

EU Data Act

February 2024

The Data Act aims to unlock the potential of industrial data to drive innovation by setting common rules regarding who can use and access data from connected devices across all economic sectors in the European Union.

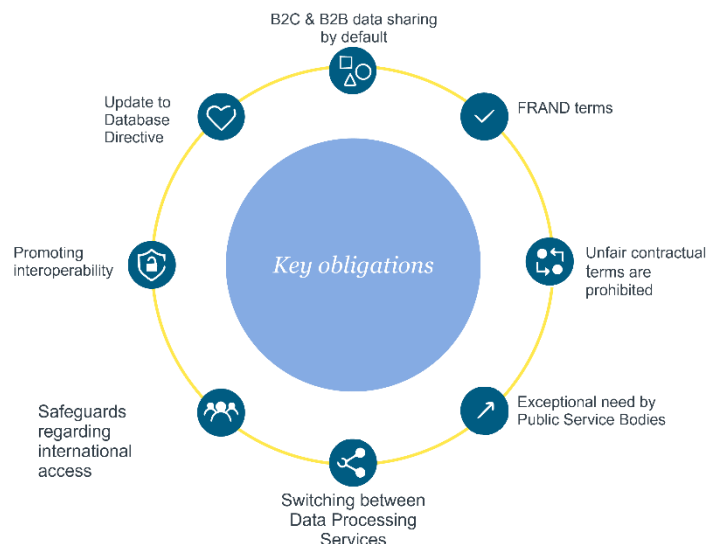
Key rights and obligations

The Data Act aims to encourage fair business-to-consumer, business-to-business and business-to-government exchange of data in the EU Single Market.

This Regulation is also meant to facilitate switching between data processing services, to introduce safeguards against unlawful third-party access to non-personal data and to promote interoperability.

Specific measures include:

- **Business to Consumer and Business to Business Data Sharing mandated for connected products and related services:** such connected products and related services need to be designed with access to data by default
- **Data Holders for connected product data are obliged to make data available:** based on fair, reasonable and non-discriminatory (FRAND) terms and transparency
- **Unfair Contractual Terms related to data access and use are prohibited:** to avoid the abuse of unequal negotiating power
- **Making data available to Public Sector Bodies:** in cases of exceptional need
- **Switching between Data Processing Services:** service providers to remove obstacles preventing customers from switching
- **Unlawful International Governmental Access:** safeguards against industrial espionage and IP theft
- **Data Spaces:** essential requirements to facilitate interoperability of data
- **Database Directive update:** the 'sui generis' property right will no longer apply to databases containing data generated by a connected product



Enforcement

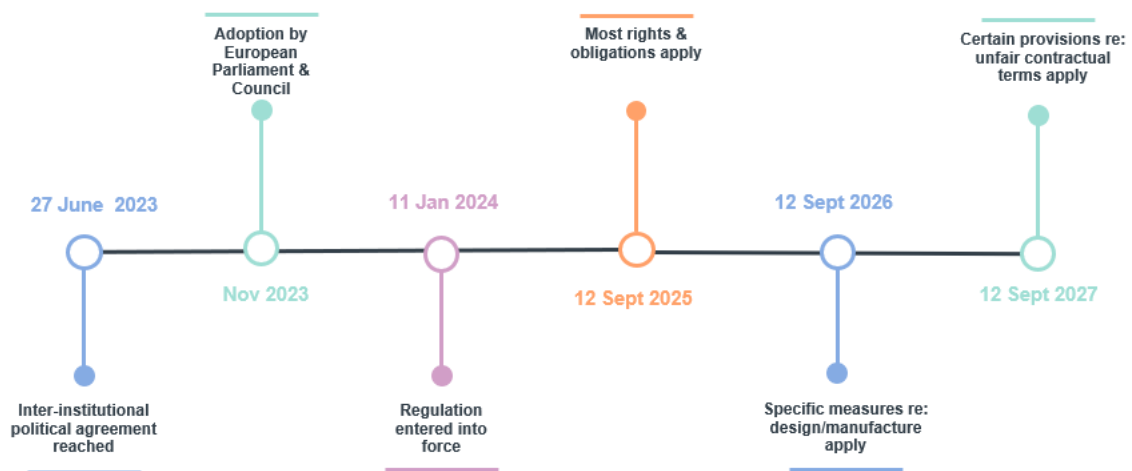
Member States will designate one or more competent authorities responsible for enforcement of the Regulation. Competent authorities can impose effective, proportionate and dissuasive financial penalties for compliance failures.

What's Next?

The Data Act was adopted by the European Parliament and Council in **November 2023** and published on **22 December 2023**. The Act entered into force from **11 January 2024**.

The majority of rights and obligations in the Data Act are expected to apply from **12 September 2025**, which is 20 months after the Regulation's date of entry into force. There is a longer lead in period for specific provisions concerning changes to the design and manufacture of products (**12 September 2026**) and for certain provisions related to certain unfair contractual terms (**12 September 2027**).

Provisional timeline of Data Act implementation



How we can support you with compliance and identifying business opportunities

Connected device and cloud processing ecosystems will both be heavily impacted by the Data Act. Device manufacturers and cloud processing providers in particular will need to build the complex technical and legal infrastructure required for compliance. Others will find new opportunities and business models presented by the rules. Bird & Bird's team of experts is on hand to help your organisation prepare for the Data Act, including by:

- **Conducting a scoping exercise** to determine the applicability of the Data Act to your products and related services
- **Carrying out an impact analysis** to determine which new rules apply to your organisation
- **Revising your Terms of Use** for connected products and services
- **Advising on changes to product design, manufacturing and information requirements** to comply with data access by default
- **Identifying Trade Secrets** held by your organisation and ensuring they retain the maximum protection in light of data sharing obligations
- **Advising on potential FRAND disputes** regarding data access and licensing agreements
- **Determining which data of third parties** could be used for developing or improving your own products and services

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Hein Hobbelen - Belgium

Partner

hein.hobbelen@twobirds.com



Francine Cunningham - Belgium

Regulatory and Public Affairs Director

francine.cunningham@twobirds.com



Tobias Bräutigam - Finland

Partner

tobias.brautigam@twobirds.com



Simon Assion - Germany

Partner

simon.assion@twobirds.com



Toby Bond - UK

Partner

toby.bond@twobirds.com



Berend van der Eijk - Netherlands

Partner

berend.vandereijk@twobirds.com



Feyo Sickinghe - Netherlands

Of Counsel

Feyo.sickinghe@twobirds.com



Manuela Cox - Netherlands

Associate

Manuela.cox@twobirds.com

twobirds.com

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