

Data Act becomes applicable

Data Act directly applicable in all Member States as of 12th of September 2025

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KEY ASPECTS

- Regulation (EU) 2023/2854 (Data Act) is directly applicable in all Member States as of 12 September 2025, establishing new rules for the access to, sharing and use of data generated by connected products and related services in the EU.
- The Data Act imposes obligations on manufactures, data holders, data processing service providers, users, and public entities, covering both personal and non-personal data, and introduces requirements regarding design, transparency, and interoperability.
- Noteworthy are the protection against unfair contractual terms, the facilitation of switching between data processing service providers (e.g. cloud), the protection of trade secrets, and the establishment of mechanisms for public sector access to data in exceptional circumstances.
- Non-compliance may result in significant penalties, including fines of up to 20 million euros or 4% of the worldwide turnover.





Data Act: Entry into Application and Schedule of Obligations

On 12 September 2025, [Regulation \(EU\) 2023/2854](#) of the European Parliament and of the Council of 13 December 2023, known as the **Data Act**, became directly applicable in all Member States (for entry into force and application, see article 50 of the Data Act).

Date of application	Provision/Chapter	Epigraph/Description	Observations
12 September 2025	Regulation (general)	General applicability of the Regulation	Applies to all chapters, except for the exceptions below
	Chapter III	Obligations of data holders required to make data available under Union law	Applies to private sector data subject to statutory data sharing obligations only for obligations that enter into force after 12.09.2025 (new legal obligations)
	Chapter IV	Unfair contractual terms relating to access to and use of data between enterprises	Applies to contracts entered into after 12.09.2025
12 September 2026	Article 3(1)	Obligation to design connected products and related services to ensure data accessibility for the user	Only for connected products and related services placed on the market after 12.09.2026
12 September 2027	Chapter IV	Applicable to private sector data accessed and used on the basis of contracts between enterprises	Applies to contracts concluded on or before 12.09.2025 if: (a) They are contracts of indefinite duration; or (b) They are due to expire at least 10 years from 11/01/2024 (i.e., contracts ending after 11/01/2034)



As part of the [European Data Strategy](#), the Data Act aims to transform the way data is accessed, used, and shared both within and outside the European Union (EU). Accordingly, it establishes rules for the sharing and pooling of data generated by connected products and services related to the Internet of Things (IoT). (See our Post: [Data Act: finally approved by the European Parliament](#)).

Goal

The Regulation **complements** Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022, entitled “**Data Governance Act**”, which became applicable in September 2023. The latter aims to increase trust in voluntary data-sharing mechanisms, whereas the Data Act provides legal clarity regarding data access and its use.

The Data Act has multiple objectives to boost the EU data economy and ensure fairness and competition in the market, such as: ensuring fairness in the distribution of data value among participants in the data economy; establishing conditions for mandatory data sharing between enterprises; increasing competition and protecting against abusive clauses in cloud computing; creating mechanisms for public sector access to data in exceptional circumstances; introducing safeguards against unauthorized access by third countries to non-personal data; and defining interoperability requirements to guarantee the continuous flow of data within the Union.

Subject matter

Its central subject matter, as detailed in its article 1(1), covers:

- The making available of product data and related service data to the user of the connected product or related service;
- The making available of data by data holders to data recipients;
- The making available of data by data holders to public sector bodies, the Commission, the European Central Bank (ECB) and Union bodies, where there is an exceptional need for those data for the performance of a specific task carried out in the public interest;
- Facilitating switching between data processing services;
- Introducing safeguards against unlawful third-party access to non-personal data;
- The development of interoperability standards for data to be accessed, transferred and used.

Subjects covered

The Data Act covers a wide range of stakeholders (article 1(3) of the Data Act) and applies to:

- **Manufacturers of connected products and providers of related services**, irrespective of their place of establishment (it applies extraterritorially if they offer products or services in the EU) (article 1(3)(a) of the Data Act).
- **Users in the Union of connected products or related services** (article 1(3)(b) of the Data Act).
- **Data holders**, irrespective of their place of establishment, **that make data available to data recipients in the Union** (article 1(3)(c) of the Data Act).
- **Data recipients in the Union** (article 1(3)(d) of the Data Act).
- **Public sector bodies, the Commission, the ECB, and Union bodies** that request data, and to data holders that provide such data (article 1(3)(e) of the Data Act).
- **Providers of data processing services**, irrespective of their place of establishment, that provide such services to customers in the Union (article 1(3)(f) of the Data Act).



- **Participants in data spaces and vendors of applications using smart contracts**, as well as persons whose trade, business or profession involves the deployment of smart contracts for others (article 1(3)(g) of the Data Act).
- **Virtual assistants** are also covered, insofar as they interact with a connected product or related service (article 1(4) of the Data Act).

