

Commission proposal for a Data Act

A Eurelectric position paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

Dépôt légal: D/2022/12.105/21

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June 2022

KEY MESSAGES

- **Eurelectric welcomes the proposal for a Regulation on harmonised rules on fair access to and the use of data** (henceforth ‘the Data Act’) and its objective of fulfilling the ambition of the Data Strategy: making the EU a leader in the data-driven economy.
- Eurelectric strongly believes that data and digital solutions are key enablers in the energy sector transformation needed for Europe’s climate ambitions. Data availability contributes to further energy efficiency, renewables integration, grid resilience, and innovative businesses such as smart mobility. However, **the scope of obligations must be carefully assessed to adapt to all situations and ensure a fair and seamless data flow, while providing legal certainty and visibility to all actors of the ecosystem.**
- Sector-specific regulation, such as the soon to be finalised **Implementing Acts on interoperability and data access** - set by Articles 23 & 24 of the Electricity Directive (EU) 2019/944 - **shall take precedence over the Data Act** to ensure an interoperable and harmonised framework within the energy sector.
- To enhance Europe’s energy and digital sovereignty, the proposal should lay out a framework designed to keep pace with technological developments and ensure coherence of the Data Act provisions with enacted, as well as foreseen, sectoral legislation on data sharing. Additionally, Eurelectric proposes the following recommendations to unlock the potential of data-driven innovation, encourage customers to make greater use of services, and allow the power industry to develop disruptive digital products and services:
 1. **More clarity** is needed to facilitate data exchanges between businesses, customers and public authorities
 2. Data-sharing agreements must **remain open and commercially viable**
 3. Data portability and interoperability must be facilitated through **viable regulatory harmonisation**

1. More clarity is needed to facilitate data exchange between businesses, customers and public authorities

To boost the European data economy envisaged in the EU Data Strategy, the Data Act should provide clear and unambiguous definitions to facilitate Business-to-Business (B2B), Business-to-Customer (B2C) and Business-to-Government (B2G) data exchanges. As non-defined, or misinterpreted circumstances, **may lead to high compliance costs and significant administrative burdens** for data holders.

In this context,

- Article 2 of the proposal shall **further define the following terms: data, data holder, public emergency, products, public sector body ...** as many of these are central to the scope of the proposal and open to interpretation. Most notably:
 - Clarification is needed on the concrete data to be made available, especially for data holders.
 - The proposal should clearly specify that its provisions do not concern valued data. These shall remain subject to exclusive intellectual property rights held by the legal entities who invested in it, **and be shared on a voluntary basis.**
 - Data generated by products or associated services should only concern the regular and non-fraudulent use by the user.
 - To tackle the issue of ‘data transitivity’, the proposal should further distinguish different sharing obligations for ‘data holders’ and third parties receiving data from an initial holder.
 - Further clarification is needed to address the case of ‘co-generated data’.
 - The current definition of ‘public sector body’ covers the public sector in all its forms. Ideally, the proposal should limit the provision to a single public institution for Member State or to a manageable number **having competences and resources to ensure data privacy and confidentiality.**
- Article 15 of the legislation should include a **clear and comprehensive list of ‘public emergency’ situations** under which public sector bodies can request access to data in the interest of the public. Thus, **ensuring a consistent level of protection for sensitive data related to critical infrastructures.**
- Article 21 shall **further assess data sharing obligations to individuals or organisations for research or statistical use.**
- As some of the proposed data sharing obligations included in Article 4 can be challenging to implement, **further guidance is needed for mixed data sets** where non-personal and personal data are inextricably linked (e.g. for electricity metering data).
- A clear data classification schema defining rules for data sharing, access and protection is needed for:
 1. **highly sensitive data** exempted from being shared. For instance:
 - i. configuration parameters and settings, logs, software levels;
 - ii. detailed information about the network structure, restoration or system defence plans (Regulation (EU) 2017/2196 establishing a network code on electricity emergency and restoration), contingences (Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation),
 - iii. technical supervision and control data regarding central remote management of end-point devices,
 - iv. detailed information on the operation and functioning of electricity generation and distribution systems installations, such as power plants’ digital twins.

2. **critical and sensitive data** requiring the highest level of protection measures due to their impact on critical services supply, fundamental rights, and legislative obligations
3. **'exchangeable' data** not requiring specific protection measures (e.g. that can be shared by means of B2B or B2C agreements)
4. **'exchangeable' data** considered in the public domain that can be shared for free or at a fair and reasonable price.

2. Data-sharing agreements must remain open and commercially viable

The Data Act is expected to make more data available for reuse and create €270 billion in additional GDP by 2028. Against this background, Eurelectric supports the Commission's ambition to untap the potential of industrial data by incentivising and supporting companies. Data-sharing agreements should remain the norm since the mandatory transfer of data undermines contractual freedom and may have the opposite effect than intended. Thus, to boost data uptake it is important that **data-sharing agreements remain open and commercially viable**.

In this context:

- **Eurelectric welcomes the inclusion of model contractual terms in Article 34**, as non-binding model contract terms on data access and use will be useful for companies without experience, legal, resources and capacity to handle contractual data sharing negotiations.
- **Eurelectric advocates for the drafting of voluntary compensation guidelines for all actors**. These shall take into account a wide range of factors including sector-specific considerations, the size of the company, an indexed market value of the data and the purpose of the data acquisition.
- **Draft legal principles for data adaptation and aggregation shall be established** to increase regulatory certainty.
- **Fair remuneration schemes in case of sharing data with third parties shall have the right to involve the costs of data adaptations and transfer**, making sure that commercial actors do not suffer disproportional economic disadvantages.
- The Data Act should support and incentivise all stakeholders (i.e. businesses, customers, and governments) to share data, through **schemes and tax incentives enabling companies to closely cooperate and extract value from data ecosystems** – in compliance with applicable laws and regulations including Data Protection and Competition laws.
- **Additional safeguards for intellectual property rights are needed** for competing companies and undertakings. In the current proposal protective measures for data holders (including trade secrets) seem limited.

3. Data portability and interoperability must be facilitated through regulatory harmonisation

In view of an increasingly intricate regulatory and compliance landscape for companies operating digital assets and providing digital services, Eurelectric requests competent EU authorities to **ensure a high degree of digital policy harmonisation and coherence**. In particular to safeguard privacy and data protection, transparent reporting, interoperability and portability standards – for instance strengthening SWIPO codes of conduct for the implementation of Article 6 of the EU Free Flow of Non-personal data Regulation between cloud service providers.

In this context:

- **Eurelectric urges additional information on how the Data Act relates to other horizontal EU digital regulations and other sector-specific requirements**. Namely coherence with the GDPR, and requirements for operators of essential services under the NIS II Directive.
- **Eurelectric welcomes the inclusion of key provisions promoting data sovereignty, interoperability and portability** (Chapter 6 to 8) seeking to strengthen European data infrastructure.
- To ensure swift **portability, interoperability and standardisation** of self-generated data, Eurelectric encourages the European Commission to **build upon existing initiatives on dataspace**s such as Gaïa-X.
- Finally, due to the numerous novel obligations introduced by the Data Act for all stakeholders (e.g. new EU standards for data storage and transfer, new interfaces enabling customers to share and erase self-generated data, software adaptations enabling the exchange of data with public bodies in case of emergencies, drafting and implementing new contractual terms...) **Eurelectric advocates an adequate two-year timeline to implement all foreseen changes following the adoption of the Regulation**.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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