

# EU Data Act at a glance...

The EU Data Act (Regulation (EU) 2023/2854) entered into force on 11 January 2024. Most of its rights and obligations apply from 12 September 2025.



## TIMING



## OVERVIEW

The Data Act is designed to enhance the EU’s data economy and foster a competitive data market by making data more accessible and usable, encouraging innovation and increasing data availability.

Given the multifaceted nature of the data market, the measures taken by the EU to meet this objective are wide-ranging, with the Data Act covering matters from unfair terms to switching restrictions to access to IoT generated data. As a result of this broad scope, the Act has relevance to a diverse range of stakeholders. Its provisions are of central importance to manufacturers of connected products and providers of cloud and edge computing services, but it benefits a much wider range of data holders and recipients, regardless of sector or their role in the supply chain. The Act covers the following key areas:

**Ch. II: B2B and B2C sharing in IoT context:** Users of connected products (e.g. connected cars and medical/fitness devices) and related services (e.g. an app that makes a connected product behave in a specific manner) can access the data that they co-create by using the connected products/related services. By unlocking access to this co-created data, this regime could help boost aftermarket and ancillary services or create entirely new services, benefitting both businesses and consumers (see overpage for more detail).

**Ch. III: B2B data sharing:** Where holders of data (including Ch. II IoT generated data) must make that data available to others under the Data Act or other EU Law, certain mandatory data sharing requirements apply (e.g. terms of transfer must be fair, reasonable and non-discriminatory, and any agreed compensation must be reasonable and non-discriminatory).

**Ch. IV: Unfair terms relating to data access and use:** In a business-to-business context, companies cannot unilaterally impose unfair contract terms related to data access and use, or to liability provisions and remedies for the breach or the termination of data related obligations.

**Ch. V: Business to government data sharing:** Public bodies can access data held by private bodies where there is an exceptional need (e.g. to respond to a public emergency - although it also applies in non-emergency scenarios). This is subject to certain information requirements to support the request and restrictions (e.g. on how the data is used). Compensation may be available in certain circumstances.

**Ch. VI: Switching between data processing services:** Customers can switch seamlessly between data processing service providers (such as cloud/edge service providers). Providers of data processing services must meet certain minimum requirements to facilitate interoperability and enable switching and there must be a written contract. The Act also stipulates the reduction, and ultimately the removal, of switching charges.

**Ch. VII: Unlawful third country government access:** Providers of data processing services must implement appropriate safeguards to prevent international transfers of industrial data or access by a third government that would not be compatible with EU or national legislation.

**Ch. VIII: Interoperability:** Enterprises involved in the provision of data/data services must comply with requirements to allow data to flow within and between data spaces. The Data Act also introduces harmonised standards and open interoperability specifications for data processing services.

## INTERPLAY WITH OTHER LEGISLATION

The Data Act is intended to work alongside other data related EU legislation. For example:

- It was published as part of a data package with the **Data Governance Act** (which seeks to increase trust in, and facilitate, voluntary data sharing).
- It builds on the **GDPR**, particularly regarding the rules around data portability. The exercise of rights under the Data Act must comply with the GDPR.
- It also builds on the **Free Flow of Non-Personal Data Regulation**, which contains rules relating to data localisation, the availability of data to competent authorities and the porting of data for professional users.

## KEY FEATURES

### Extra-territorial reach

The Data Act applies to manufacturers, data holders and providers of data processing services irrespective of their place of establishment. Companies providing such services to businesses or consumers within the EU may be caught under this legislation.

### Penalties

Although the Act is a regulation (meaning it is directly applicable), Member States are responsible for penalties, including financial penalties, warnings, reprimands, etc.. These should be effective, proportionate and dissuasive. For personal data, GDPR fines can apply.

### Enforcement

Enforcement is at member state level, with each state appointing a competent authority responsible for the Act’s application and enforcement. Where personal data is concerned, the relevant data regulator will monitor its application. For EU bodies, the EDPB will do so.

## CAN YOU BENEFIT FROM THE ACT?

Organisations should consider if they can benefit from the Act’s provisions, as well as check if it imposes new obligations on them.

Whether you want to explore different aftercare services for the IoT products you use, switch your cloud service provider, or agree reasonable terms around your data sharing arrangements, the Act may help.

# EU Data Act at a glance...

IoT Focus

## B2C AND B2B DATA SHARING IN THE IOT CONTEXT

Access to data unlocks a wide range of opportunities for organisations, from better utilisation of new technologies (such as AI) and innovative services, to more understanding of customer and business needs. Users of connected products and related services can now access the data that they co-create by using connected products/ related services, subject to certain provisions. The Act sets out certain obligations in the IoT context, including:

### Manufacturing obligations

- Connected products and related services must be designed and manufactured in such a manner that product data and related service data are, by default, easily, securely (and where relevant and technically feasible), directly accessible to the user. Data holders shall make the data readily available where it cannot be directly accessed from the connected product or service.

### Provision of information

- Before entering into a contract for the purchase, rent, or lease of a connected product, manufacturers and providers must provide information about the data collected and generated by the product.

### Data sharing

- If requested by a user, data holders must make data available to that user for free. Users can share this data themselves, or they can ask the data holder to send it to a third party.
- There is no obligation for a data holder to share data with third parties based outside the EU.
- Certain exemptions apply for micro and small companies.
- Specific rules apply in B2B arrangements - e.g. data holders should make data available to third parties under fair, reasonable and non-discriminatory terms and in a transparent manner and may agree compensation with them (which must be reasonable).

### Restrictions and measures to protect trade secrets and cyber security

- The data obtained cannot be used to develop a competing connected product (but it can be used to compete in related or aftermarket services, such as repair and maintenance services).
- The data holder and the user or third party may agree on measures to preserve the confidentiality of trade secrets. When such measures are not respected, the data holder may withhold or suspend data sharing. The data holder may refuse to share the data, but only where it can demonstrate that it is highly likely to suffer serious economic damage from the disclosure of trade secrets.
- Limits can also be put on data sharing if there is a risk that the security requirements of the connected product could be undermined, resulting in serious adverse effects to the health, safety or security of people.

## KEY TERMS FOR IOT PROVISIONS

### Connected products

- Items that obtain, generate or collect data concerning their use or environment and can communicate product data; and whose primary function is not the storing, processing or transmission of data on behalf of parties other than the user. Connected products can include consumer products such as connected cars and smart home devices, and industrial products such as planes and industrial machines.

### Related services

- Digital services which are connected with the product in such a way that their absence would prevent the connected product from performing one of its functions, or are subsequently added to update or adapt the functions of the connected product. Related services can include apps which make connected products behave in a specific manner (e.g. an app to adjust the settings of smart home appliances).

### Data holder

- Person that has the right or obligation, in accordance with the Data Act or other EU law, to use and make available data (which could include product data or related service data retrieved or generated during the provision of a related service).

### Aftermarket and ancillary services

- Data recorded by connected products or related services are an important input for aftermarket, ancillary and other services. Those services include things like repair and maintenance services and data-based insurance.

## DATA @ SLAUGHTER AND MAY

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