How to make the EU Data Act work from the perspective of insurers

What to keep in the Act?

- Enhanced **data portability rights**, a **level playing field** and effective **protection of trade secrets**, as provided by the European Commission's proposal, will be key to the success of the Data Act:
  - The insurance industry fully endorses the enhanced data portability rights of users of connected products, including their right to access the data generated through the use of their products and to allow access to that data by a third party of their choice (Art. 4 and 5). For this to work, connected products should be designed and manufactured in such a way that the data generated by their use is, by default, easily, securely and directly accessible (Art. 3).
  - Insurers welcome the provisions establishing that **gatekeepers** under the Digital Markets Act do not have access to the data generated by users via their connected products, as well as the prohibition on third parties developing **competing products** based on the data received. These requirements are a step in the right direction towards achieving a level playing field in the data economy.
  - A key element of any future cross-sectoral data-sharing framework is the horizontal provision to **protect trade secrets**, most notably by allowing data-holders to refuse to share such data with a third party (Art. 8(6)). Data-holders should not be obliged to share business-sensitive information or proprietary data that they have generated and analysed/enriched themselves, and that is the outcome of their own work.

How can the Data Act enable the development of innovative digital services: the crop insurance use case

Internet of Things (IoT) analytics of real-time data about weather, temperature or moisture from connected equipment can help farmers improve farm planning and make smarter decisions about allocating resources.

For example, IoT crop management devices placed in fields collect data on elements such as temperature, precipitation, leaf water potential and overall crop health. They make it possible to better monitor crop growth and prevent diseases or infestations. This data can considerably decrease crop production risk, especially when combined with other data, such as on soil conditions, weather and geography.

The proposed reinforced data portability rights will make it easier for third parties, such as insurers, to get access to such data. This will enable insurers to have a better understanding of agricultural production risks, and to underwrite and price the risks more accurately. This can enable them to offer more competitive rates, as well as develop innovative and more tailored crop insurance products.

What can be improved?

B2B

- The Data Act's provisions should ensure a more **level playing field between players of all sizes**. For example, unilaterally imposed contract terms that are deemed unfair should not be binding on any party regardless of their size, and not only on SMEs as proposed by the Commission. Normally, distortions in price negotiations occur when the data-holder can unilaterally impose conditions for data access due to its dominant position in the market, which is not only related to the size of the data recipient.

- Data portability rights should be strengthened to **clarify that the data-holder must ensure that it is not cumbersome or effectively impractical for the user to request that the data be shared with third parties**.

- It is essential to **ensure alignment between the Data Act and the General Data Protection Regulation (GDPR)**. Based on the draft text, some data can be used under the GDPR but not under the Data Act, as the proposal sets out specific limits about how data received can be processed. For example, Article 6(1) of the Data Act sets out a clear obligation for third parties to process the data received only for the purposes and under the conditions agreed with the user, and Article 6(2)(c) goes further by prohibiting third parties from making the data received available to another third party in raw, aggregated or derived form, unless this is necessary to provide the service requested by the user. On the other hand, the processing of personal data for purposes other than those for which they were initially collected is allowed under the GDPR, provided that the new purpose is compatible with the original purpose. Since datasets are often mixed (personal and non-personal), it is important to ensure legal certainty by aligning the Data Act with GDPR rules on further processing.

B2G

- **Government access to data should be more strictly defined**. The proposal should better frame the concept of "exceptional need" where the "lack of available data prevents a public body from fulfilling a specific task in the public interest" (Art. 15(c)). Such a concept is too broad, as circumstances leading to a possible lack of data can often occur in the public sector (for example, in cases where new legislation is introduced). The result is that the proposal would grant local authorities broad discretion when requesting access to privately held data, as they can effectively freely determine key factors such as the scope, duration and purpose of the data-sharing obligation. This is problematic, as such discretion creates legal uncertainty. In contrast, government access to data should be on a legal basis that is sufficiently clear and predictable.

Cloud

- The provisions on **cloud switchability are also a positive step and will help to establish a more competitive market for cloud computing services**. To fully enable companies and SMEs to switch freely between cloud services without undue burden, the provision in Article 24(1)(b) could be better refined. The requirement to include in the contract an exhaustive specification of all data exportable during switching process may be too burdensome depending on the level of required granularity. In this regard, a general description of the respective data should be sufficient.

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