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DATA-DRIVEN DIGITAL ECONOMY: are organizations ready for the Data Act?

Inês Antas de Barros - *iab@vda.pt*
Inês Antas de Barros is a Partner of the Information, Communication & Technology practice area of VdA, focusing her practice on privacy, data economy, cybersecurity and information technology.

The trend is now undeniable: data is a core component of the digital economy and, in general, an essential resource for economic growth, competitiveness, innovation, job creation and societal progress. In recent years, the proliferation of data-driven technologies has increased the volume and potential value of data for consumers, business, and society.

However, whilst the market acknowledges that data has (and brings) added value to business, most data are yet unused or poorly used by many organisations. Lack of trust, conflicting economic incentives and technological obstacles are identified as key reasons that hinder the full realisation of the potential of the data-driven innovation.

With a view of bridging the gap between law, regulation, and business, in light of the high impact of data in the digital economy for the ultimate benefit of society, the European Commission established, as a priority, to make Europe fit for the digital age, while creating a future-ready economy where digitalisation comes with a higher degree of trust, security, transparency and fairness for consumers and organizations. In this context, the European strategy for data envisages the development of a single market for data and foresees the approval of a set of new regulations and directives on data, as well as several data initiatives.

One key piece of this puzzle is the recently proposed Data Act, aiming to foster access and use of the data, encouraging greater and fairer flow of data in all sectors, from business-to-business, business-to-consumer, business-to-government, government-to-business and government-to- government. The Data Act applies to a multiplicity of stakeholders within the digital ecosystem, including: (i) manufacturers and providers of connected products (such as IoT devices) and related services in the EU; (ii) data holders that make such data available to data recipients in the EU (iii) businesses that are data recipients in the EU to whom data holders make data available; (iv) businesses providing data processing services (such as cloud services) to customers in the EU; and (v) public sector bodies in the EU. The potentially most impactful features of the Data Act are the following:

1. Design: connected products and related services must be designed so as to allow, by default, an easy and secure access to the data generated through their use;
2. Rights of access and use of data: if data cannot be directly accessed by the user from the product or related service, the data holder is required to provide for the access to data generated by the product or related service without undue delay, free of charge and, where applicable, continuously and in real time;
3. Data sharing: the conditions to share data must be fair and non-discriminatory;
4. Switching: providers of cloud, edge and other data processing services are required to comply with regulatory and portability requirements enabling switching between such services;
5. International data sharing: cloud service providers will be subject to restrictions on international data sharing or access.

The Data Act complements the Data Governance Act that provides for a legal data sharing framework across sectors and Members states. Both initiatives are expected to play an important role in innovation and to develop the common European data spaces (in sectors such as health, environment, energy, agriculture, mobility, finance, manufacturing, public administration and skills), enabling a fair share and use of data.

So, how can organisations unleash the full potential of data, while ensuring compliance with the existent and future legal framework? The answer is two-tiered: to take advantage of a data-driven digital economy, organizations shall firstly, map the opportunities arising from the different initiatives under the European strategy for data and, based on the challenges of data, implement an innovation and compliance by design approach. In other words, to be part of the EU Data Economy organisations should start designing a robust and innovative data governance that extends both to personal and non-personal data, capable of meeting the data protection and security obligations, while promoting data monetization. This may potentially be a demanding exercise. However, it is certainly one that pays off: an organization driven by data will eventually become an organisation that is upgraded, more agile and well-positioned to take on the challenges and opportunities that lay ahead.