COMMITTEE FOR EUROPEAN
CONSTRUCTION EQUIPMENT

POSITION PAPER

Brussels – 10/10/2022

CECE comments on the EU Data Act proposal

Executive Summary & Context

CECE represents European construction equipment manufacturers and related industries. The construction machinery sector is strongly committed to the digital transformation of the construction industry with a view to enable interoperability and data sharing at the service of productivity and sustainability.

However, CECE has concerns with the proposal published by the European Commission related to the sharing of data (Data Act)[1] as highlighted below:

- **Business-to-business (B2B) and business-to-consumer (B2C) data sharing** should be addressed separately as the one-size-fits-all approach is overall detrimental to economic operators in B2B sharing contexts.
- **Freedom of contract** should remain the guiding principle for business-to-business (B2B) relations, where the well-functioning of entrepreneurial relationships ensures the level playing field of the parties involved.
- The right of **ownership/managing access right** should be clarified under the Data Act.
- The data covered by the regulation should be limited to **data that is being generated by the use of the product based on this original data set and linked to a related service (i.e., telematics data)**, while sectors should be entitled to adapt the definition of data to be shared according to reciprocal needs.
- The dichotomy "data holder" / "user" does not fit properly into the **complexity of industrial relations**, where roles are interchangeable and vary according to the use cases concerned.
- A **level playing field between bigger and smaller companies** should be established.
- Data holders should be entitled to **compensation for the value of the data inclusive of the costs for data sharing** across all possible data sharing scenarios, including against users.
- The proposed measures to **protect business-sensitive data** (such as intellectual property rights, trade secrets, etc.) are not sufficient nor enforceable in all data sharing scenarios and confidential information and IPRs must be better protected.
- The **transition period should be extended to a minimum of 36 months** to allow manufacturers to put in place the complex implementation process foreseen for enabling our connected machines and devices to be compliant with the new requirements.

[1] COM(2022) 68 final.

I. Scope and definitions

Scope

CECE does not see the need to over-regulate the sharing of data for the construction equipment sector where consolidated, well-balanced business relationships prosper. The one-size-fits-all approach adopted in relation to B2B and B2C data sharing contexts is detrimental for construction equipment manufacturers. We recognise the value of harmonised rules on data sharing in B2C, where imbalances are noticeable. However, it must be stated that our industry's end-users are other businesses which also play a role in industrial value chains.

Freedom of contract should therefore remain the guiding principle, especially for B2B relations, where all players are able to freely negotiate the terms of their relationships entering into voluntary contractual agreements, thus also ensuring fair competition between the parties involved.

The co-generation of data scenario[2] on which the Data Act provisions are based does not take into due account **the complexity and diversity of the data generated and collected in construction machinery**. Indeed, in this context, companies provide connected products to other companies or governments for professional use only. Some examples of the complexity of data sharing operations in construction are provided in the Annex.
Therefore, CECE members call on the European institutions to recognise the specificities of the data collected and processed in the construction industry.

Definition of data

The construction industry has made significant investments in the past decade in order to develop connected devices and related services to provide tailored solution to users. Connected devices in construction collect large amounts of data about the machine, its use, its condition, etc. Analysis and processing of machine's process and status data provides significant added value to the user.

A typical related service is automated fleet management. Such service requires machine data to be transmitted regularly to the back-office along with other machinery status related data, which contains IP-protected information to help the manufacturer to develop better products and services.

CECE notes that the definition of data is too general. As a result, **if the construction industry was compelled to share data, a sectorial legislation would be necessary to address the specificities of such sector.** CECE believes that the "data" that should be considered to be shared should be understood as the **data that is being generated by the use of the product based on this original data set and linked to a related service**.

Data holders and users

CECE is surprised that the owner of the data is not identified in the text and that the proposal focuses on the dichotomy between the "data holder"/ "user". **The manufacturer may neither be the holder nor the owner of the data. The data holder may not have rights on the data.** Focusing only on the data holder/user does not fit properly into the complexity of industrial relations, where roles are interchangeable and vary according to the different data economy transactions.

In construction, machinery equipment manufacturers may indeed qualify as users of connected products at times, meaning that, in industrial contexts, also users may act as data holders. For example, in cases where

[2] This concept refers to the idea that the generation of data "is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product" – *see* rec. 6 of the Data Act proposal.

manufacturers use third party's services for data processing and storage, service providers qualify as data holders (as illustrated in the Annex).

II. B2B data sharing

The construction equipment sector is concerned about the impact the Data Act proposal will have if not reconsidered: the cost, constraints and potential lose of trade secrets may lead manufacturers to reconsider their business model.

The industry does not see the improvement/benefits that the proposed Data Act would foster and even fear this new proposal would impede the European digital strategy. **Entering into voluntary, contractual agreements on data sharing should remain the key for regulating the stream of any non-personal, industrial data for professional use in line with private law rules and contractual freedom**.

Obligation to share data with third parties

CECE has concerns as to the obligation imposed on data holders to make data available to third parties nominated by the user especially due to the fact that the draft proposal does not adequately address data ownership knowing that **in our industry the roles of the parties involved cannot be predefined**.

