

BEREC's statement on the draft Data Act

BEREC acknowledges the increasing usage of data and its growth potential and welcomes the objectives of the draft Data Act presented by the European Commission, and the benefits that it will generate for both individual and business users by making data available for their use and re-use, in particular with regard to stimulating a competitive data market, and reinforcing data driven innovation.

The European Commission has proposed a draft Regulation¹ on harmonised rules on fair access to, and use of, data. The draft Act gives users an access right to data generated by the products or related services they own, rent or lease, sets out general rules applicable to obligations for data-sharing between companies and imposes data-sharing obligations on enterprises in situations where public sector bodies have an exceptional need for data. In addition, the draft Act introduces interoperability as a key measure of the European data governance framework and additional measures aimed at allowing customers to effectively switch between different cloud data-processing service providers.

The draft Regulation also refers to independent national competent authorities with experience in the field of electronic communications services as well placed to ensure the application and enforcement of specific provisions. This role could be relevant, for example, with regard to the aim of the draft Regulation to ease the switching between data processing services, such as cloud and edge services; in particular, the monitoring of switching charges, technical aspects of switching, interoperability or complaints handling. Other related areas may be IoT devices that are able to communicate data via publicly available electronic communications services. The legislative proposal may also be relevant for the data governing provisions that are already in place.

Article 31 of the draft Data Act allows Member States to establish new independent authorities or rely on existing independent authorities for the application and enforcement of the Act. Paragraph 2 (c), related to switching, indicates specifically that the enforcing national authorities shall have experience in the field of data and electronic communications. BEREC welcomes the proposed involvement of regulators for electronic communications in this piece of legislation, as they could provide their long-standing regulatory experience.

BEREC will analyse these proposals in the coming months with respect to their relevance for the areas of work of regulators for electronic communications incl. related areas such as data protection and privacy. BEREC will share the expertise it has gained in applying similar provisions in the electronic communications sector, for example, regarding end-user protection and dispute settlement, which could provide inspiration to EU institutions involved in the finalisation of the Data Act. BEREC is available to engage with the legislators as well as cooperate with other relevant competent bodies and will provide substantive input in due course.

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