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European Organisation of Agricultural, Rural and Forestry Contractors

Confédération Européenne des Entrepreneurs de Travaux Techniques Agricoles, Ruraux et Forestiers

Europäischer Zentralverband der land- und forstwirtschaftlichen Lohnunternehmer und ländlichen Dienstleistungsunternehmer

CEETAR POSITION PAPER ON DATA ACT

Why do CEETAR Members care for the Data Act?

(1.) The European Commission proposal on harmonised rules on fair access to and use of data (2022/0047) aims at removing barriers to the development of the European data economy. This will reduce the digital divide, so that everyone benefits from these opportunities. This enables contractors to develop and offer appropriate services to their customers, which will become increasingly important in the future, such as providing decision support or chain of custody documentation. On the other hand, there are parties, which are interested in getting the data, which are produced by contractors and could benefit the receiver. This raises up the importance of rules concerning data ownership and rights of use.

(2.) On 25 March 2021, the European Parliament adopted a resolution, asking for the urgent need to create common European data spaces for the free flow of non-personal data across borders, sectors and between all stakeholders. The resolution pleads for an easier access to data for consumers and businesses, while preserving incentives to invest in ways of generating value through data. Under specific circumstances and with certain precautions, an exceptional data access needs to be granted to public authorities. Contractors could indirectly benefit from this exceptional data need to better perform their work.

(3.) The Free Flow of Non-Personal Data Regulation is a key building block of the European data economy. It will ensure that non-personal data can be stored, processed, and transferred anywhere in the Union. Contractors would then be able to compare with data in other fields with similar conditions.

Contractors are already participating in national databases, where data are stored in a common and open space, with the authorisation of the data creator. Pseudonymization or anonymization techniques can ensure that GDPR rules are respected. As an example, the Finnish harvesting machines produce positioning data on a regular basis. These data are used to create geographical model of the working site in the forest. These data are sent without any identification data of contractor or operator to a forest centre, which updates a forest resources database with this data, created by forestry activities. This improves the data accuracy and the quality of the forest resource database. A national agreement was signed in Finland by all forestry stakeholders (ministry of agriculture, forest centres, forest industries, contractors and forest owners), which results in a collective benefit for everyone.

What is CEETAR asking for?

The Data Act is a horizontal legislation. It will apply to all rural and infrastructure activities, including agriculture, earthmoving and forestry. Hence, contractors must be able to exert their right to access data generated. This does only concern data generated by machines or vehicles (as referred in the type of approval regulation), but also other devices such as hardware and software.

The Data Act proposals give a derived right to contractors. Nonetheless, they need to test in advance, what data and functions are in principle available for them.

Supplier lock-in effects must not restrict data flow. If the contractor is obliged to provide data to the manufacturer - due to special service contracts, machine and equipment data (field and yield data) must be shared between owner or renter and the dealer or machine supplier. Customers must also permit the use of certain data.

Contractors need a guaranteed access right to the information, tools and resources. They must be able to develop their services in advance, to be offered, marketed and advertised to their clients (farmers, municipalities, construction companies, forest industry and forest owners ...). This approach could lead to a more tailored legislative framework that could eventually ensure the use, protection and traceability of data generated or co-generated by contractors and improve their opportunities beyond their traditional business.

More precisely, Article 6 addresses the obligations of third parties receiving data at the request of the user. Intellectual property rights of each stakeholder must be protected. The article should clearly mention that competing repair and maintenance services are not covered by the exception of third-party processing and detailed in article 6.2. The legal text should stress this issue to avoid that competition protection is used as a pretext for not fulfilling the obligations under the Data Act.

As a reminder, CEETAR signed, in 2018, with many other EU agriculture stakeholders, the EU Code of Conduct on Agricultural Data Sharing¹. The code of conduct recognises the need to grant the data originators a leading role, in controlling the access AND the use of data from their business partners, in order to benefit from sharing the data with any potential user.

The current proposal also plans a - very welcome - limit imposed on the data holder not to use data to undermine the commercial position of the user or the third party. However, the Regulation should include a definition of 'non-personal data'.

What else is important for CEETAR?

As long as we want to establish and maintain sustainable economic, ecological and social standards, transferability and interoperability of data is indispensable. The proposal sets clear rules to remove any obstacle to effective switching between providers of data processing services. This is why it would be interesting to add potential legal difficulties to the list of obstacles contractors may encounter when switching between data processing services.

As **transferability** is concerned, the machinery industry and other data provider must, before the signature of the purchasing contract, ensure the technical feasibility of the transfer before it can even have the ability to sell its services. Technical infeasibility should not be invoked as a reason to extend the maximum period or to clear the provider from completing the transfer process. Finally, contractors have to be informed about the costs associated with the data transfer, when changing provider.

¹ <https://ceettar.eu/publications.php?item=69&cat=4&year=2020>

Contractors also need the proposed provisions to ensure the **interoperability** of data between different machinery. These interoperability requirements do not only concern the machinery industry but all the actors of the value chain which are holding data (contractors, machinery dealers, farmers forest industry and forest owners included).

Finally, the data protection principle is one of the main priorities of the current Database Directive (96/9/EC, from 1996). That directive introduced sui generis rights to databases protection, as the producer of a database is the one obtaining, verifying, and presenting the data. Since its first adoption, the Directive was evaluated twice. Both evaluations concluded with the need to balance intellectual property protection of such databases, with support to innovation.

Obstacles remain in the current Data Act proposal. For example, data protection is one of the major difficulties faced by contractors, to better monitor and exploit the data they collect. Improvement in data quality means greater investment opportunities for or contractors. These additional profit opportunities will foster contractors to invest in data, which will indirectly benefit the entire sector.

About CEETAR:

The European Confederation of Agricultural, Rural and Forestry Contractors, established in 1961, represents about 150,000 companies and nearly 600,000 workers. It aims to represent the interests of land-based contractors in Europe. In 2014, the European Network of Forestry Entrepreneurs decided to merge with CEETAR, resulting in a stronger and more representative single organisation representing land-based contractors at EU level.

CEETAR aims to be a proactive force to benefit the contractors and the rural economy at European level. Its objective is to:

- Represent the national federations and defend their professional interests in relation to the institutions of the EU. This way, CEETAR is recognised as representative organisation for contractors towards the European Institutions,
- Represent the national federations and defend their professional interests towards other private organisations, which are active at European level and beyond. CEETAR maintains constructive relations with COPA-COGECA (farmers), CEMA (agricultural machinery industry), EFFAT (workers)...
- Help organisations in the new Member States to fulfil their national objectives as rapidly as possible and under the best conditions through the expertise transfer developed by the CAP 50 years ago.