Scope of application

Among the different stakeholders, the Data Act covers different types of data:

Types of personal and non-personal data covered (article 1(2) of the Data Act):

- **Business-to-consumer and business-to-business data sharing** (Chapter II of the Data Act): Data (with the exception of content) concerning the performance, use and environment of connected products and related services (article 1(2)(a) of the Data Act).
- **Business-to-business data sharing** (Chapter III of the Data Act): Private sector data subject to statutory data sharing obligations (article 1(2)(b) of the Data Act).
- **Unfair contractual terms** (Chapter IV of the Data Act): Private sector data accessed and used on the basis of contracts between enterprises (article 1(2)(c) of the Data Act). (See [here](#) our publication on contractual terms for the Data Act).
- **Making data available to public sector bodies, the Commission, the ECB and Union bodies on the basis of exceptional needs** (Chapter V): Private sector data, with a focus on non-personal data (article 1(2)(d) of the Data Act).
- **Switching between data processing services** (Chapter VI): All data and services processed by providers of data processing services (article 1(2)(e) of the Data Act).
- **International or third-country governmental access and transfer** (Chapter VII): Non-personal data held in the Union by providers of data processing services (article 1(2)(f) of the Data Act).

Applicable obligations

The Data Act imposes various obligations on different actors in the data ecosystem:

Manufacturers of Connected Products and Providers of Related Services

- **Default design:** They must design and manufacture products and services so that the related data (including metadata) are by default **easily, securely and free of charge accessible to the user**, in a comprehensive, structured, commonly used and machine-readable format, and, where technically feasible, continuously and in real time (article 3(1) of the Data Act). This obligation regarding product design changes applies to products and services placed on the market **after 12 September 2026** (article 50 of the Data Act).
- **Pre-contractual information:** Before concluding a contract, they must provide the user with clear information on the type, format and estimated volume of data generated, the capability for continuous and real-time generation, the duration of retention, the technical means to access, retrieve or erase data, the identity of the data holder and their intention to use or share the data, the duration of the contract, and the rights to lodge a complaint (articles 3(2) and 3(3) of the Data Act).

Data Holders

- **Making data available to the user:** They must make the readily available data (and the necessary metadata) accessible to the user, **without undue delay, of the same quality, easily, securely and free of charge**, in a comprehensive, structured, commonly used and machine-readable format and, where



relevant and technically feasible, continuously and in real-time, upon electronic request (Article 4(1) of the Data Act).

- **Protection of trade secrets:** They must identify data protected as trade secrets (including in the relevant metadata) and agree with the user on the proportionate technical and organisational measures necessary to preserve confidentiality (Article 4(6) of the Data Act). They may withhold or suspend data sharing if such measures are not respected (Article 4(7) of the Data Act). In exceptional circumstances, they may refuse a request if they can demonstrate that it is **highly likely to suffer serious economic harm** (Article 4(8) of the Data Act).
- **Limitations on use:** They may not use non-personal data to obtain information about the economic situation, assets or production methods of the user that could undermine the user's commercial position (Article 4(13) of the Data Act). They may not make non-personal data available to third parties for commercial or non-commercial purposes beyond the fulfilment of their contract with the user (Article 4(14) of the Data Act).
- **Sharing with third parties:** At the user's request, they must make the readily available data (and metadata) available to third parties under the same conditions as for the user, and **free of charge for the user** (Article 5(1) of the Data Act).
- **Compensation (B2B):** They may request **reasonable compensation** for making data available to a data recipient (Article 9(1) of the Data Act). Such compensation must be non-discriminatory and may include a margin, but must take into account the costs of making the data available and investments in data collection and production (Articles 9(1) and 9(2) of the Data Act). For Small and Medium-sized Enterprises (SMEs) or non-profit research organisations, the compensation may not exceed the direct costs of making the data available (Article 9(4) of the Data Act).

Third Parties (receiving data at the request of the user)

- **Use and erasure of data:** They must process the data **solely for the purposes and under the conditions agreed with the user**, in accordance with Union and national law on the protection of personal data, and erase the data when they are no longer necessary (Article 6(1) of the Data Act).
- **Prohibitions:** They may not unduly hinder the exercise of the user's choices or rights, use the data for profiling (unless necessary to provide the service), make the data available to other third parties (unless under a contract with the user and provided that measures are taken to preserve confidentiality), or to an **access controller designated under the Digital Markets Act**. They also may not use the data to develop a competing connected product, obtain information about the economic situation of the data holder, or compromise the security of the connected product or related service (Article 6(2) of the Data Act).

