

GSMA ETNO Statement on the Data Act final text

November 2023

The GSMA and ETNO congratulate EU policymakers on reaching agreement on the Data Act, a landmark file for the EU's data economy. The GSMA and ETNO's members are supportive of provisions in the file around B2B data access, cloud switching and interoperability, which we believe will have the effect of facilitating data sharing and reuse across the single market. Conversely, the finalised provisions on B2G data sharing could have the opposite effect and indeed may result stymying the emergence of innovative home-grown data analytics services in Europe. We encourage policymakers to work with industry through the implementation period and beyond to mitigate this risk.

B2B and B2C data sharing

The GSMA and ETNO welcome the recognition in the final text that compensation for B2B data sharing will be non-discriminatory, and subject to reasonable remuneration including a fair margin (except for micro and SMEs). Where the European Commission aims to publish guidelines for this, we believe value can be gained from engaging with industry to benefit from the experience of existing data sharing arrangements.

Further clarity would also be helpful regarding the products and services in scope.

B2G data sharing

The GSMA and ETNO members have long advocated for a targeted and proportionate approach to B2G data access, one which recognises the myriad of existing data sharing initiatives put in place by telecommunications operators to make data available to public authorities in a timely fashion to respond to situations of genuine public emergency. However, we have concerns regarding the inclusion within the regulation of an overly broad data access right for public authorities to access privately held data in ambiguously defined situations of exceptional need, falling below the threshold of public emergency. We call on the European Commission to engage with data holders to clarify these terms and ensure that data access mandated under the Data Act is only applicable in genuinely exceptional situations where conventional, market-based data sharing arrangements have demonstrably failed.

The GSMA and ETNO members wish to underscore the need for public authorities to keep negotiating in good faith with private actors for access to data they hold on a commercial basis. Overzealous data access requests under this regulation could have a terminal impact on the nascent market for innovative data analytics services, where European telecommunications operators are investing substantially.

The GSMA and ETNO encourage policy makers to bring forward mechanisms for public-private sector cooperation, as the rules take effect, to maximise the positive impact of these provisions on the EU data economy, and to minimise any damaging effects on European firms.

Data processing services (DPS) switching

The GSMA and ETNO recognise that provisions regarding switching and interoperability of data processing services have the potential to facilitate a more open and competitive cloud market in Europe. Notice and transition periods that allow for more flexible, complex and custom arrangements will benefit all contracting parties. Where the European Commission will develop guidelines on interoperability requirements and provisions, and also on third-party access to non-personal data; we again encourage open dialogue with industry, for example through existing expert groups, taking into account existing international or European standards.