

DATA PROTECTION

DATA ACT: NEW REGULATION
ON FAIR ACCESS TO AND USE OF DATA

VdA EXPERTISE



December 2023

The Data Act sets out new harmonised rules on fair access to and use of data in the EU, to promote data accessibility and data-driven innovation, especially in AI.

Introduction

On 27 November, the Council formally adopted the Data Act following its approval by the European Parliament in a resounding majority during a plenary vote.

The Data Act, complementing the Data Governance Act that is applicable since 24 September 2023, is one of the pillars of the European Strategy for Data. Its primary goal is to maximise the value of the EU Data Economy by promoting data accessibility and use while maintaining a crucial balance with privacy and protection of proprietary information. This balance empowers stakeholders with more control over their data, fostering data-driven innovation, especially in AI, where extensive datasets are essential for effective algorithm training.

Key insights

1. Main objectives

The Data Act has specific goals that it intends to achieve. Firstly, it aims to **facilitate access** to and **use** of data by businesses and consumers, while maintaining incentives to invest in value-generating data activities.

Secondly, it allows specific national **public sector entities** alongside EU agencies to **utilize enterprise-held data** in situations where there is an exceptional need for such information.

The regulation also seeks to make **switching between cloud** and edge services more accessible and puts in place strict measures against **unauthorized data transfers** by cloud service providers.

Lastly, it supports the development of **interoperability standards** for data that can be reused around different sectors.

2. Scope of Application

The Regulation establishes a **broad scope of application**, extending to various stakeholders involved in the data value chain :

- Manufacturers of connected products and providers of related services to users of such devices;
- Data holders and data recipients
- Public sector bodies, the Commission, the European Central Bank and other Union bodies that request data holders to make data available where there is an exceptional need for those data for the performance of a specific task carried out in the public interest and to the data holders that provide those data in response to such request;
- Providers of data processing services (e.g. cloud);
- Participants in data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts for others in the context of executing an agreement.

The Data Act, reflecting the so-called Brussels effect, has an **extraterritorial scope**, since it is applicable regardless of whether the entity is established in the EU, as long as the products, services and data are placed or made available in the Union.

The Act applies to **both personal and non-personal data** acquired through products or during the provision of services that are within the scope of the regulation. This encompasses **raw data** produced by the user interface and device itself but does not encompass information deduced or derived from that data. It also does not pertain to data generated by sensor-equipped products when the user records, transmits, displays, or plays content, as well as the content itself in relation to **data sharing**.

3. Main Obligations

An overview of the main obligations posed to the various stakeholders in its scope is provided below:

SUBJECT	OVERVIEW
Obligation to make product data and related service data accessible to the user	Manufacturers and related service providers shall design and manufacture/provide product/service data accessible to the user and include certain type of information
Obligation of making data available to the user and sharing data with third parties (B2C and B2B)	Upon request by a user, data holders are obliged to make the data available to the user and to third parties, easily, securely, free of charge to the user, without undue delay, in the same quality as available to the data holder and, in a comprehensive, structured, commonly used and machine-readable format and, where relevant and technically feasible, continuously and in real-time
Obligations for data holders obliged to make data available pursuant to Union law	<ul style="list-style-type: none"> ▪ Making data available under fair, reasonable and non-discriminatory (FRAND) terms and in a transparent manner; ▪ Agreeing with the data recipient the terms for making the data available ▪ Not discriminating between comparable categories of data recipients when making data available ▪ Not making data available to a data recipient on an exclusive basis unless requested by the user
Obligation to making data available to public sector bodies, the Commission, the European Central Bank and Union bodies on the basis of an exceptional need	Data holders that are legal persons, other than public sectors bodies shall make data available on the basis of an exceptional need (e.g. public emergency) upon a duly reasoned request
Obligation to remove obstacles to effective switching between data processing services	Providers are obliged to remove commercial, technical and contractual restrictions that make it difficult for users to terminate a contract, conclude one or multiple new contracts or port their data to, another provider, amongst others



4. Next Steps:

The new Regulation will soon be published in the EU Official Journal. Following its publication, a 20-month transition period will commence, giving time to the various stakeholders to comply with the new rules.

However, the provisions of Article 3.1, which outline the requirements for simplified data access for new products, shall be applicable to connected products and their related services that are introduced to the market after a period of 32 months from the Regulation's effective date.

The Data Act, together with the Data Governance Act and the common European data spaces will ensure that more data becomes available for use in the economy and society, in a secure way while setting out the rules for clear data governance mechanisms.

In this regard, it should be noted that the **Proposal for the European Health Data Space** was published in May 2022, while a series of **Proposals for the Financial data access and payments package** was published in June 2023.

Contacts



MAGDA COCCO
MPC@VDA.PT



INÊS ANTAS DE BARROS
IAB@VDA.PT



IAKOVINA KINDYLIDI
IMK@VDA.PT