
Regulation on harmonized rules on fair access to and use of data (“Data Act”): finally approved by the European Parliament

On November 9, the European Parliament approved the Data Act, which harmonizes rules on fair access to and use of data generated by products connected to the Internet of Things (“IoT”)

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Key aspects

- > As part of the European strategy for data, the new legislation establishes rules on sharing and mutualizing the data generated by IoT-connected products and related services and aims to drive industry in the sector.
- > The new rules extend to various stakeholders, including manufacturers of connected products and providers of related services, users, data holders and recipients, state bodies, data-processing service providers, and micro, small and medium-sized enterprises (but with some exemptions and benefits).
- > The Council will formally approve the Data Act, which will be published in the Official Journal of the European Union. After its publication, the 20-month transitory period will begin, giving the different entities covered by this regime the necessary time to adjust to the new rules.



The Data Act: context up to its approval by the European Parliament

The exponential volume of data generated by humans and machines has become a crucial factor for innovation in both the enterprise sector and state institutions. However, in the IoT context specifically, while we have seen a considerable rise in internet-connected devices, only a small fraction of the generated data is actually used, thus limiting its value to a narrow group of market agents.

Against this backdrop, on February 23, 2022, the Commission proposed the “Regulation of the European Parliament and of the Council on harmonized rules of fair access to and use of data” (the “Data Act”). The purpose of this regulation, in brief, is to regulate the use of data from IoT devices and facilitate the transition and intercommunication of this information through cloud services.

After intense debate in the last two years, the approval of the Data Act in the European Parliament, with a substantial majority of 481 votes, represents a collaborative effort involving public authorities, industry specialists and stakeholders committed to the European strategy for data.

Main aspects

The Data Act represents a significant milestone in promoting access to and use of data from IoT devices and related services for consumers and companies. This legislation aims to simplify the collection and application of these data, thus contributing to the advancement of innovation in various sectors, especially in areas such as artificial intelligence, where huge datasets are essential for training algorithms effectively.

The regulation covers a wide variety of stakeholders, in particular:

- > manufacturers of connected products and providers of related services, regardless of the place of establishment;
- > users of related products or services in the European Union;
- > data holders that provide data to recipients in the European Union;
- > data recipients in the European Union;
- > public sector bodies, the European Commission, European Central Bank and European Union bodies that request data in exceptional cases to perform public interest tasks;
- > data-processing service providers to clients in the European Union; and



- data space operators, sellers of smart contract apps, and those whose activities involve implementing smart contracts for third parties in the context of performing agreements.

In this context, we highlight the following aspects of the final text that was recently approved:

- **Access to and control of the data by the user:** The Data Act establishes the users' right of access to the data generated in the IoT. It underscores the need for these data to be made available in a fair and non-discriminatory way by the data holders. To this end, it establishes new requirements for how these data must be provided to the users, as well as the new information and transparency obligations.
- **Data and IoT by design:** Under the provisions of the Data Act, the new legislation establishes default requirements for the design and engineering of IoT systems, ensuring that devices are designed to provide more transparency and accessibility, facilitating user comprehension and direct access to the data.
- **Enhanced user autonomy:** The Data Act strengthens the user's prerogative to request the continuous or real-time transmission of data to ensure third-party interoperability. However, it establishes restrictions to safeguard the integrity and original purpose of the data. Notably, large technology companies, considered gatekeepers, are excluded as eligible third parties to receive data. The Data Act also imposes new restrictions to avoid unfair practices and unauthorized transfers.
- **Exceptions for small and medium-sized enterprises (SMEs):** SMEs benefit from certain exceptions from the data holders' obligations, fostering a favorable environment for entrepreneurial development without overburdening these enterprises.
- **Use of data and the public interest:** The Data Act establishes the use of data by public sector bodies and European Union institutions, agencies and bodies in exceptional circumstances such as public health emergencies and natural disasters. It also establishes data-sharing for non-profit scientific research in certain circumstances, balancing the public interest with the protection of this type of data.
- **Interoperability in the cloud computing services market:** The Data Act introduces minimum regulatory, contractual, commercial and technical requirements for cloud computing services. It simplifies the transition between clients of these services, eliminating the obstacles that could hamper that interoperability, and boosting efficiency and security in portability services.



- **Protection against illegal transfers of data:** The Data Act establishes robust measures to protect the integrity of the data, preventing international transfers or government access that could conflict with the laws of the European Union or the Member States.

Final provisions

With the Parliament's approval, the Data Act will now move toward final approval by the Council, followed by its publication in the Official Journal of the European Union.

There will then be a transitory period for full enforcement of the regime, giving the different entities concerned the necessary time to adjust to the new rules. Except for some specific provisions, the Data Act will enter into force 20 months after its publication.

Given the diversity of the provisions and the new parameters to be complied with under the Data Act, we stress the need for the parties concerned to conduct a thorough review of their current practices and procedures to ensure compliance with the requirements of the regulation when it enters into force.

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