

# The European Data Act

Creating a harmonized framework for accessing and sharing of (IoT) data.



## What is the Data Act?

The Data Act is a uniform regulation across all economic sectors in the EU that sets up rules on (i) **who** can use and access (ii) **what data** (iii) for which **purposes** and (iv) on what terms. It will mandate data access requirements to allow **data sharing** among businesses, public authorities and users in the EU.

## Will the Data Act affect my business?

The Data Act will primarily impose obligations on (i) **manufacturers of connected products** and (ii) **providers of related services**. On the other hand, it will enable market players to develop new business models on the basis of data shared by those entities.

## When will the Data Act be applicable?

On 27 June 2023, EU policymakers reached a political agreement on the Data Act. It is now set for formal adoptions as the text is still fine-tuned at the technical level. The Data Act will start to apply 20 months following its entry into force.

## When is the right time to start preparations?

Should you be a device manufacturer or service provider, then the right time to start preparations is now. Although the Data Act has not yet been formally adopted, the interim period will likely be too short to properly adapt or implement the internal processes necessary to comply with its legal requirements.

## Affected Parties



The Data Act will primarily apply to **manufacturers of connected products and providers of related services** placed on the market in the European Union (irrespective of their place of establishment) and to users of such products / services in the Union.

Micro, small and medium-sized companies are exempted from some obligations. In addition, the Data Act includes a set of requirements for providers of data processing services and participants of data spaces.

## Core Requirement



Consumers and businesses will be able to access the data of their devices and use it for aftermarket and value-added services. To this end, the Data Act will impose a '**data accessibility by design**' obligation under which devices and services must be designed and manufactured to make the data, by default, accessible to the user free of charge in an easy, secure and, where appropriate, direct manner.

## Access Rights



Users of IoT devices (both natural and legal persons) will have a right of access to data in a comprehensive, structured and machine-readable format. Where data cannot be directly accessed by the users, the data holder shall provide all readily available data continuously and in real-time, if technically feasible.

## B2B Data Sharing



At the request of the user, third parties are to be granted access to the data. To this end, a contract will have to be concluded between the data owner and the third party. A compensation for making the data available may be foreseen within certain limits.

## Switching



The Data Act also provides requirements for making it easier to switch from one cloud provider to another. Providers are, therefore, required to remove obstacles to switching, for instance by ensuring compatibility with open interoperability specifications and standards.

# The Data Act brings both risks and opportunities – early adopters will *benefit*

## Get a head start of your competitors



**Competitive edge.** If you start to establish a sound and robust data management system as an IoT device manufacturer or related service provider now, this should give you a head start on your competition.

## Protect your confidential data



**Protection of trade secrets.** Requests for data access may generally not be rejected with reference to confidentiality concerns. To protect your confidential data (especially trade secrets), contractual arrangements will have to be put in place. Hence, it can be guaranteed that third-party access to shared data remains safe and harmless to the parties involved.

## Avoid penalties



**Cost of non-compliance.** Each Member State must lay down rules for "effective, proportionate and dissuasive" penalties for violations of the Data Act. As this suggests a national rather than EU-wide penalty regime, it should be noted that fines will likely vary from country to country for the same violations and could be considerably high in some cases.

## No more "vendor lock-in"?



**Interoperability and portability.** The Data Act seeks to reduce so-called 'vendor lock-in' problems, by giving customers of data processing services portability rights on their data. Providers shall remove existing obstacles to effective switching between services. Further, it introduces interoperability provisions by empowering the Commission to develop common specifications.

## GDPR & Data Act



**Protection of personal data.** The Data Act will cover both personal and non-personal data and is without prejudice to the GDPR, so both norms must be taken together where applicable. The "user" pursuant to the Data Act does not necessarily correspond to the "data subject" under the GDPR. Accordingly, when sharing data, data protection requirements must also be taken into account.

## EU data market



**Digital innovation.** Once the Data Act comes in force, business and industrial players will have more data available and will benefit from a competitive data market. Aftermarkets services providers will be able to offer more personalised services, and compete on an equal footing with comparable services offered by manufacturers, while data can be combined to develop entirely new digital services.

## How can we support to create your competitive advantage?

The Data Act, together with other main pieces of legislation in this field, will create a single market for data that will allow it to flow freely within the EU and across sectors for the benefit of businesses, researchers and public administrations. Our mission is to help businesses embrace the opportunities presented by the Data Act while ensuring compliance with its requirements.

We can provide you with all-round support:

### Assessment of Business Model

Assessment of your business model under the Data Act and other data sharing laws to identify and eliminate showstoppers.

### Risk Mitigation

Identify and mitigate data-related risks with our risk management strategies, safeguarding your business and reputation.

### Data Management

Development of robust **data management policies** and frameworks tailored to your business, promoting accessibility, quality, security and transparency.

### Data Strategy

Development and implementation of a data strategy tailored to your business model to implement Data Act requirements/policies to operate with maximized effectiveness.

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## Your Contact

EY Austria and EY Law Austria are happy to discuss your projects and help you to identify and implement your needs to ensure that you will maximize your benefits and opportunities under the Data Act!

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