

# TARGETING **STARTUPS**

Position on the Data Act proposal by an alliance of 6 organisations in Europe

Danish Entrepreneurs and its fellow startup associations in Europe have joined forces to voice the concerns of the European startup community on the Data Act proposal by the European Commission. We support its ambition to regulate the fair use of data and level the playing field for startups in Europe. However, **we see several pitfalls in the Data Act which will immensely impact startups and hinder European competition, growth and innovation.**

We, the startup community in Europe, are concerned about the following parts of the Data Act and the impact it may have on our ecosystem:

- Mandatory B2B and B2C data sharing
- Mandatory B2G data sharing
- Potential ban on international data transfers
- Potential conflicts with existing (GDPR and DMA) and future legislation
- Short implementation period

**The complex regulatory framework and unclear wording of the Data Act** will require tremendous amounts of legwork from startups which do not have the resources or capacities and thus creating hindrances for startups operating in Europe. Governance and policy definitions should aim to create clear and encouraging pathways for startups to succeed. These pathways need to be robust, grounded in pragmatic best practices whilst keeping the administrative burdens proportional for startups.

The Data Act touches upon many critical areas that the startups will bear the brunt of. Startups rely heavily on functioning data flow inside the EU and to third countries for example in the areas of new cloud storing solutions and cross-sectoral dataspace. Startups in the EU are paving the way in such areas and restrictions of international data flows and sharing data to third countries will set barriers, slow down growth and competitiveness in the European and foreign markets. Free flow of data must be secured throughout and beyond the EU's digital economy in order for the Single Market to succeed. The Data Act should lead the charge of creating European and international data spaces which will support startups in Europe in their growth cycle of becoming global champions. The regulative framework for data economy has a lot of potential to either support or discourage startups in Europe in the coming years. Therefore, we call on the European Parliament and Council to consult with the startup community and its representatives before adopting *the Data Act*.

***The startup community call on the Council and Parliament to solve the existing barriers on data flow, rather than creating new ones.***

The data economy has gradually become a greater part of the European economy and will be a driving force of the innovative ecosystem. As of now, the data economy represents 3% of the EU's GDP <sup>1</sup> and it is a new and unregulated area of interest for startups and policy-makers. 40% of Europe's businesses are already sharing data and the next 20% are looking into compatible solutions to do so.<sup>2</sup> **The startup ecosystem in Europe is looking for a regulatory framework which paves the way for creating incentives for companies to share data, not a framework which punishes them and results in loss of innovation and market competitiveness.**

---

<sup>1</sup> [Data Act: Right ambition to unlock data potential, but obligations would hold back Europe's data-driven recovery - DIGITAL EUROPE](#)

<sup>2</sup> [A study prepared for the European Commission DG Communications Networks, Content & Technology by everis](#)

# TARGETING **STARTUPS**

## Our concerns

### Mandatory B2B and B2C data sharing (Chapter 2 & 3)

The Commission proposes to introduce new provisions mandating data-holding startups to make user-generated data available free of charge to the user. In doing so, the proposal does not distinguish between individual users or businesses. Additionally, the proposal requires the sharing of trade secrets under certain circumstances, with the precaution that the shared data must not be used to compete. However, it remains unclear how the data sharing company could ensure that the other party does not reuse the data in an anticompetitive manner nor how it could seek redress in case of wrongdoing.

Provisions on mandatory B2B & B2C data sharing are welcomed in the startup ecosystem but **the concerns are raised whether the cost and benefits of the obligations will balance out or create deficits for startups with small budgets**. Most data is a mix of personal and non-personal and this will make it very costly, if not technically unfeasible, to separate these data sets to comply with the provision. It will also undermine contractual freedom for startups and create a vacuum keeping startups and bigger companies from being viable in voluntary data sharing agreements.

Additionally, the current Data Act proposal will limit startups' possibilities as users to choose companies designated as gatekeepers under the Digital Markets Act (DMA), from becoming third parties to share data with. Excluding the gatekeepers from becoming third parties which startups can share their data with will potentially add unnecessary obstacles for startups to innovate. Startups rely on products and services of the big tech companies qualifying as gatekeepers due to their credibility for example providing highest cybersecurity and privacy standards - *both crucial for startups*. Startups, together with the gatekeepers, are interconnected and reliant on each other within the ecosystem. By solely focusing on legislating the gatekeepers, startups in Europe will also be burdened and impacted broadly in their ability to build innovative products and services.

The mandatory data sharing raises concerns regarding future investments in data-holding startups and SMEs. Investments are a critical part of a startup's evolution and data is a competitive advantage which attracts investors. Mandatory data sharing could risk becoming a deterrent for investors seeking to invest in a company due to losing the exclusivity to their data. Similarly to a patent system, data should be protected in order to provide incentives to invest and allocate knowledge for having the right to exclusive data within the company. We call for the act to pave the road for data sharing, not for the EU to push companies on to it.

### Mandatory B2G data sharing (Chapter 5)

The European Commission is pushing towards provisions which would obligate companies and data holders to share data with governmental authorities to prevent, recover and respond to public emergencies. Data sharing could be also obligated when specific data would be of public interest. Interconnecting data for public and private use is a step in the right direction to foresee and prevent exceptional circumstances in the future, such as Covid-19. However, in order to prevent a fragmented regulatory framework, **we need clear and proportioned definitions which are strictly in line with wording and cannot be bypassed by individual Member States**. Moreover, government entities would be allowed to request access to data with relatively light justifications - i.e. not being able to access the data through other means - and with no limitations or safeguards in place. We think the B2G provisions need to be more balanced and take into account the potential risks of mandatory data sharing.

