

Position of the Union of Entrepreneurs and Employers (ZPP) on the *Data Act*

The European Union has made its strategy - Shaping Europe's digital future - one of its top priorities. One element of the initiative is the European Data Strategy. The strategy aims to create a single data market in the European Union, which will increase Europe's global competitiveness in access to data use in the economy and ensure control over entities generating data. Moreover, it is based on putting people first in technology development, guaranteeing users' rights in the digital world, and protecting and promoting European values.

On February 23, 2022, the European Commission presented a draft regulation on harmonized rules on fair access to and use of data. The regulation, also known as the Data Act, is the second piece of EU law proposed under the European Data Protection Strategy alongside the proposed regulation - the Data Governance Act.

The project aims to make Europe a global leader in tapping the constantly growing potential of the data economy. Data-based solutions can bring tangible benefits to businesses and consumers in the European Union. Increasing the efficiency of data use may lower the costs of creating new products and providing services and thus increase their availability. It is also possible to improve sustainability and energy efficiency and shift to fewer emissions and more efficient transport systems, which will help meet the pro-climate goals set in the European Green Deal.

The Data Act regulates the legal status, technical conditions and economic issues, which are the basis for the use of data. It aims to unlock the untapped potential of industrial data, 80 per cent of which remains unused by the European Commission.¹ The Commission assumes that by 2028, the value of GDP generated by using data under the new regulations will increase by EUR 270 billion.²

The Union of Entrepreneurs and Employers (ZPP) assesses positively the provisions encouraging producers to invest in generating higher quality data. We believe this is essential to increase business competition and consumer welfare in the European Union.

However, we note that the project did not altogether avoid its shortcomings. The provision that grants governments and the EU public institutions the right to access specific enterprises in "exceptional need" deserves criticism. According to Chapter II of the draft regulation, the obligatory and free access of public entities to enterprises' data should be conditional on the existence of a "public emergency". Its definition can be found in article 2, paragraph (10) of the draft regulation.³

'public emergency' means an exceptional situation negatively affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on living

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1113

² <https://ec.europa.eu/newsroom/dae/redirection/document/83541>

³ <https://ec.europa.eu/newsroom/dae/redirection/document/83521>

conditions or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s);

The above definition provides an extensive interpretation framework for qualifying a given situation as a state of "public emergency". Consequently, there may be a high risk that a public authority's position in requesting 'exceptional need' data will be misused. Such a solution will lead to lower legal certainty and may expose enterprises to damages caused by compulsory and free disclosure of collected data.

The Data Act, in Article 20, introduces a redress mechanism in cases of exceptional data transfers by a private entity. However, this mechanism is based on a general formulation that will require a complex assessment each time the additional costs are incurred for the entrepreneur. Such a procedure will extend the process of examining the submitted applications and does not guarantee the coverage of the company's losses caused by the activities of a public authority.

Summing up, ZPP supports the increase in the use of data collected in the European Union and the levelling of conditions for their fair use. However, as proposed, the Data Act has some legal shortcomings that may lead to a weakening of the position of enterprises vis-à-vis public entities and introduce legal uncertainty in the area of law enforcement.

We call on European legislators to keep a proportion of the proposed regulation by limiting the disclosure of data to public authorities only to what is strictly necessary and by preventing the creation of rules that could restrict the development of ambitious SMEs. During the inter-institutional negotiations, we consider it necessary to develop solutions that will not contradict the current and future legislative acts in the field of the digital economy.