

Consultation response

Data Act

Feedback to the European Commission's Inception Impact Assessment



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

The American Chamber of Commerce to the EU (**AmCham EU**) **shares the objectives of the European Commission to increase access to and further the use of data** through the proposed “Data Act”. AmCham EU provides below some **suggestions and recommendations** to ensure that the outcome of the Data Act will be to promote more data sharing and help Europe’s data economy to boost economic growth, research and innovation, competitiveness, and job creation. We also **look forward to responding to the upcoming Data Act public consultation**.

There are already a lot of successful data sharing initiatives in Europe; many **existing business-to-business (B2B) and business-to-government (B2G) data collaborations** are already providing important examples of the benefits that more open approaches to data can achieve. The **Data Act should not** disrupt functioning data sharing and processing models, unintentionally make collaboration more difficult, or **impose unjustified and unnecessary mandatory data sharing or portability obligations**.

While we agree that incentives need to be in place to increase B2G data sharing, we strongly believe that such **B2G data sharing should remain voluntary**. The Commission should consider a flexible framework to **promote the sharing of privately-held data with the public sector** and should avoid imposing mandatory B2G data sharing requirements for “public interest” purposes as this could raise **privacy, security and confidentiality concerns**. Furthermore, **such voluntary data access requests by public bodies should remain limited in number and be proportionate**. Important consideration should also be given by the Commission to the **cost implications for businesses** from gathering and formatting such data, as well as to their **appropriate reimbursement** depending on the purpose of the data access request. More importantly, data that includes business-sensitive information or gives insights into proprietary technology should be carved out.

With regards to **B2B data sharing**, the Commission should ensure that B2B data sharing frameworks are incentivized, rather than introduce **mandatory B2B data sharing requirements**. Furthermore, reviews of existing legislative instruments such as the **Database Directive** should **not introduce new barriers to data sharing**.

In addition, AmCham EU believes that **introducing additional mandatory portability provisions is premature**. This is the case in relation to potential complementary measures to the portability right of personal data under Article 20 of the GDPR and also to cloud portability by potentially mandating the recently developed SWIPO Codes of Conduct on cloud switching and data portability.

With regards to **safeguards for non-personal data in international contexts**, AmCham EU believes that **international data flows are indispensable for European companies’ competitiveness**, as they operate in a connected environment that goes beyond the EU’s borders. As such, the **Data Act should contribute to enabling – and not restricting – the free flow of data**. Companies and suppliers in Europe **must be able to rely on access to the best services available** and have the ability to move data securely across borders to maintain operations, reach customers, and compete in the global economy. Before creating new requirements, the Commission should **take into account long-standing international agreements and treaties regarding Intellectual Property (IP)** (such as WIPO, TRIPs and the Berne Convention) that have brought together a number of like-minded countries. These texts already provide adequate IP and trade secrets protection arrangements, and hence no additional decisions by the Commission are required. Furthermore, **while in principle AmCham EU members could support the option for cloud service providers to notify users** when they receive a request for access to data by foreign authorities, the **approach should remain proportionate** to the level of risk considering that non-personal data do not pose the same risks as personal data.