# TARGETING **STARTUPS**

## Restricting sharing data with third countries (Chapter 7)

The European Commission is introducing obligations for all data processing services which would require startups to take technical, legal and organisational measures (including contract provisions) to prevent international transfer or governmental access to data held within the Union when it could conflict with EU law. This applies to non-personal data. A 2020 poll conducted among privacy experts worldwide showed that 65 percent of companies transferred data from the EU and other countries of the Economic Area to non-EU countries for data processing<sup>3</sup>. We urge policymakers to understand that a harmonised transatlantic market for emerging digital technologies and data will create a clear pathway for a fertile ecosystem of startups and thus **creating additional obstacles for international transfers that could lead to potential data localisation requirements in Europe would harm several industries and hinder the startup's ability to innovate and grow globally.**

## Potential conflicts with existing and future legislation (Chapter 9)

Even though the Data Act creates a new regulatory framework it is critical to note that a lot of the articles could end up in an unwanted conflict with already existing files such as the GDPR, DMA and the Data Governance Act. Unclear regulation will become burdensome for startups who do not have the bandwidth or resources to comply with stringent EU legislation. Therefore we urge the policy-makers to keep provision in acts where they belong and not push for legislation that creates more conflict with other legislations and thereby stifles startup's ability to operate.

Even though the Data Act creates a new regulatory framework it is important to note that a lot of the articles could be in an unwanted conflict with already existing files such as the General Data Protection Regulation (GDPR), the DMA and the Data Governance Act (DGA). For example, the definition of "public sector body" and "data holder" are not fully consistent with the DGA. Legal uncertainty will become burdensome for startups who do not have the bandwidth or resources to comply with stringent EU legislation. Therefore we urge policy-makers to harmonise terminology, avoid overlaps and prevent duplications of obligations with other legislations thereby stifling innovation with several different hard to read acts and files.

## Short implementation period (Chapter 9)

The suggested implementation period for Data Act is set to twelve months which we think will be especially troubling for early-stage startups with scarce resources. The mortality rate of startups is very high in the first 12 months of their life, so adding very tight deadlines for the compliance with the regulation could further stifle their chances of success<sup>4</sup>. Moreover, startups often lack the legal and regulatory expertise to swiftly comply with new legislations in such a short period. In addition, the compliance cost for startups will be troublesome and will further create hindrances to operate and get startups off the ground. We suggest that the implementation period will be extended to 36 months to enable startups to innovate and grow companies simultaneously.

---

<sup>3</sup> <https://www.statista.com/statistics/1172995/data-transfer-from-the-eu/>

<sup>4</sup> <https://www.statista.com/statistics/1114070/eu-business-survival-rates-by-country/>

# TARGETING **STARTUPS**

## Startups on the Data Act

"The EU demonstrates a clear willingness to find a sweet spot between regulation and innovation; however, we need to be careful not to regulate in detail too fast before knowing the full effect and ramifications for startups in Europe. We do not have the experience on how to regulate EU data spaces and therefore a learning curve in all industries is highly needed. Startups should have a say in how their sensitive data is shared and whether they want to be compensated for their data. More talks between startups and policy-makers are needed to find best solutions which will work concretely on the market side. At the moment, we are in the dark."



Olivier Dion, CEO of [Onecub](#) and Co-Founder [aNewGovernance](#)



"Regulating the use of data by introducing mandatory data sharing is a dealbreaker for startups who operate in a highly competitive market and as a direct consequence, European innovation will be put out of play and strict data obligation will be in favour of old-fashioned protectionism. In order to harmonise the data legislation to be more startup-friendly, the EU Commission needs to push for voluntary agreements and throw the stick out of the toolbox to support growth of startups in Europe."

Christian Walther Øyrabø , CEO of [OOONO](#)

As a champion of open & responsible machine learning, Hugging Face welcomes any regulatory initiatives providing level playing fields for startups to access and share data responsibly. The Data Act is a promising regulatory initiative for a stronger EU data sharing regulatory framework, but even more importantly, it fosters the technical infrastructure for future open data standards enabling common European data spaces (e.g., arts. 28 & 29). Open standards and related open source reference implementations are going to be the core of future data sharing markets in the EU, and consequently startups should be facilitated access to open standardisation processes. From a different perspective, provisions related to "unfair" contractual terms in data sharing agreements (art. 13.2.) or model contractual terms (art. 34) would benefit from specific workshops, guidance and the involvement of stakeholders in order to further clarify the interpretation of such crucial provisions. We are concerned a lack of clear interpretation may lead to considerable legal uncertainty in data-related contractual practices.



Carlos Muñoz Ferrandis, Tech & Regulatory Affairs Counsel at [Hugging Face](#)

# TARGETING **STARTUPS**

## Alliances



## About Targeting Startups

Targeting Startups is an initiative by the Danish Entrepreneurs to support and advocate for startup-friendly policies. Our campaigns are supported by coalitions of startups, entrepreneurs, SMEs, organisations, politicians and individuals who want to support the startup ecosystem and bring their voices to the most important policy discussions.

The initiator of Targeting Startups, Danish Entrepreneurs, represents more than 30,000 members in Denmark and has established itself as one of the most fundamental supporters of the local ecosystem of entrepreneurs in Denmark and beyond. Danish Entrepreneurs work together with organisations and startup communities in Europe to raise awareness and support startups in their growth journeys.

## Contact us

Johann Svane  
Head of Policy and Partnership Coordinator  
[johann@d-i-f.dk](mailto:johann@d-i-f.dk)