



Key policies for digitalization during the Spanish Presidency: The AI Act and the Data Act

Main Conclusions | Workshops about the AI Act, Data Act and Open Strategic Autonomy

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It is crucial to the survival and promotion of the European tech industry to reach an ambitious and balanced compromise with the AI Act, and to deploy a productive and clear use for businesses in the future implementation of the Data Act. These two new legislative frameworks illustrate how the new stage of digitalisation is transversal and multilevel. A merely sectorial development and use of digital technologies by public and private organisations has been overcome thanks to the emergence of AI, distributed cloud infrastructure, 5G (and in the future 6G), blockchain trust architectures or digital systems for energy management.

To advance these two regulations, it is necessary to listen to the concerns of industry and allow an open dialogue with policymakers in order to hear each other's concerns. In order for Europe not to fall behind, we have to encourage innovation and, most importantly, uncover the hidden potential of creating a data economy. In essence, how do we as Europeans get the balance right in order to support our businesses and allow them to scale up easily and competitively?

The Spanish Presidency of the Council of the EU started on July 1st, 2023 - at a critical juncture for the Data and AI acts - and Spain is poised to be a major contributor in the advancement of the tech industry. The Spanish government has been proactive in fostering the tech industry as digital technologies are one of the four pillars of its Open Strategic Autonomy agenda. The results have been clear as Spain now holds 7th place in the DESI Index (Digital Economy and Society Index), which makes it the first big European economy ranked in the index. This September, "the 2023 Report on the state of the Digital Decade" was published, which confirms the consolidation of Spain as an advanced territory in terms of connectivity and digital transformation.

The Data Act is a complex piece of legislation where we cannot make a mistake, as the stakes are too high. An Act which should promote the European data economy and is divided in four parts focusing on B2B data sharing, B2G data sharing, cloud switching and international safeguards is a good initiative, but should not generate unintended effects.

Overall, the Data Act faces several obstacles that it needs to overcome. There are four main issues that are vital to consider. The first being that we need a clearer definition of the scope of data it touches, whether it concerns raw data or not. Second, stressing the importance of setting safeguards against the misuse of data and data sharing. Third, we should have a clear

idea of how compensation works when data sharing is handled. We should consider the prior investments made by European businesses to extract the data and the costs it entails for them. Finally, there should be a focus on the limitations and clarification needed in B2G sharing of data.

Ultimately, getting the balance right in terms of resilience and security while not starving off innovation is the most ambitious aspect of the Act. In other words, the principal conundrum that has to be dealt with is how to make data accessible without industry becoming less competitive and eventually losing out. European SMEs and other organisations that have a potential to become more competitive through data-driven activities need to understand and connect with the advantages that the Data Act could provide. Nowadays, beyond those companies that have been actively analysing this Act, there is no real strategy for these actors.

With regards to the AI Act, Europe is leading the first initiative around the world and the promotion of a broad legislative framework for a key emerging digital technology, which is in a constant state of transformation. In the case of Spain, the country is ahead of the curve as it already has a huge framework of initiatives to cover AI compliance and to promote the development of AI in fields like clean energies or the use of the Spanish language. The objective of Spanish institutions and private organisations is to position the country as a territory to teach and learn together with the compliance, tech and data-driven sectors.

The current text of the AI Act, which is now at the trilogue stage, includes the possibility to promote public innovation through sandbox systems, public-private collaboration for enforcement or policy prototyping. These methodologies for research and promoting the right enforcement are going to be critical if we want to avoid a stalemate in innovation and the development and use of AI technologies. Spain has already opened the possibility to test the future compliance of the AI Act. The national Government's goal is to make sandboxing accessible to all Member States in order to allow the proper development of European competitiveness. Sandboxing will help us to learn and comprehend how to deal with obligations from the AI Act and not stagnate innovation and adoption of these technologies by emerging companies. Spain is developing its sandbox through a public call where companies present their systems. This is an example of "learning through the monitoring phase". Spain has effectively managed to create a voluntary process for participants and create trust. However, Spanish

officials acknowledge the process of implementing sandboxing should be done properly and other Member States should follow Spain's example, as to provide proper guidance and create a useful regulatory framework. This is a task that should be essential within the frame of creating a more competitive market within Europe.

We have been living with AI for much longer than we think, although it is true that in recent years the use and evolution of AI has accelerated exponentially. Therefore, we must be cautious when regulating these technologies rigidly in Europe and we must adopt a regulation that balances protection and a European vision with competitiveness and innovation to generate European digital champions. In this sense, we must facilitate the adoption of these technologies by emerging companies, facilitating their use and not hindering them through disproportionate responsibilities as well as administrative obstacles and bureaucratic processes. In addition, we must not undermine the innovation capacity of large companies and the creation of new services and opportunities that they offer to European businesses, academia and public administrations. On this point, it is also very important to assess the impact of regulation on the adoption and development of innovation in this field.

In this sense, the recent approval of the EU-US Data Privacy Framework represents a way to create a safe data policy framework between closely intertwined regions fostering technological transfers, investment and joint ventures; reinforcing, in parallel, one of the strengths from the Spanish and European digital industry, digital services exports to the US. The future Data Act and AI Act enforcement shall rely on this model of agreements.

The data economy and the mentioned regulatory milestones are an angular piece to bear in mind in the concept of "Open Strategic Autonomy" (OSA), which now is at the forefront of policy. The opportunities that the data economy and AI provide to European business must be fully exploited, so smart regulation and adequate implementation of these frameworks are key to meet the goal of the OSA concept. It aims to enhance Europe's self-sufficiency and independence in crucial areas all whilst remaining open to cooperation whenever possible. There is no doubt that emerging technologies and Europe's quick and easy adoption of them are key to achieving these objectives. The geopolitical and geoeconomic international context also need to be taken into account.

Europe's greatest strength has always been our capacity to collaborate. Regarding OSA, our aim should be to collaborate effectively by using our capabilities. Digital resilience is essential to ensure Europe's relevance within the global sphere as the US and China have been taking centre stage. Nevertheless, being autonomous does not mean being separate from the world. Therefore, multilateralism must be a driver and it is necessary to have collaborative partners within the digital economy. Digital resilience involves all sectors because new digital technologies are cross-sectional. For example, using new technologies such as AI in the energy sector can help us reduce waste or distributed cloud infrastructure can reduce costs and make them more innovative among small and medium-sized businesses to compete worldwide. Not only is it necessary to develop collaborative partners within digital resilience, but it is also important to build bilateral relations between countries in other sectors such as raw materials.

Overall, we have to develop the data economy as soon as possible in order to stay relevant. We cannot do this alone and need the support and coordination of multiple stakeholders. There is an urgent need for planning and stronger governance within Europe to help European industries thrive.

This paper has been elaborated taking in consideration the discussion developed in two workshops with EU and Spanish institutions, experts and companies during May and June, 2023. The meetings were hosted by the Royal Institute Elcano, DIGITALEUROPE and Adigital.