Data Act

Background and Highlights

The Regulation on harmonised rules on fair access to and use of data — also known as the **Data Act** — entered into force on 11 January 2024 (https://digital-strategy.ec.europa.eu/en/news/european-data-act-enters-force-putting-place-new-rules-fair-and-innovative-data-economy). The Act is a key pillar of the European data strategy (https://digital-strategy.ec.europa.eu/en/policies/strategy-data) and it will make a significant contribution to the Digital Decade (https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade)'s objective of advancing digital transformation. For more in depth explanation, please see the Data Act explained (https://digital-strategy.ec.europa.eu/en/policies/data-act-explained).

The new measures complement the Data Governance Act (https://digital-strategy.ec.europa.eu/en/policies/data-governance-act), which was the first deliverable under the European strategy for data and became applicable in September 2023. While the Data Governance Act regulates processes and structures that facilitate voluntary data sharing, the Data Act clarifies who can create value from data and under which conditions. Together, these two acts will facilitate reliable and secure access to data, fostering its use in key economic sectors and areas of public interest. They will also contribute to the establishment of an EU single market for data, ultimately benefiting both the European economy and society at large.

The Data Act will enable a fair distribution of the value of data by establishing clear and fair rules for accessing and using data within the European data economy, a necessity heightened by the growing prevalence of the Internet of Things (IoT) (https://digital-strategy.ec.europa.eu/en/policies/internet-things-policy). Thanks to this regulation, connected products will have to be designed and manufactured in a way that empowers users (businesses or consumers) to easily and securely access, use and share the generated data.

The Data Act is a cross-sectoral piece of legislation (i.e. it lays out principles and guidelines that apply to all sectors). It does not modify existing data access obligations, however any forthcoming legislation should align with its principles.

What are the new measures?

The Data Act makes more data available for the benefit of companies, citizens and public administrations through a set of measures such as:

- **Increasing legal certainty** for companies and consumers engaged in data generation, particularly within the Internet-of-Things framework, by establishing clear rules on the permissible use of data and the associated conditions, while sustaining incentives for data holders to continue investing in high-quality data generation. The new rules aim to facilitate the seamless transfer of valuable data between data holders and data users while upholding its confidentiality. This will encourage more actors, regardless of their size, to participate in the data economy. The Commission will also develop model contract clauses in order to help market participants draft and negotiate fair data-sharing contracts.
- **Mitigating the abuse of contractual imbalances** that impede equitable data sharing. This entails safeguarding enterprises from unjust contractual terms imposed by a party wielding a considerably stronger market position.
- Rules enabling **public sector bodies to access and use data** held by the private sector for specific public interest purposes. For instance, public sector bodies will be able to request data necessary to help them respond quickly and securely to a public emergency, with minimal burden on businesses.
- New rules setting the **framework for customers to effectively switch** between different providers of data-processing services to unlock the EU cloud market. This will also contribute to an overall framework for efficient data interoperability.
- A review of certain aspects of the Database Directive (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996L0009-20190606), particularly focusing on elucidating the role of the *sui generis* database right. This right pertains to safeguarding the content of specific databases and extends its application to databases derived from data generated or acquired through Internet of Things (IoT) devices. This will ensure that the balance between the interests of data holders and users is in line with the broader objectives of the EU data policy.

How does it work in practice?

The Data Act is a powerful engine for innovation and new jobs. It will allow the EU to ensure that it is at the forefront of the

latest wave of data-driven advancements. Below are some examples of the impact of the new rules on the access and use of data generated by Internet-of-Things devices.

- When acquiring a 'traditional' product, you receive all of its components and accessories. However, in the case of connected devices (specifically within the Internet of Things (IoT)), new data is generated during normal usage. This adds to the product, becoming one of its essential components. The Data Act gives individuals and businesses the right to access the data produced through their utilisation of smart objects, machines and devices.
- Users of connected products may choose to share this data with third parties. This will enable aftermarket (e.g. repair) service providers to enhance and innovate their services, fostering fair competition with similar services provided by manufacturers. Consequently, users of connected products, including consumers, farmers, airlines, construction companies or building owners, will have the option to choose more cost-effective repair and maintenance providers (or undertake these tasks themselves), leading to potentially lower prices in the market. This could also extend the lifespan of connected products, thus contributing to the Green Deal objectives. (https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en#:~:text=With%20the%20Green%20Deal%20Industrial,the%20transition%20to%20climate%20neutrality.&text=The%20aim%20of%20the%20Green,industrial%20innovation%20and%20clean%20tech.)
- The accessibility of data pertaining to the performance of industrial equipment opens up opportunities for enhancing efficiency. Industries such as manufacturing, agriculture and construction can optimise operational cycles, production lines and supply chain management, leveraging machine-learning technologies.
- In precision agriculture (https://www.europarl.europa.eu/thinktank/infographics/precisionagriculture/public/index.html), the application of IoT analytics to data from interconnected equipment enables farmers to analyse real-time information, including weather conditions, temperature, moisture levels, market prices and GPS signals. This analysis provides valuable insights for optimising and increasing crop yield. The improved understanding of real-time data supports more effective farm planning, assisting farmers in making informed decisions about the allocation of resources.

Entry into application

The Data Act entered into force on 11 January 2024, and it will become applicable in September 2025.

Open consultation

The open public consultation on the Data Act ran from 3 June to 3 September 2021. The summary report (https://digital-strategy.ec.europa.eu/en/public-consultation-data-act-summary-report) took stock of the contributions and presents stakeholder views that helped shape the proposal, focusing on quantitative aspects.

The proposal for a Data Act was open for feedback from stakeholders (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13045-Data-Act-amended-rules-on-the-legal-protection-of-databases_en) from 14 March to 11 May 2022. This feedback was presented to the European Parliament and Council and fed into the legislative debate.
