionality?

This initiative is designed to address cross-border and cross-sectoral problems with data access and use. From this point of view, it is proportionate to the desired outcome and affords sufficient flexibility for additional national and sector-specific measures.

D. Follow up

When will the policy be reviewed?

The policy will be reviewed 4 years after the adoption of the Data Act.