The tailored solutions provided by construction equipment manufacturers require not only a significant level of digital know-how and expertise on the sector, but also a **very close working relationship between all actors involved**. As per our understanding, **the proposed Data Act does not take into due account the implications stemming from the sharing of data among potential competitors**, and the impact that such an obligation could have on the market.

Therefore, we call on policy makers to shed light on the interaction data holders/third parties proposed with reference to B2B contexts, where contractual agreements are key. In addition, our members call for legal certainty on trade secrets and intellectual property rights protection against potential third parties' misuse under the Data Act: **the main concern lies in the lack of sufficient protection in the event of consecutive re-sharing of data by third parties**. The safeguard clause in its current formulation is perceived as too weak to preserve the confidentiality of business-sensitive information.

III. B2G mandatory data sharing

Exceptional need to use data

CECE believes that the definition of "exceptional need" proposed for B2G mandatory data sharing is too broad. In addition, **the occurrence of "public emergency" is not defined in sufficient detail, leading to legal uncertainty**: our industry's main concern lies in the conditions allowing public sector bodies to request data under the proposed regulation. A request for data can indeed cover any type of data just on the ground of "fulfilling a specific task in the public interest" even though such a case cannot be considered exceptional.

Besides, according to the Data Act proposal, the "appropriate measures" taken by public bodies to preserve confidentiality of business-sensitive data do not seem sufficient.

IV. Exemptions from data sharing obligations for SMEs

CECE stresses the importance of levelling the playing field on which smaller and bigger companies are obliged to share data as we do not see any proper justification to exempt micro and small enterprises only from the obligations under the Data Act, except for the cost resulting from implementing those obligations.

In such case, the examination of the **balance "data holders' cost v. benefit for users/public sector" should be done for all companies' size**. Besides, exempting certain categories from their obligations based on their size implies de facto a denial of the user's rights when those products are manufactured by a SMEs. An additional argument against exemptions from the obligations, SMEs have the option to outsource the data sharing leveraging third parties.

V. Compensation for making data available

CECE objects to the restrictions imposed on data holders in relation to compensation for making data available. Obligations for data holders without any compensation for the costs borne to make data available is set up to strongly hamper the research and development as well as innovation effort of construction equipment manufacturers. In addition, the Data Act proposal takes for granted that manufacturers have access to data by default, although this is not always the case in industrial contexts where data processing may also rely on third parties' services provided along the value chain. As such, **manufacturers should always be entitled to compensation for the costs incurred to make data available, including against users**.

VI. Concluding remarks

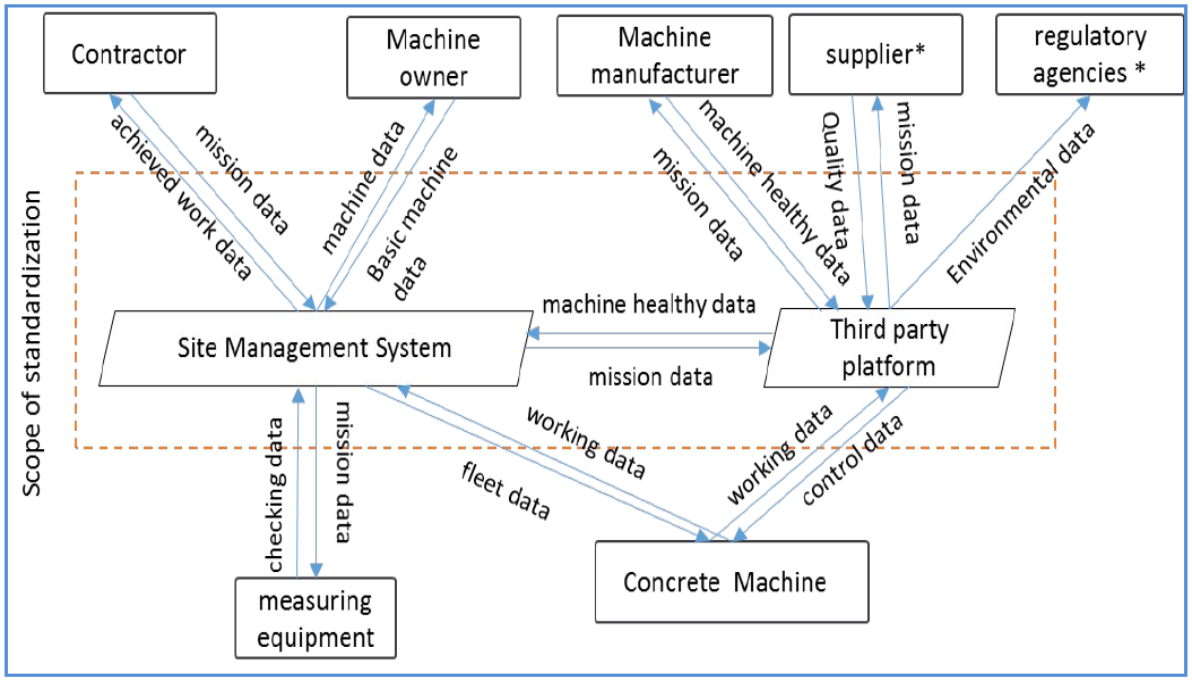
Construction equipment manufacturers (OEMs) are concerned about the risks related to the sharing of their Intellectual Property, know-how and trade secrets with users and third parties (which they cannot select).

