



European Statistical  
Advisory Committee

## **The Data Act proposal and the use of private data for official statistics**

ESAC Doc. 2022/01

## **ESAC short analysis and recommendations**

ESAC is the European Statistical Advisory Committee of the European Union with the role of ensuring that users' requirements are taken into account in developing the European statistical programmes.

According to Decision No 234/2008/EC of the European Parliament and of the Council establishing the committee, ESAC shall also draw the Commission's attention to areas in which it may be necessary to develop new statistical activities and shall advise the Commission how to improve the relevance of the Community statistics to users, taking into account the costs borne by information providers and producers.

### **Context**

The Data Act is part of the comprehensive strategy of the European Commission, which aims to shape the digital future of Europe and to strengthen European sovereignty in this area. This strategy is broken down into several actions, including one which concerns data. Following on from the Data Governance Regulation (DGA), the Data Act is the second major legislative initiative resulting from the European data strategy of February 2020.

While the DGA, approved by the co-legislators at the end of 2021, and now finally adopted, creates the processes and structures intended to facilitate the sharing of data, the Data Act specifies who can create value from data and under what conditions. The Data Act was the subject of an open public consultation in mid-2021. The Commission also asked a group of independent experts to reflect on how to ensure more of the data held by the private sector could be used by public administrations for the common good (Report Towards a European strategy on business-to-government data sharing for the public interest, published in July 2021).

In this context, the European Statistical System (ESS) issued a Position Paper (Access to privately held data is urgently needed for producing new, faster, more detailed official statistics) on the future Data Act Proposal on 5 July 2021, calling for determined action to enable and enforce Business-to-Government data sharing for the purpose of developing, producing and disseminating official statistics.

The Commission adopted its proposal for a Data Act regulation on 23 February 2022, with a view to the imminent launch of negotiations in the Council under the French Presidency and the examination of the proposal by the European Parliament.

In the Commission proposal, an entire chapter (chapter V) is devoted to the provision of private data to public administrations (B2G). However, it is regrettable that such provision of data is only justified by "exceptional need" as emphasized in the title of the chapter: "Making Data Available to Public Sector Bodies and Union Institutions, Agencies or Bodies based on Exceptional Need".

### **European Statistical System Position Paper on the Data Act**

The [ESS Position Paper](#) issued in June 2021 outlines that there is a growing gap between the timeliness and detail that can be achieved with traditional data sources and what is increasingly demanded and expected by statistical users including policy

makers at national and European level. For the ESS, Business-to-Government data sharing can become a game-changer in this respect and the Data Act provides a unique opportunity to set up a general framework for this purpose. For the ESS, the Data Act should establish clear obligations to sharing privately held data that are necessary for purposes of very high public interest and include, in that respect, an explicit reference to the development, production and dissemination of official statistics. Data sharing should aim at enabling a regular production and dissemination of improved official statistics, as determined by the existing European statistical governance structures and procedures, in order to respond to increasing information needs by society and by policy makers.

Furthermore, the Data Act proposal should ensure that the National Statistical Authorities are not required to purchase data from the data holders, in line with the rules in place today for accessing and using traditional data sources in official statistics and as they will not compete with private data holders in their respective fields of business. However, it may foresee adequate mechanisms and incentives to deal with the initial investments required and marginal costs that might be incurred by the data holders to make them ready for use in official statistics.

### ***The current Data Act proposal (23 February 2022)***

In its current version, the Data Act proposal represents for ESAC a consistent reduction of the expectations of the European users and responders of statistics represented by ESAC and the ESS that were aiming at enabling a regular, timely production and dissemination of improved official statistics, in order to respond to increasing information needs by society and by policy makers.

What was initially included in the proposal, but finally withdrawn, was a list of a limited number of cases of exceptions justifying access to private data, including statistics. In the final draft, the notion of "exceptional need" replaces this list of exceptions and is obviously very restrictive. Access to private data must be justified by an "exceptional need" (Article 14), which makes this access compulsory if the request from the administration meets certain conditions. This exceptional need is defined (Article 15) as either (1) the response to an emergency situation (of the pandemic type, terrorist acts, etc.) or for its prevention, or (2) the response to a lack of such data which prevents an administration from fulfilling its legal obligations, if the administration could not obtain the data by other means, including by purchase or by relying on other existing legislative provisions, and that new legislative measures would not make it possible to obtain the data in a sufficient time. This is quite unclear: if it is a matter of national legislation, it is difficult to understand why it would not include the means of collecting data to fulfill this obligation.

In addition, the draft proposal includes provisions for cost compensation that are very far from the ESS position. Compensation is provided for companies that provide the data, excluding data provided in the context of an emergency, which is provided free of charge (Article 20). In all other cases, the compensation includes the cost of making the data available (including that of any pseudonymisation) and a "reasonable margin". It should also be mentioned that SMEs are excluded from the scope, which could be problematic for certain types of activities in which SMEs could play an important role, keeping in mind that reporting obligations are especially burdensome for SMEs.

Overall, the current proposal will not allow the provision of regular statistics using data obtained under these provisions and it seems that in its current version, the Data Act brings almost no added value to the ESS in terms of access to private data.

ESAC, representing the users and respondents of statistics, underlines that the current version of the Data Act proposal is not considering that data needed for official statistics, relative to citizens' activities, their lives, the progress and development of the European countries, are "public goods", i.e., collective goods necessary for European citizens to satisfy their fundamental right to be informed in accordance with the principles of the official statistics (Code of Practice).

This right should not be hindered by the limited access or use of data needed for official statistics and research purposes or for failing to pay for data used exclusively for this purpose. If data needed for official statistics are available, but such data are not produced by National Statistical Institutes for reasons of time or for avoiding additional burden for respondents, the available data should be reusable for statistical purposes. Of course, a form of compensation could be considered for the costs of making privately held data available for official statistics.

The general position in the Data Act proposal is not particularly favourable regarding the free access and use of data needed for official statistics and scientific research. This may be understood because the proposed regulation regards the harmonised rules on fair access to and use of all typologies of data.

For the purpose of official statistics and scientific research activities, this proposal is insufficient for facilitating a regular, timely production and dissemination of statistical information based on the easier access to available data. Therefore, in order to respond to the increasing information needs by society and by policymakers, it becomes relevant and highly recommended to consider modifying Regulation (EC) 223/2009 on European statistics in the direction to enable sustainable access to privately held data needed for the regular production of improved official statistics.

### ***ESAC recommendations***

Therefore, ESAC wishes to recommend to the European Parliament and the Council, during the negotiations of the Data Act proposal, that the conditions for B2G data-sharing as foreseen by the proposal are at least not made even more restrictive and, on the contrary, that the co-legislators could explore ways to relax these conditions in the direction of a sustainable data-sharing framework for regular development and compilation of official statistics (for B2G data sharing to become operational even if limited to exceptional situations in the context of the Data Act);

Alternatively, if the Data Act regulation will remain insufficient for a sustainable data-sharing framework for regular development and compilation of official statistics, ESAC recommends supporting the need to amend Regulation (EC) 223/2009 on European statistics, in order to address the issue of access to privately held data there. Indeed, this would be coherent with the current Data Act proposal that allows for the modification of sectoral legislation.