

# The (proposal for a) Data Act

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about me:

Adviser for Civil Liberties, Justice and Home Affairs,  
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# Data

Not already fully regulated with the  
General **Data** Protection Regulation?

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## EU Data Strategy



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# Data Strategy

## Rules

- Data Governance Act (done)
- Data Act (almost done)
- "Data Spaces" (in the making)  
manufacturing, European Green Deal, mobility,  
health, finance, energy, agriculture, public  
administration, skills

## Infrastructure

- high performance computing (HPC) etc.

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# The Data Act

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## Aim?

"ensuring **fairness** in the allocation of value from data among actors in the data economy and to foster **access** to and use of data."  
(COM, explanatory memorandum)

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## Core elements

### **Type of legislation**

→ Regulation (*why the "Act"?*)

### **Scope**

→ Data generated by the use of connected devices

### **Rules**

→ Rights for users

→ Obligations for data holders

→ Access by public authorities

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## Where are we procedurally?

- legislative proposal, 23.2.2022
- EP & Council adopted their versions early 2023
- Trilogue since 29.3.2023
- 15 technical meetings, 2 political
- last political trilogue foreseen: 28.6.2023

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## Bit of a complex structure

- four EP committees involved
  - ITRE lead
  - IMCO for consumer protection
  - LIBE for personal data protection
  - JURI for IP protection & contract law
- but we mainly just took turns :-)

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## Main elements and debates

### **Chapter II: Data generation on devices**

- COM proposal was unclear about the basis on which data is generated
- Consent? Contract? Legitimate interest?
- We now distinguish clearer between
  - a) purchase of a device
  - b) contract for related data services
- unbundling

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## Main elements and debates

### **Chapter II: Data generation on devices**

- Obligation for manufacturer to make data accessible to the user from the device
- Obligation for data holder to make data available to the user
- Obligation for data holder to make data available to third parties designated by the user

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## Main elements and debates

### **Chapter II: Data generation on devices**

- Clarification where user is natural person (data subject)
- No right to process personal data based on Data Act alone, needs GDPR Art. 6
- But obligations on data holders and third parties = Legal obligation as per GDPR Art. 6(1)(c) together with Art. 6(3)
- In case of conflict, GDPR prevails.

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## Main elements and debates

### **Chapter IV: Unfair Terms prohibition**

- Unfair terms imposed unilaterally on SMEs shall not be binding.

### **Chapter VI: Switching between services**

- Lex specialis to Art. 15 and 20 GDPR (data access and data portability)
- porting obligations
- phasing out of switching charges

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## Main elements and debates

### **Chapter VII: International requests**

- Modeled after GDPR Art. 48, needs basis in Union law
- Comparable provisions in other laws now, e.g. DGA (reciprocity)
- Towards adequacy for non-personal data?

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## Main elements and debates

### **Chapter V: B2G data access**

- COM proposal: authorities can request data if they think they need it for their tasks
- For public emergencies, but also where
  - "the adoption of new legislative measures cannot ensure the timely availability of the data"
  - "obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders"

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## Main elements and debates

### **Chapter V: B2G data access**

- And all this includes personal data.
- Compare with law enforcement acces!
- EP: no way.
- EP: delete personal data from Chapter V
- final compromise:
- Only for public emergencies,
- with additional safeguards,
- maximum pseudonymised data

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## Main elements and debates

### **Last open issue: Trade secrets**

- Manufacturers lobbied Member States successfully to prevent data access where it could lead to breach of trade secrets
- Not about personal devices, but large machines (Airbus)
- Why should an airline not get data generated by planes it owns?
- To be seen on 28th June...

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# Questions?

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