

The Consumer Voice in Europe

BEUC-X-2023-003

13 January 2023

RE: Data Act – BEUC recommendations and meeting request

Dear attaché,

We are writing on behalf of BEUC – The European Consumer Organisation in relation to the Data Act. We reach out to you to share key recommendations from a consumer perspective, following the latest developments in the Council, and to request a meeting at your earliest convenience.

BEUC supports the aim of the Data Act but considers that improvements are needed to ensure consumers can enjoy innovative services and competitive prices and not have their data locked in by data holders. For more details, we refer to [our position paper](#) and the amendment suggestions in attachment.

We are reassured with the direction of some of the changes the Czech Presidency has put forward, such those aimed at improving the enforcement mechanisms of the Data Act. However, we would like to draw your attention to key elements needed to ensure a robust Council position from a consumer perspective:

- 1. Scope: We strongly advise against limiting the scope of some provisions to 'readily available data'** as defined in Article 2 of the [compromise text No. 15035/22](#) from 8 December 2022. Otherwise, this would create uncertainty as to what could be considered a 'disproportionate effort' or a 'simple operation' and could be misused by data holders. If not addressed, this limitation may likely hamper the practical implementation and usability of the data shared in B2C relationships and, contrary to the aims of the Data Act, result in consumers being locked in with data holders.
- 2. Stronger consumer protection provisions are required:**
 - Clarifying the relationship between the Data Act with the consumer acquis in article 1 and recital 9.
 - Including a **blacklist of contractual clauses in consumer contracts**, such as bundling necessary and unnecessary purposes of processing together, via a new article or annex.
 - **Strengthening the wording of the ban on dark patterns** for third parties and data holders. We are concerned the wording in the latest compromise proposal will be difficult to be implemented in practice. Proving coercion or manipulation will be very difficult for consumers. We recommend using the wording of Article 13(6) of the Digital Markets Act as an inspiration to amend articles 4(2a) and 6(2)(a) recital 34.
 - **Deleting the small & micro enterprises exemption** in Article 7(1), or at least exclude B2C relationships from it as consumers should be protected regardless of company size.
- 3. Data processing purpose limitations** are needed in Article 5 or 6 to protect consumers upfront from the misuse of data. For example, use personal data generated by the use of a product or related services for purposes such as direct marketing or advertising, credit scoring, to determine eligibility to health insurance or to calculate or modify insurance

premiums should not be permitted. This is in line with the [EDPB-EDPS joint opinion on the Data Act](#) (para. 55).

4. **Data access and data sharing must really be free of charge for consumers**, with no possibility for third parties to charge back to consumers what they may need to pay to the data holder following Article 9.
5. **Ensure healthy competition and innovation** by:
 - **maintaining the data access exclusion of gatekeepers** as this would not restrict competition or limit consumer choice as gatekeepers could still access data via other legal means (cf. recital 36, last sentence); and by
 - **ensuring data holders do not become gatekeepers** through legal or technical control over the data.
6. **Ensure effective redress and enforcement**, which includes:
 - Spelling out the **cooperation among competent authorities**, including data protection authorities, who shall be responsible for all data protection matters. It is important to include a role for the European Data Protection Board, not just the Innovation Board set up by the Data Governance Act.
 - The introduction of **harmonised minimum penalties** in Article 33 so it is not cheaper to infringe the law in one Member State over the other.

We thank you in advance for your time and consideration. We remain available for any question or comment you may have and look forward to meeting you to discuss your country's position and BEUC's recommendations at your earliest convenience.

Kind regards,

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