Position Paper
The EU Data Act
Contribution to Trilogue Negotiations

Brussels, 04 May 2023

The Confederation of European Security Services (CoESS) congratulates the European Parliament and Council for the highly important improvements tabled to the European Commission proposal for an EU Data Act. With this position paper, CoESS highlights key proposals of both institutions, which we recommend should be kept in a final agreement. These proposals largely reflect the recommendations of a joint security industry declaration from October 2022 as they enhance legal certainty for businesses and establish important safeguards for the sharing of security-sensitive data.

1. Enhanced legal certainty for businesses

CoESS highly welcomes the proposals of European Parliament and Council to enhance legal certainty of the proposal in terms of scope and provisions:

- **Respect of Member State competencies in public security (Art. 1.4):** We highly welcome that the agreement in European Council clarifies in Article 1.4 that the future Regulation does not apply to activities or data in areas that fall outside the scope of Union law and shall not affect the competencies of the Member States regarding activities or data concerning public security, regardless of the type of entity carrying out the activities or processing the data. This is a substantial improvement to the text proposed by the European Commission and we call on Parliament and Council to keep this change in Article 1.4 in the final agreement.
- **Clarification of the definition of "data processing services" (Recital 71a and Art. 22a):** both European Parliament and Council propose improvements to the definition of "data processing services", which substantially enhance legal certainty for our businesses. We recommend to keep the proposals made by the European Parliament Report in Recital 71a and Article 22a in the final agreement.
- **Exclusion of data that is modified by the data holder (Recital 14 and Art. 2.1af):** the agreement in European Council proposes an important clarification that the results of processing that substantially modifies the data should not be considered within scope of this Regulation. We believe that this provides legal certainty and better protection of intellectual property and should be kept in the final agreement.

CoESS however notes that the overall legal text is still quite complex and could be simplified.

2. Effective safeguards for the sharing of security-sensitive data

As highlighted in our previous contributions to the debate, CoESS stresses that security-sensitive data should not be treated as any kind of data. In some Member States, national law also prohibits companies from sharing security-sensitive data, such as video surveillance recordings, screening images, alarm signals, and operational data in case of an incident or ongoing crime prevention response.

CoESS therefore highly welcomes that the European Parliament Report (Art. 4.1a-c) **guarantees respect of national law** concerning the sharing of security-sensitive data, provides the option to make the **sharing of such data subject to specific safeguards** (e.g. legitimate interest during and after an incident, security clearances), and **clarifies liability** arising from the sharing of security-sensitive data. We strongly recommend keeping these provisions in the final agreement. As the sharing of security-sensitive data can however not only lead to security risks to the product, but also the related services and the user itself, we recommend a further clarification in the following sense in Art. 4.1b:

> *Users and data holders may agree contractually on restricting or prohibiting the access, use of or further sharing of data, which could undermine security of the product, related services or the user as laid down by law. Each party may refer the case to the data coordinator, to assess whether such restriction is justified, in particular in light of serious adverse effect on the health, safety or security of human beings and property. Sectoral competent authorities will be given the possibility to provide technical expertise in this context.*

We further welcome the European Council's amendments in Recital 28a, Articles 4.3 and 5.8a for the **preservation of trade secrets where its sharing could cause serious damage**.

CoESS believes that, if these proposals of European Council and Parliament are to be kept in the final agreement, the future EU Data Act will adequately reflect, and respect, security and sectoral regulation in the EU Member States.

For an overview of security risks that we believe are now addressed by the improvements tabled by European Parliament and Council, please find the CoESS assessment of the European Commission proposal here.

Catherine PIANA, Director General
CoESS | Confederation of European Security Services
Avenue des Arts | Kunstlaan 56 | B-1000 Brussels | Belgium
Mobile : +32 472 180 107 | **catherine@coess.eu** | **www.coess.eu**

About CoESS

CoESS acts as the voice of the private security industry, covering 23 countries in Europe and representing 2 million security officers as well as over 45,000 companies. The private security services provide a wide range of services, both for private and public clients, ranging from Critical Infrastructure facilities to public spaces, supply chains and government facilities. CoESS is recognised by the European Commission as the only European employers' organisation representative of the private security services. Representing a labour-intensive sector, CoESS is actively involved in European Sectoral Social Dialogue and multiple EU Expert Groups – including SAGAS, SAGMAS, LANDSEC, RAILSEC and the EU Operators Forum for the Protection of Public Spaces.

EU Transparency Register Number: 61991787780-18

Catherine PIANA, Director General
CoESS | Confederation of European Security Services
Avenue des Arts | Kunstlaan 56 | B-1000 Brussels | Belgium
Mobile : +32 472 180 107 | **catherine@coess.eu** | **www.coess.eu**