

# ARTICLE

## TRILOGUE ON THE PROPOSAL FOR A REGULATION ON DATA (DATA ACT): THE COUNCIL AND THE PARLIAMENT HAVE REACHED AN AGREEMENT ON A COMPROMISE TEXT

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During their latest trilogue meeting on June 27, 2023, the EU Council's presidency and representatives from the European Parliament reached a provisional agreement on the regulation for fair access to data and data usage known as the Data Act. This Agreement now requires approval in a plenary session by both the EU Council and the European Parliament.

As a reminder, the Data Act, along with the Regulation on European Data Governance (Data Governance Act), is a critical component of the European Union's data strategy. It is a regulatory text with a strong focus on industrial policy, meaning it will impact numerous sectors, if not all. With the continued expansion of connected devices and the digitization of the economy, data sharing has become central to many commercial relationships.

According to the Council's press release, and pending a consolidated version of the Agreement text, several significant points are worth noting.

Firstly, there is a clarification of the text's **scope**, which will enable users of connected devices, from smart home appliances to intelligent industrial machines, to access the data generated by their use.

Furthermore, the Agreement aims to prohibit **abusive clauses** that may be imposed by a party in a significantly stronger negotiating position than its co-contractor. It also provides additional guidance on **reasonable remuneration** for companies for the provision of their data, as well as appropriate mechanisms for **resolving disputes**.

One of the most debated and contested points of the Data Act among various industrial stakeholders from different sectors concerns the protection of **trade secrets**. The Agreement appears to have reached a compromise wording that ensures an adequate level of protection for trade secrets and intellectual property rights, with corresponding safeguards in the event of potential abusive behavior by data holders. This topic is likely to continue generating legal and political controversies.

Finally, the rules regarding Cloud computing have also been a subject of controversy. The Data Act aims to facilitate the **transition from one data processing service provider to another** (cloud providers) and to establish additional rules applicable to **data transfers** and access by governments outside the European Union. Interestingly, it is worth noting that the bill on securing and regulating the digital space (SREN), which passed the first reading in the Senate and will be examined by the National Assembly in the autumn, anticipates the measures of the Data Act related to portability in cloud computing services.

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