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European Association of Automotive Suppliers

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Data Act - CLEPA Suggested Amendments

Background

Automotive technology is rapidly advancing, with vehicles generating and collecting ever greater quantities of data to operate and monitor systems. This can provide significant benefits to drivers, passengers, and other road users. This data is also valuable to an expanding market that can make use of it, offer new services to consumers, or improve upon existing repair and maintenance services.

Innovation in this area, however, requires that car data be shared amongst the different economic actors. Fair and undistorted competition is a prerequisite to leverage Europe's full innovation power in mobility services. Currently, vehicle manufacturers control the access to all communication devices in a vehicle and thus have a unique privileged position to also control the flow of in-vehicle data. This entails a risk of competition distortion, which will impede consumers from choosing alternative value-adding services from a variety of third-party service providers.

To incentivise a balance between rights to access to data and incentives to invest in data, and as part of the EU's wider "European Strategy for Data," the Commission proposed on 23 February a Regulation on harmonised rules on fair access to and use of data ("Data Act"). In addition, the Commission is working on a sector-specific legislation on access to in-vehicle data, which we believe will be essential to complement the Data Act and address the specificities of connected vehicles and automotive products.

CLEPA has analysed the proposed Data Act and strongly supports its overall objectives and approach. However, we believe that a few specific amendments would ensure a better balance, improve effectiveness, and provide more legal certainty. This factsheet presents an overview of these suggested amendments.

Suggested amendments

NEW Recital –> Highlight the need for a sector specific legislation to reflect the complexities of the automotive sector

While the Data Act aims at strengthening the position and business models of third parties , the role of providers of components within a connected product (e.g. car) is currently not considered in this Regulation. To allow suppliers to fully make use of the potential of data driven developments and to provide for a better balance between manufacturers and component suppliers, this Regulation will be followed by a sector specific legislation which will ensure access to vehicle data, functions and resources. This sectorial legislation will provide a more precise definition of a data holder, reflecting the complexity of the automotive sector. It will furthermore investigate the suppliers' right to an improved or direct access to data from their own intelligent components for issues such as quality monitoring, product development, environmental or safety improvements.

About 44 million vehicles in EU, EFTA and UK are already connected to vehicle manufacturer's servers allowing them to provide an increasing number of value-added services. Although 50% of such vehicles theoretically can be also accessed by third parties, the offer of services from third parties and SMEs is still very limited. The reasons for this development could be the missing transparency on available data, a missing common set of data, or the complex processes for the user consent management.

The Data Act is a relevant regulation to deploy the wider European Strategy of Data. As it is a horizontal regulatory framework, it will need further specification on the deployment of data-based services in the automotive sector which are not fully covered. This will ensure that the spirit of the Data Act will be applicable to the automotive sector and will guarantee a fair and equal access to vehicle data, functions and resources for all third-party service providers.

Recital 15 –> Ensuring proper coverage of certain external devices

This recital specifies that certain products (such as products that are primarily designed to display, record, transmit or play content for the use of or by an online service) should not be covered by the Data Act. The recital provides examples, such as personal computers, servers, tablets and smart phones, cameras, webcams, sound recording systems and text scanners, as they require human input to produce various forms of content.

CLEPA would support the inclusion of additional language into the recital, to clarify that products which display content and are a functional part of the connected product or related services should still fall under this Regulation. In a connected vehicle, while the dashboard is the primary device designed for the display and the play of content, some external devices, such as a mobile phone or a tablet, can become a functional part of the vehicle during its use in addition to the vehicle interface, in order to interact with the vehicle occupants. In these circumstances, such products should fall in the scope of the Data Act since they become a functional part of a larger product, the vehicle, which itself is in scope. This is especially important given that such devices are sometimes used for consent management or HMI purposes.

Recital 17 –> Clarifying the data covered by the Regulation

This recital states that the data covered by the Data Act, i.e. data generated by the use of a product or related service should not include data resulting from any software process that calculates derivative data from such data as such software process may be subject to intellectual property rights.

This is an important distinction, which CLEPA fully supports. The data that must be shared should be the "raw" data generated by connected products, but not any data that contains added-value or is subject to IP rights. That being said, this recital should not be used to unduly prevent the sharing of data that has merely been processed by a software without any added value or is not subject to IP rights (e.g. transforming the format of raw sensor data into physical or readable values). CLEPA would welcome some addition to the text to reflect this.

