# European Data Act

**Preliminary Ibec priorities**

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# Key Messages

- Unlock the value-creation potential of data to develop a real Single Market for Data while maintaining necessary and clear rules, safeguards, proportionality and predictability.
- Ensure that data access requests by public authorities remain proportionate, targeted and subject to fair incentives, recognising these carry risks.
- Build trust with a voluntary framework to facilitate the access and use of data in a B2G (business-to-government) context, subject to fair incentives, which safeguards privacy, security and commercially sensitive information.
- Avoid mandatory requirements for B2G data sharing. Forced sharing of private data (including both personal and non-personal data) with public sector bodies would potentially risk contractual obligations and would be better handled by the data controller.
- Ensure that users maintain the tools to decide when and with whom to securely share their data.
- Promote a voluntary framework approach. Contractual freedom can also support business-to-business (B2B) data sharing.
- Promote trust in B2G data sharing by incentivising research and innovation.
- Avoid a one-size-fits-all approach to Cloud Service Providers (CSPs) when developing measures on government access to data by considering differences between business models, data handling practices and risks.
- Recognise that CSPs may already have strict measures in place to deal with government data access requests.
- Promote dialogue between the European Commission, international partners, CSPs and Cloud User Groups to further develop proportionate obligations in terms of legal, technical and organisational measures.
- Any transparency measures would have to apply uniformly to CSPs active in the Single Market, regardless of HQ, to ensure a level-playing field.
- Support industry efforts to develop voluntary standards for data taxonomy, sharing and quality.  Consensus-based, market-driven, fair and transparent processes should be used in their development, building on existing standards from leading international standard bodies.
- Enable researchers and innovators to lead Europe's path to a more connected future. Avoid mandatory technical specifications for data portability which risks stifling innovation and creating global fragmentation. Uniform requirements as regards specific technologies or data formats would reduce customer choice and slow innovation.
- Ensure that users maintain the tools to decide when and with whom to securely share their data. The improvement of technical standards will allow users to play a more active role in the data economy.
- Remove remaining barriers to cross-border data-sharing. The enabling of cross-border data-sharing is essential for the cross-border collaboration and research and innovation necessary to realise the technologies which will advance digital transition

- Encourage the free flow of data across borders, both within and outside the European Single Market, and embrace legal mechanisms to facilitate the free flow of data with trust.
- Build on long-standing international agreements and treaties which are already enforced and have enabled effective data collaborations with likeminded countries and simultaneously provide adequate protections. Avoid creating legal uncertainty and conflict of law through a separate framework for the transfer of non-personal data.
- Foster data protection, not data protectionism. Avoid pursuing burdensome obligations on data processing service providers.
- Avoid creating market fragmentation or undermining confidential business information or IP rights and protections with any review of EU Intellectual Property Rights.
- Take an evidence-based approach to any review of the Database Directive or Trade Secrets Directive.

# Introduction

Ibec welcomes the opportunity to comment on the efforts to develop a European Data Act. We support the European Commission's ambition to build a European Single Market for Data, recognising that data is at the heart of Europe's competitive future.

In February 2020 the European Commission signalled a Data Act would be published in late 2021. The European Commission intends the Data Act to complement other EU measures to create a solid framework of digital trust, opening up of public sector data, removing digital borders and encouraging trade in data. The European Commission wants to create a Single Market for data where data flows between countries and sectors, is available for use in respect of clear, fair and practical rules for access and use of data. It sees data as central to building a resilient Europe in a post-pandemic future and will play a key role in decision-making, managing crises and the realisation of the Green Deal.

There are many potential opportunities from increasing the availability of data and improving the way in which data is accessed and used. The Commission's efforts should be based on the principles of openness, usability, empowerment, security and privacy. An approach to a European Single Market for data which positions the user at the centre is essential to ensuring businesses and individuals trust they are in control of their data, can choose which data they wish to share and with who or in which case. Greater access to and re-use of data will power a cross-sectoral economic recovery in the EU. The Data Act should take a cross-sectoral approach in its development of measures, in order to avoid creating further asymmetry in the data sharing ecosystem and creating barriers or a multispeed Single Market for Data.

Data sharing and the free flow of data across borders will ensure the competitiveness of European business into the future. Proportionate rule-making will avoid cost-burdens and will facilitate companies to innovate the products that will lead Europe into a competitive future.

