



*Employers entrusted to deliver
Sustainability Growth Innovation*

Position Paper

Proposal for Data Act

Brussels, 13 May 2022

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The Data Act is an essential pillar of the European data strategy. It aims to create a broader, more open European data market, governed by conditions set by the European Union, and shared between the various players. It will make a major contribution to achieving Europe's digital transformation goal during this decade, by establishing rules for the fair use of data generated by the "Internet of Things".

SGI Europe welcomes the Commission's proposal on a Data Act and the challenges raised by the proposed regulation, which will stimulate the development of a market for data from competitive connected objects and innovation based on this data.

With this contribution, SGI Europe puts forward the key messages from employers and providers of services of general interest (SGIs) from across Europe. As one of the cross-industry EU social partners, SGI Europe represents its members active in, amongst others, energy, healthcare, telecommunications, waste management, and water distribution, amongst others. By providing services essential to the well-being of EU citizens and businesses, SGIs facilitate upward convergence across Europe while providing the infrastructures at the heart of the digital and green transition.

In a fast-developing world, where data is becoming one of the most essential assets, ensuring fairness in allocating value from data among all actors is of paramount importance. SGI Europe is also convinced of the importance and the need to encourage the widespread use of Internet of Things data. However, as currently drafted, the scope and objectives of the proposal are not clearly identified. It is indeed difficult to determine precisely what data is covered by the proposal, although the stated objective of the Commission is to tackle data from the Internet of Things. It is necessary to specify the scope of the Data Act which therefore currently lacks clarity and precision.

Furthermore, some definitions, which are very broad, could create risks of legal uncertainty. The definitions of "products" and "related services" seem broader than the intended field but do not define what a connected object or the Internet of Things (IoT) is. We insist on the importance of mentioning technological neutrality to avoid disparities in treatment which would be linked more to types of use rather than to a type of technology, which alone can guarantee a level playing field. This imprecision on "connected objects" is particularly troublesome for companies given the obligations arising from these definitions in the various chapters of the Data Act, but also from the fact that certain sectoral texts seem to want to rely on the Data Act.

The stated objective of the Data Act is to harmonize the conditions for the provision and use of industrial data generated in the EU. This text does not sufficiently define the notion of "data" in the specific context of the IoT. A clearer definition of the content and scope of non-personal data from the Internet of Things is therefore necessary. It is also necessary to distinguish raw data (as a result of an isolated analogue measurement, unprocessed and uncontextualised) from processed data (information interpreted and contextualised with regard to a purpose). In the latter case, the data results from the transformation of raw data due to know-how or experience to respond to a specific use, which requires an initial investment (financial, technical or human) resulting from the know-how of a company in order to respond to a specific use, which requires an initial investment (financial, technical or human). The sharing of such data could therefore have serious consequences on the activity of the holding company.

Regarding sharing of personal data, SGI Europe sees it fundamental to keep the human centric approach, preserving the rights and freedoms of the individuals. Sharing of personal data, generated by the use of a

product or service by any entity other than data subjects, that allow precise conclusions to be drawn concerning their private lives, should be clearly limited and restricted.

Finally, as pointed out by the European Commission's Regulatory Scrutiny Board, the notions of "public emergency" and "exceptional need" lack precision and should be able to be better distinguished.

As long as the definition of "data holder" is limited to the manufacturers, SGI Europe welcomes Article 3.1. inserted **obligations to manufacturers (data holders) to design products** so that data generated by the use of the products can be easily and securely accessible. This is a prerequisite for an effective sharing of meaningful data and preventing the circumvention of rules from the very beginning.

Since the Commission's proposal aims to **strengthen companies with weak negotiating positions**, SGI Europe sees it positively that the scope of B2C and B2B data sharing obligations is limited only to manufacturers which qualify as large enterprises. Moreover, we especially appreciate that the proposal **excludes publicly owned small enterprises from the data-sharing obligations by referring to Article 2 of the Annex to Recommendation 2003/361/EC**. Similarly, we are glad to see such formulation in Article 13 concerning **unilaterally imposed contractual terms** on micro, small or medium-sized enterprises and in Article 9, which sets out the compensation for making data available.

On B2G data sharing, a framework on data of general interest should ensure that the sharing of company data takes place under conditions that guarantee trust. It is imperative to respect the rights of the natural and legal persons concerned and to ensure fair competition between economic players. We support the principle of making company data, public or private, available to public entities, provided that this is done within strictly delimited frameworks, for uses clearly defined upstream, with real reflection concerning the fair remuneration of the contributors. However, as it stands, the proposed regulation does not seem to offer all the technical guarantees necessary to secure the data before, during and after it is shared with public sector bodies.