

Ms Margrethe Vestager
Executive Vice-President - A Europe Fit for the Digital Age
and Commissioner for Competition
European Commission



**European Round Table
for Industry**

17 May 2023

Re: Views of the European Round Table for Industry on the Data Act

Dear Executive Vice-President Vestager,

We are writing on behalf of the European Round Table for Industry (ERT), a forum of 60 Chief Executives and Chairs of leading European industrial companies, to share our views concerning the ongoing work on the Data Act.

An open data economy is an opportunity for Europe. Broader data usage enables productivity and growth and can help fight climate change at scale. To this end, we support the objectives of the EU Data Act to create a common EU regulatory framework for the data economy and leverage the scale of the single market to stimulate opportunities for data-driven innovation. We believe this will lead to new and innovative digital services for European consumers, especially in aftermarket services and repairs for connected objects.

At the same time, and as the Commission states, the Regulation must strike a balance between opening access to potentially valuable datasets while preserving economic incentives for investment and innovation in the data economy and the economy more broadly. These points are also critical in relation to business-to-government data sharing, where the provisions of the Act could severely undermine the ability of European companies to invest in and scale innovative data-driven products and services.

Yet we fear that in the rush to meet the self-imposed deadline at the end of this Presidency, the co-legislators risk not only passing up the opportunity the Data Act represents but also needlessly undermining Europe's future competitiveness.

We are of the view that the Commission's proposal needs significant improvements to fulfil its stated aims. Some of the amendments proposed by the European Parliament and Council of the EU head in the right direction. However, there are many that we fear will intensify existing issues and ultimately hamper the development of what is still an emerging market in Europe.

We wish to make the following points:

On business-to-business data sharing:

- There are certain limits to data sharing: for instance, it is not always technically possible to share data, even with users. Sharing of data without appropriate governance and controls can also increase cybersecurity or health and safety risks, counter to EU policy objectives.
- The protection of trade secrets, and of intellectual property in general, is likewise a key concern. These are vital elements of driving innovation in Europe by incentivising investment and contributing to Europe's competitiveness and technological leadership.
- Data sharing should be encouraged, but not mandatory in every instance. We have compelling examples of where such an approach can produce results: Catena-X has proven itself to be an attractive ecosystem for European and international businesses, showing that all kinds of businesses willingly share data where it makes commercial sense.
- Therefore, we propose that data holders should have the right – when necessary and justified – to refuse a request for access to data. This would be in line with the Directive on Trade Secrets and the TRIPS Agreement, where the consent of the IP holder is key for the protection of trade secrets.
- Regarding the entry into force provision, we see the urgent need to exclude existing products and contracts from the data sharing obligations.

On business-to-government data sharing:

- We agree that privately held data can have a vital role to play in emergency situations and should be made available in a timely manner to governments responding to such crises.
- At the same time, data sharing can come at a cost to the provider, for instance through the processes to pseudonymise or anonymise personal data, among other potential scenarios.
- The Data Act should not stand in the way of long-term, sustainable cooperation between businesses and governments. To that end, it should provide at least for the recovery of any costs generated for businesses providing datasets to governments in response to emergency situations.
- Beyond the clearly defined circumstances of emergency situations, business-to-government data sharing must remain on negotiated commercial terms, allowing the development of a sustainable market for data insights and analytics services in Europe.
- Finally, we ask that once made available to the public body in question, data can only be shared in exceptional and very restrictive circumstances to any other third party.

On switching between cloud providers:

- The Data Act should preserve contractual freedom, allowing cloud providers and customers to agree on terms and conditions that reflect business needs.
- Fixed-term contracts should not be questioned by the Act as they have proven to be beneficial for both cloud providers and customers.

In sum, the Data Act should address the concerns of European industry outlined above to strengthen Europe's data economy. The Data Act touches on broad swathes of Europe's economy. A race to conclude negotiations on this far-reaching legislation heightens the risk that crucial considerations are overlooked or miscalculated. At a time when Europe must do all it can to increase its competitiveness, that is a gamble its leaders should not be willing to take.

ERT has long been an exponent of close collaboration between European industry and governments, with the aim of securing European industrial success, central to the prosperity and well-being of Europeans. We will continue these efforts as Europe navigates its digital transition and stand ready to help make the Data Act the success that Europe's economy needs.

Yours sincerely,

Jean-François van Boxmeer
Chair, ERT
Chairman, Vodafone Group

Christian Klein
Chair, ERT Committee on Digital
Transformation
CEO and Member of the Executive Board,
SAP SE