Article 2: Definitions

2.1 – Data –> Limiting the scope to useable data

With regards to the definition of "data," CLEPA believes that the text would benefit from a clarification to ensure that trade secrets and IP-rights are protected, as already briefly indicated in Recital 17 above. Sharing of data for the purpose of reverse engineering of functions and products should not be covered by the Data Act. In addition, data that has gone through a process of extraction, aggregation and refinement or data which is the subject to copyright protection, or any other form of intellectual property right shall be excluded from the scope.

The definition of "data" should also state that it only includes data which are either stored in the product for later retrieval, for use in the product or for the use after being transferred out of the product in real-time. .

This is to prevent the Data Act from including into its scope "volatile" types of data, such as the data that is temporarily generated by an autonomous driving system and which is typically erased as soon as it is locally processed. Autonomous vehicles will generate an enormous amount of such data, and it would not be technically feasible to mandate manufacturers to design cars in a way that to provides the possibility to retrieve this data.

CLEPA also suggests the addition of an extra paragraph to the definition, stating that "data" shall be provided in digitally processable format, be interpretable for the use of all parties in the same manner, and include context and a time stamp.

2.6 – Data Holder –> Providing legal clarity

According to the Commission proposal, "data holder" means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through control of the technical design of the product and related services, the ability, to make available certain data.

CLEPA believes that the text would benefit from the clarification that the definition of "data holder" is independent from the fact that the data holder makes use of the data.

Article 5: Right to share data with third parties

5.1 –> Clarifying the scope by integrating the language present in recital 17

Regarding the right of users to share data with third parties, Article 5, paragraph 1, states that "upon request by a user, […] the data holder shall make available the data generated by the use of a product or related service to a third party, without undue delay, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time."

In this Article, CLEPA appreciates the amendments proposed by the Czech Presidency. It is essential that data are always provided with metadata and in machine-readable format. In addition, CLEPA supports the language included in the proposal in recital 17, which clarifies that the Data Act should cover "raw" data but not data containing added value or intellectual property rights. However, this language is not included into any article. Therefore, CLEPA suggests integrating the contents of recital 17 into the main body of the Regulation, for example by elaborating on the definition of "data" in Article 2.1

Article 8: Conditions under which data holders make data available to data recipients

8.4 –> Allowing exclusive data sharing agreements in specific cases

Article 8, paragraph 4, states that data holders cannot make data available to a data recipient on an exclusive basis.

While CLEPA understands how this article is part of the Data Act's overall logic, for engineering and development purpose, specific component data which are monitored and stored during the use of a product can save substantial R&D cost and accelerate development processes. Automotive suppliers are strongly interested in retrieving such data based on exclusive business to business agreements. Therefore, we believe that an exception should be made to the principle in Article 8.4, where data sharing on an exclusive basis by the data holder to the supplier of a product's component, regarding the use of that particular component, should be permitted. The supplier of a vehicle component, for example, should be able to receive data on the use of that component (e.g. on wear and tear) from the data holder, but this data should not be shared with its competitors.

Article 9: Compensation for making data available

9.2 –> Compensation should not exceed incurred costs, regardless of the data recipient's size

Article 9 details the compensation guidelines for making data available and, in paragraph 2, the Data Act specifically mentions that if the data recipient is an SME, compensation should not exceed the costs directly related to making the data available.

While guidance on fair, reasonable, and non-discriminatory fees is welcome, CLEPA recommends equal treatment of all parties and, therefore, advises removing the SME limitation and extending this principle to companies of all sizes.

Article 28: Essential requirements regarding interoperability

28.1 –> Extending interoperability requirements to data holders

Article 28, paragraph 1, sets some requirements for operators of data spaces to facilitate the interoperability of data, data sharing mechanisms, and data sharing services.

As it is written, this article is focused purely on a specific part of the data flow. Interoperability can only be ensured if the data source as well as downstream interfaces comply with the same rules on data sharing. Since, in the case of connected cars, the source of the data is the vehicle and the currently deployed technical solutions leave vehicle manufacturers as the data holders, CLEPA would like to see the obligations of Article 28 extended to also apply to data holders.