



EUROPEAN COMMISSION

Brussels, 14.09.2022  
C(2022) 6693 final

*Dear President,*

*The Commission would like to thank the Eerste Kamer for its Opinion on the 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}.*

*The Commission has carefully considered the questions raised by the Eerste Kamer in its Opinion and is pleased to offer the following clarifications.*

*The proposed Data Act aims to ensure that users of products and related services have access to the data generated by their use. Where such data cannot be directly accessed by the user, it shall be made available by the data holder to the user upon simple request. According to the proposal, where the manufacturer of the product is the data holder, the latter can only use any non-personal data generated by the use of a product or related service on the basis of a contractual agreement with the user. As such, the user is always in control of both personal and non-personal data generated by connected products, in relation to both data holders and third parties. However, the proposed Regulation does not prevent contractual conditions, whose effect is to limit or exclude the use of data, by the data holder. The proposed Data Act also seeks to ensure that certain enterprises have sufficient data to fuel data-based innovation, while respecting the investment incentives of data holders (i.e. usually manufacturers of connected devices), and to enter the market for aftermarket services more easily. This will increase consumer choice and, by extending the lifespan of connected products, will contribute to the Green Deal objectives.*

*The proposed Data Act lays down a horizontal framework for the access to and use of data across all sectors. Specific categories of data have therefore not been excluded from the scope of the act. However, where necessary, sectoral legislation may build upon the framework which will be created by the proposal.*

*The proposed Data Act does not affect the applicability of European Union law on the protection of personal data. It builds upon the high level of protection of personal data provided by the data protection acquis and upon the safeguards provided by the General Data Protection Regulation.*

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*The proposed Data Act does not create any exceptions from the rules of the General Data Protection Regulation and will not lower the level of protection provided therein. This applies in particular to the right to data portability that allows data subjects to move their data between controllers who offer competing services, one of the areas where the opinion of the European Data Protection Board expresses some concerns.*

*In the context of business-to-government data sharing, requests for access to data under the proposed Data Act should concern, insofar as possible, non-personal data. In the exceptional cases where a request would concern personal data, both public sector bodies and data holders would have to handle personal data in compliance with the General Data Protection Regulation.*

*Furthermore, to ensure that the responsibilities of data protection authorities are respected, the proposed Data Act provides a mechanism for coherent enforcement and cooperation between data protection authorities and other competent authorities.*

*Discussions between the Commission and the co-legislators, the European Parliament and the Council, concerning the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Eerste Kamer and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Thierry Breton  
Member of the Commission*