# Recommendations

Ibec welcomes European efforts on data as a way to foster fairness in the data economy and increase legal certainty for data sharing with voluntary business-to-government (B2G) and an evaluation of the IPR framework to enhance data access and use.

## Business-to-Government (B2G) and Business-to-Business (B2B) data sharing

- Ensure that data access requests by public authorities remain proportionate, targeted and subject to fair incentives, recognising these carry risks.

- Build trust with a voluntary framework to facilitate access and use of data in a B2G (business to government) context, subject to fair incentives, which safeguards privacy, security and commercially sensitive information.

- Avoid mandatory requirements for B2G data sharing. Forced sharing of customer data with public sector bodies would potentially risk contractual obligations and would be better handled by the data controller.

- Promote a voluntary framework approach and contractual freedom can also support business-to-business (B2B) data sharing. A B2B fairness test for contracts could be developed taking into account existing best practices in this area.

- Promote trust in B2G data sharing by incentivising research and innovation. Compensation schemes, research grants and model data sharing agreements could help incentivise organisations to share data. Open Data Agreements and the Community Data Licence Agreements can help reduce barriers to data sharing so recipients of data can use, modify and analyse data.

## Improving portability for business users of cloud services

- Avoid a one-size-fits-all approach to Cloud Service Providers (CSPs) when developing measures on government access to data by considering differences between business models, data handling practices and risks. Such differences might make some of the initiatives considered less impactful, as they would only target a subset of relevant use cases.

- Recognise that CSPs may already have strict measures in place to deal with government data access requests. Many CSPs do not have visibility and control over their customers data, especially in a B2B context and might not know what type of data is hosted in which workload.

- Promote dialogue between the European Commission, international partners, CSPs and Cloud User Groups to further develop proportionate obligations in terms of legal, technical and organisational measures. International dialogue is an important solution to addressing issues around international data transfers and access requests.

- Any transparency measures would have to apply uniformly to CSPs active in the Single Market, regardless of HQ, to ensure a level-playing field.

## Data portability

- The objective to improve technical standards for portability of data is welcome and presents many cross-sectoral opportunities.

- Support industry efforts to develop voluntary standards for data taxonomy, sharing and quality. Consensus-based, market-driven, fair and transparent processes should be used in their development, building on existing standards from leading international standard bodies.

- Enable researchers and innovators to lead Europe's path to a more connected future. Avoid mandatory technical specifications for data portability which risks stifling innovation and creating global fragmentation. Uniform requirements as regards specific technologies or data formats would reduce customer choice and slow innovation.

- Ensure that users maintain the tools to decide when and with whom to securely share their data. The improvement of technical standards will allow users to play a more active role in the data economy.

## Restrictions on international data transfers of non-personal data

- Remove remaining barriers to cross-border data-sharing. The enabling of cross-border data-sharing is essential for the cross-border collaboration and research and innovation necessary to realise the technologies which will advance the digital transition.

- Encourage the free flow of data across borders, both within and outside the European Single Market, and embrace legal mechanisms to facilitate the free flow of data with trust. Ensure the full implementation of the Free Flow of Data Regulation. Avoid any measures which restrict this or would disproportionately impact the cross-border operations of companies. Restrictions on data transfers could have cost impacts for business and an impact on Europe's global competitiveness.

- Build on long-standing international agreements and treaties which are already enforced and have enabled effective data collaborations with likeminded countries and simultaneously provide adequate protections.

Avoid creating legal uncertainty and conflict of law through a separate framework for the transfer of non-personal data.

- Foster data protection, not data protectionism. Avoid pursuing burdensome obligations on data processing service providers.

## Intellectual Property Rights – Protection of Databases

- Avoid creating market fragmentation or undermining confidential business information or IP rights and protections with any review of EU Intellectual Property Rights. Ensure continued data collaboration and protect data and trade secrets by working with international agreements, treaties and organisations such as TRIPS, the Berne Convention and World Intellectual Property Organisation (WIPO).

- Take an evidence-based approach to any review of the Database Directive or Trade Secrets Directive. IP and access laws should not be interpreted to unnecessarily restrict access to and use of data, nor should they impact the cross-border transfer of data.

## About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 38 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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