



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Response to Department of Enterprise, Trade and Employment's Call for Views

Draft Data Act

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1 Introduction

Background and Context

The Commission for Communications Regulation ('ComReg') is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio-communications and broadcasting transmission). ComReg has a range of functions and objectives in relation to the provision of Electronic Communications Networks and Services ('ECN' and 'ECS') in accordance with European Union ('EU') and national legislation.

ComReg welcomes the opportunity to respond to the Call for View's by the Department of Enterprise, Trade and Employment and to make some preliminary comments on the European Commission's published proposal COM/2022/68 for a Regulation on harmonised rules on fair access to and use of data (the "Draft Data Act").

ComReg acknowledges the increasing usage of data and its growth potential and welcomes the objectives set out in Draft Data Act presented by the European Commission, and the benefits that it will generate for both individual and business users by making data available for their use and re-use, in particular with regard to stimulating a competitive data market, and reinforcing data driven innovation. ComReg notes that the Data Act is the second main legislative initiative proposed as part of the Commission's Data Strategy and accompanies the Data Governance Act. Taken together, the Data Act and the Data Governance Act ('DGA') aim to maximise the value of data throughout the European Union by ensuring that a wider range of stakeholders gain control over their data and that more data is available for innovative use.

In terms of enforcement, ComReg notes that Article 31 of the Act, which references switching, suggests that enforcement should be entrusted to an authority with experience of data and electronic communications services. Here, it is important to mention that ComReg operates within a network of ECS regulators from across Europe through the Body of European Regulators for Electronic Communications ('BEREC'). BEREC delivers opinions, recommendations, common positions, best practices, methodologies, and issues guidelines on a variety of topics related to regulation within the sector. BEREC has submitted its own preliminary views on the Draft Data Act which ComReg has also contributed to. BEREC will analyse these proposals in the coming months with respect to their relevance for the areas of work of regulators for electronic communications incl. related areas such as data protection and privacy. BEREC will share the expertise it has gained in applying similar provisions in the electronic communications sector, for example, regarding end-user protection and dispute settlement, which could provide inspiration to EU institutions involved in the finalisation of the Data Act.

2 Draft Data Act

The Draft Data Act notes that “*data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product*”. To that end, the Commission opted for “*a general approach to assigning access and usage rights on data*” instead of awarding exclusive rights of access and use, with the draft legislation setting out a framework to govern the relationships between the various actors.

The new regulatory framework would impose business-to-consumer (B2C) and business-to-business (B2B) data sharing obligations on manufacturers of products (e.g., connected devices) and related services.

The draft Data Act would lay down harmonised rules on:

- making data generated by the use of a product or a related service available to the user of that product or service. This means that users (both individuals and businesses) would benefit from a new right to access the data generated from the use of connected devices;
- making data available by data holders to third party data recipients at the request of a user. In practice, the draft Data Act would establish an enhanced data portability right, complementing the existing one under article 20 of the General Data Protection Regulation;
- making data available by data holders to public sector bodies or EU institutions, based on an exceptional need “for the performance of a task carried out in the public interest”. This would imply mandatory business-to-government (B2G) data sharing in exceptional instances (e.g. public emergencies).

The draft regulation also aims to:

- ease the switching of providers of data processing (e.g., cloud and edge) services;
- put in place safeguards against unlawful data transfer without notification by cloud service providers;
- provide for the development of interoperability standards for data to be reused between sectors.

3 Article 31

Article 31 of the draft Data Act allows Member States to establish new independent authorities or rely on existing independent authorities for the application and enforcement of the Act. Paragraph 2 (c), related to switching, indicates specifically that the enforcing national authorities (at least in respect to Chapter VI of the Regulation, which relates to switching) shall have experience in the field of data and electronic communications.

Alongside authorities with experience in data and electronic communication services, Article 31 also makes explicit reference to data protection authorities as well as other sectoral authorities as far as sector specific data should be concerned.

Although ComReg welcomes and supports the broad aims and objectives set out in the Draft Data Act, there are three noteworthy areas on which ComReg would like to comment.

First, in Article 31, the Draft Data Act explicitly references Competent Authorities with experience in the field of data and electronic communications services. To quote, “*the national competent authority responsible for the application and enforcement of Chapter VI [Switching Between Data Processing Services] of this Regulation shall have experience in the field of data and electronic communications services*”. However, it is unclear whether this refers to a single competent authority with expertise in data and electronic communication services, or multiple Competent Authorities.

Second, Chapters VI and VIII discuss switching and interoperability respectively. Although ComReg does have experience in these areas it does not have direct experience with cloud service providers or data interoperability with respect to smart contracts which Chapters VI and VIII discuss. Furthermore, as a competitive instrument, switching is a tool familiar to most regulators as it enables choice and by extension competition in respective markets.

Third, it is important to understand the broad implications of connected / IoT devices and what these mean in terms of data. Estimates from the Commission suggest that the global IoT industry will be valued at an estimated €8trillion by 2030. Therefore, whilst these devices (cars, smart watches, home appliances, etc) are ‘connected’, the data generated through their use covers a wide range of sectors that are not traditionally or necessarily related to the telecommunications sector.

4 Concluding Remarks

ComReg welcomes the opportunity to engage with DETE on the European Commission's legislative proposals on the Draft Data Act.

ComReg views this proposal as a significant positive development. It represents an important step on the journey towards the EU's Digital Strategy by specifying who, other than the manufacturer or other data holder, is entitled to access the data generated by products or related services, under what conditions and on what basis.

ComReg would like to emphasise that the views presented in this document are preliminary. ComReg would welcome the opportunity to engage further with DETE as ComReg further assimilates these proposals and continues its work within BEREC and, indeed, as the proposals themselves develop.

BEREC will also analyse these proposals in the coming months with respect to their relevance for the areas of work of regulators for electronic communications. BEREC will share the expertise it has gained in applying similar provisions in the electronic communications sector, for example, regarding end-user protection and dispute settlement.