



20/06/2023

Dear Ambassadors,

We are reaching out to you ahead of the potentially final consideration of the triilogue progress on the proposal for Data Act. BusinessEurope would like to express serious concerns over the prospects of lowering the protection of trade secrets in this very legislation setting the data sharing rules for the digitalising companies in Europe.

Our membership agrees with the objective to grant a legal right for user's data access as this would increase the availability and usability of data across sectors. Consequently, better products and services for the European citizens, businesses, and public sector will emerge.

However, this promise of the Data Act is under a serious risk. The text still poses uncertainty for businesses' private investments in obtaining a competitive edge. This could lead to a chilling effect on the market and Europe's industrial response to the digital and green transition will consequently be delayed. Furthermore, it could go against the responsible spending of taxpayers' money that would support excellence and breakthrough projects with European funding programmes, as there would be less certainty over the protection of trade secrets that would imminently be part of Europe's technological advances.

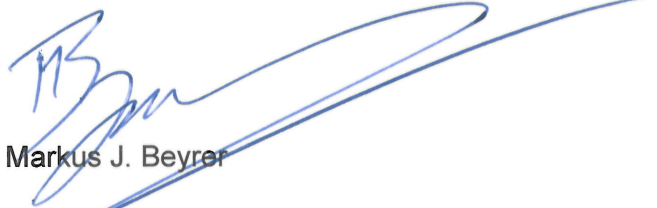
Despite some positive wording that has been added in the negotiations, the trade secrets provisions in the latest version of the compromise are still suboptimal for the following reasons:

- A potential differentiation of trade secrets protection within the EU and outside the EU would not only decrease Europe's geoeconomic stance and business opportunities with other regions but would also do nothing to effectively protect this business sensitive information.
  - We strongly advise against such a differentiation. Businesses in Europe compete for their share of the internal market, and for their share of global markets. One regime for protection provides most certainty and business trust.
- The very essence of a 'secret' is challenged and sets a serious precedent for democracy. As any secret (including state and personal), trade secrets are decided unilaterally. Hence, only the trade secret holder can decide i) whether, ii) to whom, and iii) how to reveal the secret. The Data Act undermines this premise and allows user or data recipient to challenge what is claimed to be a trade secret.
  - We oppose such an approach. By allowing limitations to the user's right to data access, the Data Act will not become an empty shell. An unlimited

right to data access and to challenge what is a trade secret is disproportionate (even fundamental human rights are subject to proportionate limitations). Hence, proportionate right to access data already creates environment for business to compete on the amount and quality of data they would share with business partners, and with users, to stay competitive.

Businesses in Europe count on strong political leadership that supports excellence and innovation on European soil. A well-balanced Data Act Regulation could indeed be the key ingredient for the acceleration of Europe's industrial revolution. We believe there is still time to make it right.

Yours sincerely,



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