



The Data Act: How the EU will regulate data rights in future

The Data Act has been in force since January 11, 2024. Alongside the AI Act, the Digital Services Act and the Data Governance Act, this regulation is a core element of the EU's future data strategy. The Data Act regulates which players may use data and under what conditions. The Data Act therefore brings legal changes for almost all companies. The good news is that most of the regulations will not apply until September 25, 2025. Companies can therefore prepare for the new regulations in good time.

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The aim of the Data Act

The aim of the Data Act is to create a fair and uniform regulation on the access and use of data in the EU. The harmonized regulation is also intended to promote the EU's data market. The explicit aim of the Data Act is to shift power away from the large „data octopuses“ towards smaller companies and consumers. This will break up so-called gatekeepers and create new opportunities for the development of innovative products and services.

Who does the Data Act apply to?

On the one hand, the Data Act is aimed at manufacturers (= data holders) and users of connected products (IoT products). On the other hand, the Data Act regulates providers of data processing services, in particular cloud services.

The Data Act applies to both personal and non-personal data. The provisions of the GDPR should remain largely unaffected and apply in addition to the Data Act.

The Data Act can have a significant impact on the business of almost any company. Exemptions from certain obligations are only provided for in Chapter II (data transfer from companies to consumers and between companies) for small and micro-enterprises.

Regarding the territorial scope, the Data Act provides for the so-called market place principle. This means that the Acts apply regardless of a company's registered office, provided that a company offers or uses connected products or data processing services within the EU.

What does the Data Ordinance regulate?

Over the next few months, we will be explaining the different provisions of the Data Act in personal meetings and workshops, at webinars and events and also at regular intervals on our website. Below we provide you with an overview of the most important regulations in advance:

- » **Data use by manufacturers:** In future, manufacturers of connected products will only be allowed to use „readily available data that is not personal data“ on the basis of a contract with the user (e.g. with the buyer of a car). In other word, this affects product data that the manufacturer receives or can receive from the connected product without disproportionate effort. For manufacturers, this means that they must amend



and extend their GTC or the EuLA accordingly if they wish to continue to access and use the product data, e.g. for further development of the product. However, manufacturers must also take into account the prohibition of unfair terms in Art. 13 Data Act.

- » **Data access by users:** Buyers of connected products will have the right to have product data made available to them simply, securely and in a structured, commonly used, machine-readable format. This right must already be observed in the design and manufacture of connected products. In addition, users must be comprehensively informed about the product data they can use before purchasing the connected products. Therefore, there may also be a need to adapt existing confidentiality regulations in non-disclosure agreements (NDAs) with suppliers or within the supply chain with manufacturers, as the legal obligation must not be undermined by NDAs that are too strict. NDA clauses that are too strict could even be ineffective.
- » **Disclosure of data to third parties:** Users will also have a right to have the product data of the product they are using passed on to third parties. Data holders only have a few options to counter such claims, e.g. to protect trade secrets or for data protection reasons. Existing NDAs should be reviewed to check whether they need to be adapted to the new legal conditions. When adapting existing NDAs and concluding future NDAs, it should be kept in mind that the Data Act cannot simply be circumvented by declaring all product data to be „trade secrets“.
- » **Easier change of providers of data processing services:** Customers will be able to switch more easily between providers of data processing services (i.e. cloud services). Providers may not impede such changes through economic, contractual, technical or other obstacles. They must not only ensure the interoperability of their services. Contractual impediments, such as minimum terms and early termination fees, will also be largely inadmissible.
- » **Data access by public authorities:** Another focus of the Data Act is that private companies must grant access to data to the relevant public bodies. This will be possible for certain purposes of public interest.



**What happens if
the regulations are
breached?**

The provisions of the Data Act can be enforced directly between the parties involved. In addition, fines may be imposed for non-compliance. The Data Act refers to Art. 83 para. 5 GDPR when calculating such fines. This means that fines of up to EUR 20 million or 4% of global group turnover, whichever is higher, may be imposed.

**Conclusion and
recommendation for
action**

The Data Act gives users significantly more rights to the data that is collected about the products they purchase. The associated new requirements for companies will make significant adjustments to contracts necessary. In addition, many companies with a strong digital focus will require extensive further process adjustments. **Companies should use the deadline of September 2025 to make the necessary adjustments without time pressure.**

If you have any questions about the Data Act or would like support, please do not hesitate to contact our experts in the fields of intellectual property, media and information technology. A short workshop could be a good way to start implementation, for example to identify together the specific requirements of the Data Act for your company and agree on the necessary steps.



Imprint

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