Data Processing Service Providers (e.g., cloud and edge)

- **Removing obstacles to switching:** They must remove pre-commercial, commercial, technical, contractual, and organisational obstacles that prevent customers from terminating contracts, entering into new contracts, transferring data and digital assets, or achieving functional equivalence when switching services (Article 23 of the Data Act).
- **Contractual terms for switching:** Contracts must include clauses allowing the customer to switch or transfer data without undue delay (mandatory maximum transitional period of 30 days after a maximum notice period of 2 months) (Article 25(2)(d) of the Data Act).
- **Assistance and security:** During the switching process, they must provide reasonable assistance, maintain service continuity, and ensure a high level of data security (Article 25(2)(a)(i)-(iv) of the Data Act).
- **Data erasure:** They must ensure the complete erasure of data and digital assets after the retrieval period (minimum of 30 days) (Article 25(h) of the Data Act).



- **Gradual withdrawal of switching charges:** From **12 January 2027**, they may not impose any switching charges (Article 29(1) of the Data Act). From 11 January 2024 to 12 January 2027, they may impose reduced charges not exceeding the direct costs incurred (Article 29(2) and (3) of the Data Act).
- **Transparency:** They must provide clear information on charges and, where applicable, on the complexity of switching (Article 29(4) and (5) of the Data Act). They must also keep information up to date regarding the jurisdiction of the ICT infrastructure and the measures against unlawful international governmental access to non-personal data (Article 28 of the Data Act).
- **Interoperability:** For Infrastructure as a Service (IaaS) services, they must facilitate functional equivalence (Article 30(1) of the Data Act). For other services, they must make open interfaces available and ensure compatibility with common specifications/harmonised standards (Article 30(2) and (3) of the Data Act).
- **Exceptions:** Switching obligations do not apply to highly customised or testing/evaluation services (Article 31(1) and (2) of the Data Act).
- **Parallel use:** They may charge data egress costs (not exceeding such costs) for the parallel use of data processing services (Article 34(2) of the Data Act).

Public Sector Bodies, the Commission, the ECB, and Union Bodies

- **Data requests:** They may request data (including metadata) from data holders **in situations of exceptional need** (public emergencies or other non-urgent needs) (Articles 14 and 15 of the Data Act).
 - In public emergencies, they may request data (personal or non-personal) if such data cannot be obtained in a timely and effective manner by other means (Article 15(1)(a) of the Data Act).
 - In non-urgent situations, only non-personal data may be requested, and they must demonstrate that the data are necessary for a task carried out in the public interest and that all other means to obtain the data have been exhausted (Article 15(1)(b) and 15(3) of the Data Act). Micro and small enterprises are exempt from this obligation in non-urgent situations (Article 15(2) of the Data Act).
- **Request requirements:** Requests must be specific, transparent and proportionate, explain the purpose and intended use, and specify measures to protect personal data and trade secrets (Article 17(1) of the Data Act).
- **Prohibitions on use:** They may not use the data to develop competing connected products/services or share them for such purposes (Article 19(2) of the Data Act).
- **Data erasure:** They must erase the data when it is no longer necessary for the stated purpose (Article 19(1)(c) of the Data Act).
- **Compensation:** In the case of a public emergency, data holders (except micro and small enterprises) must provide the data free of charge (Article 20(1) of the Data Act). For other exceptional needs, the data holder is entitled to **fair compensation** (covering technical and organisational costs, including a reasonable margin) (Article 20(2) of the Data Act).
- **Sharing for research/statistics:** They may share data with individuals/organisations for not-for-profit scientific research or with national statistical institutes/Eurostat for official statistics, under specific conditions (Article 21 of the Data Act).

Vendors of Smart Contracts

- **Essential requirements:** They must ensure that smart contracts comply with requirements of **robustness and access control, safe termination and interruption, data archiving and continuity, and consistency with the data sharing agreement** (Article 36(1) of the Data Act).



- **Conformity assessment:** They must carry out a conformity assessment and issue an EU declaration of conformity (Article 36(2) of the Data Act).

Violations

- Non-compliance with the obligations set out in the Data Act may give rise to the imposition of penalties by the competent authorities of the Member States, which must be effective, proportionate and dissuasive (Article 40(1) of the Data Act). The penalties established by the Member States may include financial penalties, warnings, reprimands or orders.
- In the case of infringements relating to personal data, fines may be imposed in accordance with the GDPR, up to a maximum of 20 million euros or 4% of the total worldwide annual turnover, whichever is higher (Article 40(4) of the Data Act).
- In determining penalties, the competent authorities must take into account factors such as the gravity, duration and nature of the infringement, any mitigating measures, recurrence, benefits obtained, turnover, and other aggravating or mitigating factors (Article 40(3) of the Data Act).

Is your company prepared for the Data Regulation?

With direct applicability as of September 12, 2025, the Data Act is a milestone that requires organizations to reassess their data governance, update contracts, and implement new data-sharing processes. Compliance is not only a legal requirement, but also a strategic opportunity for companies that know how to leverage the new possibilities for data access and monetization.



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