

# Joint Industrial Statement on the Data Act

With the adoption of the European Parliament Report and the circulation of the Swedish Presidency's General Approach on the Data Act, the undersigned groups from the energy sector would like to welcome the proposal for a Regulation and to highlight some outstanding issues to be considered as the work on the Act progresses.

## Harmonisation of energy data sharing rules

First and foremost, we would point out that the Data Act is one of at least 15 horizontal and sectorial dossiers<sup>1</sup> which govern the exchange of data in the energy sector. We are **concerned about misalignments and conflicts** between these pieces of legislation and **would welcome a reconciliation and condensing** of the regulatory landscape. Doing so will allow companies active in the energy sector to better remain in compliance and to understand the functioning of the data ecosystem in which they operate.

## The building of the common energy data space shall be supported by an official data catalogue

Related to this point, we understand that as part of the Commission's Digitalisation of Energy Action Plan, a **new Data for Energy working group will be established**. We would appreciate that the governance of a future **Energy Data Space will be drafted within this working group**, to harmonise all legislative initiatives on energy data. Regarding the governance of the European Energy Data Space, providing open access to data generated by energy consumers to global tech giants **risks the ability of European companies active in the energy sector to compete**. To ensure cohesiveness with the forthcoming Implementing Regulation on interoperability and data access, we would recommend careful consideration of which companies shall be eligible parties entitled to access EU energy data – even more so in view of cyber security aspects in relation to critical entities. **To promote clarity, simplicity, and to enable market stakeholders such as EU SMEs, distribution, and transmission system operators to harness opportunities of digital markets, we ask the Commission for a data classification scheme as *lex-specialis*, defining the rules for energy data sharing<sup>2</sup>**. This data classification catalogue should be the foundation for defining rules for data sharing, data access and, finally, data protection.

At the same time, this classification schema should define for all the types of data who are the possible 'data sharers' (*public authorities, companies, customers, associations*). For such stakeholders and for companies in particular, this classification schema will pose the foundation for risk analyses and cost-benefit evaluations. Thus, it will promote the sharing of energy-related data (also from connected devices like IoT devices) so developing new smart business for citizens.

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<sup>1</sup> Electricity market design proposal for revision, e-Privacy Directive 2002/58/EC, GDPR (EU) 2016/ 679, upcoming Implementing Acts on interoperability and data access, from the Electricity Directive, Data Governance Act (EU) 2022/868, Digital Services Act (EU) 2022/2065, Digital Markets Act (EU) 2022/1925, Implementing Act on High-Value datasets C(2022)9562, Recast of the Renewables Directive (2009/28/C) , recast of the Energy Efficiency Directive (EU 2018/2002), Inspire Directive (EU 2007/2), recast of the Energy Performance of Buildings Directive (2018/844/EU), upcoming Network Code on Demand Response, Electricity Directive (EU) 2019/944 and Regulation (EU) 2019/943, EU-US Privacy Shield (EU) 2016/1250

<sup>2</sup> Currently, initiatives such as Gaia X and OpenDei, related to Energy Data Spaces already have a Data Catalog supporting data publication/ trading.

## Trade secrets shall be adequately protected

We are also **very concerned about the negative effect on competition should trade secrets not be properly protected** by the regulatory framework. Therefore, we would like to express our support for the proposed Article 4(3a) from the Council's General Approach as a model for a framework which protects these secrets well.

## Sector specific law on energy sharing, shall take precedence over the Data Act

In the ITRE proposal for a Data Act, recital (13a) refers to follow on legislation which will govern the rules for data exchange which are specific to a given sector. **To reduce any ambiguity** in the interpretation and implementation of the Data Act and the subsequent sector-specific regulations, **we would request a clear statement in this recital that the rules and procedures laid out in the sector-specific legislation will take precedence over the general provisions laid out in the Data Act.** And in this vein, it should be emphasized that managing and processing customer data is mandatory in conjunction with the supply of energy to consumers: such service cannot be considered for a gatekeeper, nor can the related efficiency services.

Within the energy specific legislation, we would like EU legislators to further specify when energy companies serve as data holders for our consumers and when we are required to provide data on our services. For instance, ITRE mentioned connected products in the energy generation and transmission facilities at the report, which could lead to provide operational data from generators (e.g., at nuclear plant). In addition, the Council's General Approach specified the involvement of the energy sector in B2G data access requests for improving infrastructural services. **Revealing such confidential information risks jeopardising the energy system.**

We appreciate your consideration of these points and remain available to you should you wish to discuss any or all of them in further detail.