CECE members believe that the current situation in relation to data sharing is properly addressed via contractual agreement and that mandatory exposure of industrial data will create risks for companies to anti-competitive practices able to drive many businesses out of the industrial data market, and hamper investment in innovation and product development based on the principle of contractual freedom.

About CECE
CECE, the Committee for European Construction Equipment, represents the interests of 1,200 construction equipment manufacturers through national trade associations in Europe. CECE manufacturers generate €40 billion in yearly revenue, export a sizeable part of the production, employ around 300.000 people overall. They invest and innovate continuously to deliver equipment with highest productivity and lowest environmental impact. Efficiency, safety and high-precision technologies are key. See also www.cece.eu.

Annex

Figure 1. Modes of data exchange between machine and site information system, between application and site information system, and between site information systems. Adapted from ISO/TC 195 SC1 Preliminary work item *Concrete machinery data exchange —Part 1: data exchange method.*



Notes :

Third-party platform refers to platforms related to concrete machinery or production, such as the IoT platform of equipment manufacturers, ERP system of concrete manufacturers, and government-owned environmental protection platform.

Figure 2. Generalised schema for worksite data exchange. Adapted from ISO/TC 195 SC1 Preliminary work item *Concrete machinery data exchange —Part 1: data exchange method*.

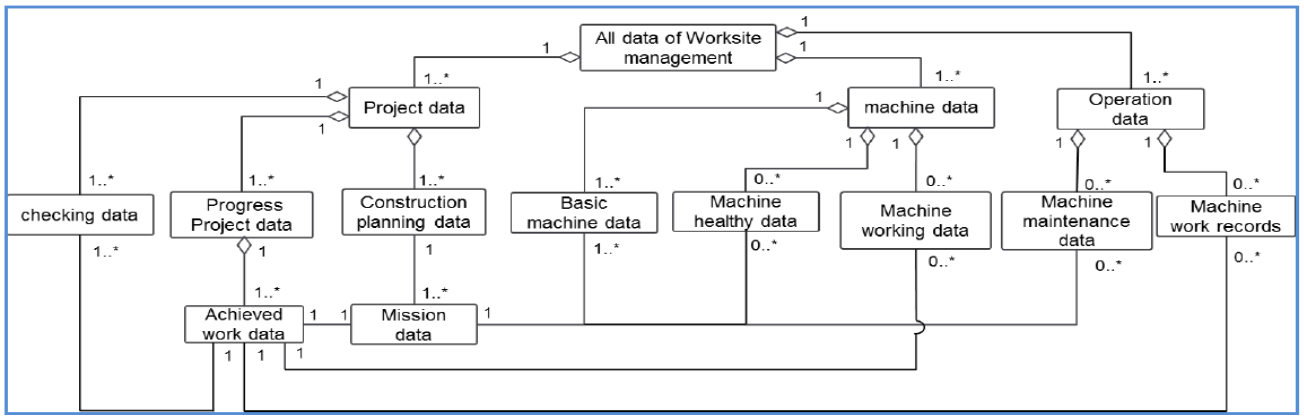


Figure 3. Detail description of generalised schema for concrete machinery. Adapted from ISO/TC 195 SC1 Preliminary work item *Concrete machinery data exchange —Part 1: data exchange method.*

Class	Description
All data of worksite management	all data used in the construction site. This category consists of project data 、 machine data and construction checking data.
Project data	data of construction project. Including "project basic data", "project progress data", etc.
Basic project data	the basic information data of construction projects, including "project information", "working conditions", "project objectives", etc.
Progress project data	construction progress of the construction project, including" Achieved work data".
Achieved work data	the completion progress of the construction project.
Construction planning data	describes the construction schedule that includes construction task data
Mission data	the work data to be achieved in the construction as opposite to "Achieved work data"
Machine data	data related to all construction machineries, including "Basic machine data", "Machine healthy data", "Machine working data", etc.
Basic machine data	the basic data related to the device, including "device type" and so on
Machine healthy data	data related to machinery health, such as pumping,
Machine maintenance data	data related to machinery maintenance, such as time and maintenance object
Machine working data	data related to machinery working status, such as working condition, position, etc. It also describes completed work, such as completed pumping volume.
Machine work records	machinery work completion, such as cumulative working time, cumulative pumping volume, cumulative transportation volume, etc., as an important part of Achieved work data that can be used to measure target achievement.
Checking data	the quality and workload data during construction process that is produced by supervising party or the construction party. It is important data that measures whether a target, such as actual construction volume, concrete strength, construction appearance size, is achieved.
Operation data	the construction operation management process, such as machinery maintenance, work record data, etc.